

Explosive Remnants of War – the impact of current negotiations.

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“While there has been significant progress in reducing the scourge of anti-personnel landmines, 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, 2002.²

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) which principally, but not exclusively, includes unexploded ordnance and abandoned ammunition. The measures which have been and, are going to be discussed, could have major implications for the humanitarian impact of unexploded ordnance and post-conflict clearance operations. This article will explain the background to the CCW, what has been discussed, the forthcoming negotiations and the possible implications for the mine action community.³

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.⁴

The CCW is a framework instrument containing rules on specific kinds of weapons. These rules are found in four protocols which ban or restrict the use of: weapons using non-detectable fragments; mines, booby traps and other similar devices; incendiary weapons and; blinding laser weapons.⁵ Although 90 States are a party to the CCW, not all States Parties have ratified the four individual protocols. This problem is further confused because while some States have ratified APII, others are 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 anti-personnel landmines (APLs). The States Party to the CCW did negotiate an amendment to Protocol II (APII) which placed further restrictions on landmines. However, the widespread disappointment with these modest measures led to the diplomatic drive which produced the Anti-Personnel Mine Ban Convention (AP MBC).⁶

Timeline of the CCW Process.

1980	CCW signed.
1983	CCW Enters into force.
1995-96	First Review Conference of the CCW. Agrees 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	Government Group of Experts Meetings to discuss ERW
2002	December meeting of States Parties agrees to a mandate for negotiation of a possible protocol on ERW
2003	Meetings to discuss ERW scheduled for March, July and November.

The emergence of Explosive Remnants of War 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, if not more than it involves landmines; the situation in Laos being one of the best known examples.⁷ Nor is the issue of ERW new. Munitions from the First and Second World Wars are still regularly dealt with by the authorities of the affected countries. In Poland, which was severely affected by ERW after the Second World War, as late as 1989-2000 Polish military engineers cleared 3,428,290 explosive devices, of which only 12,620 were mines.⁸

It was the air war in Kosovo, however, which 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 unexploded ordnance 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 regrettably not always avoidable, 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 clearance community and other interested organizations on how a dramatic reduction in the level of death and injury from the explosive remnants of war can be achieved.”⁹

Concurrent with their Kosovo report, the ICRC also published a study, *Explosive Remnants of War – Submunitions and Other Unexploded Ordnance*, which aimed to provide an overview of submunitions, their use, design and impact in the post-conflict period.¹⁰ While at the same time the UK Working Group on

Landmines¹¹ 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 bomblets, while their use, impact and legality was reviewed.¹² The publication of these reports coincided with the start of the Preparatory Process for the Second Review CCW Conference 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 unexploded ordnance 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 APII of the CCW.
5. In order to reduce the risk to civilians in future conflicts, cluster bomblets and other submunitions should be fitted with mechanisms which will ensure their self-destruction immediately after the device fails to explode upon impact as designed.
6. The use of cluster bomblets should be suspended until an international agreement on their use and clearance has been achieved.¹³

In September 2000 the ICRC presented its findings and concerns to a number of States at an experts meeting in Nyon, Switzerland.¹⁴ The goal of the ICRC was to ensure that a discussion about ERW was included in the Second CCW Review Conference.¹⁵ Independent pressure to ensure such a discussion also came from other non-government organisations.¹⁶

The Second Review Conference of the CCW – December 2001.

The Second Review Conference of the CCW took place in December 2001. The focus of States Parties to the CCW were divided amongst several topics. The main focus was to ensure an 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 anti-personnel mines, 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 which 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.¹⁷ The group were 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 sub-munitions, which could reduce the risk of such munitions becoming ERW;
- the adequacy of existing International Humanitarian Law in minimising 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.”¹⁸

ERW in the CCW during 2002.

The GGE met three times during 2002 for a total of just under five weeks. In reality, many of the diplomatic delegations remained unchanged from the Second Review Conference and few delegations included technical experts in clearance. States naturally relied on their own expertise which usually consisted of a military officer, usually, though not always, a military engineer with some experience of battlefield area clearance, but not of clearance for humanitarian reasons.

