

Reports and Documents

Landmine negotiations conclude with modest results

Third Session of the Review Conference of States Parties to the 1980 United Nations Convention on Certain Conventional Weapons (CCW)

Geneva, 22 April-3 May 1996

by Peter Herby

After two years of tortuous negotiations and despite support for a total ban on anti-personnel mines by nearly half of the 51 States participating in the final session of the Review Conference of the 1980 United Nations Convention on Certain Conventional Weapons (CCW),¹ held in Geneva from 22 April to 3 May 1996, only minimal restrictions on the use of anti-personnel landmines were finally adopted.² Nine years after entry into force of amended Protocol II, anti-personnel mines will have to be detectable and those scattered outside of marked minefields, by air, artillery or other means, will have to self-destruct after 30 days. However, long-lived mines will remain available for production, export and use — including indiscriminate use. Regrettably, this modest legal response to a major international humanitarian crisis, though adopted by consensus, is unlikely to significantly reduce the horrendous level of mine casualties.

Amended Protocol II of the CCW, on mines, boobytraps and other devices, is the end of a negotiating process which began in February 1994

¹ 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, adopted on 10 October 1980; 59 States party (as at 30 April 1996).

² Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996). See text below.

in the Group of Governmental Experts charged with preparing the revision of this Protocol and with considering the need for possible new Protocols on specific weapons. The results of the Group's efforts were submitted to the first Review Conference session, held in Vienna from 25 September to 13 October 1995, which ended in deadlock on the landmine issue. Negotiations resumed in Geneva in January and continued in the final session, covered by this report, of April/May 1996. In many respects, the results achieved by the Group of Governmental Experts and by successive Review Conference sessions became progressively weaker until the lowest common denominator required for consensus was finally reached with the adoption of Protocol II as amended.

The International Committee of the Red Cross (ICRC) was invited as an expert/observer to participate in all sessions of the Group of Governmental Experts as well as the Review Conference and contributed to the negotiating process by providing substantial background documentation on the humanitarian and legal aspects of the landmine issue.³ Resolutions adopted in December 1995 by the Council of Delegates⁴ and by the 26th International Conference of the Red Cross and Red Crescent⁵ reflect the concern of the entire Red Cross and Red Crescent Movement with regard to the landmine crisis. In many cases the active commitment of National Red Cross and Red Crescent Societies helped to bring about important decisions by governments to change their policies on landmines.

Results of the negotiations

On 3 May 1996 the Review Conference adopted an amended Protocol II on mines, booby traps and other devices⁶, which will enter into force six months after 20 States Parties declare their consent to be bound by it. This is expected to take two to three years. States Parties will continue to be bound by the original Protocol II⁷ until entry into force, for them, of the amended version.

³ See the ICRC's reports in *IRRC*, No. 307, July-August 1995, pp. 363-367 (on its position on the issues discussed), and No. 309, November-December 1995, pp. 672-677 (on the first session of the Review Conference).

⁴ Resolution 10 — Anti-personnel landmines — adopted by the Council of Delegates, December 1995, in: *IRRC*, No. 310, January-February 1996, p. 151.

⁵ Resolution 2, part G — on anti-personnel landmines — of the 26th International Conference of the Red Cross and Red Crescent, Geneva 3-7 December 1995, in: *IRRC*, No. 310, January-February 1996, pp. 66-67.

⁶ See note 2.

⁷ Adopted on 10 October 1980.

General provisions

The most notable steps forward are contained in amended Protocol II's general provisions. They include the codification of a number of new principles and the introduction of new provisions. Key elements are as follows:

- A specific *definition of anti-personnel mines*, which are now subject to stricter control than anti-tank or vehicle mines, was introduced. Anti-personnel mines are defined⁸ as those “primarily designed to be exploded by the presence, proximity or contact of a person...”. The inclusion of “primarily” in the definition could be interpreted to exclude any dual-use anti-personnel mines which can be claimed to serve another “primary” purpose. The ICRC objected vigorously to this wording, and many government delegations considered it unnecessarily ambiguous. Twenty mainly Western States, led by Germany, introduced an official interpretation of the word “primarily” indicating that it means only that anti-tank mines with anti-handling devices are not anti-personnel mines.
- Extension of the Protocol's field of application to *non-international armed conflicts*.
- Assignment of *clearance responsibility* to those who deploy mines. This obligation will nonetheless be difficult to enforce when parties do not have the resources or expertise for mine clearance — as is often the case in internal armed conflicts.
- The location of all mines must be *mapped and recorded* in all circumstances, rather than only when used in “pre-planned” minefields, as was stipulated in the original Protocol. This too will be difficult to implement in the case of remotely-delivered mines, the accurate recording of which is virtually impossible.
- *Protection for Red Cross and Red Crescent personnel (ICRC, National Societies and International Federation) and other humanitarian missions*, including provisions to provide heads of missions with information on minefields and safe routes around them and, in certain cases, to clear a route through mined areas when it is necessary for access to victims.

