

**GROUP OF GOVERNMENTAL EXPERTS 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**

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Working Paper on Compliance

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<u>SOUTH AFRICA</u>	<u>EUROPEAN UNION</u>	<u>USA</u>
<p><u>Doc: CCW/CONF.II/PC.3/WP.7</u></p> <p><u>INTRODUCE ADDITIONAL ARTICLES IN CONVENTION ON CONSULTATIONS AND COMPLIANCE: Article 7 bis and 7 ter :</u></p> <p>7 bis: CONSULTATION</p> <ul style="list-style-type: none"> ➤ A Conference 1 year after entry into force and subsequent meetings as agreed to ➤ Convened by :majority or at least 18 High Contracting Parties to <ul style="list-style-type: none"> ▪ review operation and status of Convention and Protocols, ▪ Consider matters arising from annual reports of High Contracting Parties, ▪ Prepare for Review Conference, ▪ Consider co-operation and assistance to facilitate implementation of Convention and protocols. ➤ High Contracting parties to report on: <ul style="list-style-type: none"> ▪ Dissemination of information on Convention and Protocols to armed forces and civilian populations of High Contracting Parties ▪ Compliance steps taken – in respect of Convention & Protocols ; other 	<p><u>Doc: CCW/CONF.II/PC.3/WP.8</u></p> <p><u>ADD COMPLIANCE ELEMENT TO REINFORCE CONVENTION :</u></p> <p><u><i>ASSUME COMPLIANCE; CREATE OCCASIONS FOR DIALOGUE; COLLECTIVE ESTABLISHMENT OF FACTS :</i></u></p> <p><u>CONSULTATION AND CO-OPERATION</u></p> <ul style="list-style-type: none"> ▪ to increase efficacy and credibility OF Convention ; ▪ Create occasions for dialogue; obligation to consult and cooperate ▪ Establish facts collectively ▪ Legal Authority for above system – based on Articles 13 & 14 of AP-II . ▪ Define violations – serious enough to be taken up. <p><u>System: Action at : 2 levels:</u></p> <p><u>(i) CONSULTATION AND CO-OPERATION</u> Promote dialogue ;more frequent conferences of States Parties to receive/provide clarifications</p> <p><u>(ii) ESTABLISHMENT OF FACTS;</u> By mechanism of cooperation and consultation – or if this is insufficient to</p>	<p><u>DISCN. PAPER(CCW 2nd RevCon.)</u></p> <p><u>ADD COMPLIANCE ANNEX TO AP-II</u> (Acceptance optional)</p> <p><u>RESOLUTION OF COMPLIANCE QUESTIONS THROUGH ENQUIRY BY COMPLIANCE MEETING:</u></p> <ul style="list-style-type: none"> ➤ Convening of Compliance Meeting (CM) : Any SP may request Depository to convene Meeting , providing adequate <i>justification</i> ➤ Time frame : Compliance Meeting to be convened within 4 weeks of request ➤ Venue: New York ➤ Party which is subject of request may offer views prior to the CM ➤ Quorum for decisions : majority of Parties. ➤ Decisions by consensus - or voting – majority of SPs present and voting - except as otherwise indicated ➤ CM to enquire into compliance issue unless it decides that information and facts provided do not justify it. Decision not to hold enquiry – by 2/3 majority of parties present and voting ➤ Conduct of inquiry- based on facts collected on the spot or in other places in jurisdiction or control of a Party –

