

Abstract

Explosive Remnants of War (“ERW”) are a source of constant danger and threat in post conflict regions in the world. ERW’s adverse socio-economic impact severely impedes the reintegration and resettlement of war stricken people. This paper explains the phenomenon of ERW in the context of International Law and highlights some ERW-related incidents within Pakistan to assess the consistency of Pakistan’s existing domestic legal and administrative framework with its obligations under relevant international instruments. Moreover, it offers proposals to improve the current regime’s effectiveness.

I. DEFINING ERW

Nearly every conflict in recent history has left behind large amounts of ERW, which are the explosive munitions that were fired, dropped or otherwise delivered during combat but failed to explode as intended or were abandoned by the warring parties on the battlefield.¹ ERW are often found in war-affected areas and include artillery shells, hand grenades, mortar shells, cluster-bomb sub munitions, air-dropped bombs, missiles and other similar weapons. They pose a persistent threat of killing and injuring many innocent people who disturb or tamper with them without realizing the consequences of their actions. It requires tremendous amount of effort and patience to eliminate ERW, which hamper and disrupt reconstruction efforts, delivery of humanitarian aid, farming, and the return and resettlement of individuals displaced by fighting.

It is estimated that at least 82 countries and 10 territories are affected by ERW.² Iraq is one recent example where an NGO reportedly cleared one million ERW.³ A Human Rights Watch study found that tens of thousands of sub munitions used by Coalition forces in Iraq failed to explode as intended and would need to be cleared.⁴

The term ‘ERW’ has received focal attention in the context 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”)⁵ and its Second Review Conference.⁶ Prior to 2003, ERW had no legal definition *per se* and was often viewed synonymously with unexploded ordnance. The

¹Louise Maresca, *A new protocol on the Explosive Remnants of War: The history and negotiation of Protocol V to the 1980 Convention on Certain Conventional Weapons* 856 INT’L REV. OF THE RED CROSS 815 (2004).

²*Id.* at 816.

³Mine Advisory Group-More than a Million Mines and Bombs Cleared in Iraq, <http://www.maginternational.org/news/iraq-more-than-a-million/>.

⁴*Id.*

⁵Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Oct. 10, 1980, 1342 U.N.T.S. 137 [hereinafter CCW].

⁶Adrain Willkison, *Explosive Remnants of War (ERW) — A Threat Analysis*, 2002 GENEVA INT’L CENTRE FOR HUMANITARIAN DEMINING.

International Mine Action Standards (“IMAS”) defined ERW as “explosive ordnance that has been primed, fused, armed or otherwise prepared for use or used. It may have been fired, dropped, launched or projected yet remains unexploded whether through malfunction or design or for any other reason.” The IMAS also defines explosive ordnance as “all munitions containing explosives, nuclear fission or fusion materials, and biological and chemical agents.”

Most stakeholders that have been involved with mine/ERW clearance have used different definitions for ERW. For example, in an article by the International Review of the Red Cross, unexploded munitions were defined as “anti-personnel mines, which are widely prohibited, as well as anti-vehicle mines, submunitions from airborne cluster bombs or land based systems and other unexploded ordnance.”

In light of the need for more extensive international regulation of ERW, an additional protocol to the CCW was adopted on November 28th, 2003. This Protocol on Explosive Remnants of War⁷ (“Protocol V”) to the CCW requires states to “clear existing unexploded ordnance or abandoned ammunition, which can already be found in more than eighty countries.”⁸ The Protocol entered into force on November 12th 2006 and currently there are seventy six states party to the Protocol.⁹ The Protocol is designed to alleviate the humanitarian impact of ERW in a post conflict period.¹⁰ The definitions put forth by the Protocol are as follows:

“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 3rd May 1996.¹¹

Unexploded Ordnance (“UXO”) 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.¹²

Abandoned Explosive Ordnance (“AXO”) 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

⁷Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Protocol V, Nov. 28, 2003, 2399 U.N.T.S. 100 [hereinafter Protocol V].

⁸Daniel Ressler, *A Primer on Explosive Remnants of War*, 10 J. OF MINE ACTION (2006). 1 August 2006.

⁹GICHD-The Explosive Remnants of War (Protocol V), <http://www.gichd.org/laws-and-standards/international-conventions/convention-on-certain-conventional-weapons-ccw/protocol-v/>.

¹⁰*Id.*

¹¹Protocol V, *supra* note 7, art. 2(1).

¹²*Id.* art. 2(2).

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.”¹³

As stated earlier, prior to 2003, ERW were understood and treated with reference to weapons that failed to explode (UXO). However, ERW could also comprise weapons that have been unused and abandoned (AXO). They may range from a few rounds of ammunition or a grenade left with the body of a dead soldier to entire ammunition dumps hurriedly abandoned by a retreating force.

The Protocol V defines and describes the scope of ERW. Accordingly, Anti-personnel mines (“APM”) and Anti-Vehicle Mines (“AVM”), booby traps and manually emplaced munitions including improvised explosive devices are excluded from ERW under the Protocol V.

II. ERW-RELATED PROBLEMS IN PAKISTAN

ERW threaten the lives of innocent civilians and continue to be a destructive force even after active hostilities have ended. Thus far, Pakistan has fought three wars with India in addition to being involved in conflicts in Afghanistan. During the Soviet invasion of Afghanistan, thousands of mines/ERW/Improvised explosive devices (IEDs) were left behind in Pakistan’s Tribal Areas.¹⁴

The Government of Pakistan does not treat ERW as a problem and professes full commitment to compliance with its obligations under Protocol V.¹⁵ However, different NGOs have reported that ERW are a serious problem in Pakistan and various ERW related incidents and casualties reinforce the threat posed by ERW to civilians in Pakistan.

(A). *ERW Related Casualties in Pakistan*

Although there is no official record keeping about ERW related casualties, some NGOs have compiled relevant data. Until the end of 2010, there have been 2,784 mines/ERW/IEDs related casualties in Pakistan. In 2010, of the 394 casualties related to mines/ERW/IEDs, 18 were specifically related to ERW.¹⁶ In 2009, of the 421 casualties related to mines/ERW/IEDs, 20 were specifically related to ERW.¹⁷ In 2008, of the 341 casualties related to mines/ERW/IEDs, 18 were specifically related to ERW.¹⁸ In

¹³*Id.* art. 2(3).

¹⁴John Barrie, *A Global Survey on Explosive Remnants of War*, 2003, LAND MINE ACTION, § 7, § Pak. at 40.

