

The 1980 Convention on Certain Conventional Weapons: A useful framework despite earlier disappointments

by

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Since the Second World War, arms control and disarmament negotiations have for the most part concentrated on attempting to contain the threats caused by the existence of nuclear, chemical and biological weapons. Arms control negotiators have also sought to either prohibit or restrict the use of certain types of conventional weapons which exert effects that are or could be judged to be inhumane under customary international law.¹ Particular examples are the *1980 Convention on Certain Conventional Weapons* (CCW)² and the 1997 *Ottawa Treaty* banning anti-personnel mines.³

This report considers some of the weapons-related issues that led to the negotiation of the CCW, and discusses the pioneering nature but limited impact of the CCW in the 1980s. The outcomes of the first Review Conference which took place in 1995/6 are then discussed, followed by discussion of issues which have been considered in the lead-up to the second Review Conference, which will take place in December 2001. The contribution of the International Committee

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of the Red Cross (ICRC) to the development of the CCW is considered, as well as the need for the international community to recognize the complementary nature of the CCW and the Ottawa Treaty if the CCW is to achieve its original objectives.

Negotiation of the CCW

In the early 1950s, in response to developments in armaments and military doctrine and the widespread injury and damage to civilian populations during the Second World War, the ICRC began drafting rules to protect civilian populations. The resulting *Draft Rules*⁴ included a chapter on weapons with uncontrollable effects, which proposed prohibition of weapons whose harmful effects could spread to an unforeseen degree or escape from the control of those who employ them, thus endangering the civilian population. Specific weapons referred to included incendiary, chemical, biological and radioactive agents, as well as delayed-action weapons including landmines.⁵ The Draft Rules were presented at the 19th International Conference of the Red Cross (New Delhi, 1957), and were subsequently submitted to governments for consideration. However, there was insufficient support by governments to transform the Draft Rules into an international treaty.

From the mid-1960s, there were increasing concerns about weapons that may cause excessive injury or have indiscriminate effects. These concerns were, at least in part, a reaction to the well-

¹ For an overview of these efforts, including the role of the ICRC, see R.J. Mathews and T.L.H. McCormack, "The influence of humanitarian principles in the negotiation of arms control treaties", *IRRC*, No. 834, June 1999, pp. 331-352.

² 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, and Protocols I-III, 10 October 1980.

³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction,

18 September 1997, which entered into force on 1 March 1999.

⁴ *Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War*, 2nd ed., ICRC, Geneva, 1958.

⁵ The Draft Rules (*supra*, note 4), in addition to proposing a prohibition on delayed-action weapons (Article 14 — Prohibited methods of warfare), also proposed that weapons capable of causing serious damage to the civilian population be equipped with a safety device which renders them harmless when they escape from the control of those who employ them (Article 15 — Safety measures and devices).

publicized use in the Indochina war of tear gases and herbicides. Concerns about these and other weapons considered to be excessively injurious or to have indiscriminate effects, including napalm and other incendiary weapons, anti-personnel landmines and other delayed-action weapons, small calibre bullets and fragmentation weapons (including cluster bombs) led to UN General Assembly resolutions and studies, commissioned by the UN Secretary-General, of effects of various weapon types. A number of States proposed that regulations or prohibitions of these weapons should also be developed. These weapons-related concerns coincided with activities initiated by the ICRC to reaffirm and further develop international humanitarian law applicable in armed conflict.

To this end, by the late 1960s the ICRC had collected the relevant documents and considered on which points the existing law needed to be supplemented or improved, and had then started developing texts for draft treaties with the assistance of government experts. In May 1971, it convened a Conference of Government Experts to consider the ICRC's preliminary drafts, and this process continued at a second session of the Conference of Government Experts in May 1972. At this conference several proposals were tabled for the inclusion of prohibitions and restrictions on napalm and other incendiary weapons, fragmentation weapons, air-fuel explosives and anti-personnel landmines in the draft Additional Protocols.

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (CDDH)⁶ was convened by the Swiss government, in its capacity as the depositary for the Geneva Conventions, in order to negotiate the Additional Protocols on the basis of the draft documents that had been prepared by the ICRC in consultation with a number of States. The CDDH met in Geneva in four sessions between 1974 and 1977.

⁶ This Conference is normally referred to as "the Diplomatic Conference" or CDDH. The acronym CDDH, which was also used to designate official documents, was based on the French-language title of the Conference:

Conférence diplomatique sur la réaffirmation et le développement du droit international humanitaire applicable dans les conflits armés.

An *ad hoc* Committee on Conventional Weapons was set up in the first session of the CDDH in February 1974 to consider the question of the prohibition or restriction of the use of conventional weapons which may cause “excessive injury” or have “indiscriminate effects”. A working paper which proposed restrictions and prohibitions on incendiary weapons, anti-personnel fragmentation weapons, flechettes, small calibre bullets and anti-personnel landmines was presented at this session.⁷ Thus, the question of arms control, at least as far as conventional weapons were concerned, had become intertwined with the further development of international humanitarian law.

