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PROTOCOL III TO 1949 GENEVA CONVENTION AND AN AMENDMENT AND PROTOCOL TO 1980 CONVENTIONAL WEAPONS CONVENTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE ADOPTION OF AN ADDITIONAL DISTINCTIVE EMBLEM (THE "GENEVA PROTOCOL III"), ADOPTED AT GENEVA ON DECEMBER 8, 2005, AND SIGNED BY THE UNITED STATES ON THAT DATE; THE AMENDMENT TO ARTICLE 1 OF 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 "CCW AMENDMENT"); AND THE CCW PROTOCOL EXPLOSIVE REMNANTS OF WAR (THE "CCW PROTOCOL V")

JUNE 20, 2006.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and order to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 20, 2006.*

To The Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith: the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (the "Geneva Protocol III"), adopted at Geneva on December 8, 2005, and signed by the United States on that date; the Amendment to Article 1 of 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 "CCW Amendment"); and the CCW Protocol on Explosive Remnants of War (the "CCW Protocol V"). I transmit, for the information of the Senate, the report of the Department of State concerning these treaties.

Geneva Protocol III. Geneva Protocol III creates a new distinctive emblem, a Red Crystal, in addition to and for the same purposes as the Red Cross and the Red Crescent emblems. The Red Crystal is a neutral emblem that can be employed by governments and national societies that face challenges using the existing emblems. In addition, Geneva Protocol III will pave the way for Magen David Adom, Israel's national society, to achieve membership in the International Red Cross and Red Crescent Movement. Legislation implementing Geneva Protocol III will be submitted to the Congress separately.

CCW Amendment. The amendment to Article 1 of the CCW, which was adopted at Geneva on December 21, 2001, eliminates the distinction between international and non-international armed conflict for the purposes of the rules governing the prohibitions and restrictions on the use of certain conventional weapons. It does not change the legal status of rebel or insurgent groups into that of protected or privileged belligerents.

CCW Protocol V. CCW Protocol V, which was adopted at Geneva on November 28, 2003, addresses the post-conflict threat generated by conventional munitions such as mortar shells, grenades, artillery rounds, and bombs that do not explode as intended or that are abandoned. CCW Protocol V provides for the marking, clearance, removal, and destruction of such remnants by the party in control of the territory in which the munitions are located.

Conclusion. I urge the Senate to give prompt and favorable consideration to each of these instruments and to give its advice and consent to their ratification. These treaties are in the interest of the United States, and their ratification would advance the long-

standing and historic leadership of the United States in the law of armed conflict.

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, June 12, 2006.

The PRESIDENT,
The White House.

MR. PRESIDENT: I have the honor to submit to you the following treaties with a view to their transmittal to the Senate for advice and consent to ratification: the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem ("Geneva Protocol III"), adopted at Geneva on December 8, 2005; the Amendment to Article 1 of 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 ("CCW Amendment"), adopted at Geneva on December 21, 2001; and the CCW Protocol on Explosive Remnants of War ("CCW Protocol V"), adopted at Geneva on November 28, 2003. The United States, which actively participated in the negotiations of each treaty, signed Geneva Protocol III at Geneva on the date that it was adopted, and joined the consensus adoption of the CCW Amendment and CCW Protocol V. I recommend that these treaties be transmitted to the Senate for its advice and consent to ratification.

Geneva Protocol III. Geneva Protocol III establishes a new distinctive emblem, a Red Crystal, in addition to and for the same purposes as the Red Cross and the Red Crescent emblems. The Red Crystal is a neutral emblem that can be employed by governments and national societies that face challenges using the existing emblems or that believe that this neutral emblem may offer enhanced protections in certain situations. In addition, Geneva Protocol III will pave the way for Magen David Adom, Israel's national society, to become a member of the International Red Cross and Red Crescent Movement.

CCW Amendment. Article 1 of CCW as adopted in 1980 limited the treaty's scope of application to international armed conflict and wars of national liberation. In 1999, the United States proposed expanding the scope of CCW as a whole to non-international armed conflicts, thus according the civilian population the same protections against the indiscriminate use of landmines and certain other conventional weapons regardless of the type of conflict. States Parties adopted this amendment in 2001; it entered into force internationally on May 18, 2004.

CCW Protocol V. CCW Protocol V provides rules for what must be done with respect to munitions that were intended to have exploded during an armed conflict but failed to do so, in order to reduce the threat such munitions pose to civilians and to post-conflict

reconstruction. CCW Protocol V will enter into force on November 12, 2006, which is six months after twenty states notified their consent to be bound by CCW Protocol V.

An overview of the provisions of each treaty is enclosed. Legislation implementing Geneva Protocol III in a manner that does not impose a cost on U.S. taxpayers is being submitted separately to the Congress.

Conclusion. I believe that ratification of each of these instruments, which promote the humanitarian objectives of the United States, would advance the longstanding and historic leadership of the United States in the law of armed conflict and, augmented by the adoption of implementing legislation for Geneva Protocol III, would be consistent with existing U.S. legislation. The Departments of Defense and Justice, and the U.S. Patent and Trademark Office (regarding Geneva Protocol III), join me in recommending that these treaties be transmitted to the Senate at an early date for its advice and consent to ratification.

Respectfully submitted,

CONDOLEEZZA RICE.

Enclosure: As stated.

Protocol Additional to the 1949 Geneva Conventions (Protocol III)

Overview

On December 8, 2005, the Diplomatic Conference convened at Geneva by the Swiss Federal Council, in its capacity as Depositary of the Geneva Conventions of 1949 and their Additional Protocols of 1977, voted to adopt the Protocol Additional to the 1949 Geneva Conventions relating to the Adoption of an Additional Distinctive Emblem ("Geneva Protocol III"). Geneva Protocol III was opened for signature on December 8, 2005, and will remain open for a period of twelve months. As of May 19, 2006, 57 States have signed Geneva Protocol III. Geneva Protocol III will enter into force six months after two instruments of ratification or accession have been deposited.

The text of Geneva Protocol III was originally drawn up in October 2000, following discussions within the Joint Working Group established by the Standing Commission of the Red Cross and Red Crescent pursuant to the mandate assigned to it by Resolution 3 of the 27th International Conference of the Red Cross and Red Crescent and subsequent consultations. The United States played a significant role in these discussions and consultations, urging that this longstanding humanitarian issue be resolved as soon as possible and that the High Contracting Parties to the Geneva Conventions conclude a protocol on this issue as an important step towards achieving truly universal membership in the International Red Cross and Red Crescent Movement.

The 1949 Geneva Conventions provide for the respect and protection of military medical and religious personnel during international armed conflicts. The Geneva Conventions retained the distinctive emblems as a means of easily identifying and protecting such personnel, their vehicles, and their facilities. Moreover, the Conventions permit authorized national societies of High Contracting Parties to the Geneva Conventions to use these emblems for protective purposes only in limited circumstances, but permit them to use the emblems for indicative purposes in a greater number of circumstances. For both situations, the Geneva Conventions impose a number of limitations on use of the emblems by the national societies. Geneva Protocol III creates a new emblem, equal in all respects to the existing

emblems, to be used by military medical and religious services and authorized national societies.

