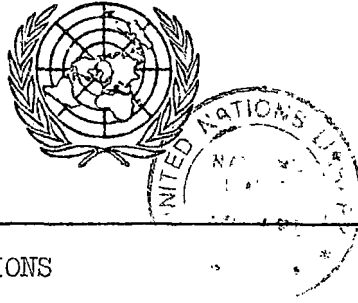


UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
GENERAL

A/CONF.95/9
6 October 1980

Original: ENGLISH

UNITED NATIONS CONFERENCE ON PROHIBITIONS
OR RESTRICTIONS OF USE OF CERTAIN
CONVENTIONAL WEAPONS WHICH MAY BE DEEMED
TO BE EXCESSIVELY INJURIOUS OR TO HAVE
INDISCRIMINATE EFFECTS

Geneva, 15 September - 10 October 1980

REPORT OF THE CONFERENCE WORKING GROUP ON A GENERAL TREATY

1. The Conference Working Group on a General Treaty, established by the Conference at its 1st plenary meeting on 10 September 1979, continued its work at the present session of the Conference under the Chairmanship of Ambassador Antonio de Icaza of Mexico. Mr. R. Sommereyns served as Secretary of the Working Group.
2. The Conference Working Group held 10 formal meetings during the period from 16 September to 3 October 1980. In addition, consultations were held in seven meetings of the Chairman with co-sponsors of various proposals and other interested delegations in an informal open-ended contact group.
3. The Conference Working Group had before it its report of the 1979 session of the Conference (A/CONF.95/8, Annex II) and used as the basic proposal for its consideration the Outline of a Draft Convention contained in Appendix A to that report. The results of the informal consultations held by the President of the Conference with a number of delegations during the period between the two sessions of the Conference were also taken into account. The Conference Working Group further had before it a number of proposals pertaining to certain provisions of the Outline of a Draft Convention or concerning additional articles. The proposals were contained in the following documents:
 - A/CONF.95/WG/L.11, proposal submitted by the Netherlands for Article 7 on "Treaty Relations Upon Entry into Force of the Convention",
 - A/CONF.95/WG/L.13 and Add.1, proposal submitted by Belgium, France, the Federal Republic of Germany, Ireland and the Netherlands for a draft article on a consultative committee of experts,
 - A/CONF.95/WG/L.14, proposal submitted by Morocco for an article on "Dissemination",
 - A/CONF.95/WG/CRP.8, proposal by the Chairman for Article 3 on "Review and Amendments",

- A/CONF.95/WG/CRP.9, proposal submitted by Norway, Tunisia and Yugoslavia for an amendment to Article 3 as proposed by the Chairman in document A/CONF.95/WG/CRP.8,
- A/CONF.95/WG/CRP.10, proposal submitted by the German Democratic Republic and the Union of Soviet Socialist Republics for an amendment to Article 3 as proposed by the Chairman in document A/CONF.95/WG/CRP.8.

In addition, the Conference Working Group had before it a series of informal working papers containing formulations for various provisions of the Draft Convention proposed by the Chairman as the result of informal consultations. In the course of the meetings, several texts of informal proposals were also circulated by various delegations. In connexion with its proposal for a new Article 7, the Netherlands also submitted a proposal for a draft resolution to be adopted by the Conference concerning application by non-parties (A/CONF.95/WG/L.12).

