

Joint Standing Committee On Treaties

**RESTRICTIONS ON THE USE OF BLINDING
LASER WEAPONS AND LANDMINES**

GOVERNMENT RESPONSE

AUGUST 1997

CANBERRA

Recommendation I

The Australian Government take every opportunity during periodic reviews to ensure that the weaknesses in Protocol IV are corrected, with a view to ensuring it becomes more effective in preventing the use of blinding laser weapons (Paragraph 2.36).

Government response

The Australian Government fully supports the early ratification of Protocol IV of the Inhumane Weapons Convention. Australia expects to ratify shortly and should be among the first countries to do so. Upon ratification, the Government also intends to declare its understanding that the provisions of Protocol IV shall apply in all circumstances.

Blinding laser weapons are still in the developmental phase and to date there is no record of their use in conflicts. In prohibiting a yet-to-be-employed weapon, Protocol IV deals with relatively unexplored territory and is widely recognised as a major achievement in international humanitarian law.

One witness to the Joint Standing Committee on Treaties expressed concern that Protocol IV prohibits only the use and transfer of blinding laser weapons, not their production and stockpiling. States parties at the Review Conference, however, saw the use and transfer prohibition as an exceptionally progressive step. Issues now perceived by some as weaknesses did not arise in the initial discussions because they were not seen as significant, or were discussed and agreed upon to the extent possible within the confines of the international treaty negotiating process. The states parties to the Review Conference were not able to agree on extending the scope of prohibitions further, but given the fact that there was no evidence of any previous use of blinding laser weapons, the states parties generally agreed that Article I of Protocol IV provided sufficient surety. Should states parties to future review conferences indicate a willingness to extend prohibitions beyond use and transfer, the Australian Government would have no objections to the inclusions of such measures in the Protocol.

Another weakness suggested was the absence of verification and compliance measures. Again, it should be recalled that Protocol IV deals with a potentiality, rather than an existing humanitarian problem. There is no evidence of any actual use of blinding laser weapons. Against this background, constructing and implementing arduous verification mechanisms was not regarded as a vital element of Protocol IV. Should future developments indicate a need for verification and compliance measures, the Australian Government would consider the options accordingly.

The definition of blindness in Article I has also been identified by some as a weakness in Protocol IV. In the absence of a standard international definition, states parties at the Review Conference agreed after extensive negotiations and compromise that the wording in Article I best reflected the common, though differently defined, international understanding of permanent blindness. The Australian Government considers this definition to be appropriate for the purposes of Protocol IV.

Although not alluded to in the Committee's final report, the Government is aware that some concern has been expressed that a weakness in Protocol IV exists because its provisions cover only weapons *designed* to cause permanent blindness. Laser technology can also be used in weapon range-finding or guidance systems. However this laser technology is designed not to blind but to increase the accuracy of weapons by measuring the range to specific military targets. Such systems are unsuitable for use as blinding weapons because of characteristics

such as the laser's specific beam width and pulse rates. Because laser guidance systems increase weapon accuracy, they actually reduce the likelihood of death or injury occurring away from the specific target. Thus, the use of effective targeting systems should, in fact, limit the incidence of collateral injury to civilians. Further, efforts are under way to increase the safety of these systems. For example, the Defence Department's Defence Science and Technology Organisation has a program aimed at making laser range-finders safer through the development and use of lasers which can be operated in the eyesafe region of the electromagnetic spectrum.

Range-finding systems using lasers as guidance aids need to be used with due care, as do all civilian technologies utilising lasers. The undoubted advantages and positive applications of laser technology in all aspects of life must be weighed against the potential for damage caused by their misuse or accidental use. ADF personnel are instructed in the safe use of laser technology as is required by Article 2 of Protocol IV.

There are sound reasons for not bringing accidental effects into the purview of Protocol IV negotiations. The Australian Government strongly believes that their inclusion could lead to an unacceptable risk that in wartime, Australian servicemen and women could become the subject of criminal charges for the unintentional effects of their weapons. In this situation, the servicemen and women would be treated as war criminals rather than prisoners of war.

In the face of the global community's overwhelming support for the achievements of Protocol IV and the absence of any consensus on a need to tighten its provisions, the Australian Government considers the text to be essentially adequate in dealing with the limited problem at hand. However, should persuasive evidence of any substantive weaknesses emerge, the Government will, through official review processes including the Review Conference in 2001, explore options for ensuring that effect is given to the intent behind Protocol IV.

