

# INTERNATIONAL COMMITTEE OF THE RED CROSS

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## CONFERENCE OF GOVERNMENT EXPERTS ON WEAPONS

*In our previous issue, it was mentioned that the second session of the Conference of Government Experts, held under ICRC auspices at Lugano, ended on 26 February. At the final plenary meeting, Mr. J. Pictet, Chairman of the Conference, and ICRC Vice-President, closed the session with the following words:*

Our work has drawn to a close. Although this Conference has made considerable progress on what was achieved in Lucerne, it is perfectly obvious that the last word on the matter has not yet been said.

I must admit quite sincerely that to reach a consensus on specific points has proved far more difficult than we had imagined. We are, however, aware that agreements of this nature are related to important interests concerning the security of nations and that the subject is of the utmost complexity.

Despite all our difficulties and differences of opinion, it would seem to me that the main result obtained in Lugano has been a step towards a diplomatic agreement on the prohibition of certain weapons and on a limitation of their use. One working group has even considered the form that such a document might take. I am convinced that a diplomatic instrument on weapons will, one day, be a reality. The ICRC certainly hopes so, for it is important that restrictions be imposed in this sphere in order to reduce both the numbers and the suffering of civilian victims of war. I will not conceal from you the fact that the ICRC views with growing alarm the news of weapons whose ravages go far beyond the requirements of military action.

Many proposals have been submitted and considered. We have accumulated a valuable body of documentation and many points have been clarified. We are now far more aware of one another's attitudes. That, too, is all to the good.

Although we have not, at this juncture, reached a true consensus, I do feel that some general trends have come to light which could be considered a valid basis for further discussion. I am thinking, for example, of the conclusions reached on mines, booby-traps and fragmentation weapons.

As for incendiary weapons, the ICRC most fervently hopes that it will be possible to make further progress and that the groundwork done here will help pave the way to a future agreement which will meet with the approval both of the Red Cross and of the general public—for weapons such as these incur general disapproval.

We have now become aware that there exists a category of weapon known as small-calibre. We have heard of numerous technical experiments carried out in various countries and have even witnessed some here. Such experiments provide legitimate cause for concern. Although no conclusion has been reached this time, we have agreed on the need to press on with experiments. The ICRC is of the opinion that consideration of the calibre, the muzzle velocity and even other manufacturing characteristics may not suffice, but that it will be necessary, above all, to concentrate on the particularly dangerous effects that these munitions have on the human body. In fact, the main thing to be avoided is the effects.

In any case, it is high time that such weapons were given consideration. We are convinced that no government would tolerate these new weapons' having considerably more serious effects on human beings than did their predecessors. We should, moreover, like to see everything possible done to prevent escalation in this sector.

Finally, the ICRC has noted that certain results have been achieved at both the Lucerne and the Lugano Conferences and is sure that these results will be consummated at some later stage. In view of the humanitarian interests at stake, the ICRC is at your disposal to help in continuing the work.

Now it only remains for me to thank all delegates who, through their good will and courtesy, have facilitated my task, and also those officials who have given so selflessly of themselves for the success of the Conference...

I wish you a pleasant journey home and hope that your thinking on return to your respective ministries will be productive so that this question of weaponry may remain a primary concern of all those on whom so many human lives depend.

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*We believe our readers would be interested to read the report presented on 24 February by Mr. Erich Kussbach, head of the Austrian Delegation, at the last meeting of the General Working Group. Mr. Kussbach, who chaired the working group, summarized its work in the following words:*

Now that we are approaching the end of our Conference and the General Working Group is about to close its deliberations, perhaps you will permit me to make some comments by way of summing up the work that has been accomplished. I should emphasize at the outset that what I am going to say is based on *my personal impressions* and is not meant as any kind of conclusions by the chair on behalf of this group. On the contrary, each one of us must draw his own conclusions after the Conference and our Governments will do the same.