¹⁵Statement by Pakistan on 5th Conference of State Parties on Protocol V, CCW, 9 November 2011.

¹⁶Landmine Monitor, *Landmine Monitor Report on Pakistan*, 13 INT’L CAMPAIGN TO BAN LANDMINES § Casualties at 8 (2011).

¹⁷Landmine Monitor, *Landmine Monitor Report on Pakistan*, 12 INT’L CAMPAIGN TO BAN LANDMINES § Casualties at 8 (2010).

¹⁸Landmine Monitor, *Landmine Monitor Report on Pakistan*, 11 INT’L CAMPAIGN TO BAN LANDMINES § Casualties at 8 (2009).

2007, of the 271 casualties related to mines/ERW/IEDs, 10 were specifically related to ERW.¹⁹ In 2006, of the 488 casualties related to mines/ERW/IEDs, 12 were specifically related to ERW.²⁰ In 2005, of the 212 casualties related to mines/ERW/IEDs, 11 were specifically related to ERW.²¹ In 2004, of the 195 casualties related to mines/ERW/IEDs, 21 were specifically related to ERW.²² According to a survey report, of the 142 casualties recorded due to mines/MOTAMP/ER between June 2003 and July 2004, 38 were specifically related to ERW.²³ Similarly, a report from September 1997 to December 2001 reveals that there were 842 casualties due to mines and ERW in Pakistan.²⁴

In addition to establishing the steady and unfortunate existence of ERW related casualties in Pakistan, the aforementioned statistics highlight the scope of the ERW related problem faced by Pakistan.

(B). Geographic Scope of the Problem of ERW

Although Pakistan has fought three wars with India along the Line of Control (“LOC”), ERW and mines pose greatest dangers in the Tribal Areas of Pakistan. Compared to other territories and provinces of Pakistan, the death rate due to ERW has been higher in Federally Administered Tribal Areas (“FATA”). The principal reasons for this include the internal disturbances in the Tribal Areas and the related operations of the Pakistan Army. Moreover, the porous border across the Durand Line between Afghanistan and Pakistan has exacerbated ERW-related threats by allowing many Afghans equipped with ammunition to cross over into the Tribal Areas during the post-9/11 US attack on Afghanistan and the 1979 Soviet invasion of Afghanistan. Furthermore, Soviet troops had laid mines and employed explosive munitions along the Durand Line.²⁵ After FATA, the area most affected by ERW is Balochistan. The Balochistan Liberation Army (“BLA”), Liberation United Front (“LUA”) and other groups have used mines and IEDs against the Pakistan Army resulting in several ERW-related incidents.²⁶

¹⁹Landmine Monitor, *Landmine Monitor Report on Pakistan*, 9 INT’L CAMPAIGN TO BAN LANDMINES § Landmine/ERW Casualties at 10-11 (2008).

²⁰Landmine Monitor, *Landmine Monitor Report on Pakistan*, 8 INT’L CAMPAIGN TO BAN LANDMINES § Landmine/ERW Casualties at 12-13 (2007).

²¹Landmine Monitor, *Landmine Monitor Report on Pakistan*, 7 INT’L CAMPAIGN TO BAN LANDMINES § Landmine/UXO Casualties at 11-13 (2006).

²²Landmine Monitor, *Landmine Monitor Report on Pakistan*, 6 INT’L CAMPAIGN TO BAN LANDMINES § Landmine/UXO Casualties at 7-8 (2005).

²³Richard Moyes, *A Global Survey on Explosive Remnants of War and Mines 2003-2004*, LANDMINE ACTION, § Pakistan at 132 (2005).

²⁴*Barrie*, supra note 14.

²⁵*Id.*

²⁶Landmine Monitor, supra note 18, at 5.

(C). ERW's Impact on People

Notwithstanding the Government of Pakistan's reluctance to acknowledge the problem of ERW, several people, particularly in the Tribal Areas, have been negatively affected by ERW. Civilian loss of life due to ERW has a long lasting impact on the family and the community. In the Tribal Areas, men are often the only source of income and casualties of adult men plunges the whole family into debt and financial ruin. An injury may require expensive medical treatment and care by other family members and could prevent survivors from working. An injury due to ERW may cause permanent physical disabilities, which is again a burden to the family. Although Pakistan's Government provides compensation to people affected by internal conflicts,²⁷ there is no exclusive compensation scheme for fallen victims of ERW.

(D). Comparison with other Countries in the Region

Afghanistan and Pakistan have both been affected by the same conflict twice. Afghanistan is not a party to Protocol V. and until 2010, 20,756 casualties had been recorded due to mines and ERW.²⁸ The problem of ERW in Afghanistan is more acute than Pakistan as a consequence of being invaded and occupied by the Soviet Union in 1979 and the United States following 9/11 attacks .

Since Pakistan and India have fought three wars along the LOC, it is pertinent to compare each country's ERW related problems. Like Pakistan, India has also ratified the Protocol V. Until 2010, 3,014 mines and ERW-related casualties were reported in India.²⁹ The number of victims in India is almost the same as Pakistan but much lower compared to Afghanistan.

A comparison of these South Asian states shows that Afghanistan is the most affected country but has surprisingly yet to sign the Protocol V.

(E). Temporal Risk Analysis

Although the Pakistan Army has scaled back its operations in the Tribal Areas, the dangers posed by ERW have not subsided and their threat looms despite the end of the conflict. According to a report, in the first eight months of 2011, the number of casualties has been higher compared to 2009 and 2010.³⁰ Moreover, the recent floods in the Northern Areas swept ERW into the lower areas like Southern KPK and Punjab. In August 2010, three children were seriously injured in Dera Ismail Khan by a bomb that

²⁷Chris Rogers, *Civilian Harm and Conflict in Northwest Pakistan*, 2010, Campaign for Innocent Victims in Conflict, § Executive Summary at 1.

²⁸Landmine Monitor, *supra* note 16, § Afghanistan.

²⁹*Id.* § India.