4. At the tenth meeting of the Conference Working Group (the first meeting at this session of the Conference), on 16 September 1980, the Chairman reiterated the understanding of the Conference, recorded in its report on its first session to the General Assembly of the United Nations, that issues on which agreement had already been achieved should not be reopened at the present session and that all efforts should be concentrated on working out agreements on outstanding issues. The Conference Working Group therefore decided with regard to the Outline of a draft Convention to give consideration only to those parts on which agreement was outstanding, namely paragraphs 6, 9, 10, 11, 12, 15 and 16 of the Preamble and Articles 1, 2, 3, 5, 6 (para. 1) and 7. At its 13th meeting, on 26 September 1980, the Conference Working Group decided that, in order not to delay the work of the Conference, it would transmit to the Drafting Committee, subject to the approval of the Conference, those texts upon which agreement had been reached within the Working Group. At the same meeting it decided therefore to transmit to the Drafting Committee the texts of paragraphs 1, 2, 3, 4, 5, 7, 8, 13 and 14 of the Preamble and of Articles 4, 8, 9 and 10 as contained in the Outline of a Draft Convention (A/CONF.95/8, Annex II, Appendix A). At the same meeting the Working Group also agreed on the text for Article 2 and decided to transmit it to the Drafting Committee. The text of Article 2 is reproduced in Annex 1 to this report. At its 14th meeting, on 26 September 1980, the Conference Working Group agreed on the text of Article 7 and decided to transmit it to the Drafting Committee. The text of Article 7 is reproduced in Annex 2 to this report. At its 18th meeting, on 1 October 1980, the Conference Working Group agreed on the text for an article on Dissemination to be included in the Outline of a Draft Convention, and decided to transmit it to the Drafting Committee. The text of this article is reproduced in Annex 3 to this report. At the 19th meeting on 3 October 1980, the Conference Working Group adopted its report as contained in the present document, based on a draft prepared by the Chairman (A/CONF.95/WG/CRP.11).

5. The text for Article 2 on relations with other international agreements, on which the Conference Working Group agreed (see Annex 1), is the text of paragraph 1 of Article 2 as contained in A/CONF.95/8, Annex II, Appendix A, in which the square brackets around the word "other" have been deleted. Article 2 thus provides that nothing in the Convention shall be interpreted as detracting from other obligations imposed upon the Parties by international humanitarian law applicable in armed conflict. The reference to "other" obligations was thought appropriate because, although the Convention and its Protocols consist primarily of new prohibitions or restrictions which will bind Parties in the future, there are also certain provisions restating existing international obligations.

6. The text for Article 7 agreed upon by the Conference Working Group (see Annex 2) relates to treaty relations upon entry into force of the Convention and replaces the text contained in A/CONF.95/8, Annex II, Appendix A, on "Provisional application". It is based on the proposal by the Netherlands (A/CONF.95/WG/L.11) from which, in paragraph 2, the words "in its relations with that State Party" have been deleted in order to bring the text in line with corresponding provisions in the Geneva Conventions of 1949 and Additional Protocol I of 1977. The proposal by the Netherlands for substituting the old Article 7 included a new text for Article 7 (A/CONF.95/WG/L.11) and a draft resolution to be adopted by the Conference (A/CONF.95/WG/L.12). It was intended to meet the objections that had been raised to the old text of Article 7 and that had been two-fold: 1) the role attributed in it to the Depositary, i.e. the Secretary-General of the United Nations, could not very well be performed by that official; and 2) such provision included in the Convention could not achieve anything as long as the Convention would not have entered into force. The new Article 7, as proposed by the Netherlands and agreed upon by the Working Group, provides solely for those situations in which the Convention would be in force and one or more parties to an armed conflict would be parties to the Convention, while other parties to the conflict are not. The proposed draft resolution of the Conference, on the other hand, is intended to cover those other situations in which either the Convention would not yet be in force, or none of the parties to an armed conflict would be a party to the Convention. Introducing his proposal, the representative of the Netherlands stated that the appeal contained in the draft resolution would in his judgement have at least as much persuasive force as the originally proposed text for Article 7. Further consideration of the draft resolution was considered, however, not to be within the competence of the Conference Working Group and will have to take place in the Plenary of the Conference.

7. The article on "Dissemination" agreed upon by the Conference Working Group (see Annex 3) was proposed by Morocco (A/CONF.95/WG/L.14). The Article states the undertaking by States Parties to disseminate the Convention and its annexed Protocols as widely as possible. It is understood that for each State Party this undertaking relates only to the Convention and to those Protocols by which it is bound.

8. In the consideration of outstanding issues, the Conference Working Group as well as the informal contact group gave considerable attention to the paragraphs that remained within brackets in the Preamble, the provisions concerning scope of application in Article 1 and Article 5, paragraph 6, the question of review and amendments to be provided for under Article 3 and the requirements for entry into force dealt with in Article 6, paragraph 1. Intensive consultations contributed to better understanding of the diverging positions of delegations with regard to these issues.

