

**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**

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Prohibitions or Restrictions on the
Use of Certain Conventional Weapons
Which May be Deemed to be Excessively
Injurious or to Have Indiscriminate Effects**

PREPARING A REVIEW OF THE CCW AND ITS PROTOCOLS

Prepared by the International Committee of the Red Cross

1. In a "food for thought" paper¹ submitted to the March meeting of the Group of Governmental Experts the International Committee of the Red Cross (ICRC) proposed that States Parties conduct a thorough review of the CCW and its Protocols at the Third CCW Review Conference. The paper highlighted that a substantive examination of the CCW's status and operation had not been conducted at earlier review conferences. It also identified several subjects which could be addressed in such a review. In particular, the ICRC urged States to address issues on which States Parties, in the final declarations of the First (1995-96) and Second (2001) Review Conferences, had either (a) committed themselves to undertake action or (b) identified these subjects as potential areas of future work.
2. The current paper discusses these potential areas of work in more detail. It provides background information on the relevant CCW obligations and highlights the commitments made by States Parties. It also proposes specific issues which the ICRC would encourage States Parties **to consider in the preparatory process and at the Third Review Conference**. Specific areas proposed for consideration include (1) Promoting increased adherence to the CCW and all of its Protocols, (2) National implementation measures, (3) Reviewing the legality of new weapons and (4) the clarification of certain issues related to Protocol IV.

¹ CCW/GGE/XIII/WP.1 (3 March 2006).

I. PROMOTING ADHERENCE TO THE CCW

3. In the Final Declarations of the First and Second Review Conferences States Parties committed themselves to promoting universal adherence to the CCW. The Third Review Conference provides an important opportunity to build upon these commitments and to further promote adherence to the Convention and its Protocols among non party-States. The paper prepared by the President-designate for the March meeting of the Group of Governmental Experts (CCW/GGE/XIII/5) outlines the efforts that have been taken collectively by States Parties in this area in CCW meetings, the UN General Assembly and other UN events. It also identifies priorities for States Parties to consider in their future universalization efforts. The ICRC believes that the President-designate's paper outlines a useful approach which States Parties should consider at the Review Conference.

4. In addition to these priorities, States may wish to report on their individual or regional efforts to promote the CCW. Many governments and armed forces have used official meetings, bilateral contacts, regional events and training seminars to promote adherence to the Convention. Information on such activities would help the Review Conference to appreciate the full range of activities undertaken by States Parties and may prompt the development of additional strategies and efforts.

In addition to the priorities outlined in the President-designate's paper, States Parties may wish to consider addressing the following issues during the preparatory process for the Review Conference or the Conference itself:

- the national and regional initiatives undertaken by States Parties to promote adherence to the CCW by non-party States;
- possible future activities and strategies to promote universalization in regions where adherence is low.

II. NATIONAL IMPLEMENTATION

5. States Parties have also committed themselves to fully implement the CCW and the Protocols to which they are a party.² In addition to the prohibitions and restrictions applicable during an armed conflict, the CCW also requires specific action that must be taken in times of peace to help ensure respect for its rules. These include requirements to disseminate the CCW, to adopt national measures to ensure compliance with the CCW and to provide technical cooperation and assistance to other States Parties.

6. **Dissemination** – Article 6 of the CCW's framework Convention requires States Parties to disseminate the Convention and its Protocols as widely as possible in their respective countries.³

² In the Final Declaration of the Second CCW Review Conference, States Parties declared "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."

³ Article 6 provides, "The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Convention and those of its annexed Protocols by which they are bound as widely as possible in their respective countries and, in particular, to include the

In addition, Article 14 of amended Protocol II requires each State Party to train military personnel and to issue the relevant military instructions and operating procedures to ensure compliance with the Protocol's rules.⁴

7. Implementing these obligations may include a range of activities directed at military and civilian audiences. This would include translating the CCW into the national language(s), including the CCW rules in military manuals and the training of military personnel. University courses on international humanitarian law including modules on the CCW would also be forms of dissemination. In some countries, these activities take place in cooperation with the ICRC or the local Red Cross or Red Crescent Society. It is also important that the appropriate military and civilian regulations exist to allow such activities to occur. A discussion of national activities to disseminate the CCW, similar to that proposed above in the field of adherence, would help raise awareness at the Review Conference of the various activities States have undertaken and could stimulate new initiatives in this field.

8. **National legislation and regulatory measures** – Each State Party must have the national measures and policies in place to help ensure compliance with the CCW's obligations. Such measures include administrative regulations and policies as well as national legislation. For example, States will need to adopt the appropriate military and civilian regulations to prevent the transfer of mines prohibited by Amended Protocol II or the transfer of such weapons to a recipient other than a State or State agency (Article 8 of Amended Protocol II). Similarly, the Protocol's requirements on recording and the technical specifications in its annex will need to be incorporated into military policies.

