

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1999 Nr. 123

A. TITEL

Protocol inzake het verbod of de beperking van het gebruik van mijnen, valstrikmijnen en andere mechanismen, zoals gewijzigd op 3 mei 1996 (Protocol II zoals gewijzigd op 3 mei 1996), gehecht aan het Verdrag inzake het verbod of de beperking van het gebruik van bepaalde conventionele wapens die geacht kunnen worden buitensporig leed te veroorzaken of een niet-onderscheidende werking te hebben;
Genève, 3 mei 1996

B. TEKST

De Engelse en de Franse tekst van het Protocol zijn geplaatst in *Trb.* 1996, 260.

C. VERTALING

Zie *Trb.* 1997, 24.

D. PARLEMENT

Artikel 1 van de Rijkswet van 4 februari 1999 (*Stb.* 96) luidt als volgt:

„Artikel 1

Het op 3 mei 1996 te Genève tot stand gekomen Protocol inzake het verbod of de beperking van het gebruik van mijnen, valstrikmijnen en andere mechanismen, zoals gewijzigd op 3 mei 1996 (Protocol II zoals gewijzigd op 3 mei 1996), gehecht aan het Verdrag inzake het verbod of de beperking van het gebruik van bepaalde conventionele wapens die geacht kunnen worden buitensporig leed te veroorzaken of een niet-onderscheidende werking te hebben, waarvan de Engelse en de Franse tekst en de vertaling in het Nederlands is geplaatst in *Tractatenblad* 1996, 260 en 1997, 24, wordt goedgekeurd voor het gehele Koninkrijk.”

Deze wet is gecontrasigneerd door de Minister van Buitenlandse Zaken J. J. VAN AARTSEN, de Minister van Defensie F. H. G. DE GRAVE, de Minister van Economische Zaken A. JORRITSMALLEBINK en de Minister van Justitie A. H. KORTHALS.

Voor de behandeling in de Staten-Generaal zie Kamerstukken II 1997/98¹⁾, 1998/99 25 925 (R 1614); Handelingen II 1998/99, blz. 1565–1575, 1594; Kamerstukken I 1998/99, (123); Handelingen I 1998/99, blz. 639–642.

¹⁾ In *Stb.* 96 staat hier „88”.

E. BEKRACHTIGING

In overeenstemming met artikel 4, derde lid, van het Verdrag inzake het verbod of de beperking van het gebruik van bepaalde conventionele wapens die geacht kunnen worden buitensporig leed te veroorzaken of een niet-onderscheidende werking te hebben, hebben de volgende Staten de Secretaris-Generaal van de Verenigde Naties in kennis gesteld van hun instemming gebonden te zijn aan het onderhavige Protocol:

Kambodja	25 maart 1997
Ierland ¹⁾	27 maart 1997
Denemarken ²⁾	30 april 1997
Duitsland ³⁾	2 mei 1997
Japan	10 juni 1997
de Filipijnen	12 juni 1997
Peru	3 juli 1997
Zweden ⁴⁾	16 juli 1997
Monaco	12 augustus 1997
Australië	22 augustus 1997
Kaapverdië	16 september 1997
Liechtenstein ⁵⁾	19 november 1997
Canada ⁶⁾	5 januari 1998
Nieuw-Zeeland	8 januari 1998
Spanje	27 januari 1998
Hongarije ⁷⁾	30 januari 1998
Mexico	10 maart 1998
Letland	11 maart 1998
Zwitserland ⁸⁾	24 maart 1998
Finland ⁹⁾	3 april 1998
Noorwegen	20 april 1998
Litouwen	3 juni 1998
Zuid-Afrika ¹⁰⁾	26 juni 1998
Frankrijk ¹¹⁾	23 juli 1998
Oostenrijk ¹²⁾	27 juli 1998
Tsjechië	10 augustus 1998
Uruguay	18 augustus 1998
Argentinië	21 oktober 1998