⁸ Protocol II, Article 2, para. 3.

- A new provision on *transfers of mines* prohibits the international transfer of non-detectable anti-personnel mines, and of any mine to entities other than States. However, transfers to non-party States are permitted if they “agree to apply” the provisions of the Protocol. A stronger prohibition on transfers to such States would have provided an incentive for adherence to the CCW.
- The provision on compliance requires States Parties to enact *penal legislation to suppress serious violations* of the Protocol.
- *Annual consultations* among States Parties shall be held to review the operation of the Protocol and prepare future review conferences.

The amended Protocol does not, however, contain any provisions for the verification of either the reliability of its technical requirements (described below) or of possible violations of its provisions on the use of landmines.

New restrictions on the use of anti-personnel landmines

The new restrictions adopted by the Review Conference on the *use* of anti-personnel landmines reflect only modest progress over existing law and may be more difficult to implement for States without adequate resources. The major innovations are as follows.

- *Long-lived anti-personnel mines (“dumb” mines)* may be produced, transferred and used as before, provided that:
 - they are detectable (compliance with this provision becomes mandatory no later than nine years after entry into force of the amended Protocol), and
 - they are placed in areas that are fenced, marked and guarded in order to keep civilians out (except when a party to conflict is prevented by direct enemy military action from taking these precautions).
- *Short-lived anti-personnel mines (“smart” mines)* may be produced, transferred and used as before, provided that (compliance likewise becomes mandatory no later than nine years after entry into force of the amended Protocol):
 - they self-destruct within 30 days (with 90% reliability), if used outside marked, fenced and guarded areas;
 - those mines which fail to self-destruct will self-deactivate within 120 days (with 99.9% reliability), and
 - they are detectable.

No specific restrictions on the placement of “smart” mines were adopted, although the general rules of humanitarian law, including prohibitions on the targeting of civilian populations and civilian objects, still apply. A large proportion of such mines are likely to be remotely delivered models, the locations of which will be difficult or impossible to record. It may be argued that the production, transfer and use of “smart” mines are implicitly encouraged by the amended Protocol because fewer restrictions apply to them than to “dumb” mines.

- The rules on the use of *anti-tank/vehicle mines, including remotely delivered models*, have not been changed:
 - no detectability requirement;
 - no specific restrictions on placement;
 - no prohibition of anti-handling devices;
 - no maximum lifetime.

As a result, only the general rules of humanitarian law, such as the protection of civilians, and amended Protocol II’s requirements for recording and removal apply to these types of mine.

- The use of devices which cause a mine to *explode when detected by an electronic sensor* is prohibited for all types of mine.

The ICRC’s response

In its statement to the closing plenary meeting of the Review Conference the ICRC welcomed the strengthened general provisions of amended Protocol II, but pointedly described the restrictions on the use of landmines as “woefully inadequate”. It indicated that such provisions alone were “unlikely to significantly reduce the level of civilian landmine casualties”. The principal points made by the ICRC in its response to the Review Conference to date have been as follows.

- The Review Conference was an important process which has led to dramatic developments in the policies of many States on the production, transfer and use of anti-personnel mines.
- The general provisions of Protocol II as amended include a number of welcome improvements:
 - extension of the scope of application to non-international armed conflicts;
 - clear assignment of mine-clearance responsibility;