The following is an article-by-article analysis of Geneva Protocol III.

The Preamble emphasizes that the states Parties to Geneva Protocol III may continue to use the existing emblems they are using in conformity with their obligations under the Geneva Conventions and, where applicable, the Protocols thereto. The Preamble also acknowledges the difficulties that certain states and national societies have with using the existing distinctive emblems. Furthermore, the Preamble notes the determination of the International Committee of the Red Cross ("ICRC"), the International Federation of the Red Cross and Red Crescent Societies ("IFRC"), and the International Red Cross and Red Crescent Movement to retain their current names and emblems.

Article 1 notes that Geneva Protocol III reaffirms and supplements the provisions related to the existing distinctive emblems in the Geneva Conventions and the 1977 Additional Protocols and indicates that Geneva Protocol III will apply in the same situations.

Article 2 establishes a new distinctive emblem "in addition to, and for the same purposes as" the existing distinctive emblems. Article 2 establishes that the emblems "shall enjoy equal status" and that the conditions for use of and respect for the new emblem are identical to those applicable to the existing emblems. This Article describes the new distinctive emblem as "a red frame in the shape of a square on edge on a white ground" and references the Protocol's Annex, which provides several illustrations of the emblem. Finally, Article 2 authorizes the medical services and religious personnel of armed forces of the states Parties to make temporary use of any of the distinctive emblems (including the new emblem) where such use may enhance protection.

Article 3 discusses use of the new distinctive emblem by national societies. In particular, it authorizes national societies of states Parties that decide to use the new emblem to incorporate within it one or more of the existing distinctive emblems or "another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting

Parties and the International Committee of the Red Cross" prior to December 8, 2005. This Article also authorizes a national society that incorporates within the new emblem one of the existing emblems to "use the designation of that emblem and display it within its national territory."

Article 4 authorizes the ICRC and the IFRC and their duly authorized personnel to use the new emblem "in exceptional circumstances and to facilitate their work[.]" Article 5 authorizes the medical services and religious personnel participating in operations under the auspices of the United Nations to use one of the distinctive emblems with the agreement of the participating states.

Article 6 extends to the new distinctive emblem provisions of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, regarding "prevention and repression of misuse" of the existing distinctive emblems. States Parties to Geneva Protocol III are required to take measures "necessary for the prevention and repression, at all times, of any misuse" of each of the emblems, including "the perfidious use and the use of any sign or designation constituting an imitation thereof." Paragraph 2 of this Article allows states Parties to permit "prior users" of the new emblem, or of "any sign constituting an imitation thereof," to continue using such emblem or signs, so long as the emblem or signs do not "appear, in time of armed conflict, to confer the protection" of the Geneva Conventions and, where applicable, the Additional Protocols. Paragraph 2 also requires the prior user to have acquired the rights to use the emblem or signs before December 8, 2005. Legislation implementing this provision of Geneva Protocol III will be submitted separately to Congress.

Article 7 commits the states Parties to undertake to disseminate Geneva Protocol III as widely as possible within their own countries and to include the study thereof in their military instruction programs and to encourage study by their civilian populations.

Articles 8-17 are final clauses typical of most international conventions. Article 8 provides for Geneva Protocol III to be opened for signature by the states Parties to the Geneva Conventions on the day of its adoption and remain open for signature for a period of twelve months. Article 9 instructs the states Parties to

deposit their instruments of ratification with the Depositary, the Swiss Federal Council. Article 10 allows any state Party to the Geneva Conventions that has not signed Geneva Protocol III to accede to it by depositing an instrument of accession with the Depositary. Article 11 provides that Geneva Protocol III enters into force six months after two instruments of ratification or accession have been deposited. The requirement that there be two instruments deposited is the same threshold requirement for bringing the 1949 Geneva Conventions into force. This Article also provides that Geneva Protocol III enters into force for new states Parties ratifying or acceding to it six months after deposit of their respective instruments of ratification or accession. Article 12 provides that when one party to the conflict is not bound by Geneva Protocol III, states Parties to Geneva Protocol III remain bound by Geneva Protocol III in relation to each other, and further will be bound in relation to each of the parties to a conflict that are not bound by it, if the latter accepts and applies its provisions.

Article 13 provides a procedure for proposing amendments to Geneva Protocol III and authorizes the Depositary to decide, after consulting with all of the states Parties, the ICRC, and the IFRC, whether to convene a conference to consider the proposed amendment. If the Depositary convenes a conference, it is required to invite all of the states Parties to Geneva Protocol III and all of the High Contracting Parties to the 1949 Geneva Conventions, whether or not they are signatories to Geneva Protocol III. Article 14 provides that a denunciation of Geneva Protocol III takes effect one year after the receipt of the instrument of denunciation. This Article also provides that if, at the expiration of the year, a denouncing state Party is engaged in armed conflict or occupation, the denunciation does not take effect before the end of the armed conflict or occupation. This Article clarifies that a denunciation does not affect the obligations already incurred by reason of an armed conflict or occupation under Geneva Protocol III by the denouncing state Party with respect to any act committed before this denunciation becomes effective.

Article 15 instructs the Depositary to inform all of the states Parties to Geneva Protocol III and all of the High Contracting Parties to the 1949 Geneva Conventions of certain specific developments related to Geneva Protocol

III. Article 16 requires the Depositary to register Geneva Protocol III with the United Nations Secretariat, in accordance with Article 102 of the UN Charter, and notify the Secretariat of all ratifications, accessions and denunciations of this Protocol. Article 17 establishes that the text of the Protocol in Arabic, Chinese, English, French, Russian, and Spanish are equally authentic.

The Annex to Geneva Protocol III provides illustrations of the new emblem, including for its indicative purposes.

Amendment 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

Overview

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 ("CCW") was concluded at Geneva on October 10, 1980. It entered into force on December 2, 1983, for states that had ratified it. The United States signed it on April 8, 1982, and ratified it on March 24, 1995. To date, 100 states have ratified the CCW. On December 21, 2001, states Parties adopted an amended Article 1 of CCW to expand its scope of coverage; this amendment entered into force on May 18, 2004, for states that had ratified it. To date, 44 states have ratified the amendment.

CCW and its Protocols are part of a legal regime that regulates the use of particular types of conventional weapons thought to pose special risks of having indiscriminate effects or causing unnecessary suffering. CCW Article 1, as adopted in 1980, limited the scope of application of the Convention to international armed conflict and wars of national liberation. In 1999, the United States proposed that CCW states Parties expand the scope of the Convention as a whole to non-international armed conflicts, which are becoming increasingly prevalent.

