

**PREPARATORY COMMITTEE FOR
THE FIRST CONFERENCE OF THE
HIGH CONTRACTING PARTIES TO
PROTOCOL V ON EXPLOSIVE REMNANTS
OF WAR 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 6 (viii) of the Provisional Agenda

**Consideration of matters pertaining
to the preparation for the First Conference
of the High Contracting Parties to Protocol V
on Explosive Remnants of War
Follow-up**

**NATIONAL REPORTING UNDER THE PROTOCOL V
FOOD-FOR-THOUGHT PAPER**

Submitted by the Chairperson

NORMATIVE FRAMEWORK

1. National reporting under CCW Protocol V on Explosive Remnants of War (ERW) is addressed in Article 10 (2) “Consultations of High Contracting Parties”. The provision stipulates the following:

“2. The work of the conferences of High Contracting Parties shall include:

[...]

(b) consideration of matters pertaining to national implementation of this Protocol, including national reporting or updating on an annual basis. [...]”

2. An obligation to provide information is also contained in Article 8 (5) “Cooperation and assistance”. The provision stipulates the following:

“5. Each High Contracting Party undertakes to provide information to the relevant databases on mine action established within the United Nations system, especially information concerning various means and technologies of clearance of explosive remnants of war, lists of experts, expert agencies or national points of contact on clearance of explosive remnants of war and, on a voluntary basis, technical information on relevant types of explosive ordnance.”

3. The issue of reporting under Protocol V should also be considered in light of the results of the Third CCW Review Conference (Geneva, 7-17 November 2006), in particular its

Decision 3 on the establishment of a Compliance mechanism applicable to the Convention and all its Protocols, as contained in the Final Declaration of the Conference (Final Document, CCW/CONF.III/11, Part II, and Annex II). Pursuant to this provision, the States parties undertook to provide information on any of the following matters:

- “(a) Dissemination of information on the Convention and its annexed Protocols to their armed forces and to the civilian population;
- (b) Steps taken to meet the relevant technical requirements of the Convention and its annexed Protocols and any other relevant information pertaining thereto;
- (c) Legislation related to the Convention and its annexed Protocols;
- (d) Measures taken on technical co-operation and assistance; and
- (e) Other relevant matters.”

4. In comparison to the respective provisions on the similar reporting obligations and information provisions established by CCW Amended Protocol II (Article 13, paragraph 4 and Art.11, paragraph 2) or the Mine Ban Convention¹ (Article 7), Protocol V is vague on the different aspects of the national reporting both in terms of applicable procedures and substance thus giving the States parties a free hand to determine all modalities. Therefore, there are a number of key issues, both on substance and on procedure, which will have to be addressed by the States parties in order to establish an effective and meaningful reporting mechanism. Such are, *inter alia*, the scope of the reporting commitments; what would be the most adequate reporting format; the timing of the initial reporting and the periodicity of the updating; the status as well as the method of circulation of the information on the national implementation of the Protocol.

SCOPE

5. Reporting is not an end in itself, but a part of the implementation architecture of the Protocol. Reporting should offer ways to promote compliance, facilitate the exchange of information and communicate needs. It is also a good indicator of the States parties' commitment to the treaty goals. Being an important transparency and confidence building measure, reporting is often regarded as part of the typical disarmament treaty verification and compliance package. In the context of Protocol V, however, reporting should be considered much more in the context of the strong humanitarian character of the CCW and as a means of supporting and promoting implementation and cooperation, rather than as an intrusive verification measure. Hence, reporting should serve as a useful tool for (self-)identification of existing and future ERW-affected countries and the problems they face, as well as a source of other relevant information that could facilitate assistance. It should be focused on assessing the collective and individual progress by States parties towards the treaty goals thus providing important information on which to base any future objectives and priorities.

6. Against this background, from a reporting perspective, two types of information could be envisaged:

¹ CCW Amended Protocol II, Protocol V and the Mine Ban Convention are complimentary in many aspects and altogether establish the existing legal framework for mine action. Therefore, this paper tries to refer as much as possible to the existing practice and to also address reporting in light of the relevant provisions of the above legal instruments.

