

**GROUP OF GOVERNMENTAL EXPERTS OF
THE STATES PARTIES 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**

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Mines Other Than Anti-Personnel Mines (MOTAPM)

Working Group on Mines Other Than Anti-Personnel Mines

**COMMENTS ON THE SET OF PROVISIONS ON THE USE
OF MOTAPM/AVM. A COMPILATION OF PROVISIONS
THAT COULD COMMAND CONSENSUS IN THE
GROUP OF GOVERNMENTAL EXPERTS (GGE),
CONTAINED IN CCW/GGE/XV/WG.2/1 AND CORR.1**

Presented by the European Union (EU)

1. The EU continues to aim at a substantive protocol on MOTAPM that strengthens the international humanitarian law. The EU attaches great importance to the “Revised proposals and ideas on MOTAPM in the Group of Governmental Experts (GGE) with the Purpose to Provide a Basis for Further Work” as contained in document CCW/GGE/XII/WG.2/1/Rev.2, dated 22 November 2005 [hereafter the Set of recommendations] presented by the former coordinator, which represents the outcome of four years of intensive work on MOTAPM. The Set of recommendations was drafted following wide consultations with interested countries and incorporated specific suggestions made. It is the view of the EU that with the presentation of that Set of recommendations the MOTAPM process entered a more mature phase. The EU would also like to recall from this process the proposal sponsored by more than 30 States Parties to the CCW, including a number of EU Member States, which the EU has consistently welcomed, as well as the pertinent proposal submitted by Ireland. In addition, EU Member States have made important contributions to the process on subjects such as Sensitive Fuses, Detectability and Transfers.

2. Against this background, the EU believes that the appropriate document on which to base further MOTAPM discussions continues to be the Set of recommendations. As the “Set of Provisions on the Use of MOTAPM/AVM. A Compilation of Provisions that Could Command Consensus in the Group of Governmental Experts (GGE)”, contained in CCW/GGE/XV/WG.2/1, dated 14 August 2006, and Corr.1, dated 25 August 2006, [hereafter

the Set of Provisions on the Use of MOTAPM/AVM] does not reach the standard in the Set of recommendations, the EU will have to retain reservations on the proposal.

3. Legally binding provisions on detectability and active life of MOTAPM are an integral and essential part of the former Coordinator's Set of recommendations. These parts, which are of fundamental importance, are missing from the Set of Provisions on the Use of MOTAPM/AVM. In the introduction to the Set of Provisions on the Use of MOTAPM/AVM the Coordinator has outlined three alternatives for dealing with these two issues: (1) legally binding language, (2) optional approach, and (3) best practice approach. The EU supports the first alternative which, in the view of the EU, can and should command consensus. The EU encourages the Coordinator to intensify contacts, and maintain a constant dialogue, with the States Parties that have not yet been able to join consensus on legally binding commitments on detectability and active life.

4. It is also very difficult to assess what could be the overall added value to the existing international humanitarian law (IHL) of the proposed Set of Provisions on the Use of MOTAPM/AVM all in all, as the parts on detectability and active life are pending. The other parts of the proposal repeat to a large extent the commitments already existing for all mines in Amended Protocol II. Therefore, as long as these two key parts are considered as pending regarding their contents and/or legal status, and as the analysis of any proposal on MOTAPM must be comprehensive, each part having an inextricable connection to the whole, it is not possible to make an assessment of the other parts either or of the possibility of reaching consensus on this basis. Regarding these other parts, the EU has noted with concern the following significant differences between the Set of recommendations and the Set of Provisions on the Use of MOTAPM/AVM:

5. The title in Set of Provisions on the Use of MOTAPM/AVM is more restrictive than in the Set of recommendations. The title could be interpreted as meaning that the future Protocol can only include provisions regarding the use of mines that are the subject of the Protocol. In other words, the Protocol could contain no phasing-out from production of certain mines. The title in the Set of Provisions on the Use of MOTAPM/AVM also reopens the question on the kind of mines that shall be the subject of the future Protocol, i.e. whether the Protocol should be restricted to AVMs or whether it should cover all MOTAPM.

6. Article 1 of the Set of Provisions on the Use of MOTAPM/AVM omits paragraph 5 of the Set of recommendations, according to which the recommendations/provisions are without prejudice to existing IHL, or other international instruments as applicable, or decisions by the United Nations Security Council, which provide for stricter obligations or which have wider applicability.

7. Article 2, paragraph (e), of the Set of provisions on the use of MOTAPM/AVM contains a significantly weaker definition of a perimeter-marked area (PMA) than in the Set of recommendations. This is a source for major concern as the PMA definition in the Set of recommendations - as a part of a comprehensive compromise where the whole text of the Set of recommendations and its envisaged final status were clear - was already weaker than that in the Amended Protocol II.

8. According to the PMA definition in the Set of Provisions on the Use of MOTAPM/AVM, mere marking with no protection would suffice for an area to be considered a PMA. The PMA concept exists in the Coordinator's proposal, apart from Article 2 (definitions), in Article 9 (see comments on Article 9 below). If the idea is to introduce this PMA exception into the currently missing requirements on detectability and active life, it would seriously undermine the detectability and active life requirements.

9. Article 5 of the Set of Provisions on the Use of MOTAPM/AVM omits paragraph 30 (a) of the Set of recommendations, according to which each State or party to a conflict is, in accordance with the recommendations/provisions, responsible for all MOTAPM employed by it and undertakes to clear, remove, destroy or maintain them as specified in the recommendations/provisions.

10. Article 7, paragraph 3, of the Set of Provisions on the Use of MOTAPM/AVM would, in the logic of the Amended Protocol II, and the Set of recommendations by the former Coordinator, refer to paragraph 2 (not to paragraph 1).

11. Article 9, paragraph 1 (b), regarding transfers in the Set of Provisions on the Use of MOTAPM/AVM introduces a PMA exception that does not exist in the Set of recommendations. This PMA exception risks making meaningless the key provision on transfers, as it is impossible to verify at the moment of transfer whether the MOTAPM would be used in a PMA or not.

12. Article 9 of the Set of Provisions on the Use of MOTAPM/AVM omits paragraph 37 of the Set of recommendations, according to which the recommendations/provisions on transfers will be effective upon the entry into force of the MOTAPM Protocol, irrespective of the transition periods of which States could avail themselves on detectability and active life requirements.

13. Annexes to the Set of Provisions on the Use of MOTAPM/AVM: The inclusion of specifications on self-destruction, self-neutralization and self-deactivation in the best practice annex prejudices the provisions on active life that are described as pending, because these specifications can also be placed in the legally binding main text of the Protocol itself or in the legally binding annex. In the Set of recommendations, these specifications were placed in the best practice annex as a part of the comprehensive final compromise regarding the text and envisaged final status of the Set of the recommendations as a whole. Therefore, it is not consistent to describe detectability and active life as pending issues and assume at the same time that the specifications on self-destruction, self-neutralization and self-deactivation can only be best practice and not legally binding provisions.

14. The EU is highly appreciative of the efforts of the Coordinator on MOTAPM. The EU looks forward to continuing the MOTAPM discussions in the GGE/XV and beyond under the Coordinator's able guidance, and remain available for all discussions and consultations.
