

**Fourteenth Annual Conference of the High Contracting Parties to Amended Protocol II 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**

31 August 2012

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Item 9 of the provisional agenda

**Review of the operation and status of the Protocol**

**Report**

**Operation and status of the Protocol;  
matters arising from reports by High Contracting Parties  
according to paragraph 4 of Article 13  
of Amended Protocol II, as well as development of  
technologies to protect civilians against indiscriminate effects  
of mines**

**Submitted by the Coordinator<sup>1</sup>**

**I. Introduction**

1. The Group of Experts meeting in 2012 was an opportunity to continue discussions on the operation and status of Amended Protocol II, matters arising from the national reports, and the development of technologies to protect civilians against indiscriminate effects of mines, in keeping with the mandate as contained in the Final Document of the Thirteenth Annual Conference of the High Contracting Parties to Amended Protocol II (CCW/AP.II/CONF.13/6, paragraph 24).

2. In 2011 the Thirteenth Annual Conference of the High Contracting Parties decided that:

(a) The Group of Experts shall continue to review the operation and status of the Protocol and consider matters arising from the national annual reports, as well as the development of technologies to protect civilians against indiscriminate effects of mines.

(b) The Plan of Action to Promote the Universality of the Convention and its Protocols is the relevant mechanism to enhance the interest of States that are not party to

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<sup>1</sup> In accordance with the relevant decision of the Thirteenth Annual Conference of the High Contracting Parties to Amended Protocol II, as contained in paragraph 30 of its Final document (CCW/AP.II/CONF.13/6), the discussions on the operation and status of the Protocol; on matters arising from reports by High Contracting Parties according to paragraph 4 or article 13 of amended Protocol II, as well as on development of technologies to protect civilians against indiscriminate effects of mines were led by Mr. Jesus S. Domingo of the Philippines as the Coordinator.

those instruments. Against this background, the Conference encourages the States parties and the Implementation Support Unit to intensify their efforts at implementing the Plan of Action, in particular through organizing more national and regional seminars aimed at promoting and explaining the Convention and its Protocols.

(c) The High Contracting Parties to the Convention shall continue their contacts with the High Contracting Parties to the original Protocol II that have not yet become party to Amended Protocol II, to encourage them to accede to it and thus to facilitate the termination of the original Protocol II. Any action with respect to the termination of the original Protocol II should be taken with the consent of the High Contracting Parties to this Protocol.

(d) The Group of Experts shall analyze the implementation by the States parties of their obligation to submit national annual reports and shall study their content, focusing on the information submitted in Form B, "Mine clearance and rehabilitation programmes."

## **II. Organization and work of the 2012 Group of Experts meeting**

3. The Group of Experts, which met on 23 and 24 April 2012, built upon the discussions which had taken place in the previous year. The States parties were encouraged to convey their views concerning ways of giving impetus to Amended Protocol II and of promoting its universality, the submission of national reports, the development of technologies to protect civilians against indiscriminate effects of mines and any other relevant matters that could be considered by the Group of Experts.

### **A. Universalization of Amended Protocol II**

4. The Group of Experts meeting focused on the efforts aimed at universalizing Amended Protocol II in the framework of implementing the Accelerated Plan of Action on Universalization of Convention and its annexed Protocols, a decision by the 2011 Fourth Review Conference. Some States parties provided information on their initiatives to promote the universalization of the Protocol at the national, regional, sub-regional and international levels. The Coordinator also encouraged observer States to provide information on their intentions to consent to be bound by Amended Protocol II, or on the potential difficulties and challenges preventing them from doing so at the present time.

5. The Group noted that the number of States parties to the Protocol had steadily increased since the time of the First Annual Conference in 1999. The current number of States parties to the Protocol stood at 98. Since the Thirteenth Annual Conference, Montenegro is the latest State to accede to the Protocol on 30 December 2011.

6. The Group called upon the States parties to intensify their efforts to promote the universality of the Protocol and welcomed the efforts made by the President of the Thirteenth Annual Conference of the High Contracting Parties to Amended Protocol II to that end.

