

**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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Working Group on Mines Other Than Anti-Personnel Mines

**PROPOSALS AND IDEAS ON MOTAPM IN THE
GROUP OF GOVERNMENTAL EXPERTS (GGE) WITH THE PURPOSE TO
PROVIDE A BASIS FOR FURTHER WORK**

Prepared by the Coordinator

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INTRODUCTION

1. The present paper is submitted under the personal responsibility of the Coordinator on Mines Other Than Anti-Personnel Mines as a follow-up of the paper entitled “Proposals and ideas on MOTAPM in the Group of Governmental Experts (GGE) with the purpose to provide a basis for further work” (CCW/GGE/VIII/WG.2/1) presented by the Coordinator, dated 11 June 2004. It attempts to reflect the progress made and comments expressed during the Eighth session of the Group of Governmental Experts in July 2004, as well as the support expressed for the proposals, both formal and informal, and ideas on MOTAPM put forward since the establishment of the Group of Governmental Experts.
2. The main purpose of the present paper is to facilitate the discussion on the issues contained herein, to provide a framework for the States Parties to prepare their contributions for the Ninth session of the GGE and to prepare possible recommendations for further work of the Group of Governmental Experts. All the issues are treated on their own merits. Addressing the humanitarian impact by balancing the military requirements of MOTAPM may require a comprehensive approach. For this reason, the issues raised therein are often interlinked and should be addressed accordingly.
3. The Coordinator welcomes all comments, either orally or in writing, and looks forward to a fruitful and result-oriented discussion in November.

I. DETECTABILITY OF MOTAPM

The CCW States Parties might wish to recommend:

4. The prohibition of the use of MOTAPM, which are not detectable by commonly available mine detection equipment, subject to certain exclusions. **By definition**, detectable MOTAPM provides a response signal equivalent to a response signal from eight grammes of iron in a single coherent mass buried five cm beneath the ground.
5. That newly emplaced MOTAPM in minefields along national borders or sensitive facilities be excluded from the detectability requirement if they are located in a perimeter-marked area which is monitored by military personnel or protected by fencing or other means, to ensure the effective exclusion of civilians from the area.
6. That MOTAPM already emplaced in minefields are excluded from the detectability requirement.
7. That, after the provisions contained in this paragraph, become effective, future MOTAPM and existing stocks, which have not been emplaced, should meet the detectability requirement prior to their use.

8. That, if required, a State can avail itself of a transition period to meet the detectability requirement.¹

Additional remarks, comments and questions:

9. An earlier proposal to prohibit the use of MOTAPM, which are not detectable by mine detection methods and equipments other than “commonly available mine detecting equipment” does not seem to be a realistic approach at present stage.

Most of the other methods of detection are either still under development, not yet widely available, or too expensive to be adopted as alternatives to mine detection methods and equipment that are based on the induction method of detection. The latter are widely available, relatively inexpensive, and often used by humanitarian deminers. Nevertheless, as new methods become widely available States Parties may wish to consider including them within the definition of commonly available mine detection equipment.

10. The difference in the definition of detectability used for anti-personnel mines in APII and for MOTAPM in the present paper (response signal equivalent to a response signal from eight grammes of iron in a single coherent mass buried five cm beneath the ground) is due to the different operational use of the respective mines.

11. The numerical value of the response signal (which is based on measurements obtained by commonly available mine detection equipment) was deemed sufficient and was accepted for anti-personnel landmines in the CCW Amended Protocol II.² Nevertheless, the States Parties may wish to further consider the adequacy of the use of the proposed measurement to MOTAPM.

12. The use of such a response signal should mean:

- a. That mines otherwise subject to this prohibition, including many surface-laid and remotely delivered mines, which are not buried in the ground, would not be required to contain eight grammes of iron in a single coherent mass because they would be detectable by commonly available mine detectors at smaller quantities of metal;
- b. That MOTAPM emplaced at a depth greater than five cm beneath the ground would be required to produce a response signal equivalent to the response signal from at least eight grammes of iron in a single coherent mass buried five cm beneath the ground, subject to certain exclusions.

