

HOUSE OF LORDS

International Agreements Committee

3rd Report of Session 2023–24

**Scrutiny of international
agreements: Protocol V to
the Conventional Weapons
Convention on Explosive
Remnants of War**

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider, and where appropriate report on, 1) matters relating to the negotiation, conclusion and implementation of international agreements, and 2) treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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Lord Goldsmith (Chair)	Lord Marland
Lord Grimstone of Boscobel	Lord Razzall
Baroness Hayter of Kentish Town	Lord Udney-Lister
Lord Howell of Guilford	Lord Watts

Declaration of interests

See Appendix 1.

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SUMMARY

This report considers the following treaty, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010:

- Protocol 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) (CP 974, 2023)

Protocol V is a humanitarian treaty designed to address the serious problems caused by explosive remnants of war left in the aftermath of armed conflict. These deadly remnants may be left littering houses, schools, hospitals and farmland with the potential to kill or injure civilians and inhibit reconstruction and return of displaced persons in post-conflict environments.

Protocol V was adopted in 2003 and the UK was a leading advocate for it. It is surprising that the Government is only now taking steps to ratify it. The UK's position has been out of step with NATO partners for many years. No clear explanation has been provided to Parliament despite repeated questions over the years.

We welcome the ratification of Protocol V, which is long overdue, but regret that the Government has not been more transparent about the issues it has been considering which have led to the significant delay in ratification.

We report the Protocol to the House for information.

Scrutiny of international agreements: Protocol V to the Conventional Weapons Convention on Explosive Remnants of War

AGREEMENT REPORTED FOR INFORMATION

Protocol 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) (CP 974, 2023)¹

1. The Protocol was laid before Parliament on 14 November 2023. The scrutiny period expires on 9 January 2024.

Background

2. International humanitarian law bans or restricts certain types of conventional weapons² in order to protect civilians from their indiscriminate effects and combatants from excessive injuries. One of the main legal instruments for achieving this is the Convention on Certain Conventional Weapons (CCW Convention) which was adopted by the United Nations in December 1980. The CCW Convention has five Protocols which each cover a specific type of restricted weaponry (Box 1).

Box 1: Weapons covered by the Protocols to the CCW Convention

- Protocol I (1980): prohibits weapons causing fragments that cannot be detected by X-ray
- Protocol II (1980): regulates the use of landmines, booby-traps and other explosive devices
- Protocol III (1980): restricts the use of incendiary weapons
- Protocol IV (1995): bans the use and transfer of laser weapons designed to cause permanent blindness
- Protocol V (2003): establishes a framework to minimise the risks and effects of explosive remnants of war in post-conflict situations

Source: International Committee of the Red Cross (ICRC), 'Conventional weapons': <https://www.icrc.org/en/doc/twar-and-law/weapons/conventional-weapons/overview-conventional-weapons.htm>. [accessed 6 December 2023]

3. The United Kingdom ratified the CCW Convention and Protocols I-III in February 1995. Protocol IV was ratified four years after its adoption, in

1 HM Government, *Protocol 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)*, CP 974, 28 November 2003: https://assets.publishing.service.gov.uk/media/65524a89ce0b3a0012491617/MS_10.2023_Protocol_Explosive_Remnants_War_Convention_Prohibitions_Restrictions_Use_Certain_Conventional_Weapons_Protocol_V.pdf [accessed 6 December 2023]

2 Conventional weapon means a weapon which is not a weapon of mass destruction

February 1999, but the Government has not until now taken steps to ratify Protocol V on explosive remnants of war. Protocol V is the only major treaty on international humanitarian law that the UK has not so far ratified.

Content of the Protocol

4. The aim of Protocol V is to address the serious humanitarian problems caused by explosive remnants of war left in the aftermath of armed conflict. The problems caused by explosive remnants of war have been described by Richard Moyes, Director of the advocacy group Article 36:

“Explosive remnants of war are produced when explosive weapons fail to detonate as intended or are left abandoned in the battle space. Much like landmines, these deadly remnants may be left littering houses, schools, hospitals and farmland. They can kill or injure those that interact with them—too often children. They can prevent reconstruction, or the return of displaced people, and in some contexts they have provided a deadly resource for the construction of improvised explosive devices.”³

5. Protocol V provides for remedial measures aimed at minimizing the occurrence, effects and risks of explosive remnants of war. The main obligations are:
 - (a) Parties to the Protocol which become participants in an armed conflict bear responsibility with respect to all explosive remnants of war in territory under their control.
 - (b) After the cessation of active hostilities such a Party is required, as soon as feasible, to mark and clear, remove or destroy explosive remnants of war in affected territories under its control.
 - (c) Parties shall, to the maximum extent possible, record and retain information on the use of explosive remnants of war, and make available such information to the state in control of affected areas.
 - (d) Parties shall take all feasible precautions to protect civilian populations from the risks and effects of explosive remnants of war.
 - (e) Parties shall cooperate among themselves and with other states and organizations, and shall assist each other in order to fulfil their duty of clearance, removal or destruction of explosive remnants of war.

