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Submission relating to the Prohibition or Restriction of Certain Conventional Weapons Bill, 2007

The Institute for Security Studies (ISS) is a regional research institute operating across sub-Saharan Africa and has offices in South Africa, Ethiopia and Kenya. The ISS was established in 1991 and is a non-profit trust registered in terms of section 6(1) of the South African Trust Property Control Act, 1988. Dr Cilliers is the current executive director of ISS and co-trustee together with Advocate Selby Baqwa, Head: Corporate Governance of the Nedcor group and Justice Lucy Mailula, Johannesburg High Court. The Institute is also registered as a non-profit organisation in term of the South African Non-Profit Organisations Act, 1997 (No 71 of 1997). As a leading African human security research institution, the ISS works towards a stable and peaceful Africa characterised by sustainable development, human rights, the rule of law, democracy and collaborative security.

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- Support to various intergovernmental offices in Nairobi (RESCA and EAPCCO)
- Counter Terrorism in the Horn of Africa
- African Human Security Initiative

ISS would like to commend the Minister of Defence and the Minister of Foreign Affairs in their efforts to implement their international obligations under the various Conventions South Africa has signed up to and which have come to be regarded as international humanitarian norms and laws. This Bill is more evidence that South Africa is fully behind initiatives to limit the humanitarian impact of weapons of war both during conflict and in the post-conflict period.



The ISS has limited its comments on the Bill to those sections that relate to aspects that it feels are missing from the Bill as presently drafted and if added would enhance South Africa's compliance with the obligations of the Convention.

Preamble

It is the view of the ISS that in the Preamble, note should be made of the fact that the nature 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 (CCW) is such that in the future additional Protocols may be appended. For example, to provide for technological advances in weapon development – new weapons which need to be prohibited or restricted due to their use causing superfluous injury or unnecessary suffering or new issues that arise such as the need to actively deal with post-conflict legacies such as unexploded ordnance and other explosive remnants of war. (For more on Protocol V see below: CCW Protocol V: Explosive Remnants of War.)

Definitions

The ISS recommends that anti-personnel mines also be defined as follows: "anti-personnel mine" means an anti-personnel mine as defined in the Schedule to the Anti-Personnel Mines Prohibition Act, 2003 (Act No. 36 of 2003).

In addition, while blinding laser weapons are defined, 'laser systems' are not (see Section 8(2)).

Chapter 1: Extraterritorial Application

This section does not make it clear how the Act would affect South Africa citizens serving in foreign militaries of countries not party to the CCW and/or its Protocols. This is an important oversight which should be covered by this section.

Chapter 4: Regulations

As mentioned above, a unique feature of the CCW is its annexed Protocols. Provision should be made in Chapter 4 (14) for the Minister, by notice in the *Gazette*, to ensure that any future Protocols, if and when ratified by South Africa, be covered by the Prohibition or Restriction of Certain Conventional Weapons Act. This will prevent the Act from being amended every time a new Protocol is added which South Africa ratifies.

Joint or Combined Operations

The Bill is also not clear in its application to South African security authorities participating in joint or combined operations with the armed forces of a state that is not a party to the Convention and/or its Protocols, including in, for example, peace-keeping operations.



It is therefore recommended that the following be inserted: The Department of Defence and the Department of Safety and Security may participate in operations, exercises or other military or peace-keeping activities with the armed forces of a state that is not a party to the Convention as long as such: (a) operations, exercises or activities are not in contravention of the Convention; and (b) participation does not amount to assistance in any activity prohibited by the Convention.

It is also recommended that if a contravention occurs, the Minister must order the termination of any further involvement in the operation, exercise or activity. In addition, the military force and its members of another state visiting the Republic in terms of an international obligation or an agreement between that state and the Republic should be bound by this Act.

CCW Protocol V: Explosive Remnants of War

On 12 November 2003, CCW Protocol V on Explosive Remnants of War entered into force. While South Africa is yet to ratify this Protocol, given the important role that South Africa played in its formulation, ISS has no doubt that it will do so and would presume that the process of ratification is currently underway.

Protocol V should therefore also be referred to in the Preamble and in the definition section under "Protocols".

Conclusion

The ISS would be willing to further expand on the comments provided in this document at a public or private hearing should the Minister of Defence and/or the Portfolio Committee on Defence deem such an event necessary.

If you have any questions regarding this document, please do not hesitate to contact Noel Stott (nstott@issafrica.org) or Ben Coetzee (bcoetzee@issafrica.org), at the ISS.

Yours sincerely

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