

2015

Less-Lethal Weapons Legislation



Homeland Security Research Corp.

Less-Lethal Weapons Legislation

August 2015

Homeland Security Research Corp. (HSRC) is an international market and technology research firm specializing in the Homeland Security (HLS) & Public Safety (PS) Industry. HSRC provides premium market reports on present and emerging technologies and industry expertise, enabling global clients to gain time-critical insight into business opportunities. HSRC's clients include U.S. Congress, DHS, U.S. Army, U.S. Navy, NATO, DOD, DOT, GAO, and EU, among others; as well as HLS & PS government agencies in Japan, Korea, Taiwan, Israel, Canada, UK, Germany, Australia, Sweden, Finland, Singapore. With over 750 private sector clients (72% repeat customers), including major defense and security contractors, and Fortune 500 companies. HSRC earned the reputation as the industry's Gold Standard for HLS & PS market reports.

**Washington D.C. 20004, 601 Pennsylvania Ave., NW Suite 900,
Tel: 202-455-0966, info@hsrc.biz, www.homelandsecurityresearch.com**

Table of Contents

1	Appendix A: Less-Lethal Weapons Legislation.....	4
---	--	---

1 Appendix A: Less-Lethal Weapons Legislation

Non-lethal weapons development impacts on several international treaties including the Biological and Toxin Weapons Convention (BWC), the Chemical Weapons Convention (CWC), the Convention on Conventional Weapons (CCW) (also known as the Inhumane Weapons Convention (IWC)), and the Ottawa Convention on Landmines. The use of NLWs in warfare is also governed by the law of war or international humanitarian law. For recent perspectives on the implications of NLW development for international humanitarian law the reader is directed to papers presented to the 2003 2nd European Symposium on Non-Lethal Weapons. Of the treaties mentioned above the CWC is perhaps under the greatest threat from NLW development. In the U.S., for example, there is continuing military interest in incapacitating chemicals and a desire be able to use RCAs in warfare, which would contravene the prohibitions of the Convention. Senior figures in the U.S administration have made no secret of their contempt for the restrictions of the CWC

The legal issues surrounding chemical weapons are confusing. The use of some chemical weapons depends on the circumstances involved. The best-known chemical agents are designated riot control agents (RCAs). Although RCAs are prohibited as a method of warfare, they are legal for use by law enforcement agencies including being employed to control riots. "Under the Chemical Warfare Convention ratified in 1997, RCAs can probably be used during peacekeeping operations, but not if an engagement escalates to international conflict." Furthermore, it appears "that most anti-material non-lethal chemical systems would meet the test of legality. In general, they are discriminate in that they are designed to attack a small portion of the target, and frequently nontoxic."

Here is a list of non-lethal weapons related treaties and laws. It's based mainly on Erik Nutley's paper, "Non-lethal Weapons: Setting The Phasers to Stun? Potential Strategic Blessings and Curses of Non-Lethal Weapons on the Battlefield".

1. Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, 18 October 1907
2. Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925
3. Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field. Geneva, 12 August 1949

4. Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea. Geneva, 12 August 1949.
5. Geneva Convention (III) Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.
6. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.
7. Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Opened for Signature at London, Moscow, and Washington. 10 April 1972.
8. Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques. 10 December 1976.
9. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.
10. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. (The U.S. is not a party to this protocol).
11. United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (UNCCW). Geneva, 10 October 1980.
12. UNCCW Protocol on Non-Detectable Fragments (Protocol I). Geneva, 10 October 1980.
13. UNCCW Protocol on Prohibitions or Restrictions on the Use of Mines, Booby traps, and Other Devices (Protocol II). Geneva, 10 October 1980.
14. UNCCW Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). Geneva, 10 October 1980. (The U.S. is a party to this protocol, with restrictions).
15. Nairobi International Telecommunications Convention, 10 January 1986.
16. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. Paris, 13 January 1993.
17. UNCCW Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995.
18. UNCCW Protocol on Prohibitions or Restrictions on the Use of Mines, Booby traps and Other Devices as Amended on 3 May 1996 (Amended Mines Protocol).

19. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997. (The U.S. is not a party to this convention).
20. Rome Statute of the International Criminal Court, 17 July 1998. (The U.S. is not a party to this treaty).

Law of Armed Conflicts (LoAC). Customary law and treaty law are the main Sources of LoAC. Although some treaties have not been ratified by all states, some of their provisions are considered customary international law. A list of the states which have ratified or filed their intention to ratify each convention is kept up to date in regards to each convention. The United Nations maintains a set of lists of the States which have ratified all the conventions coming under its aegis. Unlike treaty law (e.g. the Geneva Conventions), customary international law is not written. A rule is customary if it reflects state practice and when there exists a conviction in the international community that such practice is required as a matter of law (*Opinio Juris*). The International Committee of the Red Cross (ICRC) is preparing a report on customary rules of LoAC applicable in international and non-international armed conflicts, which will be published in 2004. LoAC protects civilians and civilian objects which are, or may be, directly affected by an armed conflict or situations of occupation. The rules of LoAC also cover aspects such as the conduct of hostilities, the status of combatants and prisoners of war, and the protection of the emblems of the Red Cross, the Red Crescent and the Red Lion.

