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UN Conference Reviews Weapons Convention

by Fredrik A. Holst

Thirty years have passed since television reports on liberation wars, the Six Day War in the Middle East, and the Vietnam War in the Far East, began to bring the gruesome realities of warfare before the public eye. As public opinion regarding the changing means and methods of warfare grew, the International Committee of the Red Cross/Red Crescent (ICRC) received steadily increasing support for the revision of the 1949 Geneva Conventions, which had proven insufficient to protect the victims of modern warfare. In the United Nations General Assembly, concern also grew, and "Human Rights in Armed Conflicts" was established as a standing subject on the UN agenda.

The four-session 1974-77 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Diplomatic Conference) led to the enactment of two Additional Protocols (AP) to the 1949 Geneva Conventions: AP I, regarding the protection of victims of international armed conflicts, and AP II, regarding the protection of victims of non-international armed conflicts. Concerning weapons, AP I simply reiterated the basic rule of customary international law that conflicting parties are prohibited from using weapons, such as explosive ammunition and expanding "dum dum" bullets, which are capable of causing superfluous injury and unnecessary suffering to the victims. It also repeated the customary prohibition on

the use of imprecise weapons which may strike both civilians and combatants indiscriminately, thus violating the principle of distinction. No rules were made on specific weapons during the Diplomatic Conference. Rather, the issue of particularly inhumane conventional weapons, which should be distinguished from weapons of mass destruction such as atomic, biological, and chemical weapons (ABCs), was transferred to the UN after separate conferences with medical and military experts.

The Conventional Weapons Convention

Common efforts led by the ICRC and the UN resulted in a series of meetings, culminating in a 1979-80 UN summit in Geneva. In October 1980, a conference on particularly inhumane weapons unanimously adopted a General Treaty as well as three protocols: Protocol I on Prohibition of Non-Detectable Fragments, which have a wounding effect and which escape detection by x-rays; Protocol II on Prohibition or Restrictions on the Use of Mines, Booby-Traps and Other Devices; and Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons. After being opened for signature in April

reach a conclusion on other harmful weapons such as fuel air explosives, known as FAEs, and small caliber projectiles despite the fact that the harm such systems may cause was well established. Instead, these items were to be the subject of further research and discussion along with other so-called "future weapons" such as lasers. Second, they argue that since only some 50 states have ratified the Convention, it can not have been sufficiently imple-

The 1980 Weapons Convention relies extensively on regulating behavior, such as restrictions on mines and incendiary weapons, which have proven difficult to enforce, rather than prohibiting the use of certain weapons altogether.



Sign warns passersby of minefield in Iraqi Kurdistan.

Photo courtesy of Human Rights Watch

1981, the 1980 United Nations 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 entered into force in late 1983.

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Criticism of the Weapons Convention

Has the Convention been efficient? Many commentators say it has not. They have criticized the Convention for failing to achieve its aim of codifying and developing specific rules on the use of certain weapons so as to give concrete expression in treaty form to customary principles of international humanitarian law. First, the critics point out that the Conference failed to

mented. Third, they criticize the Convention for its failure to provide protection for combatants. The Convention relies extensively on regulating behavior, such as "restrictions" on mines and incendiary weapons, which have proven difficult to enforce, rather than prohibiting the use of certain weapons altogether. The Convention also does not cover non-international armed conflicts, which constitute the majority of conflicts today. In addition, it also lacks verification and compliance mechanisms. As the ICRC has

Some reservations in the protocols have made them "cats without claws."

pointed out, no parallel measures have been taken in the disarmament context, although they are proposed in the Convention's preamble. Finally, some reservations in the protocols have made them "cats without claws." One provision, for example, requires that "effective warning" be given when

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remotely delivered mines, such as those delivered by planes or artillery, are deployed in a manner which may affect the civilian population. The provision is rendered toothless, however, by the inclusion of the phrase "*unless circumstances do not permit.*"

The Review Conference

The Review Conference of the States Party to the Convention (Review Conference) was held in Vienna in September-October 1995. Despite being in the shadow of the ongoing conflict in the Balkans and the fact that it was taking place in the wake of the UN Fourth World Conference on Women, the conference received some attention before it began. Little has been heard since then, however, and no final document has been presented. Swedish Ambassador Johan Molander, President of the Review Conference, explains that this is because the Conference has not yet finished its work. The main difficulty lies in reaching an agreement on the real substance of the new provisions in the second protocol on mines. This, along with issues such as scope and implementation, will be discussed when the Conference resumes its work at subsequent sessions in Geneva this winter and spring.

