

Fourth Review Conference of the High Contracting Parties to 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 10 October 2011

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Review of the scope and operation of the Convention and its annexed Protocols

The Compliance Mechanism for the CCW and Its Protocols

Review and Food for Thought Paper prepared by the CCW Implementation Support Unit at the request of the President-designate of the Fourth Review Conference

I. Introduction

1. This paper reviews States Parties' work on compliance over the past five years. The final section titled "Questions on enhancing the compliance mechanism" draws on the proposals put forward by the President-designate in his letter dated 15 August 2011 and the discussions that took place on preparations for the Fourth Review Conference, which were held during the Third 2011 Session of the Group of Governmental Experts, 22–26 August 2011.

2. The current compliance mechanism of the Convention was established by the 2006 Third Review Conference (CCW/CONF.III/11, Annex II) and the 2007 Meeting of the High Contracting Parties (CCW/MSP/2007/5), following several years of negotiations on compliance, including on an amendment to the Convention. The substantive elements of those decisions were:

(a) Agreement to consider implementation of and compliance with the Convention and its Protocols as a regular agenda item of the annual Meetings of States Parties.

(b) Agreement by States Parties to take all appropriate steps, including legislative and other measures, to prevent and suppress violations of the Convention and its Protocols by which they are bound by persons or on territory under its jurisdiction or control.

(c) The above measures to be reinforced by States Parties implementing the appropriate provisions for the investigation and punishment of those that violated the Convention and its Protocols.

(d) Enhanced commitment of States Parties to provide their armed forces with the appropriate military instructions, operating instructions and training in accordance with the obligations of the Convention and its Protocols.

(e) Transparency reports to be submitted annually by the States Parties on compliance, which will include information on: (i) Dissemination of information on the Convention and its Protocols to their armed forces and to the civilian population; (ii) Steps taken to meet the relevant technical requirements of the Convention and its Protocols and any other relevant information; (iii) Legislation related to the Convention and its Protocols; (iv) Measures taken on technical co-operation and assistance; and (v) Other relevant matters.

(f) An undertaking by States Parties to consult and cooperate with each other bilaterally, through the United Nations Secretary-General, or other voluntary international procedures on concerns regarding their legal obligations or to resolve any issues arising from the Convention and its Protocols.

(g) The establishment of a pool of experts to provide assistance, upon request, on any concerns relating to the fulfilment of the States Parties' legal obligations under the Convention and its Protocols.

II. Implementation of the compliance mechanism

A. Consideration of compliance by the Meetings of the High Contracting Parties

3. At the annual Meetings of the High Contracting Parties to the Convention compliance has been considered as a regular agenda item. Under this item, States Parties had the opportunity to provide updates on their progress in implementing the CCW and its Protocols, to clarify the obligations under the Convention and its Protocols, namely Protocol IV, as well as to update on other International Humanitarian Law related issues, such as the establishment and functioning of national mechanisms to review the legality of new weapons. All, States and non-governmental organizations (NGOs) could raise concerns about compliance matters. Due to the on-going work on cluster munitions, the attention to and time spent on compliance has been limited.

B. Compliance reports

4. The key aspects of the reporting requirements are:

(a) *The dissemination of information on the Convention and its Protocols to their armed forces [...]*: The inclusion of the Convention and its Protocols in military manuals and teaching materials for the armed forces is crucial to ensuring that the militaries of State Parties are aware of their obligations and being guided as to how they should be complied with. Such information is important for assessing implementation at the operational level.

(b) *Steps taken to meet the relevant technical requirements of the Convention and its annexed Protocols and any other information pertaining thereto*: The weapons and ammunition used by a State Party's armed forces must comply with the regulations and prohibitions of the Convention and its Protocols. In the absence of such information, it may be difficult to be confident that States Parties are complying with their obligations.

(c) *Legislation related to the Convention and its annexed Protocols*: Implementing legislation assists a State Party to be fully in compliance with its obligations and to ensure that provisions are in place for the investigation and prosecution of any breaches of the implementing legislation.

5. States Parties which submitted compliance reports were: Albania, Argentina, Australia, Austria, Belarus, Belgium, Canada, China, Colombia, Croatia, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Finland, France, Georgia, Germany, Hungary, India, Ireland, Italy, Japan, Lithuania, Malta, Mexico, Montenegro, New Zealand, Netherlands, Nicaragua, Norway, Pakistan, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Sweden, Switzerland, Tunisia, Turkey, Turkmenistan, and Ukraine. However, the reporting rate under compliance remains modest and is much lower than under Protocol V or Amended Protocol II.

C. The Pool of Experts

6. States Parties which have submitted qualified CCW experts for the Pool of Experts on Compliance are: Argentina, Belarus, Bulgaria, Chile, China, Colombia, Croatia, Cyprus, France, Germany, Italy, Netherlands, Pakistan, Portugal, South Africa, Switzerland, Tunisia and Turkey. The Pool of Experts has not been called on to provide advice on CCW matters. None of the candidates from the Pool of Experts has been called on to provide advice.

D. The Consultative Mechanism

7. States Parties have not sought consultations with another State Party through the United Nations Secretary-General or via any other channels in order to resolve issues arising from the Convention and its Protocols.

III. Questions on enhancing the compliance mechanism

8. In order to make the most of and enhance the Decision on Compliance, States Parties may wish to consider the following issues:

(a) Ways of enhancing the transparency reporting:

(i) review of the information submitted by the States parties: would it be useful to establish a coordinator on compliance to provide some much needed leadership, compile information from the compliance reports, follow up with those States Parties which have not submitted reports, and present a report on the status of compliance across the CCW and its Protocols each year to the Meeting of States Parties? The coordinator would be assisted in these tasks by the CCW Implementation Support Unit;

(ii) review submission requirements: synchronize the deadlines for submission of the compliance reports with those under Amended Protocol II, Protocol V (31 March is the deadline for submitting reports under the latter protocols); reconsider periodicity of submission (given that most information in compliance reports is unlikely to be changed on an annual basis, would it be preferable to require States Parties to submit an initial report and then only bi-annual or tri-annual updates)?

(b) Ways to refocus the annual discussion on the operation and status of the CCW to problems of the national legislation and implementation, concerns on compliance,

interpretation of the obligations under CCW and its Protocols, or review of new weapons that may cause excessive suffering or be indiscriminate.¹

(c) Ways to make better use of the Pool of Experts: how can the CCW benefit from the expertise and experience of the experts in the Pool of Experts? For example, would it be useful if the experts were invited to provide examples of best practice on CCW implementation and compliance from their respective regions?

(d) How can the consultative mechanism be promoted to raise awareness of it among States Parties and States not party to the CCW?

¹ The need to review new weapons and the means and methods of warfare was taken up in paragraph 17, page 6 of the *Final Document*, Part II of the Final Declaration for the Third Review Conference, (CCW/CONF.III/11 (Part II) and *Observations on implementing the CCW's Decision on a Compliance Mechanism*, (CCW/MSP/2007/WP.1), Working Paper submitted by the International Committee of the Red Cross, 26 September 2007.