³⁰*Id.* § Pakistan.

detonated when one of them touched it. It had apparently been dislodged from its original place due to floodwaters.³¹ Luiza Khazhgerieva, an ICRC mine-risk education specialist has stated that “areas that may once have been considered free of weapons can easily be re-contaminated when mines and unexploded ordnance are carried into them by floodwaters.”³²

(F). A Case Study: Tayyab’s Story

A child named Tayyab hailed from Dera Ismail Khan District located in KPK, which constitutes one of the areas majorly affected by recent internal disturbances in the Northern Areas of Pakistan. Tayyab’s father was illiterate and a shepherd by occupation who routinely travelled far distances with his flock of sheep. On one of his nomadic journeys, Tayyab’s father came across a colorful and attractive piece of metal which he decided to bring back home thinking that Tayyab might use it as a toy. In actual fact, the attractive piece of metal was unexploded ordnance. The next day, Tayyab proudly showed his ‘toy’ to his friends. Curious as to what lay inside, Tayyab and his friends decided to open it with a piece of stone, which resulted in a powerful explosion. Consequently, Tayyab lost a limb and his friends suffered multiple injuries. Fortunately, Tayyab received an artificial limb with the support of an NGO. Worryingly, there is no official record indicating that the Government of Pakistan financially supported Tayyab.

Fortunately, Tayyab is now able to perform basic tasks and go about his daily routine normally. However, the incident’s long-term psychological and physical impact on Tayyab cannot be understated or overlooked. He will always be at a disadvantage compared to the healthy and able bodied workforce for jobs requiring hard labor, which constitute the majority of jobs in KPK. Thus, it is likely that Tayyab will depend on others to fulfill his financial needs. The irony in this case study is that the UXO was brought home by Tayyab’s father who later expressed his repentance and regret and wished that he had taken Mine Risk Education awareness which would have prevented him from picking up the deceptively attractive item. Therefore, Mine Risk Education by the Government of Pakistan and the NGOs can help mitigate ERW-related risks.

Like Tayyab, several children in Pakistan constantly live under threats of ERW. Such threats and dangers are most prevalent in Tribal Areas where the conflict is coming to an end and life is slowly returning to normalcy. As schools in the region are usually located at far distances from home, children have to extensively travel by foot which increases the probability of their exposure to risks and dangers

³¹News Release, International Committee of Red Cross, *Pakistan; flood water increases danger posed by unexploded munitions*, Doc.10/48 (Aug. 10, 2010).

³²*Id.*

emanating from ERW. Thus, clearing the ERW ought to be a priority for the Government in order to protect civilians including children from ERW's threats and ensure that a repeat of Tayyab's unfortunate experience does not happen.

III. ERW IN THE CONTEXT OF INTERNATIONAL LAW AND PAKISTAN

There are several treaties dealing with mines and ERW have always been included in the spectrum of mines, booby traps and other devices. The legal parameters of International Law on ERW are set forth in Protocol V.

The United Nations Environment Programme published a report in 1983 drawing attention to the impact of these weapons and proposing a series of recommendations. Unfortunately, nothing consequential materialized from this effort. The International Committee of Red Cross ("ICRC") and Landmine Action, a UK based NGO, held a meeting in early 2000 to discuss the humanitarian impact of unexploded and abandoned explosive ordnances other than anti-personnel mines.

(A). *CCW Protocol V*

The Protocol V on ERW is a legally binding instrument like other CCW Protocols and the State must consent to the depository in order to be bound by its rules.³³ This is the only Protocol with a preamble which requires states to be conscious of and willing to mitigate the negative impact of ERW and institute generic preventive measures and voluntary best practices for improving the reliability of munitions to minimize the occurrence of ERW.

States parties also agreed that the Protocol V would apply in both international and non-international armed conflicts. Its application to non-international armed conflicts did not give rise to controversy during the negotiations and no state opposed it.³⁴

The Protocol V refers to States that have ratified the Convention as "High Contracting Parties" and non-state actors in relation to non-international armed conflict as 'parties to an armed conflict.' States must go through the process of ratification in order to be bound by the Protocol V. States not party to the Protocol V shall not be bound by it.³⁵

The Protocol V has no retroactive application and is applicable only to conflicts occurring after its entry into force. Several states including Pakistan, China, Australia and Brazil raised concerns about

³³*Maresca*, supra note 1, at 823.

³⁴*Id.*

³⁵*Id.* at 824.

ERW already on the ground as a result of past conflicts and proposed that the Protocol V should also apply to such conflicts. On the other hand, several states including Italy, France and Japan were opposed to the retroactive application of the Protocol V. In this context, the Protocol V's Article 1(4)³⁶ clarifies that the Protocol V's main operative provisions apply only to the ERW produced after its entry into force. However, a separate provision on assistance in dealing with existing ERW was included in Article 7 of the Protocol V.³⁷

One of the main responsibilities on states parties to the Protocol V is the Clearance, Removal and Destruction of ERW as laid down in Article 3.³⁸ Each party is under a legal obligation to clear the ERW in the affected territory under its control.³⁹ This is not dependent on the parties having a peace agreement after the hostilities are over; the parties need to begin clearance of ERW as soon as feasible in affected areas. Historically, each party has been responsible for the removal of unexploded and abandoned ordnance in its territory. However, some countries find it difficult to deal with this issue as they do not have the financial resources to successfully undertake this task.

Article 3 (1) encourages member states to provide assistance and facilitate the marking and clearance of ERW even in territory outside of their control.⁴⁰ This requirement is similar to the existing provisions laid down in the Amended Protocol II to the CCW.⁴¹

³⁶“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.” Protocol V, *supra* note 7, art. 1(4).

³⁷“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 organizations and institutions in dealing with the problems posed by existing explosive remnants of war.” *Id.* art. 7(1). “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.” *Id.* art. 7(2).

³⁸“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.” *Id.* art. 3(2).

³⁹Maresca, *supra* note 1, at 826.

⁴⁰“...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 organizations, to facilitate the marking and clearance, removal or destruction of such explosive remnants of war.” Protocol V, *supra* note 7, art. 3(1).

⁴¹“Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.” Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed 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, 3 May 1996, 2048 U.N.T.S., 93, Article 3(2) [hereinafter Protocol II].

Article 4 of the Protocol V lays down certain requirements of recording, retaining and transmission of information between the High Contracting Parties. Parties are specifically required to share the information with other members after the hostilities have ended. They are required to share information with the UN and other organizations engaged in the marking and clearing of ERW.⁴² The Protocol V's Technical Annex states the technical measures that the parties must undertake in eradicating ERW. These include the types and amounts of explosive ordnance used; the areas targeted with these weapons; the types, amount and location of abandoned explosive ordnance; and the general location where unexploded ordnance is known to exist or is likely to be found.⁴³ Since the Parties are not legally bound by the Technical Annex of the Protocol, in order for Article 4's effective implementation, the information gathered must match the specifications of the Annex.