9. In addition to administrative measures, States must take steps to prevent and suppress violations of Amended Protocol II. Article 14 of the Amended Protocol provides that:

(i) Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control, and

(ii) The measures envisaged in paragraph 1 include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of [Protocol II], wilfully kill or cause serious injury to civilians and to bring such persons to justice.

10. In their annual reports on the implementation of Amended Protocol II many States Parties have indicated that legislation and other measures have been adopted or that existing law provides appropriate penal sanctions. In many cases, however, the relevant laws are not identified.

study thereof in their programmes of military instruction, so that those instruments may become known to their armed forces."

⁴ Article 14 (3) of amended Protocol II states that "Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol."

11. A discussion of the domestic measures taken by States Parties to ensure compliance with the CCW would be a beneficial exercise. It would help highlight the important role that such measures play in national implementation and the range of measures that States Parties need to consider. It would also be an opportunity to highlight the role and scope of national legislation in the prevention and suppression of violations.

12. **Cooperation and assistance** – Specific provisions for cooperation and assistance in the implementation of CCW obligations are found in two of its Protocols, amended Protocol II and Protocol V.⁵ These articles provide a potentially valuable framework through which States Parties can seek or provide materials, knowledge and resources to ensure the implementation of CCW's rules. To date, however, it has been unclear the extent to which States Parties have used these provisions, what kinds of cooperation and assistance have occurred and the extent to which it has helped facilitate CCW implementation. An exchange of experiences in this field would help the Review Conference evaluate the status and operation of such requirements and determine if more needs to be done.

In their work on these issues, States Parties may wish to address the following points:

- the extent to which the CCW and its Protocols are part of military manuals and the training curriculum of its armed forces;
- any programs, courses or documentation to disseminate the CCW to non-military audiences;
- the status and content of national legislation to prevent and suppress violations of amended Protocol II;
- the regulations and policies (other than national legislation) adopted to implement the CCW's obligations and ensure compliance with its Protocols;
- experiences in seeking or providing technical assistance and cooperation.

III. REVIEWING THE LEGALITY OF NEW WEAPONS

13. Article 36 of Additional Protocol I of 1977⁶ provides:

“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.”

14. The aim of Article 36 is to prevent the use of weapons that would violate international law in all circumstances and to impose restrictions on the use of weapons that would violate international law in some circumstances, by determining their lawfulness *before* they are developed, acquired or otherwise incorporated into a State's arsenal. The terms of Article 36 indicate that the review involves not only an examination of the weapon itself (means of

⁵ See, Article 11 of amended Protocol II and Article 8 of Protocol V.

⁶ 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 (hereafter referred to as Additional Protocol I).

warfare), but also of the manner in which it is expected to be used on the battlefield (method warfare), bearing in mind that a weapon's effects will result from a combination of its design and the method by which it is to be used.

15. The rigorous review of new weapons is essential to protect civilians from weapons which may have indiscriminate effects and combatants from weapons which may be excessively injurious. It is in each State's interest to undertake such reviews, regardless of whether it is party to Additional Protocol I, as this helps to ensure that a State's armed forces are capable of conducting hostilities in accordance with its international obligations. Carrying out legal reviews of proposed new weapons is of particular importance today in the light of the rapid development of new weapons technologies.

16. While not formally required by the terms of the CCW, Article 36 reviews are a logical and necessary element of CCW implementation. This link was recognized by the Second CCW Review Conference, where States Parties reaffirmed the importance of such procedures.⁷ Weapons review mechanisms were also included as key element of IHL implementation in the "IHL Questionnaire" presented to the 10th session of the Group of Governmental Experts and discussed in the report prepared by Professor McCormack on States Parties' Responses. All States were also called upon to establish such procedures by the 27th and 28th International Conferences of the Red Cross and Red Crescent, which gathers all States Parties to the Geneva Conventions and the components of the International Movement of the Red Cross and Red Crescent.⁸

17. Despite the requirement of Article 36 of Additional Protocol I and the calls made by the CCW and other international conferences, today only a handful of States are known to have established standing mechanisms to assess the legality of new weapons. The Third CCW Review Conference would be a valuable opportunity to follow-up on the calls of previous conferences, discuss the necessity of weapons review in the implementation of the CCW and share experiences in establishing and conducting such review processes.

⁷ In Final Declaration 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."

