

**Fifth 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**

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English only

Geneva, 12–16 December 2016

Item 11 of the provisional agenda

**Review of the scope and operation  
of the Convention and its annexed protocols**

**Views and Recommendations for the Fifth Review  
Conference of the Convention on Certain Conventional  
Weapons**

**Working Paper submitted by the International Committee of the Red  
Cross**

1. The Fifth Review Conference of the Convention on Certain Conventional Weapons (CCW), which will be held from 12 to 16 December 2016 in Geneva, is an important moment for High Contracting Parties to examine the status and operation of the Convention and its Protocols. It is also a time to assess developments that have occurred in weapons technology and the use of weapons and, in response to such developments, to consider clarifying and enhancing the CCW's protections for the benefit of civilians and combatants.
2. This paper outlines the International Committee of the Red Cross' (ICRC's) views and proposals on a number of issues already on the CCW agenda or which are otherwise pertinent to its object and purpose. It includes issues that High Contracting Parties could address during the Review Conference and which may be considered for more focussed work beginning in 2017.
3. The ICRC encourages High Contracting Parties to consider its views and proposals as they prepare for the Review Conference. Specific areas for consideration include: (1) Promoting adherence to the CCW and all of its Protocols; (2) National implementation; (3) Mines other than anti-personnel mines; (4) Incendiary weapons and weapons with incendiary effects; (5) Laser systems other than blinding laser weapons; (6) Autonomous weapon systems; and (7) Explosive weapons in populated areas.


**I. Promoting adherence to the CCW**

4. To ensure the universal protection of civilians from the indiscriminate effects of certain conventional weapons and of combatants from weapons that cause unnecessary suffering, it is critically important that every State adhere to the CCW and all of its Protocols, and faithfully implement their provisions.
5. In the Final Declarations of all of the preceding review conferences, High Contracting Parties have committed themselves to promoting universal adherence to the

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CCW.<sup>1</sup> Plans of action on universalization were also adopted in 2006 and 2011.<sup>2</sup> The Fifth Review Conference provides an opportunity for High Contracting Parties to report on their efforts to fulfil these commitments and to further promote adherence to the Convention and its Protocols among States not yet party to these instruments. It also provides an opportunity for each High Contracting Party to assess the status of *its* adherence to the Convention's Protocols and to the 2001 amendment to Article 1.

Box 1

The ICRC encourages each High Contracting Party to:

- Report to the Review Conference on initiatives it has taken, nationally or regionally, to promote adherence to the CCW and all of its Protocols by non-party States;
- Consider adhering to the Protocols to which it is not yet a party, and report to the Review Conference on the steps it is and will take to do so;
- Consider adhering to the 2001 amendment to Article 1, which extends Protocols I, II, III and IV to non-international armed conflicts, if it has not yet done so, and report to the Review Conference on the steps it has and will take to do so;
- If it is party only to Protocol II of 1980, consider adhering to amended Protocol II, which was adopted in 1996 to provide basic measures to protect civilians from the effects of landmines, booby traps and other devices.

## II. National implementation

6. High Contracting Parties have also committed themselves to respect, implement and fully comply with the provisions of the CCW, and the Review Conference will be an important moment to show how these commitments are being fulfilled at the national level.<sup>3</sup>

7. Under the Convention, the High Contracting Parties are required to disseminate the Convention and its Protocols and ensure that their requirements are included in military training and instruction.<sup>4</sup> Amended Protocol II also requires that all appropriate steps be taken, including legislative and penal measures, to prevent and suppress violations of the

<sup>1</sup> First Review Conference of the High Contracting Parties (1996) [hereinafter, First Review Conference], Final Declaration, Operative Paragraph 2, p. 35 of Part I of the Final Document; Second Review Conference of the High Contracting Parties (2001) [hereinafter, Second Review Conference], Final Declaration, Operative Paragraph 2, p. 3; Third Review Conference of the High Contracting Parties (2006) [hereinafter, Third Review Conference], Final Declaration, Operative Paragraphs 7-10, p. 3; Fourth Review Conference of the High Contracting Parties (2011) [hereinafter, Fourth Review Conference], Final Declaration, Operative paragraphs 3-5, p. 3.