The Committee met through each of the four sessions of the CDDH and was supported by the ICRC, which convened a Conference of Government Experts on the Use of Certain Conventional Weapons held in Lucerne in 1974;⁸ a second meeting was held in Lugano in 1976.⁹ At both the Lucerne and Lugano meetings, some experts advocated total bans on specific weapons, while other experts considered that total bans were beyond reach, and that more progress would be achieved if the meeting were to concentrate its efforts on restrictions of use. This latter more pragmatic view was shared by the ICRC. For example, at the conclusion of the Lugano meeting the Vice-President of the ICRC, Jean Pictet, stated: “Moreover, I think relatively minor results which meet with general agreements are far better than projects which look dazzling on paper but which are worthless in practice and likely, when all is said and done, to undermine humanitarian law as a whole.”¹⁰

By the last session of the CDDH it had become clear that there would not be agreement on even the major weapons-related issues (in particular, which weapons should be included and the nature

⁷ *Incendiary Weapons, Anti-personnel Fragmentation Weapons, Flechettes, especially Injurious Small Calibre Projectiles, Anti-Personnel Land Mines*, Working Paper, presented by Egypt, Mexico, Norway, Sudan, Sweden, Switzerland and Yugoslavia. Doc. CDDH/DT/2, 21 February 1974.

⁸ ICRC Report, *Conference of Government Experts on the Use of Certain Conventional Weapons (Lucerne 24.9.-18.10.1974)*, ICRC, Geneva, 1975.

⁹ ICRC Report, *Conference of Government Experts on the Use of Certain Conventional Weapons (Second Session, Lugano, 28.1.-26.2.1976)*, ICRC, Geneva, 1976.

¹⁰ *Ibid.*, p. 78.

of prohibitions or restrictions, whether there should be prohibitions on the battlefield use of certain weapons, or prohibitions on the use of certain weapons against civilians). The main divergences largely arose between a number of neutral European States (including Sweden, Norway, Switzerland and Yugoslavia) and developing States (including Egypt and Mexico), which took the view that high technology anti-personnel weapons were particularly inhumane and should be prohibited,¹¹ and a number of major military States (including the USA and other larger NATO members, the USSR and other larger Warsaw Pact members), which were either opposed to prohibitions or restrictions on high-technology weapons or argued that any such prohibitions should be negotiated in the UN Conference of the Committee on Disarmament rather than in the CDDH.

However, at the final session of the CDDH there was agreement on a conference resolution which expressed the wish that the weapons issues should be dealt with within the framework of the United Nations. Resolution 22 of the CDDH recommended that a Conference of Governments should be convened “with a view to reaching: (a) agreements on prohibitions or restrictions on the use of specific conventional weapons...”. Preparatory meetings were held in Geneva in August 1978 and March/April 1979 to prepare the two sessions of the United Nations Conference (September 1979 and September 1980).¹² Draft texts which had been developed in the CDDH *ad hoc* Committee on Conventional Weapons formed the basis of the twelve proposals submitted to the first preparatory conference. After it became evident that there would be agreement on only a

¹¹ There was also an implied linkage between advanced technology in weapons with increased inhumanity: a notion which had considerable appeal to certain developing States and groups involved in guerrilla warfare and wars of national liberation.

¹² The two sessions were attended by representatives of 82 States and 76 States respectively. A number of governments included a representative of their National Red Cross or Red Crescent Society in their delegations. In addition, the ICRC was present with observer status; it made a number of useful interventions and provided information on weapons issues.

limited number of weapon types for inclusion in a future treaty,¹³ it was agreed that the CCW should become an “umbrella” or framework convention, consisting of a general agreement and a number of protocols on specific weapons, which would be dynamic and allow the possibility of adding new protocols for other types of weapons to take future developments into account.

At the end of its second session in 1980, the UN Conference adopted the text of 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), with three Protocols. The CCW was opened for signature in New York on 10 April 1981, and entered into force on 2 December 1983 (i.e. six months after 20 ratifications had been deposited).

Assessment of the CCW in the 1980s

The CCW, with its three Protocols, was the first treaty regulating conventional weapons since the 1920s, and combined various elements of international humanitarian law and arms control. However, it was seen as a very modest achievement. Indeed, the final outcome was a major disappointment for its proponents, who felt that military considerations had been given much greater priority than humanitarian concerns. In particular, they had sought: a ban on a range of fragmentation weapons (not just on fragments which are not detectable by X-rays, as in Protocol I); a complete ban on anti-personnel landmines and booby traps (rather than the very detailed regulations on use of these weapons, as contained in Protocol II); a complete ban on incendiary weapons (rather than the prohibition of use of these weapons against civilians, as contained in Protocol III); and provisions to prohibit or regulate the use of other weapons including fuel-air explosives and small calibre bullets (which were not included in the CCW at all).

