

II Review Conference

The events of the Persian Gulf War were central to the Second Review Conference, held in Geneva, from 14 to 18 September 1992. At the end of the Gulf War, the Security Council, established liability for the environmental damages caused by Iraq as a condition to the cessation of hostilities (Resolution 687 of April 3, 1991) In 1990, at the 6th Committee of the UN General Assembly, when addressing the environmental devastation produced by Iraq in Kuwait, some countries had specifically referred to ENMOD's applicability to those events.

Finland and the Netherlands submitted a working paper highlighting the challenges to ENMOD raised by the Gulf War. In their view, ENMOD needed more specific prohibitions to achieve greater applicability and universality:

The Second Review should clarify what exactly is prohibited by the ENMOD Convention. Regardless the merits of the arguments concerning the applicability of the ENMOD convention to the Gulf War, the discussion has made one thing clear. A clearer definition of the scope of the ENMOD Convention is needed for the Convention to become relevant to international security.

The Second Review Conference should urge broader adherence to the ENMOD Convention. Neither Iraq nor some other regional States, such as Saudi Arabia, are parties, a situation which clearly handicapped discussion of the relevance of the ENMOD Convention to the Gulf War. However, a call for broader adherence will not achieve any more than a similar urging by the First Review Conference unless is accompanied by action that addresses the fundamental cause of low adherence to the ENMOD Convention, its perceived irrelevance to the real security of States. (ENMOD/CONF.II/8; p. 3, [click here to view](#) [pdf])

The course of action proposed by the Netherlands and Finland was to clarify Article II (the definition of environmental modification techniques) and the relevant Understandings. The European duo proposal that a specific reference to the use of herbicides (which from 1976 had been acknowledged by the US as a potential ENMOD violation) would be a positive step.

As it had happened at the First Review Conference, and the negotiation of the Convention itself, the issue of the scope of the Convention of Article I received much of the attention during the Second Review Conference.

Once again there were proposals to abolish the *troika*. A number of other interesting proposals were made; but because transcripts or detailed summaries of the Review Conference's deliberations have not been made public, it is difficult to trace the debate. From the available record, proposals which were made; but did not achieve

consensus include:

Stating that under international law no circumstances whatsoever can justify any large-scale destruction of the environment;

Stating that under existing international customary law it is already prohibited to cause significant damage to the environment of other States or areas beyond national jurisdiction;

Welcome Parties' commitment to observe their obligations *vis-a-vis* non parties;

Stating that the dumping of nuclear waste in developing countries, even if they are not deliberately used in military or hostile activities, is illegal under ENMOD; and

Bringing ENMOD into harmony with the requirements of the law of warfare, particularly Protocol I to the 1949 Geneva Conventions.

Instead, when referring to article I, the Conference retreated to a diplomatic non-decision, stating that:

...having re-examined the provisions of paragraph 1, of Article I, taking into account the relevant Understandings, the Conference reaffirms that they have been effective in preventing military or any other hostile use of environmental modification techniques between State Parties and, having regard to the different views expressed in the course of the debate on this Article on the question of scope, affirms the need to keep this provision under continuing review and examination in order to ensure their global effectiveness. (ENMOD/CONF.II/12, Part II; p. 12)

An advance was achieved on the area of research and development, which was never explicitly prohibited by the Convention. The Conference declared that environmental modification research, as well as its use, "*should be dedicated solely to peaceful ends.*" Furthermore, Austria pointed out that in its opinion research on biotechnology and genetic engineering is also covered by the Final Declaration's wording on Article II: "*With regard to the Final Declaration, his delegation understood the wording of the second sentence of the second paragraph concerning article II to include research, in particular, in the fields of biotechnology and genetic engineering.*" (ENMOD/CONF.II/SR.6; p. 4)

The 2nd Review Conference's major accomplishment was in clearly establishing that "low tech" environmental modification (such as fire and herbicides) is prohibited. Indeed, it was Iraq's torching of oil wells - a very low tech activity with devastating environmental consequences - that provided political momentum to convene the Conference. On herbicides, the Conference agreed that their use would constitute an environmental modification technique as indicated in Article II. This decision more firmly established a broader interpretation of the scope the convention and put to rest the minority view (sometimes promoted by the US) that ENMOD was mainly a "future tech" or "high tech" convention. The final text on Article II in the Final Declaration, containing the expression "any" hostile use as well as "any" environmental modification technique was meant to solve the controversy once for all.

A compromise solution to the problems with the scope was the acceptance of Canada's proposal to establish a Consultative Committee of Experts to "provide expert views relevant to clarifying the scope and application of the provisions of the Convention". Echoing, to an extent, Finland and The Netherlands, Canada said:

Clearly, the perceived lack of relevance of ENMOD to the real security needs of most states is the reason for the low level of adherence. That brings us to the second problem in relation to ENMOD - what exactly does it prohibit?

The answer is not clear because there are interpretational difficulties associated with key elements of the Convention. Most problematic is the lack of agreement on what constitutes a 'deliberate manipulation of a natural process' (Article II). The second problem relates to what have been called the 'threshold of seriousness' set out in Article I, which limits the Convention's ambit to environmental effects that are "widespread, long-lasting or severe"... These terms are ambiguous at best...

We must... start a process that could lead to legally-binding improvements to the Convention's effectiveness. At the very last, we need to thoroughly canvass what measures might be taken to that end. It is for this reason Canada strongly supports the creation of a Consultative Committee of Experts... to examine the provisions of the Convention, with a view of determining the effectiveness of their application in relation to its objectives, and to identifying areas for improvement. (Canada's opening statement, in: The Disarmament Bulletin, N. 19, Winter 1992/93, p. 14).

At least one (unidentified) state party opposed the need to convene the Consultative Committee of Experts, and a reference to that fact was also included in [the Final Declaration](#) [PDF].

Also pertaining article V was a move to convene a meeting to discuss conference-building measures and verification mechanisms. Sweden was disappointed that such proposal had not been accepted by the conference:

Mr. HYLTEINIUS (Sweden) said his delegation welcomed the consensus on the prohibition of herbicides as a method of warfare, which it considered to be an important complementary element to the draft Chemical Weapons Convention. However, it was disappointed that the Conference had been unable to agree to convene an expert meeting to discuss future confidence building mechanisms and verification mechanisms, which could not but enhance the Convention. In that connection, it supported the initiative for the convening of a

Consultative Committee of Experts, as mentioned in the Final Declaration.

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