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INCENDIARY AND OTHER SPECIFIC CONVENTIONAL WEAPONS WHICH MAY
 BE THE SUBJECT OF PROHIBITIONS OR RESTRICTIONS OF USE FOR
 HUMANITARIAN REASONS

Report of the Secretary-General

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* A/31/150.

I. INTRODUCTION

1. By paragraph 3 of resolution 3464 (XXX), the General Assembly requested the Secretary-General, who had been invited to attend the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, to report to the Assembly at its thirty-first session on aspects of the work of the third session of the Conference relevant to the resolution, namely, the Conference's consideration of the question of prohibiting or restricting, for humanitarian reasons, the use of incendiary and certain other specific conventional weapons.
2. In the same paragraph of that resolution, the General Assembly also requested the Secretary-General to report to its next session on relevant aspects of the work of a related conference, a second Conference of Government Experts on the Use of Certain Conventional Weapons, to be held under the auspices of the International Committee of the Red Cross at Lugano from 28 January to 26 February 1976, with a view to focusing on such weapons as had been or might become the subject of proposed bans or restrictions and to studying the possibility, contents and form of such proposed bans or restrictions.
3. The General Assembly, at its twenty-eighth and twenty-ninth sessions, had adopted resolutions containing similar requests to the Secretary-General with regard to the first and second sessions of the Diplomatic Conference, and aspects of these two sessions of the Conference relative to those resolutions were reported by the Secretary-General in documents A/9726 and A/10222, respectively. Some relevant aspects of the first Conference of Government Experts on the Use of Certain Conventional Weapons, held at Lucerne from 24 September to 18 October 1974, were also noted in the latter report.
4. The present report, submitted pursuant to resolution 3464 (XXX), is divided into two parts relating to the second session of the Conference of Government Experts (sect. II) and to the third session of the Diplomatic Conference (sect. III).

II. CONFERENCE OF GOVERNMENT EXPERTS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS

(held at Lugano from 28 January to 26 February 1976)

A. Organization

5. The second session of the Conference of Government Experts on the Use of Certain Conventional Weapons, convened by the International Committee of the Red Cross (ICRC) in accordance with a broad agreement reflected in the conclusions of the first session of the Conference at Lucerne in late 1974 1/ and endorsed by the

1/ For the report of this session of the Conference, see Conference of Government Experts on the Use of Certain Conventional Weapons (Lucerne, 24 September to 18 October 1974), International Committee of the Red Cross, Geneva, 1975.

Ad Hoc Committee on Conventional Weapons at the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (see A/10222), was held at Lugano from 28 January to 26 February 1976. Participants at the second session of the Conference included experts appointed by the Governments of 43 States, as well as representatives of the Secretary-General of the United Nations and of the Director-General, World Health Organization, a technical expert representing the Stockholm International Peace Research Institute and representatives of various non-governmental organizations. The rules of procedure for the session were those drawn up in advance by ICRC and presented to the Ad Hoc Committee of the Diplomatic Conference, except for a modification made in the course of the 4th plenary meeting of the Lugano Conference, at the request of one expert, to the effect that the Conference, while not adopting any resolutions, might formulate proposals or express wishes "to Governments, especially to participants in the CDDH", rather than "to Governments or to the CDDH". The Conference was presided by the same Chairman (Mr. Jean Pictet of ICRC) and reappointed the same Rapporteur (Mr. F. Kalshoven of the Netherlands) and the same Bureau as at the first session at Lucerne.

6. The work programme of the Conference included the following items:

Brief review of the report of the first session and of the discussions in the Ad Hoc Committee;

Incendiary weapons;

Small-calibre projectiles;

Delayed-action weapons and treacherous weapons;

Blast and fragmentation weapons;

Other categories of weapons and new weapons;

Other business;

Report and follow-up.

7. The Conference held 12 plenary meetings, largely devoted to a general debate. Most of the detailed discussions on the various subjects took place in a General Working Group of the whole, which in turn set up three special working groups, or subgroups, to assist it in its work. The report of the Conference, ^{2/} accordingly, consisted of (a) a report of the debate in the plenary; (b) summary records of the plenary meetings; and (c) a report of the General Working Group, with the final statements of the Chairman of that Group and the reports of the three subgroups.

^{2/} Conference of Government Experts on the Use of Certain Conventional Weapons (Second Session - Lugano, 28 January-26 February 1976), International Committee of the Red Cross, Geneva, 1976.

B. Plenary meetings

8. In general, the views expressed in the general debate in the plenary reflected the various opinions reported in section E of the Secretary-General's report on the second session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (A/10222). The principal divergence of views continued to be essentially between 21 States sponsoring proposals to adopt broad bans against the use of a number of specific weapons in the various categories included in the work programme ^{3/} and a number of militarily advanced States which considered such proposals either unjustified or requiring further study. Among the less familiar aspects of the problem given particular stress by some delegations at this session were (a) the importance of achieving universal adherence to any new agreements in the field, as well as provisions for ensuring reciprocity among States; (b) the importance of clarifying the legal principles governing the use of weapons in armed conflict (as a response to this view, a special working subgroup on general and legal questions was set up to assist the General Working Group; and (c) the view that progress might be possible in the field of prohibiting the use of mines and booby-traps, while the question of bans or restrictions on the use of other types of weapons, particularly blast and fragmentation weapons and small-calibre projectiles, required further study (special working subgroups were also set up on mines and booby-traps and on small-calibre projectiles). Several specific proposals were submitted while the plenary meetings were taking place and were given some initial consideration, but more detailed consideration of specific questions took place in the General Working Group and are discussed in the following section on that Group.

