

HUMAN RIGHTS WATCH

1630 Connecticut Ave., NW, Suite 500
Washington, DC 20009
Phone: 202-612-4321
Facsimile: 202-612-4333
Email: hrwdc@hrw.org
Website: <http://www.hrw.org>

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MEMORANDUM TO DELEGATES OF THE FOURTH ANNUAL MEETING OF STATES PARTIES

Implementation of CCW Amended Protocol II

December 11, 2002

Actions by certain States Parties during the past year raise serious concerns about the effective implementation of Amended Protocol II to the 1980 Convention on Certain Conventional Weapons (CCW). **Human Rights Watch urges all States Parties to address these concerns as they review the implementation and operation of Amended Protocol II during the Fourth Annual Meeting on December 11, 2002.**

Specifically, there are concerns about:

- the effectiveness of the measures taken by India and Pakistan to ensure the exclusion of civilians from areas containing recently emplaced landmines;
- allegations that Pakistan Ordnance Factories offered two types of antipersonnel mines for sale in the United Kingdom;
- the lack of reported progress by States Parties like China and Pakistan to enable them to end their deferred compliance with key provisions;
- the lack of detailed reporting on the national measures taken by States Parties to implement Amended Protocol II, particularly regarding the detectability and reliability requirements for antipersonnel mines.

There is also concern about the slow pace of universalizing the amended protocol, especially to states that continue to produce, retain large stockpiles of, and use landmines.

There is clear recognition by the vast majority of the international community that a strong international norm against any possession or use of antipersonnel mines is firmly in place. Only ten of the sixty-eight States Parties to Amended Protocol II are not signatories or party to the 1997 Mine Ban Treaty: China, Estonia, Finland, India, Israel, Latvia, Morocco, Pakistan, South Korea, and the United States of America. Thus, of the States Parties, only those ten assert the right to use antipersonnel mines.

Two States Parties to Amended Protocol II have used antipersonnel mines since the entry into force of the treaty in December 1998: India and Pakistan. In addition, four States Parties to the original Protocol II have used antipersonnel mines in the last four years: Georgia, Israel (which is now a State Party to the amended protocol), Russia (in Chechnya and Tajikistan), and Uzbekistan. Rebel groups and armed non-state actors are also reported to have used antipersonnel mines on the territory of some States Parties to Amended Protocol II or Protocol II, including Colombia, Georgia, India, Former Yugoslav Republic of Macedonia, Philippines, Russia, Senegal, and Uganda.

Human Rights Watch believes that any use of antipersonnel mines is prohibited under customary international humanitarian law, and calls upon all governments and non-state actors to halt such use. States Parties to Amended Protocol II that are also party to the Mine Ban Treaty should condemn any use of antipersonnel mines.

Human Rights Watch further calls upon States Parties to Amended Protocol II that used antipersonnel mines in the past year, including India and Pakistan, to present detailed information on the compliance of their actions with their obligations under Amended Protocol II. We also call upon States Parties to the original Protocol II that used antipersonnel mines in the past year, including Russia and Georgia, to do the same.

Providing Effective Exclusion of Civilians

Article 5 of Amended Protocol II is intended to protect civilians from the impact of non-remotely-delivered antipersonnel mines. However, there is a growing body of information about mines killing or injuring non-combatant victims in mined areas under the jurisdiction and control of States Parties. Civilian casualties have been reported in the last four years in the following States Parties to Amended Protocol II: Albania, Bangladesh, Bosnia and Herzegovina, Cambodia, China, Colombia, Croatia, Ecuador, Greece, Israel (Golan Heights), Jordan, Moldova, Morocco (Western Sahara), Nicaragua, Peru, Philippines, Senegal, South Korea, Tajikistan, and most recently India and Pakistan.

As part of the military buildup resulting from the December 13, 2001, attack on the Indian parliament, both India and Pakistan emplaced large numbers of antipersonnel and antivehicle mines along their common border. A report in the November 4-10, 2002 issue of the U.S.-based *Defense News* quotes a senior Indian Army officer as saying that the Indian Army placed 300,000 landmines in approximately 25,000 acres (101 square kilometers).

The exact number of casualties is not known, as there is no comprehensive data collection mechanism on landmine incidents in either India or Pakistan. In India, based on an analysis of media reports, information is available on at least 332 new mine casualties in 2001. Of the total, 107 were civilian casualties, including thirty-two children. Between January 1, 2002 and June 17, 2002, 180 landmine casualties were reported, including fifteen children. In Pakistan in 2001, ninety-two new mine casualties were recorded, including thirty-six children. In the first five months of 2002, forty-nine new mine casualties were recorded in Pakistan.

Reports of civilian casualties on both sides of the border call into question the effectiveness of the measures taken to protect civilians from the effects of mines. Article 5 of Amended Protocol II requires that a state emplacing non-remotely delivered antipersonnel mines take steps to ensure the effective exclusion of civilians from these mined areas. Marking, fencing, and monitoring of mined areas are common ways in which effective exclusion is accomplished.