13. The notion "Commonly Available Mine Detecting Equipment" seems to be sufficient to define a standard metal detector. Nevertheless, the States Parties may wish to consider whether a specific definition of this equipment/method of detection is needed, or whether a list of equipment needs to be determined.

¹ A period not exceeding nine years was agreed upon in the CCW Amended Protocol II.

² It is considered that 87.38% of the MOTAPM available to the CCW States Parties can be detected under the proposal (see CCW/GGE/VIII/WG.2/WP.4).

14. The proposed detectability requirement can be excluded in certain effectively controlled areas and facilities. The States Parties may also wish to consider how to further accommodate eventual military requirements to the proposed detectability standard.

15. A sufficient transition period may allow some States Parties, which do not see an urgent need for detectability requirement, to commit themselves to it later. The adoption of such a transition period should mean that:

- a. Existing MOTAPM stocks that do not meet the detectability requirement may be used until the end of the transition period for the respective State Party;
- b. After the end of the transition period MOTAPM have to meet the proposed detectability standard only when and if deployed.

II. RESTRICTIONS ON THE USE OF MOTAPM

The CCW States Parties might wish to recommend:

16. That all remotely delivered MOTAPM incorporate a self-destructing mechanism, or a mechanism for self-neutralisation, with a self-deactivation backup (hereinafter referred to as “SD or SN/SDA”).

17. That the lifespan of all MOTAPM be limited, to the extent feasible,³ by incorporating SD or SN/SDA.

18. That all MOTAPM located outside a perimeter-marked area which is monitored by military personnel or protected by fencing or other means, to ensure the effective exclusion of civilians from the area would require SD or SN/SDA regardless of whether they are hand-emplaced or remotely delivered.

19. That mines, which are required to self-destruct or self-neutralise, do so within 45 days after emplacement. Self-deactivation of those mines which fail to self-destruct or self-neutralise should take place within 120 days after emplacement.

20. That each State Party takes the measures necessary to ensure that no more than 10 percent (with a 90 percent confidence level) of activated mines will fail to self-destruct or self neutralise after 45 days.

21. That each State Party takes the measures necessary to ensure that, in combination with self-destruct, self-neutralisation mechanisms, only one in a thousand activated mines will function as a mine after 120 days.

22. That, if required, a State can avail itself of a transition period not exceeding [...] years.

³ As "Best Practice".

23. The adoption of appropriate measures aimed at consulting and cooperating with each other on all issues related to the implementation of the technical requirements, contained in paragraphs 16 to 22, including exchanging technical and other appropriate information.

Additional remarks, comments and questions:

24. The operational life of MOTAPM shall be defined as only from the time it is armed.

25. The assessment of the reliability rate of the SD or SN/SDA is left to the discretion of each State Party.

26. A sufficient transition period may allow some countries to commit themselves to the SD or SN/SDA requirement later.⁴ The adoption of such a transition period should mean that:

- a. Existing MOTAPM stocks that do not meet the SD or SN/SDA requirement may be used until the end of the transition period;
- b. After the end of the transition period such MOTAPM have to be converted to meet the proposed standard only when and if deployed.

III. SENSITIVE FUSES AND SENSORS - ANTI-HANDLING DEVICES

The CCW States Parties might wish to recommend:

27. To determine basic categories of fuses and to adopt Best Practices on suitable technical parameters for single fuse mechanisms, which will increase the discriminatory capacity of MOTAPM and will prevent them from being actuated by the presence, proximity or contact of a person.⁵

28. That all MOTAPM incorporate, to the extent feasible⁶, multi-sensor fuses technology in order to reduce the possibility of inadvertent or accidental activation. If a single fuse or sensor fulfills safety requirements of the Best Practices referred to in paragraph 27, the incorporation of multi-sensor fuses should be discretionary.