C. Report of the General Working Group

9. As previously noted, all aspects of the work programme, including old and new proposals, were thoroughly discussed in the General Working Group of the Conference. In its report to the plenary, the Group did not attempt to set out the debate in detail but outlined, instead, the areas of agreement and disagreement, as well as any new factual information of direct relevance concerning the various types of proposals that might be advanced for future consideration with regard to the various categories of conventional weapons, as follows.

1. Incendiary weapons

10. The first proposal on the subject put before the Conference was the revised version of a previous proposal of 21 States, ^{4/} for a ban on the use of all measures

^{3/} All proposals of this group were contained in document CDDH/IV/201, except for a modified proposal on incendiary weapons, which was circulated as Conference document RO 610/4b and Add.1. Sponsors were Algeria, Austria, Egypt, Iran, the Ivory Coast, Lebanon, Lesotho, Mali, Mauritania, Mexico, New Zealand, Norway, Romania, the Sudan, Sweden, Switzerland, Tunisia, the United Republic of Tanzania, Venezuela, Yugoslavia and Zaire.

^{4/} See foot-note ^{3/} above.

of warfare falling within the category of incendiary weapons, with the exception of weapons having secondary or incidental incendiary effects or having incendiary effects combined with penetration or fragmentation effects and which were specifically designed for use against aircraft, armoured vehicles and similar targets. The experts supporting this proposal stressed the view that incendiaries caused extreme human suffering and exposed non-combatants to a great hazard, that they could easily be replaced by other more humane weapons, and that a general prohibition was preferable in that it could be more easily applied. Those arguing against the proposal maintained that there was as yet insufficient proof that injuries from incendiaries caused greater suffering than other burn injuries or other types of traumatic injuries and that it was not evident that substitutes for the important use of such weapons in warfare would result in any diminution of the over-all level of human suffering and injury to non-combatants. In this general connexion, some experts from less advanced countries held that a distinction should be made between simple incendiaries that could be delivered by a single man (or "low-capacity" incendiary carriers) and larger incendiary weapons (or "high-capacity" carriers), and that the latter category should be prohibited.

11. As a possible compromise between the group favouring broad prohibitions on incendiaries (Mexico, one of the 21 States sponsoring such bans, also formally proposed a ban on the use of virtually all incendiary weapons - COLU/220) and those considering such bans unjustified, the Netherlands submitted a working paper (COLU/205 and Corr.1-3). This paper contained a proposal to ban the use of incendiary weapons against civilian population centres "as a consequence of the rules of international law applicable with respect to the protection of the civilian population", except in the cases of (a) general use of all incendiaries against specific military objectives within such a populated area, if otherwise lawful and if all feasible precautions had been taken to limit the incendiary effects to the specific military objectives and to avoid incidental loss of civilian life or injury to civilians; and (b) the use of "flame" incendiaries (defined to include napalm) in aerial attacks against an objective located in such a populated area when that objective was also within an area in which combat between ground forces was taking place or was imminent. The same document also proposed a specific ban on the use of napalm in combat except: in close combat support; against fortified positions and pill-boxes; against military airfields; against armoured targets or in interdiction action; and against seaborne attack on the coastline as long as the attacking forces were on the water or on the beach. The Netherlands explained that the specified exceptions related to situations in which napalm could be used in an accurate and discriminate way and where, generally speaking, alternative weapons would be likely to cause more suffering.

12. A group of experts representing Australia, Belgium, Canada, Denmark, Germany (Federal Republic of), France, Ireland, Italy, Japan, the Philippines and the United States of America submitted a proposal (COLU/207), similar to the proposal of the Netherlands relating to population centres, banning incendiary attacks on any city, town, village or other area containing a concentration of civilians, but excepting attacks on specific military objectives within that area if otherwise lawful and if all feasible precautions were taken to limit the

incendiary effects to the specific military objectives and to avoid incidental loss of civilian life or injury to civilians. The sponsors held that this proposal had been drafted to bring the prohibition more into line with the language of draft Additional Protocol I to the Geneva Convention of 1949, being considered at the Diplomatic Conference.

13. The experts supporting prohibitions based on the type of target attacked held that such bans would meet the demands of public opinion against incendiaries in general and napalm in particular, that they would be more likely to obtain the required consensus, and that they would strike a judicious balance between humanitarian and security considerations. The experts who felt such limited prohibitions were insufficient questioned whether they adequately reflected considerations of unnecessary suffering or excessive injury, particularly among combatants. They held that bans containing a number of exceptions could not be satisfactorily implemented. They also noted that the concept of "military objective" was vague and subject to abuse, and expressed the fear that a specific ban on incendiaries might imply that other weapons could be used against non-military objectives. Other experts opposed even such limited bans on the ground that they are still too broad, particularly with regard to napalm, maintaining that, in the absence of a consensus either on the degree of human suffering caused by napalm or on the indiscriminate nature of its most usual applications, a special prohibition of use of this specific weapon was unwarranted, particularly since a good case could be made that napalm was likely to cause less over-all suffering than alternative types of weapons, including other incendiaries. Some of these experts also questioned the distinctions made in the proposals between incendiary and flame weapons. Indonesia and Spain suggested certain amendments to the proposals in writing (COLU/208 and 211, respectively), concerning attacks with incendiaries against or close to population centres. Several other amendments were suggested orally. None of these proposals were discussed in any detail, however.

14. With particular respect to the proposals aimed at improving the protection of civilians in populated areas, some experts observed that this question was already treated in existing legal instruments, as well as in the draft Additional Protocols being considered by the Diplomatic Conference; they further held that this question lay properly in the competence of Committee III of the Diplomatic Conference and that the primary task of the Expert Conference was to seek rules for the protection of combatants.

15. Other experts suggested that a common ground might be found in a ban on the use of incendiaries which would become operative only after a specified period of time, such as five years, in order to give States time to prepare alternative means. One expert suggested that States which considered napalm to be particularly inhumane and not indispensable might unilaterally renounce its use or, alternatively, seek a regional ban on the use of incendiaries.