<p>relevant information</p> <ul style="list-style-type: none"> ▪ Legislation related to the Convention and Protocols ▪ Measures taken on technical cooperation and assistance <p>➤ Costs to be borne by all High Contracting Parties and participants in the work of the Conference.</p> <p>7 ter COMPLIANCE High Contracting Parties undertake:</p> <p>➤ <u>PREVENTIVE STEPS</u>: Including legislative and other measures to prevent and suppress violations of Convention and Protocols by persons or on territory under their jurisdiction or control.</p> <p>➤ <u>PENAL MEASURES</u> in cases of violations: Imposition of penal sanctions against persons who, in relation to armed conflict willfully kill or cause serious injury to civilians in violation of Convention and its annexed Protocols – and to bring such persons to justice.</p> <p>➤ <u>TRAINING , MEASURES FOR IMPLEMENTATION BY MILITARY</u></p> <ul style="list-style-type: none"> ▪ Issue of appropriate military 	<p>clarify a situation satisfactorily, then a simple mechanism based on existing models :</p> <p>Model 1: <u>Additional Protocol I of 1977 (Article 90) :</u> 15 member International Fact Finding Commission</p> <ul style="list-style-type: none"> ▪ Composition: 15 (Recognition optional) ▪ Qualification: as specified ▪ Profile of members : high moral standing ; impartial ▪ Appointed on basis of equitable geographical distribution ▪ Convened at request of one or several High Contracting Parties. ▪ Mandate of commission: to investigate any fact alleged to be serious offence; facilitate remedy ▪ Procedure of obtaining facts – inviting Parties to assist , present evidence , carry out inspections ▪ Submission of Report and recommendations to Concerned SPs only – unless States concerned wish otherwise . <p>Model 2: <u>Draft article on Advisory Committee of Experts based on Protocol I. Presented in 1980 by a Group of Countries in UNGA.)</u></p> <ul style="list-style-type: none"> ▪ Each State Party to communicate to 	<p>unless the CM decides that issue may be dealt with on basis of materials provided – decision by 2/3 majority of Parties present and voting.</p> <p>➤ Facts to supplement enquiry to be collected by Team of Experts</p> <p><u>TEAM OF EXPERTS:</u></p> <ul style="list-style-type: none"> ▪ <u>PANEL OF QUALIFIED EXPERTS</u> prepared and updated by Depository – list and subsequent changes communicated to Parties. ▪ Any objections to be registered within 30 days to CM for decision. ▪ On receipt of request for enquiry, Depository to appoint 10-member Team of Experts acting in their personal capacity, excluding nationals of Parties directly concerned. ▪ Time Frame : Team of Experts to be dispatched at earliest opportunity; Party on whose territory facts to be collected to be informed 72 hours in advance. ▪ Period of stay of Team of Experts in territory of Party concerned: maximum two weeks – at any particular site : .maximum 1week ▪ Submission of Report to Depository : 1 week after departure from territory of concerned Party. ▪ Host Party to facilitate arrival, transport and accommodation of Team
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<p>instructions, operating procedures and training of armed forces personnel commensurate with their duties and responsibilities to comply with Convention and its annexed Protocols.</p> <p>➤ <u>CONSULTATION & COOPERATION</u></p> <p>Consultation and co-operation – bilaterally or through the UNSG or other appropriate international procedures to resolve any problems that may arise regarding interpretation, application of provisions of the Convention and its Protocols .</p> <p>*****</p>	<p>depository name of one expert member</p> <ul style="list-style-type: none"> ▪ Convening : By Depository within 1 month of receipt of request from State Party for enquiry into facts of compliance concern. ▪ Mandate: enquire into facts ▪ Report to depository & Parties to Conflict – if common report not agreed, may present differing views ▪ Recommendations , views and information received by Committee ▪ Facilitate compliance <p>(Depository shall distribute Report)</p> <p>Prerogative of Committee to collect evidence & request information , assistance from States, International organisations , groups/ individuals</p> <p>-may establish sub-groups.</p> <p>*****</p>	<p>of Experts.</p> <ul style="list-style-type: none"> ▪ Equipment allowed for Team of Experts specified; also procedure for hearing statements and questioning related to compliance issue. ▪ Limitations applicable to Experts. Procedural Protections Against Compromise of Legal or Military Interests <p>Inspection teams subject to arrangements the Party concerned considers necessary to protect:</p> <ol style="list-style-type: none"> 1. Sensitive equipment, information and areas unconnected with the inspection 2. Any constitutional obligations the Party concerned may have with regard to proprietary rights, searches and seizures, and other constitutional protections 3. The conduct of actual military operations <ul style="list-style-type: none"> ▪ Report summarizing factual findings of Team ▪ Depository to transmit Report to the CM. <p>➤ <u>COMPLIANCE MEETING</u></p> <p><u>CONSIDERATION of</u> all relevant</p>
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		<p>information including report , request to Party responsible for violation to take remedial measures, the CM may consider measures to encourage compliance; the CM may, in accordance with UN Charter, refer the issue to the Security Council.</p> <p>➤ <u>COSTS</u> : in accordance with UN scale of assessments; adjusted as may be agreed .</p> <p>*****</p>
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