Article 5 deals with other precautions for the protection of the civilian population, individual civilians and civilian objects from the risks and effects of ERW.⁴⁴ Feasible precautions are those precautions which are practicable or practically possible, taking into account all the circumstances existing at the time, including humanitarian and military considerations. In this regard, marking, fencing, risk education and monitoring of territory affected by ERW is specifically mentioned.

Article 6 lays down the responsibility of High Contracting Parties and parties to an armed conflict to protect humanitarian missions and organizations working in that area from ERW. Furthermore, the Parties should inform the humanitarian mission and organizations of the location of all ERW.⁴⁵

Article 7 reflects the compromise between states opposed to retroactive applicability of the Protocol and states favoring such applicability. Under this Article, each High Contracting Party facing problems posed by ERW has a right to seek and receive assistance, where appropriate, from other states and relevant organizations in dealing with them and vice versa. However, this is a general provision that is not absolutely binding on the parties to earlier conflicts.

Article 8 lays down obligations on assistance to the victims of ERW. The High Contracting Parties are required to provide assistance or facilitate the care, rehabilitation and the socio-economic reintegration of persons injured by ERW.⁴⁶

Article 9 encourages High Contracting Parties to implement generic preventive measures aimed at minimizing the occurrence of ERW and maintaining best practices in relation to minimizing the

⁴²Protocol V, *supra* note 7, art. 4(1).

⁴³*Maresca*, *supra* note 1, at 828.

⁴⁴Protocol V, *supra* note 7, art. 5.

⁴⁵*Id.* art. 6(1)(b).

⁴⁶*Id.* art. 8(2).

occurrence of ERW. In this context, standardized munitions manufacturing process, storage, transport and handling, and the training of personnel are specifically mentioned.⁴⁷

Article 10 establishes that High Contracting Parties will consult and co-operate with each other on all issues relating to the operation of the Protocol V. In this regard, a Conference of High Contracting Parties may be convened to review the status and operation of the Protocol V, consider matters of national implementation and prepare for future CCW review conferences.⁴⁸

Article 11 stipulates that each High Contracting Party must issue appropriate instructions and procedures and make sure that its personnel receive training consistent with the Protocol V's provisions. It also requires High Contracting Parties to work bilaterally, through the UN or other international procedures, to resolve any problems that may arise in the Protocol V's interpretation or application.⁴⁹

(B). CCW Amended Protocol II

Pakistan is also a party to the CCW Amended Protocol II ("Protocol II") which relates to the use on land of the mines, booby-traps and other devices including mines laid to interdict beaches, waterway crossings or river crossings, but not to the use of anti-ship mines at sea or in inland waterways.⁵⁰

The Protocol II specifically deals with the use of mines, booby traps and other devices. The Protocol II applies to both anti-personnel and anti vehicle mines. It encompasses all internal armed conflicts incorporating by reference the principles of the Article 3 common to the Geneva Conventions of 1949.⁵¹ In fact, internal conflicts (such as that in Cambodia and Angola) have accounted for most ERW related civilian casualties.⁵²

The Protocol II requires states parties which have employed such weapons to clear, remove, destroy or maintain them as specified in Article 10.⁵³ It also restricts the use of mines, booby-traps and other devices which are designed to cause superfluous injury or unnecessary suffering.⁵⁴ An example of a device causing superfluous injury or unnecessary suffering would be a mine or booby-trap filled with shards of glass. Such ordnance would be regarded as unnecessarily injurious as the shards of glass would be undetectable by X-ray and cause suffering unnecessary to achieving any military objectives.

⁴⁷*Marcesa*, supra note 1, at 832.

⁴⁸Protocol V, supra note 7, art. 10(2).

⁴⁹*Id.* art. 11.

⁵⁰Protocol II, supra note 41, art. 1(1).

⁵¹See Geneva Conventions of 1949 I-IV & Additional Protocols, Common Article 3.

⁵²CCW- Article by Article Analysis of the Protocol on the Use of Mines, Booby-traps and Other Devices, Treaty Compliance, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

⁵³Protocol II, supra note 41, art. 3.

⁵⁴*Id.*

The technical specifications set forth in the Annex of the Protocol II should also be fulfilled. The Annex states that mines which are used outside the marked and monitored fields should have a self destructing and self deactivating feature in them.

The latter part of Article 3 takes into account the protection of civilians. There is a strict requirement of taking all feasible precautions to protect civilians from the effects of weapons to which the Protocol II applies. Four factors that must be taken into account when undertaking such precautions are: (a) the effect of mines upon the local civilian population for the duration of the mine field; (b) possible measures to protect civilians; (c) the availability and feasibility of alternatives; and (d) the military requirements for a minefield.

(C). Convention on the Rights of Persons with Disabilities

Pakistan is also a party to the Convention on the Rights of Persons with Disabilities (“Disabilities Convention”). Pakistan became a party on 25th December 2008 and it is now under a legal obligation to abide by the law laid down by the Disabilities Convention. Injuries caused by ERW end up disabling the person which lower his or her manual productivity. Most of the areas affected by ERW are the Tribal Areas of Pakistan where the majority of the civilian population depends on agricultural farming. Pursuant to its obligations under the Disabilities Convention, Pakistan ought to provide for the welfare of persons with disabilities and also educate the people in eradicating the stereotypes associated with disabled persons.⁵⁵

(D). International Covenant on Civil and Political Rights

Pakistan ratified the International Covenant on Civil and Political Rights (“ICCPR”) on 23rd June 2010. The ICCPR states that civil and political rights derive from the inherent dignity of the human person.⁵⁶ In accordance with the Universal Declaration of Human Rights (“UDHR”), the ideal of individuals enjoying civil and political liberties and freedom from fear can only be achieved if an enabling and conducive environment is fostered where every individual is free to exercise his civil, political, economic, social and cultural rights. The states need to promote universal respect for human rights and freedoms. In light of the principles and objectives of ICCPR, the Government of Pakistan and other institutions are duty bound to protect the civilians from ERW threats and harm.

⁵⁵The Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter Disabilities Convention].