China ¹³⁾	4 november 1998
Bulgarije.	3 december 1998
Costa Rica.	17 december 1998
Italië ¹⁴⁾	13 januari 1999
Griekenland ¹⁵⁾	20 januari 1999
het Verenigd Koninkrijk van Groot-Brit- tannië en Noord-Ierland ¹⁶⁾	11 februari 1999
Pakistan ¹⁷⁾	9 maart 1999
het Koninkrijk der Nederlanden ¹⁸⁾	25 maart 1999
(voor Nederland)	

1) Onder de volgende verklaringen:

Article 1

“It is the understanding of Ireland that the provisions of the amended Protocol which by their contents or nature may also be applied in peacetime, shall be observed at all times”.

Article 2 (3)

“It is the understanding of Ireland that the word ‘primarily’ is included in article 2, paragraph 3 of the amended Protocol to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”

2) Onder de volgende verklaringen:

“It is the understanding of the Government of Denmark that those provisions of the amended Protocol II which by their contents or nature may be applied also in peacetime, shall be observed at all times.

It is the understanding of the Government of Denmark that the word ‘primarily’ is included in article II paragraph 3 of the amended Protocol II to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”

3) Onder de volgende verklaringen:

“(1) article 1 of the Protocol:

It is understood that the provisions of the Protocol shall, as the context requires, be observed at all times.

(2) article 2 of the Protocol:

It is understood that the word ‘primarily’ is included in article 2, paragraph 3 of the revised Protocol II to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle, as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

(3) article 5, paragraph 2 (b) of the Protocol:

It is understood that article 5, paragraph 2 (b) does not preclude agreement among the States concerned, in connection with peace treaties or similar arrangements, to allocate responsibilities under paragraph 2 (b) in another manner which nevertheless respects the essential spirit and purpose of the article.’ (*vertaling*)

4) Onder de volgende verklaring:

“Sweden intends to apply the Protocol also in time of peace;

Sweden is of the opinion that the expression ‘primarily’ in the definition of an anti-personnel mine referred to in article 2, paragraph 3 should be interpreted in

such a way that an anti-vehicle or anti-tank mine that has been equipped with an anti-handling device, and that explodes upon contact when attempts are made to remove it, shall not be classified as an anti-personnel mine;

Sweden is of the opinion that the obligations ensuing from article 5, paragraph 2 shall not be interpreted to the effect that the High Contracting Parties or parties in a conflict are prevented from entering into an agreement allowing another party to conduct mine clearance.”

5) Onder de volgende verklaring:

“It is the understanding of the Principality of Liechtenstein that the provisions of Protocol II which by their contents or nature may also be applied in peacetime, shall be observed at all times.”

6) De regering van Canada heeft op 26 juni 1998 het volgende verklaard:

“Canada reserves the right to transfer and use a small number of mines prohibited under this Protocol to be used exclusively for training and testing purposes. Canada will ensure that the number of such mines shall not exceed that absolutely necessary for such purposes.

1. It is understood that the provisions of Amended Protocol II shall, as the context requires, be observed at all times.

2. It is understood that the word ‘primarily’ is included in Article 2, paragraph 3 of Amended Protocol II to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

3. It is understood that the maintenance of a minefield referred to in Article 10, in accordance with the standards on marking, monitoring and protection by fencing or other means set out in Amended Protocol II, would not be considered as a use of the mines contained therein.”

Bij notificatie van 11 november 1998 heeft de depositaris medegedeeld dat er geen bezwaar tegen het voorbehoud van Canada is gemaakt en dat dientengevolge het voorbehoud op 19 oktober 1998 is aanvaard voor nederlegging.

