

# Review Conference of the 1980 Weapons Convention

by **Nikolay Khlestov**

The United Nations General Assembly welcomed, in its resolution 48/79 of 16 December 1993, the request made to the organization's Secretary-General by a State party to the 1980 Weapons Convention<sup>1</sup> (France) to convene a conference to review, in accordance with Article 8(3), the provisions of that Convention. In paragraph 6 of the same resolution, the General Assembly encouraged the States party to ask the Secretary-General to set up a group of government experts to prepare such a conference. The States did so and the group of experts that was subsequently brought together held three meetings in 1994 and one in 1995. Pursuant to a decision by the group, the Review Conference is to be held in Vienna from 25 September to 13 October 1995.

One might ask whether it is really necessary to review the Convention on "inhuman weapons"<sup>2</sup> and what outcome can be expected of such a conference.

Before answering that question, it should first be remembered that the United Nations conference held on 10 October 1980 adopted this Convention by consensus, together with three Protocols, respectively on:

- 1) non-detectable fragments (Protocol I);
- 2) prohibitions or restrictions on the use of mines, booby-traps and other devices (Protocol II); and

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<sup>1</sup> United Nations 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 1980).

<sup>2</sup> Although one would be hard put to name a "human" weapon, this diplomatic jargon is in common use at the United Nations.

3) prohibitions or restrictions on the use of incendiary weapons (Protocol III).

The idea of specific prohibitions or restrictions on the use of certain weapons is not a new one, since the international community already showed an interest in it during the drafting of the 1977 Protocols additional to the 1949 Geneva Conventions. Indeed, the 1974-1977 Diplomatic Conference set up an ad hoc committee to deal with issues relating to restrictions on conventional weapons, i.e. those that do not fall into the categories of nuclear, biological or chemical weapons.

Prohibitions or restrictions on certain types of conventional weapons raise a number of difficult problems owing not only to their substance, but also to the fact that they are part of both disarmament law and humanitarian law. Each of these branches of international law approaches the issue differently.<sup>3</sup> The 1980 Convention and its Protocols are more closely related to humanitarian law than to disarmament law, since they do not touch on matters involving the production, storage, sale or purchase of weapons. The Review Conference should remedy this shortcoming by adding to these instruments, following the example of disarmament law, provisions on the development, stockpiling and transfer of mines so as to curb the effects of these inhuman weapons.

An attempt was made in the 1980 Convention and its Protocols to "humanize" the use of weapons. With respect to practical implementation, however, Protocol II has run up against more obstacles than the other two Protocols. When referring to mines, one must always bear in mind the fact that "weapons do not exist in themselves, but as means towards the conduct of particular kinds of military operations: if the operations, or most of them, were illegal, what would be the point of investing in, developing or acquiring the weapons?"<sup>4</sup>

It is a well-known fact that nine out of 10 people injured by mines are civilians. Easy to lay and very difficult (and extremely dangerous) to clear, these "seeds of death" constitute a permanent threat long after peace has been restored. They hinder humanitarian activities undertaken by the

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<sup>3</sup> See Yves Sandoz, "A new step forward in international law — Prohibitions and restrictions on the use of certain conventional weapons", *International Review of the Red Cross (IRRC)*, No. 220, January-February 1981, pp. 3-18.

<sup>4</sup> See Frank Berman, "Ensuring compliance with the law of war: some policy considerations", in *125th Anniversary of the 1868 Declaration of St. Petersburg, International Symposium on the Law of War, Tavrichesky Palace, St Petersburg, 1-2 December 1993, Summary of the proceedings*, ICRC, Geneva, December 1994, p. 74.

ICRC, UNHCR, UNICEF and the DHA (United Nations Department of Humanitarian Affairs) and they make peace-keeping operations all the more difficult. UNHCR has already described the extremely serious and harmful effects of mines on its efforts to protect and assist refugees and returnees. As a result of the indiscriminate use of mines, especially in internal armed conflicts, the number of displaced persons and refugees continues to grow. The main idea behind the review process is to lay the burden of responsibility squarely at the door of those who produce or use mines, and thereby, if possible, to avoid further unnecessary casualties and to improve the protection afforded civilians.