One crucial agreement was reached during the Vienna session. With consensus, the participants agreed to include in the Convention a new Protocol on Blinding Laser Weapons. The first article of this new Protocol IV initially declares, "It is prohibited to employ laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unen-

Efforts to ban anti-personnel laser weapons have been taking place since the mid-1980s when Sweden, Switzerland, and later the ICRC actively began to work toward a ban.

hanced vision, that is to the naked eye or to the eye with corrective eyesight devices. . . ." Over the last few decades, various countries have been conducting research in order to make either a rifle-like weapon or a device mountable

on rifles which would emit a non-lethal but dazzling laser beam. Efforts to ban anti-personnel laser weapons (which should be distinguished from other military lasers) have been taking place since the mid-1980s when mainly Sweden, but also Switzerland, and later the ICRC actively began to work toward a ban. Since many experts concluded that it is impossible only to dazzle or flashblind temporarily, i.e. merely to render the adversary *hors de combat*, opponents of anti-personnel laser weapons consider their use as a method of warfare as being the cause of superfluous injury and/or unnecessary suffering. Thus, their use would violate customary international law.

This interpretation was not supported by everyone, especially not by the countries that worked on the development of such weapons. These states claimed that blinding was not worse than rendering death. Efforts to build a consensus for a ban therefore continued. In addition, since it is relatively accepted that, for a certain weapon to be prohibited *per se*, as a means of warfare, such a prohibition must be codified, attempts to enact a ban also con-

It is very rare that a weapon is prohibited before its horrors have been realized on the battlefield.

tinued. Parallel to meetings prior to the Review Conference, reports from the Human Rights Watch Arms Project claimed that the development of battlefield laser weapons had reached the point where the U.S. and China were on the verge of deployment. Allegedly, U.S. prototypes were deployed, but not activated, both in Saudi Arabia during the Gulf War and in Somalia. A new Pentagon policy presented early in the fall of 1995 declares, however, that it is not in the spirit of American defense policy to intentionally blind permanently, and that weapons which accomplish such blinding should not be promoted. The U.S., therefore, announced at the time of the Review Conference that it would cancel delivery of the most developed blinding laser weapon, the Laser Countermeasure System.

Despite reports that the Chinese have been developing a laser gun, the

new protocol is an important step, and possibly even a major historical decision. It is very rare that a weapon is

The willingness of states to use humanitarian law to prevent unwanted development and deployment of blinding laser weapons could signify a forward-looking trend toward protecting combatants as well as others.

prohibited before its horrors have been realized on the battlefield. The ban on exploding bullets and on non-detectable fragments are two notable exceptions. The ban on blinding laser weapons is, therefore, in very select company.

Those involved in the process

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Haiti Report Available

The Center for Human Rights and Humanitarian Law has developed an analysis of human rights obligations established in the Haitian Constitution and international human rights treaties ratified by Haiti. The paper, prepared in anticipation of a human rights training program for the newly elected Parliament of Haiti, also addresses human rights concerns in the Haitian context, including: freedom from torture, personal liberty, due process of law, effective remedy, participation in government, equality, State responsibility during states of emergency, and amnesty laws. In addition, the paper suggests constitutional amendments and new legislation to bring domestic law into compliance with international obligations.

This paper, the result of a USAID grant received by the Parliamentary Human Rights Foundation, is available at a cost of \$5.00 (22 pages). For further information, please contact the Center for Human Rights and Humanitarian Law.

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believe that the ban is a decision of common good. The willingness of states to use humanitarian law to prevent unwanted development and deployment of blinding laser weapons

If development and mass production are hindered, there is less risk that laser weapons will proliferate, since there is less risk that they would be small and cheaper to manufacture.

could signify a forward-looking trend toward protecting combatants as well as others. The laser beam is indeed targeting, even at long distances, and could surely be swept over bigger open areas. The threat from laser weaponry, however, is not necessarily similar to that posed by area bombardments, where collateral harm to civilians is a very real danger. Along with use in combat, another threat from lasers is the risk that such weapons may fall into the hands of extremists, terrorists, or madmen. If development and mass production are hindered, there is less risk that laser weapons will proliferate, since there is less risk that they would be small and cheaper to manufacture.

