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DISCUSSION PAPER ON CLEARANCE OF EXPLOSIVE REMNANTS OF WAR

1. INTRODUCTION

- 1.1 In accordance with the decision taken at 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 (CCW) a Group of Governmental Experts shall discuss ways and means to address the issue of Explosive Remnants of War (ERW). The Group shall also consider all factors, appropriate measures and proposals in relation to, among others, the clearance of ERW.
- 1.2 The purpose of this discussion paper is merely to provide a factual basis to facilitate an informed discussion at the meeting of the Group of Governmental Experts on those relevant aspects of the clearance of ERW and is without prejudice to the positions taken by States Parties on ERW. Although issues such as warning to civilians and assistance and co-operation are linked to clearance of ERW, these issues will not be addressed in this discussion paper.

2. BACKGROUND

Impact of ERW

- 2.1 Armed conflicts tend to generate unexploded ordnance as remnants of war. Such explosive remnants could include aircraft and ground delivered munitions such as general-purpose bombs; cluster munitions especially its submunitions, missiles, artillery shells, mines and mortars.
- 2.2 ERW continue to inflict severe civilian casualties long after armed conflicts have ended. In addition, socio-economic development, infrastructure development and the delivery of humanitarian assistance are hampered. The development of land for agricultural purposes is severely constraint due to the presence of ERW and countless cattle and other animals are also killed by ERW. This situation necessitates the rapid and safe clearing of ERW and justifies international efforts to promote clearing as soon as possible.

International instruments

- 2.3 The international community has already responded to address the effects of one category of remnants of wars namely mines and in particular anti-personnel mines,

and a focus have been placed on the clearance of mines. Although the clearance of ERW, in particular submunitions, has its own specific challenges that are distinct from the clearance of mines, general principles developed for mine clearance as well as experiences and best practices could be helpful in the clearing of ERW.

- 2.4 Amended Protocol II of the CCW and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, provide a legal framework for States bound by these instruments on the clearance of mines, especially anti-personnel mines.
- 2.5 In addition, the United Nations Mine Action Service (UNMAS) has the responsibility to develop and maintain the International Mine Action Standards (IMAS). IMAS has been developed to improve safety and efficiency in, among others, unexploded ordnance clearance, by providing guidance, by establishing principles and, in some cases, by defining international requirements and specifications. IMAS, therefore, provides a frame of reference, which encourages the sponsors and managers of clearance operations to achieve and demonstrate agreed levels of effectiveness and safety.

Key questions to be addressed

- 2.6 The key issues to be discussed in regard to the clearance of ERW are responsibility, information exchange and clearance methodology. Key questions to be addressed are who is responsible for clearing ERW and when to commence with clearance operations. Regarding information exchange it is essential to determine what type of information should be made available to whom and at what time. In dealing with clearance operations it is essential to discuss what types of standards, including safety and effective quality assurance standards, should be applied, what lessons could be learned from best practices, how to take into account local clearance priorities and if time limits should be applied to clearance operations.

Responsibility

- 2.7 It is regarded as an accepted principle that those who use munitions, which remain after the end of active hostilities, are responsible for their clearance or to provide the relevant technical or material assistance to facilitate the clearance thereof. This is particularly applicable in areas under jurisdiction or control of a State.
- 2.8 When a State no longer control or has jurisdiction over an area in which it used munitions it is also an accepted principle that it will not be responsible to conduct clearing operations in that ERW affected area. However, that State shall provide to the State now in control of that area technical and material assistance necessary, including the possibility of joint operations when deemed appropriate, to ensure the clearance of ERW.
- 2.9 The above-mentioned principles are contained in Articles 3, 5(2) and 10 of the CCW's Amended Protocol II. In terms of Article 5 of the 1997 Convention banning anti-personnel mines an obligation is placed on States Parties to destroy all anti-personnel mines in areas under their jurisdiction or control. According to paragraph 5.1 of the First Edition of the "Guide for the application of International Mine Action Standards

(IMAS)”, the primary responsibility for mine action, that includes unexploded ordnance clearance when necessary, lies with the Government of the mine-affected State, i.e. the authorities that have control or jurisdiction over the affected area.