⁵⁶International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

(E). Convention on Cluster Munitions

The Convention on Cluster Munitions (“CCM”) came into force on 30th May 2008, in order to end the consistent pattern of humanitarian harm specifically caused by cluster munitions.⁵⁷ Protocol V, on the other hand, is aimed at minimizing the risks and effects from UXO and AXO of all types in the post conflict period. The prohibition on the use of cluster munitions applies to both during and post conflict scenarios.⁵⁸

The CCM is believed to be the appropriate solution to the longstanding problems caused by cluster munitions. It stands as a treaty in its own right, and functions as such. Landmine Action believes that the new CCM is straightforwardly coherent with the broader obligations of the Protocol V. Pakistan is one of many countries which have adopted the Protocol V but have not yet signed the CCM. The obligations laid down in the CCM impose higher standards on victim assistance and reporting, which raises the bar for state practice in the context of the Protocol V.⁵⁹

The terms given in the CCM are more narrowly focused and detailed. Article 1 contains prohibitions on the use, production, stockpiling and transfer of cluster munitions. This goes beyond the Protocol V which only provides for post-conflict remedial measures relating to UXO and AXO in general.⁶⁰

Article 3 of the CCM provides time bound obligations on states parties to destroy cluster munitions stockpiles as soon as possible and within eight years.

Article 4 of the CCM provides detailed, time bound obligations with respect to the clearance of unexploded cluster munitions remnants.⁶¹ This provision is similar to the one laid down in Article 3 of the Protocol V.

Article 5 of the CCM relates to victim assistance. This Article again goes beyond the scope of the Protocol V and imposes rigorous responsibility upon States Parties to provide age and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their

⁵⁷Convention on Cluster Munitions, May. 30, 2008 C.N.776.2008 [hereinafter CCM].

⁵⁸Katie Harrison & Richard Moyes, *CCW Protocol V and the Convention on Cluster Munitions (CCM): Note on coherence*. Jun. 26, 2008. Landmine Action

⁵⁹*Id.* at 1.

⁶⁰*Id.* at 2.

⁶¹*Id.* at 2.

social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munitions victims.⁶²

Article 6 of the CCM provides for International Cooperation and Assistance between states. It focuses specifically on assistance for clearance of cluster munitions remnants, assistance for cluster munitions victims and destruction of cluster munitions stockpiles.⁶³

Article 7 of the CCM relates to the reporting procedures for states parties.⁶⁴ These reporting requirements are more specific and detailed than the legal obligations given under the Protocol V or the current reporting practice of states under the Protocol V.

In November 2010, Pakistan repeated its long-held view that cluster munitions are legitimate weapons with military utility, but said that it opposed the use of cluster munitions against civilians. Pakistan has argued that the problem with cluster munitions is not the weapon itself, but its “irresponsible use.”⁶⁵ Previously, in February 2009, a government official said that “in view of Pakistan’s security environment and legitimate defense needs, we do not support a ban on use, production, and transfer of cluster munitions due to their military utility.”⁶⁶ It supports efforts to tackle cluster munitions through the framework of CCW and has cautioned against encouraging “extra UN-mechanisms” such as the CCM.⁶⁷ Pakistan treats the CCM as supplanting but not supplementing the CCW process. What Pakistan fails to comprehend is that incorporating the CCM will give detailed, time bound obligations to the States Parties which would rapidly remove the problem of ERW.

(F). Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti Personnel Mines and on their Destruction

Pakistan is also not a member of the Convention on the Prohibition on the Use, Stockpiling, Production and Transfer of Anti Personnel Mines and on their Destruction (“Ottawa Convention”). The Ottawa Convention opened for signature on 3rd and 4th December 1997 and entered into force on 1st

⁶²*Id.* at 3.

⁶³*Id.*

⁶⁴*Id.*

⁶⁵Landmine and Cluster Munitions Monitor, Country Profiles, Pakistan, Mine Ban Policy Overview, p.4, Oct. 25, 2011.

⁶⁶*Id.*

⁶⁷*Id.*

March, 2009. By March 2010, there were 156 Member states to the Ottawa Convention.⁶⁸ Notably, Pakistan, China, Russia and the United States have still not joined it but do nonetheless informally follow the Ottawa Convention, which aims to put an end to the suffering and casualties caused by the anti-personnel mines. It does so by obliging the state parties never to use, stockpile, or transfer anti-personnel mines, and by requiring that they destroy existing stocks of anti personnel mines, clear mined areas, and assist victims.⁶⁹ In carrying out their obligations, States Parties in need may request assistance, and State parties “in a position to do so” are supposed to provide assistance under Article 6. Plenty of provisions of the CCM are derived from the Anti-Personnel Mine Ban Treaty. The similarities between CCM and the Ottawa Convention are significant. Both aim to eradicate ordnance which can cause harm to the civilian population in the aftermath of an armed conflict.

Although, Pakistan denies any use of mines or cluster munitions, the facts suggest otherwise. Therefore, it would be best advised to ratify the Ottawa Convention.

IV. PAKISTAN’S EXISTING LEGAL AND ADMINISTRATIVE FRAMEWORK RELATED TO ERW

As discussed already, Pakistan is not immune from the effects of ERW. Therefore, it is essential to precisely identify the legal and administrative regime pertinent to ERW in Pakistan and also highlight any shortcomings or deficiencies of the existing framework. The following aspects shall be sequentially taken up in this part of the paper:

- What is the scope of international obligations that Pakistan has undertaken so far pertinent to ERW and what does its law and policy say about ERW?
- How far is Pakistan’s domestic legal regime compliant with its international obligations? Is the current regime deficient with respect to international obligations or does it go further and beyond in combating the risks and dangers associated with ERW in Pakistan.

Pakistan holds the view that a more effective implementation of the existing International Humanitarian Law principles would significantly contribute to addressing the humanitarian implications

⁶⁸Stuart Casey-Maslen, *Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction*, OSLO. AUDIOVISUAL LIBR. OF INT’L L. (1997).

⁶⁹*Id.* at 2.

of ERW.⁷⁰ Pakistan is a party to the CCW and ratified the Protocol V on ERW to CCW on 3rd of February 2009.

The scope of application of the CCW was initially limited to international armed conflict but was extended in 2001 to non-international armed conflicts by virtue of an amendment to Article 1 of CCW.⁷¹ Since Pakistan has not ratified the amended Article 1, it is not obligated by it.

The substantive obligations on Pakistan under the Protocol V are as follows:⁷²

- 1) Clearance, removal or destruction of ERW;
- 2) Recording, retaining and transmission of information;
- 3) Precautions for the protection of the civilian population, individual civilians and civilian objects from the risks and effects of ERW;
- 4) Protection of humanitarian missions and organisations from the effects of ERW;
- 5) Assistance with respect to existing ERW;
- 6) Co-operation and assistance; and
- 7) Generic preventive measures.