7) Onder de volgende verklaringen:

“The Republic of Hungary

1) declines to observe the 9 year period of deferral on compliance as allowed for in Paragraphs 2 (c) and 3 (c) of the Technical Annex to Amended Protocol II, and even prior to the entry into force of Amended Protocol II intends to be bound by its implementation measures as stipulated therein, as well as the rules of procedure regarding record keeping, detectability, self-destruction and self-deactivation and perimeter marking as stipulated in the Technical Annex;

2) intends to eliminate and eventually destroy its entire stockpile of anti-personnel landmines by December 31, 2000 the latest, in addition to the already undertaken destruction of stockpiled landmines, as initiated in August of 1996 and completed in 40%;

3) refrains from the emplacement of anti-personnel landmines and, for the duration of their complete destruction, intends to designate a central storage facility to pool the remained stock of anti-personnel landmines as a way to facilitate inspection by international monitors;

4) announces a total ban on the development, production, acquisition, export and transfer of all types of anti-personnel landmines;

5) refrains from the operational use of anti-personnel landmines, unless a policy-revision becomes necessitated by a significant deterioration in the national

security environment of the country, in which case due attention shall be paid to compliance with laws governing international warfare;

6) stands ready to engage in implementing appropriate confidence building measures, as a way to be enabled to present the implementation of the measures announced unilaterally by the Republic of Hungary in the course of joint military, educational, and training and other cooperational activities conducted with other armed forces;

7) offers appropriate technical and training assistance to international organizations engaged in de-mining activities;

8) urges her neighbours and other countries in the region to seek unilateral or coordinated measures designed to achieve the total elimination of all types of anti-personnel landmines from the weapons arsenal of the countries in the region, and expressed her readiness to engage in further negotiations to advance this cause;

9) reiterates her commitment to promote the early conclusion of and wide adherence to an international convention stipulating a total and comprehensive ban on anti-personnel landmines, by reaffirming her determination to contribute actively to the success of international efforts furthering this goal.”

8) Onder de volgende verklaring:

Interpretative declaration relating to article 2, paragraph 3: “Switzerland interprets the definition of ‘anti-personnel mine’ as excluding any mine designed to explode in the presence or proximity of, or upon contact with, a vehicle, when such mine is equipped with an anti-handling device.” (*vertaling*)

9) Onder de volgende verklaring:

“It is the understanding of the Government of Finland that those provisions of the Protocol II as amended which by their contents or nature may also be applied in peacetime, shall be observed at all times, and that the word ‘primarily’ is included in article 2, paragraph 3 of the Protocol to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”

¹⁰⁾ Onder de volgende verklaringen:

“It is {...} the understanding of the Government of the Republic of South Africa that Article 1, Article 2 (3) and Article 5 (2) (b) of Protocol II as amended on 3 May 1996, are interpreted as follows:

Article 1

It is understood that the provisions of the Protocol shall, as the context requires, be observed at all times.

Article 2 (3)

It is understood that the word ‘primarily’ is included in Article 2 (3) to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

Article 5 (2) (b)

It is understood that Article 5 (2) (b) does not preclude agreement among the States concerned, in connection with peace treaties or similar arrangements, to allocate responsibilities under this paragraph in another manner which nevertheless respects the essential spirit and purposes of the Article.”

¹¹⁾ Onder de volgende verklaring:

1. Declaration concerning the scope of amended Protocol II: France wishes to

indicate that it will apply the relevant provisions of amended Protocol II during peacetime as well.

2) Declaration concerning article 2: France takes it that the term "primarily" has been added to article 2, paragraph 3 of amended Protocol II in order to make it clear that mines designed to be detonated by the presence or proximity of, or contact with, a vehicle, rather than a person, and which are equipped with anti-handling devices, are not deemed to be anti-personnel mines by virtue of being equipped with such devices.

3) Declaration concerning article 4: France takes it that the article 4 and the Technical Annex to amended Protocol II do not require the removal or replacement of mines that have already been laid.

4) Declaration concerning the obligations with respect to marking, monitoring and protection: The provisions of amended Protocol II such as those concerning the marking, monitoring and protection of zones which contain anti-personnel mines and are under the control of a party, are applicable to all zones containing mines, irrespective of the date on which those mines were laid." (*vertaling*)

¹²⁾ Onder de volgende verklaringen:

"In respect of Article 1

It is the understanding of Austria that the provisions of the amended Protocol which by their contents or nature may be applied also in peacetime, shall be observed in all times.

