

Second Review Conference of the Convention on Certain Conventional Weapons

For only the second time since it was adopted in 1980, States gathered to review the status and operation of the Convention on Certain Conventional Weapons (CCW).¹ The Review Conference of States Parties, which was held in Geneva from 11 to 21 December 2001, provided an important opportunity to strengthen international humanitarian law and consider new regulations on weapons which may cause superfluous injury or have indiscriminate effects.

The Review Conference took several major decisions. First and foremost, States Parties extended the scope of application of the CCW to non-international armed conflict. In addition, the Review Conference set up a Group of Government Experts to address the issue of “explosive remnants of war”. More informally, the meeting encouraged States Parties to continue efforts to limit the wounding potential of small-calibre weapon systems and to establish a mechanism to monitor compliance with the CCW. The Conference also adopted a Final Declaration which makes reference to multipurpose explosive bullets, legal reviews for new weapons, means or methods of warfare and blinding laser weapons.

These decisions are the result of a one-year preparatory process during which three formal preparatory meetings and one informal intersessional meeting were held.² Prior to this, the ICRC also organized informal consultations with governments on the problem of explosive remnants of war. The results of the Conference are an indication that the Convention can respond to developments in the nature and conduct of modern armed conflict. The main decisions adopted by the meeting are summarized below.³

Extension of the CCW's scope of application

The principal legal norm adopted by the Review Conference was the extension of the CCW's scope of application to non-international armed conflict. Previously, only the Convention's amended Protocol II (on the use of mines, booby-traps and other devices) applied to such situations. Protocol I (which prohibits weapons causing injury by means of fragments not detectable by X-rays), Protocol III (which restricts the use of incendiary

weapons) and Protocol IV (which prohibits the use and transfer of blinding laser weapons) applied only to international armed conflict.

On the basis of a proposal by the United States, States Parties agreed to amend Article 1 of the CCW framework Convention. The new version of Article 1 (see Annex below) will make existing protocols applicable to non-international armed conflict once the amendment enters into force, namely after its ratification by 20 States. The nature of the armed conflicts to which future protocols will apply will be determined on a case-by-case basis as each new protocol is negotiated. Protocols adopted after 1 January 2002 may apply, exclude or modify this new scope of application. Unlike the first Review Conference, which took place in 1995 and 1996, there was no opposition to this extension. On the contrary, it was recognized by all States Parties as an important and necessary development of international humanitarian law.

Explosive remnants of war

An issue that has received considerable attention in recent years is the impact of explosive munitions which were laid or delivered during an armed conflict but remain in an armed yet unexploded state after they no longer serve a military purpose. While the international community has taken significant steps to end the death, injury and suffering caused by anti-personnel landmines, large numbers of civilians are killed or injured each year by other explosive munitions. Such weapons include anti-vehicle mines, submunitions from airborne cluster bombs or land-based systems, artillery shells, hand-grenades, rockets and other similar ordnance. Like anti-personnel mines, these “explosive remnants of war” are often a direct danger to life and limb and an obstacle to the delivery of humanitarian aid, the cultivation of agricultural land and the post-conflict reconstruction of a war-torn country.

1 The full title is 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. It was adopted in 1980 and entered into force in 1983. At 1 January 2002, there were 88 States Parties. The first Review Conference was held in 1995 and 1996.

2 Preparatory meetings were held in Geneva on 14 December 2000, 2-6 April 2001 and 24-28 September 2001. An informal preparatory session also took place on 27-31 August 2001.

3 Further information on explosive remnants of war, the need for legal reviews of new weapons and the papers submitted and statements made by the ICRC during the Review Conference can be found on the ICRC website (<http://www.icrc.org>).

Three proposals to address the problems caused by explosive remnants of war were submitted to the Conference for consideration. Switzerland proposed the adoption of a new protocol laying down technical specifications to prevent cluster bombs and other submunitions from becoming explosive remnants of war. This proposal would require all submunitions to have a 98% reliability through a combination of the primary fusing mechanism and a back-up self-destruct feature, thereby ensuring that *if the weapon does fail to explode as intended when launched against a military target, it would self-destruct soon after.*

The United States called for a new protocol to reduce the impact of anti-vehicle mines. Its proposal would build upon existing obligations contained in the CCW's amended Protocol II (mines, booby-traps and other devices). All anti-vehicle mines would have to be detectable by commonly available mine detectors and only remotely delivered anti-vehicle mines would be required to contain self-destruct or self-neutralization features. Like the requirements proposed by Switzerland for submunitions, these characteristics would help ensure that anti-vehicle mines no longer pose a threat once the military purpose for the weapons has ended.