I am fully aware, indeed, of the complexity of the problems we faced during the last three weeks and also that this Conference was only one step further in *our continuous common efforts* in reducing human suffering caused in the course of armed conflicts which, in spite of existing prohibitions of the threat or use of force, regrettable as it is, seem to be unavoidable.

Let me now turn to the more specific task which has been entrusted to this second session of the ICRC Conference of Government Experts on the Use of Certain Conventional Weapons. According to the comments included in the communication received by the Secretary General of the Diplomatic Conference last year from the ICRC (Doc. CDDH/IV/203), the second session had to focus "on weapons regarding which proposals already exist or will subsequently be placed before that session". And it is stated in the same document somewhat later that the experts "should seek to identify possible areas of agreement or—at least—different main conclusions".

In compliance with Art. 1 para 2 of the Rules of Procedure the Conference had to examine the possibility, contents and form of proposed bans or restrictions. Furthermore, the Work Programme of the second session (Doc. RO 610/1 b) suggested that the experts should consider with respect to each category of weapons new information, in particular new facts and new arguments.

In accordance with the Rules of Procedure, efforts were made to adapt working methods in a most flexible way to the actual needs of our work. While general exchanges of views were mainly carried on within the General Working Group, sub-working-groups have been set up whenever it was felt that they would be useful for the study of specific questions. By this method, it also became possible to have simultaneous

meetings. At this point, I should like to express my gratitude once more to those smaller delegations which, although their limited size made it more difficult to attend two meetings at the same time, showed an admirable spirit of comprehension and of co-operation.

Having said this, I shall now give you my personal impressions on the current situation, as I see it, of our efforts regarding the different types of weapons. In doing so, I shall follow the order in which we have been dealing with them.

To reach a certain amount of consensus on the ban or restriction of *incendiary weapons* proved to be more difficult than some of us may have expected. Although the various groups with differing views on the subject showed some flexibility and readiness to discuss opposing positions and proposals, it soon became apparent that a large gap continued to exist between those positions.

Let me sum up briefly the different views as they seem to me:

Some new data were presented relating to casualty rates, mortality and length of treatment connected with the use of napalm bombs. However, there were no agreed conclusions. The question of the utility of napalm, especially for close air support, was further argued, similarly without any agreed conclusions.

The group of experts supporting the proposal contained in document RO/610/4 continued to be of the view that a complete prohibition of most incendiary weapons was desirable and possible. Some other experts were of the opinion that a ban of incendiary weapons could be elaborated on the basis of this proposal. The approach of the afore-mentioned group of experts was considered unrealistic or selective by another group of experts. Yet other experts considered the approach acceptable, but suggested that some exception for small incendiary weapons was needed. Reference was made to the possibility of a ban which would enter into force after a number of years, e.g. five, to enable States gradually to phase out incendiary weapons.

Four working papers containing new proposals were presented (COLU/205, COLU/207, COLU/211 and COLU/220). Two of these suggested restrictions in the use of napalm, particularly with a view to protecting civilians against its use. One of these proposals was especially criticized by some experts for containing too many exceptions from the ban of use. Others criticized it for imposing too severe restrictions. One expert questioned the concept that a prohibition on napalm was of humanitarian value, since alternative weapons would probably cause greater numbers of casualties.

Three of the new proposals suggested prohibitions of use of incendiary munitions on cities or other populated areas but made an exception for attacks upon military objectives in population centres. This concept, which had the support of one group of experts, was criticized by another group as not offering any meaningful advance over existing law. An amendment to one of the proposals intended to eliminate the exception for attacks on military objectives within or in close proximity to population centres (COLU/208). At a later stage a revision of the proposal in question was introduced, taking into account some of the criticism (COLU/205/Corr.1). Most of the experts commenting on the revised version paid tribute to the valuable effort of the sponsors in seeking for broader agreement. Some associated themselves with the introductory remarks of the sponsors to the effect that the revised proposal did not constitute the "end of the road", but served as a good basis for future consideration. However, the revised proposal did not satisfy all of the opponents of the original version. One expert commenting on it thought that a general ban on flame weapons combined with the prohibition of use of incendiary weapons against populated areas without exceptions would be a more attractive approach.

