

**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**

CCW/GGE/VIII/WG.2/WP.2
30 June 2004

Original: ENGLISH

Eighth Session
Geneva, 5-16 July 2004
Item 8 of the agenda

Working Group on Mines Other Than Anti-Personnel Mines

**Mines other than Anti-Personnel Mines (MOTAPM)
laid outside perimeter-marked areas**

Prepared by Ireland

INTRODUCTION

1. **The problem**: Since 2002 the CCW Group of Governmental Experts (GGE) has been discussing the issue of mines other than anti-personnel mines (MOTAPM). In that time the GGE has considered a large number of papers and presentations from States Parties and from agencies working in the field.
 - a. These papers, presentations and numerous reports based on field experience have provided compelling evidence that MOTAPM present a substantial hazard to civilian populations, to humanitarian operations and to peacekeeping forces.
 - b. All States Parties to this Convention have already recognised, through ratification of Protocol II and Amended Protocol II, that all landmines, including MOTAPM, may be deemed to be excessively injurious or to have indiscriminate effects.
 - c. Persistent mines laid outside fenced and marked areas have caused the great majority of MOTAPM casualties. Such mines, whose active life is of indefinite and long-term duration, are a threat to civilians, both during conflicts, and for an indefinite period after conflicts.
 - d. Unlike most anti-personnel mines (APM), each MOTAPM has the potential to kill large numbers of people, and small numbers of MOTAPM cause long-term disruption to communications routes, which are vital for the movement of humanitarian aid and for the resumption of normal economic activities.
2. **Amended Protocol II**: In the process leading to the adoption of CCW Amended Protocol II (AP II) in 1995-1996, the main focus of concern was the problem of anti-personnel mines. The restrictions agreed on MOTAPM were markedly less stringent.
 - a. There was no requirement for detectability of MOTAPM.
 - b. Restrictions on Remotely Delivered MOTAPM were minimal. (Article 6, paragraph 3).

- c. No restrictions were imposed on MOTAPM laid outside perimeter-marked areas. In contrast APM laid outside perimeter-marked areas are subject to the same restrictions as Remotely Delivered APM (RDAPM) with regard to the duration of the active phase and the design of the SD/SDA mechanisms. (Article 5)
- d. Evidence from the field has demonstrated that existing provisions on MOTAPM in Amended Protocol II do not provide adequate protections to civilian populations and activities.

3. **GGE Context:** There is wide acceptance within the Group of Governmental Experts that MOTAPM are causing a level of humanitarian damage that is not justified by military necessity. A great majority of delegations have expressed views in favour of addressing the problem by means of a binding protocol, or a best practices regime, or by a combination of both. Ireland believes that five major issues need to be addressed by this Group. These are in general order of priority:

- a. The laying of long life mines outside perimeter-marked areas.
- b. Establishing limits on the active life of remotely delivered mines. This is closely related to the first issue.
- c. The detectability of all mines, by standard metal detectors.
- d. Identifying and applying standards on sensitivities of fuzing systems.
- e. The transfer of non-compliant mines must be prohibited in any future instrument.

DISCUSSION

4. **MOTAPM laid outside perimeter-marked areas:** Persistent mines laid outside fenced, marked and monitored areas cause the great majority of MOTAPM casualties.

- a. **Terminology:** In AP II the term ‘**Perimeter-Marked Areas**’ was agreed. A perimeter-marked area is an area monitored, fenced and marked in accordance with Article 5, paragraph 2 of AP II.
- b. In Amended Protocol II States Parties agreed that all APM laid outside fenced and marked areas should be subject to the same restrictions as Remotely Delivered APM, with regard to the duration of the active phase and the design of the SD/SDA mechanisms. Similar standards should be required of MOTAPM laid outside perimeter-marked areas.
- c. There would appear to be a clear lack of consistency in an instrument that deems, a single anti-personnel mine, containing 40 grams of explosive, and capable of killing or maiming one person, a greater humanitarian hazard than a MOTAPM containing up to 9 kg of explosives and capable of destroying a bus.

