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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

Statement by the ICRC (20 October 1993)

1. The importance of the Review Conference of the 1980 Convention

We are grateful to the Government of France for having called for a conference to review the 1980 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.

The Review Conference for the 1980 Convention is an important event, as it provides the opportunity, for the first time since that Convention entered into force in 1983, for States to make an assessment of its impact and to decide whether it needs to be amended in order to be more effective.

It may be recalled that work on the Convention was initiated at a conference of government experts which was convened by the ICRC and which met for several weeks in 1974 in Lucerne and again in 1967 in Lugano. It was on the basis of the extensive work done by this conference that States were able to discuss specific proposals during the United Nations Conference that held several sessions between 1978 and 1980.

The preparatory work for the 1980 Convention consisted in background studies and lengthy discussions on many different types of

weapons, including not only the weapons that are now regulated in the Protocols to the Convention but also small-calibre projectiles, blast and fragmentation weapons and a number of "future weapons", including laser weapons, microwave devices and infra-sound devices.

The final result was a modest treaty which in many respects was the result of various compromises. A number of issues that were brought up by States were not covered in the treaty, in several cases because it was felt to be premature or because further research needed to be done in order to establish whether a specific treaty regulation would be appropriate. The form of the treaty, namely a Convention and annexed Protocols, was chosen intentionally to enable States to add further Protocols relating to different weapons and thus take into account new weapons developments. The treaty now has three Protocols, the first on Non-Detectable Fragments, the second on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices and the third on Prohibitions or Restrictions on the Use of Incendiary Weapons.

The forthcoming Review Conference is a unique opportunity to take stock of the use of conventional weapons in the world today, to consider whether the present treaty adequately answers the existing problems and to look more carefully at the likely development of new types of weapons. There are an increasing number of local conflicts in which the various parties involved have access to the weapons available on the market and in which those weapons are unfortunately largely used in an indiscriminate manner.

In view of this trend, States could consider whether the very limited restriction of the use of weapons in the 1980 Convention as it now stands is really sufficient.

The 1980 Convention is a humanitarian law treaty in that it regulates or prohibits the *use* of weapons, not the trade in or ownership of them. However, the two subjects are closely linked, for if the use of certain weapons needs to be restricted or prohibited because of their unacceptably cruel or indiscriminate effects, States also need to consider prohibiting the manufacture and export of these weapons.

2. Issues that could be considered during the Review Conference

2.1 The scope and implementation of the 1980 Convention

An issue that requires careful thought is the fact that the present Convention formally applies only to international armed conflicts,

although the majority of conflicts are internal. For example, in addition to the tremendous immediate suffering caused by the laying of mines during internal armed conflicts, we are witnessing the large-scale social and economic damage that many countries are undergoing as a result.

Another aspect of importance for an effective treaty is the means of implementation that it provides. This, however, is noticeably lacking in the present Convention.

2.2 Modifications to the existing Protocols

The Review Conference will enable States to assess whether the provisions of the existing Protocols are in fact adequate.

In this respect, the problem that is causing the greatest concern to the international community is, as already indicated, that of mines, the use of which is currently regulated in Protocol II. The ICRC cannot but approve of the desire to find an effective solution to the appalling situation that the massive and indiscriminate use of mines has created. In April 1993, the ICRC held a symposium on anti-personnel mines which studies the problem from a number of different angles, including the care needed by mine-blast victims, the actual effects of the present use of mines, the technical characteristics of mines, mine-clearance, the trade in mines, and the existing law and its shortcomings. In January 1994, the ICRC will be convening a meeting of military experts to study in greater detail the military utility of different types of mines and to consider possible alternative systems. The April 1993 symposium made a number of recommendations and noted that Protocol II has important shortcomings even if it were respected. It concluded that, for it to be effective, serious thought could be given to altogether prohibiting the use of certain types of mines. On this question, it is hoped that the January 1994 symposium will clarify the relevant elements to be taken into account from the military standpoint.

The ICRC hopes that the valuable work accomplished during these symposia will be taken into full account during the Review Conference, as it is essential that the solutions eventually agreed to by States are both realistic and genuinely effective.

2.3 Possible additional Protocols

As the Convention has been structured to enable the adoption of new Protocols, States could consider the possible regulation of existing weapons that are not yet included in it.

However, as mentioned above, States adopted this structure in particular in order to be able to take into account the development of new weapons. States are in fact under an obligation to assess whether the use of a weapon under development would in some or all circumstances violate international humanitarian law. Given the abundance of problems that already plague the world, 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.

It was with this intention that the ICRC held a series of expert meetings between 1989 and 1991 on the subject of blinding weapons. The reports of those meetings have now been published in one volume in English, and publications in French and in Spanish will be available in the early months of 1994. The ICRC was prompted to convene these meetings by reports concerning the development of certain types of laser weapons which, when used against persons over a range of about a kilometre, would result in permanent and incurable blindness. The meetings provided highly specialized technical and medical information and, on this basis, the majority of experts from legal and governmental backgrounds thought that a treaty regulation would be advisable.

There could also be more general discussion, in the light of humanitarian law standards, of trends in future weaponry such as the different types of directed energy weapons that are currently being researched. Such a discussion took place during the conference of government experts of 1974 and 1976, although the participants recognized that it was premature to think of specific treaty regulations for weapons that are only at the research stage.

3. The role of the ICRC

In view of its internationally recognized mandate to work for the application and development of international humanitarian law, the ICRC considers it important that it be able to participate fully in the work of the Review Conference, including its preparatory meetings. The importance of our mandate in relation to the 1980 Convention was specifically acknowledged in paragraph 5 of resolution 47/56 adopted by the United Nations General Assembly on 9 December 1992 and which recognizes "the potential of the International Committee of the Red Cross to consider

questions pursuant to the Convention". In particular, the ICRC is able to provide appropriate documentation, including the results of work on the effects of weapons that has been undertaken since the adoption of the treaty. Given our first-hand knowledge of the reality of armed conflicts, as well as our long experience in the development of international humanitarian law treaties and the specialized expert meetings that we have convened, we believe that our input would be of particular value.

The ICRC hopes that States that have not yet done so will ratify or accede to the said treaty as quickly as possible, as to date only 39 States are party to it. A wider participation in the treaty should help ensure that the discussions and results of the forthcoming Review Conference are as effective as possible. The ICRC sincerely hopes that States will take the opportunity offered by this Review Conference to work towards the most effective solutions in accordance with the spirit and the purpose of international humanitarian law, which is to allievate as far as possible the suffering caused by armed conflict.