The Review Conference Resumes

Several issues remain to be discussed as the Review Conference resumes. Ambassador Molander points out two main controversies to resolve regarding anti-personnel mines. First, the parties in Vienna decided that there is a need to forge a lasting agreement concerning the detectability of mines. If prohibition is not realistic,

If prohibition is not realistic, mines must be made more easily detectable.

mines must be made more easily detectable. The Vienna sessions reached an initial but non-sanctioned agreement that mines be fitted with non-removable pieces of metal which emit a magnetic pulse in order to facili-

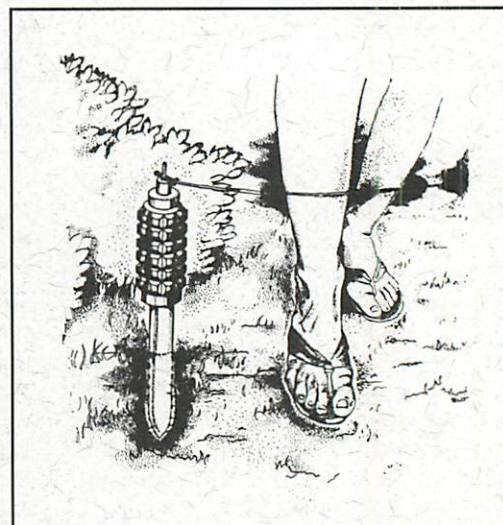
tate detection. One remaining issue is the length of time it may take to modify or exchange the mines. A solution must be found, according to Ambassador Molander, who also emphasizes the importance of banning producing countries from transferring mines.

The second main issue is what should be required of the contracting countries regarding unsupervised mines. Such mines can be delivered either remotely or tactically during unexpected combat and would therefore not be registered in records as being "marked and mapped." To limit the collateral effects of such deployments, proposals have been made not only to forbid them, but also to force states to provide mines with self-destruction and/or self-deactivation mechanisms which would cause a mine to self-destruct in 30 days and would also include a back-up mechanism which would deactivate the mine in 180 days. Despite the relative modesty of these modifications, they are of utmost priority. To deal with the issue of implementations, Ambassador Molander suggests frequent meetings on the protocols, as opposed to fact-finding missions. Another related matter is transparency, i.e., how the parties to the protocol will show that they are adhering to it. Transparency can be achieved, first, through disclosure reports, which may focus on the amount of mines in stock or the education of forces, and second, by offering opportunities to control this disclosure. Reaching an agreement on transparency also would help to address criticisms regarding verification mechanisms.

The eternal question of the scope of the agreement still has not been resolved, and will be addressed again during the spring sessions of the Review Conference. The most ambitious resolution would be to extend the General Treaty to include internal conflicts, so that when additional protocols are negotiated in the future, the issue of scope would not have to be readdressed. However, if the scope issue is resolved to include non-international conflicts as well, it seems likely that it will be included as an additional article in the mine protocol. If so, it is also agreed that the Blinding Laser Weapons Protocol will be worded similarly in order to widen its scope. Otherwise, the protocol only awaits ratifica-

tion. Since 135 nations urged adherence at an ICRC conference held in December, this hopefully will not be difficult.

Nations have been reluctant thus far to ratify the Convention and the original protocols. The Vienna Review Conference, however, offers support for the proposition that many more countries are willing to adhere to them by formal means. Different views concerning controversial issues such as mines continue to result in barriers to final agreements. Dynamic progress makes some countries more willing to choose radical approaches, even to the point of calling for a total ban and unilateral abandonment of the use of mines, as do Norway, Belgium, and Switzerland.



Operation of a trip mine.

Other countries are less radical, and a more realistic position must, therefore, be taken. Compromises, however, such as allowing for longer than necessary transition periods for modifications, would only extend the suffering caused by the use of mines. Political considerations and the military industrial complex often interfere with progress made in diplomatic sessions. To date, agreements regarding mines have proven harder to reach than agreements on ABC weapons. One may hope that sessions during the spring will lead to an increasingly broad, binding and realistic agreement on mines, but, as Ambassador Molander states, "Nothing is agreed, until everything is agreed." ☸

Photo courtesy of Human Rights Watch