The above stated obligations and their consistency with Pakistan's existing domestic regime are henceforth analyzed.

(A). Clearance, Removal or Destruction of ERW

Article 3 of the Protocol V places obligation on both ERW-affected nations and users of explosive ordnance to clear the explosive munitions once the fighting has ceased. The obligations created by Articles 3 and 4 of the Protocol V apply "after the cessation of active hostilities and as soon as feasible." It is unclear from the provisions of the Protocol V how the states will determine the cessation of hostilities. Does it occur when the armed conflict is officially declared over, or when a state has control of a territory, or does it relate to the level of violence and opposition in an area? In line with the intent of the

⁷⁰See Pakistan's statement on Explosive Remnants of War and International Humanitarian Law-20 Jun. 2006.

⁷¹"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." CCW, *supra* note 5, art. 1(2).

⁷²*National Reporting under Protocol V, Scope and Contents of National Reports*, available at <http://www.unog.ch/80256EE600585943/C94A2E8E4FB1EF52C12574080055C8CB?OpenDocument>.

Protocol V, states should be encouraged to interpret the cessation of hostilities as referring to the status within an area of control rather than across an entire country or armed conflict.⁷³

(i). Domestic regime of Pakistan

Pakistan has stated with respect to this obligation that no ERW exist in Pakistan. However, the procedures for removal or destruction of ERW are in place⁷⁴ and form a part of Standing Operating Procedures (“SOPs”)⁷⁵. In a presentation given by Pakistan to the Group of Experts on ERW,⁷⁶ it was clearly stated that the process of survey, identification and clearance/removal/destruction to control or reduce the risks posed to civilians or non-combatants is handled by dedicated Explosive Ordnance Disposal (“EOD”) trained professionals.

(ii). Gap Analysis

It seems plausible from the details given by Pakistan in periodic reports that there are at least some procedures in place for the clearance and removal of ERW in conflict-ridden regions of Pakistan. In the course of our research, we could not find any concrete legislation regulating ERW clearance. However, regulations and SOPs exist within the Pakistan Army. There is no evidence of any plans, on-going or future, to provide clearance aid by Pakistan.

The periodic reports submitted by Pakistan are deficient and incomplete in fulfilling its obligations under this Article of the Protocol V. National reporting standards under the Protocol V state that an ERW-affected state should include in its national report⁷⁷:

- The extent of contamination or steps being taken to ascertain the entire extent of contamination and risks (include geographical locations affected and type of ordnance);
- The organization (government department, military branch, international or private institution) responsible for coordinating and implementing marking and clearance efforts;
- A timeline for assessing, marking, and clearing, removing or destroying ERW;
- A budget, including reference to relevant requests for funding from the international community pursuant to Articles 7 and 8 of the Protocol;

⁷³Landmine Action, *National Reporting Standards under CCW Protocol V*, available at <http://www.landmineaction.org/resources/National%20reporting%20standards%20CCW%20Protocol%20V.pdf>.

⁷⁴Form A, Reporting Forms, Pursuant to Article 10, Paragraph 2(a) of the Protocol and the Decision of the First Conference of the High Contracting Parties to Protocol V, CCW, Mar. 15, 2011.

⁷⁵Col Sadiq Rahi, *Pakistan’s national standards, procedures and experiences in implementation of Article-4 CCW Protocol-V on ERW*, Presentation, PAK. ARMY, TO GROUP OF EXPERTS-PROTOCOL V ON ERW, Apr. 21, 2010.

⁷⁶*Id.*

⁷⁷Landmine Action, *supra* note 73.

- Steps taken to mobilize resources, both international and domestic.

(B). Recording, Retaining and Transmission of Information

Article 4 of the Protocol V stipulates that High Contracting parties and parties to an armed conflict must record and retain information on the use or abandonment of explosive ordnance to the maximum extent possible and as far as practicable. The kind of information that the High Contracting parties and parties to a conflict are expected to record is listed in the Protocol V's technical annexure⁷⁸.

(i). Domestic regime of Pakistan

With regard to this obligation, Pakistan has stated that all information related to operational activities is recorded by the field units involved in operations. It is conveyed to the respective Service Headquarters for retention and archiving. This includes information on use of explosive ordnance or abandonment of explosive ordnance, which could facilitate rapid marking, clearance, removal or destruction of Explosive Ordnance⁷⁹. The Pakistan Army has specialized units/organizations (Ammunition Technical Officer/Ammunition Experts and Bomb Disposal Units) trained to perform such functions.⁸⁰ According to the laid down procedures, the respective Service focal point will forward a consolidated report to Joint Staff Headquarters, which after collecting requisite data from Service Headquarters will intimate Ministry of Defence/Ministry of Foreign Affairs. Afterwards, if required, the national focal point, Ministry of Foreign Affairs, is responsible for onwards transmission of such information to international agencies/country holding the affected territory as per the provisions of the Protocol V.⁸¹

The following procedure within the Pakistan Army was conveyed to group of experts meeting in 2010:⁸²

- *Explosive Ordnance Allotment/Issue Record*

The record of the ammunition is maintained on ledgers/vouchers/stock cards at two levels during peace and war time. The first one is the Ordnance channel including Pakistan Ordnance Factories, Ordnance Directorate, Ordnance depots and Ammunition Replenishment Points and the second is the Field Units Channel starting from sub-unit/unit to Formation Headquarters and respective service

⁷⁸Protocol V, *supra* note 7, Technical Annex.

⁷⁹*Id.*

⁸⁰Form B, Reporting Forms, Pursuant to Article 10, Paragraph 2(a) of the Protocol and the Decision of the First Conference of the High Contracting Parties to Protocol V, CCW, Mar. 15, 2011.

⁸¹Protocol V, *supra* note 7, Technical Annex.

⁸²*Id.*

headquarters. The information which is recorded includes the manufacturer, lot/batch number, type/caliber and quantity.

- *Explosive Ordnance Usage record*

Ammunition usage record during war is maintained on the same lines as mentioned in the preceding paragraph. In case of major weapons, the bearing, grid reference and location of the area targeted, number, type and nature of ammunition used, are recorded as information. This databank forms the basis of maintaining record and transmission of the information pertaining to UXO.