Principles of LoAC. The principle of military necessity: it justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible. The prohibition of superfluous injury or unnecessary suffering. The principle of distinction: the parties to a conflict must at all times distinguish between combatants and non-combatants, and between military and non-military targets. Neither the civil population as a whole nor civilians in particular may be subjected to attacks. The principle of proportionality: it is forbidden to attack a military target if such an action would cause excessive damage to civilians and civilian objects. Furthermore, the right of the parties to a conflict to choose methods and means of warfare is not unlimited. In cases not covered by LoAC, the Martens clause applies. This mandates that civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience. LoAC binds all parties to an armed conflict. In an international conflict it must be observed by the belligerent states. In an internal conflict it binds the state and the groups fighting against it or fighting among themselves. Thus LoAC establishes rules which are applicable to states and non-state factions, groups or other parties. The main LoAC treaties applicable to NLWs are listed below. Not all NATO nations are parties to these treaties, although some of their provisions are

considered customary international law by different states. Differing national views will have to be considered in all NATO missions.

1868 Saint Petersburg Declaration Renouncing the Use, in Time of War, of certain Explosive Projectiles. In the preamble to this declaration, the following considerations can be noted: The only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy. For this purpose it is sufficient to disable the greatest possible number of men.

1899 The Hague, Declaration (IV,3) concerning Expanding Bullets. The declaration prohibits the use of bullets which expand or flatten easily in the human body.

1907 The Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. This convention limits the right of belligerents to adopt means of injuring the enemy. In addition, it particularly forbids: The employment of poison or poisoned weapons. The employment of arms, projectiles, or material calculated to cause unnecessary suffering.

1925 Geneva Protocol/ Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare. In response to the use of poisonous gases in the First World War, this protocol prohibits further use of such chemical weapons as well as biological weapons. The protocol only concerned their use between states and did not cover internal or civil conflicts. The Protocol recognized the significance of bringing together controls on chemical and biological weapons. While it prohibits the use of such weapons it does not prohibit their production, development and stockpiling. Additionally many state-parties held reservations to the protocol as to the right of retaliatory use, making it effectively a no-first-use treaty for those states, hence the need for further treaties which came in the form of the 1972 Biological and Toxin Weapons Convention (BTWC) and the 1993 Chemical Weapons Convention (CWC). There is no verification mechanism contained within the protocol and compliance is voluntary.

The four Geneva Conventions dated 12 August 1949 and their additional Protocols I and II dated 8 June 1977. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are principal instruments of LoAC. Applicable in case of international armed conflict, the four Geneva Conventions of 12 August 1949 concern the treatment of: The wounded and sick in armed forces in the field (Convention I); The wounded, sick and shipwrecked members of armed forces at sea (Convention II); Prisoners of war (Convention III); Civilian persons (Convention IV). The latter includes internally displaced persons, women, children, refugees, stateless persons, journalists and other categories of individual.

Two additional protocols complement the Geneva Conventions: The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Protocol I includes rules governing the conduct of hostilities include prohibitions regarding weapons and methods and means of warfare: *“Article 35 – Basic rules 1) In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited. 2) It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. 3) It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environments.”* Article 36 of Protocol I relating to the protection of victims of international armed conflicts lays conditions on the development of new weapons. This article is reproduced in full below: *“Article 36 – New weapons In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.”* This article implies that all states parties are obligated to institute a national legal review process for all new weapons whether lethal or non-lethal. Each state party is free to choose its review mechanism. In consultation with states, the ICRC is developing guidelines which can assist state parties in establishing their legal review mechanisms. *Protocol II applies to “all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.” (Article 1).* Additional Protocol II does not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. This Convention prohibits all bacteriological (biological) and toxin weapons. Article 1 of this Convention is as follows: *“Each State Party to this Convention undertakes never in any circumstance to develop, produce, stockpile or otherwise acquire or retain:*

1) *Microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes.*

2) *Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.”* Although BTWC comprehensively prohibits misuse of biological and toxin materials, it has no associated verification regime.

Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, 10 December 1976 (ENMOD Convention). The ENMOD Convention is an instrument of international law aimed specifically at protecting the environment in a situation of hostilities. It prohibits the hostile use of the environment as a method of combat. The provisions of Additional Protocol I of 8 June 1977 to the Geneva Conventions of 1949 which directly prohibit causing damage to the environment in warfare provide an essential complement to ENMOD. Other rules and principles of LoAC also provide protection for the environment in armed conflict, although they may not mention it specifically. In particular, general custom governing the conduct of hostilities includes the principle of discrimination, which limits attacks to military objectives, and the principle of proportionality, which prohibits the use of means and methods of combat causing excessive damage.