The amendment to Article 1 means that the provisions in the Convention and its Protocols dealing with the use of weapons such as landmines, incendiary weapons, and blinding laser weapons will apply in all kinds of armed conflicts. Thus, states Parties would be bound by the same rules and the civilian population would be accorded the same protections in internal and international armed conflicts, without unduly restricting the legitimate security requirements of a state to combat armed rebellion within its territory. The amendment to Article 1 is consistent with U.S. military requirements and existing military practices, and advances the U.S. national objective of preserving humanitarian values during armed conflict.

The following is a paragraph-by-paragraph analysis of the Amendment to Article 1 of the CCW.

Paragraph 1 provides that the Convention and its Protocols will apply to situations referred to in Common Article 2 of the 1949 Geneva Conventions - that is, international armed conflicts - and to any situation described in paragraph 4 of Article 1 of Additional Protocol I to the 1949 Geneva Conventions. This

paragraph 4 deals with "wars of national liberation," and is identical to the original Article 1 of the Convention.

Paragraph 2 expands the circumstances in which the provisions of the Convention and its Protocols will be observed. The Convention previously was limited to international armed conflicts and "wars of national liberation." The paragraph, as amended, states that the Convention and its Protocols will apply to situations referred to in Common Article 3 of the 1949 Geneva Conventions - that is, armed conflict not of an international character. This paragraph is essentially the same as Article 1(2) of the CCW Amended Mines Protocol, to which the United States is a party.

The result of this expanded scope is significant because of the positive effect it will have on the victims of war itself, to whom the distinction between the type of conflict - international or internal - matters little. The expanded scope will lead to increased protection of the civilian population from the effects of hostilities during, and in the aftermath of, internal armed conflicts by applying the principles and rules of the Convention and the first four protocols to those conflicts. The increased frequency of non-international armed conflicts also underscores the need to afford such protections to civilian populations in those situations.

Since the expanded scope brings the requirements of the Convention and its protocols to all armed conflicts, whatever their political character, it gives no special status to "wars of national liberation," unlike Article 1(4) of Additional Protocol I to the 1949 Geneva Conventions and references thereto in Article 7 of the CCW itself. The U.S. declaration at the time of its ratification of the CCW in March 1995, that Article 7 of the CCW will have no effect, continues to apply. Paragraph 2 of the amendment also states that the CCW and its Protocols do not apply to situations other than armed conflict, such as internal disturbances and riots.

Paragraph 3 establishes that, if a state Party to the CCW is engaged in an internal armed conflict in its territory, the prohibitions and restrictions contained in the CCW and its Protocols will apply to both state and non-state belligerents. There is no requirement that the adverse party or parties in the conflict meet specific criteria - e.g., be organized under responsible command or exercise some territorial control.

Paragraph 4 addresses the concern of states that international humanitarian law instruments not affect the sovereign power of a state to maintain law and order or defend its territorial integrity, using all legitimate means.

Paragraph 5 addresses states Parties' concern that nothing in the CCW be invoked to justify intervention in the affairs of a state. This does not mean, however, that any action to enforce the CCW, such as a discussion of compliance issues, could be considered unlawful intervention.

Paragraph 6 states that recognizing the applicability of the CCW and its Protocols to parties to a conflict that are not states Parties that have accepted the CCW or its annexed Protocols does not change the legal status of those parties or of a disputed territory.

Finally, Paragraph 7 provides that any Protocols adopted after January 1, 2002, may apply, exclude, or modify the scope of their application in relation to CCW Article 1. The first draft proposed by the United States automatically would have applied the expanded scope to all additional Protocols, but not all delegations supported this approach. Thus, the compromise formulation requires that future negotiations on protocols will have to decide whether the provisions should apply in non-international armed conflicts. By its terms, this paragraph means that the amended scope provision automatically applies to CCW Protocols I, II, III, and IV.

Protocol on Explosive Remnants of War (Protocol V) 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

Overview

On November 28, 2003, CCW states Parties adopted the fifth Protocol to CCW concerning Explosive Remnants of War (Protocol V). Protocol V will enter into force on November 12, 2006, which is six months after twenty states notified their consent to be bound by the Protocol in accordance with paragraph 3 of Article 5 of the CCW.

CCW and its Protocols are part of a legal regime that regulates the use of particular types of conventional weapons thought to pose special risks of having indiscriminate effects or causing unnecessary suffering. In 2000, the International Committee for the Red Cross produced a report concluding that a large proportion of the civilian deaths and injuries from explosive remnants of war (ERW) during the post-conflict period in Kosovo had been both predictable and preventable. ERW are defined as explosive munitions that remain armed after the cessation of the armed conflict, such as artillery shells, bombs, hand grenades, mortars, and rockets. This may include munitions that did not explode as intended and munitions that were abandoned. For the purposes of the Protocol, however, ERW does not include landmines. Landmines are addressed in the CCW Amended Mines Protocol (CCW Amended Protocol II).

In December, 2001, CCW states Parties decided to address the problems caused by ERW. In doing so, they considered the types of munitions that become ERW, technical features that could prevent such munitions from becoming ERW, measures that could facilitate their clearance and provide warning to civilian populations, adequacy of existing international humanitarian law in minimizing the post-conflict risks of ERW, and issues related to assistance and cooperation. In 2002, CCW states Parties decided to negotiate a protocol on the issue and, in November 2003, they adopted the text of Protocol V by consensus.

Protocol V is the first international agreement specifically aimed at reducing the humanitarian threat posed by unexploded and abandoned munitions of all types remaining on the battlefield after the end of armed conflicts. Protocol V contains no restrictions or prohibitions on the use of these weapons; rather, it addresses what must be done with respect to unexploded munitions that threaten civilians and post-conflict reconstruction. The Protocol deals primarily with steps to be taken before or after hostilities, not during them. Protocol V

also includes a Technical Annex of suggested best practices that states Parties to the Protocol are encouraged to follow on a voluntary basis in order to achieve greater munitions reliability.

Protocol V strikes the appropriate balance between the need to address the urgent humanitarian risk posed by ERW after a conflict and to maintain the ability of states to protect their legitimate military and security interests.

The following is an article-by-article analysis of Protocol V.

The Preamble recognizes that Protocol V's focus is on the post-conflict period and on the humanitarian concerns caused by ERW during such period. This focus is consistent with the negotiating mandate that led to the adoption of the Protocol. The United States believed that it was essential to establish the temporal nature of the Protocol, i.e., that the post-conflict period was the relevant timeframe for the actions contemplated by the majority of articles. The Preamble also notes that the Protocol addresses, in an Annex to be implemented on a voluntary basis, generic remedial measures to be taken following a conflict, to minimize the occurrence of ERW. A number of states wanted to impose targeting restrictions on the use of munitions to minimize the occurrence of ERW, particularly in populated areas, but the major military states, including the United States, did not support this idea.