- a provision on the transfer of mines (a new and important element for international humanitarian law);
 - new protection for humanitarian workers;
 - an obligation to repress serious violations of the new rules;
 - annual consultations among Parties to the Protocol.
- The definition of an anti-personnel mine is, however, unnecessarily ambiguous. The ICRC is of the opinion that such a mine must continue to be understood as any mine which is “designed to be exploded or detonated by the presence, proximity or contact of a person”,⁹ whatever other functions the munition may also have.
 - The restrictions on use are inadequate and, on their own, are unlikely to have a significant impact on the level of civilian casualties. If the humanitarian crisis caused by landmines is to be effectively addressed, States must do far more individually than could be agreed by consensus within the framework of an amended Protocol II. This includes maintaining existing *comprehensive* moratoria on the transfer of anti-personnel mines and completely ending their production and use.
 - The ICRC deeply regrets that Protocol II as amended not only does *not* prohibit the use of a weapon with indiscriminate effects but even indirectly promotes the development and use of *new* weapons which will have precisely the same effects, at least in the short term. This is the first time that a humanitarian law instrument may have the effect of promoting the use of a new weapon.
 - However, the text adopted by the Review Conference does not tell the whole story:
 - The Review Conference is only one aspect of what is happening politically in the world at large, where anti-personnel mines are being stigmatized in the public conscience, military forces are questioning the utility of such weapons and State practice is changing rapidly.
 - Whereas the Review Conference yielded disappointing results, efforts to achieve a *total ban on anti-personnel landmines* are succeeding at a pace which was inconceivable only two years ago. Forty States now support a ban; seventeen of them have renounced

⁹ I.e. the definition as contained in new Article 2(3) but without the word “primarily”.

and six have suspended the use of anti-personnel mines. Nine States are destroying existing stocks. This trend is likely to gather momentum, partly thanks to the results, modest though they may be, achieved in Geneva.

- It can be hoped that a global ban on anti-personnel landmines will be achieved once there is a critical mass of States reconsidering their own use of mines and supporting a ban as the only effective and verifiable solution to the problems caused by these weapons in humanitarian terms.
- It is essential to focus on national and regional initiatives to end production, use and transfer of anti-personnel landmines and to build further support for a global ban. The Canadian initiative to bring pro-ban countries together in Ottawa in September 1996 to consider further steps which they can take to this effect is the beginning of an important new process. A number of States and regions are considering unilateral steps towards a ban. In this regard, an “Anti-personnel Mines Free Zone” in the Americas will be under consideration by the members of the Organization of American States.

Protocol IV on blinding laser weapons¹⁰

New Protocol IV on blinding laser weapons, adopted by the Vienna session of the Review Conference, is a landmark achievement. It is particularly encouraging that the Protocol contains an absolute prohibition on both the *use* and the *transfer* of blinding laser weapons — a first in the history of international humanitarian law. Contrary to the proposal by the 26th International Conference of the Red Cross and Red Crescent and agreements reached at the first session of the Review Conference in Vienna, the scope of this Protocol was not extended beyond international armed conflicts. States should, however, be encouraged to declare, when adhering to Protocol IV, that they consider the Protocol to apply under all circumstances.

Concluding remarks

Looking beyond the Review Conference, Yves Sandoz, Director of the ICRC Department for Principles, Law and Relations with the Move-

¹⁰ Protocol on Blinding Laser Weapons (Protocol IV), adopted on 13 October 1995. See the comprehensive study by L. Doswald-Beck, “New Protocol on Blinding Weapons”, in this issue, pp. 272-298.

ment, reflected in an article the organization's hopes and determination with regard to the landmine issue:¹¹

Taken together, the awakening of the public conscience, the beginnings of dramatic changes in State practice and authoritative questioning of anti-personnel mine use from within military circles could lead to an end to the use of these arms in large parts of the world in coming years. On that basis the next Review Conference of the 1980 Convention in 2001, or possibly another forum, could be expected to produce agreement on outlawing this indiscriminate weapon.

Though attention has recently focused on globally negotiated solutions, the landmine crisis will be ended through the insistence of the public, through decisions of States which seek to protect their population and territories from the terrible scourge of these weapons and by the decisions of individual commanders who judge their human costs unacceptable.

A global legal ban will be the result, not the cause, of such actions. It will be a victory of human compassion and solidarity. It is the only fitting response to the carnage which continues to cost the lives and livelihoods of two thousand victims each and every month. The ICRC, together with the entire Red Cross and Red Crescent Movement, will tirelessly continue its efforts with both military and humanitarian organizations to ensure that anti-personnel mines are banned sooner rather than later.

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¹¹ "Anti-personnel mines will be banned", May 1996 (to be published shortly in several journals).