

**AMENDMENT, ADOPTED AT GENEVA ON 21 DECEMBER 2001, 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 OF 10 OCTOBER 1980**

Documents tabled on 18 June 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**

Amendment, adopted at Geneva on 21 December 2001, 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 of 10 October 1980

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that Australia ratify an Amendment to Article 1 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 of 10 October 1980 (“the Convention”), which was adopted by the States Parties to the Convention in December 2001. Ratification of this amendment would modify our obligations under the Convention.

Date of proposed binding treaty action

2. The amendment will enter into force six months after the twentieth state has deposited its instrument of ratification, acceptance, approval or accession. If Australia is not among these first twenty states, the amendment shall enter into force for Australia six months after notifying its consent to be bound.

3. It is proposed that Australia lodge its instrument of ratification in September 2002, or as soon as practicable thereafter, upon the completion of tabling in Parliament and consideration by JSCOT.

Date of tabling of the proposed treaty action

4. 18 June 2002

Summary of the purpose of the proposed treaty action and why it is in the national interest

5. The proposed amendment will alter Article 1 of the Convention so that the provisions of the Convention, and each of its existing annexed Protocols, will apply to non-international as well as international armed conflict. This amendment will restrict the use of a range of weapons (those creating non-detectable fragments, incendiary weapons and blinding laser weapons) in armed conflicts occurring within the territory of a single State Party. Support for this amendment is consistent with Australia’s longstanding commitment to reducing the humanitarian impact of armed conflict, particularly on civilian populations.

Reasons for Australia to take the proposed treaty action

6. The Convention, also frequently referred to as the Inhumane Weapons Convention, is an important instrument of international humanitarian law. It consists of an umbrella Convention and four annexed Protocols placing prohibitions and/or restrictions on the use of specific categories of conventional weapons, considered to be indiscriminate and to inflict superfluous injury or unnecessary suffering on both combatants and civilians.
7. The proposed amendment attracted overwhelming support from States Parties to the Convention, and was borne of a general recognition that a significant proportion of civilian casualties result from internal armed conflicts. There was also widespread support among non-government organisations, such as the International Committee of the Red Cross (ICRC) which called on the Review Conference to agree to such an amendment.
8. Australia's delegation to the Conference of States Parties, which included officials from DFAT and Defence as well as a representative of the Australian Red Cross, strongly supported the proposed amendment and participated actively in its formulation. Our support for this amendment is fully consistent with Australia's commitment to limiting the impact of armed conflict on civilian populations, as illustrated by Australia's leading role in global mine action programs and support for the Ottawa Convention on anti-personnel mines.
9. Amended Protocol II of the Convention, dealing with Mines, Booby-traps and Other Devices, incorporated this extended scope when it was agreed at the First Review Conference held in 1996. It is logical to extend this expanded scope to the umbrella Convention and the remaining Protocols (I, original Protocol II, III and IV). As a High Contracting Party to Amended Protocol II Australia has already committed itself to applying the provisions of this Protocol in non-international armed conflict and there appears no valid reason why the remaining Protocols should be treated differently.
10. There are currently 88 States Parties to the Convention, though the number of countries which have acceded to the annexed Protocols varies from Protocol to Protocol. Australia has worked to encourage all countries to accede to the Convention and each of its Protocols. In the lead up to the 2001 Review Conference, Mr Downer wrote to the Foreign Ministers of 104 non-States Parties urging their early accession to the Convention and participation in the Review Conference.
11. While there is a perception among some countries that the Convention is of limited relevance following the entry into force of the Ottawa Convention, the overlap between these two treaties is limited to the treatment of anti-personnel mines. The Second Review Conference confirmed that the overwhelming majority of States Parties see the Convention as the appropriate forum in which to consider measures to address the indiscriminate effect of other categories of conventional weapons on civilians. This was highlighted by the agreement of the Conference to establish a Group of Experts to look at whether there was a need for a new protocol to regulate the use of weapons, such as cluster bomb units, which result in unexploded ordnance.

Obligations

12. In ratifying this amendment Australia is obliged to ensure that the various prohibitions and restrictions set out in the Convention and its annexed Protocols will apply to any armed conflicts of a non-international character occurring in Australian territory. The term “non-international armed conflicts” here does not include instances of internal disturbance and tension, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature within a country. Thus the provisions of the Convention would not apply to Australian police undertaking normal law enforcement duties (though it should be noted that none of the weapons presently covered by the Convention and Protocols are employed by the Federal, State or Territory police forces in any case).