The Geneva International Centre for Humanitarian Demining (GICHD) participated by providing technical advice on the issues that were discussed. As part of this contribution the GICHD published two papers. The first paper, *ERW – A Threat Analysis*, attempted to provide a quantitative analysis of which munitions were a particular problem¹⁹. It concluded that while qualitatively, the clearance community could identify the major problem munitions, there was insufficient data to provide an empirical based analysis.²⁰ The second paper, *ERW – Undesired 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.²¹

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 2002 was one of the few written contributions based on actual field experience in clearance; it concentrated on the issue of identifying the problem and information

requirements to overcome the ERW problem.²² Other contributions were also provided by the ICRC, Landmine Action and Human Rights Watch (HRW).²³ However the majority of working papers that were presented and discussed in the GGE came from States Parties. There has been no shortage of material to be discussed, with over 30 official working papers presented plus a large number of additional presentations on the subjects. Several topics were the focus of particular interest, including information requirements, existing international humanitarian law, technical improvements to submunitions and warnings to civilians.²⁴ The sessions were not however, 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 like a drawn out process, 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 will start in March 2003²⁵. The mandate agreed by the States Parties is broad. Interestingly, it states that the issue of international law and technical improvements are to be “separate from the negotiations”. Both these areas have proved contentious, the legal debate involves the problem of how existing international humanitarian law should be interpreted and proposals on restrictions on the use of submunitions, issues on which several influential parties differ.²⁶ While technical improvements, which have been promoted by Switzerland and the USA, have been strongly resisted by the developing countries who are concerned about the cost of such technology and its availability.²⁷ If a draft protocol is to be negotiated the probable focus will be on section (a)(i) which looks at responsibility for clearance, existing ERW, the provision of information, warning to civilians, assistance and cooperation (see text box for full details).²⁸

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 which would reduce the risks of ERW. These measures would be based on a broad definition covering most types of explosive munitions, with the exception of mines. Abandoned munitions would have to be included. In these negotiations, questions need to be considered regarding, inter alia, responsibility for clearance, existing ERW, the provision of information to facilitate clearance and risk education, warnings to civilian populations, assistance & co-operation,

and a framework for regular consultations of High Contracting Parties. These negotiations would have to establish the scope of this instrument consistent with Article I of the Convention as amended at its Second Review Conference.

- (ii) To explore and determine whether these negotiations could successfully address preventive generic measures for improving the reliability of munitions that fall within the agreed broad definition, through voluntary best practices concerning the management of manufacturing, quality control, handling and storage of munitions. Exchange of information, assistance and co-operation would be important elements of such best practices.
- (b) Separate from the negotiations under a.: to continue to consider 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 of these munitions becoming ERW. Exchange of information, assistance and co-operation 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.²⁹

There was some criticism of what was left out, in particular, a disagreement on the text, led to the deletion of the explicit reference to victim assistance, much to the annoyance of several non-governmental organisations.³⁰ 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.³¹

The Implications for the Mine Action community.

Many in the mine clearance sector are not involved in the current diplomatic work, perhaps in part because of a perception of too many promises that have gone unfilled. However, discussions on ERW will go ahead in 2003 and potentially may 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 retrospective action, although this issue will be raised. The greatest potential is for how future programmes post-conflict are affected. To provide a theoretical example, what could be the impact on a clearance programme which followed a military attack by a coalition force such as occurred in Kosovo. Clearly to date, nothing substantive has been agreed, however discussions suggest the following may

occur: guaranteed level of funding for clearance to achieve a pre-defined technical standard; accurate geographic information for strike points of munitions; list of types and quantity of munitions dropped; target lists; funding for warnings to civilians both in advance and after the conflict; demolition procedures; specialist assistance for particular munitions; technical characteristics of munitions. All this information delivered in a timely fashion in a practical format which has been prescribed. Clearance organisations would no longer have to ask for this information, they would know what will be available, when, where, and in what format. All of which arguably would have a positive effect on clearance programmes. Further, a future Protocol may be legally binding, so it would not be a question of whether militaries wanted to provide information, they would be obliged to under International Humanitarian Law.

These measures affect fundamental aspects of clearance programmes, what and where is the threat. Such issues will be discussed in detail in 2003 and may be incorporated into international law shortly after the discussions finish.

The GGE will see considerable debate this year. The negotiations are not without their challenges, least of which is agreeing a formal definition of what constitutes ERW. At present the only decision is to exclude landmines from the definition for political reasons and as they are already covered by other treaties. States Parties have other concerns too, particularly the potential impact on military operational effectiveness. The financial implications and deciding on responsibility for clearance are also areas likely to see careful discussions. State Parties are wary of measures which would leave them with open-ended commitments. To field operators the GGE process may seem a cumbersome, slow and bureaucratic process, which it is, but it is currently the only mechanism available to conduct these negotiations and achieve an international agreement.³²

It is up to individuals and organisations on what action they take to influence the debate. The GICHD is committed to producing papers which assist the discussions.³³ Through our work we hope to help State 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 seem unlikely to benefit, but fundamentally the negotiations in 2003 could lead to many of the questions the clearance community ask when a conflict has occurred, being answered automatically: is there funding available and how much, what, and where are the problems. The clearance community sometimes complain about the difficulty of their work, perhaps the CCW offers hope that it may be a little, even a lot, easier in the future.