- (i) general information on the legal, administrative and other measures undertaken by the States parties in view of the implementation of the Protocol, and
- (ii) specific information with reference to the ERW situation in each State party.

7. As far as point 5, (i) is concerned, the Decision on the establishment of the CCW Compliance mechanism is quite prescriptive and contains a detailed but not exhaustive list of implementation activities modeled after Amended Protocol II.² It is, therefore, expected, that this information will be provided in the broader context of the implementation of CCW and all its Protocols, as envisaged by the Decision on Compliance.

8. As far as point 5, (ii) is concerned, the following information could be envisaged as useful for the purposes of the effective implementation of Protocol V:

- (a) Types and total quantity of ERW in territory under its jurisdiction or control (to the extent possible);
- (b) Types and total quantity of abandoned explosive ordnance in territory under its jurisdiction or control;
- (c) The location of areas that contain or are suspected to contain ERW, types and quantity of unexploded ordnance (to the extent possible);
- (d) Status of mine clearance and rehabilitation programmes;
- (e) Status of programmes for destruction of ERW;
- (f) Measures taken to provide immediate and effective warning and risk education to the population;
- (g) Information concerning various means and technologies of clearance of explosive remnants of war, lists of experts, expert agencies or national points of contact on clearance of explosive remnants of war and other information pursuant to Article 8, paragraph 5 of Protocol V; and
- (h) Other relevant matters, including transfers of ERW.

9. As a useful tool for achieving the above goals, however, reporting under protocol V shall remain flexible and should not result in an unnecessary increase in the existing reporting obligations under other legally-binding instruments.

Existing practice

10. Both CCW Amended Protocol II and the Mine Ban Convention provide for a detailed list of topics which have to be covered by national reporting. Under CCW Amended Protocol II this list covers topics as contained in Article 13, paragraph 4, as well as Article 11, paragraph 2. In the Mine Ban Convention the implementation topics are listed in Article 7, paragraph 1.

Recommendation

11. The States parties to Protocol V may wish to consider the establishment of an ERW database consisting of the specific information listed in paragraph 7 above (the information on

² These are: (a) dissemination of information on the Protocol to their armed forces and to the civilian population; (b) steps taken to meet the relevant technical requirements of the Protocol and any other relevant information pertaining thereto; (c) legislation related to the Protocol; (d) Measures taken on technical co-operation and assistance; or (e) Other relevant matters.

the legal, administrative and other measures as specified in paragraph 6 above will be considered in the broader context of Compliance with the CCW and all its Protocols). This information will be submitted through the initial national reports and will be updated regularly.

12. Instead of imposing an annual (or other) periodicity in reporting, the States parties to Protocol V may wish to consider a more flexible system of regular updating of the information contained in the initial reports (the ERW database). Under such a system the States parties will be under the obligation to provide information only in cases where there is a change in their ERW-situation – as a result of an armed conflict or of the measures undertaken in compliance with the provisions of Protocol V. In other words, a State party implementing an ERW programme (ERW/mine clearance, ERW destruction, etc.) or other related activities, or on which territory hostilities have taken place recently, will have to update [annually] its national report, while a State which is not ERW-affected and is not involved in ERW-related activities will not be under such an obligation.

REPORTING FORMS

13. A standardized reporting format, which would be sufficiently flexible to enable the States parties to include additional information if they so desire, might facilitate the implementation of the reporting commitments.

Existing practice

14. Under Amended Protocol II and the Mine Ban Convention the States parties have deemed it appropriate to endorse standardized reporting forms under each reporting topic prescribed by the respective treaty. These forms were later amended to take care of the needs and to better serve the reporting goals. Both sets of reporting forms are not exhaustive and enable the States parties to provide any relevant information. Moreover, under both treaties a simplified cover page (summary sheet) was approved and is being used with the purpose of facilitating reporting on topics which are not relevant for a State party or on which there had been no changes since the submission of the previous national report. These reporting forms represent a useful and flexible framework for presenting the information as required by both treaties.

Recommendation

15. The States parties to Protocol V may wish to adopt a similar approach as the one established in the framework of the similar reporting procedures. If so decided, the UN may develop reporting templates covering each of the agreed reporting topics for approval by the States parties at their First Conference in November 2007. An additional summary reporting cover page will not be needed as the States parties will not be under obligation to report annually, but only when a change in the ERW-situation has occurred. In the latter case the States will not be under an obligation to submit reporting forms on the topics which are not relevant or on which there were no changes since the previous reporting period, but only on those which refer to the changes which have occurred.