The ICRC also suggested ways to reduce the human and social costs of explosive remnants of war. It, however, proposed a complementary but less weapon-specific approach. In its view, measures to reduce the consequences of such remnants should cover all types of explosive munitions which threaten civilian populations in a post-conflict environment. The main emphasis in addressing the problem would be placed on general rules to ensure rapid and safe clearance, plus warnings to civilian populations living in affected areas. Specifically, the ICRC proposed that States adopt a new protocol to the CCW which would:

- establish the responsibility for users of explosive munitions to clear those which remain after the end of hostilities or to provide the technical and material assistance needed to ensure such clearance;
- require rapid provision of technical information to the UN and demining agencies to facilitate swift clearance and minimize risks to clearance personnel;
- require users of munitions likely to have long-term effects to inform organizations conducting mine/unexploded ordnance-awareness campaigns and give the civilian population effective advance warning of the delivery of such munitions.

Such general obligations could be supported by technical requirements, for instance detectability specifications and self-destruct mechanisms, to prevent unexploded munitions from becoming a threat in the first place.

In its proposal the ICRC also included a specific restriction on the use of cluster bombs and other submunitions: it called for a prohibition on the use of submunitions against any military objective situated within a concentration of civilians. The reason for this rule is that not only do large numbers of submunitions fail to explode as intended after they are dropped or launched (an estimated average of 10%-20%), but because of their devastating area-wide impact these weapons have indiscriminate effects in civilian areas even when they function properly.

By design, submunitions are area weapons. Once delivered by cluster bomb, rocket or other means, they are dispersed over a large area up to, and sometimes exceeding, one hundred thousand square metres. When targeting is imprecise or a mistake is made, the effects of missing the target in a civilian area can be far greater than with traditional ordnance. Large numbers of civilians may be caught in a submunition attack when such weapons are used against nearby military objectives. Moreover, submunitions can be affected by weather (wind and air density), causing them to land far from the intended target.

In order to examine these proposals in greater detail, the Review Conference established a Group of Government Experts (GGE) which will meet for a total of five weeks during 2002.⁴ Since many governments regard the problem of anti-vehicle mines as being different from that of other explosive remnants of war, proposals on anti-vehicle mines will be discussed separately. From a technical viewpoint, such mines are a problem not because they fail to explode as intended, but because they do exactly what they are designed to do, namely to remain live and lie in wait once laid. The Group will examine the problem of anti-vehicle mines and consider tighter restrictions on their use and design.

For other explosive remnants of war, the Group of Government Experts is specifically asked to examine (1) the types of munitions that become explosive remnants of war; (2) features which could prevent munitions from becoming explosive remnants of war in the first place; (3) technical, legal and

⁴ The GGE will meet in Geneva 20-24 May, 8-19 July or 22 July-2 August and 2-10 December 2002.

other measures which could facilitate their rapid and safe clearance and warnings to civilian populations where a threat exists; (4) the adequacy of existing international humanitarian law in minimizing the post-conflict risks of explosive remnants of war; and (5) issues related to assistance and cooperation. New proposals and approaches may also be considered.

The Group of Government Experts will report back to a meeting of States Parties to be convened on 12 and 13 December 2002. One of the essential tasks of this meeting will be to decide on whether to begin negotiations in 2003 on new legal instruments. The ICRC considers the launching of negotiations in 2003 to be a crucial step in the development of a credible process to address the immense humanitarian problem of explosive remnants of war.

Other issues

The Conference also encouraged States to continue efforts on small-calibre weapon systems, an issue which Switzerland has been working on for a number of years. Its purpose is to update the prohibition on expanding bullets (also called “dum-dum” bullets) which was established in the Hague Declaration of 1899. The cause for concern is small-calibre ammunition which does not correspond to the narrow technical definitions found in the Declaration but which nonetheless produces similar wounds, owing to a high initial deposit of energy when it enters the human body. During the preparatory process for the Review Conference, Switzerland called for the adoption of a new protocol which would limit the energy deposit of such ammunition and prohibit the use of small-calibre weapon systems which go beyond specified thresholds.

