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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

Committee of the Whole

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REPORT OF THE WORKING GROUP ON INCENDIARY WEAPONS

1. The Working Group met from 16 September to 1 October 1980, under the chairmanship of Colonel R. Felber (German Democratic Republic). Miss Aida Luisa Levin served as Secretary of the Working Group. During this period the Working Group held six formal meetings. In addition, the Working Group held eight informal meetings as well as meetings in small contact groups.
2. The Working Group based its work on the Draft Protocol, which it had elaborated at the first session of the Conference (A/CONF.95/8, pp. 28 to 30). The Group also had before it two additional proposals concerning incendiary weapons (A/CONF.95/8, pp. 32 to 34) and several proposals on the protection of combatants which were made orally during the first session of the Conference (A/CONF.95/8, p. 31).
3. In the course of the deliberations of the Working Group, two new proposals were submitted, one by the delegation of Morocco on the definition of "flame weapons" (A/CONF.95/CW/WG.2/L.2) and the other by the delegation of the Union of Soviet Socialist Republics on the protection of forests or other kinds of plant cover (A/CONF.95/CW/WG.2/L.3).
4. In accordance with the decisions of the Conference and of the Committee of the Whole, the Chairman of the Working Group reported to the Committee of the Whole on 19 September and on 26 September 1980 on the course of the work.
5. Although all efforts were made to elaborate a Draft Protocol acceptable to all delegations, the Working Group was not able to achieve that objective because of the complex and controversial nature of the substantive questions involved. The results of the deliberations of the Working Group are set out in the Annex to this report in the form of a "Draft Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons". Areas of disagreement are reflected in those parts of the above-mentioned Draft Protocol that are within square brackets.
6. With the exception of subparagraph 3(b), agreement was reaffirmed on the definition of "incendiary weapons" in paragraphs 1 to 3. At the fifth meeting of the Group, one delegation orally submitted a new version of the exception contained

in subparagraph 3(b) in order to correct technical ambiguities. This proposal is presented as the second alternative of this subparagraph. While some delegations supported this proposal, other delegations were of the opinion that the first version, which had been elaborated at the first session of the Conference, corresponded more to the rules as envisaged by those delegations. Some delegations expressed the view that the second alternative could adversely affect the objective of strengthening the protection of the civilian population by broadening the scope of the exceptions. In order to dispel doubts, some delegations agreed that the text could be improved. In this connexion, reference was made to subparagraph 3(b) of the proposal contained in document A/CONF.95/8, page 32, and a variant thereof was orally proposed as a third alternative. One delegation was of the opinion that subparagraph 3(b) should be eliminated on the grounds that it referred to munitions that were in fact incendiary weapons and thus were included in the definition contained in paragraph 1.

7. There was no discussion on the definition of "flame weapons" because the need for such a definition depends on the rules. For this reason the three alternatives which had been under consideration at the first session of the Conference remain in square brackets. At the fifth meeting, one delegation submitted a fourth alternative which appears in Attachment 1 and is similar in content to the proposal that the delegation of Morocco submitted at the beginning of the session reference to which was made in paragraph 3 of this report. Several delegations expressed the opinion that the category "flame weapon" should be eliminated.

8. Agreement was reaffirmed on the definitions of "concentration of civilians", "military objectives", "civilian objects" and "feasible precautions" (paragraphs 5 to 8). The definition of "concentration of civilians" is intended to convey a word picture to the military commander regarding the protected character of the civilian population, rather than to present a precise mathematical or geographical formulation of what is a "concentration" of civilians. The commander's attention is directed by the definition to the concern he must have for the presence or absence of the civilian population, which is fluid in wartime, rather than to the character or size of the city, town or village as such. It is understood that "civilians" means those persons who are not taking a direct part in the hostilities. The definition of "civilian objects" corresponds to the definition contained in Article 52(1) of additional Protocol I to the 1949 Geneva Conventions.

9. No agreement could be reached on the rules concerning the protection of civilians and civilian objects. In view of that, there are still two alternatives for paragraph 9. The first alternative reflects the opinion of some delegations which favour a complete prohibition of the use of incendiary weapons. The second alternative reaffirms existing international law applicable in armed conflicts with a view to strengthening the protection of civilians and civilian objects against the effects of incendiary weapons. Paragraph 10 contains a prohibition of attacks against military objectives located within a concentration of civilians by incendiary weapons, which is also intended to increase the protection of civilians. Among the various possible prohibitions set out in this paragraph, the one that received the greatest support was the prohibition of attacks by air-delivered incendiary weapons. Some delegations would prefer that the expression "air-delivered" be deleted in order to provide greater protection to the civilian population. Other delegations, however, argued that air attacks with such weapons were the ones that had the most injurious consequences to the civilian population. Some delegations stated that the order of paragraphs 10 and 11 should be reversed. In their view, paragraph 11 should constitute the main rule for the protection of the civilian population. Paragraph 10 should then follow as an additional rule and should prohibit the use of air-delivered flame weapons against military objectives located within a concentration of civilians. These delegations stated that, because of the

complex nature of the question, national security and defence considerations must also be taken into account. In their opinion, the prohibition of the use of air-delivered flame weapons would meet the main concern of the public. Paragraph 11 is a revised text on which the Working Group reached wide agreement. One delegation, however, reserved its position with regard to this text. This paragraph is intended to afford greater protection to civilians if a military objective located within a concentration of civilians is made the object of attack by means of incendiary weapons. Implicitly, this paragraph would prohibit the indiscriminate use of incendiary weapons, in conformity with Article 51 of Additional Protocol I to the 1949 Geneva Conventions. It was the understanding of the Working Group that the phrase "in any circumstances", which is contained in paragraphs 9 and 10, was intended as reinforcing language for the restrictions contained in those rules. Addition of the phrase was not intended to suggest any modification of the general prohibition on attack of the civilian population as such, or individual civilians, contained in Article 51(2) of Additional Protocol I, or of civilian objects, as stated in Article 52(1) of Additional Protocol I; that is, use of the words "in any circumstances" in the restrictions on the use of incendiary weapons stated in paragraphs 9 and 10 was not intended to imply that there are circumstances in which the civilian population as such, individual civilians, or civilian objects may be attacked with other weapons. Nor was the expression "in any circumstances" intended to prevent civilians from losing the protection given by those rules, if they take a direct part in hostilities.