India is at least taking some steps to fulfill its obligation. For example, a report in the January 31, 2002, *Tribune* notes that in the Ferozepore district in Punjab, the civilian administration and Indian Army are conducting mine awareness education for the civilian

population, and fencing and warning signs in the Hindi and Gurmukhi languages are present. However, a report in the *Times of India* on February 9, 2002, notes,

Thousands of acres along the Indo-Pak border have been mined by the Army, with no markers to give warning. In some places, a narrow ribbon with a faintly written "Danger" sign in Punjabi is the only indicator for the largely illiterate village population not to stray into these heavily mined fields.

Other reports in the Indian and Pakistani media note that the victims had unwittingly entered an unmarked mined area. Such incidents naturally raise questions about the effectiveness of the measures taken by India and Pakistan to ensure the exclusion of civilians from areas containing antipersonnel mines and thus comply with the obligations of Amended Protocol II.

Prohibition on Transfer of Antipersonnel Mines

In April 2002, the state-owned Pakistan Ordnance Factories (POF) allegedly offered two types of antipersonnel mines for sale to a journalist from Channel 4 television in the United Kingdom (U.K.). The journalist posed as a representative of a private company seeking to purchase a variety of weapons. The mines appeared in a brochure, which the POF Director of Exports later claimed was out of date. He stated that "all our current brochures do not at all have any data/references to mines of any sort." A similar incident involving POF occurred in the U.K. in 1999. Such a sale would likely be a violation of both Amended Protocol II and Pakistan's domestic ban on export of antipersonnel mines, in place since February 1999.

Fulfilling the Detectability Requirement

Because low metal content antipersonnel mines are difficult to detect and clear, Amended Protocol II prohibits the use and transfer of such mines. States must modify low metal content mines by including a metal content equivalent to eight grams of iron. South Korea and the United States have chosen to glue a metal washer to the mine to satisfy the requirement.

China and Pakistan notified the Depositary upon ratification of their intent to defer compliance with the specifications on detectability of antipersonnel mines as provided for in the Technical Annex, paragraph 2 (c). The deadline for both China and Pakistan to come into full compliance with the technical specifications is December 3, 2007. Neither country has provided detailed information on the steps taken thus far to meet the detectability requirement.

Pakistan stockpiles two types of low metal content antipersonnel mine, the P2 Mk2 and P4 Mk2. In an April 2002 letter to the Pakistan Campaign to Ban Landmines, the Joint Staff Headquarters stated that "conversion of the existing stocks of the Anti-personnel mines to detectable ones is in hand and progressing as per plans." Pakistan has stated that it has produced only detectable antipersonnel mines since January 1, 1997.

China is believed to stockpile a very large number of low metal content antipersonnel mines, perhaps some 100 million. Since its initial Amended Protocol II national annual report submitted in 1999, China has only reported repeatedly that a detectability requirement is "being formulated" for its stockpile. China reported in December 2001 that it has issued a document, "The Functional Requirements of Anti-Personnel Landmines of PLA in Compliance with Protocol II," that states that newly produced mines must be detectable.

India did not defer compliance and is known to stockpile at least one type of low metal content antipersonnel mine, a copy of the U.S. M14. India stated that production of this mine ceased on January 1, 1997, and reported as recently as December 2001 that measures have been taken to make its stocks compliant with the detectability requirement.

While it is not known if M14s have been used in India's recent mine laying operations, if India is to be in full compliance with its Amended Protocol II obligations, all low metal content antipersonnel mines used by India must first be modified to include additional metal content.

Fulfilling the Reliability Requirement

China, Israel, Pakistan, South Korea, Ukraine, and the United States are reported to stockpile remotely-delivered antipersonnel mine systems. India is developing such systems. China, Pakistan, and Ukraine notified the Depository upon ratification of their intent to defer compliance with the specifications of self-destruction and self-deactivation for remotely-delivered antipersonnel mines as provided for in the Technical Annex, paragraph 3 (c). They have up to nine years to come into full compliance with the technical specifications. The deadlines for this action are December 3, 2007 for China and Pakistan, and May 15, 2008 for Ukraine.

Ukraine, a signatory of the Mine Ban Treaty, is taking steps to destroy its stockpile of 5.9 million PFM-type remotely-delivered antipersonnel mines. India and Pakistan have reported that new remotely-delivered antipersonnel mines compliant with the technical requirements of Amended Protocol II are being developed and tested.

States Parties have reported little about steps taken to comply with the requirements for self-destruction and self-deactivation on remotely-delivered antipersonnel mines. None of the States Parties have provided detailed information on the reliability of the self-destruct, self-deactivation, or self-neutralization mechanisms for their stockpiled remotely-delivered antipersonnel mines. Not one of the States Parties has included in its national annual reports any detailed information on the criteria by which the reliability rates were determined or tested.