UK position on ratification

6. Paragraph 3.3 of the Government’s Explanatory Memorandum to Protocol V states:

“Ratification of Protocol V aligns with the UK’s position on the ... [CCW] Convention’s four other protocols and the similar arms control and humanitarian considerations in the context of anti-personnel mines and cluster munitions This approach will also support ongoing cross-Governmental work on the wider Protection of Civilians in Conflict strategy. An assessment of the implications of the Protocol on UK operational policy has been concluded since the Protocol was adopted by State Parties in 2003. Existing operational policy and practice

3 Article 36.org, ‘Why won’t the UK protect civilians from unexploded bombs?’ by Richard Moyes: <https://article36.org/updates/uk-ccwpv/> [accessed 20 December 2023]

are already in line with the Protocol's obligations, and the marking, clearance, removal or destruction of [explosive remnants of war] on operations also provides force protection benefits and allows freedom of manoeuvre for our own forces.”

7. This statement makes it all the more surprising that the UK has not taken steps to ratify Protocol V for 20 years since its adoption, particularly since no new legislation was required⁴ and all other NATO partners (except Turkey) together with the other permanent members of the UN Security Council ratified the Protocol more than 10 years ago.⁵
8. The UK's anomalous position has not gone unnoticed. In September 2020, the non-profit organisation Article 36 noted: “despite engagement in numerous conflicts since 2003, the use of thousands of explosive weapons, and repeated claims to be a champion of the protection of civilians in armed conflict, the UK has still not joined this instrument of humanitarian law”.⁶
9. In Parliament, questions have also been asked over the years. In the aftermath of Protocol V's adoption, the Government appeared to be ready to ratify swiftly. In April 2004 the Minister for Europe said:

“The UK, along with EU partners, had long pushed for the adoption of a legally binding protocol and we are delighted that a consensus was reached. We received our certified true copy of the instrument from the United Nations in March 2004 and are currently looking at the necessary measures needed to implement the new Protocol. We hope to ratify in the near future”.⁷

In September 2006 a new Minister for Europe said that “The UK aims to complete ratification of Protocol V, concerning explosive remnants of war, of the Convention on Certain Conventional Weapons (CCW) by the CCW Review Conference in November”.⁸ A follow-up question two months later in November 2006 led the then Foreign Secretary to say that “The UK fully intends to ratify Protocol V as soon as possible”.⁹
10. Parliament has not been informed about what led the Government to change its mind about early ratification of Protocol V, for which it had been a leading advocate. In response to further Parliamentary questions in subsequent years, the Government's position has been that it was still assessing the implications of the Protocol. From 2020 onwards the Government has referred in Parliamentary answers to the need for a “comprehensive cross-government review” as a result of “complexities” involved in ratification. The Government has nevertheless repeatedly stated that it complies with the spirit of Protocol V even though it has not been ratified.
11. In 2021 the then Foreign Secretary promised to update Parliament on the outcome of this review but did not do so.¹⁰ MOD and FCDO officials from

4 Explanatory Memorandum, paragraph 5.

5 Explanatory Memorandum, paragraph 3.4

6 Article 36.org, ‘Why won't the UK protect civilians from unexploded bombs?’ by Richard Moyes: <https://article36.org/updates/uk-ccw/v/> [accessed 20 December 2023]

7 HC Deb, 21 April 2004, [col 537W](#)

8 HC Deb, 18 September 2006, [col 2475WA](#)

9 HC Deb, 23 November 2006, [col 242W](#)

10 HC Deb, 12 April 2021, [UIN 178831](#)

the Counter Proliferation and Arms Control Centre have, however, informed us that:

“Due to the legally-binding nature of the Protocol, a comprehensive cross-Government review was undertaken to determine the implications of ratification. Owing to the nature of the review, it did take longer than expected. It considered the legal, financial (including funding any contingent liability), and operational implications of ratification. It was important to ensure the views of all relevant government departments were taken into account and to understand their roles and responsibilities.”¹¹

This still does not explain the issues the Government has been considering and why they were so complex. Most treaties are ratified in shorter timeframes even where primary legislation is needed.

12. **We welcome the fact that the Government is finally taking steps to ratify Protocol V, which is long overdue. However, we regret that the Government has not been fully transparent with Parliament about the reasons for the twenty year delay in ratification of this important humanitarian treaty. We call on the Government to explain the reasons for the delay.**
13. **We report Protocol V to the Conventional Weapons Convention on explosive remnants of war to the House for information, together with our comments in paragraph 12.**

¹¹ Supplementary information provided to the Committee by the Ministry of Defence, 12 December 2023: <https://committees.parliament.uk/publications/42695/documents/212133/default/>

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Fox
 Lord Geidt
 Lord Goldsmith KC (Chair)
 Lord Grimstone of Boscobel
 Baroness Hayter of Kentish Town
 Lord Howell of Guildford
 Lord Kerr of Kinlochard
 Baroness Kingsmill
 Lord Marland
 Lord Razzall
 Lord Udny-Lister
 Lord Watts

Declarations of interest

Lord Fox
No relevant interests

Lord Geidt
Chairman of Council, King's College London
President, Royal Overseas League

Lord Goldsmith KC
Partner, Debevoise & Plimpton LLP (International law firm)

Lord Grimstone of Boscobel
No relevant interests

Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers

Lord Howell of Guildford
No relevant interests

Lord Kerr of Kinlochard
No relevant interests

Baroness Kingsmill
No relevant interests

Lord Marland
No relevant interests

Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc

Lord Udny-Lister
Advisor to the Group Chairman of HSBC

Lord Watts
No relevant interests