10. No agreement could be reached with respect to the protection of combatants. Some delegations were of the opinion that no prohibitions or restrictions on the use of incendiary weapons against combatants could be accepted. One delegation maintained that the general rules on the protection of combatants contained in the rules of international law applicable in armed conflicts were sufficient. Some delegations reaffirmed their position concerning the protection of combatants reflected in document A/CONF.95/8, p.33, paragraph 9. Most of the difficulties centred on the exceptions in subparagraph (ii) of paragraph 12. One delegation proposed the deletion of all the examples of military objectives mentioned therein. Several delegations considered that the expression "in the vicinity" was too ambiguous. The Chairman submitted two alternative texts, based on existing proposals, both formal and informal (Attachment 2), but neither text received general support. In spite of all the efforts made, the Group was unable to elaborate a text which could meet all the requirements of such a rule.

11. The Working Group also examined a proposal on the protection of forests or other kinds of plant cover (A/CONF.95/CW/WG.2/L.3). In a small contact group an understanding was reached on a text which was then submitted by the Chairman for further consideration by the Group (Attachment 3). Several delegations supported the proposal during the deliberations of the Working Group. Some delegations, however, expressed reservations for reasons of principle with regard to further drafting work on the matter. Other delegations doubted whether this matter was within the scope of the Draft Protocol and still other delegations were of the opinion that this problem was covered by existing rules. For these reasons no decision was taken on this matter.

ANNEX

DRAFT PROTOCOL ON PROHIBITIONS OR RESTRICTIONS
ON THE USE OF INCENDIARY WEAPONS

DEFINITIONS

For the purpose of this Protocol:

1. "Incendiary weapon" means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target.
2. Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances.
3. Incendiary weapons do not include:
 - (a) Munitions which may have incidental incendiary effects, such as illuminants, tracers, smoke or signalling systems;
 - (b) Munitions which rely for their principal effect upon fragmentation, penetration or blast and which have secondarily an incendiary effect.
 - or
 - Munitions which produce fragmentation, penetration or blast effects, and which also produce incendiary effects.
 - or
 - Munitions which rely for their primary effect upon fragmentation, penetration or blast and which produce an additional incendiary effect.
4. "Flame weapon" is any incendiary munition designed primarily to produce flame effects similar to those of napalm.
- or
- "Flame weapon" is any incendiary munition in which the incendiary substance is based on a gelled liquid hydrocarbon, such as napalm, or an ungelled liquid hydrocarbon or any other substances designed primarily to produce similar flame effects to those produced by napalm.
- or
- "Flame weapon" means any incendiary munition specifically designed to produce incendiary effects by means of the delivery on the target of flame-producing agents such as gelled and ungelled hydrocarbons and organometallic substances, their compounds and derivatives and other substances having similar effects. Napalm is a flame weapon.

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5. "Concentration of civilians" means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.

6. "Military objective" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time, offers a definite military advantage.

7. "Civilian objects" are all objects which are not military objectives as defined in paragraph 6.

8. "Feasible precautions" are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

RULES

General protection

9. It is prohibited to use incendiary weapons.]

Protection of civilians and civilian objects

9. It is prohibited in any circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons.

10. It is prohibited in any circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered/flame/incendiary weapons.

11. It is further prohibited to make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered, except when such a military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.]

Protection of combatants

12. (a) It is prohibited to use incendiary weapons against combatants except when they:

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- (i) are engaged in a combat situation where close air support is necessary;
 - (ii) are in, or in the vicinity of, a military objective such as armoured vehicles, field fortifications, bunkers, pill-boxes or other similar objectives.
- (b) This provision is without prejudice to the protection given to non-combatant members of armed forces by the rules of international law applicable in armed conflicts.⁷

ATTACHMENT 1

Proposal by the delegation of the
Union of Soviet Socialist Republics on flame weapons

"Flame weapon" means any weapon or munition specially designed to set fire to objects or cause burn injury to persons through the action of flame, produced by a chemical reaction of a substance delivered on the target.

ATTACHMENT 2

Proposal by the Chairman
on the protection of combatants

- 12 (1) It is prohibited to make combatants as such the object of attack by incendiary weapons except when they are in armoured vehicles, field fortifications, bunkers, pill-boxes, caves or other similar military objectives.
- (2) This provision is without prejudice to the protection given to non-combatant members of the armed forces by the rules of international law applicable in armed conflicts.

or

- 12 (1) It is prohibited to make combatants as such the object of attack by incendiary weapons except when they are removed less than 50 kms from the enemy lines.
- (2) This provision is without prejudice to the protection given to non-combatant members of the armed forces by the rules of international law applicable in armed conflicts.

ATTACHMENT 3

Proposal by the Chairman
on the protection of forests or other kinds of plant cover

It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or military objectives, or are themselves military objectives.