Recommendation 2

The Australian Government take advantage of every opportunity, especially in South East Asian and Pacific regions, to encourage other nations to sign the Inhumane Weapons Convention and all of its Protocols (Paragraph 3.130).

Government Response

As an interim practical step on the road to achieving a total global ban on anti-personnel landmines, Australia supports the widest possible adherence to the Inhumane Weapons Convention - particularly in our region - and progressive strengthening of Protocol II to the Convention dealing with mines, booby traps and other devices.

Although defective in a number of respects, revised Protocol II of the Convention provides a number of enhanced protections for civilians pending the achievement of a total ban on anti-personnel landmines. The Government will continue to encourage other countries, in particular in South East Asia and the Pacific, to accede to the Inhumane Weapons Convention and its Protocols and, in the case of existing states party, to ratify revised Protocol II and additional Protocol IV dealing with blinding laser weapons as soon as possible. Australia supported the adoption by the 51st United Nations General Assembly on 10 December 1996 of consensus resolution 51/50 which called for universal adherence to the Convention and its Protocols.

In addition to earlier specific demarches by Australian overseas missions, we continue systematically to promote adherence to the IWC and its Protocols among our regional partners, notably through contacts at ministerial level, regular officials-level bilateral dialogue on security issues, and in the context of regional security institutional mechanisms, notably the ASEAN Regional Forum.

Australia's representations will continue to focus on urging other states to move quickly on ratification of amended Protocol II covering landmines in order to bring the amended Protocol into force as soon as possible (this will occur six months after the twentieth state party notifies its consent to be bound by it) and will encourage regional states in particular to adapt their landmines to the new technical requirements quickly rather than take advantage of the nine year deferral option accepted at the 1996 Inhumane Weapons Convention review conference.

In addition to this ongoing activity, the Government will continue to make full use of the two new mechanisms of the annual meetings of States Parties to the Convention and the second review conference of the Convention in 2001, not only to promote widest possible adherence to the Convention (and in particular its amended Protocol II concerning landmines) but also to promote the concept of a total ban.

Recommendation 3

Australia destroy its stockpile of anti-personnel landmines, except for a small number to be retained for training purposes to ensure that the Australian Defence Force retains its skills, and

Australia prepare for consideration at the December 1997 meeting in Canada a proposal for the creation of an agreed international timetable for the destruction of anti-personnel landmines of all nations (Paragraph 3.137).

Government Response

The issue of the retention of a national stockpile of anti-personnel landmines is not germane to the Australian Government's intention to ratify revised Protocol II of the Inhumane Weapons Convention (IWC). The anti-personnel landmines contained in the Australian Defence Force stockpile comply with the restrictions of revised Protocol II, although the M14 mines would need a minor modification if they were ever to be used. There is no requirement to modify these mines before use.

In a joint policy statement on 15 April 1996, the Minister for Defence, the Hon. Ian McLachlan AO MP, and the Minister for Foreign Affairs, the Hon. Alexander Downer MP, announced a unilateral suspension on the operational use of anti-personnel landmines by the Australian Defence Force, a measure which came into effect immediately. Ministers noted that Australia did not produce and would not export landmines and that Australian Defence Force stocks would be used for training and research purposes only. The suspension would only be reviewed in the case of a substantial deterioration in our strategic circumstances, in which Australia's security was under threat and the denial of an anti-personnel landmines capability to the Australian Defence Force would result in additional Australian casualties and damage to vital infrastructure. The Australian Government is retaining a national anti-personnel landmines stockpile to provide an operational defensive capability in the event of substantial deterioration in Australia's strategic circumstances.

The recommendation to "prepare for consideration at the December 1997 meeting in Canada a proposal for the creation of an agreed international timetable for the destruction of

anti-personnel landmines of all nations" will need to be examined in the context of developments leading up to that Conference.

Recommendation 4

The Department of Defence assume full responsibility for humanitarian mine clearing operations in countries which need assistance and, in order to increase its humanitarian expertise and to instill and retain mine clearing knowledge and skills within the Australian Defence Force, ensure appropriate countries are aware of Australia's continuing interest in this work (Paragraph 3.140).