In respect of Article 2 (3)

It is the understanding of Austria that the word 'primarily' in Article 2, paragraph 3 of the amended Protocol to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices are not considered anti-personnel mines as a result of being so equipped."

¹³⁾ Onder de volgende verklaring:

"I. According to the provisions contained in Technical Annex (2)(c) and 3(c) of the Amended Protocol II, China will defer compliance with 2(b), 3(a) and 3(b);

II. It is the understanding of the Chinese government that the word 'primarily' is included in Article 2, paragraph 3 of Amended Protocol II to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines." (*vertaling*)

¹⁴⁾ Onder de volgende verklaringen:

"Under Article 1 of the amended Protocol II, it is the understanding of the Italian Government that those provisions of the Protocol which by their contents or nature may be applied also in peacetime shall be observed at all times.

Under Article 2 of the amended Protocol II, in order to fully address the humanitarian concerns raised by antipersonnel land-mines, the Italian Parliament has enacted and brought into force a legislation containing a far more stringent definition of those devices. In this regard, while reaffirming its commitment to promote the further development of international humanitarian law, the Italian Government confirms its understanding that the word 'primarily' is included in Article II paragraph 3 of the amended Protocol II to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

Under Article 5 of the amended Protocol II, it is the understanding of the Italian Government that Article 5 (paragraph 2 B) does not preclude agreement in

connection with peace treaties and related agreements among concerned states to allocate responsibilities under this paragraph in another manner which reflects the spirit and purpose of the Article.”

¹⁵⁾ Onder de volgende verklaringen:

Article 1:

“it is understood that the provisions of the protocol shall, as the context requires, be observed at all times.”

article 2, paragraph 3:

“it is understood that the word ‘primarily’ is included in article 2, paragraph 3 of the revised Protocol II to clarify that mines designed to be detonated by the presence, proximity or contact of a vehicle, as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”

article 5, paragraph 2 b:

“it is understood that article 5, paragraph 2 b does not preclude agreement among the states concerned, in connection with peace treaties or similar arrangements, to allocate responsibilities under paragraph 2 b in another manner which nevertheless respects the essential spirit and purpose of the article”.

¹⁶⁾ Onder de volgende verklaringen:

“(a) the [declaration conveying consent to be bound by Protocols I, II and III to the Convention on Prohibitions or Restrictions on the Used of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, concluded at Geneva on 10 October 1980], in so far as it applies to Protocol II to the [1980] Convention, continues to apply to Protocol II as amended;

(b) the [declaration dated 28 January 1998 accompanying the United Kingdom’s ratification of Additional Protocol I to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts, opened for signature at Geneva on 12 December 1977], in so far as it is relevant, also applies to the provisions of Protocol II as amended;

(c) nothing in the present declaration or in Protocol II as amended shall be taken as limiting the obligations of the United Kingdom under the [Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, concluded at Oslo on 18 September 1997 (the ‘Ottawa Convention’)] nor its rights in relation to other Parties to that Convention;

(d) Article 2 (14) is interpreted to have the same meaning as Article 2 (3) of the Ottawa Convention;

(e) the reference in Article 12 (2) to ‘force’ and ‘mission’ are interpreted as including forces and missions authorised by the United Nations Security Council under Chapter VII or Chapter VIII of the Charter of the United Nations which are deployed by a regional arrangement or agency. This applies to all such forces or missions, whether or not they include contingents contributed by non-member States of the regional arrangement or agency.”

¹⁷⁾ Onder de volgende verklaringen:

“Article 1

– It is understood that the purposes of interpretation the provisions of Article 1 take precedence over provisions or undertakings in any other Article.

– The rights and obligations arising from situations described in Article 1 are absolute and immutable and the observance of any other provision of the Protocol cannot be construed, either directly or indirectly, as affecting the right of peo-

ples struggling against colonial or other forms of alien domination and foreign occupation in the exercise of their inalienable right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations.

