

**GROUP OF GOVERNMENTAL EXPERTS OF THE
STATES PARTIES TO THE CONVENTION ON
PROHIBITIONS OR RESTRICTIONS ON THE
USE OF CERTAIN CONVENTIONAL WEAPONS
WHICH MAY BE DEEMED TO BE EXCESSIVELY
INJURIOUS OR TO HAVE INDISCRIMINATE
EFFECTS**

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COMPLIANCE IN THE CCW CONTEXT

Presented by the Swedish delegation

Introduction:

1. As other delegations are aware, working paper no. 8 (CCW/CONF. II/PC.3/WP.8) presented in September 2001 by the European Union concerned a mechanism for compliance at two levels, the first of which could comprise consultation and dialogue and a second level the establishment of facts. This paper is presented as food for thought for further discussions and deals with the second level.

2. WP 8 mentioned two possible building blocks: I - the Commission established under article 90 (first additional protocol to the Geneva Conventions) and II - a proposal put forward in 1980 in the context of CCW negotiations.

I. The Commission established under article 90 (first additional protocol to the Geneva Conventions)

3. The Commission established under Article 90 is competent to, *inter alia*, inquire into any facts alleged to be a grave breach as defined in the Conventions and the Protocol or other serious violations of the Conventions or of the Protocol (Geneva Conventions and first additional protocol). In other situations, the Commission shall institute an inquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned. If interpreted widely, the mandate could be seen to cover inquiries regarding also the CCW regime. It should be noted that the art. 90 already has offered its *bona officia* also in other situations of armed conflict.

4. A framework for a compliance mechanism could connect the existing Article 90 Commission to the CCW regime through an amendment of the CCW convention or by creating a mechanism like the Commission within the CCW (perhaps with the same members, or sharing of facilities, secretariat). Such a link from CCW to the Commission would not exclude other specific requirements for the Commission's mandate and for states' responsibilities under the CCW regime. The Commission provides for a flexible mechanism. This proposal would have to take into account the

different groups of States which are parties to the two instruments (i.e. the CCW and Additional protocol I respectively). The proposal would also benefit from further analysis of the legal possibilities and consequences of such a construction, as well as exploratory contacts with the Commission and the states (62) which have accepted its competence.

II. A proposal put forward in 1980 in the context of CCW negotiations

5. The 1980 proposal to the UN General Assembly was presented by a group of States, now Parties to the CCW, in the context of ongoing CCW negotiations. It also provides for a flexible alternative in which a Consultative Committee of experts is set up with a simple mandate. All state parties shall communicate the name of an expert to the Depositary. The Consultative Committee's competence involves inquiry into facts, reports to the Depositary and the parties to the conflict and facilitation of compliance through good offices. State parties would undertake to consult and cooperate with each other with the aim of conciliation as well as with the Committee in the accomplishment of its work. To enable different kinds of expertise to be represented, both permanent and ad hoc members could be appointed. When in action, the Committee could consist of experts from both "lists" depending on the particular mission. This option would also benefit from further discussions on possible amendments that could enhance the mechanism.

III. A future mechanism

6. A mechanism on compliance should be simple and effective. It is suggested that it should also enjoy a degree of independence. Such a mechanism could therefore include a link to the UN system allowing the UNSG to express an opinion on the adequacy/relevance of any inquiry instituted by the mechanism or by a party to a conflict and also the mechanism to report its findings back to the UNSG¹.

7. It is clear that the issue of compliance, and the different proposals already put forward, need further consideration by states parties to the CCW. These deliberations should take the form states parties deem appropriate.

¹ See also UN res. 42/37 C; 44/115 B and 45/57 C and report A/44/561.