16. In the nature of new data in the field of incendiaries, a number of studies were reported, most of which tended to show that these weapons, particularly napalm, were not necessarily inhumane and indiscriminate in their effects. Some of the experts challenged these conclusions.

2. Delayed action weapons and treacherous weapons

17. The various proposals put forward under this category concerned one or more of the following points: (a) the use of time-fused munitions; (b) the recording of minefields; (c) the use of remotely delivered or "scatterable" mines; (d) the conduct of mine warfare within areas of civilian population; and (e) the use of booby-traps. A proposal of the 21 States (contained in CDDH/IV/201), calling for a ban on the laying of all anti-personnel land-mines by aircraft, was resubmitted to the Expert Conference. A working paper submitted by France, the Netherlands and the United Kingdom (COLU/203) dealt with points (b) to (e) above, proposing that the location of all minefields of more than 20 mines should be recorded and made public on the cessation of active hostilities; that the use of remotely delivered mines be forbidden, unless each such mine was fitted with a neutralizing mechanism or the area in which they were delivered was marked; that the use of mines, booby-traps and all other manually placed munitions, designed to kill, injure or damage and for that purpose to detonate automatically after a lapse of time or to be remotely detonated, be banned in any area containing a concentration of civilians and in which combat between ground forces was not taking place or was not yet imminent, unless they were placed on or in the close vicinity of a military objective or due precautions were taken to protect civilians from their effects; and that the use of all booby-traps or other devices would be barred if they were designed to kill or injure by non-explosive means or if in any way they were attached or associated with: internationally recognized protective emblems; sick, wounded or dead persons; burial sites or graves; medical facilities, equipment, supplies or transport; or children's toys. A working paper of the Philippines (COLU/214) suggested deletion from the proposal of the ban on non-explosive booby-traps or other devices; Switzerland (COLU/206) and Israel (COLU/217) proposed the addition of objects in general use among civilians to the list to which booby-traps could not be attached; Spain (COLU/215) suggested a number of clarifying amendments; and Venezuela (COLU/219) suggested a definition of the term "booby-traps".

18. A working paper submitted by Mexico and Switzerland (COLU/213) dealt with time-fused weapons, proposing that the use of bombs and all other dropped ammunitions, projected ammunitions and other "remotely delivered" ammunitions be forbidden, if they were equipped with a fuse or other long-delay mechanism designed to explode 24 hours or more after impact, either by themselves or on contact.

19. In the general discussion, it was widely urged that, in considering this broad category of weapons, due regard should be given to the requirements of defensive military operations, as well as to the risk of compelling resort to more objectionable means or methods of warfare.

20. Details of this category of prohibition were discussed, however, largely in a working subgroup of military experts set up for the purpose. This group agreed that the two main approaches to the problem were contained in paragraph 14 of the proposal (COLU/203) submitted by France, the Netherlands and the United Kingdom, and in the proposal of the 21 States contained in document CDDH/IV/201, and that

the former should be the basis for discussion. In these discussions, a number of criticisms of the three-country proposal were made and various amendments suggested, but no specific recommendations were made. One of the sponsors of the proposal, supported by another expert, suggested, however, that the section on the recording of mine-fields be amended to provide that only pre-planned defensive minefields must be recorded while others would be recorded if feasible. There was broad agreement, however, that the proposal concerning the use of remotely delivered mines was satisfactory, that it constituted a significant advance over current regulations and that it could serve as a meaningful basis for future elaboration and refinement. A revised version of the section of the three-country proposal concerning mines, booby-traps and other devices was agreed upon as a basis of discussion, and the view was widely shared that the proposal banning the laying of mines in areas of civilian concentration (basically the same as in the original proposal, with some refinement of detail) was also an advance over existing regulations concerning the protection of the civilian population and could serve as a useful basis for further refinement. It was also stated that a measure of agreement had been reached that the three-country proposal on the use of booby-traps represented an advance and a basis for further elaboration. There was general agreement that the definitions in the three-country proposal could be accepted, on an interim basis, for later discussion.

3. Small-calibre projectiles

21. The proposal of the 21 States with regard to small-calibre projectiles (CDDH/IV/201) called for prohibition of the use of especially injurious projectiles in this category, including those which deformed, tumbled or created intense hydrodynamic shock or the formation of secondary projectiles inside the human body, in so far as these four phenomena resulted from the design or velocity of the projectile. This proposal was criticized, however, as being based on unproved assumptions, particularly with regard to design and velocity being the determinants of the phenomena. In the light of this criticism, the sponsors of the proposal indicated a willingness to modify it to some degree, but they stressed that their opposition to projectiles which deformed or tumbled in the human body remained fully warranted.
22. In this general connexion, the suggestion was made that Governments should be encouraged to promote further research in the matter, and extensive consideration was given to the problem of developing standard practices for testing the effects of projectiles. Suggestions were also made that research in these areas might be performed not only on a national basis, but also on an international basis. A more specific suggestion was made that a team of specialists should be asked to propose, to a future Conference of Government Experts on the subject, a testing standard which would simulate, as far as possible, the structure of human tissues. A working subgroup of technical experts was set up to consider this matter in more detail. One expert, however, held that the fact that certain projectiles caused more wounds than others, thus causing superfluous injury, was being obscured by technicalities and demands for further research, while sufficient information was already available to permit the formulation of a principle that the use of such projectiles should be prohibited.

23. In the working subgroup set up to consider a possible approach to agreement on standard projectile-testing procedures, a number of experts stressed the complicated nature of the problem. Two of them, each representing a country actively involved in such testing, held further that much skilled efforts would have to be expended to establish even simple standard test procedures and that little might be gained from such efforts, particularly since national security could be directly involved in such tests; these experts expressed willingness, however, to consider sympathetically future co-operation and exchange of information in the field.

