

**GROUP OF GOVERNMENTAL EXPERTS OF
THE STATES 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**

CCW/GGE/XIII/WP.1
3 March 2006

Original: ENGLISH

**Thirteenth Session
Geneva, 6-10 March 2006
Item 10 of the Provisional Agenda
Third Review Conference of the
States 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**

FOOD FOR THOUGHT PAPER

**ENSURING A THOROUGH REVIEW OF THE STATUS AND OPERATION OF THE
CCW AND ITS PROTOCOLS AT THE THIRD REVIEW CONFERENCE**

Prepared by the International Committee of the Red Cross

1. This food for thought paper highlights the value of States Parties conducting a thorough review of the status and operation of the Convention on Certain Conventional Weapons and its Protocols (CCW) at the Third CCW Review Conference. This examination could include an assessment of the measures taken by States Parties to implement their CCW obligations and provide an opportunity to consider a number of important issues which have been raised in the final declarations of earlier meetings.

INTRODUCTION

2. CCW Review Conferences play an important role in ensuring that the Convention remains a dynamic and robust instrument. Such meetings allow the CCW to respond to developments in the means and methods of warfare and the effects of hostilities on civilians. Past conferences have focussed primarily on expanding the CCW into new fields. The First Review Conference, held in 1995-96, adopted Protocol IV prohibiting blinding laser weapons and amended Protocol II on mines, booby traps and other devices. In 2001, the Second Review Conference adopted the Amendment to Article 1, which extended the CCW to non-international armed conflicts, and created the Group of Governmental Experts (GGE) to examine the problem of explosive remnants of war. The GGE went on to negotiate the Protocol on Explosive

Remnants of War (Protocol V), which was subsequently adopted at a Meeting of CCW States Parties in 2003.

3. In addition to the progressive development of the CCW, review conferences should serve to assess the status and operation of the Convention and its Protocols. Such an assessment is explicitly referred to in Article 8(3)(a) of the framework Convention which allows for the convening of conferences of High Contracting Parties.

4. Although the First and Second Review Conferences spent limited time examining the CCW's status and operation, their final declarations did include a "review" of the Convention and identified several issues which may be considered by future meetings. However, the reviews in these documents were, for the most part, cursory assessments made at the end of the conference and did not address substantive issues or examine in any detail the state of implementation by States Parties. As 25 years have passed since the CCW's adoption, it would now seem appropriate for States Parties to conduct a substantive review of its status and operation and to consider certain "unfinished business" from previous review conferences.

A PROPOSAL FOR A THOROUGH REVIEW OF THE STATUS AND OPERATION OF THE CCW

5. It is suggested that the Third Review Conference give particular attention to reviewing the status and operation of the CCW and its Protocols and to clarifying the intentions of States Parties on certain issues identified in the final declarations of previous review conferences. Such a review could incorporate the areas of work outlined below.

Implementation Measures

In the Final Declaration of the Second CCW Review Conference, States Parties declared

Their determination to promote universal adherence to the Convention and its annexed Protocols, and to call upon all States that have not done so to take all measures to become parties, as soon as possible, to the Convention and to its annexed Protocols.

Their commitment to the full implementation of, and compliance with, the Convention and its annexed Protocols, and to keep the provisions of the Convention and its annexed Protocols under review in order to ensure their provisions remain relevant to modern conflicts.

6. This area of work would include the measures and activities taken by States Parties to implement the CCW and its Protocols and ensure compliance with their provisions. This could include a discussion of what States Parties have done in the following areas:

- (i) promotion and universalization of the CCW;
- (ii) dissemination and training of the armed forces;
- (iii) dissemination to non-military audiences;
- (iv) technical cooperation and assistance to other States in implementation;
- (v) legislative and other measures to prevent and suppress violations.

Reviewing the Legality of New Weapons

In the Final Declaration of the Second CCW Review Conference, States Parties declared

Their determination to urge States which do not already do so, to conduct reviews such as that provided for in Article 36 of Protocol I additional to the 1949 Geneva Conventions to determine whether any new weapon, means or methods of warfare would be prohibited by international humanitarian law or other rules of international law applicable to them.

7. Additional Protocol I (1977) to the 1949 Geneva Conventions requires each State Party to determine whether the use of any new weapon, means or method of warfare that it studies, develops, acquires or adopts would be prohibited by international law. States Parties have recognized the important role such mechanisms play in the implementation of international humanitarian law by including this issue in the IHL questionnaire discussed in the Group of Governmental Experts. The Third Review Conference could build upon the GGE's work and

- (i) provide an opportunity for States Parties to present their weapons review mechanisms;
- (ii) compile information on the current practice in this area; and
- (iii) urge States which have not yet done so to establish a mechanism to review the legality of weapons under international humanitarian law and other relevant rules.

Clarification of Certain Issues

In the Final Declaration of the Second CCW Review Conference, States Parties reaffirmed:

The recognition by the First Review Conference of the need for the total prohibition of blinding laser weapons, the use and transfer of which are prohibited in Protocol IV.

Their recognition of the importance of keeping the blinding effects related to the use of laser systems under consideration, taking into account scientific and technological developments.

Both issues were also included in the Final Declaration of the First Review Conference.

8. The First and Second CCW Review Conferences identified several issues as possible areas of work for future CCW meetings. The Third Review Conference could provide an opportunity for further consideration in these areas, give States Parties a chance to report on relevant national action taken and may allow for clarification of certain issues. Areas for possible discussion could include the following:

- (i) **The total prohibition of blinding laser weapons** – Protocol IV prohibits the use and transfer of blinding laser weapons. During the Protocol's negotiation there was also unanimous support, in principle, for prohibiting the production of such weapons. However, the First Review Conference was unable to develop any text in this area due entirely to time constraints. Since Protocol IV's adoption CCW States Parties have on two occasions confirmed the need for a complete prohibition on blinding laser weapons. States Parties could use the Third Review Conference to confirm their understanding that blinding laser weapons should not be developed, produced, acquired or stockpiled.

- (ii) **Blinding resulting from the use of other laser systems** – While Protocol IV prohibits the use of laser weapons "specifically designed to cause permanent blindness", it does not ban the use of "laser systems" for other military purposes. Such systems include, for example, lasers used for targeting or for anti-material purposes. States Parties to the Protocol are, however, required by its Article 2 to take all feasible precautions to prevent permanent blindness from the use of other laser systems. In reviewing the status and operation of the CCW, States Parties could discuss the feasible precautions taken to reduce the prospect of incidental blinding caused by other laser systems.

9. It would also be an important opportunity to clarify which feasible precautions are necessary to prevent permanent blindness resulting from the use of lasers which are designed to temporarily, rather than permanently, blind the victim (often called "dazzling lasers"). Since the adoption of Protocol IV in 1995, there has been increased interest and research in the development of such weapons. This list of issues is not intended to be exhaustive.

10. The proposal to examine the CCW's current status and operation should not detract from progress on issues currently under discussion in the Group of Governmental Experts or other proposals which may be submitted to the Third Review Conference. However, given that the CCW was adopted more than 25 years ago, a thorough review is justified and would help ensure that the Convention remains a dynamic instrument. Such a review would be a positive outcome for the Conference and would help ensure the Convention's health and relevance in the coming years.
