
First Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention (First Review Conference)

The Hague 28 April - 9 May 2003

Statement of the International Committee of the Red Cross, Geneva

The International Committee of the Red Cross (ICRC) is very grateful for this opportunity to address States Parties to the Chemical Weapons Convention (CWC) on the occasion of the First Review Conference of this important Convention. We speak as an organisation mandated by States to serve as the guardian of international humanitarian law, or the “law of war”. This field of law embodies the ancient and modern norms of diverse civilisations which uphold the belief that even in warfare there are limits demanded by decency, morality and the “dictates of the public conscience”.

The very *raison d’être* of the Chemical Weapons Convention is to uphold and reinforce for all time the rejection of warfare by poison found in ancient codes of war and, more recently, in the 1925 Geneva Protocol. When the Convention is seen simply as an agreement among States to eliminate, for political or security reasons, an important weapon system, its status and mission are diminished and its power to command public support is undermined.

Following the widespread use of chemical weapons in the First World War the ICRC, on 6 February 1918, protested “with all the force at its command” against such warfare, which it deemed “criminal”, and called for the prohibition of such weapons. If chemical warfare was not outlawed the Committee foresaw “a struggle which will exceed in barbarity anything which history has known so far”. This Appeal contributed to mobilizing public opinion and leaders to pursue the negotiation of the Geneva Protocol.

Despite the occurrence of several hundred conflicts since 1918 the use of chemical weapons has been confirmed in only a few cases. Both the law and public abhorrence have undoubtedly played a role in making poison

warfare unacceptable. The prohibitions on the use of chemical and biological weapons are now part of customary international law binding on all parties to all armed conflicts — whether or not they are parties to the specific treaties which contain these rules.

Since the CWC entered into force five years ago it has played a crucial role in reinforcing existing prohibitions, beginning with the elimination of existing chemical weapons stocks and production facilities and increasing confidence that other toxic chemicals are not diverted for prohibited purposes. The Technical Secretariat has played a central role in these achievements. It is important that its mission is supported through the provision of adequate resources and respect for its independence and broad mandate. Any effort to achieve the objectives of the Convention without a rigorous approach to its inspection regime, pursuit of its ambitious stockpile destruction programme and adequate human and financial investments would have serious consequences for the Convention and the international humanitarian law norms upon which it is based.

The ICRC urges all States which have not done so to join in this historic effort to make chemical weapons a relic of the past by adhering to the Chemical Weapons Convention and 1925 Geneva Protocol, by adopting effective national legislation to criminalize acts prohibited by the Convention and by withdrawing any reservations to the Geneva Protocol concerning use of prohibited agents. Chemical and biological weapons should have no place in the future of warfare or the future of humanity.

In an age of rapid developments in science and, in particular, in the field of chemistry and biotechnology the Convention's integrity is crucially dependent on vigilance regarding new technologies that could undermine its object and purpose. Participation of and frank debate with the scientific, industrial and medical communities on the implications of new developments are essential.

In this regard the ICRC would like to express its alarm at the increasing interest among police, security and armed forces in the use of incapacitating chemicals and the lack of expressions of concern about the implications of such developments by States parties to this Convention. Both the 1925 Geneva Protocol and the CWC contain absolute prohibitions on the use of incapacitating chemicals, including irritants, in warfare. This is not by chance. Several of the documented cases of chemical weapons use in conflicts over the last century began with the use of incapacitating chemicals and escalated to the employment of "traditional" chemical warfare agents.

The CWC permits the use of chemical agents for law enforcement. However, it is clear that the intent of its negotiators was only to permit the use of domestic riot control agents and the use of lethal chemicals for executions — where permitted by national law. The routine use of a variety of incapacitants was not envisaged and needs to be carefully considered before moves in this direction are pursued.

Although domestic law enforcement is beyond the ICRC's field of direct expertise, medical evidence shows that it is illusory to believe that rapid incapacitation can be achieved without a certain level of mortality. We are deeply concerned that the pursuit of incapacitating chemicals for law enforcement could lead to their proliferation, to an "arms race" of measures and countermeasures among security forces, criminals and those who commit acts of terror. In the longer term the result could be an extension into warfare of the use of incapacitating chemicals. We are also concerned about the apparent links between research into incapacitants for law enforcement and those pursuing what are sometimes called "non-lethal" weapons for use in warfare.

The pursuit of incapacitating chemical and biological agents has important implications not only for the CWC but also for fundamental rules of international humanitarian law. If used in armed conflict they would make it difficult or impossible to determine when a combatant is "out of action" and thereby afforded protection and assistance. An incapacitated combatant would probably not appear to be injured and may be unable to show a sign of surrender. It would be difficult to train soldiers to distinguish whether an enemy were incapacitated or remained a threat. The resulting combination of incapacitants and lethal force could significantly increase the lethality of armed conflicts. The introduction of incapacitants would also be likely to undermine the rule prohibiting the use of weapons against civilians — one of the most basic norms of warfare.

While the ICRC does not claim that all incapacitants are problematic, we firmly believe that the absolute prohibition in warfare of all forms of chemical and biological agents is of crucial importance and must be maintained. We are concerned about the interest being shown in such agents as a means of warfare; we are concerned therefore by lack of attention being given to the implications of the development of such agents for law enforcement. We urge this Review Conference to begin a process involving States Parties and specialist bodies which would aim to clarify the meaning of the Convention's law enforcement provisions and so address the risks raised here.

The ICRC calls on delegations here to reaffirm their commitment to the noble goals of the Chemical Weapons Convention, to ensure that the Convention's full and transparent implementation is not hampered by a lack of resources and to confront squarely the challenges to this Convention posed by scientific and technological developments. As guardians of this Convention you have a crucial role in ensuring that the social taboos and legal structures which, for several millennia, have protected humanity from poison warfare are maintained and strengthened for this and succeeding generations.