The first task of the Review Conference is to make the 1980 Convention and its Protocol II applicable to non-international armed conflicts. It is no secret that the most barbaric use of anti-personnel mines occurs in internal armed conflicts. This is not surprising since only trained military personnel can anticipate the full effects of these weapons; they also bear in mind possible movements by their own troops and the safety of their technical services. It is in view of these considerations that specialized personnel mark and register minefields carefully. However, belligerents in internal armed conflicts, who have often received little if any military training, usually lack this type of knowledge. In addition, they sometimes use anti-personnel mines deliberately to terrorize civilians. That is why it is in the interest of all governments, including those which face problems of insurgency, to ensure that the Convention and Protocol II apply to non-international armed conflicts. This would, moreover, have no bearing on the sensitive and tricky issue of recognition of a party to a conflict, yet any violation of these instruments by one or another of the parties would be considered a criminal offence and the perpetrator could thus be prosecuted for grave breaches of humanitarian law. There can be no significant improvement in this field until the scope of the Convention and Protocol II is extended to include internal armed conflicts, which are increasingly more common than international armed conflicts. According to current estimates, some 100 million mines are now scattered in more than 60 countries and hundreds of civilians fall victim to them every day.

As we have seen, the 1980 Convention and Protocol II present a number of shortcomings. In addition, their practical implementation leaves much to be desired. One of the reasons for this is that they have so far been ratified by only 41 States. The preparatory work for the Review Conference has undoubtedly encouraged other States to reconsider their position on these instruments, and certain positive developments can therefore be expected on the eve of the Conference. In any event, stricter provisions should be adopted on mines with a view to prohibiting weapons

which by their very nature have indiscriminate effects or cause excessive suffering.

The Review Conference provides an excellent opportunity to amend the 1980 Weapons Convention and Protocol II so as to make their provisions more specific. It was with this in mind that military experts from various countries drafted a number of amendments at the meetings of the group of experts held in 1994 and 1995. The amendments, if adopted by the Conference, would considerably broaden the scope of Protocol II, in particular. This endeavour may, however, prove unsuccessful unless the international community gives due importance to introducing an implementation mechanism. It was precisely the absence of such a mechanism that prompted certain States not to ratify the 1980 Convention and its Protocols, and others to express their dissatisfaction. If an implementation mechanism were adopted, these instruments would rally the support of far more States. Its general aim would be to ensure compliance with international humanitarian law, a field that was recognized as having special significance by the 49th session of the United Nations General Assembly in its resolution on the Decade of International Law.

To adopt an implementation mechanism applicable only to the Convention, as has been suggested by some, or only to Protocol II, would be an unsatisfactory solution. Such a mechanism should apply to both the Convention and Protocol II. Later on, the States party could extend it to include the other Protocols. It should regulate all problems relating to mines, including mine clearance, the sharing of experience in this field and the exchange of information on the production, stockpiling, development and export of anti-personnel mines (and possibly other types of mines). The implementation mechanism should be based on a reporting system that could be made compulsory by the States party. Members of the "club" of countries opposed to mines could set up a procedure to investigate violations of the provisions of the 1980 Convention and Protocol II. This "club" could also work out a code of conduct concerning the export of anti-personnel mines that would regulate the transfer of such weapons. Some States have tried to pave the way towards a compromise in this area even before the start of the Conference. The United States moratorium on the export of anti-personnel landmines has thus garnered the support of a considerable number of producer countries.<sup>5</sup>

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<sup>5</sup> By a presidential decree of 21 November 1994, Russia joined the present moratorium on the export of anti-personnel landmines which have no self-destruct mechanism and cannot be found by mine detectors. The moratorium came into force on 1 December 1994 for three years.

A possible compromise for the Review Conference to consider would be to agree on a transitional period allowing States to adjust gradually to the new requirements. A commission could be set up within the framework of the 1980 Convention and Protocol II to assist States during this period. The commission, which would be composed of government representatives and function in an open manner, would act as a supervisory body and encourage periodic exchanges of views. It could also provide a cost-effective means of dealing with any other issues relating to the mutual obligations of States party under the existing Convention and Protocol II and under the revised instruments. To handle such a transition period will be no easy task for the international community and this is one of the issues which the Conference must tackle. One way of proceeding would be for the Conference to adopt a special declaration containing provisions along the following lines:

- “(a) From the date of entry into force of the revised Convention and Protocol II, States may no longer accede to the old instruments, only to the new ones.
- (b) The old instruments shall continue to be valid as long as any State remains a party to them. By acceding to the revised Convention and Protocol II, a State shall cease to have any obligations under the old instruments, without prejudice to the provisions of Article 7 of the Convention.”