29. To prohibit the use of MOTAPM fitted with sensitive fuses or with anti-handling devices, subject to the following exclusions:

- a. MOTAPM fitted with sensitive fuses or with anti-handling devices, when equipped with SD or SN/SDA;

⁴ A period not exceeding nine years was agreed upon in the CCW Amended Protocol II.

⁵ AS "Best Practice".

⁶ As "Best Practice".

- b. MOTAPM fitted with sensitive fuses or with anti-handling devices, unless located in a perimeter marked area which is monitored by military personnel or protected by fencing or other means, to ensure the effective exclusion of civilians from the area.

Additional remarks, comments and questions:

30. On different occasions, experts have concluded that there is no suitable technological solution for refitting MOTAPM equipped with some types of too sensitive fuses in such a way that they remain militarily effective without posing a humanitarian threat to civilians. Accordingly, other possibilities to address the humanitarian impact of such MOTAPM may be explored.

31. An earlier made proposal to prohibit the use of all MOTAPM fitted with sensitive fuses that can be actuated by the presence, proximity or contact of a person does not seem to be a realistic approach at the present stage. It may, however, be applied if subject to certain exclusions.

32. An earlier made proposal to prohibit the use of all MOTAPM fitted with AHD does not seem to be a realistic approach at the present stage. It may, however, be applied if subject to certain exclusions.

33. The deliberations of the GGE to date have reaffirmed the military utility of AHD as a deterrent to mine removal. Accordingly, other possibilities to address the humanitarian impact of such MOTAPM may be explored.

34. With respect to the conclusions, stated in paragraphs 30 to 33, several delegations have suggested a two-tiered approach. Such an approach, composed of a best practice regime and a legally binding element, may be as follows:

- a. The best practice regime would focus on the relevance of technical solutions and decisions to the capacity of MOTAPM to distinguish. Under this regime the States Parties would be encouraged to use, on all MOTAPM, fuses which can discriminate between military vehicles and persons. Mines with multi-sensor actuating mechanism would be a goal.
- b. Under the legally binding second tier, the States Parties would undertake to use sensitive fuses and anti-handling devices only on MOTAPM equipped with SD or SN/SDA mechanisms unless they are located in perimeter marked areas which are monitored by military personnel or protected by fencing or other means, to ensure the effective exclusion of civilians from the area.

35. Limiting the time for which the mine remains active or restricting their use will eliminate a great part of the threat to civilians caused by highly sensitive fuses and anti-handling devices.

36. For the purpose of the Best practice, based on information and data provided by States Parties, the latter may consider as relevant the following broadly available fuses and sensors:

acoustic sensors; break wires; fiber-optic wires; infra-red-sensors; magnetic sensors; pressure sensors; roller arms; scratch wire sensors; seismic/vibration sensors; tilt rods; trip wires.⁷

37. For the purpose of the Best practice, the States Parties may wish to determine and grade the following categories of broadly available fuses and sensors:

- a. Category One: *Fusing systems that cannot be designed in a way not to be excessively sensitive, i.e. break wires, tilt rods, and trip wires;*
- b. Category Two: *Fusing systems that can be designed in a way not to be excessively sensitive, but are best used in conjunction with other sensors, i.e. acoustic sensors, infrared-sensors, and seismic/vibration sensors;*
- c. Category Three: *Fusing systems that can be designed in a way not to be excessively sensitive and can be designed to operate satisfactorily on their own, i.e. fiber-optic wires, magnetic sensors, pressure sensors, roller arms, and scratch wire sensors.*

38. For the purpose of the Best practice, the States Parties may wish to adopt suitable technical parameters for fuse mechanisms in line with the suggestions, contained in paragraphs 5 to 7 of CCW/GGE/VIII/WG.2/WP.3, dated 5 July 2004, presented by Germany, which will increase the discriminatory capacity of MOTAPM and will reduce probable risks to humans.

39. For the purpose of the Best practice, the States Parties may wish to consider the influence of environmental factors, operational, procurement as well as life cycle factors when selecting the types of fuses and determining the sensitivity of fuses, as suggested in paragraph 10 and 11 of CCW/GGE/VIII/WG.2/WP.3.