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Endnotes

¹ The author would like to thank Jonathon Henning, Lou Maresca, Wendy Price and Robert Wilton for their comments.

² Explosive Remnants of War: Negotiations for a new agreement. ICRC Press Release, 13 December 2002

³ The Second Review Conference of the 1980 Convention on Certain Conventional Weapons, David Kaye and Steven A Solomon, American Journal of International Law, Vol.96, No.4 October 2002, pps.922-936

⁴ The Second Review Conference of the 1980 Convention on Certain Conventional Weapons, David Kaye and Steven A Solomon, American Journal of International Law, Vol.96, No.4 October 2002, pps.922-936

⁵ "Countries Agree to Negotiate on Explosive Remnants of War", Wade Boese, Arms Control Today, http://www.armscontrol.org/act/2003_01-02/ccw_janfeb03.asp/

⁶ 1997: the year of a treaty banning anti-personnel mines? Peter Herby, International Review of the Red Cross, no.317, pps192-197

⁷ UXO Lao – Work Plan 2002

⁸ Polish Experiences with Explosive Remnants of War, a presentation to the CCW Group of Government Experts, December 2002. For the period 1944-2000 a total of 96,529,734 explosive devices were cleared of which 14,940,300 (18.53%) were mines and 80,589,435 (81.47%) were rockets, bombs, mortars and others.

⁹ Explosive Remnants of War - Cluster Bombs and Landmines in Kosovo, p.5, August 2000, ICRC.

¹⁰ Explosive Remnants of War – Submunitions and Other Unexploded Ordnance, August 2000, ICRC.

¹¹ The UK Working Group on Landmines, is now known as Landmine Action.

¹² Cluster Bombs – The military effectiveness and impact on civilians of cluster munitions. Rae McGarth, UK Working Group on Landmines, August 2000. The report also called for other measures against states who used cluster bombs, for full details of the recommendations see p.54 of the report.

¹³ Explosive Remnants of War - Cluster Bombs and Landmines in Kosovo, p.37, August 2000, ICRC.

¹⁴ Explosive Remnants of War: Protecting civilian through an additional protocol to the 1980 Convention on Certain Conventional Weapons. Peter Herby and Anna R. Nuiten, International Review of the Red Cross, No.841, pp195-205

¹⁵ Telephone Interview between the author and ICRC 31 January 2003

¹⁶ The issue of ERW has not caught the popular imagination like that of anti-personnel landmines. The main non-government organisations who have been most actively involved, are, Human Rights Watch, Landmine Action (UK), Mennonite Central Committee, and Mines Action Canada.

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

¹⁸ Report of the Second Review Conference of the States Parties 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. Geneva, 21 December 2001. The full text can be found at <http://www.ccw-treaty.com/report.htm>

¹⁹ Explosive Remnants of War (ERW) – A Threat Analysis, GICHD, Geneva 2002, ISBN 2-88487-003-2

²⁰ Explosive Remnants of War (ERW) – A Threat Analysis, GICHD, Geneva 2002, ISBN 2-88487-003-2, p.17

²¹ Explosive Remnants of War (ERW) – Undesired Explosive Events in Ammunition Storage Areas, GICHD, Geneva, November 2002, ISBN 2-88487-006-7

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 on Anti-Vehicle Mines – Experience from Field Operations for the GGE. Although several of the non-government organisations, Landmine Action and Handicap International, used consultants with field experience, there was little knowledge of practical field operations amongst 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, this despite the

fact that RSPs are often well known to former members of the same countries Armed Forces.

²⁵ There are three meetings of the GGE scheduled for 2003, 10-14 March, 16-27 June and 17-24 November, Draft Report of the Meeting of the States Parties 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. CCW/MSP/2002/CRP.1 Geneva, 12-13 December 2002.

²⁶ Authors Conference notes December 2002

²⁷ Authors Conference notes December 2002

²⁸ Draft Report of the Meeting of the States Parties 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. CCW/MSP/2002/CRP.1 Geneva, 12-13 December 2002. para.21

²⁹ Draft Report of the Meeting of the States Parties 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. CCW/MSP/2002/CRP.1 Geneva, 12-13 December 2002. para.21

³⁰ "New talks in 2003 to cut deaths from unexploded munitions" ClariNews, 13 December 2002, http://quickstart.clari.net/qs_se/webnews/wed/ag/Qu-disarmament.R0rx_CDD.html/

³¹ Authors 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 new major work ongoing in the United Nations in disarmament. This may well work in the favour of the CCW with States Parties keen to maintain what are seen to date by many as successful negotiations. Various discussions between the author and diplomatic representatives.

³³ The GICHD has been asked to produce papers which 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.