<sup>2</sup> Plan of Action to Promote the Universality of 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, Annex C of the Final Declaration of the Third Review Conference of the High Contracting Parties (2006), pp. 16-22; An Accelerated Plan of Action on Universalization of the Convention and its Annexed Protocols, Annex I of the Final Declaration of the Fourth Review Conference of the High Contracting Parties (2011), p. 11.

<sup>3</sup> Second Review Conference, Final Declaration, Operative Paragraph 6, p. 4; Third Review Conference, Final Declaration, Operative Paragraphs 2-4, p. 2; Fourth Review Conference, Final Declaration, Operative paragraphs 6-8, pp. 3-4.

<sup>4</sup> Article 6 of the framework Convention.

Protocol.<sup>5</sup> Protocol V specifies that instructions, procedures and training consistent with the Protocol be put in place.<sup>6</sup>

8. These requirements have been reinforced by the CCW Compliance Mechanism, which was established by the Third Review Conference in 2006 and the 2007 Meeting of High Contracting Parties. It was later enhanced by the Fourth Review Conference in 2011.<sup>7</sup> This mechanism requires High Contracting Parties to take a variety of measures to implement the CCW and to ensure compliance with its provisions. In summary, it requires High Contracting Parties to take all appropriate steps, including legal and other measures, to prevent and suppress violations of the Convention and all of the Protocols to which they are a party.<sup>8</sup> It also specifies that the armed forces of each High Contracting Party must issue military instructions and operating procedures consistent with the Protocols binding on the State and to provide training in those areas.<sup>9</sup> To show how these commitments are being implemented, national compliance reporting formats have been adopted, which each High Contracting Party is called upon to submit on an annual basis. The Compliance Mechanism also created a pool of experts from which any High Contracting Party may seek assistance in fulfilling these obligations.<sup>10</sup>

#### Box 2

The ICRC encourages each High Contracting Party to report on the steps that it has taken at national level to implement and ensure compliance with the CCW, especially those steps taken since the Fourth Review Conference to operationalize the CCW Compliance Mechanism. Specific areas that States may wish to underscore include the following:

- The extent to which the CCW Protocols are part of military manuals and the training curriculum of its armed forces;
- The status and content of national legislation to implement and enforce the CCW Protocols, including provisions to prevent and suppress violations;
- Any violations or prosecutions that have occurred and how they were resolved;
- Experiences in seeking or providing technical assistance and cooperation in CCW implementation.

To further assist the Review Conference's work on implementation and compliance, it would be useful for any State that has not yet completed an annual compliance report to do so as a matter of urgency and submit it before the Review Conference.

### III. Mines other than anti-personnel mines

9. Since the unsuccessful attempt by High Contracting Parties to conclude a new protocol on Mines other than anti-personnel mines (MOTAPM) — also often referred to as

<sup>5</sup> Article 14 of Amended Protocol II.

<sup>6</sup> Article 11(1) of Protocol V.

<sup>7</sup> See, Third Review Conference, Final Declaration, Decision 3, p. 4 and Annex B, pp 13-15; Fourth Review Conference, Final Declaration, Decision 4, p. 5 and Annex III, p. 13.

<sup>8</sup> Paragraphs 7 and 8.

<sup>9</sup> Paragraph 9.

<sup>10</sup> Paragraph 10.

anti-vehicle (AV) mines<sup>11</sup> — between 2003 and 2006, there has been little progress towards developing new rules to increase the protection of civilians, as the ICRC and others have been calling for. High Contracting Parties have, however, continued to discuss the humanitarian impact of AV mines, the rules of IHL that govern these weapons and the possible technical features that may help reduce civilian casualties.