One of the three proposals, taking an intermediary view, contained specific provisions for the protection of combatants (COLU/211).

The fourth proposal was drafted in the form of an additional protocol to the Geneva Conventions and was based essentially on the working paper contained in document RO/610/4.

After this resume of the situation one may say that for the first time serious attempts were made to reduce the distance between opposing views, to explore the differences between them and to show more flexibility. This attitude has to be welcomed even though for the time being it did not succeed in achieving any conclusive agreement on the subject.

Coming now to the *delayed action weapons and treacherous weapons*, I had the impression that the preliminary discussion in both the Plenary and the General Working Group was rather promising. There was a general feeling shared by many experts that in this field substantial progress could be achieved.

Apart from the proposal contained in document CDDH/IV/201 prohibiting the laying of anti-personnel landmines from aircraft, several new proposals were presented. The most extensive among them, supported by one group of experts, covered the whole range of mines and booby traps (COLU/203), while others focused on specific weapons or aspects,

like time-fused weapons (COLU/213), booby traps (COLU/206) and on the disposal of mines (COLU/215).

In order to facilitate the work a sub-working-group of military experts was set up to study the different proposals and opinions.

This is not the place to go into details. The report of the military sub-working-group (COLU/GG/MIL/REP/1/Rev.1) gives a very comprehensive summary of areas of agreement and disagreement. I wish to thank the officers of the group for the valuable work they have accomplished. Although one may perhaps have expected more conclusive results, some progress can be discerned. Widespread agreement was reached on a revised proposal concerning the recording of minefields. Also, with regard to Article C and revised Article D of the proposal, contained in document COLU/203, broad agreement was reached that these articles were a significant advance over current regulations and that they could serve as a useful basis for future elaboration and refinement.

With regard to *small-calibre projectiles*, my personal summary can be limited to a few remarks. Since the Lucerne Conference, a number of tests have been carried out and a considerable amount of research has been initiated in many countries. In addition, a significant symposium was organised by Sweden last summer in Göteborg. As a result, four reports were presented to our Conference. I should also mention that thanks to Switzerland we all had the opportunity to attend one of a series of tests which are going on in this country. For that I wish to express once again in the name of all of us our gratitude.

No new proposals were presented in the course of our debate. The co-sponsors of document CDDH/IV/201 maintained their proposal indicating, however, that they were willing to discuss modifications. Much new additional data was submitted. Interest was expressed in the phenomena of tumbling and disintegration of projectiles. However, no generally agreed conclusions could be drawn. One group of experts expressed doubts about the validity and the conclusiveness of the data presented. Some experts, supported by others, suggested the establishment of a technical sub-working-group to discuss a generally acceptable standard test. On the basis of the agenda contained in document COLU/GG/INF/203, this sub-working-group discussed various aspects of a possible standard test. Although owing to the complexity of the subject no such standard test could be agreed upon, the working group did stress the importance of the continuation or initiation of future study and research at the national level. International exchanges of views and co-operation were also considered to be desirable. The officers of

this group deserve our appreciation for the remarkable efforts they have made in accomplishing their difficult task.

Coming to the next item of our agenda concerning *blast and fragmentation weapons*, let me tell you briefly how I see the present stage of our work:

Some new data were presented on the rate of incapacitation and of mortality caused by fragmentation weapons. In addition various techniques for the detection of fragments in the human body were explored.

One group of experts maintained the proposal in document CDDH/IV/201 aiming at the prohibition of the use of anti-personnel fragmentation weapons and flechettes. Another group was of the view that such general prohibition was neither helpful from the humanitarian point of view nor feasible as regards military requirements. Yet other experts thought that some restriction of use could be conceivable although the proposal in document CDDH/IV/201 went too far.

