

**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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**DISCUSSION PAPER ON COMPLIANCE**

**Prepared by the Chairperson**

**Introduction**

1. This discussion paper is submitted under the personal responsibility of the Chairman. It is based on proposals put forward since the establishment of the Group of Governmental Experts. Its purpose is to facilitate and provide a basis for discussions at the Eighth Session of the Group, and, subsequently, to structure a foundation for further work thereafter. This working paper does not aim at taking any position on any of the proposals put forward nor does it preclude anything.

**Historical background**

2. The compliance issue was introduced in 1978-1980, during the original negotiations on 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 (CCW). In the course of the negotiations a number of States had proposed that CCW should contain some form of compliance/monitoring mechanism. In particular, it was suggested that a consultative committee of experts should be established, which would act at the request of States Parties concerned regarding any compliance issue that may arise. The proposal did not gain consensual support.

3. The idea of establishing a compliance mechanism was reintroduced during the First Review Conference held in Vienna and Geneva in 1995-1996. Several proposals were put forward and the Review Conference discussed three possibilities, namely:

- (i) To establish a commission of States Parties to meet regularly in Geneva in order to consider annual reports to be submitted by States Parties on the implementation of the CCW;
- (ii) To introduce the submission of annual reports to the depositary of the Convention which shall contain information on measures aimed at implementing the provisions of the Convention and its annexed Protocols;

- (iii) To introduce the possibility for each State Party to request the convening of a verification commission to make enquiries about alleged non-compliance.
4. None of the aforementioned proposals gained consensual support.
5. During the Second Review Conference, held in December 2001, three proposals were considered:
- (i) South Africa suggested (CCW/CONF.II/PC.3/WP.7) additional articles on consultation and compliance to the Convention similar to Articles 13 and 14 of Amended Protocol II;
  - (ii) The European Union proposed (CCW/CONF.II/PC.3/WP.8) a broader compliance mechanism than the one contained in Amended Protocol II. In particular, it was suggested that, in addition to the South African proposal, a mechanism for collective establishment of facts should be set up, offering two models for the execution of that idea.
  - (iii) The United States proposed (CCW/CONF.II/PC.1/WP.8) an optional compliance mechanism enhancing the one contained in Amended Protocol II comprising, if deemed appropriate, enquiry by a compliance meeting of the States Parties and a team of experts.<sup>1</sup>

#### **Proposals submitted for consideration**

6. To date, both proposals submitted by South Africa and the European Union have gained broad support. For ease of reference, as the aforementioned proposals are based on the provisions of Articles 13 and 14 of Amended Protocol II of 1996 and on Article 90 of Additional Protocol I to the Geneva Conventions of 1949, the referred texts are attached to this paper as Annex 1 and Annex 2.

7. The proposal by **South Africa**, modeled after Amended Protocol II, follows its structure and content. It foresees annual conferences of States Parties to review the operation and status of the Convention and its annexed Protocols, to consider cooperation and assistance in order to facilitate implementation of the Convention and its annexed Protocols, and to consider matters arising from annual reports of the States Parties. Annual reports shall contain information on dissemination of the content of the Convention and its annexed Protocols to armed forces and civilian population, legislation related to the Convention and its annexed Protocols, measures taken on technical cooperation and assistance, and other relevant information.

8. States Parties shall also undertake preventive steps, including legislative and other measures, to prevent and suppress violations of the Convention and its annexed Protocols by person(s) or on the territory under their jurisdiction or control. Penal sanctions shall be imposed against persons in violation of the Convention or its annexed Protocols. States Parties shall require that its armed forces issue appropriate military instructions, as well as operating procedures and training of armed forces personnel commensurate with their duties and responsibilities to comply with the Convention and its annexed Protocols.

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<sup>1</sup> At the 2003 Meeting of the States Parties the US proposal was withdrawn.

9. The proposal by the **European Union** envisaged the establishment of a two-level mechanism comprising:

- a. Level 1: Consultation and cooperation
- b. Level 2: Establishment of facts. A Consultative Committee of Experts shall be set up (a proposal considered during the negotiations on CCW in 1980) consisting of experts nominated by States Parties. The Committee shall make enquiries about compliance by collecting evidence and requesting information and assistance, shall report to the depositary and to the States Parties concerned, and shall be in a position to submit recommendations, views and advice to States Parties in order to resolve the issue at hand and facilitate compliance. The Committee of Experts shall be convened by the depositary within one month of receipt of request from a State Party for enquiry into facts of compliance.

### **Questions for consideration**

10. Below is a list of questions pertaining to the two proposals contained in part B of this paper which States Parties may wish to address:

- a. Is there a need for a compliance mechanism under the CCW? What are the advantages and possible disadvantages of such a mechanism?
- b. How to define a common ground that could serve as a starting point for future deliberations on a compliance issue?
- c. Is the compliance mechanism contained in the South African proposal adequate to deal with the possible concerns that States Parties might have under the CCW? How can this mechanism be further strengthened?
- d. Should a compliance mechanism be established for the CCW as a whole, or should it be established separately for each of the CCW Protocols?
- e. If a compliance mechanism is established for the CCW as a whole, should it be in a form of a new protocol or as an amendment to the Convention?
- f. In the case that States Parties decide to use an enhanced system of compliance should this be a permanent or ad hoc body?

