

Successful Implementation of Protocol V

Protocol V of the Convention on Certain Conventional Weapons¹ recently entered into force, and the author hopes lessons learned from the operations of the Ottawa Convention² can be applied to this Protocol.

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On 12 November 2006, Protocol V of the Convention on Certain Conventional Weapons entered into force; it addresses the humanitarian impact of explosive remnants of war other than landmines.³ This “Protocol on Explosive Remnants of War,” as it is formally known, contains “remedial measures of a generic nature in order to minimise the risks and effects of explosive remnants of war.”⁴ With the Protocol having become binding international law for more than 20 states,⁵ attention has turned toward the work necessary to implement it.

Much of this attention has focused on practical operations of the Protocol. For instance, it has been frequently mentioned that various lessons from the operations of the Ottawa Convention (e.g., an informal work programme, a sponsorship programme) could be applied to Protocol V. While valuable operational lessons can be applied in terms of how the Protocol functions, what is often overlooked are the important conceptual lessons that can be applied from the Ottawa Convention regarding what might be implemented.

Lessons Learned from the Ottawa Convention

Some central concepts in the work to implement the Ottawa Convention are:

- **Responsibility:** It is the responsibility of each individual party to the Convention to fulfill certain obligations in areas under its control or jurisdiction.
- **Measurable and time-bound obligations:** Key provisions of the Convention call for actions that are clearly quantified and must be carried out over a set period of time.
- **Cooperation and assistance:** Notwithstanding the fact that individual States Parties are responsible for fulfilling certain measurable and time-bound obligations, other States Parties are required to assist when feasible and to the extent possible.



A complication exists, though, in instances when obligations are not measurable and time-bound, or even universally applicable. In such cases, it is difficult for cooperation and assistance to manifest because objectives and deadlines are not clearly defined. A central and active role of the state is exactly how the States Parties to the Ottawa Convention have dealt with the ambiguity surrounding the Convention’s obligations in relation to mine victims.

The imperative to assist mine victims is manifested in a legal obligation for “each State Party in a position to do so” to “provide assistance for the care and rehabilitation, and social and economic reintegration of mine victims.”⁶ However, unlike the Ottawa Convention’s clear obligations to destroy or ensure the destruction of stockpiled or emplaced anti-personnel mines, the obligation concerning mine-victim assistance is ambiguous. It is neither defined nor measurable. Moreover, even if defined, the implementation of objectives and deadlines would not be universally applicable.

The Ottawa Convention’s States Parties have first dealt with the ambiguity of mine-victim assistance by clearly defining *mine victims* and *victim assistance*, and adopting certain common understandings regarding the place of victim assistance in broader contexts.

Second, a number of States Parties have chosen to “self identify,” an act of indicating that addressing the matter of victim assistance is truly relevant and necessary for them. Certainly it is understood all States Parties have a responsibility to support mine victims, no matter the number of victims in a particular state. However, this responsibility is particularly pertinent for those States Parties that have indicated significant numbers—hundreds or thousands—of survivors in areas under their control or jurisdiction. A total of 24 States Parties have self-identified, acknowledging that comparatively they have some of the greatest needs and greatest responsibilities to provide victim assistance.

Third, because these Parties are ultimately responsible for their populations, the matter of identifying what can and should be done by what deadline has been turned over to each individual state because conditions are unique to each of them. In addition, while acknowledging that assisting victims is a long-term task, a timeline has been established for the achievement of a meaningful level of interim progress: the Ottawa Convention’s Second Review Conference in 2009.

Applying these Lessons to Protocol V

Protocol V contains an obligation in Article 8.2 to assist victims of explosive remnants of war that is basically identical to the obligation in the Ottawa Convention. Hence, the lessons of the Ottawa Convention can easily be applied to the effort to implement victim assistance under Protocol V. However, even beyond victim assistance, the Ottawa Convention’s lessons can be applied to Protocol V’s Article 3, which addresses the clearance, removal or destruction of ERW. Additionally, to ensure Protocol V has a more immediate and noticeable impact, these lessons might also be applied to Article 7, which contains an implicit appeal that clearance, removal or destruction measures be undertaken with respect to already existing ERW.

Protocol V’s Article 3 calls for each High Contracting Party to “mark and clear, remove or destroy explosive remnants of war in affected territories under its control,” according priority to those areas “posing a serious humanitarian risk.”⁷ Article 3 includes specifics regarding how these provisions should be applied, including surveying and assessing the threat; prioritising needs; marking and clearing, removing or destroying; conducting these activities in accordance with high standards (left to the reader to define); and mobilising resources to carry out these activities.

However, despite these specific provisions, success or failure in the application of Article 3 is not clear, measurable, time-bound or universally applicable. Therefore, the High Contracting Parties to Protocol V may benefit from applying the Ottawa Convention’s methodology for victim assistance, which was borne out of similar challenges in application. This methodology could be applicable to Protocol V Articles 3 and 7 regarding clearance, removal and destruction of ERW, as well as to the victim-assistance obligation found in Article 8.2, and might include the following principles:

- States that wish to address the problems they face with respect to new and existing ERW could be asked to self-identify.



While Protocol V’s provisions largely relate to future ERW, clearance, removal and destruction of existing ERW as seen here by a MACC Explosive Ordnance Disposal Team member carrying out a battle-area-clearance task, will be significant in ensuring the Protocol lives up to its promise.
PHOTO COURTESY OF HABEN YOSEPH/UNMEE MACC

- As the responsibility to address problems caused by ERW rests with individual Parties that have self-identified, these Parties could be asked—with assistance if necessary—to provide baseline information on the problems they face and to establish specific, measurable, achievable, relevant objectives and timelines for achieving these objectives.
- States could be asked to develop and implement plans to achieve their objectives. As part of these plans, there should be a clear articulation of priorities for assistance.
- High Contracting Parties in a position to provide assistance could respond to prioritised assistance needs as articulated by Parties that have well-developed plans.
- High Contracting Parties could periodically hold Conferences of High Contracting Parties to assess progress in achieving the objectives as previously articulated by the self-identified Parties.

Conclusion

This approach may sound self-evident, but such was not the case when similar work to implement the Ottawa Convention began. Moreover, there is an important nuance to this methodology that places the affected Party at the front and centre of addressing its Protocol V needs and obligations. As such Parties hold ultimate responsibility, notwithstanding the responsibility of others to assist, these affected

states should have their voices heard when it comes to their needs and aspirations. Equally, there should not be demands for large-scale assistance until affected states have also demonstrated a solid, realistic and measurable plan for implementation. ♦

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Since January 2002, **Kerry Brinkert** has served as the Manager of the Geneva International Centre for Humanitarian Demining’s Anti-personnel Mine Ban Convention Implementation Support Unit. Prior to that, Brinkert was the Section Head of Research, Policy and Communications with the Mine Action Team of Canada’s Department of Foreign Affairs and International Trade.

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