9. Regarding the preambular paragraphs 6, 9 and 10, some delegations felt that in a Convention dealing with the laws applicable in armed conflict there is no need to restate notions of ius ad bellum. Others felt that it was necessary to recall the provisions of the Charter in this respect and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations that pertain to the right of self-determination. It was decided that the paragraphs in question would be examined after an agreement has been reached on the scope of application provisions.

10. Paragraphs 11 and 12 of the Preamble were considered together and also in conjunction with paragraph 1 of Article 6 on the requirements for entry into force. Some delegations felt that the participation in the Convention and the Protocols of militarily significant States, especially the permanent members of the Security Council of the United Nations, is of greatest importance for the effectiveness of the Convention and Protocols. Other delegations had strong objections to recognizing the special status of the permanent members of the Security Council of the United Nations in the context of this Convention or to attributing to any particular group of States special rights or responsibilities. On 29 September, the Chairman submitted a proposal for a possible compromise which is reproduced as Annex 4. No agreement could be reached.

11. Paragraph 15 of the Preamble was considered in conjunction with corresponding provisions in Article 3 on the system of review and amendments which, as proposed by the Chairman on the basis of informal consultations, contains a paragraph 4 dealing with the role of the Committee on Disarmament (see Annex 5). On 30 September, the Chairman proposed a series of alternatives regarding Article 3 (Annex 6) that included one on paragraph 15 of the Preamble. On 1 October, the Chairman informed the Working Group that pending a solution on the issue of paragraph 4 of Article 3, in special consultations there had been an understanding that paragraph 15 of the Preamble could be replaced by the following two paragraphs:

"Bearing in mind that the General Assembly of the United Nations and the United Nations Commission for Disarmament may decide to examine the question of a possible broadening of the scope of the prohibitions and restrictions contained in this Agreement,

Bearing in mind that the Committee on Disarmament may decide to negotiate the question of adopting further measures to prohibit or restrict the use of certain conventional weapons,"

12. It was decided that paragraph 16 of the Preamble can be deleted.

13. After consultations with several interested delegations, the Chairman submitted a proposal on Article 1 and three alternatives for a paragraph 6 of Article 5. The proposal is attached to this report as Annex 7. No agreement has been reached.

14. Article 3 was the object of intensive negotiations, the result of which are the proposals of the Chairman reproduced as Annexes 5 and 6.

15. In connection with paragraph 3 of Article 5, several delegations proposed that in order to become a party to the Convention, each party should express its consent to be bound by at least two of its annexed Protocols. Other delegations felt this was not acceptable.

16. Regarding Article 6, there was a wide measure of support for the entry into force of the Convention and its Protocols six months following the date of deposit of 20 instruments of ratification, acceptance, approval or accession. No agreement could be reached on the need of the ratification, acceptance, approval or accession of the permanent members of the Security Council of the United Nations for the entry into force of the Convention and its Protocols. On 29 September, the Chairman submitted a proposal which is contained in Annex 4. No agreement was reached.

17. At the 17th meeting of the Conference Working Group, on 1 October 1980, the proposal by Belgium, France, the Federal Republic of Germany, Ireland and the Netherlands for a draft article on a consultative committee of experts (A/CONF.95/WG/L.13) was discussed. Several delegations expressed their support for the proposal. Other delegations stated that they could not pronounce themselves on the proposal which had only been recently submitted. No agreement was reached.

18. When introducing his draft of this report to the Conference Working Group on 3 October 1980, the Chairman explained that it had been his intention to give only a brief and factual description of the stage reached in the consideration by the Working Group of the provisions on which negotiations are going on, without any explanation of the issues involved, in order not to complicate the said negotiations and because the diverging views are implicit in the various proposals.

ANNEXES

ANNEX I

TEXT AGREED UPON BY THE CONFERENCE WORKING GROUP
AT ITS 13TH MEETING ON 26 SEPTEMBER 1980

Article 2

Relations with other international agreements

Nothing in this Convention shall be interpreted as detracting from other obligations imposed upon the Parties by international humanitarian law applicable in armed conflict.

