Explosive Remnants of War: The Impact of Current Negotiations

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"While there has been significant progress in reducing the scourge of APLs, the menace posed by unexploded artillery shells, mortar rounds, hand grenades, cluster bomb submunitions and other similar objects must also be addressed." - ICRC President Jakob Kellenberger, 2002.

by Paul Ellis, GICHD

Introduction

The 1980 UN Convention on Certain Conventional Weapons (CCW) has become the focus for new measures of international law on the issue of explosive remnants of war (ERW), a category that includes UXO and abandoned ammunition. The measures that have been and are going to be discussed could have major implications for the humanitarian impact of contemporary and post-conflict clearance operations.

What is the CCW?

The full title of the CCW is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. The Convention seeks to regulate the use of certain conventional weapons in armed conflict to prevent unnecessary suffering to combatants and indiscriminate harm to civilians.

Negotiated in 1980, it was a by-product of the international conference of the 1977 Additional Protocols to the Geneva Conventions.

The CCW is a framework instrument containing rules on specific kinds of weapons. These rules are found in four protocols that ban or restrict the use of the following weapons: using non-detachable fragments; mines, booby traps and other similar devices; incendiary weapons; and blinding laser weapons. Although 90 states are party to the CCW, not all States Parties have ratified most of the individual protocols. This problem is further confused because while some states have ratified the amendment to Protocol II (APIL), others have yet to do so and continue to follow the earlier Protocol II. The CCW is an important instrument of international humanitarian law. It was in the 1990s that the treaty became a focus for activity, when it was seen as a possible vehicle to reduce the impact of APLs. The States Party to the CCW did negotiate an amendment to Protocol II, APIL, which placed further restrictions on landmines. However, the widespread disappointment with these modest measures led to the diplomatic drive that produced the Anti-Personnel Mine Ban Convention (APMBC).

Timeline of the CCW Process

1980
CCW signed
1995
CCW enters into force
1995-96
First Review Conference of the CCW agrees to Amended Protocol II on mines, booby traps and similar devices and Protocol IV banning blinding laser weapons
2000-01
Preparatory Meetings for the Second Review Conference
2001
Second Review Conference of the CCW
2002
Group of Government Experts (GGE) Meetings to discuss ERW
2002
December meeting of States Parties agrees to mandate clearance of a prototype APIL on ERW
2003
Meetings to discuss ERW scheduled for March, July and November

The Emergence of ERW as an issue

In recent years, the international community has concentrated on alleviating the humanitarian impact of APLs. However, for those operating in the clearance community, it is a fact that the work involves unexploded or discarded ordnance as much as—or more than—it involves landmines. The situation in Laos is one of the best known examples. While the issue of ERW is new, the authorities of the affected countries still regularly deal with munitions from the First and Second World Wars. In Poland—which was severely affected by ERW after the Second World War—as late as 1990-2000, military engineers cleared 3,428,290 explosive devices, of which only 12,620 were mines.

It was the air war in Kosovo, however, that led to calls for international action on ERW. Based on its experiences in war-affected areas and its concerns about the problems caused by cluster bombs and other UXO, the International Committee of the Red Cross (ICRC) commissioned a study, Explosive Remnants of War—Cluster Bombs and Landmines in Kosovo. It is worth quoting from the introduction to the study: "Although the ICRC is aware that civilian casualties in armed conflicts are regarded as unacceptable, it believes that a large proportion of the deaths and injuries from explosive remnants of war in the post-conflict context is both predictable and preventable. This report is aimed at launching a dialogue among governments, humanitarian agencies, the military, the mine clearing community and other interested organisations on how to achieve a dramatic reduction in the level of death and injury from explosive remnants of war can be achieved.

The ICRC also published a study called Explosive Remnants of War—Submunitions and Other Unexploded Ordinance, which attempts to provide an overview of submunitions and their use, design and impact in the post-conflict period. At the same time, the UK Working Group on Landmines published a report titled Cluster Bombs—The Military Effectiveness and Impact on Civilians of Cluster Munitions. Both organisations called for a moratorium on the use of cluster bombs while their use, impact and legality were reviewed. The publication of these reports coincided with the start of the Preparatory Process for the Second Review Conference of the CCW in 2000.

Based on the findings of its report, the ICRC recommended the following:

1. The use of cluster bombs and other types of submunitions against military objectives in populated areas should be prohibited, as is currently the case with incendiary weapons under Protocol III of the CCW.