INITIAL SUBMISSIONS

16. Protocol V is silent about the timing of the initial submission of information.

Existing practice

17. Under Amended Protocol II 31 States out of the then 45 States parties to the Protocol submitted their initial National Annual Reports (NAR) before the First Annual Conference. For this purpose they made use of proposed reporting forms, submitted by Austria during the Preparatory Meeting for the First Review Conference.³ Pursuant to Article 7(1) of the Mine Ban Convention each State party shall report to the Secretary-General of the United Nations “as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State party ...”.

Recommendation

18. The States parties to Protocol V may wish to consider the establishment of a reasonable time limit [of 180 days after the entry into force of the Protocol for the State party] for the submission of the initial report. For the States for which the Protocol is already in force this time limit should be fixed in a manner providing reasonable time for gathering the necessary information and preparing the initial reports, but also guaranteeing that reports will be available in time for the formal/informal meeting at which they will be considered.

PERIODICITY

19. As mentioned, reporting is not a goal but a tool. Reporting is important in identifying as early as possible the ERW-affected countries in need of assistance and their priorities. It will also be important for assessing the progress in the implementation of the Protocol as well as for periodic exchange of information on the efficiency of the cooperation and assistance programmes put in practice for addressing the different aspects of the ERW problem. The periodicity of its updating, therefore, should depend on the necessity for such periodic measurement of progress, and not on a redundant decision to report only for the sake of reporting. It should also depend on the frequency/periodicity of the (formal or informal) meetings of the States parties to the Protocol on which the issue of implementation will be addressed.

Existing practice

20. Article 13, paragraph 4 of Amended Protocol II establishes the periodicity of reporting (annual reports). The Protocol is silent, however, with regard to the exact date of the annual submissions as well as to the period that has to be covered by the National Annual Reports. The first of these issues was addressed by the Group of Experts of the First Annual Conference of the States parties to APII in 1999 which recommended that NAR be submitted no later than eight weeks prior to the convening of Annual Conferences in order to provide the States parties with sufficient time to study the reports. With regard to the reporting period, the States parties are following different practices as some of them report for the past calendar year, while others cover the period between the previous and the next Annual Conferences.

21. For its part, the Mine Ban Convention contains fixed provisions on the periodicity of the updating (annually), the time of submission (30 April of each year) and the reporting period

³ These forms were consequently adjusted and became the standardized reporting forms under the treaty.

covered by the Article 7 reports (last calendar year, i.e. 1 January to 31 December of the year preceding the submission of the report).

Recommendation

22. The States parties to Protocol V may wish to consider an annual updating (whenever necessary) of the information contained in the ERW database. They may also wish to fix the deadlines of submission of the updates in a way to provide the States parties with sufficient time to study the information in advance of the next Protocol V implementation formal/informal meeting. The periodicity and deadlines of submission of the updating may be subject to change and adjustment in the future.

CIRCULATION

23. Protocol V is silent about circulation of national reports.

Existing practice

24. Under the Amended Protocol II and the Mine Ban Convention national reports are submitted in one of the authentic languages and - for the sake of cost efficiency - are not translated into any other language. A State party may, however, also provide an unofficial translation of its national report in any of the official UN languages. In the case of Amended Protocol II, national reports submitted in accordance with the established deadline are issued as official documents of the annual conference.

25. Under both instruments national reports are forwarded to the Secretary-General of the United Nations and appear in the respective database established by the UNODA Geneva branch.

Recommendation

26. The States parties to Protocol V may wish to follow the existing practice: national reports and updates of national reports would be submitted in one of the authentic languages of the Convention, if possible in electronic form. Unofficial translation of the national reports or the updates may also be provided.

27. This database would be maintained by the CCW Secretariat and would be accessible for all: the States parties, States non-parties as well as the general public. The States not parties to Protocol V could be encouraged to also provide voluntary national reports for the database.

REVIEW

28. This reporting mechanism may be subject to a review in five years' time.