24. After extensive consideration of all the technical aspects of the problem of establishing standards, the subgroup recognized that no conclusions could be reached in the time available and issued a "final statement" explaining that no conclusions could be reached because of the complexity of the problem, but holding that further study and research might be stimulated by the discussion of the matter that had taken place at the Conference and stressed the importance of the initiation of such research in all countries at the national level, as well as of an international exchange of views and co-operation in the field.

25. Much new data on the subject was contained in the statements of experts, both in the General Working Group and the subgroup, as well as in the plenary meetings. A number of documents containing such information were distributed informally by various delegations, and a formal document submitted by Indonesia (COLU/204) set out the results of tests of the firing of various bullets into soap blocks at various ranges, while another document submitted by Japan (COLU/221) described experiments on the behaviour of bullets in water. Several experts also referred to the results of similar experiments carried out during an international symposium on wound ballistics held at Gothenburg, Sweden, in July 1975, which these experts had attended; and one expert reported on the results of studies conducted as a follow-up to that symposium.

4. Blast and fragmentation weapons

26. In the discussions in the General Working Group on blast and fragmentation weapons, primary attention was given to (a) multiple-submunition weapons of the pre-fragmentation or controlled-fragmentation types, (b) multiple-fléchette munitions, (c) fuel-air explosives, and (d) weapons dispensing fragments that would be difficult or impossible to detect when lodged in the body. Proposals were made on each of these categories.

27. The basic paper of the 21 States (CDDH/IV/201) contained two proposals in this field: (a) one calling for a ban on the use of anti-personnel cluster warheads or other devices with many bomblets which act through the ejection of a great number of small-calibred fragments or pellets; and (b) one calling for a ban on the use of munitions which act through the release of a number of projectiles in the form of fléchettes, needles and similar. The sponsors of the proposals stressed the view that such weapons caused undue suffering because of the multiplicity of wounds they caused and that they were inherently indiscriminate in nature. On the other hand, one delegation, describing a comparative study of wound inflicted by fragmentation weapons of the pre-fragmented type and those of

the older uncontrolled type, held that while the former tended to cause more multiple injuries the latter resulted in higher mortality rates, thus suggesting that the newer types caused less suffering than the older. It was further suggested that the latest types of weapons in the pre-fragmented category caused a lower degree of suffering than older types in that category, and that the principal reason for their use was to achieve greater area coverage. A number of experts, however, perceived grave dangers of indiscriminate use precisely in such increased coverage; and it was suggested that the individual area of effectiveness of fragmentation weapons might be limited to, say, one square kilometre.

28. A proposal put forward by Norway (COLU/218) called for a ban on the use of weapons acting through the release of pre-fragmented elements which, because of their irregular shape, were likely to cause extensive wounds and thus lead to excessive suffering.

29. With regard to fuel-air explosives, a proposal was put forward by Sweden (COLU/202), calling for the prohibition of use of weapons which relied exclusively on air shock-waves for their effects, and another was put forward by Switzerland (COLU/209), calling for a ban on detonating for military purposes gas-air and dust-air mixtures which released gas pressure. The sponsors maintained that such weapons lent themselves too easily to indiscriminate applications, that they caused undue suffering and high mortality rates among the casualties, and that they should be banned before they were put into wide use. On the other hand, some experts expressed doubts as to the validity of the high mortality rates cited and stressed the military importance of the use of such weapons to neutralize minefields. Some specifically opposed the first proposal on the general grounds that it was too broad in scope, since even certain types of grenades and landmines exerted their effects solely through blast.

30. On the question of undetectable fragments, a proposal was put forward by Mexico and Switzerland (COLU/212) calling for a ban on the use of weapons producing fragments which, in the human body, escaped detection by usual medical methods. In reply to criticism and a proposed amendment submitted by Australia (COLU/216), the sponsors later revised the proposal in such a way as to ban the use of any weapon the primary effect of which was to injure by fragments which in the human body escaped detection by X-rays. There was wide support for this proposal, but some experts still objected, in particular, to the limitation of the detection method to X-rays, suggesting that the ban be limited to fragments not detectable by normal medical procedures, including X-rays.

31. New data submitted in connexion with this subject largely concerned fuel-air explosives and the mortality and incapacitation rates of various weapons in this category.

5. Other categories of weapons and new (future) weapons

32. Although the General Working Group devoted relatively little time to other categories of weapons, including new (or future) weapons, several experts stressed the view that efforts should be made to ensure that due constraint be observed in the design of new weapons. Accounts were also given of the efforts being made

in the United Nations General Assembly and at the Conference of the Committee on Disarmament to achieve appropriate bans on the development and production of new weapons of mass destruction. Some experts questioned the feasibility of banning newly-developed weapons for humanitarian reasons, and it was suggested that, instead, a clear reaffirmation of the applicability of humanitarian principles to weapon design might exert a dissuasive effect on weapon designers.

33. A number of experts also stressed the need for monitoring new weapon development through some type of review mechanism. While it was recognized that such a mechanism might be developed on an international basis, most experts referred to internal procedures that had already been instituted by a number of States for this monitoring purpose; and a specific suggestion was made that an international agreement might be reached whereby all States would undertake to establish such national review mechanisms.

34. In this general connexion, a proposal was made by Mexico (COLU/210) recommending that the Conference of Government Experts on certain conventional weapons be given permanent status, thus permitting the continuation of the studies begun at Lucerne in 1974 and continued at Lugano in 1976 (see also the following section).

6. Report of the Working Sub-Group on General and Legal Questions

35. The working sub-group established to consider general and legal questions discussed the following questions in some detail: (a) alternative types of agreement, or agreements, to ban specific conventional weapons; (b) the nature of the obligations to be included in such agreements, e.g., questions of reciprocity and reprisal; (c) alternative provisions for entry into force of such agreements; and (d) a review mechanism. In connexion with the latter point, a specific proposal was put forward informally by Austria.

