We would like to present some information that we have collected during our ongoing research in Libya that is related to aspects of the implementation of Protocol V on Explosive Remnants of War (ERW). The protocol's Article 4 obligates users of explosive ordnance to record, retain, and transmit information "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."

It is important to note that Libya is not a party to the Convention on Conventional Weapons (CCW). This highlights one of the greatest weaknesses of Protocol V: its lack of acceptance among states affected by explosive remnants of war. Since Protocol V's entry into force in 2006, it is telling that there have been no situations wherein the "user" state and "affected" state are both party to the protocol. So it is difficult to assess the effectiveness of the information sharing provisions contained in Article 4 and relevant parts of the technical annex.

Yet a total of 76 states are now party to Protocol V and we believe that their actions as "users" of explosive ordnance creates a body of practice that may be viewed as creating a standard, setting the tone and precedence for implementation of Article 4. We understand that the NATO alliance has recently taken some steps to provide strike data from the 2011 combat operation in Libya. We hope the data is useful for actors engaging in survey, clearance and risk education. We note that there is a generic electronic template that has been developed to facilitate information sharing, including on the types of weapons used for each target.
According to a report by *The New York Times* citing internal NATO documents, aircraft from eight states delivered over 7,700 items of explosive ordnance on targets in Libya over the course of the 214-day Operation Unified Protector, which ended on 31 October 2011. The NATO countries that used air-delivered explosive ordnance include Belgium, Canada, Denmark, France, Italy, Norway, UK, and US. All these states are party to Protocol V, except the UK.

[PHOTO 2]

One of the places where explosive ordnance was used in Libya in 2011 is the now abandoned military depot located a few kilometers away from the township of Mizdah. Situated 160 kilometers south of Tripoli, NATO aircraft attacked targets in the depot’s ammunition storage area a total of 56 times between April and July 2011. Human Rights Watch has determined the number of strikes at the Mizdah depot from information contained in daily operational summaries released to media by NATO during the operation. The information from this source does not however detail the types and quantities of explosive ordnance used or any that may have become ERW.

[PHOTO 3]

Human Rights Watch visited the Mizdah depot site on March 8, 2012 and saw at least four carloads of scrap metal collectors sifting through the remnants. The site was open and accessible – we saw no marking or visible warning signs of the ERW danger.

[PHOTO 4/5]

Human Rights Watch found two different types of intact submunitions that had been scattered by the air strikes from their storage site in the bunkers. We saw about three dozen DPICM submunitions of an unidentified type lying on the ground around three different bunkers. We also saw approximately 15 PTAB bomblets in two different places.

[PHOTO 6]

Many munitions and boxes were lying inside the depot, along the main road leading from the entrance, indicating looting.
According to Mizdah hospital employees, several ERW casualties were treated in the period from mid-August 2011, when government forces lost control of the depot, and late December 2011, when an order was issued to block off the site. During our visit, Human Rights Watch confirmed two deaths and seven injuries from ERW from six separate incidents at the Mizdah depot between August and December 2011. The ERW casualties were all men except for one boy and almost all were local residents of Mizdah, visiting the site to collect scrap metal or inspect the damaged facilities. Human Rights Watch interviewed two of the ERW victims in Mizdah and also talked to witnesses to the two deaths. Human Rights Watch also reviewed the death records held by Mizdah hospital.

Libya faces a large and complex threat from uncleared landmines and ERW and Mizdah is just one example of the humanitarian response that is needed to protect the civilian population. The targeting of ammunition storage exacerbates this situation as well as creating a new level of threat, illustrated by the pictures that accompany this presentation.

Mr. Coordinator,

We had hoped to obtain information from states that used explosive ordnance during operations in Libya in their annual national transparency reports for calendar year 2011, which were due by March 31, 2012. Yet few of those states even mentioned that their forces participated in combat operations, despite abundant media coverage. Those that did, such as Canada, provided only generic information on specific internal regulations and procedures that they noted are adequate to implement Article 4.

There appears to be a lack of clarity between NATO member states that are states parties to Protocol V and the NATO alliance which provides command and control for its operations as to who should provide strike data on the use of explosive ordnance. It is imperative that this be addressed so that detailed information is provided in a timely manner to the clearance community.

Protocol V was intended to minimize the risks and effects of situations such as that of Mizdah, by giving states a clear indication of what the essential elements of information that facilitates survey, clearance, and risk
education. It is not a question of "the maximum extent possible and as far as practicable" since alliance standard operating procedures exist to record and retain data on the use of explosive ordnance. It is time to demonstrate that Protocol V can work, especially to protect civilians from the harmful impacts of explosive ordnance.

Thank you.