Article 1 establishes the general obligation of states Parties to the Protocol to comply with the terms of the Protocol and states its scope of application. The Protocol applies to ERW on the land territory, including internal waters of states Parties, and applies to both international and non-international armed conflicts. The obligations concerning clearance, removal, destruction, recording, precautions, and cooperation and assistance related to ERW apply only to ERW that are created after entry into force of the Protocol for the Party on whose territory the ERW is located, i.e., these obligations are not retroactive.

Article 2 contains five definitions. Three of the definitions provide the basis for the definition of the term "explosive remnants of war": "unexploded ordnance", "abandoned explosive ordnance", and "explosive ordnance." The fifth definition is for the term "existing explosive remnants of war."

Article 3 contains the fundamental obligations of the states Parties with respect to marking, clearance, removal, or destruction of ERW. Each state Party (and non-state parties) to an armed conflict bear responsibility with respect to ERW in

territory under their control. During the negotiations, some delegations proposed that the responsibility to clear unexploded munitions should be shifted to the party that used the munitions. Such a provision would have been contrary to the long-established customary principle of the rights and responsibilities of a sovereign state over its territory; responsibility should be assigned to the entity in the best position to exercise it. The Article requires a user of explosive ordnance that becomes ERW, in situations in which a user does not exercise control of the territory, to provide, where feasible, assistance to facilitate marking, clearance, removal, or destruction of ERW.

The U.S. delegation made clear its understanding during the negotiations that the fundamental obligations of this instrument attach in the period following the cessation of active hostilities, consistent with the mandate to "negotiate an instrument on *post-conflict* remedial measures of a generic nature which would reduce the risks of explosive remnants of war." This is the relevant time period for the provisions within Article 3 related to the responsibility of states in control of affected territory to clear, remove, or destroy ERW and for those provisions related to the responsibilities of users of munitions that become ERW.

Decisions on taking such actions are understood to be made by the state concerned, based on its assessment of relevant circumstances at the time. The extent to which a state Party can fulfill its obligations raises sensitive diplomatic, military, domestic political, and other questions that can turn on specific circumstances. The United States (along with certain other delegations) stated their view during negotiations that feasibility standards and formulations such as "in a position to do so" that are included in the Protocol are self-judging and are intended to reflect states' need to make their own evaluation of relevant factors in implementing Protocol V's provisions. Other delegations did not dispute this position.

During the negotiations, the United States and other delegations raised the need to reconcile this Protocol with other international agreements or arrangements related to the settlement of armed conflict, in order to avoid unintended consequences in connection with peace treaties or similar arrangements. In the context of armed conflict, the parties to the conflict themselves will be in the best position to determine how the responsibilities for ERW should fit into an overall settlement. During formal closing statements made after CCW states Parties agreed to the text of Protocol V, the United States made clear its understanding that nothing in this Article or the Protocol would preclude future arrangements in connection with the settlement of armed conflicts, or assistance connected

thereto, to allocate responsibilities under this Article in a manner that respects the essential spirit and purpose of Protocol V.

Article 4 details obligations concerning the recording, retention, and transmission of information on the use of explosive ordnance or abandonment of explosive ordnance. The purpose of such information is to facilitate the rapid marking, clearance, removal, or destruction of such ordnance, as well as for risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory. The obligation to record and retain such information is expressed in terms of "to the maximum extent possible and as far as practicable," which, as noted above, is understood to be self-judging. Voluntary best practices with respect to recording, retaining, and transmitting such information are contained in the Technical Annex.

Article 5 provides that parties to an armed conflict shall take "all feasible precautions" in the territory under their control that is affected by ERW to protect civilians and civilian objects from the risks and effects of ERW. "Feasible precautions" are described as those precautions that are "practicable or practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations." This obligation is self-judging. Voluntary best practices with respect to such precautions, such as warnings, risk education, and marking, fencing, and monitoring of territory affected by ERW, are contained in the Technical Annex.

Article 6 obligates states Parties (and non-state parties) to an armed conflict to protect humanitarian missions and organizations from the effects of ERW. The basic obligation is to protect "as far as feasible" and is restricted to such missions and organizations that operate in the area under the control of the state Party or party to an armed conflict and with that party's consent. In addition, "as far as feasible," a party to an armed conflict must provide upon the request by the mission or organization information on the location of all explosive remnants of war it is aware of in the territory where that mission or organization will be operating. This Article states that it is without prejudice to existing international humanitarian law or other international instruments or decisions by the UN Security Council that provide for a higher level of protection.

Article 7 deals with assistance to a state Party with respect to ERW that existed in the territory of that party prior to the entry into force of the Protocol. It establishes the right of each Party to "seek and receive assistance, where appropriate,"

from other Parties, from states non-party, and from relevant international organizations and institutions, in dealing with the problems posed by such ERW. Each state Party "in a position to do so" shall provide assistance in dealing with such problems, "as necessary and feasible." The United States made clear its understanding when the Protocol was adopted that the language of Article 7, particularly in view of the phrases "where appropriate" and "in a position to do so," preserves each state Party's discretion in matters of providing or requesting assistance, i.e., each state determines for itself whether it is in a "position to do so." This determination would be based on national considerations of economic, political, and military factors. Other delegations did not dispute this position.

Article 8 addresses the provision of more general assistance and information on ERW and a state Party's cooperation with international, regional, national, and non-governmental organizations. There is no specific obligation to provide any particular type of assistance, but the provisions provide that each state Party in a position to do so shall render assistance, including marking, clearance, removal, or destruction of ERW; risk education to civilian populations; care and rehabilitation of victims of ERW; and contributions to trust funds. Among the means by which states may provide such assistance are through the UN system; other international, regional, or national organizations or institutions; the International Committee of the Red Cross, National Red Cross and Red Crescent Societies and their International Federation; or bilaterally. The language "in a position to do so" was specifically designed -- by delegations of states that often act as donor states -- to reserve to contributing states the determination of whether, how, and how much to assist.

This Article further provides that each state Party has the right to participate in "the fullest possible" exchange of equipment, material, and scientific and technological information (other than weapons-related technology) necessary to implement the Protocol. In addition, in paragraph 4 the states Parties undertake to facilitate such exchanges in accordance with national legislation and not to impose "undue restrictions" on the provision of clearance equipment and related technological information for humanitarian purposes. This is not an unlimited right to receive assistance: the U.S. delegation made clear during the negotiations that this provision would not affect states' discretion to restrict or deny permission to export such items for national security or other valid reasons. Other delegations did not dispute this position. Paragraph 4 is essentially identical to Article 11(1) of the Amended Mines Protocol. Each Party undertakes to provide information to the relevant databases on mine action established within the UN

system, but retains the right to determine the extent and type of information that it will provide. In addition, on a voluntary basis, each Party may provide technical information on relevant types of explosive ordnance. This paragraph is based on Article 11(2) of the Amended Mines Protocol.

Article 9 encourages the states Parties to take generic preventive measures aimed at minimizing the occurrence of ERW. Such measures include, but are not limited to, those referred to in the Technical Annex. Each Party also may, on a voluntary basis, exchange information related to efforts to promote and establish best practices in respect of such measures.

