

Geneva, 11 – 21 December 2001

## REPORT OF MAIN COMMITTEE I

1. The Second Review Conference of the States Parties to 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, at its first plenary meeting, on 11 December 2001, adopted the distribution of work for the two main committees, and decided that Main Committee I should deal with: "Review of the scope and operation of the Convention and its annexed Protocols, consideration of any proposal relating to the Convention or to Protocols annexed to the Convention, and preparation and consideration of the final documents."

2. The Committee held seven meetings from 13 to 20 December 2001, under the Chairmanship of Ambassador Rakesh Sood of India. Ambassador Clive Pearson of New Zealand served as Vice-Chairman of the Committee. Mr. Jerzy Zaleski, Political Affairs Officer of the United Nations Department for Disarmament Affairs (Geneva Branch), served as Secretary of the Committee.

3. In the course of its consideration of items 13 and 14 of the agenda of the Review Conference, entitled "Review of the scope and operation of the Convention and its annexed Protocols" and "Consideration of any proposal for the Convention and its existing Protocols", respectively, the Committee had before it:

CCW/CONF.II/PC.3/1, Annex III	List of proposals for consideration at the Second Review Conference
CCW/CONF.II/MC.I/WP.1	Draft Agenda of Main Committee I
CCW/CONF.II/MC.I/CRP.1 and Rev.1*	Draft Final Declaration
CCW/CONF.II/MC.I/CRP.2*	Draft Report of Main Committee I

4. At the third meeting on 18 December 2001, the Chairman of the Committee submitted a conference room paper (CCW/CONF.II/MC.I/CRP.1)\* containing a draft Final Declaration of the Conference.

5. At its seventh meeting on 20 December 2001, the Committee adopted its draft report (CCW/CONF.II/MC.I/CRP.2)\* as well as the Draft Final Declaration (CCW/CONF.II/MC.I/CRP.1/Rev.1)\* and recommended the Draft Final Declaration for adoption by the Conference.

\* This document was distributed by the Secretariat during the Conference beyond official channels.

Annex

**DRAFT FINAL DECLARATION**

THE HIGH CONTRACTING PARTIES TO 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, WHICH MET IN GENEVA FROM 11 TO 21 DECEMBER 2001, TO REVIEW THE SCOPE AND OPERATION OF THE CONVENTION AND THE PROTOCOLS ANNEXED THERETO AND TO CONSIDER ANY PROPOSAL FOR AMENDMENTS OF THE CONVENTION OR OF THE EXISTING PROTOCOLS, AS WELL AS PROPOSALS FOR ADDITIONAL PROTOCOLS RELATING TO OTHER CATEGORIES OF CONVENTIONAL WEAPONS NOT COVERED BY THE EXISTING ANNEXED PROTOCOLS

*Reaffirming* their conviction that 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 can significantly reduce the suffering of civilians and combatants,

*Reaffirming* their determination to call upon all States that have not done so to become parties to the Convention and its annexed Protocols as soon as possible, so that the instrument attains universal adherence,

*Reaffirming* the need to reinforce international cooperation in the area of prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects,

*Recognising* that many armed conflicts are non-international in character, and that such conflicts should also be within the scope of the Convention,

*Gravely concerned* that the indiscriminate effects or the irresponsible use of certain conventional weapons often fall on civilians, including in non-international armed conflicts,

*Recognising* the need to protect civilians from the effect of weapons, the use of which is restricted or prohibited by this Convention and its annexed Protocols, which take into account all circumstances ruling at the time, including humanitarian and military considerations,

*Reaffirming* their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed,

*Deeply concerned* at the humanitarian and development problems caused by the presence of explosive remnants of war, which constitute an obstacle to the return of

refugees and other displaced persons, to humanitarian aid operations, to reconstruction and economic development, as well as to the restoration of normal social conditions,

*Welcoming* the entry into force of Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devised (Amended Protocol II) on 3 December 1998,

*Noting* that the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction entered into force on 1 March 1999,

*Reaffirming also* the need to reinforce international cooperation in the area of mine action and to devote greater resources towards that end,