Government Response

The Australian Government considers that the goal of quality assistance to the victims of landmines will most effectively be met by ensuring that the most appropriately qualified and oriented agencies deliver the product of their professional expertise. The Government believes the Australian Agency for International Development (AusAID) remains the appropriate agency for the coordination of Australia's international humanitarian mine clearance efforts.

AusAID's core responsibility is the prioritisation, coordination and delivery of effective and efficient humanitarian and development assistance to developing countries. Mine clearance today occurs in the context of the broader development of countries. Technical clearance expertise is only one aspect of the broader rehabilitation efforts required to restore social stability and economic livelihood. Complementary programs for mine awareness education and injury rehabilitation are essential. Also, many de-mining programs are becoming integrated within counterpart Government structures in developing countries. AusAID is able to provide a broad developmental approach which facilitates the integration of de-mining activities with political and economic processes.

The Defence Organisation's core responsibility is to provide for the defence of Australia. Its program and budget priorities must be driven by, and measured against, this core duty.

The Australian Defence Force has identified mine clearance as a skill which it must maintain. Defence recognises the training opportunities provided by international humanitarian relief operations such as de-mining and the contribution of such programs to regional security and stability. The Australian Defence Force will, therefore, continue to provide quality personnel to international de-mining activities as funding and training priorities permit.

Recommendation 5

The Department of Defence examine ways by which it can encourage researchers into and designers of de-mining technology, with a view to assisting financially in the development of safer, faster and more efficient ways of reducing the number of anti-personnel landmines throughout the world. (Paragraph 3.144).

Government Response

The Defence Organisation is well aware of the global humanitarian crisis caused by the indiscriminate use of anti-personnel landmines. The Australian Defence Force has made a significant contribution to international de-mining programs in Afghanistan, Cambodia and Mozambique and recognises the importance of using the best available de-mining technology.

The Defence Science and Technology Organisation (DSTO) is undertaking research into anti-personnel landmines countermeasures and this involves the development of improved de-mining equipment. In part, DSTO has developed, to concept demonstrator level, a hybrid detector that incorporates the new landmines detector produced by the Australian manufacturer Minelab Electronics Pty Ltd, and a ground probing radar system developed by CSIRO. The Minelab landmines detector is capable of overcoming the interference caused by most mineralised soils (a particular problem in Cambodia), and appears to be superior to the current in-service equipment.

DSTO's charter does not extend to the development of equipment and technology to the production stage. DSTO has and will continue to provide testing and evaluation of any de-mining equipment developed in Australia.

Recommendation 6

The Australian Government continues its international efforts to achieve a total global ban on anti-personnel landmines as soon as practicable (Paragraph 3.144).

Government Response

Australia is committed to working for a global ban on the production, stockpiling, use and transfer of anti-personnel landmines. In international and regional forums, and through bilateral dialogue, the Government will continue to add its weight to the growing international movement in favour of eliminating anti-personnel landmines as a weapon of war. Australia took part in the international conference of pro-ban states and non-government groups in Ottawa in October 1996 which looked at future strategies for achieving a ban. Australia also co-sponsored the historic resolution 51/45S adopted at the 51st session of the United Nations General Assembly on 10 December 1996 in which the Assembly for the first time urged the vigorous pursuit and early conclusion of negotiations for a global ban on anti-personnel landmines. Addressing the Conference on Disarmament in Geneva on 30 January 1997, Mr Downer also issued a forceful call for the Conference to deliver a treaty banning anti-personnel landmines.

Australia will continue to consult widely with other countries on the best way of achieving an effective global ban on anti-personnel landmines. We have been and will continue to be particularly active in support of the earliest possible commencement of negotiations in the Conference on Disarmament which we see as the most appropriate approach and the only one likely to take us towards the goal of a truly global, effective ban involving all key countries. We will continue to urge those with in principle objections to an anti-personnel landmines ban - whether out of self defence concerns or because of particular national security situations - not to block work on a ban in the Conference on Disarmament but to participate in discussions with an open mind and explore, as in any negotiation, how their interests might be accommodated within an international arms control instrument. At the same time, Australia has continued to participate in post-Ottawa Conference follow-up meetings in 1997. Our aim is to achieve an effective global landmines ban treaty.