In Article 10, the states Parties undertake to consult and cooperate with each other on all issues related to the operation of the Protocol. The Article provides for the calling of a conference of Parties to review the status and operation of the Protocol and to consider matters pertaining to national implementation, if agreed to by a majority of parties, but no less than eighteen. The U.S. delegation made a statement when the Protocol was adopted confirming the U.S. interpretation of the meaning of Article 10(2)(b), as it relates to the possibility of reporting on the implementation of this instrument: "As we indicated on the floor last week, and as you confirmed from the chair, we understand that this instrument does not provide for a new national reporting requirement." Other delegations did not dispute this position. The costs of a conference would be borne by parties and other states participating in the conference, in accordance with the UN scale of assessments. This provision is identical to Article 13 of the Amended Mines Protocol.

Article 11 is modeled on provisions of the 1949 Geneva Conventions. It requires states Parties to provide appropriate instruction and training consistent with the relevant provisions of the Protocol for the personnel of its armed forces and relevant agencies or departments. It is similar to Article 14(3) of the CCW Amended Mines Protocol, but also covers non-armed forces personnel because of their involvement in the post-conflict operations covered by this Protocol. Like Article 14(2) of the CCW Amended Mines Protocol, Article 11 requires consultation and cooperation among parties to resolve any problems that may arise with regard to the interpretation and application of the Protocol.

The Technical Annex contains "suggested best practice" for achieving the objectives in various articles of the Protocol and is to be implemented "on a voluntary basis." The Annex consists of three parts, each of which provides specific details on the applicable best practice.

Part 1 ("Recording, storage and release of information for unexploded ordnance and abandoned explosive ordnance") corresponds to Article 4 ("Recording, retaining and transmission of information"). Part 2 ("Warnings, risk education, marking, fencing and monitoring") corresponds to Article 5 ("Other precautions for the protection of the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war"). Finally, Part 3 ("Generic preventive measures") corresponds to Article 9 ("Generic preventive measures").

Much of the best practice in Part 1 relates to the release of information. Part 1 describes the content of the information to be released, which varies depending on whether the ERW is unexploded ordnance or abandoned explosive ordnance. In addition, states are encouraged, "where feasible," to use international or local mechanisms for the release of information, such as the United Nations Mine Action Service (UNMAS), the Information Management System for Mine Action (IMSMA), and other expert agencies "as considered appropriate by the releasing State." Finally, with respect to timing, the information should be released "as soon as possible, taking into account such matters as any on-going military and humanitarian operations in the affected areas, the availability and reliability of information and relevant security issues." The release of this information may take into account "the security interests and other obligations of the State providing the information."

Part 2 provides best practice elements of "warnings" and "risk education" and defines both concepts. Warnings and risk education should take into account prevailing national and international standards "where possible," and should be provided to the affected communities "at the earliest possible time." Parties to an armed conflict should employ third parties such as international organizations and non-governmental organizations when they are not able to deliver efficient risk education and should, "if possible," provide additional resources for warnings and risk education. Part 2 also addresses marking, fencing, and monitoring of an ERW-affected area. Parties to an armed conflict should, "when possible," and "at the earliest possible time and to the maximum extent possible," ensure that areas containing ERW are marked, fenced, and monitored so as to ensure the effective exclusion of civilians. This Part suggests specific methods of warning and monitoring.

Part 3 provides generic preventive measures that states producing or procuring explosive ordnance should endeavor to implement during the life-cycle of explosive ordnance "to the extent possible and as appropriate." The measures include munitions manufacturing management (e.g., how to achieve the greatest

reliability of munitions), munitions management (e.g., how to ensure the best possible long-term reliability in terms of storage, transport, field storage, and handling of munitions), training, transfer, and future production.

Protocol additional
to the Geneva Conventions of 12 August 1949,
and relating to the Adoption
of an Additional Distinctive Emblem

(Protocol III)

Geneva, 8 December 2005

Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem

(Protocol III)

Preamble

The High Contracting Parties,

(PP1) *Reaffirming* the provisions of the Geneva Conventions of 12 August 1949 (in particular Articles 26, 38, 42 and 44 of the First Geneva Convention) and, where applicable, their Additional Protocols of 8 June 1977 (in particular Articles 18 and 38 of Additional Protocol I and Article 12 of Additional Protocol II), concerning the use of distinctive emblems,

(PP2) *Desiring* to supplement the aforementioned provisions so as to enhance their protective value and universal character,

(PP3) *Noting* that this Protocol is without prejudice to the recognized right of High Contracting Parties to continue to use the emblems they are using in conformity with their obligations under the Geneva Conventions and, where applicable, the Protocols additional thereto,

(PP4) *Recalling* that the obligation to respect persons and objects protected by the Geneva Conventions and the Protocols additional thereto derives from their protected status under international law and is not dependent on use of the distinctive emblems, signs or signals,

(PP5) *Stressing* that the distinctive emblems are not intended to have any religious, ethnic, racial, regional or political significance,

(PP6) *Emphasizing* the importance of ensuring full respect for the obligations relating to the distinctive emblems recognized in the Geneva Conventions, and, where applicable, the Protocols additional thereto,

(PP7) *Recalling* that Article 44 of the First Geneva Convention makes the distinction between the protective use and the indicative use of the distinctive emblems,

(PP8) *Recalling further* that National Societies undertaking activities on the territory of another State must ensure that the emblems they intend to use within the framework of such activities may be used in the country where the activity takes place and in the country or countries of transit,

(PP9) *Recognizing* the difficulties that certain States and National Societies may have with the use of the existing distinctive emblems,

(PP10) *Noting* the determination of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the International Red Cross and Red Crescent Movement to retain their current names and emblems,

Have agreed on the following:

Article 1 - Respect for and scope of application of this Protocol

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2. This Protocol reaffirms and supplements the provisions of the four Geneva Conventions of 12 August 1949 ("the Geneva Conventions") and, where applicable, of their two Additional Protocols of 8 June 1977 ("the 1977 Additional Protocols") relating to the distinctive emblems, namely the red cross, the red crescent and the red lion and sun, and shall apply in the same situations as those referred to in these provisions.

Article 2 - Distinctive emblems

1. This Protocol recognizes an additional distinctive emblem in addition to, and for the same purposes as, the distinctive emblems of the Geneva Conventions. The distinctive emblems shall enjoy equal status.

2. This additional distinctive emblem, composed of a red frame in the shape of a square on edge on a white ground, shall conform to the illustration in the Annex to this Protocol. This distinctive emblem is referred to in this Protocol as the "third Protocol emblem".

3. The conditions for use of and respect for the third Protocol emblem are identical to those for the distinctive emblems established by the Geneva Conventions and, where applicable, the 1977 Additional Protocols.

4. The medical services and religious personnel of armed forces of High Contracting Parties may, without prejudice to their current emblems, make temporary use of any distinctive emblem referred to in paragraph 1 of this Article where this may enhance protection.