Although Switzerland has organized several expert meetings on this issue, a number of States Parties were not yet sufficiently familiar with it for the Review Conference to start work on formulating a new protocol. The Conference did, however, endorse further — informal — efforts to examine the subject, specifically inviting interested States Parties to convene experts to discuss it and examine its military, technical, medical, legal and financial implications. While it was decided that such efforts would be an independent initiative and not part of the mandate of the Group of Government Experts, States were nonetheless also invited to report back to the other States Parties on their work.

Proposals were also submitted for setting up a mechanism to monitor compliance with the Convention. During the preparatory process, the United States proposed a new protocol which would allow States Parties to convene compliance meetings and fact-finding missions to investigate violations of the rules on the use of mines, booby traps and other devices found in amended Protocol II. The European Union advocated a broader approach which included more frequent meetings of States Parties and fact-finding missions, if necessary, to settle disputes related to all existing and future CCW protocols. South Africa also supported measures covering the CCW and all its Protocols, but preferred a “lighter” option focusing on regular meetings of States Parties, the submission of annual reports to the depositary and national measures to prevent and suppress violations of the Convention and Protocols.

None of these proposals garnered the consensus required to begin negotiations. Although many States spoke in favour of the establishment of some form of compliance mechanism, not all supported work on the issue at this time. The Review Conference decided, however, that the Chairman-designate of the December 2002 meeting of States Parties (Ambassador Rakesh Sood of India) would consult governments on the possible options to promote compliance and, following his consultations, submit a report to States Parties.

These decisions and others taken by the Conference are contained in the Final Declaration adopted at its close. In addition to the areas of work outlined above, other issues of international humanitarian law and its implementation were raised. These include: (1) concerns of the ICRC about the proliferation of “multipurpose” explosive bullets and its implications for the 1868 St Petersburg Declaration;⁵ (2) the need to pursue a total prohibition of blinding laser weapons and monitor relevant technical developments in this field; and (3) the importance of conducting legal reviews of weapons, means and methods of warfare. While these subjects were primarily discussed informally during the Conference, important statements on them are included in the Final Declaration.

⁵ See “Ensuring respect for the 1868 St Petersburg Declaration prohibiting the use of certain explosive projectiles”, Report of the International Committee of the Red Cross

submitted to the Third Meeting of the Preparatory Committee for the Second Review Conference of the CCW, 18 September 2001. UN Doc. CCW/CONF.II/PC.3/WP.6.

Concluding comments

The Review Conference of the Convention on Certain Conventional Weapons was a distinct milestone for the CCW and produced significant results. The extension of the Convention's scope of application is a substantial development of international humanitarian law and helps ensure that its fundamental rules apply in all situations of armed conflict. As most conflicts today are of an internal nature, it is vital that the various forms of protection afforded to civilians and combatants in international conflict apply equally in non-international armed conflicts.

Furthermore, the willingness of States Parties to address new issues, such as explosive remnants of war, anti-vehicle mines and other weapons, highlights the key role that the Convention can play in ensuring that the law remains up to date and responsive to developments in the nature and conduct of warfare. Importantly, none of the polarization which has hindered discussions in other multilateral fora, such as the Review Conference of the Biological Weapons Convention, were present in the CCW context. The Second Review Conference of the CCW has shown that the treaty can remain a dynamic regime through which new issues related to conventional weapons can be examined and rules developed if necessary. Whether this potential is fulfilled will depend on speedy ratification by States Parties of the extended scope of application, and intensive efforts in the coming years by governments, the ICRC, National Red Cross and Red Crescent Societies and non-governmental organizations to ensure the negotiation and adoption of a new protocol on explosive remnants of war.

The next Review Conference of States Parties will take place no later than 2006.

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Annex

Article 1 of the CCW (as amended on 21 December 2001)

1. This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article I of Additional Protocol I to these Conventions.

2. This Convention and its annexed Protocols shall also apply, in addition to situations referred to in paragraph 1 of this Article, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Convention and its annexed Protocols shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts.

3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Convention and its annexed Protocols.

4. Nothing in this Convention or its annexed Protocols shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Convention or its annexed Protocols shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Convention and its annexed Protocols to parties to a conflict which are not High Contracting Parties that have accepted this Convention or its annexed Protocols, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

7. The provisions of paragraphs 2-6 of this Article shall not prejudice additional Protocols adopted after 1 January 2002, which may apply, exclude or modify the scope of their application in relation to this Article.