### **B. The status of the original Protocol II**

7. Related to efforts at universalizing Amended Protocol II and as part of the overall strategy of universalization of the Convention and its Protocols, the discussion under this segment centred on the increasing irrelevance of the original Protocol II. The Coordinator reiterated that limitations of the original Protocol II were already evident in the early 1990s owing to its inability to address the humanitarian concerns from the massive use of anti-

personnel landmines. Furthermore, the structure of the Convention was complex, with the amendment to article 1 and the five annexed Protocols, one of which had been amended. This was a source of confusion for States, particularly those that were not party to the Convention. The Coordinator focused his efforts on the remaining handful of States that are party to the original Protocol II but which have not yet consented to be bound by Amended Protocol II.

8. The Coordinator reported that he has held consultations with the remaining 10 States parties to the original Protocol II that have not joined Amended Protocol II.<sup>2</sup> The purpose of those consultations was to have a useful dialogue on the best possible way to address the irrelevance of original Protocol II and also to find avenues on how best to encourage these remaining countries to consider becoming parties to AP II. From those consultations the following issues can be reported:

(a) All the States concerned were still in the process of discussing the matter internally among the related national agencies and departments. Most of the States expressed the need to have more time to consider this matter and they agreed to revert to the Coordinator on their views on this at the appropriate time either before or during the Fourteenth Annual Conference.

(b) Two States still remain strongly opposed to the concept of terminating the original Protocol II, and that they underscored that such a termination must be decided with the consent of all the States parties to Protocol II. Furthermore, some States are still in the process of settling their disagreement over territorial issues with neighbouring States hence more time would be needed to have a consolidated view on this matter.

(c) One State proposed a 'phased out' long term plan which still needs to be discussed in detail among the States parties to the original Protocol II. This concept meant that a gradual process would be important in order for States to consider this issue in a more comprehensive manner. Such a progressive step would be to set a realistic timeframe, for example, until the next Review Conference, because the related political, legal, economic, financial aspects should be thoroughly considered. Such a concept for a 'road map' should firstly attempt to find agreement on the nature of the problem, and subsequently to agree on a gradual solution to the problem.

(d) The concept of a possible discontinuation of future accessions to the original Protocol II and to encourage more accessions to Amended Protocol II. In this context, as long as Protocol II is still in force it would be legally possible for new States that accede to the Convention to also accede to Protocol II in accordance with Article 4 paragraph 3 of the Convention.<sup>3</sup> Three High Contracting Parties to the original Protocol II which had not yet acceded to amended Protocol II had ratified the original after the entry into force of the amended instrument. In addition, one recent example is Burundi which acceded to the Convention, Protocol II and Protocol V on 13 July 2012.

9. The Group agreed that the High Contracting Parties to the Convention should continue their contacts with the High Contracting Parties to the original Protocol II that have not yet become party to Amended Protocol II in accordance with the mandate. The

<sup>2</sup> Cuba, Djibouti, Lao People's Democratic Republic, Lesotho, Mauritius, Mexico, Mongolia, Togo, Uganda, and Uzbekistan. Burundi recently acceded to Protocol II on 13 July 2012.

<sup>3</sup> Article 4 (3) of the Convention: "Expressions of consent to be bound by any of the Protocols annexed to this Convention shall be optional for each State, provided that at the time of the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, that State shall notify the Depositary of its consent to be bound by any two or more of these Protocols."

Group also underscored that any action with respect to the termination of the original Protocol II should be taken with the consent of the High Contracting Parties to the Protocol.

### **C. Implementation of Amended Protocol II**

10. Several States parties provided information on the steps taken at national level to implement the provisions of Amended Protocol II. Some delegations which have sufficient resources and vast experience in providing assistance in mine action to other countries conveyed their readiness to provide assistance to States parties in need of assistance to fulfil their obligations under the Protocol.

