

**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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Item 5 of the Agenda

Organization of work of the Group of Governmental Experts

COMPLIANCE

Prepared by the Chairperson-designate

Introduction

1. As stipulated in paragraph 27 of the Report of the 2004 Meeting of the States Parties (document CCW/MSP/2004/2), “the Chairperson-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.”

2. This discussion paper is submitted under the personal responsibility of the Chairperson-designate. Its sole purpose is to provide a basis for the discussion on the issue on compliance at the Eleventh Session of the Group of Governmental Experts and to structure a foundation for further work thereafter. This paper does not aim at taking any position on any of the proposals under consideration nor does it preclude anything.

Background

3. There exist two main proposals for consideration on the issue of compliance:

(a) The proposal by **South Africa**¹, modeled after Amended Protocol II and follows its structure and content.

(b) The proposal by the **European Union**² promotes the establishment of a two-level mechanism comprising: (a) Consultation and cooperation (based on the respective provisions of Amended Protocol II), and (b) Establishment of facts, based partly on the concept of Article 90 of Additional Protocol I to the Geneva Conventions of 1949.

¹ CCW/CONF.II/PC.3/WP.7, CCW/GGE/VIII/WP.1

² CCW/CONF.II/PC.3/WP.8, CCW/GGE/V/2, CCW/GGE/IX/WP.1, CCW/GGE/X/WP.1, as well as CCW/GGE/III/WP.7 by Sweden

4. During its Tenth Session, the Group discussed document CCW/GGE/X/3 (dated 1 March 2004) entitled “Compliance”, prepared by the Chairperson-designate, and attempted to assess and analyze the implementation, effectiveness and usefulness of the existing compliance mechanism under Amended Protocol II, based on preliminary results of a survey prepared under the Chairperson-designate’s own responsibility and circulated on 30 September 2004 to all the States Parties to the Convention.

5. In his paper the Chairperson-designate also underlined that a possible solution could 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. It will, however, naturally adjust to a certain extent both of the original proposals giving rise to a new modified solution. In that sense, the current paper and the forthcoming discussion on the issue on compliance are aimed at enabling States Parties to move forward to a consensual proposal.

The Concept

6. This paper contains in its Annex an example of a proposal for a compliance mechanism applicable to the Convention and all its annexed Protocols. The proposal is entirely based on the two above-mentioned proposals by South Africa and the European Union, which have been modified in a way to establish a two-level compliance regime comprising:

- (a) Level one – a compliance mechanism based on the model of the Amended Protocol II; and
- (b) Level two – an **optional second level** (comprising a Compliance Committee), applicable only to those States Parties which have explicitly recognized it.

7. Despite the fact that such a proposal has not yet been discussed in the Group of Governmental Experts, the Chairperson-designate has considered it appropriate to provide the States Parties with draft legal provisions thus clarifying to the extent possible all the key details of his proposal. The proposal is neither an exhaustive nor a conclusive set of possible provisions. Naturally, this proposal is open to any ideas, comments, observations and amendments the States Parties might consider.

Legal Framework

8. Based on the legal opinion of the United Nations Legal Counsel, as contained in CCW/GGE/X/3, it seems that the most appropriate way of introducing a compliance mechanism for the Convention would be its amendment.

9. The final decision rests with the States Parties to the Convention.

Annex

PROPOSAL BY THE CHAIRPERSON-DESIGNATE

FIRST PART

Article 7 bis³

Consultations of High Contracting Parties

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Convention and its annexed Protocols.
2. For this purpose, the Depositary shall convene a Conference of the High Contracting Parties within one year after the entry into force of this Article. Subsequent Conferences shall be held as agreed to by a majority, but not less than eighteen, of the High Contracting Parties.
3. Participation in the Conference of the High Contracting Parties shall be determined by their agreed Rules of Procedure.
4. The work of the Conference shall include:
 - (a) review of the operation and status of this Convention and its annexed Protocols;
 - (b) consideration of matters arising from reports by the High Contracting Parties according to paragraph 5 of this Article;
 - (c) preparation for review conferences; and
 - (d) consideration of international co-operation and assistance to facilitate the implementation of this Convention and its annexed Protocols.
5. The High Contracting Parties shall provide reports to the Depositary in advance of each [this Conference] [the Conferences referred to in paragraph 2 of this Article], which shall be circulated by the Depositary to all the High Contracting Parties, on any of the following matters:
 - (a) dissemination of information on this Convention and its annexed Protocols to their armed forces and to the civilian population;
 - (b) steps taken to meet the relevant technical requirements of this Convention and its annexed Protocols and any other relevant information pertaining thereto;

³ Of the Convention.