40. The deliberations of the GGE to date 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 fusing mechanisms. Expert discussions have underlined that the use of MOTAPM, which incorporate multi-sensor fuses technology would significantly increase their discrimination capability thus reducing their eventual accidental activation. Such technology, however, is not available to all and may represent an unacceptable financial and technological burden for some States Parties. Accordingly, it shall be recommended as a goal.

41. The States Parties may also wish to consider whether the definition of AHD as contained in Article 2, paragraph 14 of Amended Protocol II covers sufficiently other similar devices, such as anti-disturbance, anti-lift, anti-movement devices or whether other eventual definition(s) is (are) needed.

IV. PROTECTION OF CIVILIANS - WARNING AND MINE RISK EDUCATION

The CCW States Parties might wish to recommend:

42. That all feasible precautions are taken to protect civilian population, individual civilians and civilian objects from the hazard posed by MOTAPM.

⁷ The sequence of the fuses and sensors is strictly alphabetical and does not entail an assessment on their availability, distribution or use.

43. The adoption, to the extent feasible, of appropriate provisions aimed at the establishment of an effective and efficient system of warnings to civilians and mine risk education on the threat of MOTAPM.

Additional remarks, comments and questions:

44. The discussion of the GGE to date has shown a lot of support for the eventual adoption of additional precautions and measures aimed at reducing the threat of MOTAPM to civilian population. Preferences had been expressed that further discussions of the issue should be based on the relevant provisions on display of warning signs, marking, fencing, monitoring, warnings or risk education, contained in the CCW Amended Protocol II and Protocol V. The need to take into account local cultural factors, or whether pre-conflict or post-conflict warning is provided was also emphasised. Accordingly, the States Parties may wish to consider what further measures and precautions would enhance the protection of civilians from the threat of MOTAPM.

V. TRANSFERS

The CCW States Parties might wish to recommend:

45. To prohibit the transfer of MOTAPM the use of which is prohibited, except for the purpose of destruction or for development of and training in mine detection, mine clearance, or mine destruction techniques.

46. To prohibit the transfer of MOTAPM, included in sensitivity category I described in paragraph 49, except for the purpose of destruction or for development of and training in mine detection, mine clearance, or mine destruction techniques.

47. To exercise restraint in the transfer of MOTAPM the use of which is restricted, except for the purpose of destruction or for development of and training in mine detection, mine clearance, or mine destruction techniques.

48. To prohibit the transfer of MOTAPM to any recipient other than a State or State agency authorised to receive such transfers.

49. Pending the adoption of a legally binding instrument on the issues under consideration, to introduce unilaterally a moratorium on the transfer of non-detectable MOTAPM, as well as of MOTAPM included in sensitivity category I described in paragraph 37, and to exercise restraint in the transfer of MOTAPM, not fitted with SD or SN/SDA.

Additional remarks, comments and questions:

50. The transfer recommendations are applicable in conjunction with the eventual adoption of prohibitions or restrictions on the use of MOTAPM.

51. When the States Parties agree on prohibitions or restrictions on the use of MOTAPM they may also agree to apply some specific provisions of Article 8 of the CCW Amended Protocol II, such as:

- a. Not to transfer any MOTAPM to States not bound by the agreed provisions on prohibitions or restrictions on the use of MOTAPM unless the recipient agrees to apply these agreed prohibitions;
- b. To ensure that any transfer takes place in full compliance by the transferring and recipient State with the relevant agreed provisions and the applicable norms of international law.

52. In the case when a State Party declares that it will avail itself with a transition period, transfers shall nevertheless be prohibited as application of the respective provisions for that State Party.

53. The States Parties may also wish to consider whether an “end-user certificate” has to be requested from the recipient State Party.