36. The above topics were all discussed in considerable detail, but no conclusions were reached or recommendations made.

7. Final statement of the Chairman of the General Working Group

37. The Chairman of the General Working Group, Mr. Erich Kussbach (Austria), in a final statement based on his personal impression of the work of the Group, summarized the work of the Group and stressed the following views:

(a) It had proved more difficult than expected to reach any consensus on a ban or restriction of the use of incendiary weapons but, for the first time, serious attempts had been made to narrow the gap between the diverging views on the subject;

(b) The preliminary discussion on delayed-action and treacherous weapons had been promising and there was a widespread feeling that substantial progress was possible in that area, particularly on the recording of minefields;

(c) Although no conclusions or agreements had been reached on small-calibre projectiles or on the related subject of a standard test for such weapons, the Group had stressed the importance of continuing and expanding study and research in the area, as well as the importance of an international exchange of views and co-operation on the subject;

(d) Some interesting new data had been presented on blast and fragmentation weapons, and a proposed ban on the use of weapons producing non-detectable fragments had been endorsed by many experts, who considered it an excellent basis for a future ban in this area;

(e) The exchange of views on some legal aspects of the over-all problem which had never been discussed before had served a useful purpose;

(f) The progress made at the Conference, although limited, was nevertheless encouraging and had revealed a greater flexibility of positions, a broader agreement on some controversial issues, a spirit of co-operation and a readiness to continue efforts towards a solution of the problems involved, as well as a growing awareness of the significance of those problems, thus constituting a further step towards the desired goal of making armed conflicts less inhumane.

III. THIRD SESSION OF THE CONFERENCE ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICTS

(held at Geneva from 21 April to 11 June 1976)

A. Organization of work

38. All the work of the third session of the Diplomatic Conference having any direct substantive relationship to the question of prohibiting or restricting the use of incendiary weapons and certain other specific conventional weapons was carried out, as at previous sessions, in the Ad Hoc Committee on Conventional Weapons (sometimes referred to as Committee IV). This Committee held 14 meetings (22nd to 35th) from 27 April to 9 June 1976. The composition of the Committee's Bureau remained unchanged, except for the replacement of the Rapporteur late in the session, as follows:

<u>Chairman:</u>	Mr. Diego Garces	(Colombia)
<u>Vice-Chairmen:</u>	Mr. Houchang Amir-Mokri	(Iran)
	Mr. Mustapha Chelbi	(Tunisia)
<u>Rapporteur:</u>	Mr. Frits Kalshoven	(Netherlands)
	(until 31 May)	
	Mr. Robert Akkerman	(Netherlands)
	(after 31 May)	

39. The Ad Hoc Committee adopted the following programme of work for the third session of the Conference (CDDH/IV/INF.218):

1. Oral report by the Rapporteur on the work of the Conference of Government Experts on the Use of Certain Conventional Weapons (Lugano, 28 January 1976-26 February 1976).
2. Introduction of proposals.
3. Consideration of the question of prohibition or restriction of use of specific categories of conventional weapons and, in this context, consideration of the report of the Lugano Conference, and of proposals:
 - (a) Napalm and other incendiary weapons;
 - (b) Delayed action weapons and treacherous weapons (including mines and booby-traps);
 - (c) Small-calibre projectiles;
 - (d) Blast and fragmentation weapons;
 - (e) Potential weapons developments.
4. Other questions.

40. Although the Committee met on 27 and 30 April to organize its work, it decided it was unable to resume its substantive work until 12 May because of the unavailability of the report of the Conference of Government Experts before 10 May. Some delegations stressed that they had made a major concession in agreeing to start work at such a late date. Other delegations, however, stated that it was a concession on their part to start working in the Committee before the Lugano report had been distributed in the official languages of the Diplomatic Conference, as their Governments had not been able to study the report beforehand.

B. Oral report on the work of the Conference
of Government Experts

41. The Rapporteur of the Ad Hoc Committee, who had also served as Rapporteur at the Lugano Conference, reported orally on the work of that Conference, stressing the point that its focus had no longer been on the question of conventional weapons in their generality, as at the previous Conference of Government Experts held at Lucerne in late 1974, but on such conventional weapons as had been, or might become, the subject of proposed bans or restrictions. The Rapporteur held that this proposal-oriented approach had resulted in a much more direct political involvement of Governments at the Lugano Conference than at the Lucerne Conference. He also noted that the participation of experts of third world countries at the Lugano Conference had been less than at Lucerne. Outlining the discussions that had taken place at Lugano on various categories of weapons, without any specific

agreements having been reached, he concluded that the Conference had apparently succeeded more often in identifying areas of disagreement than of agreement.

42. The discussions following the Rapporteur's oral report revealed a moderate degree of optimism regarding the results of the Lugano Conference, and some delegations held that the weapons in question had now been thoroughly analysed and that the time had come to consider concrete proposals and to negotiate specific agreements. Other delegations, however, considered that, while that stage had been reached in respect of some weapons, more thorough research was still needed in the case of others, including small-calibre projectiles, cluster-bombs, fléchettes and fuel-air explosives.

C. Proposals introduced and discussions

43. In addition to the broad proposals of 24 States contained in document CDDH/IV/201 (as revised in RO 610/4b with regard to incendiaries) ^{5/} which were still before the Committee, new proposals were submitted in every category of weapons included in the work programme, except that of "potential weapons". These various proposals, as well as the discussions on them, are outlined under the various categories below.