- *Abandoned ammunition record*

The record of all ammunition stored/dumped in the field at various locations including naval/airbase is available at the respective headquarters. The record includes location of ammunition dumped, quantity of ammunition, type of ammunition, information on type and methods of packing and state of readiness of AXO. This databank will form the basis of recording and transmission of information pertaining to AXO.

- *UXO reporting form*

A proper UXO reporting form is in place in the Pakistan Army which contains section for recording of all the information regarding UXO contaminated area, the record of any incident, information source and details about the UXO and if possible, a photograph.

(ii). Gap Analysis

The above stated details regarding Pakistan's domestic regime establish that Pakistan is compliant with the said obligation.

(C). Precautions for the Protection of the Civilian Population, Individual Civilians and Civilian Objects from the Risks and Effects of ERW

This obligation calls for precautionary measures to prevent ERW-related civilian casualties.

(i). Domestic regime of Pakistan

According to the periodic report submitted by Pakistan,⁸³ all feasible precautions with regards to protection of civilian population/civilian objects have been taken, in accordance with International Humanitarian Law. Requisite information pertaining to ERW and associated risks is disseminated before

⁸³Form C, Reporting Forms, Pursuant to Article 10, Paragraph 2(a) of the Protocol and the Decision of the First Conference of the High Contracting Parties to Protocol V, CCW, Mar. 15, 2011.

any impending operations through a well deliberated plan using media, pamphlets, leaflets, hand-outs, seminars and lectures.

Moreover, the Pakistan Army is in the process of establishing a specialist cadre of Risk Awareness and Education Drive (“READ”) which would visit the local populace in rural areas and impart UXO risk education and promote awareness.⁸⁴ A Risk Education Manual prepared by the Provincial Institute of Education, KPK, is a useful tool for training the teachers residing in conflict affected areas of KPK and FATA.⁸⁵

(ii). Gap Analysis

A well-established mechanism is in place to meet the said obligation. Hence, Pakistan is fully compliant.

(D). Protection of Humanitarian Missions and Organizations from the Effects of ERW

(i). Domestic regime of Pakistan

Pakistan has specified that in any future armed conflict with a state party, the Armed Forces of Pakistan would be able to provide all relevant information on location of ERW to concerned humanitarian missions or organizations, subject to national policy and procedures.⁸⁶ Moreover, provisions for the protection of humanitarian missions and organizations from effects of ERW are already in place.⁸⁷

(ii). Gap Analysis

No specific legislation is found meeting the said obligation. Pakistan has only stated in its periodic report that rules and regulations are in place without furnishing details of any humanitarian organizations provided with aid, military escorts, warnings and information etc. In light of the absence of any legislation and lack of access to any rules and regulations, any statement about Pakistan’s compliance would at best be speculative.

⁸⁴Protocol V, *supra* note 7, Technical Annex.

⁸⁵Provincial Institute for Teacher Education, *Draft Training Manual on Mine Risk Education*, Khyber Pakhtunkhawa.

⁸⁶Protocol V, *supra* note 7, Technical Annex.

⁸⁷Form D, Reporting Forms, Pursuant to Article 10, Paragraph 2(a) of the Protocol and the Decision of the First Conference of the High Contracting Parties to Protocol V, CCW, Mar. 15, 2011.

(E). Assistance with respect to Existing ERW

(i). Domestic regime of Pakistan

As one of the largest contributors to UN missions in the world, the Pakistan Army has been actively and effectively participating in de-mining efforts. Notably, the Pakistan Army is engaged in de-mining operations in Sudan since May 2006. The first demining company started its operational task (Humanitarian De-mining) in December 2006, at the south eastern border of Sudan, near Ethiopia which had been heavily mined by the opposing forces. To date, a 122 square mile area has been cleared including the discovery and destruction of 42 UXOs, 1625 ERWs and 226 anti-personal mines.⁸⁸

(ii). Gap Analysis

The Government of Pakistan has been contributing to the UN de-mining operations prior to the entry into force of the Protocol. Hence, Pakistan is compliant with regards to this obligation.

(F). Co-operation and Assistance

This obligation calls on the states parties for broader implementation of the Protocol V and to provide assistance to the victims for their social integration and rehabilitation etc.

(i). Domestic regime of Pakistan

The Ministry of Foreign Affairs (Disarmament Division) is the national focal point and Military Operations Directorate (MO-12) is the focal point of the Pakistan Army for victims' assistance.⁸⁹ The co-operation among non-governmental service providers has increased in the past few years. Bilateral co-operation between individual service providers and government agencies has also increased to provide survivors with information and referrals to existing services. Generally, Ministry of Social Welfare and Special Education and its national council for the rehabilitation of disabled persons are responsible for the protection of rights of all persons with disabilities. Pakistan's Government has a medical support plan that details the emergency medical evacuation of mine/IED and ERW casualties to army medical units and field hospitals in the affected areas. Landmine and cluster munitions monitor reported a list of the organizations providing humanitarian assistance in conflict areas of Pakistan.

⁸⁸Form E, Reporting Forms, Pursuant to Article 10, Paragraph 2(a) of the Protocol and the Decision of the First Conference of the High Contracting Parties to Protocol V, CCW, Mar. 15, 2011.

⁸⁹ Permanent Mission of Pakistan, *Response to Questionnaire on Victim Assistance under Protocol V*, PAK. Apr. 20, 2010.

In addition to these regulations and procedures, The War Injuries Ordinance⁹⁰ provides for the grant of relief in certain cases of personal injuries sustained during the conflict. This Ordinance explicitly defines a war injury⁹¹ and then confers the power to the Federal Government to make schemes for relief with respect to war injuries and war service injuries.⁹²

Furthermore, Pakistan has conveyed to the international community that it has a dedicated pool of medical professionals providing assistance to victims as per national policy and systems are in place to provide monetary compensation/employment/distress grant. In the long term, agriculture based property and guaranteed free medical support and education are provided to the victim and his or her family.

⁹⁰The War Injuries Ordinance, No. VII of 1941; PAK. CODE.

⁹¹“war injury” means a physical injury-

(a) caused by-

(i) the discharge of any missile (including liquids and gas), or

(ii) the use of any weapon, explosive or other noxious thing, or

(iii) the doing of any other injurious act, either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy ; or

(b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to or held by any person on behalf of or for the benefit of [Government] or any allied power, or any part of, or anything dropped from, any such aircraft;[or]

(c) caused by any explosion or fire which involves any explosives or munitions or other dangerous things required for war purposes and which happens or is caused by, through, or in connection with the manufacture, storage or transportation of any such explosives, munitions or other dangerous thing.” Id. art. 2(6).