*Recognising* the need to further explore the issue of mines other than anti-personnel mines, including through reinforced international cooperation in the area of mine action, and the allocation of necessary resources to that end,

*Welcoming* the entry into force of the Protocol on Blinding Laser Weapons (Protocol IV) on 30 July 1998,

*Recognising* the crucial role of the International Committee of the Red Cross and encouraging it to continue to work to facilitate further ratifications and accessions to the Convention and its annexed Protocols, to disseminate their contents and to lend its expertise to future Conferences and other meetings related to the Convention and its annexed Protocols,

*Acknowledging* the invaluable humanitarian efforts of non-governmental organizations in armed conflicts and welcoming the expertise they have brought to the Review Conference itself,

*Noting* the report of the International Committee of the Red Cross on "Ensuring respect for the 1968 St. Petersburg Declaration prohibiting the use of certain explosive projectiles" (dated 18 September 2001). Inviting States to consider this report and other relevant information, and take any appropriate action,

**SOLEMNLY DECLARE:**

- Their commitment to respect and comply with the objectives and provisions of the Convention and its annexed Protocols as an authoritative international instrument governing the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects,
- Their determination to promote universal adherence to the Convention and its annexed Protocols, and to call upon all States that have not yet done so to take all measures to become parties, as soon as possible, to the Convention and to its annexed Protocols. In this regard, the Conference encourages States to cooperate to promote universal adherence,

- Their reaffirmation of the principles of international humanitarian law, as mentioned in the Convention, that "the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, and on the principle that prohibits the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" and that "the civilian population and the combatants shall at all times remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience";
- Their determination to extend the application of the Convention and its annexed Protocols to armed conflicts of a non-international character and, to that end, their satisfaction with the amendment of Article I of the Convention,
- The importance they attach to the earliest possible entry into force of the amendment of Article I of the Convention, and their desire that all States, pending its entry into force, respect and ensure respect for the revised scope of application of the Convention to the fullest extent possible,
- Their commitment to the full implementation of, and compliance with, the Convention and its annexed Protocols, and to keep the provisions of the Convention and its annexed Protocols under review in order to ensure their provisions remain relevant to modern conflicts,
- Their determination to consult and cooperate with each other in order to facilitate the full implementation of the obligations contained in the Convention and its annexed Protocols, thereby promoting compliance,
- Their commitment to reinforce cooperation and assistance, including the transfer of technology as appropriate, with a view to facilitating the implementation of the Convention and its annexed Protocols,
- Their determination to address as a matter of urgency the deleterious humanitarian effects of explosive remnants of war, through a thorough examination of these effects and possible measures to prevent and remedy them,
- Their commitment to further explore the issue of mines other than anti-personnel mines (referred to as anti-vehicle mines),
- Their satisfaction at the entry into force of Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Amended Protocol II), and at the progress made by the three Annual Conferences of States Parties to Amended Protocol II, and their determination to encourage all States to become parties to Amended Protocol II as soon as possible,
- Their conviction that all States should strive towards the goal of the eventual elimination of anti-personnel mines globally and in this regard noting that a significant number of States Parties have formally committed themselves to a

prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction,

- Their continuing commitment to assist, to the extent feasible, impartial humanitarian demining missions, operating with the consent of the host State and/or the relevant States Parties to the conflict, in particular by providing all necessary information in their possession covering the location of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the mission is performing its functions,
- Their satisfaction at the entry into force of the Protocol on Blinding Laser Weapons (Protocol IV), and their determination to encourage all States to become parties to the Protocol as soon as possible,
- Their reaffirmation of the recognition by the First Review Conference of the need for the total prohibition of blinding laser weapons, the use and transfer of which are prohibited in Protocol IV,
- Their recognition of the importance of keeping the blinding effects related to the use of laser systems under consideration, taking into account scientific and technological developments,
- Their determination to urge States which do not already do so, to conduct reviews such as that provided for in Article 36 of Protocol I additional to the 1949 Geneva Conventions, to determine whether any new weapon, means or methods of warfare would be prohibited by international humanitarian law or other rules of international law applicable to them,
- Their commitment to follow up the review process and, for that purpose, establish a regular review mechanism for the Convention and its amended Protocols, as well as more frequent meetings of States Parties,