There are other issues of equal importance that the Review Conference should address, such as the adoption of new protocols. The international community should also turn its attention to the problem raised by the development of new weapons. “...It may seem esoteric to spend time discussing possible prohibitions of weapons that have not yet appeared on the battlefield. However, as we well know, once a weapon is fielded it is very difficult to stem its proliferation and widespread use. It makes sense, therefore, to dedicate a little time to taking preventive steps that would save enormous problems at a later stage.”<sup>6</sup>

Speaking at the International Symposium on the Law of War held in commemoration of the 125th anniversary of the 1868 Declaration of St Petersburg, the American professor G.H. Aldrich rightly pointed out that Article 36 of Protocol I to the Geneva Conventions “obligates Parties,

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<sup>6</sup> Statement by the ICRC to the First Committee of the United Nations General Assembly on 20 October 1993, *IRRC*, No. 298, January-February 1994, p. 59.

when developing or acquiring a new weapon, to make a determination whether and in what circumstances its use would be unlawful".<sup>7</sup> The Review Conference provides the opportunity to take another step forward in the process begun in St Petersburg more than 125 years ago, when the law of the Hague took its place alongside the law of Geneva, by drafting new protocols to the Convention.

The idea of prohibiting blinding weapons was launched by the ICRC, which has held a series of meetings of experts on the subject of laser weapons. Although still being developed, these inhuman weapons that cause permanent blindness have already demonstrated their powerful potential, especially when used on a mass scale. Blinding as a method of warfare should be considered as a superfluous injury and a cause of unnecessary suffering.

The Review Conference will consider the adoption of a protocol prohibiting the use as a method of warfare of laser beams that cause serious damage to eyesight. This prohibition should include the production and use of laser weapons designed primarily to blind. The ban should apply to both laser beams and laser weapons. The proposed prohibition should, however, take into account the needs of the armed forces with respect to targeting and the use of laser beams for medical, industrial or other civilian purposes. The protocol should therefore include a clause providing that the prohibition of laser weapons shall not cover incidental blinding as a result of the lawful use of laser beams. Indeed, "...a law which lacks realism will inevitably be violated".<sup>8</sup> If the Review Conference adopts a protocol prohibiting the use of laser weapons that is based on a realistic approach, this will give a new impetus to the further development of the 1980 Weapons Convention.

The Conference could also recommend that the above-mentioned commission, if set up, consider preparing other protocols, for instance on small-calibre weapons. This recommendation could be based on the relevant resolution of the previous conference.

Another task of the forthcoming Conference will be to examine how to speed up the new Convention's entry into force. Article 5 could be amended so as to provide that this would take place three months after the date of deposit of the sixth instrument of ratification, acceptance,

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<sup>7</sup> *124th Anniversary of the 1868 Declaration of St Petersburg, op. cit.*, p. 53.

<sup>8</sup> See Jean Pictet, "The formation of international humanitarian law", *IRRC*, November-December 1994, No. 303, p. 528.

approval or accession, and paragraphs 2, 3 and 4 of the same article could be amended accordingly. The Conference could also make it more difficult for States to denounce the Convention. This could be achieved by adding to Article 9, as is commonly done in the conventions of the International Labour Organization, two paragraphs to the following effect:

“Article 9: Denunciation

1. Any High Contracting Party may, by so notifying the Depositary, denounce this Convention or any of its annexed Protocols no sooner than ten years after the day on which the Conventions and any of its Protocols come into force. Any such denunciation shall only take effect one year after the date on which it is registered.

2. Any High Contracting Party which ratifies this Convention and any of its annexed Protocols and does not, within the year following the expiry of the ten-year period mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, shall be required to wait for another ten years before it can denounce the Convention or any of the annexed Protocols, and so forth for each ten-year period thereafter, under the terms of this article.”

The first sentence of Article 9, para. 2, of the existing instrument should be deleted and the rest of Article 9 stand as it is.

The purpose of this proposal (made by the Russian delegation) is self-evident: to strengthen the commitment of States party to the Convention and to make it more difficult for them to denounce it. Some might argue that this ten-year period offers the States too little opportunity to withdraw from the treaty. However, there is a strong and simple argument in favour of introducing such a provision, namely, that denunciations do occur and that what we are dealing with here are extremely dangerous weapons. Not to adopt it would be to tempt the devil.

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