### **D. Matters arising from the national annual reports**

11. The submission of national annual reports is a legal obligation under Amended Protocol II. The new date of submission, as decided by the 2010 Twelfth Annual Conference is 31st March of each year. This date has been synchronized with the deadline for submission of reports under CCW Protocol V on Explosive Remnants of War and the annual reports on CCW compliance which will enable the national annual reports to be available in time for the discussion in the Group of Experts. The Coordinator further encouraged States parties which have not yet done so to meet their legal obligations and submit their respective initial national annual reports.

12. The High Contracting Parties to Amended Protocol II strived to meet their reporting obligations. Of the 98 High Contracting Parties, as many as 41 national annual reports were received by the Secretariat during the meeting of the Group of Experts. Subsequently, this number rose to 51 national annual reports received as at the date of this document. From past experience the number of submissions usually increases closer to the date of the annual conference.

13. The Coordinator announced that as in previous years the United Nations Mine Action Service (UNMAS) would be ready to assist and cooperate with States parties that encounter difficulties in collecting the necessary data and information and in preparing and submitting the national annual reports.

### **E. Analysis of the national annual report: Form B “Mine clearance and rehabilitation programmes”**

14. The purpose of analyzing the different reporting forms each year is to improve the quality of reporting and of the information contained in the forms submitted. Furthermore, comparing the submissions of the national annual reports with the existing “Guide to Reporting”, which is available on the CCW website, would be beneficial to understand how States respond to their reporting obligations. An analysis of the returns and the content of the information provided, the States parties was expected to be able to appreciate whether the reports were submitted in detail and contain the expected information, or the contrary. This year the Group is mandated to analyze Form B: “Mine clearance and rehabilitation programmes.”

15. The High Contracting Parties are obliged to report on mine clearance and rehabilitation programmes which have been implemented during the reporting period. High Contracting Parties are responsible for all weapons that exist under their control to which the Protocol applies. After the cessation of active hostilities, mine clearance is one of the core obligations to be performed by the High Contracting Party.

16. Mine clearance programs contain, *inter alia*, information management; data and records available; estimated extent of weapon-affected areas; estimated costs and duration; authority responsible for clearance (inclusive point of contact); institutions acting on behalf of the authority; international assistance given; missing technical and material assistance.

17. High Contracting Parties intending to provide assistance with respect to information exchange, co-operation on mine clearance and technical co-operation should place the appropriate information under Form E “International technical information exchange, co-operation on mine clearance, technical co-operation and assistance”.

18. High Contracting Parties seeking for assistance from other High Contracting Parties, organizations or institutions should give necessary information in the national annual report. For the sake of clarification it is recommended to use Form E in this respect.

19. Despite there is no direct obligation under this Protocol to establish and run rehabilitation programmes a common understanding has been expressed to acknowledge the valuable work of relevant agencies, bodies of the UN and of the ICRC and NGOs in the field of surgical care and rehabilitation of mine victims. To promote humanity and facilitate international help for the benefit of victims, the High Contracting Parties should report on governmental or other rehabilitation programmes that are either in existence or otherwise to be performed. This information may include: the name of authority or acting institution; the responsible authority to coordinate national and international assistance (point of contact), the estimated number of victims, classified by their handicap, if possible; the description of business; and other relevant information to promote assistance through others.<sup>4</sup>

20. Of the 51 States that reported in 2012, at the time of the drafting of the present document, the following trend can be concluded:

(a) Of the 98 High Contracting Parties to APII, there are 65 States parties have made use of Form B to report on their efforts about mine clearance and rehabilitation programmes ever since those States were in a position to submit national annual reports.

(b) As the information contained in Form B comprises two components i.e. mine clearance programmes and rehabilitation programmes, those that provided information in Form B comprise mainly those States that provide assistance on mine clearance and rehabilitation programmes to other States, and – to a lesser degree – those that receive assistance on mine clearance and rehabilitation programmes from other States or a group of States. There seems to be no sufficient data from the returns received concerning countries that receive assistance from other countries. Most probably one of the main reasons for this lack of information is that those States which may have received international assistance have not yet submitted their annual reports.