- (c) legislation related to this Convention and annexed Protocols;
- (d) measures taken on technical co-operation and assistance; and
- (e) other relevant matters.

6. The cost of the Conference of the 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 7 ter

Compliance

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Convention and its annexed Protocols 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 Convention and its annexed Protocols, wilfully 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 Convention and its annexed Protocols.
4. The High Contracting Parties undertake to consult each other and to co-operate 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 Convention and its annexed Protocols.

SECOND PART

Article 7 quater

Compliance Committee

1. (a) A High Contracting Party may at any time declare that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Compliance Committee (hereinafter referred to as “the Committee”), established under this Article, in all matters related to the compliance with the Convention and its annexed Protocols as described hereinafter.

(b) The declarations referred to paragraph 1 (a) of this Article shall be deposited with the Depositary, who shall immediately inform the High Contracting Parties of any declaration received under this paragraph

2. (a) There shall be established a Compliance Committee which shall consist of [...] experts of high moral standing, acknowledged impartiality and recognized [legal or technical] competence in the field of the application of the Convention and its annexed Protocols. The members of the Committee shall serve in their personal capacity and shall be elected for a term of [...] year[s] and shall hold office until the election of new members. For the filling of casual vacancies, the High Contracting Party whose expert has ceased to function as a member of the Committee shall appoint another expert, subject to the approval of the Committee, to serve until the end of the mandate of the expert who ceased to function as a member of the Committee.

(b) The members of the Committee shall be elected at a meeting of the High Contracting Parties which have made the declaration under paragraph 1 of this Article. The members of the Committee shall be elected by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person. At the election, the High Contracting Parties shall ensure that equitable geographical representation is assured.

3. (a) When not less than twenty High Contracting Parties have agreed to accept the competence of the Committee, the Depositary shall convene the first meeting of those High Contracting Parties for the purpose of electing the members of the Committee. Thereinafter, further meetings shall be convened by the Depositary at intervals of [...] year[s] thereafter in conjunction with the Conferences of the High Contracting Parties referred to in Article 7 ter above.

(b) If a majority, that shall not be less than eighteen High Contracting Parties so agree, the Depositary shall promptly convene a meeting to which all High Contracting Parties which have made the declaration under paragraph 1 of this Article shall be invited to consider the case submitted by the Committee in accordance with paragraph 13 (a) (v) of this Article.

4. The first session of the Committee shall take place no later than six months after the meeting of the High Contracting Parties at which the election of its members took place. Thereinafter the Committee shall meet as often as necessary to perform its duties.

5. (a) The Committee shall elect its officers and shall establish its own Rules of procedure. Those Rules shall ensure, *inter alia*, that the functions of the President of the Committee 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 any of the parties in a dispute.

(b) To the extent possible, the decisions of the Committee on all cases submitted to it for consideration under this Article shall be taken by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decisions of the Committee shall be adopted by a two-thirds majority vote of the members present and voting.

6. (a) The Committee may invite the High Contracting Parties referred to in paragraph 8 of this Article to participate as observers and to provide additional comments and information to clarify the case under discussion. In particular, the High Contracting Party whose compliance is in question shall have the right to present comments and additional information on the submission and may draw upon any information or use any experts or expertise it may consider appropriate.

(b) Whenever special expertise is needed, the Committee may also make use of ad hoc experts [drawn from a list of experts, provided for by the High Contracting Parties].