United Nations Convention of 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects and its Protocols. This Convention applies two general customary rules of LoAC to specific weapons, i.e.: The prohibition on the use of weapons which have indiscriminate effects. The prohibition on the use of weapons which cause superfluous injury or unnecessary suffering. This Convention, while applying customary rules to specific weapons, does not restrict states' obligation to refrain from using weapons which are not mentioned in it, but which would nevertheless violate LoAC. It forms a framework complemented by four Protocols governing the use of specific weapons. New protocols may be added when the States parties deem it necessary. There are four protocols to this Convention: Protocol I – Non-detectable fragments. It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by x-rays. Protocol II – Mines, booby-traps and other devices. This protocol regulates and restrict the use of mines, booby-traps and other devices. Protocol III – Incendiary weapons. Incendiary weapons are those which are primarily designed to set fire to objects or to cause burn injury to persons through the action of flame or heat, for example flame-throwers (Article 1). They should not in any circumstances be used against civilians, or be delivered by aircraft against military objectives located within concentrations of civilians. Furthermore, they may not be used against forests or other kinds of plant cover, except when such natural elements are used to conceal or camouflage combatants or other

military objectives (Article 2). Protocol IV (Vienna Protocol) – Blinding laser weapons. It is prohibited to use, or to transfer to any state or any other entity, laser weapons specifically designed to cause permanent blindness to unenhanced vision (Article 1). In the employment of laser systems, parties shall take all feasible precautions to avoid permanent blindness. Such precautions shall include training of their armed forces and other practical measures.

Convention of 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC). This Convention aims to completely exclude the possibility of use of chemical weapons by prohibiting their development, production and stockpiling and by destruction of stocks and existing production facilities. Like the 1972 Convention on bacteriological weapons, in several ways it complements and strengthens the Geneva Protocol of 1925 on the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Besides the fact that it does not allow any reservations (Article XXII1), the Convention extends the prohibition on the use of chemical weapons to their development, production, acquisition, stockpiling, retention and transfer, as well as requiring both their destruction and that of the facilities where they are produced. Unlike the BTWC, compliance with the CWC is verifiable through the requirements for declaration by state parties and the associated inspection activities of the Organisation for the Prohibition of Chemical Weapons (OPCW). The CWC prohibits chemical weapons, including those that cause temporary incapacitation. Therefore, non-lethal chemical weapons seemingly are prohibited. However, the use of a chemical agent for law enforcement including domestic riot control purposes is a non-prohibited purpose. The CWC also prohibits the use of Riot Control Agents (RCAs) as a “method of warfare”. The CWC does not define the terms “law enforcement purpose” or “method of warfare”. The CWC allows for a review conference to take into account scientific and technological developments. It takes place every five years. The next one is due in 2008.

Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Antipersonnel Mines and on their Destruction, 18 September 1997 (Ottawa Convention). The states which sign the treaty undertake *never, under any circumstances, to use, develop, produce, otherwise acquire, stockpile, retain or transfer antipersonnel mines*, nor to assist anyone to do so. For the purposes of this convention, antipersonnel mines are defined as “*designed to be placed under, on or near the ground... and to be exploded by the presence, proximity or contact of a person...*” Only antipersonnel mines are prohibited by the Ottawa treaty. It does not cover: antitank and anti-vehicle mines (whose use is regulated by the United Nations Convention of 1980 on certain conventional weapons, and by the general principles of LoAC). anti-handling devices fitted to anti-vehicle mines to prevent their removal. Remote-controlled devices which can only be triggered manually by a combatant, and not simply “by the presence, proximity or contact of a person”. Maritime mines.

Terms of the Mandate Given to the Force and Rules of Engagement (ROE).

The terms of the mandate given to a particular force define its political and military objectives and the freedom of action and autonomy granted to it. They also define the legal framework for the use of force, taking into account the different bodies of law applied by the states belonging to the coalition providing the force and by the state in which the coalition is intervening. They also establish the legal status of the forces deployed. The rules of engagement (ROE) are guidelines for the use of force. However, the soldiers of a coalition are primarily subject to the laws of their country of origin. It should be noted that ROE are a point of convergence between the political, military and legal aspects, where the sensitivities of each nation of the coalition may diverge on such specific points as the right of self-defense or the notion of a threat.

Labor Law. The use of certain non-lethal weapons may expose their operators to the same effects as the targets, but at lower intensities (microwave NLW, for example). The results for their health and the possible legal consequences do not fall under the law of armed conflict but rather under national legislation for health and safety at work and the protection of labor. This national legislation therefore has relevance in the consideration of NLWs.

(Source: NATO)

More information can be found at:

[Non-Lethal Weapons \(NLW\): Industry, Technologies & Global Market – 2014-2020](#)