

Seventh Conference of the High Contracting Parties 30 August 2013
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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Report
Clearance, Removal or Destruction of Explosive Remnants of
War and Article 4

Submitted by the Coordinator¹ and Friend of the Coordinator on
Clearance, Removal or Destruction of Explosive Remnants of War and
Article 4

Introduction

1. Central to Protocol V's objective of preventing the humanitarian harm caused by explosive remnants of war (ERW) are the provisions of Article 3. Article 3 requires High Contracting Parties in control of affected territories and the users of explosive ordnance to contribute to the surveillance, clearance and destruction of ERW. An important mechanism to facilitate clearance operations is Article 4, which requires militaries to record the use and abandonment of explosive ordnance during an armed conflict. The information recorded must be transferred to the party in control of the territory or a third party.

2. To advance both the understanding and implementation of Articles 3 and 4, the Sixth Conference agreed to continue consideration of Article 3 matters and in particular to focus on capacity building in the areas of surveillance, clearance, removal and destruction of ERW at the national and community levels. In addition, the Coordinator prepared a food-for-thought paper on existing ERW. The intention was not to renegotiate the obligations under Protocol V concerning existing and future ERW, but instead to use the opportunity of six years after the entry into force of Protocol V to learn from affected States on their experiences and challenges with clearing existing ERW and whether they have the necessary procedures in place and resources to address this problem.

¹ In accordance with the decision of the Sixth Conference of the High Contracting Parties to Protocol V on Explosive Remnants of War, as contained in paragraph 39(a) of its final document (CCW/P.V/CONF/2012/10), the discussions on clearance, removal or destruction of explosive remnants of war, were led by Mr. Ivan Grinevich of Belarus as the Coordinator and Colonel Gerfried Elias of Germany as Friend of the Coordinator.

3. On Article 4, High Contracting Parties were encouraged to include information in their national reports on their steps to implement the obligations on recording, retaining and transmitting information on the use or abandonment of explosive ordnance and steps taken to fulfill the requirements of Article 11, which concerns issuing appropriate instruments and providing training on the obligations of Protocol V. High Contracting Parties were also encouraged to share their practices and experiences on how they give effect to their obligations under Article 4, especially when participating in coalitions or alliances. For example, when participating in a coalition or alliance do national militaries' Article 4 procedures differ compared to when acting independently?

Exchange of information on clearance, removal or destruction of ERW, capacity building and existing ERW during the Meeting of Experts

4. Mr. Erasmus Stir Jakobsen, Head of Section of Danish Demining Group (DDG) made his presentation on DDG's experiences with assisting affected States in the area of capacity building. Mr. Jakobsen indicated that there are two ways of building capacity within ERW affected States. First was the traditional approach of providing assistance through working with national authorities and established structures of the recipient country in a formal way. The non-traditional approach involved the provision of direct assistance to the ERW affected communities. In DDG's experience the non-traditional route is the more preferable one. DDG emphasised that there should be holistic engagement with governments and community stakeholders; compliance activities should be left to the government and national authorities; national structures must include both those at the technical and policy levels; and there needed to be longer term engagement by donors and international agencies. The United States of America shared its experiences on capacity building and emphasised that close cooperation with the affected State was vital to the success of any capacity building. Technical and financial assistance should strengthen and augment the resources of affected States. Another important element was understanding the nature and scope of landmine and ERW contamination in affected States. This enabled work to focus on the capacities required to effectively and efficiently address the problem and not to be distracted by adding unnecessary capabilities. While some States emphasised the importance of providing international cooperation for capacity building, others argued that even States with very limited financial resources or experience with UXO needed to support and invest in capacity building in order to create a fully functional and sustainable clearance programme. For example, Mozambique acknowledged that it was in the early stages of building up its national capacity and hoped to exchange experiences with neighboring States.

5. A number of High Contracting Parties continue to be confronted with the challenge of existing ERW. For example, prior to 2012 Lao People's Democratic Republic cleared 39 000 hectares of existing ERW. During 2012, 5603 hectares was cleared. While efforts had been made to survey the extent of the contamination in Lao People's Democratic Republic, the total amount of contaminated land is unknown and this is being addressed through a land release and district focused approach. The most common type of ERW is the cluster submunition. The long term impact of ERW has been the occurrence of new victims and casualties along with ongoing poverty in affected communities. The Ministry of Defence (MoD) and the National Regulatory Authority (NRA) for UXO/Mine Action are the two key bodies with responsibility for ERW. If a civilian finds a piece of ERW, the village head is the first point of contact, then he or she will report to the clearance operator working in the area or to the district authority. If there is no operator working in the area, the NRA will coordinate with the MoD to send a roving clearance team. Another country affected by

existing ERW was Mozambique, which explained that the three main difficulties it faced in dealing with existing ERW were: (1) there had been widespread use of explosive weapons in Mozambique and combatants had not kept any records or maps on the use of explosive ordnance; (2) clearance is completed to the standard depth of 13 centimeters, but explosive ordnance can be buried much more deeply; and (3) due to the range of weapons used and the unpredictability concerning depth, it is difficult to accurately conduct battle area clearance to a standard where it can be guaranteed that an area will be free of UXO. In Mozambique if a civilian discovers a piece of ERW, they can contact the National Demining Institute and the Humanitarian Demining Operators. In the future, this responsibility will transfer to the Ministry of Interior and Police.

6. The following States participated in the discussions and provided updated information on the status of their respective clearance programmes: Armenia, Belarus, Colombia, Croatia, Estonia, Lao People's Democratic Republic, Montenegro, Mozambique, Nigeria, Russian Federation, Senegal, Sri Lanka and Ukraine. The updates provided by these States demonstrated that work on the implementation of Article 3 continues to be an important priority for affected States.

Discussion on implementation of Article 4 – recording, retaining and transmission of information

7. The session on Article 4 was opened with a presentation by Mr. Raymond Smith, Military-Technical Adviser, Arms Unit, International Committee of the Red Cross (ICRC) on the "Operationalizing the recording requirements of Protocol V" Meeting of Experts, which was hosted by the ICRC from 8 to 9 November 2012 in Geneva. The purpose of the Meeting of Experts was to clarify the understanding of the requirements of Article 4 and to examine the current practices of States concerning its implementation. Also, there were discussions on some of the main challenges to Article 4 implementation.

8. The ICRC stated that if properly implemented Protocol V has the potential to greatly relieve the suffering caused by ERW and is among the CCW's achievements with the greatest potential to benefit those affected by armed conflict. If the Protocol is to make a meaningful contribution to the protection of civilian populations from the effects of ERW, challenges and obstacles to its implementation needed to be understood and addressed. One of the ongoing challenges towards implementation is that a significant number of High Contracting Parties either may have misunderstood or are facing challenges in implementing Article 4's obligations. In anticipation of the final report of the Meeting of Experts, which will be made available to all CCW High Contracting Parties, Mr. Smith presented the paper "Recommended Best Practices for Implementation". A number of High Contracting Parties intervened on the recommendations presented by the ICRC and in particular, States expressed their concerns about the use of the phrase "legally binding on the armed forces" as part of the recommendation for States to adopt a formalised instrument for the provisions of Article 4 and Part 1 of the Technical Annex under the authority of the minister for defence, armed forces chief or another equivalent office. States made the point that Article 4 refers "to the maximum extent possible and as far as practicable" and therefore supported a pragmatic approach to implementation of these obligations. States intended to study and analyze the recommendations carefully and to provide comments to the ICRC.

9. Ms. Hine-Wai Loose, CCW Implementation Support Unit, presented a new assessment of the progress made by High Contracting Parties in implementing Article 4. Common errors were reporting on ERW contamination on a State's own territories in peace time; referring to engineering information systems, which were often designed to record the discovery of ERW during a surveillance operation rather than the use or abandonment of

explosive ordnance during an armed conflict; and reporting on the current non-engagement in an armed conflict, which does not take into account the importance of having recording procedures in place prior to a State finding itself in such a situation.

10. Lieutenant Colonel Olivier Madiot, Arms Control Division, Ministry of Defense, presented France's Article 4 procedures. It was first necessary to explain the rationale behind Article 4, especially in terms of its advantages for military forces. Implementing Article 4 facilitates clearance operations and thereby makes a significant contribution to the protection of civilians, but also recording the location of ERW provides protection to militaries. It also facilitates the transition from military operations to the post-conflict building phase as a military can demonstrate what they have done to protect the civilian population. Finally, the recording of firing data enables an assessment to be carried out on the efficiency of munitions. Article 4 does take a pragmatic approach, especially as it requires "to the maximum extent possible and as far as practicable record and retain information on the use of explosive ordnance..." This meant that Article 4 can be adapted to operational realities.