ANNEX 2

TEXT AGREED UPON BY THE CONFERENCE WORKING GROUP
AT ITS 14TH MEETING ON 26 SEPTEMBER 1980

Article 7

Treaty Relations Upon Entry into Force of this Convention

1. When one of the parties to a conflict is not bound by a Protocol, the parties bound by the Convention and that Protocol shall remain bound by them in their mutual relations.
2. Any State Party shall be bound by this Convention and any Protocol thereto which it has accepted, in any situation contemplated by Article 1, in relation to any State which is not a party to the Convention or bound by the relevant Protocol, if the latter accepts and applies the Convention or relevant Protocol, and so notifies the Depositary.
3. The Depositary shall immediately inform the State Parties concerned of the notifications received under this Article.

ANNEX 3

TEXT AGREED UPON BY THE CONFERENCE WORKING GROUP
AT ITS 18TH MEETING ON 1 OCTOBER 1980

Dissemination

The States Parties undertake, in time of peace as in time of armed conflict, to disseminate the Convention and its annexed Protocols as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction, so that those instruments may become known to the armed forces.

ANNEX 4

PROPOSAL BY THE CHAIRMAN FOR A PARAGRAPH IN THE PREAMBLE
AND PARAGRAPH 1 OF ARTICLE 6 (ENTRY INTO FORCE)

(Informal Working Paper, submitted on 29 September 1980)

Paragraph for the Preamble:

Emphasizing the desirability that all States become parties to this Convention and the annexed Protocols, specially those States that are permanent members of the Security Council of the United Nations and the militarily significant States,

Article 6, paragraph 1 would read:

1. This Convention, its annexed Protocols and any subsequent Protocols shall enter into force six months following the date of deposit of 20 instruments of ratification, acceptance, approval or accession.

ANNEX 5

PROPOSAL BY THE CHAIRMAN FOR ARTICLE 3
ON REVIEW AND AMENDMENTS

(Informal Working Paper, submitted on 25 September 1980)

Article 3

Review and Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to the Convention or any annexed Protocol by which it is bound. Any proposal for an amendment shall be communicated to the Depositary, who shall notify it to all the States Parties and shall seek their views on whether a conference should be convened to consider the proposal. If / a majority / of the States Parties so agree, he shall promptly convene a conference to which all States Parties shall be invited. States not parties to the Convention shall be invited to the conference as observers.
2. Such a conference may agree upon amendments which shall be adopted and shall enter into force in the same manner as this Convention, provided that amendments to the Convention may be adopted only by the States Parties and that amendments to a specific Protocol may be adopted only by States Parties which are bound by that Protocol.
3. At any time after the entry into force of this Convention any State Party may propose additional protocols relating to other categories of conventional weapons not covered by the existing Protocols. Any such proposal for an additional protocol shall be communicated to the Depositary, who shall notify it to all the States Parties in accordance with paragraph 1 of this Article. If / a majority / of the States Parties so agree, the Depositary shall promptly convene a conference to which all States shall be invited.
4. A conference could also be convened in accordance with the procedure provided for in paragraph 3 to consider any proposal or recommendation from the Committee on Disarmament for the adoption of additional protocols relating to other categories of conventional weapons not covered by the existing Protocols.
5. The conference referred to in paragraphs 3 and 4 may agree upon additional protocols which shall be adopted and enter into force in the same manner as this Convention.
- 6.A. If after a period of (10) years following the entry into force of this Convention, no conference has been convened in accordance with paragraphs 1, 3 or 4 of this Article, any State Party may request the Depositary to convene a conference to which all States Parties shall be invited to review the scope and operation of the

Convention and the Protocols and to consider any proposal for amendments of the Convention or of the existing Protocols. States not parties to the Convention shall be invited as observers to the conference. The conference may agree upon amendments which shall be adopted and enter into force in accordance with paragraph 2 above.

6.B. At the conference consideration may also be given to any proposal for additional protocols relating to other categories of conventional weapons not covered by the existing Protocols. All States represented at the conference may participate fully in such consideration. Any additional protocols shall be adopted and enter into force in the same manner as this Convention.

