

**Fifteenth 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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Item 8 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 President-designate<sup>\*1</sup>**

**I. Introduction**

1. The Group of Experts of the High Contracting Parties to Amended Protocol II met in Geneva on 8 and 9 April 2013 and 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 based on the mandate as contained in the final document of the Fourteenth Annual Conference of the High Contracting Parties to Amended Protocol II (CCW/AP.II/CONF.14/6, paragraph 25).

2. The President-designate informed the High Contracting Parties on 19 February 2013 by letter on the preparations for the Group's meeting to focus on five substantive sub-topics: 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; to strengthen the universalization of the Protocol

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<sup>\*</sup> Submitted after the due date as soon as the required data and feedback was received by the Secretariat.

<sup>1</sup> In accordance with the decision of the Fourteenth Annual Conference, as contained in Paragraph 31 of its final document (CCW/AP.II/CONF.14/6), the discussion on the operation and status of the Protocol, matters arising from reports by High Contracting Parties according to Article 13 (4) of Amended Protocol II, as well as the development of technologies to protect civilians against indiscriminate effects of mines, was under the overall responsibility of the President-designate of the Fifteenth Annual Conference, Ambassador Luis Gallegos of Ecuador.

based on the Accelerated Plan of Action on Universalization of the Convention and its annexed Protocols; to continue to engage 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; to consider the “Guide to reporting” in light of developments and progress achieved in the field of mine action since the adoption of the Protocol; and to analyze the implementation by the High Contracting Parties of their obligation to submit national annual reports and study their content, focusing on the information submitted in Form C: “Technical requirements and relevant information.”

## **II. Organization and work of the 2013 Group of Experts meeting**

3. The Group of Experts built on the previous year’s discussions. The experts were encouraged to convey their views on efforts at strengthening the implementation of Amended Protocol II and of promoting its universality. They also focused on the importance of submitting national annual reports, as it provides useful information on how the High Contracting Parties implement the Protocol. The development of technologies to protect civilians against indiscriminate effects of mines and other relevant matters were also considered by the Group.

### **A. Universalization of Amended Protocol II and the status of the original Protocol II**

4. The Group focused on the efforts aimed at enhancing more accessions to Amended Protocol II in the framework of implementing the Accelerated Plan of Action on Universalization of Convention and its annexed Protocols. A number of States parties provided information on their initiatives to promote the universalization of the Protocol at the national and regional levels. The President-designate also encouraged States not yet party 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 topic on the status of the original Protocol II is related to the universalization of Amended Protocol II. The discussion focused on the increasing irrelevance of the original Protocol II due to its inability to address the humanitarian concerns from the extensive use of anti-personnel landmines in the early 1990s. The President-designate focused his efforts to engage with the remaining States that are party to the original Protocol II but which have not yet consented to be bound by Amended Protocol II.

6. The President-designate reported that he was in the process of holding informal consultations with a number of States that are considered as priority for the universalization of Amended Protocol II.<sup>2</sup> By the time this report was issued, the President-designate had already approached the representatives of 17 States, comprising the remaining 11 States parties to the original Protocol II that have not joined Amended Protocol II, and six States that are party to the Convention but have not joined Amended Protocol II.<sup>3</sup>

7. The consultations were useful in following up on the States’ status on joining Amended Protocol II. From those consultations the following issues can be reported:

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<sup>2</sup> Burundi, Cuba, Djibouti, Lao People’s Democratic Republic, Lesotho, Mauritius, Mexico, Mongolia, Togo, Uganda, and Uzbekistan

<sup>3</sup> Antigua and Barbuda, Benin, Kazakhstan, Qatar, Saudi Arabia, and United Arab Emirates

(a) All the States shared that they were still going through their internal processes, which included consultations among the related national agencies and departments. They expressed the need to have more time to consider this matter and they agreed to revert to the President-designate at the next round of consultations.

(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.

(c) 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.

(d) Some States conveyed that due to competing national priorities on which international instruments to accede to, more time would be needed to assess and consult with agencies and other branches of government. These States were willing to provide an update on its status during future consultation on this matter.