44. In the nature of general remarks covering all categories, some delegations, which in principle gave a favourable reception to a number of the proposals submitted, nevertheless held that the prohibition or restriction of the use of conventional weapons went beyond the terms of reference of the Diplomatic Conference, and that this question should be the responsibility of international bodies concerned with disarmament. Other delegations, however, considered that the matter lay clearly within the competence of the Diplomatic Conference, and one delegation quoted paragraph 2 of General Assembly resolution 3464 (XXX), by which the General Assembly invited the Diplomatic Conference to continue its consideration of the use of specific conventional weapons and its search for agreement for humanitarian reasons on possible rules prohibiting or restricting their use. A proposal to set up a working group of the Ad Hoc Committee to consider all proposals in detail did not obtain the necessary support for adoption.

1. Incendiary weapons

45. The Netherlands submitted a proposal (CDDH/IV/206), later sponsored by Australia and Denmark, seeking to restrict the use of incendiary munitions and of flare munitions, as defined in the proposal, in areas containing a concentration of civilians. Flare munitions were defined in terms of the incendiary agent on which the munition was based, i.e., "a gelled hydrocarbon", which included napalm.

^{5/} See para. 8 above; Afghanistan, Colombia and Kuwait also became sponsors of document CDDH/IV/201 at this session of the Diplomatic Conference.

In addition to a ban on the use of all incendiaries in areas of civilian concentration except against military objectives, the proposal would ban aerial attacks by flare munitions even against a military objective, unless it was located in an area in which combat between ground forces was taking place or was imminent. The Netherlands stressed that it would like to see the battlefield use of napalm restricted also, but that in view of discussions at the Lugano Conference, it had preferred not to put its ideas in this regard in the form of a specific proposal but rather to seek a generally acceptable solution of that aspect of the problem through further discussions of the subject in the Ad Hoc Committee.

46. Norway, however, submitted a proposal (CDDH/IV/207) seeking to prohibit the use of incendiary weapons against personnel in combat, as well as against civilian populations. It explained that, while it remained committed to the broader ban on incendiaries proposed in document CDDH/IV/201 (and the revision in RO 610/4b), it wished to contribute to the exploration of the area between those advocating a total ban on the use of all incendiary weapons and those opposing any ban at all. Norway held further that its proposal, which it considered to be closely related to articles 46 and 50 of Additional Protocol I to the Geneva Convention under consideration by the Diplomatic Conference, sought to provide even greater protection for civilian populations than that provided by those articles.

47. Sweden also submitted a working paper (CDDH/IV/208) containing a proposal to prohibit the use in all circumstances of "flame munitions", defined as "any munition primarily designed to cause burn injury to persons or to set fire to objects through the action of flame produced by a chemical reaction of a substance dispensed over the target". Sweden held that such weapons included flame-throwers, napalm bombs, white phosphorus grenades and other kinds of munitions containing "scatter-type agents". In introducing the proposal, Sweden stressed its continued preference for a total ban on the use of all incendiary weapons as contained in CDDH/IV/201, a revised version of which had been submitted to the third session of the Diplomatic Conference and issued as document CDDH/IV/INF.220, 6/ but that the new proposal had been submitted as a contribution to a possible agreement on the subcategory of incendiary weapons which caused the most concern. The new proposal, Sweden held, still sought to prohibit the use of all weapons in this subcategory in order to avoid the element of unreliability inherent in any rule seeking merely to restrict the use of a weapon.

48. A number of delegations expressed keen satisfaction with the large number of proposals on napalm and other incendiary weapons submitted at the third session. They noted, however, that, despite serious efforts at Lugano to reconcile the opposing views, the discussions in the Committee still revealed two divergent trends on the subject. Some, while not denying the possible military value of incendiary weapons, continued to hold that their use should be banned because of their extremely serious medical consequences and because their use was not essential to the national security of the States possessing them; and one delegation

6/ During the session, New Zealand withdrew as one of the 21 sponsors of this revised version, but Afghanistan and Kuwait became sponsors.

held that, since article 33 of draft Additional Protocol I to the Geneva Convention provided a solid moral and legal basis for such a ban, it was the task of the Ad Hoc Committee to devise ways of applying the principles set forth therein. On the other hand, some delegations reiterated the view that incendiary weapons provided very valuable support in close combat and that they could be used selectively; one delegation held that, according to available information, the use of replacement weapons would increase the number of dead and wounded and there was, consequently, no evidence whatever that a ban on the use of napalm would, in the final analysis, be of any advantage from the humanitarian point of view; some held that such restrictions as those proposed might also restrict the application of the additional Protocols to the Geneva Convention, inasmuch as article 33 of Protocol I, for example, did not distinguish between civilians and military in its prohibition of the use of weapons which tended to cause unnecessary suffering; some suggested that a restriction of the use of weapons based on a distinction between military and civilian objects, or between anti-personnel and anti-matériel use, would create great difficulties in an armed conflict; and one delegation noted that it had been pointed out at Lugano that any international agreement should be as simple and clear as possible to permit immediate decision in the field. Finally, one delegation took the position that, while a total ban on incendiary weapons was fully justified from the humanitarian point of view and while it was absolutely essential to provide the greatest possible protection to civilians, as proposed in documents CDDH/IV/206 and 207, it would be unrealistic to try to achieve such a ban at this time.

2. Delayed action weapons and treacherous weapons

49. Mexico, Switzerland and Yugoslavia submitted a proposal to restrict the use of booby-traps (CDDH/IV/209), while Mexico and Switzerland submitted a proposal to restrict the use of anti-tank and anti-personnel mines (CDDH/IV/211 and Corr.1). In introducing these proposals, the representative of Switzerland explained that they represented an attempt to summarize previous proposals on the matters concerned, taking into account the discussions on the subject at the Lugano Conference. He pointed out that the first proposal contained a definition of booby-traps and held that it laid down restrictions on their use that could protect the civilian population and exclude particularly repulsive and treacherous uses. He held further that the second proposal also sought to provide better protection for the civilian population by restricting the laying of mines in areas of civilian concentration and by prescribing the recording of methodically laid minefields. The sponsors had not included any requirement for the marking of minefields, the representative of Switzerland added, since they were not convinced that such rules would be practicable; but they had included a paragraph limiting the laying of remotely delivered delayed-action mines and similar devices.

