

## **An amendment to the convention on the prohibition and restriction of certain conventional weapons**

### **Background<sup>1</sup>**

- 6.1 The *Convention on the Prohibition of Certain Conventional Weapons which may be deemed Excessively Injurious or to have Indiscriminate Effects* (the Convention) consists of an umbrella convention and four protocols placing prohibitions and/or restrictions on the use of specific categories of conventional weapons. Weapons belonging to these categories are considered to cause indiscriminate and superfluous injury to combatants and civilians. Australia ratified the Convention in September 1983.
- 6.2 The protocols that apply to Australia and which are affected by the proposed amendment restrict the use of weapons that create non-detectable fragments (Protocol I), incendiary weapons (Protocol III) and blinding laser weapons (Protocol IV) in international armed conflicts. Australia has already ratified an amended Protocol II which obligates parties to restrict their use of landmines, booby traps and like devices in non-international as well as international conflicts.
- 6.3 The amendment alters Article 1 of the Convention so that it and its existing protocols will apply to non-international as well as international
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<sup>1</sup> Unless otherwise specified the material in this and the following section was drawn from the National Interest Analysis (NIA) for the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons*. The full text of the NIA can be found at the Committee's website on [www.aph.gov.au/house/committee/jsct](http://www.aph.gov.au/house/committee/jsct).

armed conflicts. The term 'non-international conflicts' 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 Convention provisions would not apply to Australian police undertaking normal law enforcement duties.

- 6.4 As of 20 June 2002 the amendment had not entered into force and none of the 89 countries that have ratified the Convention had ratified the amendment.

## **Proposed treaty action**

- 6.5 Implementing the amendment will not require any additional 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 of Australia).
- 6.6 None of the weapons presently covered by the Convention and protocols are employed by Commonwealth, State or Territory police forces.

## **Evidence presented and issues arising**

- 6.7 The Committee inquired as to why no other states had ratified the amendment to the Convention and heard evidence that as the amendment had only been agreed upon in December 2001, countries would only now be going through the machinery required to deposit instruments of ratification.<sup>2</sup> Further, the amendment received very broad support from those states attending the Second Review Conference in December 2001 at Geneva at which the amendment was adopted.<sup>3</sup>
- 6.8 In a supplementary submission from the Department of Foreign Affairs and Trade received after the hearing, it was confirmed that Canada and the United Kingdom had now ratified the Amendment.<sup>4</sup>
- 6.9 The NIA referred to a meeting of interested non-government organisations held in mid 2001 that ensured their views were taken into account. These consultations revealed strong support for this amendment.

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2 Peter Shannon, *Transcript of Evidence*, 12 July 2002, p. 73.

3 Shennia Spllane, *Transcript of Evidence*, 12 July 2002, p. 73.

4 Todd Mercer, *Submission No. 9.1*, p. 1.

The Australian delegation at the Review Conference was joined by Professor Timothy McCormack, Professor in International Humanitarian Law at the University of Melbourne and Vice President of the Australian Red Cross. The strong support for the amendment in the non-government sector was underlined in a submission made by the Uniting Church in Australia.<sup>5</sup>

- 6.10 The Committee understands that the ADF neither holds nor has any plans to acquire the types of weapons that are specified by the protocols of the Convention. However, it inquired whether or not the ADF purchased weapons or munitions from companies or countries that produce these types of weapons.
- 6.11 None of the government witnesses could provide a categorical affirmation that the ADF does not acquire weapons or munitions from companies or countries that produce the types of weapons banned under the protocols. In response to its query the Committee received information via DFAT from the Department of Defence that:

The Australian Defence Organisation does not enquire as part of its usual procurement policy into the other products manufactured by its weapons or ordinance suppliers.<sup>6</sup>

## Conclusions and recommendations

- 6.12 The Committee is satisfied that Australian law and practice both lie within the terms of the Convention and its protocols. It welcomes Australia's continued commitment and preparedness to play an active role in developing institutions that will protect civilians and combatants from unnecessary suffering.

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5 Rev David Pargeter, Uniting Church in Australia, *Submission No. 4*, p. 1.

6 Todd Mercer, Department of Foreign Affairs and Trade, *Submission No. 9*, p. 1.

6.13 Therefore the committee makes the following recommendation:

**Recommendation 5**

6.14 **The Committee supports the Amendment 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* and recommends that binding treaty action be taken.**