⁸ The 28th International Conference called upon States to subject all new weapons, means and methods of warfare to rigorous and multidisciplinary review; review with particular scrutiny all new weapons, means and methods of warfare that cause health effects with which medical personnel are unfamiliar; and for States that have weapons review procedures in place, to cooperate with the ICRC with a view to facilitating the exchange of experience on such procedures.

Following upon the Final Declaration of the Second Review Conference, States Parties may wish to use the Third CCW Review Conference to:

- present their weapons review procedures and mechanisms and share their experiences in adopting such procedures and setting up such mechanisms;
- record information on the current practice in this area in the Final Document;
- identify ways to promote the establishment or improvement of national procedures to review the legality of new weapons under international law, in particular through rigorous and multidisciplinary reviews;
- consider adding the issue of weapons review procedures and mechanisms to future CCW Meetings.

IV. CLARIFICATION OF ISSUES RELATED TO PROTOCOL IV

18. The adoption of Protocol IV was a significant event. It marked only the second time that States prohibited a weapon before its deployment on the battlefield. The Protocol has helped halt the development and proliferation of blinding laser weapons which could have proliferated quickly in light of previous military interest in such systems and the relatively low cost of laser technologies today.

19. States Parties have acknowledged the importance of monitoring developments to prevent the Protocol's object and purpose from being undermined. In the Final Declarations of the First and Second Review Conference they also recognized the need for a total prohibition on blinding laser weapons as well as the need to monitor scientific and technological developments in this field. The Third Review Conference may be the appropriate time for States Parties to confirm their understanding that blinding laser weapons should not be developed or produced (only use and transfer are explicitly prohibited by Protocol IV). It would also be an important opportunity to examine how the risk of permanent blinding resulting from the use of legitimate lasers or laser systems can be minimised, as required by the Protocol.

20. **The total prohibition of blinding laser weapons** – Protocol IV prohibits the use and transfer of blinding laser weapons. However, a ban on the development and production of these weapons was also proposed and widely supported during the negotiations. The development of a specific rule, however, was not possible due to time constraints and the ongoing work on anti-personnel mines at that time.

21. States Parties may wish to confirm their understanding, implicit in previous review conference statements on the "total prohibition of blinding laser weapons", that blinding laser weapons should not be developed, produced, acquired or stockpiled. This would be an important step in ensuring that the purpose of Protocol IV is not undermined. As such activities are not specifically mentioned in the Protocol, some States or non-State entities may see them as permissible. A clear statement by States Parties would remove any ambiguity on this issue and help ensure that a total prohibition of blinding laser weapons remains the reality.

22. **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 (*e.g.* to destroy optical sensors).

23. However, States Parties to the Protocol are 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, it would be useful for States Parties to discuss the specific feasible precautions which can or are being taken to reduce the prospect of incidental blinding caused by the use of other laser systems.

24. **The development of "dazzling" lasers for use in armed conflict** – In recent years armed forces have shown an increased interest in developing and deploying "dazzling" lasers (*i.e.* laser weapons which are designed to temporarily rather than permanently blind the victim). Such weapons are already used by the national police forces in a number of countries and there has been a military interest in using such weapons in the context of an armed conflict to meet certain operational needs, such as activities related to law enforcement activities or the maintenance of public order.

25. Dazzling lasers are not prohibited by Protocol IV. There are, however, humanitarian concerns associated with these weapons which need to be addressed. Although the technical aspects of each weapon vary, some dazzling lasers are being developed to cause temporary blindness at long distances, for example against persons up to 400 metres away. Based on scientific and medical expertise, serious concerns arise with such devices because the power of a laser capable of temporarily blinding a combatant at 400 metres will carry a very high risk of causing permanent blindness at a shorter distance, for example at 50 metres. This risk was also recently confirmed in a press statement in which a manufacturer of a dazzling laser claimed that its system, capable of temporarily blinding a target at several hundred metres, could be harmful to the eyes when viewed at 70 metres or closer.⁹

26. The Third Review Conference provides an important opportunity for States Parties to examine these issues in greater detail. The Group of Governmental Experts may also wish to consider inviting relevant experts in this field to speak at its August/September meeting to inform the Review Conference's deliberations on this Protocol.

States Parties may wish to consider addressing the following issues during a review of the status and operation of Protocol IV:

- confirm their understanding that blinding laser weapons should not be developed, produced, acquired or stockpiled;
- discuss the feasible precautions to minimize the risk of incidental permanent blindness caused by laser systems and the national action taken by States Parties to Protocol IV in this area;
- identify the feasible precautions necessary to prevent the risk of permanent blindness caused by dazzling laser weapons.

⁹ James Rainey, Los Angeles Times, 18 May 2006.