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Explosive Remnants of War: The Negotiations Continue

From 16–27 June 2003, States Parties to the Convention on Certain Conventional Weapons¹ (CCW) met in a Group of Governmental Experts (GGE) to discuss a draft proposal for an Instrument on Explosive Remnants of War (ERW).² A previous article in the *Journal of Mine Action*³ outlined the background to this process, and the June meeting was the second to take place in 2003. This article explains what was discussed in June, what will happen next and some of the broad issues of interest to the mine action community.

by Paul Ellis, *GICHD*

Background

The aim of the current series of meetings is to discuss possible measures that could alleviate the humanitarian impact of ERW. Based on earlier work, the ambassador from the Netherlands, who is responsible for coordinating work on ERW in the CCW, presented a paper as a possible basis for an instrument or protocol on ERW. At present, there are two arguments as to how work on this paper should progress. The majority of States Parties favour the adoption of a legally binding protocol.⁴ However, some States Parties continue to oppose this view, favouring a “statement of best practices.” For the clearance community, the encouraging news is that issues that are central to their work in the field (such as responsibility for clearing up ERW and measures to protect civilians, e.g., fencing and marking) are being discussed in an international forum. These discussions may result in formal obligations for parties to future conflicts to provide clearance and other mine action activities.

After two weeks of discussions, the Coordinator for ERW will now redraft the proposal and present it again to States Parties in the autumn with the next formal meeting scheduled for November 2003. The key articles of interest to the clearance community are Article 3: Clearance, Removal and Destruction of Explosive Remnants of War; Article 4: Recording and Use of Information; Article 5: Provisions for the Protection of the Civilian Populations from the Effects of Explosive Remnants of War; Article 7: Existing Explosive Remnants of War; and the Technical Annex, which covers recording and provision of information on UXO and abandoned ordnance, plus risk education and the provision of information.⁵

The Draft for an Instrument on ERW

From a positive perspective, the draft paper offers the prospect of recognizing the responsibility of parties to a conflict to clean up ERW, which could mean better funding provision, swifter action to deal with ERW and improved cooperation between military forces and humanitarian organisations. Also, information would be made available, such as the types of ordnance used, location of battle areas, methods for safe disposal, presence of anti-handling devices, and location and amounts of abandoned ammunition. All this information would be of considerable use for pre-deployment planning and preparation for a post-conflict environment. However, the proposals could see states increasingly using

their own assets (almost certainly the military) to undertake work previously done by the clearance community. This raises issues about the quality and efficacy of the military in this type of work. Furthermore, if states use their own assets to clear ERW or provide risk education, they might have to pay a third party to do what they see as a duplication of work. As a result, there could potentially be a negative impact on funding.

Before there will be any agreement, there are a number of obstacles that we need to overcome. First, among many delegations, there is still a lack of understanding about the reality of work in the field or what is involved in providing risk education. The few “experts” that states bring along are almost always military officers, and not always with experience in explosive ordnance disposal (EOD), let alone a mine action programme. Several states are openly opposed to providing any information beyond the bare minimum. The usual reason cited for this is national security. The GICHD and others have pointed out that the issue is not one of providing the information but rather of when the information becomes known. A good example would be, should

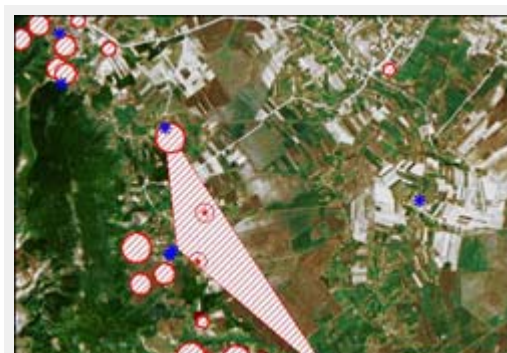





Discussions include the provision of information on the location and types of abandoned ordnance.

states refuse to provide coordinates for cluster bomb strikes, it just means that the clearance community would have to establish the location using a survey. The information ultimately becomes known—it just takes longer and costs more. There are also grounds for concern about how information would be provided. The draft proposal mentioned international databases, perhaps run by the United Nations, yet such databases do not exist. In part, the problem for many states appears to be a reluctance to provide information, perhaps because they perceive this as a loss of control.

The GICHD’s Role

The GICHD will continue to play an active role in negotiations. Two recently published reports on information requirements and warnings and risk education⁶ were written to try to provide delegates to the meetings with a better understanding of the issues involved. The Centre’s mandate is to provide technical advice to the States Parties involved in the discussions. Areas we will be concentrating on in the second half of the year include seeking to underline the importance of providing information that is as broad and detailed as possible, giving examples from the field to explain the reality of clearance and risk education work, and explaining the strengths of the clearance community.



 **Dangerous Areas**
 **Dangerous Areas (Cluster)**
 **Casualties**

Locating dangerous areas would become easier should states agree to provide details of battle areas.

Conclusion

The next meeting of the GGE on ERW is 17–24 November 2003. Shortly after, there will be a meeting of States Parties to the CCW, on 27–28 November, to consider the next step on this issue. While it is unclear what the States Parties will decide, there are two probable outcomes: an agreement to create a legally binding protocol or a non-legally binding “statement of best practice” for ERW. Discussions on ERW continue, possibly because the States Parties cannot decide on the legal status of the proposal or due to the demands in any paper being unacceptable to some States Parties. Perhaps the greatest danger is a legally binding document that has been so weakened to achieve agreement that it does little if anything to alleviate the acknowledged humanitarian impact of ERW.

*All photos courtesy of the author.

Endnotes

1. The full official 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."
2. United Nations, *Draft Proposal for an Instrument on Explosive Remnants of War, Coordinator on Explosive Remnants of War, Working Group on Explosive Remnants of War, CCW/GGE/V/WG.1/WP.1/Rev.1* 20 May 2003, Geneva.
3. Ellis, *op cit*.
4. Should a legally binding protocol be adopted, it would become the fifth protocol of the CCW. For details of the other four protocols, see Ellis, *op cit*.
5. Full details of the Draft Proposal and other papers presented to the meeting in June can be found on the UN Department of Disarmament Affairs website on the CCW at <http://disarmament.un.org/ccw/index.html>.
6. *Explosive Remnants of War—Information Requirements*, GICHD, Geneva, 2003 and *Explosive Remnants of War—Warnings and Risk Education*, GICHD, Geneva, 2003.

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