¹³ Decision-making on the weapons-related issues (both in the CDDH *ad hoc* Committee and subsequently in the CCW negotiations) was made difficult because

decisions were taken by consensus (unlike other decisions taken in the CDDH which, had it been necessary, could have been taken by a two-thirds majority).

Further disappointments were the absence of compliance-monitoring provisions,¹⁴ the applicability of the CCW to international armed conflict only, and the very minimal implementation-related obligations for States Parties: the CCW requires them to disseminate its provisions so that, in particular, they “may become known to their armed forces” (Article 6), but does not require their translation into field manuals and operating procedures within the armed forces. Moreover, it does not provide for penal sanctions against individuals who violate one of its provisions.¹⁵

Consequently very limited attention was given to the CCW during the 1980s — it was a neglected treaty, with many developing countries considering it not worth ratifying and a number of “militarily significant States” not wishing to be bound by its provisions.¹⁶ This is illustrated in the graph showing membership of several arms control treaties between 1970 and 2000 (Annex, Figure 1), which also plots UN membership over the same time frame, as this provides a useful indication of the extent of universal acceptance of each of the treaties.¹⁷

14 In the course of the negotiations, several States had proposed that the CCW should contain some form of compliance-monitoring procedures. See *Draft Article on a Consultative Committee of Experts*, UN Doc. A/CONF.95/L.7, 9 October 1980, sponsored by Belgium, Canada, Federal Republic of Germany, France, Ireland, Italy, Japan and The Netherlands. Unfortunately, this proposal did not gain consensus support.

15 This is in stark contrast to 1977 Additional Protocol I of the Geneva Conventions (agreed three years earlier) which required development of military manuals, orders and instructions to ensure observance of the provisions (Art. 80), including availability of legal advisers (Art. 82), broad dissemination (Art. 83) and criminal proceedings against those who commit “grave breaches” of the provisions (Arts 85-89).

16 Indeed, preambular para. 6 of the CCW referred specifically to the importance of ratification by “militarily significant States”.

17 It should be noted, however, that not all States are members of the United Nations, so comparisons should be made with care, especially with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). For example, a number of internationally recognized States that are party to the NPT are not UN Member States (e.g. Holy See and Switzerland). At the end of 2000, four States (Cuba, India, Israel and Pakistan) were not party to the NPT. The “cross-over” of the NPT and UN curves in the late 1990s was a consequence of, *inter alia*, Kiribati, Nauru and Tonga (which had ratified the NPT in 1985, 1982 and 1971 respectively) not becoming UN Member States until 1999.

In view of the extensive use of anti-personnel landmines in various conflicts in the 1980s and the amount of suffering and devastation caused thereby, the CCW was clearly ineffective in reducing the widespread and indiscriminate effects of such mines during that period. However, this was not necessarily due to any intrinsic fault in the actual provisions in Protocol II, but can be attributed to several other reasons, including the limited acceptance of the CCW by States, the fact that the provisions of the CCW were not respected by a significant part of the international community and were limited to international armed conflicts, and the absence of implementation, consultation and compliance-monitoring provisions. Another significant factor was the substantially increased use of anti-personnel landmines in armed conflicts in the 1980s because of their greater availability and reduced cost.¹⁸

By the late 1980s the CCW was in fact regarded by many as a failed attempt to combine elements of international humanitarian law and arms control. Thereafter, however, interest in it was revived by a series of expert meetings convened by the ICRC to discuss blinding laser weapons,¹⁹ which subsequently led to a proposal for a new protocol for the CCW, and grew further in view of the increasing anti-personnel landmines problem, which was being highlighted by the ICRC²⁰ and a number of States and non-governmental organizations, which in 1992 formed the International Campaign to Ban Landmines (ICBL). At that time, there were estimates that as many as 27,000 people (mainly civilians) were either killed or severely injured by anti-

¹⁸ Anti-personnel landmines (APLs) had become a greater problem since the 1970s, because of improved production methods, increased use of plastics and more compact design. This resulted in APLs becoming more readily available, less expensive, less labour-intensive to deploy (i.e. air-scatterable or remotely deliverable), and more difficult to detect. This resulted in massive numbers of casualties, most notably civilians after conflicts.

¹⁹ Meetings were held in June 1989, November 1990 and April 1991 to consider

technical, medical, psychological and legal aspects of the use of battlefield laser weapons. ICRC Report, *Blinding Weapons – Reports of the Meetings of Experts Convened by the ICRC on Battlefield Laser Weapons 1989-1991*, ICRC, Geneva, 1993.

²⁰ The ICRC convened meetings to consider means of addressing the APL problem. See e.g. ICRC, *Report on Landmines: Report of a Meeting of Experts Convened by the ICRC (Montreux, 21-23 April 1993)*, Geneva, 1993.

personnel landmines every year, and that there were up to 120 million sown landmines in 64 countries around the world.²¹ This resulted in pressure on the States Parties to the CCW to convene a Review Conference to consider how the CCW might be amended to address these issues more adequately.