Information exchange

- 2.10 To facilitate clearance of ERW it is an accepted principle that relevant technical information should be provided to clearance organizations after the cessation of active hostilities and between parties to a conflict as soon as security interests permit it. Regarding transparency it is also an accepted principle that information will be released in a manner consistent with the security interests of States. Three questions are therefore important namely what type of information to provide when to provide it and to who should it be provided.
- 2.11 In terms of the Article 9 and the Technical Annex of the CCW’s Amended Protocol II States Parties shall record, among others, information on the location of minefields and mined areas. In addition, to facilitate detection and clearance, information shall be recorded on the types, number and certain technical characteristics of the mines used. This information shall be retained by the parties to a conflict and, without delay after the cessation of active hostilities, use this information to protect civilians from the effects of mines in areas under their control. At the same time they shall make available all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control to the Secretary General of the United Nations (UN) and other parties to the conflict. Provision is also made for cases where such information should be temporarily withheld until security interests permit its release.
- 2.12 In terms of Article 7 of the 1997 Convention banning anti-personnel mines, States Parties shall provide to the UN Secretary General information on, among others, the location of mined areas and the technical characteristics of anti-personnel mines owned or possessed by States Parties to facilitate clearance operations.
- 2.13 Regarding ERW, the kind of information necessary to facilitate clearance operations could include the those outlined by the GICHD in its paper "Information on explosive remnants of war useful to Mine/UXO Action Organisations", prepared for the preparatory process of the CCW Review Conference (i.a. information on the types of ordnance used, its approximate geographical location -operational information indicating the areas where for example cluster munitions were used- and technical information directly relevant to safely neutralise the hazard of ERW such as render safe procedures).

Clearance methodology

- 2.14 The objective is to ensure the rapid and safe clearance of areas containing ERW as soon as possible after the cessation of active hostilities. The clearance of ERW could follow the same model as applied to mine clearance, namely the general identification and location of areas containing ERW, the marking of specific contaminated areas and the detection, location and destruction of each individual explosive remnant.

- 2.15 In dealing with the question of setting a time frame on clearance operations reference could be made on how this matter been dealt with in the CCW context. In terms of the Article 10 of the CCW's Amended Protocol II no specific time frame is provided. However, in accordance with Article 10(1) of Amended Protocol II States Parties shall without delay after the cessation of active hostilities clear, remove, destroy or maintain all minefields, mined areas, mines, booby-traps and other devices in accordance with the Articles in the Protocol.
- 2.16 In undertaking clearance operations it is important that relevant safety and effective quality assurance standards be applied as for example set out in the Internal Mine Action Standards (IMAS). The application of IMAS are shaped by five guiding principles that are also relevant to the clearance of ERW, namely: the right of national governments to apply national standards to national programmes; standards should protect those most at risk; emphasising the building of a national capacity to develop, maintain and apply appropriate standards for clearance operations; maintaining consistency with other international norms and standards; and compliance with relevant international conventions.
- 2.17 In accordance with the IMAS definition, a cleared area should be considered an area that has been physically and systematically processed by a demining organisation (government, NGO or commercial entity) to ensure the removal and/or destruction of all unexploded ordnance hazards to a specific depth. The specified area to be cleared shall be determined by a technical survey or from other reliable information that establishes the extent of the ERW hazard area.
- 2.18 According to IMAS the removal and/or destruction of ERW hazards in the specified area to a the specified depth shall be ensured by: (i) using accredited demining organisations with licensed capabilities, such as manual clearance, dog detection teams, mechanical systems and community liaison teams; (ii) using appropriate management practices and applying safe and effective operational procedures; (iii) monitoring the demining organisation and its sub-units; and (iv) conducting a process of post-clearance inspection of cleared land.
- 2.19 The above-mentioned clearance elements are not an exhaustive list but merely an indicative list of issues that could be considered in the process of the possible codification of appropriate measures and proposals in relation to ERW.