7. Any conference convened in accordance with paragraph 6 of this Article may consider whether provision should be made for the convening of a further conference at the request of any State Party if, after a similar period to that referred to in paragraph 6 of this Article, no conference has been convened in accordance with paragraphs 1, 3 or 4 above.

ANNEX 6

PROPOSAL BY THE CHAIRMAN FOR ARTICLE 3

(Informal Working Paper, submitted on 30 September 1980)

Article 3

Paragraphs 1 and 3

Alternative I

1. Two years after the entry into force of this convention, any State party may at any time propose amendments to the convention or any annexed Protocol by which it is bound. Any proposal for an amendment shall be communicated to the Depositary, who shall notify it to all States Parties and shall seek their views on whether a conference should be convened to consider the proposal. If a majority of the States Parties so agree . . .

3. (Redraft accordingly).

Alternative II

1. Change the sentence in the fifth line after the words "consider the proposal" to read: If a majority that shall not be of less than 18 nor need be of more than 40 of the States Parties so agree, etc. . . .

3. Change paragraph 3 accordingly.

Paragraph 4

Alternative I

- (a) delete paragraph 4.
- (b) approve a preamble paragraph that would read:

"Bearing in mind that the Committee on Disarmament may decide to examine (negotiate) the question of adopting further measures to prohibit or restrict the use of certain conventional weapons [with a view to a possible broadening of the scope of the prohibition contained in this agreement]".

Alternative II

- (a) delete paragraph 15 of the Preamble.
- (b) paragraph 4 of article 3 would read:

"A conference for the adoption of additional protocols relating to other categories of conventional weapons not covered by the existing Protocols could also be convened in accordance with the procedure provided for in paragraph 3 on the proposal or recommendation of the General Assembly of the United Nations, or of the Committee on Disarmament, bearing in mind that such Committee can decide to negotiate the question of adopting further measures to prohibit or restrict the use of certain conventional weapons [with a view to a possible broadening of the scope of the prohibition or restrictions contained in this Agreement]".

Alternative III

- (a) Insert a paragraph in Article 3, after paragraph 3 and before paragraph 4 that would read:

"Such a conference could also consider any recommendation from the General Assembly of the United Nations or from appropriate international bodies".

- (b) no change in paragraph 4.
- (c) delete paragraph 15 of the Preamble.

ANNEX 7

PROPOSAL BY THE CHAIRMAN ON SCOPE OF APPLICATION
(Informal Working Paper, submitted on 30 September 1980)

Article 1

Scope of Application

This Convention 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 1 of Additional Protocol I to the Conventions.

Article 5(6) or 7(4)

Alternative I

Any party to an armed conflict of the type referred to in Article 1 may undertake to apply this Convention and one or more of its Protocols in respect of a High Contracting Party to this Convention engaged in a conflict against the said party through a unilateral declaration addressed to the Depositary. Such declaration shall, upon its receipt by the Depositary, have in relation to that conflict the following effects:

- (a) The Convention and its Protocols are brought into force for the said party as a party to the conflict with immediate effects;
- (b) The said party assumes the same rights and obligations as those which have been assumed by a Party to the Convention and its Protocols; and
- (c) The Convention and its Protocols are equally binding upon all parties to the conflict.

Alternative II

In any situation referred to in paragraph 4 of Article 1 of Protocol I, this Convention and its annexed Protocols shall apply if the Geneva Conventions of 12 August 1949 and Additional Protocol I have been made applicable to that situation in accordance with Article 96, paragraph 3 of Additional Protocol I.

Alternative III

In any case referred to in paragraph 4 of Article 1 of Additional Protocol I, this Convention and its annexed Protocols shall apply when those provisions are accepted and applied by the parties to an armed conflict

- (a) to which Additional Protocol I has been made applicable, or
- (b) if the parties to the armed conflict are not party to or have not undertaken to apply Additional Protocol I, and if they otherwise accept and apply the customary law of armed conflict by means of a Declaration addressed to the Depositary.