First CCW Review Conference (1995/6)

A Review Conference for the CCW was requested by France in 1993 and supported by a number of other States. It was agreed that the meeting would take place in Vienna from 25 September to 13 October 1995.²² Interest in the CCW increased in the lead-up to the Conference, with increasing membership (as shown in Figure 1, there were 29 States Parties by the end of 1991, and 56 States Parties by the end of 1995). In addition to the quantitative aspect, this increase was also of qualitative importance, as several “militarily significant States” (including the USA) were among those States that ratified the CCW in the lead-up to the first Review Conference.

The first achievement was the agreement, during the first formal session in November 1995, on a protocol prohibiting blinding laser weapons, the future Protocol IV.²³ This agreement was regarded as a landmark in arms control history because the prohibition was negotiated before the weapons had been deployed in battle.²⁴

²¹ These UN-based figures were cited in ICRC, *Special Brochure: Landmines Must be Stopped*, Geneva, 1995, p. 4. More recently, some sources have claimed that the total number of landmines deployed worldwide at that time was closer to half of the estimated 110 million or more. Z. Lachowski, “The Ban on Anti-Personnel Mines”, *SIPRI Yearbook 1998*, pp. 545-558.

²² Indeed, the term “Review Conference” is a little misleading in this context. In fact, the review of the CCW took place over 27 months, starting with the first of several meetings of groups of experts in February 1994, and ending with an extended final formal session in May 1996. The Review Conference had a high rate of participation. For example,

44 of the (then) 57 States Parties took part in the October 1995 session and 40 other States attended as observers.

²³ Additional Protocol 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 (Protocol IV to the 1980 Convention on Certain Conventional Weapons), which was adopted on 13 October 1995 and entered into force on 30 July 1998.

²⁴ Apparently a number of countries had been developing laser weapons capable of inflicting blindness on their victims, and in some cases these weapons had gone into production. They had not, however, been deployed in battle.

However, from the first preparatory meeting in the lead-up to the first Review Conference until the conclusion of the extended final session 27 months later, the highest profile issue was anti-personnel landmines. During consideration of it two divergent groups of States emerged: one group of approximately twenty States proposing that a total prohibition on anti-personnel landmines be incorporated in the CCW (by the end of the Review Conference, this group had increased to 40 States); and another group of States (including several “militarily significant States”) which were opposed to a total prohibition on anti-personnel landmines but were prepared to strengthen the provisions in Protocol II. Between these two extremes were a number of States which supported a prohibition but recognized that the “prohibitionists” would not achieve the required consensus, and on that basis accepted the role of the Review Conference in strengthening Protocol II.

The attempt to strengthen the anti-personnel landmines provisions of Protocol II became a long and tortuous process. Consensus could not be reached by the date set for conclusion of the Review Conference (13 October 1995),²⁵ which eventually had to be extended twice (15–19 January 1996 and 22 April–3 May 1996) before agreement on an amended Protocol was achieved. By the end of the negotiations some useful improvements were made to Protocol II. These included: extension of its scope to cover internal armed conflicts, strengthened general humanitarian restrictions on the use of anti-personnel landmines; bans on non-detectable anti-personnel landmines; bans on anti-sensing devices on such mines; enhanced rules on mine-laying (e.g. long-lived mines may be used only if properly fenced in, marked and monitored); stronger restrictions on the use of

²⁵ The achievement of this session (Protocol IV on blinding laser weapons) went virtually unnoticed in the disappointment at the failure to agree on amendments to Protocol II on APLs. Indeed, press headlines

on 13 October 1995 included comments such as “Landmine conference falls apart” (*The Times*) and “UN talks to ban landmines fail” (*International Herald Tribune*).

remotely-delivered anti-personnel landmines (including a ban on the remote-delivery of long-lived mines); and transfer restrictions.²⁶

The situation with regard to implementation obligations for Protocol II was corrected to some extent, with provisions including the obligation to take all appropriate steps to prevent violations of the Protocol, to impose penal sanctions on individuals who violate it, to prepare and distribute relevant military instructions and operating procedures and to train armed forces accordingly. Amended Protocol II also provides for an annual conference of States Parties to consult on operational issues, and for annual reports by States Parties on, *inter alia*, domestic legislation related to the Protocol.

Besides convening meetings of experts to consider weapons issues, the ICRC had conducted regional seminars to provide information to States and had submitted proposals and working papers related to blinding laser weapons and anti-personnel landmines. Following the inconclusive session in October 1995 the ICRC, for the first time in its history, launched an international media campaign aimed at enlisting public support for the stigmatization of anti-personnel landmines.²⁷

The failure of the Review Conference to agree on a total prohibition of anti-personnel landmines caused considerable disappointment in some quarters.²⁸ This gave rise to a very determined humanitarian campaign which resulted in the negotiation of a disarmament treaty, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, or “Ottawa Treaty”. It is interesting to note (as shown in the Annex, Figure 2) that by 30 June 2001, 117 States had

²⁶ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996), which entered into force on 3 December 1998.