RECOGNISE that the important principles and provisions contained in this Final Declaration can also serve as a basis for further strengthening the Convention and its annexed Protocols and express their determination to implement them,

AND

- DECIDE to amend Article I of the Convention to read as follows:
  - "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."
- DECIDE to commission follow-up work on decisions arising from the Second Review Conference of the Convention, under the oversight of the Chairman-designate of a meeting of the States Parties to the Convention to be held on 12-13 December 2002 in Geneva, in conjunction with the Fourth Annual Conference of States Parties to Amended Protocol II, which may begin on 11 December 2002.
  - DECIDE to establish an open-ended Group of Governmental Experts with separate Coordinators to:
    - (a) discuss ways and means to address the issue of Explosive Remnants of War (ERW). In this context the Group shall consider all factors, appropriate measures and proposals, in particular:
      1. factors and types of munitions that could cause humanitarian problems after a conflict;
      2. technical improvements and other measures for relevant types of munitions, including sub-munitions, which could reduce the risk of such munitions becoming ERW;

3. the adequacy of existing International Humanitarian Law in minimising post-conflict risks of ERW, both to civilians and to the military;
4. warning to the civilian population, in or close to, ERW-affected areas, clearance of ERW, the rapid provision of information to facilitate early and safe clearance of ERW, and associated issues and responsibilities;
5. assistance and co-operation.

The Coordinator shall undertake work in an efficient manner so as to submit recommendations, adopted by consensus, at an early date for consideration by the States Parties, including whether to proceed with negotiating a legally-binding instrument or instruments on ERW and/or other approaches.

- (b) further explore the issue of mines other than anti-personnel mines. The Coordinator shall submit a report, adopted by consensus, to the States Parties.
- DECIDE that the Chairman-designate shall undertake consultations during the intersessional period on possible options to promote compliance with the Convention and its annexed Protocols, taking into account proposals put forward, and shall submit a report, adopted by consensus, to the States Parties.
  - DECIDE to invite interested States Parties to convene experts to consider possible issues related to small-calibre weapons and ammunition, such as:
    - military requirements
    - scientific and technical factors/methodology
    - medical factors
    - legal/treaty obligations/standards
    - financial implications

and in this respect, report on their work to the States Parties to the Convention. These meetings shall have no implications for the CCW budget

The intersessional work will be undertaken in three sessions during 2002:

- 20 - 24 May 2002
- 8 - 19 July 2002 or 22 July - 2 August 2002
- 2 - 10 December 2002

The Chairman-designate shall consult States Parties on financial arrangements and the programme of work. The intersessional work will be conducted in accordance with the Rules of Procedure adopted by the Second Review Conference of the States Parties to the Convention.

## **Review of the Preamble**

### **Preambular paragraph 3**

The Conference recalls the obligation to determine in the study, development, acquisition or adoption of a new weapon, means and method of warfare, whether its employment would, in some or all circumstances, be prohibited under any rule of international law applicable to the High Contracting Parties.

### **Preambular paragraph 8**

The Conference reaffirms the need to continue the codification and progressive development of the rules of international law applicable to certain conventional weapons which may be excessively injurious or have indiscriminate effects.

### **Preambular paragraph 10**

The Conference underlines the need to achieve wider adherence to the Convention and its annexed Protocols. The Conference welcomes recent ratifications and accessions to the Convention and its annexed Protocols and urges the High Contracting Parties to accord high priority to their diplomatic efforts to encourage further adherence with a view to achieving universal adherence as soon as possible.

## **Review of the Articles**

### **Article 1 (Scope of application)**

The Conference recognises the necessity and the importance of extending the application of the principles and rules of this Convention to conflicts of a non-international nature.

The Conference also recognises the right of a State Party to take legitimate measures to maintain or re-establish law and order in accordance with paragraph 4 of amended Article 1 of the Convention.

