
Thirteenth 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

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Report on the 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 mines¹

Submitted by the Coordinator²

I. Introduction

1. The Group of Experts in 2011 continued 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 Twelfth Annual Conference of the High Contracting Parties to Amended Protocol II (CCW/AP.II/CONF.12/6, paragraph 25).

II. Organization and work of the 2011 Group of Experts meeting

2. The Group of Experts, which met on 4 and 5 April 2011, continued and built on the discussions which had taken place in 2010. 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.

¹ Late submission.

² In accordance with the relevant decision of the Twelfth Annual Conference of the High Contracting Parties to Amended Protocol II, as contained in paragraph 32 of its Final Document (CCW/AP.II/CONF.12/6), 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 coordinated by Mr. Abderrazzak Laassel of Morocco.

A. Universalization of Amended Protocol II

3. The Group of Experts meeting focused on the efforts aimed at universalizing Amended Protocol II in the framework of implementing the Plan of Action on Promoting the Universality of Convention and its Protocols. Some States parties provided information on their initiatives to promote the universalization of the Protocol at the national, regional, sub-regional and international levels. Observer States were also encouraged to provide information on their intentions to consent to be bound by Amended Protocol II, or on the difficulties and challenges preventing them from doing so at the present time.

4. 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 97.

5. 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 Twelfth Annual Conference of the High Contracting Parties to Amended Protocol II to that end.

B. The status of the original Protocol II

6. The discussion on the Operation and Status of Amended Protocol II centred on the irrelevance of the original Protocol II. The 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. Moreover, 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. In fact, it was recorded that 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.

7. States parties and interested organizations were encouraged to consider what could be the best procedure to persuade new States to become party to Amended Protocol II instead of becoming party to the original Protocol II. In this context, the Coordinator addressed the legal possibility and feasibility of terminating the original Protocol II and presented various options available under international law for the termination or denunciation of the original Protocol II to the Convention.

8. The Coordinator presented two options for the termination of legal instruments, either by acceptance of termination by all the States parties, or through the application of the provisions of the framework law for the Convention i.e. Article 59, paragraph 1, of the Vienna Convention on the Law of Treaties, which provided for the termination of a treaty upon conclusion of a later treaty.

9. The Coordinator contacted the 12 States parties to the original Protocol II that had not yet declared their intention to accede to Amended Protocol II so as to encourage them to carry out that formality and thus facilitate the collective denunciation of the original Protocol II. Ten States contacted by the Coordinator reported that their respective authorities were in the process of considering accession to Amended Protocol II. One State party considered that as the standards established by Amended Protocol II did not go as far as those contained in the Anti-personnel Landmine Convention (APLC), it was not ready to join Amended Protocol II. Another State party insisted that its government was not yet in a position to join Amended Protocol II because not only did it support the humanitarian principles enshrined in the original Protocol II, but also due to various national security considerations.

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.

11. It was recalled, in particular, that at the Third Review Conference of the High Contracting Parties to the Convention over 26 States had made declarations on unilateral measures they intended to undertake at the national level with regard to mines other than anti-personnel mines. Those States were invited to advise the Group or the Annual Conference of the steps taken to follow up on their declarations.

12. Views were also expressed that the Group should consider the issue of anti-vehicle mines with sensitive fuses.

13. The Group discussed the importance of implementing the Plan of Action to Promote the Universality of the Convention and its annexed Protocols and encouraged the High Contracting Parties and the CCW Implementation Support Unit (ISU) to intensify their efforts to implement the Plan of Action, in particular by organizing more national and regional seminars aimed at promoting the Convention and its Protocols. Some States showed interest in holding such events, and preparations are being discussed with the CCW ISU, if resources permit.

D. Matters arising from the national annual reports

14. 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 is synchronized with the deadline for submission of reports under CCW Protocol V on Explosive Remnants of War which will enable the national annual reports to be available in time for the discussion in the Group of Experts. The Coordinator encouraged States parties which have not yet done so to meet their legal obligations and submit their respective initial national annual reports.

15. The High Contracting Parties to Amended Protocol II strived to meet their reporting obligations, although there has been a decrease in the percentage of compliance in recent years.

16. The United Nations Mine Action Service (UNMAS) stood 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.

17. The Coordinator has undertaken efforts to approach many of those States that have not submitted national annual reports since the 2006 Third Review Conference to further understand the difficulties and the reasons behind this delay. From the consultations, a large majority of States conveyed that they would try their utmost to make this possible. Other States believe that the presentation of national annual reports by virtue of the APLC was part of the demand for transparency provided for under Amended Protocol II.

E. Analysis of the national annual report: Form A “Dissemination of information”

18. 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. Judging by 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 was mandated to analyze Form A: "Dissemination of information."

19. The High Contracting Parties are obliged to disseminate the content of Amended Protocol II, i.e. to the armed forces, and to the civilian population.

(a) Armed Forces personnel has to be informed in particular about the prohibitions and restrictions on the use of weapons (e.g. Articles 3, 4, 5, 6, and 7) and all other commitments (e.g. recording, removal, use of information) deriving from the Protocol. Armed forces have to: issue relevant military instructions; issue operating procedures; provide appropriate training; inform personnel about the imposition of penal sanctions (Article 14).

(b) The civilian population i.e. men, women, children, has to be informed in particular about specific dangers caused by the use of such weapons. This includes, *inter alia*, to inform about: warning signs in general; particular dangers prior to any emplacement; the significance of means and methods of marking weapon-affected areas, responsible authorities (points of contact) civilians may approach; restrictions and prohibitions deriving from the Protocol; penal sanctions to prevent violations of the Protocol or the law. The dissemination of such information is normally done through publication of legal codes and or specific leaflets dependent on the situation. All steps and measures, taken during the reporting time period, must be stated in the report.³

20. Of the 50 States that reported in 2011, at the time of the drafting of the present report, the following trend can be concluded:

- The percentage of States that disseminated information to the armed forces: 90%. Of this total, 82% of the responses contained detailed or specific information i.e. the content and date of the relevant military doctrines, operating procedures and training publications, etc.
- The percentage of States that disseminated information to the civilian population: 96%. Of this total, 92% of the responses contained detailed or specific information i.e. the content, date, and reference number of the national legislation and aspects of how and to which sectors of the public they were disseminated.
- A majority of States used the Summary Sheet hence the information provided were mostly found in previously submitted national annual reports.

21. The high percentage rate on the provision of information in Form A is a positive trend. In general, States parties do not seem to experience any particular difficulty with filling out the form. In conclusion, Form A is still relevant and applicable because a majority of States have responded positively, and no difficulties on reporting activities were reported to the Coordinator. Therefore, the States Parties are encouraged to continue providing such information in future submissions of their national annual reports.

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

³ Summarized from the "Guide to Reporting," available on the CCW website, <http://www.unog.ch/ccw>

22. 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

23. In light of the above, the Thirteenth 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 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."