



## **CCW Meeting of High Contracting Parties**

**Statement by Katy Donnelly  
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Conference on Disarmament**

### **Protocol III – incendiary weapons**

**23 November 2017**

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Thank you Mr Chair.

New Zealand is pleased to be able to discuss incendiary weapons under a dedicated agenda item on Protocol III. We continue to see Protocol III as an important component of the CCW and we urge its universalisation and full implementation by all States. The horrific humanitarian harm that can be caused by the use of incendiary weapons warrants our very careful consideration of whether more can be done to reduce suffering and enhance the protection of civilians.

In this regard, New Zealand welcomes the paper circulated by Switzerland and its encouragement for States to share their national perspectives and experiences with respect to Protocol III. We are pleased to contribute to the debate by engaging on some of the issues raised in the Swiss paper. In doing so we would note that New Zealand does not currently possess flame-throwers or similar incendiary weapons, and that white phosphorus munitions are employed principally for their smoke-creating properties, not as anti-personnel weapons.

Mr Chair,

New Zealand's approach to incendiary weapons is contained within the New Zealand Defence Force's manual on the Law of Armed Conflict. Our approach reflects the view that incendiary weapons do have military utility, and that there does not exist a more effective alternative that would warrant further limiting the use of incendiary weapons at this stage. That said, the manual recognises the tight constraints that exist around

the use of incendiary weapons to ensure compliance with international humanitarian law, and with Protocol III of the CCW in particular.

In more detail, members of the NZDF are not to use incendiary weapons without the express authority of the Commander Joint Forces New Zealand. Wherever practicable, that Commander is to obtain the advice of the NZDF Legal Adviser before granting such authority. If authority is granted, members of the NZDF may use incendiary weapons that have been issued for their use only against legitimate military objectives. Members of NZDF are not to use incendiary weapons against the civilian population and individual civilians, or civilian objects.

Consistent with Protocol III, the manual makes clear that members of the NZDF are not to use air-delivered incendiary weapons to attack military objectives within a concentration of civilians. Nor are they to use incendiary weapons other than air-delivered ones to attack military objectives within a concentration of civilians unless there is a clear separation between the military objective and the civilian population, and all feasible precautions are taken to limit incidental civilian casualties and damage.

With respect to what constitutes a “clear separation” and “feasible precautions”, much depends on the specific scenario in question. There are a broad range of operational conditions that would contribute to a determination that the necessary “clear separation” exists, with a linkage to be drawn to the Collateral Damage Estimate calculation that would be undertaken before any incendiary weapon would be deployed. “Feasible precautions” would include warnings as well as decisions regarding the timing of an operation.

New Zealand considers that the principles of IHL already provide clear guidance around the legality of certain uses of munitions that have a significant incidental or secondary incendiary effect and has not developed or implemented additional specific doctrines, directives or rules of engagement in this regard.

With respect to additional protections for combatants New Zealand considers that IHL already provides sufficient guidance. Our own manual

makes clear that the deliberate use of incendiary weapons, such as flame-throwers and white phosphorous grenades, against members of the opposing force with the intention of causing them burn injuries is likely to breach the prohibition against causing superfluous injury and unnecessary suffering unless a clear military necessity for such use exists. The manual therefore provides that such weapons should be reserved for use against bunkers, buildings and vehicles.

Mr Chair,

Our exchange of views on Protocol III is not merely academic but is taking place against a backdrop of horrific incidences of harm being caused to civilians by the use of incendiary weapons. We remain gravely concerned about the reports of such use and continue to condemn any use of incendiary weapons against civilians or civilian objects, and any other uses incompatible with relevant rules of IHL, including provisions of Protocol III where applicable. We again wish to see this concern and condemnation reflected in the final report of this meeting.

New Zealand appreciates the work of Human Rights Watch in compiling an updated report on recent incendiary weapons use and is considering it carefully. From the information available, the main issue appears to be compliance with current obligations under IHL including the deliberate targeting of civilians, the use of weapons systems indiscriminately, and the failure to make appropriate calculations regarding military necessary. In this regard New Zealand strongly supports any effort to improve universalisation of Protocol III and to strengthen its implementation by all States that are High Contracting Parties to it. We note Switzerland's proposal to convene an informal meeting of experts to discuss universalisation, implementation and adequacy of Protocol III in light of the humanitarian concerns expressed – we can support that suggestion. At the very least, Protocol III should remain on our agenda.

Thank you Mr Chair.