The Conference acknowledges and confirms that the High Contracting Parties agreed to broaden the scope of the Convention by amendment to Article 1. The Conference encourages all States Parties to deposit as soon as possible their instrument of ratification, acceptance, approval or accession of the amendment to Article 1 with the Depositary of the Convention.

### **Article 2 (Relations with other international agreements)**

The Conference reaffirms that nothing in the Convention or its annexed Protocol shall be interpreted as detracting from other obligations imposed upon the High Contracting Parties by international humanitarian law.



**Article 3 (Signature)**

The Conference notes the provisions of Article 3.

**Article 4 (Ratification, acceptance, approval or accession)**

The Conference notes that 88 States have ratified, accepted, acceded or succeeded to the Convention.

The Conference calls upon States which are not parties to this Convention to ratify, accept, approve or accede, as appropriate, to the Convention, thus contributing to the achievement of universal adherence to the Convention.

The Conference, in this context, invites the High Contracting Parties to encourage further accessions to the Convention and its annexed Protocols.

**Article 5 (Entry into Force)**

This Conference notes the provisions of Article 5.

**Article 6 (Dissemination)**

The Conference encourages international cooperation in the field of dissemination of the Convention and its annexed Protocols and recognises the importance of multilateral collaboration relating to instruction, the exchange of experience at all levels, the exchange of instructors and the organisation of joint seminars. The Conference underlines the importance of the High Contracting Parties' obligation to disseminate this Convention and its annexed Protocols, and, in particular, to include the content in their programmes of military instruction at all levels.

The Conference requests the United Nations Secretary General to make all documents relating to the Convention available on the United Nations website.

**Article 7 (Treaty relations upon entry into force of this Convention)**

The Conference notes the provisions of Article 7.

**Article 8 (Review and amendments)**

The Conference agrees that future Review Conferences should continue to be held on a regular basis.

The Conference decides, consistent with Article 8.3(c) to convene a further Conference five years following the entry into force of the amendments adopted at the Second Review Conference, but in any case not later than 2006, with preparatory meetings starting as early as 2005, if necessary.

The Conference welcomes the adoption of the text of an amended Article 1 of the Convention in accordance with subparagraph 3(a) of this Article.

The Conference proposes that the next Review Conference consider further measures in relation to other conventional weapons, which may be deemed to cause unnecessary suffering or to have indiscriminate effects.

The Conference decides to convene a meeting of High Contracting Parties on 12-13 December 2002 in Geneva.

**Article 9 (Denunciation)**

The Conference notes with satisfaction that the provisions of this Article have not been invoked.

**Article 10 (Depositary)**

The Conference notes the provisions of Article 10.

**Article 11 (Authentic texts)**

The Conference notes the provisions of Article 11.

**Review of the Protocols**

**Protocol on Non-Detectable Fragments (Protocol I)**

The Conference takes note of the provisions of this Protocol.

**Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) and Technical Annex to the Protocol**

The Conference takes note of the provisions of this Protocol.

**Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Amended Protocol II) and Technical Annex to the Protocol**

The Conference acknowledges that the High Contracting Parties strengthened Protocol II in a number of areas at the First Review Conference, and takes note of the provisions of Amended Protocol II and welcomes its entry into force.

The Conference also notes with satisfaction that in accordance with Article 13 of Amended Protocol II, three Annual Conferences of High Contracting Parties were held for the purpose of consultations and cooperation on all issues related to Amended Protocol II.

The Conference recommends that future Annual Conferences of High Contracting Parties of Amended Protocol II coincide with any meetings of High Contracting Parties to the Convention.

The Conference takes note of the reporting obligations of High Contracting Parties under Amended Protocol II, and calls on High Contracting Parties to fulfill these obligations in a timely, consistent and complete manner.

The Conference acknowledges the valuable work of relevant agencies and bodies of the United Nations, of the International Committee of the Red Cross pursuant to its mandate to assist war victims and of NGOs in a number of fields, in particular the care and rehabilitation of mine victims, implementation of mine-awareness programmes and mine clearance.

**Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons  
(Protocol III)**

The Conference takes note of the provisions of this Protocol.

**Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention)**

The Conference takes note of the provisions of this Protocol and welcomes its entry into force.

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