54. The States Parties may also wish to consider whether to recommend the adoption of Best practice on export control.

VI. TRANSPARENCY AND OTHER CONFIDENCE-BUILDING MEASURES

The CCW States Parties might wish to recommend:

55. To establish a system of accountability on the implementation of the adopted prohibitions, restrictions and regulations. Such a system may include the following elements:

- a. Each State Party to submit an initial declaration/report on the implementation of the adopted provisions;
- b. Each State Party to update its declaration/report periodically;
- c. The declaration/report to include, *inter alia*:
 - (i) Technical specifications and types of MOTAPM;
 - (ii) Dissemination of information on the adopted provisions on MOTAPM to their armed forces and to the civilian population;
 - (iii) Mine clearance and rehabilitation programmes;
 - (iv) Steps taken to meet technical requirements of the adopted provisions and any other relevant information pertaining thereto;
 - (v) Legislative and other measures taken for the implementation of the adopted provisions;
 - (vi) measures taken on technical cooperation and technical or other assistance provided; and
 - (vii) other relevant matters.

Additional remarks, comments and questions:

56. The States Parties may wish to further consider what is the most appropriate form, periodicity and other modalities of reporting?

57. The States Parties may wish to further consider what to include in the initial declaration/report and the ensuing declarations/reports.

VII. ISSUES RELATED TO THE IRRESPONSIBLE USE OF MOTAPM

The CCW States Parties might wish to recommend:

58. That any recommendation on MOTAPM apply to situations resulting from armed conflicts referred to in CCW Article1, paragraphs 1 to 6, as amended on 21 December 2001.

59. That the States Parties take all appropriate steps aimed at preventing the unauthorised access to or use of MOTAPM by any individual, group of persons or entity, not acting under the legal authority of a State in conducting activities which come within the scope of the present mandate of the GGE to address the humanitarian impact of MOTAPM, including *inter alia*:

- a. establishment of adequate system for marking and tracing of MOTAPM;
- b. enhanced export control measures;
- c. increased stockpiles and transport security;
- d. penalisation of the unauthorised manufacturing, trafficking, possession and use of MOTAPM by any individual, group of persons or entity, not acting under the legal authority of a State in conducting activities which come within the scope of the present mandate of the GGE to address the humanitarian impact of MOTAPM, or of the transfer of MOTAPM to such individuals, groups of persons or entities; other appropriate legislative or other measures, including the establishment of an appropriate prosecution or extradition regime;
- e. enhanced cooperation among the States Parties on sharing information on the trafficking of and the use of MOTAPM by any individual, group of persons or entity, not acting under the legal authority of a State in conducting activities which come within the scope of the present mandate of the GGE to address the humanitarian impact of MOTAPM;
- f. other appropriate steps.

VIII. INTERNATIONAL COOPERATION AND ASSISTANCE

The CCW States Parties might wish to recommend:

60. The establishment of an enhanced system of cooperation and assistance at local, regional and international level aimed at assisting the States Parties in the fulfilment of their obligations in respect to MOTAPM.

Additional remarks, comments and questions:

61. The deliberations of the GGE to date have demonstrated support for this issue and that the GGE should build on the respective provisions of the CCW (Article 11 of Amended Protocol II and Article 8 of Protocol V).

62. Against this background, the States parties may wish to further consider the manner in which international cooperation and assistance could help in addressing the humanitarian concerns associated with the use of MOTAPM. In particular it was suggested that cooperation and assistance could include the following:

- a. technical and financial assistance, including exchange of experience, technology and information, to facilitate the implementation of necessary modifications to improve the reliability of and minimise the humanitarian risks of existing and future MOTAPM.
- b. cooperation and assistance in the destruction of stockpiles of MOTAPM that do not meet and cannot be modified to meet the humanitarian and military norms on MOTAPM?
- c. cooperation and technical, material and human assistance for the rapid and effective clearance, removal or destruction of MOTAPM?
- d. the timely provision of geographic and technical information on MOTAPM to relevant humanitarian missions and to the database on mine action maintained within the UN system?
- e. cooperation and assistance on the provision of risk education for civilian populations?
- f. cooperation and assistance for the care and rehabilitation and the social and economic reintegration of victims of MOTAPM.

IX. ANY OTHER ISSUE

(to be completed)
