

easier to determine what ammunition may indeed “be deemed to be excessively injurious or to have indiscriminate effects and/or to cause superfluous injury or unnecessary suffering,”: another view would suggest that new developments in ammunition – conventional lethal and non-lethal, as well as DEW – would seem to demand such a review. It appears that some of the constraints on the use of weapons established in the 19th and early 20th centuries may for various reasons be outdated, unenforceable, impractical and even hypocritical today. On the other hand, there are factors which limit the possibility of successfully developing new or updated “rules of war” or other “humanitarian rules” within the context of addressing the proliferation challenges posed by modern SALW. One such challenge is that of establishing a common definition.¹¹⁴ Just what kind of weapon is considered superfluous, excessively injurious or to have indiscriminate effects? Another challenge will be involving 185 countries in this process – or at the very least, the 60 to 100 SALW-producing states. Obtaining consensus within such a diverse, political, geographic and cultural environment will be much more difficult than obtaining consensus within the essentially euro-centric agreements of the late 19th and early 20th century. Another issue complicating matters further is that most wars fought in the last twenty years have been civil or internal conflicts where international law has carried little to no weight.¹¹⁵ This trend towards internal conflicts and informal wars needs to be addressed within the context of “rules of war.” Attempts to date have appeared to accomplish little outside of lofty phrases. States must address the question of why rules regarding the use of ammunition in international wars are different from those established for domestic conflict. It is not clear why ammunition deemed to cause unnecessary suffering in international conflict is considered acceptable for domestic policing. The rationale for using or not using such ammunition frequently cuts both ways. The international and domestic application of rules should be rationalized and harmonized where possible. It is time to move forward on these issues, particularly as new types of ammunition (lethal and non-lethal) and new types of weapons (ie. DEW) are now undergoing R&D or entering the inventories of law enforcement agencies and/or military organizations. There are several fora where this may be addressed. They include the review conference for The 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, the International Institute of Humanitarian Law and the ICRC.

New SALW Trend Dichotomies

Unlike landmines, artillery shells, mortar shells and iron bombs, small arms are very discriminate weapons. In the hands of responsible and well-trained individuals they should only

¹¹⁴ The ICRC has attempted to address this in its SIRUS project. For details see <http://www.icrc.org/unicc/icrcnews>.

¹¹⁵ Protocol 2 to Geneva Convention IV relating to the protection of victims of non-international armed conflicts certainly addresses many of these issues. To date, notwithstanding attempts to apply these rules to Rwanda and the Balkans, there have been few attempts and limited success in prosecuting accused violators. The establishment of an international court to try war crimes is one small step to addressing this issue.