Article 3 - Indicative use of the third Protocol emblem

1. National Societies of those High Contracting Parties which decide to use the third Protocol emblem may, in using the emblem in conformity with relevant national legislation, choose to incorporate within it, for indicative purposes:

a) a distinctive emblem recognized by the Geneva Conventions or a combination of these emblems; or

b) another emblem which has been in effective use by a High Contracting Party and was the subject of a communication to the other High Contracting Parties and the International Committee of the Red Cross through the depositary prior to the adoption of this Protocol.

Incorporation shall conform to the illustration in the Annex to this Protocol.

2. A National Society which chooses to incorporate within the third Protocol emblem another emblem in accordance with paragraph 1 above, may, in conformity with national legislation, use the designation of that emblem and display it within its national territory.

3. National Societies may, in accordance with national legislation and in exceptional circumstances and to facilitate their work, make temporary use of the distinctive emblem referred to in Article 2 of this Protocol.

4. This Article does not affect the legal status of the distinctive emblems recognized in the Geneva Conventions and in this Protocol, nor does it affect the legal status of any particular emblem when incorporated for indicative purposes in accordance with paragraph 1 of this Article.

Article 4 - International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, and their duly authorized personnel, may use, in exceptional circumstances and to facilitate their work, the distinctive emblem referred to in Article 2 of this Protocol.

Article 5 - Missions under United Nations auspices

The medical services and religious personnel participating in operations under the auspices of the United Nations may, with the agreement of participating States, use one of the distinctive emblems mentioned in Articles 1 and 2.

Article 6 - Prevention and repression of misuse

1. The provisions of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, governing prevention and repression of misuse of the distinctive emblems shall apply equally to the third Protocol emblem. In particular, the High Contracting Parties shall take measures necessary for the prevention and repression, at all times, of any misuse of the distinctive emblems mentioned in

Articles 1 and 2 and their designations, including the perfidious use and the use of any sign or designation constituting an imitation thereof.

2. Notwithstanding paragraph 1 above, High Contracting Parties may permit prior users of the third Protocol emblem, or of any sign constituting an imitation thereof, to continue such use, provided that the said use shall not be such as would appear, in time of armed conflict, to confer the protection of the Geneva Conventions and, where applicable, the 1977 Additional Protocols, and provided that the rights to such use were acquired before the adoption of this Protocol.

Article 7 - Dissemination

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that this instrument may become known to the armed forces and to the civilian population.

Article 8 - Signature

This Protocol shall be open for signature by the Parties to the Geneva Conventions on the day of its adoption and will remain open for a period of twelve months.

Article 9 - Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Geneva Conventions and the 1977 Additional Protocols.

Article 10 - Accession

This Protocol shall be open for accession by any Party to the Geneva Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Article 11 - Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Geneva Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Article 12 - Treaty relations upon entry into force of this Protocol

1. When the Parties to the Geneva Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.

2. When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.

Article 13 - Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, whether a conference should be convened to consider the proposed amendment.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol.

Article 14 - Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in a situation of armed conflict or occupation, the denunciation shall not take effect before the end of the armed conflict or occupation.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict or occupation, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

Article 15 - Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Geneva Conventions, whether or not they are signatories of this Protocol, of:

a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 8, 9 and 10;

b) the date of entry into force of this Protocol under Article 11 within ten days of said entry into force;

c) communications received under Article 13;

d) denunciations under Article 14.

Article 16 - Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

Article 17 - Authentic texts

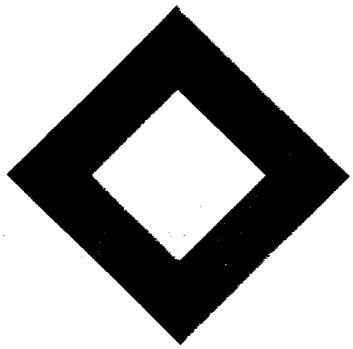
The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Geneva Conventions.

ANNEX

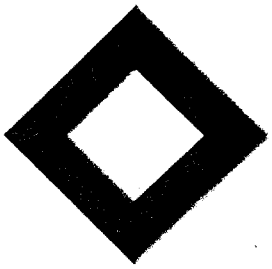
THIRD PROTOCOL EMBLEM

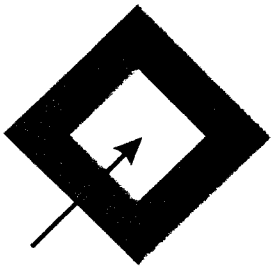
(Article 2, paragraph 2 and Article 3, paragraph 1 of the Protocol)

Article 1 - Distinctive emblem



Article 2 - Indicative use of the third Protocol emblem





Incorporation in
accordance with Art. 3

Amendment to Article I of 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 (CCW)

The following decision to amend Article I of the Convention in order to expand the scope of its application to non-international armed conflicts was made by the States Parties at the Second Review Conference held from 11 to 21 December 2001. This decision appears in the Final Declaration of the Second Review Conference, as contained in document CCW/CONF.II/2.

"DECIDE to amend Article I of the Convention to read as follows:

"1. This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article I of Additional Protocol I to these Conventions.

2. This Convention and its annexed Protocols shall also apply, in addition to situations referred to in paragraph 1 of this Article, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Convention and its annexed Protocols shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts.

3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Convention and its annexed Protocols.

4. Nothing in this Convention or its annexed Protocols shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Convention or its annexed Protocols shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Convention and its annexed Protocols to parties to a conflict which are not High Contracting Parties that have accepted this Convention or its annexed Protocols, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

7. The provisions of Paragraphs 2-6 of this Article shall not prejudice additional Protocols adopted after 1 January 2002, which may apply, exclude or modify the scope of their application in relation to this Article."

Protocol on Explosive Remnants of War

The High Contracting Parties,

Recognising the serious post-conflict humanitarian problems caused by explosive remnants of war,

Conscious of the need to conclude a Protocol on post-conflict remedial measures of a generic nature in order to minimise the risks and effects of explosive remnants of war,

And willing to address generic preventive measures, through voluntary best practices specified in a Technical Annex for improving the reliability of munitions, and therefore minimising the occurrence of explosive remnants of war,

Have agreed as follows:

Article 1

General provision and scope of application

1. In conformity with the Charter of the United Nations and of the rules of the international law of armed conflict applicable to them, High Contracting Parties agree to comply with the obligations specified in this Protocol, both individually and in co-operation with other High Contracting Parties, to minimise the risks and effects of explosive remnants of war in post-conflict situations.

2. This Protocol shall apply to explosive remnants of war on the land territory including internal waters of High Contracting Parties.

3. This Protocol shall apply to situations resulting from conflicts referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001.

4. Articles 3, 4, 5 and 8 of this Protocol apply to explosive remnants of war other than existing explosive remnants of war as defined in Article 2, paragraph 5 of this Protocol.