⁹²“Power to make schemes for relief in respect of war injuries and war service injuries:(1) The Central Government may make a scheme or schemes in accordance with the provisions of this Ordinance providing for the grant of relief in respect of the following injuries sustained during the continuance of hostilities, namely:-

(a) war injuries sustained by gainfully occupied persons (with such exceptions, if any, as may be specified in the scheme) and by persons of such other classes as may be so specified ; and

(b) war service injuries sustained by civil defence volunteers.

(2) A scheme may authorize the Central Government, or any authority authorized by the Central Government to make payments under the scheme, in such circumstances and subject to such conditions as may be specified in the scheme, to make to or in respect of persons injured-

(a) payments by way of temporary allowance, which shall be payable only so long as the person injured is incapacitated for work by the injury and has not received any such payment as is mentioned in clause (b);

(b) payments otherwise than by way of temporary allowance, which shall be payable only where the injury causes serious and prolonged disablement or death ; and

(c) payments for the purchase of or the grant at the cost of Government of artificial limbs or surgical or other appliances [and payments for medical and surgical treatment].

(3) A scheme may empower the Central Government to make regulations for giving effect to the purposes of the scheme.

(4) A scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.

(5) A scheme may be amended or rescinded at any time by the Central Government.

(6) Any decision of the Central Government or other authority empowered to make payments under a scheme as to the making, refusal or amount, or as to the continuance or discontinuance, of a payment under a scheme may be varied from time to time by a subsequent decision of the Central Government or such authority as the case may be, but save in so far as it is so varied shall be final and conclusive.” Id. art. 3.

(ii). Gap Analysis

It is clear that a comprehensive regime exists in Pakistan with respect to this obligation. Specific law, certain regulations and dedicated departments and organizations are in place to ensure Pakistan's compliance with this obligation.

(G). Generic Preventive Measures

This obligation encourages state parties to take all preventive measures to minimize the incidence of ERW.

(i). Domestic regime of Pakistan

Pakistan has reported that measures to prevent explosive ordnance from turning into ERW are in place. The Government has acquired greatest international reliability standards through certified quality assurance standards; adequate safety arrangements are ensured during production, storage, transportation and testing of munitions; and proof tests are conducted periodically to ensure that munitions function correctly. The defected munitions' lot is destroyed under controlled mechanism. There exists safe disposal mechanism after expiry of shelf life. Proper training of personnel in handling, transportation and storage of explosive ordnance is also in place. Regular maintenance and periodic inspections are carried out on weekly, quarterly and yearly basis by expert personnel of the Pakistan Army in order to ensure quality standards and reliability.

(ii). Gap Analysis

Although no law or regulation is found dealing specifically with the said obligation, it seems from the statements and reports submitted by Pakistan before the international community that it is committed to meeting the said obligation and already has certain preventive measures in place.

(H). Compliance

This obligation places a requirement on member states to give appropriate instructions and training to their relevant departments and military branches to facilitate compliance with the Protocol V.

(i). Domestic regime of Pakistan

The Ordnance school, Pakistan Army teaches certain officers, soldiers/civilians courses including, but not limited to, Ordnance Officers civilian basic course, Ammunition technical officers course, Quality control and assurance course and Basic ordnance course for civilians, etc. However, as far as the official

position taken by Pakistan is concerned, it has only stated that the Pakistan Army is fulfilling all its obligations in letter and spirit.⁹³

(ii). Gap Analysis

Considering the general obligation under this Article of the Protocol V, which calls for the institution of a comprehensive and overarching framework from states parties, Pakistan's compliance seems dubious on the basis of reports submitted by it under the Protocol V. It should have furnished the details in its periodic reports regarding explosive ordnance training including the timing, content and method of such training and finally the organization or department working as a watchdog for the implementation of the Protocol V. Although a generic course outline is available, it has not been specifically incorporated in the course taught at Ordnance school, Pakistan Army, as mandated under the Protocol V.

V. CHALLENGES AND RECOMMENDATIONS

Although the above stated objective gap analysis of Pakistan's domestic regime pertinent to ERW suggests that Pakistan is almost compliant with its obligations under relevant International Law, the facts suggest otherwise. Moreover, the periodic reports submitted by Pakistan under the Protocol V are deficient in properly detailing the existing legal regime and mechanisms in Pakistan. Merely stating that a proper regime is in place, without documenting the evidence of any legislation or administrative measures casts doubts over Pakistan's effective implementation and compliance. Since Pakistan is a party to the Protocol V and has submitted two periodic reports thus far, it should take the following steps to substantially improve the implementation of its obligations:

- Refrain from using explosive weapons, which cause indiscriminate and unnecessary sufferings and are known to have a significant failure rate in densely populated or residential and agricultural areas so that the risks and dangers of ERW are minimized. This will strengthen the implementation of overall International Humanitarian Law regime in Pakistan. This can also be done by acceding to the CCM and subsequently developing an enabling legal regime under its obligations. This will also reinforce Pakistan's commitment regarding broad and effective implementation of International Humanitarian Law principles.
- Initiate a more transparent regime of compensation and rehabilitation as laid out in War Injuries Ordinance, 1940. An independent cell within government machinery is proposed for

⁹³Form H, Reporting Forms, Pursuant to Article 10, Paragraph 2(a) of the Protocol and the Decision of the First Conference of the High Contracting Parties to Protocol V, CCW, Mar. 15, 2011.

data collection, filtration and then dispensation of socio-economic privileges to the victims of ERW.

- Establish an independent body within government's focal point for ERW, which shall be responsible for formulating and preparing the periodic reports that have to be submitted by Pakistan under the Protocol V. This is required as most of the time, Pakistan is complying with the obligations but fails to convey it properly and systematically to the international community. An inter-ministerial body/cell can be established for the sole purpose of preparing and arranging the compliance reports that Pakistan has to submit under its various international obligations.
- Keeping in view the massive on-going law enforcement operations in Pakistan and the sobering statistics on casualties related to ERW, the Government of Pakistan needs to strictly implement the existing relevant regulations to avoid any further mishaps and also consider enhancing public-private partnership and coordination, such as with NGOs, for the purpose of providing relief to the victims. This can serve as an alternative to the governmental run body responsible for victim assistance and rehabilitation.