50. Venezuela also submitted a proposal to restrict the use of booby-traps (CDDH/IV/212) similar to that of Mexico, Switzerland and Yugoslavia, but which it considered to be more explicit, precise and realistic from the technical, humanitarian and military points of view.

51. France, the Netherlands and the United Kingdom also submitted a proposal (CDDH/IV/213 and Add.1) dealing with landmines, which was subsequently also

sponsored by Denmark. This proposal would (a) provide for the recording of the location of all pre-planned defensive minefields, as well as other minefields containing more than 20 mines; (b) forbid the use of remotely delivered mines unless they were fitted with neutralizing mechanisms or unless the area in which they were delivered was appropriately marked; (c) prohibit the use of manually emplaced mines and other devices in any area of civilian concentration where combat between ground forces was not taking place or did not appear to be imminent, unless they were placed in the close vicinity of a military objective or due precautions were taken to protect civilians; and (d) ban the use of "certain explosive and non-explosive devices" (i.e., booby-traps) in a broad range of cases. In introducing this proposal, the United Kingdom noted that it was a revised version of a proposal of the same countries contained in document COLU/203 of the Lugano Conference and that it sought to establish a balance in humanitarian ideals and the realities of armed conflict. The United Kingdom also noted that the proposal gave much attention to the use of booby-traps, although no longer utilizing that expression but, instead, defining the various devices which it sought to curb. Also, the ban on the use of apparently harmless portable objects had been restricted to those objects specifically designed and constructed to contain explosive material and to detonate when disturbed or approached, but the ban on non-explosive devices had been retained, despite the criticism of some experts at Lugano, in order to reaffirm the rule of international law derived from article 23 (a) of the Hague Convention.

52. In the discussion of this category of weapons, a large number of delegations welcomed the new proposal of France, the Netherlands and the United Kingdom as a marked improvement over the proposal made by them at Lugano. Some other delegations favoured an effort to reconcile this new proposal with similar proposals in CDDH/IV/209, 211 and 212; and some suggested various specific modifications in the text to make the proposal more specific or more comprehensive. No final decisions were taken in the matter, however.

3. Small-calibre projectiles

53. Sweden submitted a proposal on small-calibre projectiles (CDDH/IV/214) which it described as a revision of the broader proposal on the subject in CDDH/IV/201. The revision had been undertaken, it was explained, in the light of the criticism of the latter proposal and of Sweden's own experiments. The new proposal called for abstention from the use of bullets which deform, break easily or tumble rapidly in the human body, or which have a velocity exceeding 1,500 metres per second. The proposal also prescribed standard tests for determining whether a bullet had the prohibited characteristics.

54. In introducing the proposal, the representative of Sweden commented that, although a rule on the use of small-calibre projectiles might possibly be related to the cavity which such a projectile made in soap or other tissue-simulant in a standard test, or to the amount of energy deposited per unit of length in such a simulant, the Swedish experts had considered it wiser to indicate some features in the behaviour of bullets which should be banned as likely to cause more severe injuries than the bullets at present in the most common use. In this connexion, he

held that the characteristic of deforming or breaking easily in the body was similar to the characteristic of expanding or flattening easily, which had been prohibited by the 1899 Hague rule on bullets. The earlier proposals to include bans on projectiles creating shock waves or producing secondary projectiles had been dropped, he added, in view of the fact that these criteria had been extensively criticized and were no longer considered essential. With regard to the general question of standard tests, he noted that a second international symposium of experts in the field, to be held in Gothenburg, Sweden, in August 1976, and to which all interested delegations were invited, would be devoted primarily to further study of previously noted indications of a correlation between the form and size of cavities caused in soft live tissue by the same bullet at the same distance.

55. A number of delegations welcomed the new Swedish proposal as an improvement over the broader one contained in document CDDH/IV/201. One delegation of a country sponsoring the latter document stressed, however, that the new proposal merely brought the earlier one up-to-date. This delegation, joined by another delegation sponsoring the same document, also believed that the question of bullet velocity should be left open pending additional tests. Another sponsor of the document noted that such bullet characteristics as tumbling upon impact would be influenced by the way the bullets were designed, adding that he thought it doubtful that sufficient data had been obtained to provide the necessary basis for agreement on regulation in this area. Still another sponsor of the earlier proposal stressed the need to establish a standard test to determine the main factors influencing the particularly serious impact of certain small-calibre weapons, including velocity, weapon design, and shape and material of the ammunition, on the one hand, and tumbling, deformation or disintegration of the ammunition, on the other hand. This delegation thought it would be easy to agree on the properties necessary for the target material, and noted that a report on recent tests carried out by his country was available to all delegations.

56. On the more negative side, one delegation drew attention to the fact that its country had already pointed out at Lucerne that all ammunition in current use could break up; while another expressed doubts that the problem connected with small-calibre projectiles could be solved by the test arrangements suggested in the Swedish proposal; another delegation stressed that it could not comment on the new Swedish proposal until it had had time to study it carefully.

4. Blast and fragmentation weapons

57. Austria, Mexico, Norway, Sweden, Switzerland and Yugoslavia submitted a proposal (CDDH/IV/210), subsequently also sponsored by Denmark, banning the use of any weapons the primary effect of which was to injure by fragments which, in the human body, escape attention by X-rays. In introducing this proposal, Switzerland noted that it was a revision of a proposal submitted by it and Mexico at the Lugano Conference (COLU/212) and was designed to meet certain criticism expressed at that Conference. Switzerland added that, in initial discussions at Lugano, the idea contained in the proposal could be considered to have received virtually unanimous support, and only one delegation had indicated a reservation,

namely, that such a proposal should take into account techniques already available or to be developed that might be superior to the X-ray techniques. In this latter connexion, Switzerland believed that methods more advanced than X-rays were unlikely to be generally available or easy to use.