Article 2

Definitions

For the purpose of this Protocol,

1. *Explosive ordnance* means conventional munitions containing explosives, with the exception of mines, booby traps and other devices as defined in Protocol II of this Convention as amended on 3 May 1996.

2. *Unexploded ordnance* means explosive ordnance that has been primed, fused, armed, or otherwise prepared for use and used in an armed conflict. It may have been fired, dropped, launched or projected and should have exploded but failed to do so.

3. *Abandoned explosive ordnance* means explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it. Abandoned explosive ordnance may or may not have been primed, fused, armed or otherwise prepared for use.

4. *Explosive remnants of war* means unexploded ordnance and abandoned explosive ordnance.

5. *Existing explosive remnants of war* means unexploded ordnance and abandoned explosive ordnance that existed prior to the entry into force of this Protocol for the High Contracting Party on whose territory it exists.

Article 3

Clearance, removal or destruction of explosive remnants of war

1. Each High Contracting Party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all explosive remnants of war in territory under its control. In cases where a user of explosive ordnance which has become explosive remnants of war, does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, inter alia technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party, including inter alia through

the United Nations system or other relevant organisations, to facilitate the marking and clearance, removal or destruction of such explosive remnants of war.

2. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control. Areas affected by explosive remnants of war which are assessed pursuant to paragraph 3 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall take the following measures in affected territories under its control, to reduce the risks posed by explosive remnants of war:

(a) survey and assess the threat posed by explosive remnants of war;
(b) assess and prioritise needs and practicability in terms of marking and clearance, removal or destruction;
(c) mark and clear, remove or destroy explosive remnants of war;
(d) take steps to mobilise resources to carry out these activities.

4. In conducting the above activities High Contracting Parties and parties to an armed conflict shall take into account international standards, including the International Mine Action Standards.

5. High Contracting Parties shall co-operate, where appropriate, both among themselves and with other states, relevant regional and international organisations and non-governmental organisations on the provision of inter alia technical, financial, material and human resources assistance including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil the provisions of this Article.

Article 4

Recording, retaining and transmission of information

1. High Contracting Parties and parties to an armed conflict shall to the maximum extent possible and as far as practicable record and retain information on the use of explosive ordnance or abandonment of explosive ordnance, to

facilitate the rapid marking and clearance, removal or destruction of explosive remnants of war, risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

2. High Contracting Parties and parties to an armed conflict which have used or abandoned explosive ordnance which may have become explosive remnants of war shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties' legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through a mutually agreed third party including inter alia the United Nations or, upon request, to other relevant organisations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of explosive remnants of war in the affected area.

3. In recording, retaining and transmitting such information, the High Contracting Parties should have regard to Part 1 of the Technical Annex.

Article 5

Other precautions for the protection of the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war

1. High Contracting Parties and parties to an armed conflict shall take all feasible precautions in the territory under their control affected by explosive remnants of war to protect the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war. Feasible precautions are those precautions which are practicable or practicably possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations. These precautions may include warnings, risk education to the civilian population, marking, fencing and monitoring of territory affected by explosive remnants of war, as set out in Part 2 of the Technical Annex.

Article 6

Provisions for the protection of humanitarian missions and organisations from the effects of explosive remnants of war

1. Each High Contracting Party and party to an armed conflict shall:

(a) Protect, as far as feasible, from the effects of explosive remnants of war, humanitarian missions and organisations that are or will be operating in the area under the control of the High Contracting Party or party to an armed conflict and with that party's consent.

(b) Upon request by such a humanitarian mission or organisation, provide, as far as feasible, information on the location of all explosive remnants of war that it is aware of in territory where the requesting humanitarian mission or organisation will operate or is operating.

2. The provisions of this Article are without prejudice to existing International Humanitarian Law or other international instruments as applicable or decisions by the Security Council of the United Nations which provide for a higher level of protection.

Article 7

Assistance with respect to existing explosive remnants of war

1. Each High Contracting Party has the right to seek and receive assistance, where appropriate, from other High Contracting Parties, from states non-party and relevant international organisations and institutions in dealing with the problems posed by existing explosive remnants of war.

2. Each High Contracting Party in a position to do so shall provide assistance in dealing with the problems posed by existing explosive remnants of war, as necessary and feasible. In so doing, High Contracting Parties shall also take into account the humanitarian objectives of this Protocol, as well as international standards including the International Mine Action Standards.

Article 8

Co-operation and assistance

1. Each High Contracting Party in a position to do so shall provide assistance for the marking and clearance, removal or destruction of explosive remnants of war, and for risk education to civilian populations and related activities inter alia through the United Nations system, other relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

2. Each High Contracting Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war. Such assistance may be provided inter alia through the United Nations system, relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

3. Each High Contracting Party in a position to do so shall contribute to trust funds within the United Nations system, as well as other relevant trust funds, to facilitate the provision of assistance under this Protocol.

4. Each High Contracting Party shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information other than weapons related technology, necessary for the implementation of this Protocol. High Contracting Parties undertake to facilitate such exchanges in accordance with national legislation and shall not impose undue restrictions on the provision of clearance equipment and related technological information for humanitarian purposes.

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.

6. High Contracting Parties may submit requests for assistance substantiated by relevant information to the United Nations, to other appropriate bodies or to other

states. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organisations and non-governmental organisations.

7. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and in co-operation with the requesting High Contracting Party and other High Contracting Parties with responsibility as set out in Article 3 above, recommend the appropriate provision of assistance. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required, including possible contributions from the trust funds established within the United Nations system.

Article 9

Generic preventive measures

1. Bearing in mind the different situations and capacities, each High Contracting Party is encouraged to take generic preventive measures aimed at minimising the occurrence of explosive remnants of war, including, but not limited to, those referred to in part 3 of the Technical Annex.

2. Each High Contracting Party may, on a voluntary basis, exchange information related to efforts to promote and establish best practices in respect of paragraph 1 of this Article.

Article 10

Consultations of High Contracting Parties

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Protocol. For this purpose, a Conference of High Contracting Parties shall be held as agreed to by a majority, but no less than eighteen High Contracting Parties.

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

(a) review of the status and operation of this Protocol;
(b) consideration of matters pertaining to national implementation of this Protocol, including national reporting or updating on an annual basis.
(c) preparation for review conferences.

3. The costs of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 11

Compliance

1. Each High Contracting Party shall require that its armed forces and relevant agencies or departments issue appropriate instructions and operating procedures and that its personnel receive training consistent with the relevant provisions of this Protocol.

2. The High Contracting Parties undertake to consult each other and to co-operate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

Technical Annex

This Technical Annex contains suggested best practice for achieving the objectives contained in Articles 4, 5 and 9 of this Protocol. This Technical Annex will be implemented by High Contracting Parties on a voluntary basis.