### **Next steps**

11. A possible solution would be to merge the proposals of South Africa and the European Union. Such a merger should fully respect all opinions and positions expressed by the States Parties. However, it will naturally adjust to a certain extent both of the original proposals giving

rise to a new modified solution. In that sense, the forthcoming discussion on the issue on compliance is aimed at enabling States Parties to move forward to a consensual proposal.

Annex I

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

**Article 13  
Consultations of High Contracting Parties**

1. The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol. For this purpose, a conference of High Contracting Parties shall be held annually.
2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.
3. The work of the conference shall include:
  - (a) review of the operation and status of this Protocol;
  - (b) consideration of matters arising from reports by High Contracting Parties according to paragraph 4 of this Article;
  - (c) preparation for review conferences; and
  - (d) consideration of the development of technologies to protect civilians against indiscriminate effects of mines.
4. The High Contracting Parties shall provide annual reports to the Depository, who shall circulate them to all High Contracting Parties in advance of the conference, on any of the following matters:
  - (a) dissemination of information on this Protocol to their armed forces and to the civilian population;
  - (b) mine clearance and rehabilitation programmes;
  - (c) steps taken to meet technical requirements of this Protocol and any other relevant information pertaining thereto;
  - (d) legislation related to this Protocol;
  - (e) measures taken on international technical information exchange, on international cooperation on mine clearance, and on technical cooperation and assistance; and
  - (f) other relevant matters.
5. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the conference, in accordance with the United Nations scale of assessment adjusted appropriately.

## **Article 14 Compliance**

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.
2. The measures envisaged in paragraph 1 of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, willfully kill or cause serious injury to civilians and to bring such persons to justice.
3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.
4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

Annex II

**Protocol Additional to the Geneva Conventions of 12 August 1949,  
and relating to the Protection of Victims of International Armed Conflicts  
(Protocol I), 8 June 1977**

**Article 90  
International Fact-Finding Commission**

1.

(a) An International Fact-Finding Commission (hereinafter referred to as "the Commission") consisting of 15 members of high moral standing and acknowledged impartiality shall be established;

(b) When not less than 20 High Contracting Parties have agreed to accept the competence of the Commission pursuant to paragraph 2, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person;

(c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new members at the ensuing meeting;

(d) At the election, the High Contracting Parties shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation is assured;

(e) In the case of a casual vacancy, the Commission itself shall fill the vacancy, having due regard to the provisions of the preceding subparagraphs;

(f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2.

(a) The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize ipso facto and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to inquire into allegations by such other Party, as authorized by this Article;

(b) The declarations referred to above shall be deposited with the depositary, which shall transmit copies thereof to the High Contracting Parties;

(c) The Commission shall be competent to:

- (i) inquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;
- (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol;

(d) In other situations, the Commission shall institute an inquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned;

(e) Subject to the foregoing provisions of this paragraph, the provisions of Article 52 of the First Convention, Article 53 of the Second Convention, Article 132 of the Third Convention and Article 149 of the Fourth Convention shall continue to apply to any alleged violation of the Conventions and shall extend to any alleged violation of this Protocol.

3.

(a) Unless otherwise agreed by the Parties concerned, all inquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:

(i) five members of the Commission, not nationals of any Party to the conflict, appointed by the President of the Commission on the basis of equitable representation of the geographical areas, after consultation with the Parties to the conflict;

(ii) two ad hoc members, not nationals of any Party to the conflict, one to be appointed by each side;

(b) Upon receipt of the request for an inquiry, the President of the Commission shall specify an appropriate time-limit for setting up a Chamber. If any ad hoc member has not been appointed within the time-limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.

4.

(a) The Chamber set up under paragraph 3 to undertake an inquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation in loco;

(b) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission;

(c) Each Party shall have the right to challenge such evidence.

5.

(a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber, with such recommendations as it may deem appropriate;



(b) If the Chamber is unable to secure sufficient evidence for factual and impartial findings, the Commission shall state the reasons for that inability;

(c) The Commission shall not report its findings publicly, unless all the Parties to the conflict have requested the Commission to do so.

6. The Commission shall establish its own rules, including rules for the presidency or the Commission and the presidency of the Chamber. Those rules shall ensure that the functions of the President of the Commission are exercised at all times and that, in the case of an inquiry, they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties which made declarations under paragraph 2, and by voluntary contributions. The Party or Parties to the conflict requesting an inquiry shall advance the necessary funds for expenses incurred by a Chamber and shall be reimbursed by the Party or Parties against which the allegations are made to the extent of 50 per cent of the costs of the Chamber. Where there are counter-allegations before the Chamber each side shall advance 50 per cent of the necessary funds.

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