58. Several delegations specifically agreed that this proposal was an improvement over the initial proposal on the subject at Lugano, but one delegation stressed that much more detailed consideration of the question would be required before agreement could be reached.

59. Sweden and Switzerland also submitted a working paper (CDDH/IV/215) containing a proposal limiting the use of fuel-air explosives (FAE), or "weapons which rely for their effects on shock waves created by a substance spread in the air", except to destroy material objects, such as minefields. In introducing the paper, the representative of Sweden stressed the grave injuries caused to the victim of blasts, noting that the statement of a Swedish expert at Lucerne to the effect that a blast-wave could cause about 99 per cent mortality of unprotected persons exposed to it, had not been subsequently contested; it added that a person within or close to an FAE burst was also likely to sustain extensive burn wounds. Sweden also held that the probability of being killed within an exploding fuel-air cloud was close to 100 per cent; that, if extensive areas were covered by several such explosives, the killed-to-wounded ratio could increase up to 100 per cent; and that death from blast injuries was probably one of the most atrocious kinds of death. Noting that the sponsor of the proposal recognized the effectiveness of FAE for such anti-matériel tasks as the release of pressure-sensitive mines, Sweden added the view that at least one country had apparently contemplated the use of FAE against personnel.

60. One delegation, although believing that the substance of this FAE proposal raised many questions, welcomed it as a concrete basis for discussion. Another delegation, however, held that statistics compiled by its Government showed that the killed-to-wounded ratio of FAE was only about 20 per cent, while that of high explosives was around 25 per cent, and that deaths caused by FAE were less painful and lingering than those caused by fragmentation weapons. In response to the doubts expressed by one of the sponsors of the proposal with regard to these statistics, this delegation provided some further information on the subject, but the sponsoring delegation was still unconvinced and insisted on having a more detailed report of the tests on which these statistics were based.

61. With regard to further prohibitions on fragmentation weapons, one delegation stressed the view that the use of such weapons against personnel should be banned, particularly the use of fléchettes. Another delegation suggested in this connexion that the provisions of article 46, paragraph 3 of draft Additional Protocol I (already adopted at Committee level) might be particularized in relation to specific weapons, such as anti-personnel cluster-bombs. One delegation, however, reiterated the view it had expressed at the expert conferences that the lethality rate from wounds caused by small fragments was lower than that for wounds caused by large fragments and that fléchettes broke up less readily than comparable projectiles, were quite stable because of their shape and were less likely to tumble than other projectiles.

5. Potential weapons development

62. Although no specific proposals were submitted in this general category, a number of delegations made reference to the need for national procedures in each country to review humanitarian aspects with respect to the acquisition or development of new weapons and also stressed the need for review conferences, to be held with a certain frequency at the request of an agreed number of States, after any new prohibitions on weapons use had been established. In this latter connexion, some delegations drew attention to the proposal of Mexico at Lugano (COLU/210) that the expert conferences on the general subject be given a permanent status, and suggested that any review conferences should be preceded by such expert conferences. In the Ad Hoc Committee, Mexico, supported by several delegations, also suggested that if no protocol was adopted on specific conventional weapons, a provision should be included, within the framework of Additional Protocol I to the Geneva Convention, which would make it possible to continue the study of possible prohibition or restriction of certain of these weapons within the over-all development of humanitarian law.

63. One delegation, while also stressing the need for appropriate national procedures as well as for international conferences at regular intervals with a view to reaching agreement on rules with respect to new weapons, suggested that consideration also be given to the idea of establishing an independent institute that would gather data on certain conventional weapons and that could, for example, be linked with the International Committee of the Red Cross and with the Secretariat of the United Nations, or act as an independent institute of the latter. Such an institute, this delegation held, could assist conferences held on the subject, as well as assist individual States in their internal considerations of the humanitarian aspects of weapons. Some other delegations supported the idea of creating an organization for the collection of data in the field, and some welcomed the idea of assistance to developing States in setting up national procedures.

D. Other questions

64. Under this item, a number of delegations commented on the past, present and future work of the Ad Hoc Committee. Some delegations felt that, while the results of the Lugano Conference had been rather meagre and while the Ad Hoc Committee had made a slow start on its work at this session of the Diplomatic Conference, the various proposals submitted to the Committee were a matter of some satisfaction. Several, however, expressed regret that it had not been possible to discuss these proposals in detail and expressed the hope that an appropriate method for giving them careful study would be found at the next session of the Diplomatic Conference in 1977. In this connexion, the Committee secretariat was requested to draw up a comparative table of all proposals presented to the Committee at this session for use at the next session. A number of delegations maintained that a sufficient amount of data had already been gathered and that rules, at least with regard to some types of weapons, could now be agreed upon, while others again stressed that more data was needed in many areas before any conclusions could be reached. Some delegations expressed the view that there was no need to organize a third conference of experts to follow those held at Lucerne in late 1974 and at Lugano in early 1976.

65. The representative of the International Committee of the Red Cross (ICRC) noted, in connexion with a report showing a credit balance on expenses for the Lugano Conference held under its auspices, that ICRC was prepared to contribute to the continuation of the work. On the substance of the matter, the representative stated that, while ICRC had put forward no proposals of its own, it considered that a general prohibition of all the weapons with which the Committee was dealing would be the best solution in humanitarian terms, and that ICRC requested Governments never to lose sight of the fundamental humanitarian aspects of the problem and never to justify the use of any weapons solely on the basis of the criterion of military value.