10. Already at the First Review Conference in 1996, High Contracting Parties expressed concern about AV mines when they outlined a commitment to ban all remotely delivered mines (including AV mines) without effective self-deactivation features and a self-destruction or self-neutralization mechanism.<sup>12</sup> This was followed by commitments in the Second and Third Review Conferences to explore the issue of AV mines more broadly and this eventually led to the negotiations mentioned above. When these negotiations concluded unsuccessfully in 2006, 25 High Contracting Parties joined a declaration in which they pledged to implement, on a national basis, measures to help reduce the humanitarian consequences of AV mines.<sup>13</sup> These included commitments not to use any AV mine outside a perimeter marked area unless the mine was detectable and incorporated a self-destruct or self-neutralization mechanism with a back-up self-deactivation feature.

11. Yet, AV mines continue to pose significant problems in humanitarian terms. The database of AV mine incidents, managed by Geneva International Center for Humanitarian Demining (GICHD) shows that nearly 600 people were killed or injured by AV mines in 2015, of which 60% were civilians. Direct casualties, however, are only a fraction of the humanitarian impact. AV mines can significantly hinder the efforts of humanitarian organizations to deliver much needed assistance and support to vulnerable populations. They can also hinder the return of displaced civilians, the cultivation of valuable farmland and reconstruction once the fighting is over. These consequences in countries such as Afghanistan, Cambodia and South Sudan are detailed in reports on the humanitarian and developmental impacts of AV mines prepared by the GICHD and the Stockholm International Peace Research Institute (SIPRI).<sup>14</sup>

12. The evidence of the unacceptable impact of AV mines on civilians calls for decisive action by High Contracting Parties.

#### Box 3

The ICRC urges the High Contracting Parties that endorsed the 2006 Declaration on AV mines to use the opportunity of the Review Conference to report on the status of their implementation of the Declaration's commitments, including confirmation that such commitments are part of military doctrine and policy. They are also encouraged to report on any other measures that they have taken to reduce the dangers that AV mines might pose to civilians when they are used.

<sup>11</sup> The terms MOTAPM and AV mines are often used interchangeably in the CCW context. AV mines will be the term predominantly used in this section.

<sup>12</sup> First Review Conference, Operative Paragraph 10, p. 35;

<sup>13</sup> Declaration on Anti-vehicle Mines, 16 Nov. 2006, UN Doc. CCW/Conf.III/WP.16 presented by Albania Australia, Bosnia and Herzegovina, Belgium, Bulgaria, Canada, Croatia, Denmark, El Salvador, Luxembourg, Estonia, France, Israel, Latvia, Lithuania, Netherlands, New Zealand, Norway, Republic of Korea, Romania, Serbia, Slovenia, The former Yugoslav Republic of Macedonia, United Kingdom, United States. Germany submitted its own declaration which outlines that it would use detectable and limited life AV mines in all circumstances, UN Doc. CCW/Conf.III/WP.17.

<sup>14</sup> GICHD & SIPRI, *The humanitarian and developmental impact of anti-vehicle mines*, 2014; GICHD & SIPRI, *Global mapping and analysis of anti-vehicle min incidents in 2015*.

The ICRC also calls on the Review Conference to make AV mines the subject of focused work in 2017, taking into account and building upon the earlier efforts in this area.

#### **IV. Clarification of issues related to Protocol III: incendiary weapons and weapons with incendiary effects**

13. A number of High Contracting Parties and organizations, including the ICRC, have expressed concern about the humanitarian consequences of incendiary weapons and of weapons with incidental incendiary effects, such as white phosphorous munitions. These concerns are based on the severe burn injuries caused by such weapons, the lack of experience that many medical facilities often have in treating them and the long-term disabilities and suffering that victims often face. There is also disquiet about the fires that can result and spread when such weapons are used. There are reports that incendiary weapons have been used in populated areas in recent conflicts with devastating consequences for civilians.