(c) Under “mine clearance programmes,” a large majority of countries that provided assistance to States in need of assistance clearly state the timing and duration of the clearance programmes or projects. Some of them provided data on the costs of the projects, as well as the budget and the amount of money that is projected to be used until a certain period of time for a certain project in a certain region. In some cases, States also reported on which kinds of explosive remnants of war that were expected to be cleared, such as anti-personnel mines or anti-vehicle mines. In other cases, States also explained in detail the authority that is responsible for clearance, including the points of contact. However, a large majority of States did not provide this information. In this regard, it may be the intention of that State to consider that the information concerning the point(s) of

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<sup>4</sup> Summarized from the “Guide to reporting,” available on the CCW website at <http://www.unog.ch/ccw>

contact which already appear on the cover sheet of the national annual report was sufficient for this purpose.

(d) Some States parties also provided information about various institutions that act on behalf of the national authority in efforts to implement their clearance and rehabilitation programmes i.e. State-owned institutions, inter-governmental organizations or non-governmental organizations.

(e) Some States reported that Form B was not applicable to them because they were not mine-affected countries hence this part of the reporting form did not apply to them. However, there are States that reported that they are no longer mine-affected because heavy clearance programmes have been implemented under the context of another Convention banning the use of anti-personnel mines. In other cases, States reported that its authorities have found mines that were used from the Second World War era and that they have been destroyed and accounted for.

(f) Under rehabilitation programmes, a number of countries reported that during a certain reporting period no citizens of that country became victims of mines, booby-traps or other explosive devices. Moreover, a handful of countries reported that they have been developing and establishing various activities and principles to ensure social security and full rehabilitation. Moreover, some States reported that this particular part of Form B was not applicable to them because they are not mine-affected countries hence no data is provided. Subsequently, they informed the reader to jump to Form E to find information about international cooperation in this field, notably when countries provide assistance to other countries, as suggested in the “Guide to reporting”.

(g) In conclusion, all States that submit their national annual reports and utilize Form B have done so correctly whenever it is applicable to them, but a number of States do not necessarily submit information fully complying with the “Guide to reporting”.

## **F. Development of technologies to protect civilians against indiscriminate effects of mines**

21. Under the topic on the development of technologies to protect civilians against indiscriminate effects of mines, States were encouraged to share views on what could be the best way to address this particular topic in the future. However, despite the Coordinator’s intense efforts at encouraging States to deliberate on this issue, no discussion took place on this matter.

## **III. Recommendations**

22. In light of the above, the Fourteenth Annual Conference of the High Contracting Parties to Amended Protocol II may wish to take the following decisions:

(a) The Group of Experts shall continue to review the operation and status of the Protocol and consider matters arising from the national annual reports, as well as the development of technologies to protect civilians against indiscriminate effects of mines.

(b) The Plan of action to promote the universality of the Convention and its Protocols is the relevant mechanism to enhance the interest of States that are not party to those instruments. Against this background, the Conference encourages the States parties and the Implementation Support Unit to intensify their efforts at implementing the Plan of action, in particular through organizing more national and regional seminars aimed at promoting and explaining the Convention and its Protocols.

(c) The High Contracting Parties to the Convention shall continue their contacts with the High Contracting Parties to the original Protocol II that have not yet become parties to Amended Protocol II, to encourage them to accede to it and thus to facilitate the termination of the original Protocol II. Any action with respect to the termination of the original Protocol II should be taken with the consent of the High Contracting Parties to this Protocol.

(d) The Group of Experts shall consider the “Guide to reporting” in light of developments and progress achieved in field of mine action since the adoption of the Protocol.

(e) The Group of Experts shall analyze the implementation by the States parties of their obligation to submit national annual reports and shall study their content, focusing on the information submitted in Form C: “Technical requirements and relevant information.”

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