

## CCW第五議定書

国際人道法の条約である特定通常兵器使用禁止制限条約（CCW, Certain Conventional Weapons）の第五議定書（爆発性戦争残存物 = ERW）の交渉の際、当時軍縮大使であった猪口邦子は日本政府代表として議長国オランダを助けて取りまとめに努力した。

第五議定書は effect-specific の議定書構造を有し、これを参考にクラスター爆弾に関する weapon-specific の第六議定書が成立することが期待される。以下、CCWの第五議定書を掲載する。

## **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.