14. Previous CCW Meetings have highlighted this issue. The Fourth Review Conference took note of the concerns raised by some High Contracting Parties about "the offensive use of white phosphorous against civilians" and proposals for further discussion on this matter.<sup>15</sup> Concerns were also recorded in the reports of the 2012-2015 Meetings of States Parties. However, there has been no agreement thus far to look at these weapons in more detail.

15. Protocol III of the CCW is the primary IHL instrument regulating the use of incendiary weapons. Among other rules, it prohibits the use of air-delivered incendiary weapons against any military objective located in a concentration of civilians.<sup>16</sup> It also restricts the use of incendiary weapons in other situations.<sup>17</sup>

16. The Protocol defines incendiary weapons as weapons or munitions which are primarily designed to set fire to objects or to cause burn injury to persons through flame, heat, or combination thereof.<sup>18</sup> However, it excludes weapons that may have "incidental" incendiary effects such as flares, tracers and smoke and signalling systems. As a result, many weapons with such effects are not covered by the Protocol's restrictions because their incendiary effects can be characterised as "incidental" to the munitions' main purpose. The use of such weapons in populated areas in past conflicts has shown that, like their incendiary counterparts, they can have severe consequences for civilians, because of the likelihood that fires incidentally caused by these weapons will spread and the nature of the burn injuries that result when people come into contact with white phosphorous.

<sup>15</sup> Fourth Review Conference, Final Declaration, Review of Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), paragraph 2, p 9.

<sup>16</sup> Article 2(2).

<sup>17</sup> Article 2(3) prohibits the use of incendiary weapons not air-delivered against any military objective located within a concentration of civilians, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. Under Article 2(4) the use of incendiary weapons against forests and other plant cover is also prohibited unless they are being used to conceal combatants or other military objectives.

<sup>18</sup> Article 1(1).

## Box 4

The ICRC urges all High Contracting Parties, including those bound by Protocol III, to use the opportunity of the Review Conference to:

- Report on their national policies and operational practices on the use of incendiary weapons, with a view to minimizing their indiscriminate effects on civilians and unnecessary suffering to combatants;
- Report on measures taken to avoid foreseeable indiscriminate effects of munitions that have incidental incendiary effects;
- Consider beginning work in 2017 on incendiary weapons to address the above concerns. This could include an informal meeting of experts to examine the military, technical, legal and humanitarian aspects of incendiary weapons and of weapons that have incidental incendiary effects.

## V. Clarification of issues related to Protocol IV: laser systems other than blinding laser weapons

17. Protocol IV prohibits the use and transfer of laser weapons specifically designed to cause permanent blindness.<sup>19</sup> The Protocol also seeks to prevent the occurrence of permanent blindness that may result from the use of other laser systems, such as those designed for targeting, for anti-materiel purposes, and those meant to "temporarily", rather than permanently, blind their victim (so called "dazzling" laser weapons). High Contracting Parties must take all feasible precautions to avoid the incidence of permanent blindness from such systems.<sup>20</sup> The First and Second Review Conferences explicitly recognized the importance of keeping the blinding effects related to the use of permitted laser systems under consideration, taking into account scientific and technological developments.<sup>21</sup>

18. The use of lasers for targeting and anti-material purposes, as well as "dazzling" laser weapons, has increased in recent years, and this has been accompanied by increasing risk of eye injuries among both combatants and civilians. "Dazzling" laser weapons present a particular hazard because they are deliberately directed at the eyes. The increased deployment of these weapons from the mid-2000s onwards has led to an increase in eye laser-injuries, with reports of numerous eye injuries among soldiers.<sup>22</sup> The prevalence of eye injuries to civilians (or combatants) from "dazzling" laser weapons is unclear, although the incidents among soldiers highlight the dangers. Other types of laser systems can also present significant injury risks from either accidental or deliberate exposure, particularly high-power devices designed to operate at long range and/or to have destructive effects on materiel.