Particular attention was given to the proposal in document COLU/212 presented by one group of experts. This proposal contained a ban on the use of weapons producing fragments non-detectable in the human body. A revised version of this proposal, taking into account some suggestions for its improvement, was generally welcomed by many experts, who considered that it was an excellent basis for future considerations of an instrument on such a ban.

Another working paper (Doc. COLU/218) raised the question of a ban on use of fragmentation weapons which spread irregularly shaped fragments and, as a consequence, caused extensive wounds.

In addition, two new proposals (Doc. COLU/202 and COLU/209) dealing with fuel-air explosives were submitted. One group of experts welcomed a ban on the anti-personnel use of such weapons. They suggested that because of the limited military application of those weapons at this time, a prohibition would be more effective at this early stage. Other experts argued that fuel-air explosive devices had important military utility, e.g. in destroying minefields, and further careful study was needed as to their alleged inhumane effects.

Lastly, there was a general exchange of views on the issue of *future weapons*. One group of experts expressed its deep concern over new weapons of mass-destruction being developed. With regard to these weapons, they felt that the prohibition of their development was more urgent than the ban of their use in the future. Reference was made in this connection to the efforts undertaken in the framework of the United Nations and in particular of the Disarmament Conference. Lasers,

environmental weapons and microwave devices were particularly mentioned by other experts. Yet other experts shared the concern about new weapons in general, although they pointed out that not all new developments need necessarily be inhumane. They mentioned the so-called "smart bombs" as one example. By their design such bombs would better hit their target, thus being less indiscriminate than others. However, there was general agreement that information on new weapons was lacking to a large extent. For that reason, it was difficult to suggest any specific ban or restriction at this stage. No proposal was presented on this item. No suggestion was made to establish a special working group for these weapons.

In view of the fact that some legal problems will be common to all kinds of possible future bans or restrictions, several experts felt that it would be useful to discuss them in a special *legal sub-working-group*. Accordingly, a working group on legal issues was established. Following its agenda contained in document COLU/GG/INF/202, the group considered such questions as alternative types of agreement, the nature of the obligations, reprisals, the modalities of the entry into force and national as well as international review mechanism. Although some experts argued that, without any knowledge of what might be the final outcome of the efforts made for banning or restricting the use of some specific weapons, it was premature and hence impossible to take any definite position on these legal issues, they did not object to a preliminary exchange of views on the subject. A proposal on the international review mechanism was presented (COLU/GG/LEG/201).

The debate and the different views expressed are well reflected in the report of the sub-group (COLU/GG/LEG/REP/1), to which I have nothing to add. I would only express my gratitude and appreciation to the chairman and the rapporteur of the group for their valuable work. Given the general and preliminary character of the discussion, it was neither intended nor possible to draw any agreed conclusions on the matter at this stage. Yet, on the whole, I think that the exchange of views on some legal aspects, which have never been discussed before, served a very useful purpose.

To sum up, Ladies and Gentlemen, according to my assessment the progress made in the last three weeks—limited as it may be—is nevertheless encouraging. For those, of course, who came to Lugano with high expectations, the outcome of our Conference might seem disappointing. However, others who had less ambitious hopes and a more

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modest and realistic attitude, will agree that our common endeavours were worthwhile and the few results achieved promising. There were some other, perhaps even more important, positive aspects in our work worth mentioning, such as a considerable amount of comprehension of opposing views, more flexibility, honest efforts in seeking for wider agreement on some controversial issues and the spirit of co-operation as well as the readiness to continue the work in which we are engaged. In addition, there is a growing awareness of the significance and the importance of the problems discussed.

Undoubtedly, we still have a long way to go and Lugano is but one step further on the road towards the goal of making armed conflicts less inhumane. To this goal we are all committed, otherwise we would not have been here. What is needed is patience combined with determination and goodwill. Past experience shows that you all, who are engaged in this humanitarian adventure, are provided with those virtues and I am confident that they will help us in the future—as they did in the past—to achieve our goals.

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