8. The Group noted that the number of States parties to the Protocol has been steadily increasing. The current number of States parties to Amended Protocol II is 100. Since last year's Conference, two States have acceded: Kuwait on 24 May 2013 and Zambia on 25 September 2013. The Group called upon the States parties to further intensify their efforts at promoting the universality of the Protocol and welcomed the efforts made by the President of the Fourteenth Annual Conference to that end.

9. The Group agreed that contacts with the High Contracting Parties to the original Protocol II that have not yet become party to Amended Protocol II should continue, either conducted by the President-designate or by the High Contracting Parties to the Convention in accordance with the mandate. It was also reiterated by some members of the Group that 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.

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

10. The President-designate encouraged States parties which have not yet done so to meet their legal obligations in submitting their national annual reports. The High Contracting Parties to Amended Protocol II strived to meet their reporting obligations. Of the 98 High Contracting Parties, as many as 43 national annual reports were received by the Secretariat during the meeting of the Group of Experts. Subsequently, this number rose to 52 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. The President-designate stated that the Implementation Support Unit as well as other UN agencies, including the United Nations Mine Action Service (UNMAS), would be ready to assist and cooperate with States parties that need assistance in collecting the necessary information in the preparation of their national annual reports.

## **C. Analysis of the national annual report: Form C "Technical requirements and relevant information"**

11. The rationale behind analyzing the different reporting forms each year is to improve the quality of reporting and of the information contained in the forms submitted. Evaluating the submissions of the national annual reports against the existing "Guide to Reporting", which is available on the CCW website, would be useful 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 C: "Steps taken to meet technical requirements of the Protocol and any other relevant information pertaining thereto."

12. The High Contracting Parties are obliged to meet all technical requirements at the time of use of the weapons contained by this Protocol. In addition, the High Contracting Parties have to prepare warning signs and other material in accordance with international norms. In order to provoke the High Contracting Parties to adjust their inventories as soon as possible, Article 13 of the Protocol requires information on steps taken.

13. The High Contracting Parties have to observe that:

- in general no mines shall be used which are not in compliance with provisions on self-destruction and/or self-deactivation or self-neutralization;
- appropriate and sufficient material is available at the time of use of non self-destructing and self-deactivating anti-personnel mines other than remotely-delivered mines in order to effectively exclude civilians from the area;
- appropriate and sufficient material is available at all times of armed conflicts in order to clear, remove or destroy weapons laid or emplaced or to establish protections for the benefit of personnel and civilians, irrespective of whether the weapons have been laid by their forces or others;
- appropriate and sufficient material is available at the time of use of weapons corresponding to recording commitments;
- appropriate and sufficient material is available at the time of use of weapons corresponding to features as set out for international warning signs;
- no mines, produced after the entry into force of this Protocol, are used unless marked in accordance with the provisions of paragraph 1 (d) of the Technical Annex;
- No anti-personnel mines are used unless they are detectable in accordance with the provisions of paragraph 2 of the Technical Annex.

14. Any other relevant information (with regard to technical requirements):

- e.g. to inform in the case that the High Contracting Party has declared its deferral of compliance with sub-paragraph (b) of paragraph 2 of the Technical Annex (inclusive the foreseen time period);
- e.g. to inform in the case that the High Contracting Party has declared its deferral of compliance with sub-paragraph (c) of paragraph 3 of the Technical Annex;
- The necessary time period of the respective declaration of deferral.<sup>4</sup>

15. In accordance with this mandate, the Implementation Support Unit has examined National Annual Reports submitted to the Secretariat from 2006 to 2012. In 2006, 49 States parties submitted reports; in 2007, 49 States parties; in 2008, 51 States parties; in 2009, 49 States parties; in 2010, 50 States parties; in 2011, 54 States parties, and in 2012, 53 States parties submitted reports.

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

16. At the time of drafting the analysis, the Convention on Certain Conventional Weapons had 115 High Contracting Parties, of which 98 countries consented to be bound by Amended Protocol II. Of the 98 States parties, a total of 34 States have never submitted reports since 2006.