2. Responsibility for the clearance of all UXO should be assigned to those who have used them, as is currently the case for landmines under the terms of APII of the CCW.

3. All necessary technical information concerning the location, dangers, detection and destruction of cluster bombs and other munitions should be made available to the United Nations and demining bodies immediately after the end of hostilities.

4. Warning of the threat posed by ERW should be provided to the civilian population immediately after their use in a given area, as is the case for remotely delivered landmines in APIII of the CCW.

In order to reduce the risk to civilians in future conflicts, cluster bombs and other submunitions should be fitted with mechanisms that will ensure their self-destruction immediately after the device fails to explode upon impact as designed.

6. The use of cluster bombs should be suspended until an international agreement on their use and clearance has been achieved.

In September 2000, the ICRC presented its findings and concerns to a number of states at an experts' meeting in Nyon, Switzerland. The goal of the ICRC was to ensure that a discussion about ERW was included in the Second CCW Review Conference. Independent pressure to ensure such a discussion also came from other non-governmental organisations (NGOs).

The Second Review Conference of the CCW

The Second Review Conference of the CCW took place in December 2001. The focus of states party to the CCW was divided among several topics. The main focus was to ensure the extension of the scope of application of the CCW to cover internal as well as international conflicts. In addition to ERW, there were other issues under consideration, including mines other than APLs, measures for compliance and small arms.

Overall, despite the various proposals the largest part of the time was spent discussing the issue of ERW. This was very much an educative process, as while some states were very aware of the issue, others were being introduced to the issue for the first time. It was never going to be possible to conclude a new agreement on ERW at the Review Conference. However, there was wide recognition of ERW as an important topic that needed to be examined further. To undertake the work, a Group of Government Experts (GGE) was established to discuss ways and means to address the issue of ERW. The group was to "consider all factors, appropriate measures and proposals, in particular:

• Factors and types of munitions that could cause humanitarian problems after a conflict;

• Technical improvements and other measures for relevant types of munitions, including submunitions, which could reduce the risk of such munitions becoming ERW;

• The adequacy of existing international humanitarian law in minimizing post-conflict risks of ERW, both to civilians and to the military;

• Warning to the civilian population in or close to ERW-affected areas, clearance of ERW, the rapid provision of information to facilitate early and safe clearance of ERW, and associated issues and responsibilities;

• Assistance and cooperation."

ERW in the CCW During 2002

The GGE met three times during 2002 for a total of less than five weeks. In reality, many of the diplomatic delegations remained unchanged from the Second

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clearance community could identify the major problem munitions, there were insufficient data to provide an empirical analysis. The second ERP—Undeclared Explosive Events in Ammunition Storage Areas, provided an understanding of the potential threat from abandoned ammunition stockpiles and poor ammunition management practices, which were areas of discussion in the GGE. The UN Mine Action Service (UNMAS) sent the former Programme Manager of the UN Mine Action Programme in Kosovo to the GGE. His paper, presented to the GGE in July 2003, was one of the few written contributions based on actual field experience in however, were not designed to examine the minutiae of the issues or to negotiate a protocol, but to examine whether measures to address the problem were feasible and whether a new agreement should be negotiated. Overall, there was widespread recognition of the problems caused by ERW, and although the process sounds drawn out, many states spoke in favour of moving quickly to address the issues and what measures might be negotiated.

The Next Step

At the December 2002 meeting of States Parties to the CCW at which the work of the GGE was discussed, it was agreed that actual negotiations on an instrument on ERW would start in March 2003. The mandate agreed on by the States Parties is broad. Interestingly, it states that both the legal and technical improvements are to be "separate from the negotiations." Both of these areas have proven contentious; the legal debate involves the problem of how existing international humanitarian law and proposals on restricting the use of explosive remnants of war in environments—what would be the implications on issues in which several influential parties differ? Technical improvements, which have been promoted by Switzerland and the United States, have been strongly resisted by the developing countries who are concerned about the cost and availability of such technology. If a draft protocol is to be on section (a)(6), which looks at responsibility for clearance, existing ERW, the provision of assistance, warning to civilians, assistance, and cooperation.

The Meeting of States Parties decided that the Working Group on Explosive Remnants of War would continue its work in the year 2003 with the following mandate:

(a) (i) To negotiate an instrument on post-conflict remedial measures of a generic nature that would reduce the risks of ERW. These measures would be based on a broad definition covering most types of explosive remnants, with the exception of underwater mines, the impact of which has already been felt.