²⁷ For more details, see L. Maresca and S. Maslen, *The Banning of Anti-personnel Landmines: The Legal Contribution of the International Committee of the Red Cross*

1955-1999, Cambridge University Press, 2000.

²⁸ In addition to the concerns and disappointment expressed by a number of States Parties, the ICRC stated that it considered the amended Protocol II as “woefully inadequate” and that “the horror of the immense human suffering caused by landmines is set to continue, and the amended Protocol II will do little to change this situation”. ICRC Press Release 96/16, 3 May 1996.

ratified the Ottawa Treaty, whereas only 85 States had ratified the CCW (while Protocols II and IV had been ratified by only 59 and 56 States, respectively).

It is not a simple task to assess the effectiveness of the CCW. Nonetheless, a combination of factors, including the increased number of ratifications of and accessions to the treaty, the strengthening of Protocol II, the strong support shown by many States for the Ottawa Treaty and the increased resources allocated to mine clearance in recent years, does appear to have had a positive impact on the anti-personnel landmines problem.²⁹ The extent to which this can be credited to the CCW is difficult to judge, but if all anti-personnel landmine supplier States were to comply with Protocol II's transfer provisions, then that in itself could be expected to have a major impact on the availability of anti-personnel landmines for use in armed conflicts. The extent of adherence to the provisions of Protocols I, III and IV of the CCW is even less clear; the situation would be improved if the CCW made it mandatory for States Parties to provide information on their relevant activities (including implementation procedures) and contained compliance-monitoring provisions.

Preparations for the CCW Second Review Conference 2001

The second Review Conference of the CCW will take place in Geneva in December 2001. The first preparatory meeting took place in late April 2001. The Australian Ambassador for Disarmament (Mr Les Luck) was appointed President-designate of the Conference and chaired the preparatory meetings.

²⁹ For example, the ICRC recently stated: "Although a global assessment may be premature, statistics gathered by the ICRC and mine action organizations show that the average number of monthly casualties due to landmines and unexploded ordnance has decreased significantly in several affected countries." Statement by the ICRC, UNGA, 55th Session, November 2000. — On 12 September 2001, the International Campaign to Ban Landmines (ICBL) released its third

annual report on the global landmine situation, detailing substantial results in implementation of the Ottawa Treaty. The major findings of the 2001 report included: decreased use of APLs; a dramatic drop in production of APLs; an almost complete halt in trade of APLs; destruction of millions of stockpiled APLs; increased funding for humanitarian mine action; more land cleared of mines; and most importantly, fewer new APL casualties. <<http://www.icbl.org/lm/2001/findings/>>.

A number of proposals were being considered in the lead-up to the Review Conference, including:

- Scope — The scope of the CCW should be extended to include non-international armed conflicts³⁰ (at the moment, Protocol II is the only Protocol of the CCW that applies to both international and internal armed conflict).
- Compliance-monitoring — The whole CCW has to be covered by compliance-monitoring procedures; alternatively, Protocol II has to be covered by compliance-monitoring.³¹
- Explosive Remnants of War (ERW) — A Protocol on Explosive Remnants of War (including cluster bombs) should be established.³²
- Anti-Vehicle Mines (AVMs) — A protocol should be worked out with provisions requiring that all anti-vehicle mines be detectable and that remotely deliverable AVMs be self-destructing and self-deactivating.³³
- Small calibre bullets — A protocol incorporating certain design standards for small calibre bullets to minimize the extent of wounding should be established.

It is interesting to note that these proposals are similar to certain proposals first considered during negotiation of the CCW during the 1970s, and that some of these issues were also considered at the first Review Conference in 1995/6. At this stage it is unclear as to

³⁰ Proposals have been put forward by the ICRC: adoption of a new protocol which would extend the scope of the whole CCW (CCW/CONF.II/PC.1/WP.1); and the USA: amendment of Article I of the Framework Convention (CCW/CONF.II/PC.1/WP.2). For details of this and other USA proposals see <<http://www3.itu.missions/US/CCW/>>.

³¹ There were proposals by France, in a non paper entitled "Compliance" of 2 April 2001 presented to the Second Preparatory Committee, and the USA (CCW/CONF.II/PC.1/WP.7).

³² This proposal by the ICRC included: users' responsibility for clearance; sharing of technical information on clearance; obligation of users to warn civilians; and prohibi-

tion on use against military objects co-located with civilians. See P. Herby and A. Nuiten, "Explosive remnants of war: Protecting civilians through an additional protocol to the 1980 Convention on Certain Conventional Weapons", *IRRC*, Vol. 83, March 2001, pp. 195-205.