– The provisions of the Protocol must be observed at all time, depending on the circumstances.

Article 2 (Paragraph 3)

– In the context of the word ‘primarily’, it is understood that such anti-tank mines which used anti-personnel mines as a fuse but do not explode on contact with a person are not anti-personnel mines.

Article 3 (Paragraph 9)

– It is understood that an area of land can itself be a legitimate military objective for the purposes of the use of landmines, if its neutralisation or denial, in the circumstances ruling at the time, offers a definite military advantage.

– Sub-para 2 (c) and 3 (c) of Technical Annex

– It is declared that compliance with sub-para 2 (b) and 3 (a) and (b) is deferred as provided for in sub-para 2 (c) and 3 (c), respectively.”

¹⁸⁾ Onder de volgende verklaringen:

“1. With regard to Article I, paragraph 2, of the amended Protocol II;

The Government of the Kingdom of the Netherlands takes the view that the provisions of the Protocol which, given their content or nature, can also be applied in peacetime, must be observed in all circumstances.

2. With regard to Article 2, paragraph 3, of the amended Protocol II:

The Government of the Kingdom of the Netherlands takes the view that the word ‘primarily’ means only that mines that are designed to be exploded by the presence, proximity or contact of a vehicle and that are equipped with an anti-handling device are not regarded as anti-personnel mines because of that device.

3. With regard to Article 2, paragraph 6, of the Protocol II:

The Government of the Kingdom of the Netherlands takes the view that a specific area of land may also be military objective if, because of its location or other reasons specified in paragraph six, its total or partial destruction, capture, or neutralization in the circumstances ruling at the time, offers a definitive military advantage.

4. With regard to Article 3, paragraph 8, under c, of the amended Protocol II:

The Government of the Kingdom of the Netherlands takes the view that military advantage refers to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack.

5. With regard to Article 12, paragraph 2, under b, of the amended Protocol II:

The Government of the Kingdom of the Netherlands takes the view that the words ‘as far as it is able’ mean ‘as far as it is technically able’.”

G. INWERKINGTREDING

De bepalingen van het onderhavige Protocol zijn in overeenstemming met artikel 5, derde lid, van het Verdrag inzake het verbod of de beperking van het gebruik van bepaalde conventionele wapens die geacht kunnen worden buitensporig leed te veroorzaken of een niet-onderscheidende werking te hebben op 3 december 1998 in werking

getreden voor Australië, Canada, Duitsland, de Filipijnen, Finland, Hongarije, Ierland, Japan, Kaapverdië, Kambodja, Liechtenstein, Litouwen, Monaco, Nieuw-Zeeland, Noorwegen, Peru, Spanje, Zweden en Zwitserland.

Voor elke Staat die na 3 juni 1998 kennis geeft van zijn instemming te zijn gebonden aan het onderhavige Protocol, treedt ingevolge artikel 5, vierde lid, van bovengenoemd Verdrag het Protocol in werking zes maanden na de datum waarop die Staat heeft kennisgegeven van zijn instemming om aldus te zijn gebonden.

De bepalingen van het onderhavige Protocol zullen op 25 september 1999 voor het *Koninkrijk der Nederlanden* in werking treden.

Wat het Koninkrijk der Nederlanden betreft, zal het onderhavige Protocol alleen voor Nederland gelden.

J. GEGEVENS

Zie *Trb.* 1996, 260.

Voor het op 26 juni 1945 te San Francisco tot stand gekomen Handvest van de Verenigde Naties zie ook, *Trb.* 1998, 145.

Voor het op 13 oktober 1995 te New York tot stand gekomen Aanvullend Protocol bij het Verdrag inzake het verbod of de beperking van het gebruik van bepaalde conventionele wapens die geacht kunnen worden buitensporig leed te veroorzaken of een niet-onderscheidende werking te hebben, zie ook *Trb.* 1999, 122.

Uitgegeven de *twaaalfde* juli 1999.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN