

Protocol V on Explosive Remnants of War

- 8.1 *The Protocol on Explosive Remnants of War to the 1980 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* (Protocol V) reduces the humanitarian risk posed by explosive remnants of war by obliging Contracting States to mark and clear, remove or destroy explosive remnants of war.¹

Background

- 8.2 *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* (the Convention) is an important instrument of international humanitarian law.² It prohibits and/or restricts the use of specific categories of conventional weapons, considered to be indiscriminate and to inflict superfluous injury or unnecessary suffering on both combatants and civilians.³ The Convention has 100 Parties.⁴

This protocol is the fifth one under 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. The

1 Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 24.

2 National Interest Analysis (NIA), para. 5.

3 NIA, para. 5.

4 NIA, para. 5.

previous four protocols dealt with non-detectable fragments, mines, booby traps and other devices, incendiary weapons and blinding laser weapons. Australia is a signatory to the CCW and all of the four preceding protocols.⁵

- 8.3 Australia's delegation to the Group of Government Experts played an active role in the negotiation of Protocol V, advocated a balance between addressing the humanitarian impact of explosive remnants of war and legitimate military needs, as well as supporting a pragmatic approach to clearance responsibilities in territories outside a State's control.⁶
- 8.4 Twenty States are required to deposit notifications of consent to be bound before Protocol V enters into force.⁷ Currently 23 States have notified their consent to be bound by Protocol V and it is expected to enter into force on 12 November 2006.⁸

Protocol V

- 8.5 Protocol V is a legally binding instrument which applies to international and non-international armed conflict.⁹ Its primary obligation is for High Contracting States to mark and clear, remove or destroy explosive remnants of war present in their territory after the cessation of hostilities.¹⁰
- 8.6 Under Article 4 of Protocol V, Parties must record and retain information on the use or abandonment of explosive ordnance in order to facilitate its post-conflict clearance. On the cessation of active hostilities, Parties must provide this information to parties in control of the affected area or to other organisations relevant to clearance operations.
- 8.7 Article 5 obliges Parties to protect the civilian population in the territory under its control from explosive remnants of war.

5 Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 24.

6 NIA, para. 6.

7 NIA, para. 7.

8 NIA, para. 7.

9 Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 24.

10 Article 3 Protocol V; NIA, para. 8; Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 24.

- 8.8 Under Article 6 Parties must protect humanitarian missions and organisations from the effects of explosive remnants of war. This may include the provision of information upon request on the location of all explosive remnants of war.
- 8.9 Parties may seek and receive assistance in dealing with problems posed by existing explosive remnants of war and any Party in a position to provide assistance, must do so.¹¹
- 8.10 Parties must use generic preventative measures to minimise the occurrence of explosive remnants of war. Suggested best practice is included within Section 3 of the Technical Annex.
- 8.11 The obligations under Protocol V are largely prospective and so do not apply to explosive remnants of war prior to the entry into force of the Protocol.¹² However, obligations related to the protection of humanitarian missions and the provision of assistance relate to existing explosive remnants of war.¹³

Implementation

- 8.12 Implementation of Protocol V will not require any additional legislation.¹⁴ The Committee was informed that responsibility for compliance with Protocol V is with the Australian Defence Force.

There would be no significant impacts on the conduct of military operations which are already conducted in accordance with Australia's law of armed conflict obligations...In order to ensure that the Australian Defence Force would be compliant with the fifth protocol, the Secretary of Defence and the Chief of Defence Force have issued a joint directive which instructs that Defence will be in full compliance with the protocol within 180 days of Australia depositing its instrument of consent to be bound by Protocol V, and that deadline coincides with our treaty obligations.¹⁵

11 Article 7 Protocol V.

12 NIA, para. 10.

13 Articles 6 and 9 respectively; NIA, para. 9.

14 NIA, para. 18.

15 Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 25.

Costs

- 8.13 Compliance with the obligations of Protocol V will not involve any immediate financial cost for Australia.¹⁶
- 8.14 The National Interest Analysis states that costs may be incurred in the event that Australia is in control of territory containing explosive remnants of war.¹⁷

The costs of any of those obligations would be part of the cost of maintaining a presence in the territory we occupied. If we were not in occupation of the territory over which we had fought, the obligation would be to provide information.¹⁸

Consultation

- 8.15 Extensive consultation was undertaken within the Defence.¹⁹
- Defence provided members of the ADF to participate as part of the group of government experts that were responsible for negotiating the text. The individuals involved were operational lawyers and Army engineers. They closely assisted our Foreign Affairs colleagues and others in the negotiations and the development of the text. Subsequently we remain in close contact with other government departments about the implications of protocol V for the ADF.²⁰
- 8.16 Protocol V was an agenda item on the annual National Consultative Committee on Peace and Disarmament meetings in both 2002 and 2003. Members of this Committee include representatives from the Australian Red Cross and the Australian Network of the International Campaign to Ban Landmines.²¹

16 NIA, para. 20.

17 NIA, para. 21.

18 Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 25.

19 NIA, 'Consultation', para. 1.

20 Mr Murray Perks, *Transcript of Evidence*, 11 September 2006, p. 25.

21 NIA, 'Consultation', para. 3.

- 8.17 Information on Protocol V was provided to the Commonwealth-State/Territory Standing Committee on Treaties.²²

Conclusion and recommendation

- 8.18 Support for Protocol V is consistent with Australia's long-standing commitment to reducing the humanitarian impact of armed conflict, particularly on civilian populations.

Recommendation 9

The Committee supports the *Protocol on Explosive Remnants of War to the 1980 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* and recommends that binding treaty action be taken.

²² NIA, 'Consultation', para. 2.