³³ Working paper presented by Denmark, Finland, Germany, Japan, Poland, United Kingdom and USA, *Protocol on mines other than anti-personnel mines*, CCW/CONF.II/PC.3/WP.11. Working paper presented by Switzerland, *Restrictions on Small Calibre Ammunition which cause excessive wounding and unnecessary injuries*, CCW/CONF.II/PC.3/WP.3.

which of the proposals will be adopted at the second Review Conference. However, it appears possible that this meeting may be able to agree on extending the scope of the CCW to include non-international armed conflicts, and on mandates to enable negotiation of a Protocol on Explosive Remnants of War.

The future of the CCW: the second Review Conference and beyond

The main focus in the lead-up to the second Review Conference has been consideration of the proposals to extend the scope of the CCW to non-international conflict and to incorporate new protocols covering other types of weapons. These are all evidently worthwhile objectives which should be pursued. But it is also necessary to review the current status of the CCW as a starting point in terms of future activities to make it a more effective instrument. In the author's view there are three high-priority objectives for the second Review Conference of the CCW and beyond:

- to recognize and reaffirm the relevance and value of the CCW;
- to promote increased acceptance of it, with a view to achieving universality; and
- to increase respect for/adherence to its provisions.

Unless these three objectives are achieved, there may be only limited benefit, if any, in extending the CCW's scope and adding new protocols to cover additional types of weapons.

Recognition and reaffirmation of the relevance and value of the CCW

One problem in attempting to convince States of the potential benefits in ratifying the CCW (especially those which are already party to the Ottawa Treaty) is the perception in some quarters that the CCW has been replaced by that treaty: "Why do we need to join the CCW when we have already joined the Ottawa Treaty?" In a quest for greater membership, there will be a need to reaffirm the relevance of the CCW. While there is no question of the value of the Ottawa Treaty, it does have limitations in that several significant producers, users and exporters of anti-personnel landmines have not

joined it. The CWW consequently retains a necessary role as an instrument to regulate the use and transfer of such mines by those States which have decided that their security interests will not at present allow them to ratify the Ottawa Treaty. It is therefore most unfortunate that certain NGOs and States appear to feel antagonism towards the CCW and to regard it as ineffective and not worth supporting.

The CCW is also very relevant because of the other weapons covered by it, which currently include undetectable fragment weapons, booby-traps, anti-vehicle mines, and incendiary and blinding laser weapons. As new protocols are added to regulate other types of weapons, the relevance of the CCW will increase still further. In addition, attention has recently been drawn to a potential role of the CCW in supporting constraints on the inhumane and indiscriminate effect of "small arms and light weapons".³⁵

It has also become clear that the CCW can no longer be regarded as a treaty primarily for the protection of civilians in developing countries, which was the view taken by a number of militarily significant States in the 1970s. For example, in a letter sent to the United States Secretary of Defense dated 31 July 1995 by fifty-one members of the US Congress who supported the prohibition of blinding laser weapons, it was stated: "We dread the day when hundreds or thousands of American service men and women return home from combat to face the rest of their lives without eyesight."³⁶ This line of reasoning, which changed the US position from initially being opposed to Protocol IV on Blinding Laser Weapons to being a strong supporter of it at the CCW Review Conference in 1995, was also echoed by eight high-ranking retired US generals, including those who commanded in Korea, in a recent letter to President Bush urging that the United States accede to the Ottawa Treaty. In their letter, the retired generals stated that their recommendation was "motivated by a

³⁵ J. Boutwell and M. Klare, "Small arms and light weapons: Controlling the real instruments of war", *Arms Control Today*, vol. 28, August/September 1998.

³⁶ "Letter to Secretary of Defense

William Perry from fifty-one U.S. Members of Congress, July 31, 1995", Appendix G in *Blinding Laser Weapons: The Need to Ban a Cruel and Inhumane Weapon*, Human Rights Watch Project, vol. 7, No. 1, September 1995.

deep concern for the welfare of the men and women of our armed services” and “most importantly, to protect our nation’s sons and daughters when we send them into harm’s way”.³⁷

Universality

Despite considerably greater interest by the international community in the CCW since the early 1990s, the number of States Parties to the CCW still remains relatively low compared to other arms control treaties. That said, most of the “militarily significant States” which opposed the more ambitious proposals for the CCW in the 1970s have now ratified the treaty or acceded to it. However, there are still approximately 90 States yet to ratify or accede to the CCW, including many small developing States. Furthermore, acceptance of Protocols II and IV remains low, especially when compared to the Ottawa Treaty (see Figure 2). It would clearly be useful for all States Parties to the CCW to accede to these two Protocols without further delay, and to undertake outreach activities to States not party, particularly in their regions of influence, in an attempt to increase membership of the CCW in the lead-up to the second Review Conference and beyond.