1. Recording, storage and release of information for Unexploded Ordnance (UXO) and Abandoned Explosive Ordnance (AXO)

(a) Recording of information: Regarding explosive ordnance which may have become UXO a State should endeavour to record the following information as accurately as possible:

(i) the location of areas targeted using explosive ordnance;
(ii) the approximate number of explosive ordnance used in the areas under (i);
(iii) the type and nature of explosive ordnance used in areas under (i);
(iv) the general location of known and probable UXO;

Where a State has been obliged to abandon explosive ordnance in the course of operations, it should endeavour to leave AXO in a safe and secure manner and record information on this ordnance as follows:

(v) the location of AXO;
(vi) the approximate amount of AXO at each specific site;
(vii) the types of AXO at each specific site.

(b) Storage of information: Where a State has recorded information in accordance with paragraph (a), it should be stored in such a manner as to allow for its retrieval and subsequent release in accordance with paragraph (c).

(c) Release of information: Information recorded and stored by a State in accordance with paragraphs (a) and (b) should, taking into account the security interests and other obligations of the State providing the information, be released in accordance with the following provisions:

(i) Content:
On UXO the released information should contain details on:
(1) the general location of known and probable UXO;
(2) the types and approximate number of explosive ordnance used in the targeted areas;

(3) the method of identifying the explosive ordnance including colour, size and shape and other relevant markings;
(4) the method for safe disposal of the explosive ordnance.

On AXO the released information should contain details on:
(5) the location of the AXO;
(6) the approximate number of AXO at each specific site;
(7) the types of AXO at each specific site;
(8) the method of identifying the AXO, including colour, size and shape;
(9) information on type and methods of packing for AXO;
(10) state of readiness;
(11) the location and nature of any booby traps known to be present in the area of AXO.

(ii) Recipient: The information should be released to the party or parties in control of the affected territory and to those persons or institutions that the releasing State is satisfied are, or will be, involved in UXO or AXO clearance in the affected area, in the education of the civilian population on the risks of UXO or AXO.

(iii) Mechanism: A State should, where feasible, make use of those mechanisms established internationally or locally for the release of information, such as through UNMAS, IMSMA, and other expert agencies, as considered appropriate by the releasing State.

(iv) Timing: The information should be released as soon as possible, taking into account such matters as any ongoing military and humanitarian operations in the affected areas, the availability and reliability of information and relevant security issues.

2. Warnings, risk education, marking, fencing and monitoring

Key terms

(a) Warnings are the punctual provision of cautionary information to the civilian population, intended to minimise risks caused by explosive remnants of war in affected territories.

(b) Risk education to the civilian population should consist of risk education programmes to facilitate information exchange between affected communities, government authorities and humanitarian organisations so that affected communities are informed about the threat from explosive remnants of war. Risk education programmes are usually a long term activity.

Best practice elements of warnings and risk education

(c) All programmes of warnings and risk education should, where possible, take into account prevailing national and international standards, including the International Mine Action Standards.

(d) Warnings and risk education should be provided to the affected civilian population which comprises civilians living in or around areas containing explosive remnants of war and civilians who transit such areas.

(e) Warnings should be given, as soon as possible, depending on the context and the information available. A risk education programme should replace a warnings programme as soon as possible. Warnings and risk education always should be provided to the affected communities at the earliest possible time.

(f) Parties to a conflict should employ third parties such as international organisations and non-governmental organisations when they do not have the resources and skills to deliver efficient risk education.

(g) Parties to a conflict should, if possible, provide additional resources for warnings and risk education. Such items might include: provision of logistical support, production of risk education materials, financial support and general cartographic information.

Marking, fencing, and monitoring of an explosive remnants of war affected area

(h) When possible, at any time during the course of a conflict and thereafter, where explosive remnants of war exist the parties to a conflict should, at the earliest possible time and to the maximum extent possible, ensure that areas containing explosive remnants of war are marked, fenced and monitored so as to ensure the effective exclusion of civilians, in accordance with the following provisions.

(i) Warning signs based on methods of marking recognised by the affected community should be utilised in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should as far as possible be visible, legible, durable and resistant to environmental effects and should clearly identify which side

of the marked boundary is considered to be within the explosive remnants of war affected area and which side is considered to be safe.

(j) An appropriate structure should be put in place with responsibility for the monitoring and maintenance of permanent and temporary marking systems, integrated with national and local risk education programmes.

3. Generic preventive measures

States producing or procuring explosive ordnance should to the extent possible and as appropriate endeavour to ensure that the following measures are implemented and respected during the life-cycle of explosive ordnance.

(a) Munitions manufacturing management

(i) Production processes should be designed to achieve the greatest reliability of munitions.

(ii) Production processes should be subject to certified quality control measures.

(iii) During the production of explosive ordnance, certified quality assurance standards that are internationally recognised should be applied.

(iv) Acceptance testing should be conducted through live-fire testing over a range of conditions or through other validated procedures.

(v) High reliability standards should be required in the course of explosive ordnance transactions and transfers.

(b) Munitions management

In order to ensure the best possible long-term reliability of explosive ordnance, States are encouraged to apply best practice norms and operating procedures with respect to its storage, transport, field storage, and handling in accordance with the following guidance.

(i) Explosive ordnance, where necessary, should be stored in secure facilities or appropriate containers that protect the explosive ordnance and its components in a controlled atmosphere, if necessary.

(ii) A State should transport explosive ordnance to and from production facilities, storage facilities and the field in a manner that minimises damage to the explosive ordnance.

(iii) Appropriate containers and controlled environments, where necessary, should be used by a State when stockpiling and transporting explosive ordnance.

(iv) The risk of explosions in stockpiles should be minimised by the use of appropriate stockpile arrangements.

(v) States should apply appropriate explosive ordnance logging, tracking and testing procedures, which should include information on the date of manufacture of each number, lot or batch of explosive ordnance, and information on where the explosive ordnance has been, under what conditions it has been stored, and to what environmental factors it has been exposed.

(vi) Periodically, stockpiled explosive ordnance should undergo, where appropriate, live-firing testing to ensure that munitions function as desired.

(vii) Sub-assemblies of stockpiled explosive ordnance should, where appropriate, undergo laboratory testing to ensure that munitions function as desired.

(viii) Where necessary, appropriate action, including adjustment to the expected shelf-life of ordnance, should be taken as a result of information acquired by logging, tracking and testing procedures, in order to maintain the reliability of stockpiled explosive ordnance.

(c) Training

The proper training of all personnel involved in the handling, transporting and use of explosive ordnance is an important factor in seeking to ensure its reliable operation as intended. States should therefore adopt and maintain suitable training programmes to ensure that personnel are properly trained with regard to the munitions with which they will be required to deal.

(d) Transfer

A State planning to transfer explosive ordnance to another State that did not previously possess that type of explosive ordnance should endeavour to ensure that the receiving State has the capability to store, maintain and use that explosive ordnance correctly.

(e) Future production

A State should examine ways and means of improving the reliability of explosive ordnance that it intends to produce or procure, with a view to achieving the highest possible reliability.

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