17. Sixty-four High Contracting Parties to Amended Protocol II have submitted at least one report since 2006, which is 65% of the High Contracting Parties. Among High Contracting Parties which have submitted National Annual Reports, some have submitted only once (since 2006) while others have submitted more regularly.

18. Five percent of the High Contracting Parties to the Protocol have submitted their report only once since 2006, while 4% of the High Contracting Parties to the Protocol have submitted only two reports since 2006. That is almost one-tenth of the total number of High Contracting Parties which do not submit their National Annual Report regularly. Since 2006, as many as 34 States have submitted National Annual Reports every year, representing 35% of the total of High Contracting Parties to Amended Protocol II.

19. According to the guidelines to national reporting, Form C should contain information on: recording, detectability, self-destruction, self-deactivation or self-neutralization, and on international warning signs for minefields and mines areas, as well as information on declaration of deferral of compliance with certain provisions. Deferral of compliance is requested “in the event that a High Contracting Party determines that it cannot immediately comply with [the relevant provisions]”. Deferral of compliance cannot exceed 9 years from the entry into force of the Protocol.

20. To conclude the analysis, 48% of the High Contracting Parties who responded to form C did so in a correct manner. However, overall countries do not respond according to the Guide. For example, with regard to the availability of material to clear, remove, or destroy weapons laid or emplaced or to establish protections for the benefit of personnel and civilians, irrespective of whether the weapons have been laid by their forces or others, the response rate is very low with only less than 10 States providing information. Similarly, information on the marking of mines as specified in the guide and in paragraph 1 (d) of the Technical Annex has been provided only by three States. As for the section on “any other relevant information,” only one country has provided the kind of information requested in the guide, which requests that States provide information about deferral of compliance

21. Following this analysis of Form C, it is not clear whether High Contracting Parties consider that the Guide is still relevant. Given that since the adoption and entry into force of Amended Protocol II there was significant development and progress in the field of mine action, it would be logical if the Guide would need to be updated. Furthermore, it was noted during the analysis of the reports submitted to the Secretariat that the Guide does not offer the possibility for States to explain about activities pertaining to training i.e. receive training from other States, give training to other States, and organise internal training for their national armed forces. Yet, responses indicate that some States retain mines for training purposes and other States provide information on training courses that are organised either internally or by another High Contracting Party. In future discussions, the Group could consider that the Guide be revised so as to include a section on the organisation, provision or attendance to trainings.

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

22. Under this broad theme, the Group focused on the aspect of technological cooperation and assistance, which is stipulated under Article 11 of the Protocol. The Group heard a presentation by Mr. Halil Radogoshi of the Geneva International Centre for

Humanitarian Demining (GICHD) on “Information Management in Mine Action: How IMSMA can support the implementation of Amended Protocol II.” The Information Management System in Mine Action (IMSMA) is a humanitarian information and decision support system used for planning, prioritization and follow-up of mine action activities. It is maintained by the GICHD and is provided free of charge to national authorities and research centres. It is the responsibility of the national authority to populate the System with data, which subsequently can only be accessed by that State alone. The System can be adjusted to the specific needs at the national level and country conditions.

23. In line with Article 11 paragraph 1 of the Protocol, which stipulates, *inter alia*, that the High Contracting Parties should not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes, IMSMA has the capacity to store the information provided by the parties related to laid minefields and devices used by any party involved in the conflict. On the technical aspect, IMSMA uses the standardized Extensible Markup Language (XML) which can be easily understood by all States that engage in the exchange of information.

24. Article 11 paragraph 2 of the Protocol states that each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations System, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance. In this regard, IMSMA has the capacity to store data and produce information on lists of operational teams (manual mine clearance, mechanical demining, mine detection dogs, explosive ordnance disposal, battle area clearance, etc.); lists of expert agencies in the country; national points of contact; and an overview of mine action activities, which may include reports and maps. However, despite the President-designate’s efforts at encouraging States to examine this issue closer, no discussion took place on this matter.

### **III. Recommendations**

25. In light of the above, the Fifteenth 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. 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 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 D: “Legislation related to the Protocol”. The Group

shall also consider the “Guide to reporting” of Form D in light of developments and progress achieved in field of mine action since the adoption of the Protocol.

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