19. As these laser systems continue to proliferate, and their use on the battlefield becomes more common, the risk of such injuries is likely to rise in the absence of preventive measures.

<sup>19</sup> Article 1.

<sup>20</sup> Article 2.

<sup>21</sup> First Review Conference, Final Declaration, Operative Paragraph 20, p. 36; Second Review Conference, Final Declaration, Operative Paragraph 16, p. 5.

<sup>22</sup> J Svan and H Druzin (2009) Military Sees Rise in Eye Injuries from Lasers, *Stars and Stripes*, 14 June 2009, <http://www.stripes.com/news/military-sees-rise-in-eye-injuries-from-lasers-1.92467>

## Box 5

The ICRC urges High Contracting Parties to:

- Highlight, in the Final Declaration of the Review Conference, the ongoing need to monitor scientific and technological developments in relation to laser systems so as to ensure that the object and purpose of Protocol IV is upheld.
- Consider convening a one-day informal meeting of experts in 2017 to examine the risk of incidental permanent blindness from laser systems other than blinding laser weapons. The meeting could look at the types of systems causing serious eye injuries and the feasible precautions and best practices necessary to minimize the risk of incidental permanent blindness.

## VI. Autonomous weapon systems

20. CCW States Parties have been discussing "autonomous weapons systems" (AWS) since 2014 in informal meetings of experts. These meetings have examined a wide range of technical, military, legal, ethical, and security issues related to AWS. The ICRC has also convened two expert meetings on this subject (in 2014 and 2016, respectively) and there have been numerous events and discussions in other legal, military, scientific, academic and public forums. Discussions have indicated broad agreement that "meaningful", "appropriate" or "effective" human control over weapon systems must be retained, but there has been less clarity on the type and degree of control necessary from a legal, ethical and policy perspective.

21. The ICRC has called on States to set limits on autonomy in weapon systems to ensure that they can be used in accordance with international humanitarian law (IHL) and within the bounds of what is acceptable under the principles of humanity and the dictates of public conscience. For the purpose of better understanding the key issues, the ICRC understands autonomous weapon systems to be: "Any weapon system with autonomy in its critical functions. That is, a weapon system that can select (i.e. search for or detect, identify, track, select) and attack (i.e. use force against, neutralize, damage or destroy) targets without human intervention." In view of the incremental increase of autonomy in weapon systems, specifically in the "critical functions" of selecting and attacking targets, the ICRC has stressed that experience with existing weapon systems can provide insights into where the limits on autonomy in weapon systems should be placed, and the kind and degree of human control that is necessary to ensure compliance with IHL and ethical acceptability.

22. While States now have a better understanding of the multifaceted nature and implications of AWS, there is no convergence of views on the nature and scope of the problem, let alone approaches to addressing it. As is outlined in the Recommendations to the 2016 Review Conference prepared by the Chairperson of the Informal Meeting of Experts: "views on appropriate human involvement with regard to lethal force and the issue of delegation of its use are of critical importance to the further consideration of LAWS amongst the High Contracting Parties and should be the subject of further consideration".<sup>23</sup>

23. The work on AWS has also highlighted the importance of conducting thorough **legal reviews of new weapons**. While not formally required by the terms of the CCW, the ICRC believes that such reviews are a logical and necessary element of CCW implementation. They are one way to ensure that the armed forces of a High Contracting Party do not

<sup>23</sup> Recommendations to the 2016 Review Conference submitted by the Chairperson of the Informal Meeting of Experts (advanced version), para 2 (b).

develop or acquire weapons that may violate the provisions of the CCW's Protocols or other IHL rules and principles. Such reviews should also consider the proposed weapon in light of the principles of humanity and the dictates of public conscience as found in The Martens Clause.