7. The costs of the Committee shall be borne by the High Contracting Parties which have made the declaration under paragraph 1 of this Article in accordance with the United Nations scale of assessment adjusted appropriately, and by voluntary contributions. The Depositary shall make available to the Committee all necessary administrative facilities for the performance of its functions.

8. The Committee shall be competent to:

(a) promote compliance with the Convention and its annexed Protocols;

(b) facilitate, through its good offices, the settlement of disputes concerning the compliance with the Convention and its annexed Protocols, and in particular the consultations referred to in paragraph 10;

(c) consider compliance difficulties by the High Contracting Parties, as well as to recommend appropriate solutions which may enhance compliance with the Convention and its annexed Protocols.

(d) inquire into any facts alleged to be a grave breach of the Convention and its annexed Protocols;

9. A case before the Committee may be submitted by:

(a) a High Contracting Party which considers that, despite its best efforts, it is not or will not be able to fully comply with its obligations under the Convention and its annexed Protocols; and,

(b) a High Contracting Party or group of Parties which consider that another High Contracting Party does not comply fully with the obligations under the Convention and its annexed Protocols.

10. A High Contracting Party or group of Parties which intend to make a submission under paragraph 9 (b) of this Article shall inform the Party whose compliance is in question, and try to resolve the matter through consultations. At the request of the High Contracting Parties involved, the Committee may facilitate these consultations.

11. Any submission under paragraph 9 (b) addressed to the Committee shall set out:

(a) the matter of concern;

(b) the relevant provisions of the Convention or its annexed Protocols;

(c) information substantiating the submission; and

(d) if applicable, information on any consultations aimed at resolving the matter of concern which could have been undertaken prior to the submission of the case to the Committee.

12. (a) A submission shall be inadmissible if:

(i) it refers to a High Contracting Party which has not made the declaration under paragraph 1 of this Article;

(ii) the Committee considers it *de minimis* or manifestly ill-founded.

(b) A submission under paragraph 9 (b) shall solely address those provisions in the Convention and its annexed Protocols, which are of legally binding nature.

(c) A submission under paragraph 9 (a) of this Article may also address those provisions of the Convention and its annexed Protocols which are not of legally binding nature.

13. (a) The Committee shall consider the submissions in the light of all information made available to it. Its final decision on each case shall contain conclusions assessing the compliance difficulties and identifying the facts, specific circumstances, possible causes and the capacity of the High Contracting Party concerned, as well as recommendations for possible measures aimed at further promoting compliance with the Convention and its annexed Protocols, including, but not limited to, the following measures:

(i) provision of advice and guidance;

(ii) facilitation of assistance;

(iii) elaboration, with the co-operation of the High Contracting Party or Parties concerned, of a compliance action plan, integrating targets and timelines;

- (iv) issuing of a formal statement of concern regarding a High Contracting Party's compliance situation;
- (v) transfer of the case to the Meeting of the High Contracting Parties, set out in Paragraph 3 of this Article;
- (vi) other possible measures which may be deemed necessary and appropriate.

(b) The Committee shall inform the High Contracting Party concerned about its draft conclusions and recommendations and the latter may provide additional comments, which shall be included in the report, referred to in paragraph 14 of this Article, which the Committee submits to the Meeting of the High Contracting Parties set out in Paragraph 3 of this Article.

14. (a) The Committee shall submit a report to the Meeting of the High Contracting Parties, set out in paragraph 3 of this Article, including nil-reports if applicable, presenting the work that the Committee has undertaken in promoting compliance with the Convention and its annexed Protocols.

(b) The Committee shall include in its report a summary of all submissions and, where appropriate, a summary of the explanations and statements of the High Contracting Parties concerned, as well as its own suggestions and recommendations for information, consideration and necessary action by the Meeting of the High Contracting Parties, set out in Paragraph 3 of this Article.

(c) In the case when the Committee was unable to secure sufficient evidence for factual and impartial findings, then it shall state the reasons for that inability.

15. On the basis of the recommendations by the Committee, the Meeting of the High Contracting Parties set out in paragraph 3 of this Article may decide to those measures which it consider the most appropriate in the specific case, particularly in case of repeated or continued noncompliance.