Attendance at Annual Meetings and Annual Reporting Obligations

Article 13 of Amended Protocol II establishes that annual meetings of States Parties will be conducted. The First Annual Meeting was held on December 15-17, 1999. The Second Annual Meeting was held on December 11-13, 2000. The Third Annual Meeting was held on December 10, 2001 and the fourth meeting is scheduled for December 11, 2002. All meetings to date have been held in Geneva, Switzerland. The declining attendance of state delegations is detailed in the following table:

Attendance at Amended Protocol II Annual Meetings

	1999	2000	2001
States Parties	44	43	45
Signatory and Observer States	37	25	18
Total	81	68	63

Article 13 also requires States Parties to submit annual reports on the measures taken to implement the amended protocol. The number of reports submitted at each annual meeting and the rate of compliance are detailed in the following table.

Submission of Amended Protocol II National Annual Reports

	1999	2000	2001	2002
Number of Reports Submitted	31	29	30	---
Number of States Parties Eligible to Submit report	38	50	58	65
Compliance Rate	82%	58%	52%	---

This is a low rate of compliance by States Parties. For comparison purposes, the compliance rate for transparency reporting under Article 7 of the Mine Ban Treaty stood at 82 percent for initial reports and 78 percent for annual updates, as of December 6, 2002.

One encouraging point is that all of the governments that were party to Amended Protocol II but not party to the Mine Ban Treaty that were eligible to do so, submitted national reports in 2001. However, the annual reports submitted by these States Parties are lacking in detail especially regarding stockpiles, problems being encountered, and operational measures taken to ensure compliance. Such details could facilitate the provision of international cooperation and assistance by States Parties in a position to provide such assistance.

Universalization

Amended Protocol II entered into force on December 3, 1998. As of December 5, 2002, sixty-eight countries have ratified it (for the purposes of this paper, the term “ratification” is used as a shorthand for the term “consent to be bound” and the term “State Party” is used as a short hand for the term “High Contracting Party”). Progress in universalization appears to have slowed in recent years. The same number of states joined the amended protocol in the two years from December 2000 to December 2002 as did in the one year from December 1999 to December 2000. Looking at the progress from one annual meeting of States Parties to the next:

- Forty-six states were party to Amended Protocol II or had ratified and were awaiting entry into force at the time of the First Annual Meeting in December 1999: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, China, Costa Rica, Czech Republic, Denmark, Finland, France, Germany, Greece, Holy See, Hungary, India, Ireland, Italy, Japan, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Senegal, Slovakia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Ukraine, United Kingdom, United States of America, and Uruguay.
- Eleven countries ratified between December 17, 1999 and December 11, 2000: Bangladesh, Bosnia and Herzegovina, Colombia, Ecuador, El Salvador, Estonia, Israel, Jordan, Maldives, Nicaragua, and Seychelles.
- Six countries ratified between December 11, 2000 and December 10, 2001: Bolivia, Guatemala, Mali, Moldova, Nauru, and South Korea.
- Five countries ratified between December 10, 2001 and December 5, 2002: Albania, Croatia, Latvia, Morocco, and Slovenia.

Twenty-one states who are party to the original Protocol II have not joined Amended Protocol II: Belarus, Cuba, Cyprus, Djibouti, Georgia, Laos, Lesotho, Former Yugoslav Republic of Macedonia, Malta, Mauritius, Mexico, Mongolia, Niger, Poland, Romania, Russia, Togo, Tunisia, Uganda, Uzbekistan, and Federal Republic of Yugoslavia.

Eight countries have signed the framework CCW treaty but have not ratified it or any of its protocols: Afghanistan, Egypt, Iceland, Nigeria, Sierra Leone, Sudan, Turkey, and Vietnam.

Clearly there is work to be done on universalizing Amended Protocol II and CCW as a whole in certain regions of the world. Specifically, with regard to Amended Protocol II:

- Four of forty-eight states in sub-Saharan Africa are party;
- Three of eighteen states in the Middle East and North Africa are party;
- Twelve of forty states in East and South Asia and the Pacific are party;
- Fifteen of thirty-five states in the Americas are party; and,
- Six of fifteen states from the former Soviet Union are party.

A particular challenge to the universalization of Amended Protocol II are the countries that are reported to have used antipersonnel mines at some point in the last four years and are not party or signatory to any international instrument banning or regulating the production, use, stockpiling, and transfer of antipersonnel mines: Burma (Myanmar), Kyrgyzstan, Nepal, Somalia, and Sri Lanka.

Additionally, nine of the remaining fourteen antipersonnel mine producing countries remain outside Amended Protocol II: Burma (Myanmar), Cuba, Egypt, Iran, Iraq, North Korea, Russia, Singapore, and Vietnam. Cuba and Russia are party to the original Protocol II but not Amended Protocol II.

Furthermore, a significant number of states believed to possess large stockpiles of antipersonnel mines are not party to Amended Protocol II: Belarus, Egypt, Iran, Iraq, North Korea, Poland, Russia, Syria, Turkey, Vietnam, and Yugoslavia.