24. The significance of legal reviews for the CCW was emphasized in the Final Declarations of the Second, Third and Fourth CCW Review Conferences where High Contracting Parties declared their determination to urge States to undertake such reviews if they do not already do so.<sup>24</sup> Reviews to determine the legality of newly developed or acquired weapons are already required for those States that are a party to 1977 Additional Protocol I of the Geneva Conventions.<sup>25</sup>

25. In addition to advancing the substantive discussion on AWS, the Fifth Review Conference presents an opportunity for High Contracting Parties to consider the importance of carrying out timely legal reviews on newly developed or acquired weapons as such reviews are essential to preventing the deployment of weapons "which may be deemed to be excessively injurious or to have indiscriminate effects", in the words of the Convention's title and consistent with its object and purpose.

#### Box 6

The ICRC urges High Contracting Parties at the Review Conference to:

- Agree that future work on AWS will focus on determining the kind and degree of human control over weapon systems required to ensure compliance with IHL and acceptability under the dictates of public conscience.
- Consider establishing an open-ended Group of Governmental Experts (GGE) for this purpose, as recommended by the Chairperson of the Informal Meeting of Experts. This would demonstrate that High Contracting Parties take seriously the legal, ethical and societal issues raised by AWS, and assume their solemn responsibility to address these issues.
- Continue to urge States to conduct legal reviews on newly developed or acquired weapons if they do not already do so. States that already conduct such reviews are invited to share their experiences in this area among High Contracting Parties.
- Consider further discussion on the role of legal weapon reviews in the context of AWS or more broadly in the context of the Convention and its Protocols.

## VII. Explosive weapons in populated areas

26. Although the issue of explosive weapons in populated areas is not formally on the CCW agenda, it has garnered increased attention in various international forums, and in the general exchange of views in CCW Meetings of High Contracting Parties. Underlying this is a serious concern about the significant numbers of civilian casualties that regularly occur when heavy explosive weapons are used in urban areas or in similar concentrations of civilians. In addition to causing immediate death, injury and destruction, explosive weapons

<sup>24</sup> Second Review Conference, Final Declaration, Operative Paragraph 17, p. 5. Third Review Conference, Final Declaration, Operative Paragraph 17, p. 4; Fourth Review Conference, Final Declaration, Operative Paragraph 16, p. 4.

<sup>25</sup> Specifically in Article 36 of Additional Protocol I.



used in populated areas are prone to having significant "reverberating" effects on civilians, which are made worse when hostilities are protracted. Incidental damage caused to critical civilian infrastructure, such as water and electrical facilities and supply networks, severely disrupts essential services on which the civilian population depends for its survival, including the provision of health care. This in turn further threatens the lives and health of civilians, provoking their displacement.

27. The use of explosive weapons having wide-area effects in populated areas is a serious humanitarian issue and one that warrants the urgent attention of States. The ICRC, and the International Red Cross and Red Crescent Movement more broadly, have called upon States and parties to armed conflicts to avoid using explosive weapons with a wide impact area in densely populated areas, due to the significant likelihood of indiscriminate effects.<sup>26</sup>

28. Limiting the impact of weapons that may have indiscriminate effects is at the core of the CCW's object and purpose. While the ICRC is not calling for formal work on this issue in the CCW at this time, the Review Conference is an opportune moment for the High Contracting Parties to share their views on this matter.

Box 7

The ICRC encourages the High Contracting Parties to share their views on the use of explosive weapons in populated areas during the Review Conference's general exchange of views.

<sup>26</sup> See, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report of the ICRC to the 31st International Conference of the Red Cross and Red Crescent, Geneva, December 2011 p. 42; *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, Report of the ICRC to the 32nd International Conference of the Red Cross and Red Crescent, Geneva, October 2013 p. 51; Resolution 7 of the Council of Delegates, "Weapons and International Humanitarian Law" (18 November 2013) (CD/13/R7), para 4.