- d. In addition to casualties these mines cause long-term disruption to communications routes, which are vital for the movement of humanitarian aid and for the resumption of normal economic activities.
 - e. It is logical that mines laid outside perimeter marked areas should be treated in the same manner as remotely delivered mines. Why in the first instance did States Parties agree that restrictions were required on remotely delivered mines (RDM)? Largely because by their nature RDM are emplaced outside perimeter-marked areas and in areas which are not under the direct control of the user and were thus deemed to be a hazard to civilian populations. Therefore the logic of limiting the active duration of remotely delivered mines should apply equally to non-remotely delivered mines laid outside fenced and marked areas, a logic which is already recognised with regard to APM in Amended Protocol II.
5. **Definition of RDM**: The definition of Remotely Delivered Mines, in Amended Protocol II, Article 2, Paragraph 2, specifically excludes mines delivered by land-based systems from less than 500 metres. If only RDM are subjected to SN/SD and SDA requirements, then a class of scatterable MOTAPM will not be subject to any restriction on the duration of their active life. Limitations on the use of persistent mines outside perimeter-marked areas will address much of the humanitarian danger arising from such weapon systems.
6. **Sensitivity**: Much concern has been expressed about the dangers to civilians arising from the sensitivity of MOTAPM fuzes and the design of anti-handling devices and anti-disturbance devices. The deliberations to date of the GGE on this issue have demonstrated that it is very difficult to strike a measurable balance between humanitarian protection and military utility over a wide range of complex fuzing mechanisms. Limiting the time for which the mine remains active will eliminate a great part of the threat to civilians caused by highly sensitive fuzes and anti-handling devices.
7. **Irresponsible use**: If mines of indefinite duration continue to be manufactured there is a danger that, they may be laid outside fenced and marked areas by undisciplined forces.
8. From a humanitarian perspective it would be preferable if all MOTAPM were of limited duration. However many States Parties would have difficulties with maintaining large long-term minefields which are protecting vulnerable borders and vital installations.
9. Some States Parties have expressed concern over irresponsible use of MOTAPM by Non State Actors in particular. Limiting persistent MOTAPM to perimeter-marked areas would facilitate the maintenance of border minefields and outlaw unambiguously most of the MOTAPM tactics used by Non State Actors.
10. **Military utility**: Restrictions on the use of persistent mines outside perimeter marked areas would not impair, to any appreciable degree, the military utility of these weapons. Indeed there is a strong argument that their utility would be enhanced.
- a. The legitimate military function of a mine laid outside perimeter-marked areas should be of short duration, and should certainly be less, in most circumstances, than the 30 days already agreed, in AP II, for APM.
 - b. In the unlikely event that a longer period was required most mines should be capable of being reset by military personnel for a further period of up to 30 days.

- c. Mines, which remain active for an indefinite duration, will hamper the mobility of friendly as well as enemy forces and subsequent clearance operations will tie down scarce military resources.

PROPOSAL

11. **History of Irish proposal:** During the July 2002 meeting, Ireland expressed concern about the long-term hazards posed by MOTAPM laid by hand or mechanical means, outside fenced and marked areas. At the request of the then Coordinator Ireland prepared a short working paper on this issue which was circulated as CCW/GGE/III/WP.4 dated 28 November 2002. Ireland has elaborated on this paper with further statements in December 2002, March 2003 and July 2003.
12. The essential element of the Irish proposal is that any future instrument on MOTAPM must address the issue of persistent mines laid outside perimeter-marked areas.
13. **Options based on the US-Danish Proposal:** If the US-Danish Proposal for a Protocol on Prohibitions or Restrictions on the Use and Transfer of MOTAPM were taken as a model, the problem of MOTAPM outside perimeter-marked areas could be dealt with in a number of ways, including the options listed below. Each option would require a definition of the term ‘*perimeter-marked area*’, either separately within a definitions article, or incorporated by reference to AP II.
 - a. Adding an additional paragraph to Article 4 of the US-Danish Proposal, extending restrictions on remotely delivered MOTAPM to all persistent mines emplaced outside perimeter-marked areas.
 - b. Treating non-remotely delivered MOTAPM as a separate category of MOTAPM as is the case for APM in Article 5 of AP II.
 - c. Treating all mines emplaced outside perimeter-marked areas as one category, on the basis that the resulting humanitarian hazards and clearance difficulties will be the same regardless of the method of delivery of the MOTAPM.
14. **Option A:** Amend Article 4 of the US-Danish proposal to include mines emplaced outside perimeter-marked areas.
 - a. A definition of *perimeter-marked area* would be required either in Article 2 or incorporated within Article 4.
 - b. Change the title of Article 4 to include non-remotely delivered mines. E.g. *Mines laid outside perimeter-marked areas, including remotely delivered mines.*
 - c. Add a new paragraph 3 to Article 4.