13. The specific provisions which apply to Australia, and which are affected by this amendment, are those contained in Protocols I, III and IV. These Protocols place certain prohibitions and/or restrictions on the use of the following categories of weapons:

- Weapons which result in non-detectable fragments (Protocol I)
 - prohibits any weapon whose primary effect is to injure by fragments, if those fragments can not be detected in the human body by x-ray;
- Incendiary Weapons (Protocol III)
 - prohibits targeting civilians;
 - prohibits air attacks targeting military objectives located within concentrations of civilians; and restricts non-air attacks on the same, to instances where the military target is clearly separate, and all precautions are taken to prevent civilian losses;
 - prohibits targeting forests and plant cover unless such natural elements are being used for the cover, concealment or camouflage of, or are themselves, military objectives;
- Blinding Laser Weapons (Protocol IV)
 - prohibits using any weapon specifically designed to cause permanent blindness;
 - in using laser weapons, Parties must take all feasible precautions against causing permanent blindness, including training of their armed forces.

Implementation

14. The amendment to the Convention will not require any additional implementation measures in Australian law or practice. The Australian Defence Force (ADF) already implements the provisions of the Convention in relation to all its activities (within and outside Australia). Before any weapon may be employed by the ADF, its use must be regulated through ADF doctrine, development of which is informed by Australia’s treaty obligations. The ADF has existing doctrine which prohibits the use of weapons which cause non-detectable fragments, incendiary weapons, and other weapons which cause unnecessary suffering.

15. In line with this doctrine, the ADF does not currently have any of the weapons restricted by Protocols I, III and IV (weapons which result in non-detectable fragments, incendiary weapons or blinding laser weapons) and will not acquire them.

Costs

16. Ratification of the proposed amendment will not involve any additional financial cost for Australia.

17. The expansion of scope does not necessitate additional meetings of States Parties, and consequently will not impact on Australia's contribution to the cost of holding regular meetings related to the Convention. The amendment will not require additional reporting or administrative action on the part of the Government.

18. Ratification of this amendment will not require the Australian Defence Force to acquire new weapons or replace any existing weapons.

Consultation

19. Given the nature of the Convention and the possibility that amendments to it may have impacted on Australian Defence Force capability, the Department of Defence was closely involved in the development of Australia's position on the amendment. Representatives from the Department of Defence (The Defence Legal Service, and Strategic and International Policy Division) joined the Australian delegation at the Review Conference, where it was adopted. A legal representative from Defence attended each of the preparatory meetings for the Conference held during 2000 and 2001.

20. To ensure that the views of those in the non-government sector were taken account of, we held a meeting of interested NGOs in mid-2001. These consultations revealed strong support for this amendment. Prof. Timothy McCormack, Professor in International Humanitarian Law at the University of Melbourne and Vice President of Australian Red Cross, joined the Australian delegation to the Review Conference as NGO Adviser.

21. The proposed treaty action was notified to the States and Territories through the treaties schedule of the Commonwealth-States-Territories Standing Committee on Treaties (SCOT).

Regulation Impact Statement

22. No Regulation Impact Statement is required for the proposed treaty action.

Future treaty action: amendments, Protocols, annexes or other legally binding instruments

23. The Convention itself does allow for the creation of further annexed protocols to deal with categories of weapons not already covered. The 2001 Review Conference agreed to establish a Group of Experts to consider whether there is a need for a new protocol to deal with the so-called 'explosive remnants of war', including unexploded cluster bomblets. This group will report on its findings to a meeting of States Parties to be held in December 2002.

24. The expanded scope of the amendment will not automatically apply to future protocols which may be annexed to the Convention. When formulating the text of any future protocols, States Parties will have to decide whether to apply, exclude or modify their application to non-international armed conflicts.

25. States Parties must give their consent to be bound by any amendments to the Convention or its annexed Protocols, or to any new protocols, before these will enter into force for the State Party concerned.

Withdrawal or denunciation

26. Article 9 of the Convention provides that as a High Contracting Party, Australia can denounce the Convention or any of its annexed Protocols by so notifying the Depositary, the Secretary-General of the United Nations. Denunciation shall occur one year after receipt of the notification of denunciation by the depositary.

Contact details

Conventional and Nuclear Disarmament Section
International Security Division
Department of Foreign Affairs and Trade