In these negotiations, questions need to be considered regarding: initial responsibility for clearance, existing ERW, the provision of information to facilitate clearance and risk education, warnings to civilian populations, assistance to the victims, the provisions on victim assistance, victim assistance, and cooperation.

cooperation would be important elements of such best practices.

(b) Separate from the negotiations under (a) to continue on the implementation of existing principles of international humanitarian law and to further study, on an open-ended basis, possible preventive measures aimed at improving design of certain specific types of munitions, including submunitions, with a view to minimise the humanitarian risk they present. The exchange of information, assistance and cooperation would be part of this work.

(c) In the context of the activities described above, meetings of military experts can be conducted to provide advice in support of these activities.

There was some scepticism of what was left out. In particular, a disagreement on the next led to the deletion of the explicit reference to victim assistance, much to the annoyance of several NGOs. The South African delegation stated that they would agree to the deletion only on the assumption that victim assistance would be discussed under assistance and cooperation.

The Implications for the Mine Action Community

Many in the mine clearance sector are not involved in the current diplomatic work, in part because of a perception that too many political problems have gone unfulfilled. However, discussions on ERW will go ahead in 2003 and may potentially have a profound impact on future post-conflict clearance operations.

For existing programmes, the impact is likely to be small. It seems unlikely from the discussions of the last year that States Parties will agree to retroactive assistance, although this issue will be raised. The greatest potential is for future programmes; indeed, the process may serve an important function as a benchmark for the CCW, a process that it is, but it is currently the only mechanism available to discuss these negotiations and an important forum for the CCW.

It is up to individuals and organisations what action they take to influence the debate. The GICHD is committed to producing papers that address the issues. Through our work, we hope to help States Parties to decide on practical, achievable measures. The States Parties are not seeking a panacea for ERW. Ultimately, the technical aspects of clearance programmes will remain unchanged. Existing programmes would

Endnotes

2. The author would like to thank Jonathan and Binta for their comments and feedback.
3. For their review comments.
5. Ibid.
16. The issue of ERW has not caught the popular imagination like that of APLs. The main NGOs who have been most actively involved are HRW, Landmine Action (UK), Mennonite Central Committee and Mines Action Canada.

17. The GGE was mandated to discuss the issues of compliance, mines other than APLs and ERW.


20. Ibid.


22. Explosive Remnants of War—Experience from Field Operations. A discussion paper prepared by John Flanagan, former Programme Manager of the UN Mine Action Programme in Kosovo, for the United Nations Mine Action Service. CCW/GGE/II/WP.13, 15 July 2002. John Flanagan also wrote a paper entitled Anti-Vehicle Mines—Experience from Field Operations, for the GGE. Although Landmine Action and Handicap International used consultants with field experience, there was little knowledge of practical field operations among the delegations. This is not to imply a criticism of the standard of debate and knowledge of the issues, but is simply an observation that for many States Parties experience in clearance from a humanitarian rather than military perspective was not available.

23. Both Landmine Action and HRW have been active in the discussions and made a number of interventions during the GGE. See also “Explosive Remnants of War—Unexploded Ordnance and Post-Conflict Communities,” Landmine Action, March 2002 and “Fatally Flawed: Cluster Bombs and Their Use by the United States in Afghanistan,” HRW, December 2002.

24. Many of the papers were broad discussion documents, setting the scene for discussion in the GGE. However, it was of interest to note that many countries used their papers to set out provisional limits on what they would or would not consider. One issue of particular interest to the clearance community is that of Render Safe Procedures (RSPs). Many States are adamant that they will not provide RSPs on security grounds; however, when asked, they would provide details of how to conduct Conventional Munitions Destruction, despite the fact that RSPs are often well-known to former members of the same countries’ Armed Forces.


27. Ibid.


31. Author’s notes from the GGE of the CCW, 10 December 2002.

32. Comment: The problems with the biological weapons negotiations, the continued deadlock in the Conference on Disarmament, means that diplomatically the CCW negotiations this year are the only major new disarmament work ongoing in the United Nations. This may well work in the favour of the CCW with States Parties keen to maintain what is seen by many as successful negotiations to date.

33. The GICHD has been asked to produce papers that will look at which munitions pose the greatest threat; information requirements; and lessons learned from former warnings to civilians. It would greatly assist our work if you could ensure that any request for information is quickly answered.

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