Effective implementation

To increase adherence to the provisions of the CCW, all Protocols should be covered by the same implementation provisions that were incorporated into (revised) Protocol II (Article 14). While it would be possible to add similar provisions to Protocols I, III, IV and any new protocols, it would certainly be less complicated, and easier in the long run, to add them to the framework Convention (i.e. to apply to all Protocols). In addition, an annual Conference of States Parties to review the operation of the CCW, along the lines of Article 13 of Protocol II, would also promote greater awareness of each State Party’s obligations under the CCW, and would act as a mechanism to

³⁷ The letter to President Bush, dated 19 May 2001, may be viewed at <http://www.banminesusa/>.

encourage all States Parties to develop appropriate legislation and military operating procedures to ensure compliance with the various provisions.

Compliance-monitoring procedures

For the CCW to have increased credibility, and to encourage all States Parties to fully respect the various provisions of all of the Protocols, it will be necessary for the whole of the CCW to be covered by compliance-monitoring procedures. The least complicated approach would be to incorporate the compliance-monitoring procedures into the main body of the CCW — it would be an unnecessary complication to include compliance-monitoring procedures in all Protocols, for each one would then require amendment and, in the case of Protocol II, an amendment to an already amended Protocol. For ease of implementation, the compliance-monitoring procedures should preferably be along the lines of Article 8 of the Ottawa Treaty.³⁸

Scope of the CCW

Clearly, the scope of the whole CCW (and not just of Protocol II, as at present) should be extended to include applicability in non-international armed conflicts. Indeed, it is difficult to argue against broadening the scope and including non-international armed conflicts, as most injuries (especially to civilians) in recent conflicts have been caused precisely during such conflicts.

Protocols for specific weapons

Obviously, there are merits in the various weapons proposals, and the CCW would be improved by having provisions covering other weapons, including cluster weapons, anti-vehicle mines and other unexploded ordnance. All amendments to the CCW should as far as possible be sensitive to maintaining the intended structure of the

³⁸ In this respect, the compliance-monitoring proposal by the USA includes procedures which are similar to those in Art. 8 of the Ottawa Treaty. It would in fact be most convenient for States Parties undertaking to ensure

implementation of the CCW and the Ottawa Treaty at the national level if the compliance-monitoring provisions agreed for the CCW were identical to those contained in the Ottawa Treaty.

treaty (i.e. general provisions in the Framework Convention and particular weapons provisions in the Protocols) and to keeping the CCW from becoming too complicated. Thus, when considering weapon issues, it would be advisable also to consider the future structure of the CCW and Protocols, mindful of which of the more general provisions might be more usefully placed in the Framework Convention and hence be applicable to each of the weapon-specific Protocols.

There is also an issue of ease of implementation. In particular, consideration should be given to the Defence Ministries in smaller States which will be trying to implement the various provisions, particularly those which do not have English or another UN language as their national language. The ICRC and interested States Parties could play a useful part in encouraging and assisting other States Parties to develop the appropriate legislation and other necessary documentation.

Concluding comments

It is interesting to reflect on the efforts that have been expended over many years and by many States, the ICRC and various NGOs, ranging from expert group meetings to long and arduous negotiations, in order to obtain an instrument to regulate the use of specific weapons which may cause excessive injuries to combatants and have indiscriminate effects for non-combatants. Despite the disappointments, the CCW still represents an achievement, and the main problem has been due to lack of respect for and adherence to it, and not to any deficiencies in its actual provisions. If those provisions had been effectively implemented and fully respected, they would have greatly reduced the suffering caused by “inhumane” weapons.³⁹ There is still a potentially very useful role for the CCW, which should be regarded as complementing the Ottawa Treaty with regard to anti-personnel landmines, and as a part of the “tapestry of treaties” including

³⁹ This view accords with a recent statement by the ICRC which, referring to international humanitarian law, stated that “[t]he effective implementation of existing law, including the obligation to ensure its respect,

is indeed the most pressing matter, rather than the development of new rules”. Statement by the ICRC, UNGA, 53rd session, Sixth Committee, 17 November 1998.

the 1949 Geneva Conventions on the Protection of Victims of War, their 1977 Additional Protocols and other treaties which have been negotiated within the international humanitarian law/arms control framework.

It should be borne in mind that the CCW was designed to be a dynamic treaty, with the facility to evolve in response to weapons developments and within a changing international climate. In this context, it is important to recognize the changing positions by various States over time with respect to the acceptability of regulations and/or prohibitions of particular weapons which may cause excessive injuries to combatants and have indiscriminate effects for non-combatants. There is also a changed reality with regard to the availability and use of the weapons covered by the CCW. In the 1970s there was a sense, at least in some quarters, that the major threat associated with “inhumane weapons” came from the “militarily significant States” and that the major beneficiaries of the CCW would be civilians in developing countries. More recent consideration of weapons such as anti-personnel landmines and blinding laser weapons has resulted in recognition of the potential benefits of the CCW in protecting combatants, including those from militarily significant States, during military operations. Moreover experience in the past twenty years, exemplified by the anti-personnel landmines problem, is that “inhumane” weapons are readily available and used by developing countries and various non-State groups in internal armed conflict.