11. Establishing an inventory of existing weapons was important. For many of the weapons systems systematic recording was already carried out, which enabled an immediate assessment of the damage to the target. Given this background, each service within the armed forces was tasked to determine the level at which recording was to be carried out. The first priority was to use automatic systems and if this was not possible, they were to use manual recording procedures and the third option was noting the approximate coordinates of the area in which the conflict took place. Collecting and retaining data was a major challenge. All units had procedures for safeguarding their firing data and therefore, supplied data to their operation, legal and logistical files. It was important to establish files on the supplementary information concerning the type of explosives that could give rise to ERW and to centralise the new files at the appropriate level. For France the centralization of data is carried out in the Heads of Staff within the Armed Forces in Paris. The centralisation of data provides the advantages of knowing that data has been correctly recorded and it will be subsequently transmitted.

12. Concerning the transmission of information on the use or abandonment of explosive ordnance without delay after the cessation of active hostilities, France had decided to make data exclusively available only on request of parties in control of the affected area or on request of other organizations which are tasked by the affected country to conduct clearance operations. France was against any type of automatism in the transmission process. It was clear that implementation of these obligations was not a fixed process as much depended on the way in which the armed forces of a particular country were organised and the types of weapons used.

Discussion on giving effect to the obligations of Article 4 when High Contracting Parties are participating in coalitions or alliances

13. France stated that it did not distinguish between acting independently and participating within an operation of a coalition or alliance. Recording of firing data is a national responsibility.

14. Lieutenant Colonel Frank Cremer, a representative from the Supreme Headquarters Allied Powers Europe (SHAPE), shared his views from an alliance perspective concerning the interaction between the command level and participating nations on the obligations of Article 4 and provided examples from the experience of Operation "UNIFIED PROTECTOR" in Libya. The North Atlantic Treaty Organisation (NATO) is well aware of each of its members obligations under international humanitarian law and these are taken

into consideration when planning and conducting operations. For example the Allied Command Operations Directive on “Conventional Arms Control and Alliance Military Activities” (AD 80-75) states, “The CCW Convention must always be considered in NATO planning”.

15. NATO took control of all military operations for Libya under the United Nations Security Council Resolutions 1970 and 1973. All fire missions (air delivered, helicopter strikes and naval fire support activities) were registered in the database of the Combined Forces Air Component Command (CFACC). This database initially remained classified. The classifying authority, CFACC, had the responsibility and authority for declassifying the database. In conducting this process, participating nations had the possibility to check and review the data with regard to confidentiality and protection of national interests via their National Military Representative (NMR). This procedure allowed nations to object to the release of any specific data before declassifying the entire database. After that, CFACC did declassify and gave permission for the release of sanitized information to the ICRC and the United Nations Mine Action Service (UNMAS). From SHAPE’s perspective everything possible had been done to enable NATO member’s compliance with Article 4 of Protocol V; not only in the aftermath but also during the preparation and execution of Operation “UNIFIED PROTECTOR”.

Recommendations

16. In light of the above, it is recommended that the Seventh Conference of the High Contracting Parties decide as follows:

(a) To continue the consideration of clearance, removal or destruction of ERW in the context of meetings of experts and the conferences of the High Contracting Parties to Protocol V and in particular to encourage affected High Contracting Parties to report on their authorities responsible for ERW, awareness raising and educational campaigns for the public, both progress towards and challenges in surveying and clearing and destroying ERW.

(b) To encourage donor and affected High Contracting Parties to further support capacity building for the surveillance, clearance and destruction of ERW at the community and national levels, as a means of ensuring that such programmes are strengthened and sustainable.

(c) To continue to further address all aspects of the obligations of Article 4 in conjunction with Article 11 in a special working session of the Meetings Experts to support all High Contracting Parties to implement appropriate operating procedures and instructions and provide training to their military personnel.

(d) To emphasise that the obligations of Article 4 are a national responsibility even when participating in coalitions or alliances.