3. All non-remotely delivered mines other than anti-personnel mines, which are emplaced outside perimeter-marked areas, must comply with paragraphs 1 and 2 of this Article.
15. **Option B:** Insert a new Article 4 bis in the US-Danish proposal and add a definition of ‘perimeter-marked areas’ as proposed in paragraph 13 above.

Article 4 bis. Mines other than anti-personnel mines laid outside perimeter-marked areas

It is prohibited to emplace mines other than anti-personnel mines outside perimeter-marked areas [that are monitored, fenced and marked in accordance with Article 5, Paragraph 2, of Protocol II as amended on 2 May 1996], unless they are in compliance with the provisions in Article 4 of this Protocol.

16. **Option C:** Revise Article 4 of the US-Danish proposal to include all mines laid outside perimeter-marked areas and add a definition of ‘perimeter-marked areas’ as proposed in paragraph 10 above.

Article 4. Mines other than anti-personnel mines [including remotely delivered mines] laid outside perimeter-marked areas

It is prohibited to emplace mines other than anti-personnel mines, including remotely delivered mines outside perimeter-marked areas [that are monitored, fenced and marked in accordance with Article 5, Paragraph 2, of Protocol II as amended on 2 May 1996] unless:

- a. *They are designed and constructed so that no more than 10% of activated mines will fail to self-destruct or self-neutralize within 30 days after emplacement.*
- b. *Each mine incorporates a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction or self-neutralization mechanism, no more than one in one thousand will function as a mine 120 days after emplacement.*

17. **Definition of Perimeter-Marked Area:** A ‘Perimeter-Marked Area’ is an area monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area. It must be marked by appropriate signage in accordance with Technical Annex Paragraph 4 of Protocol II as amended on 2 May 1996. The marking must be of a distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area.

18. **Other aspects of ‘Perimeter Marked Areas’:** Consideration may also have to be given to the incorporation or restatement of provisions in Article 5, paragraphs 2 (b), 3, 4 and 5 of AP II. These are concerned with change in control of perimeter-marked areas and the prevention of interference with perimeter markings.

CONCLUSIONS

19. **Impact of proposal:** Each of the options outlined above would achieve the following

- a. The proposal prohibits the use of persistent MOTAPM outside perimeter marked areas, thus outlawing the major cause of humanitarian damage due to MOTAPM.

- b. The proposal would considerably reduce the humanitarian hazards arising, from the use of scatterable mines delivered by land-based systems from less than 500 metres.
 - c. The proposal would also significantly reduce the humanitarian hazards caused by overly sensitive fuzes and by anti-handling devices.
 - d. Persistent MOTAPM could continue to be used in border minefields and other long-term minefields provided they are located within perimeter-marked areas.
 - e. The proposal does not directly impose any additional financial burden on States Parties although there may be some indirect costs in adapting military doctrine and procurement policies.
 - f. The proposal addresses concerns about the irresponsible use of mines by parties to a conflict, including, in particular, such use by non-state actors. Non-state actors, who use MOTAPM, generally use persistent mines and will almost always lay them outside fenced, marked and monitored areas. Such activities would be explicitly prohibited by this proposal.
20. **Preferred option:** Option C in combination with a definition of perimeter-marked areas, while departing slightly from the methodology of AP II, would provide a clear and consistent provision on the use of MOTAPM outside perimeter-marked areas.
21. **End state:** A desirable end state for our present work would be an application of standards to MOTAPM similar to those already accepted for APM in AP II. Such standards would include a limitation on the active life of all mines, including remotely delivered mines, laid outside perimeter-marked areas, and the application of detectability standards to all mines.
22. Such an end state will present States Parties with technical, doctrinal and logistic challenges and financial costs during the conversion phase. It may take some time to achieve full compliance with such an end state.
23. It is, however, an end state which will have considerable benefits worldwide in reducing civilian casualties, enhancing military utility, reducing mine clearance costs and facilitating economic recovery in areas of conflict and in bringing provisions for use of MOTAPM into conformity with those already agreed for APM in APII.
24. Ireland will continue to work within this Group to sustain the progress we have made to date, with a view to agreeing a mandate in November 2004, for negotiations on a new instrument on mines other than anti-personnel mines.
-