Clearly, the CCW needs strengthening through greater universality, measures to encourage and monitor adherence to its provisions (including compliance-monitoring procedures), extended scope (to include internal armed conflict); and coverage of other weapons by specific protocols. It is to be hoped that the States Parties to the CCW will look beyond the various proposals that have been tabled in the lead-up to the second Review Conference, and will adequately address the key issues of increased acceptance of and greater respect for/adherence to the provisions.

A number of States and the ICRC are currently urging other States to join the CCW and the Ottawa Treaty and offering to assist in their implementation. At the same time, a number of NGOs

are encouraging States to join the Ottawa Treaty, but are not actively promoting the CCW. There would clearly be a useful role for interested NGOs to play in encouraging other States to accept the CCW as well as the Ottawa Treaty. Recognition of the complementary nature of these instruments, despite the earlier disappointments over the CCW, would be a critical element in such an endeavour,⁴⁰ as well as an awareness of the benefits that would result from universal adherence to and respect for both treaties.

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⁴⁰ It is unfortunate that certain of the NGOs which are actively seeking increased adherence to the Ottawa Treaty appear to

have a disregard for, and in some cases perhaps even a sense of antagonism, towards the CCW.

Annex

Figure 1. MEMBERSHIP OF ARMS CONTROL TREATIES

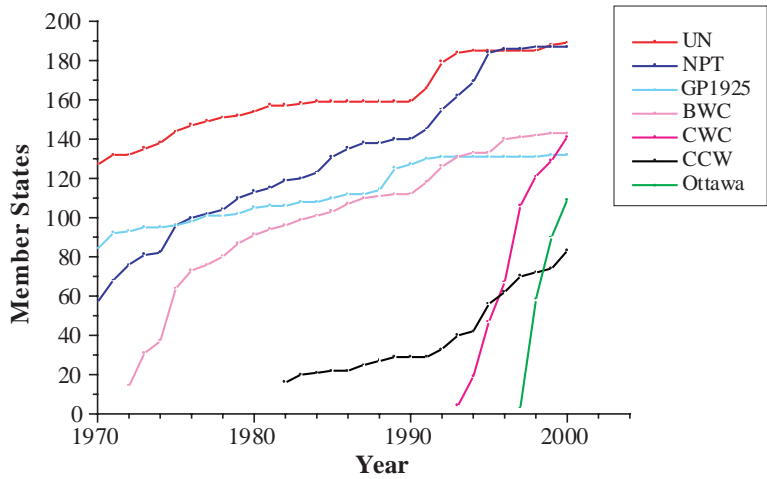
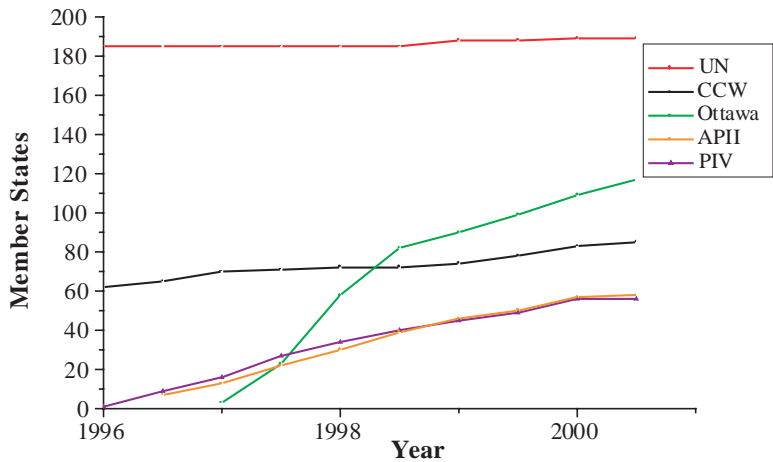


Figure 2 MEMBERSHIP OF CCW AND OTTAWA TREATIES



Résumé

La Convention de 1980 sur certaines armes classiques : un cadre utile malgré des déceptions initiales

par ROBERT J. MATHEWS

La Convention sur l'interdiction ou la limitation de l'emploi de certaines armes classiques qui peuvent être considérées comme produisant des effets traumatiques excessifs ou comme frappant sans discrimination (du 10 octobre 1980) a établi le cadre juridique pour non seulement interdire certaines armes particulièrement cruelles mais encore, et surtout, en limiter l'emploi. L'article retrace l'histoire de ce traité et rappelle l'évolution qu'il a connue depuis 1980 à travers, notamment, l'adoption d'un nouveau protocole sur les armes à laser aveuglantes et le renforcement du Protocole II (relatif aux mines terrestres). Toutefois, après l'interdiction complète des mines antipersonnel par le traité d'Ottawa en 1997, peut-on encore justifier l'approche choisie par la Convention de 1980, à savoir la limitation dans l'emploi ? L'auteur répond par l'affirmative.