
First session
Geneva, 21-24 May 2002

European Union Position on the Issue of Explosive Remnants of War

Objective

The European Union recognizes the serious problems caused by “Explosive Remnants of War” (ERW) which have ceased to have any military purpose, and which are a cause of humanitarian suffering and a serious impediment to humanitarian assistance, peace-keeping, reconstruction and development. They are a threat to civilians and military alike. In this context, the EU would like to refer to the UK working paper¹ on the military and humanitarian objectives of addressing unexploded remnants of war (UXO) of September the 27th.

This working paper seeks to contribute to the deliberations on how to deal with problems caused by ERW with an aim to facilitate the building of a consensus on how to carry forward the process after the Review Conference in December 2001. The European Union believes guidance on how to regulate explosive remnants of war can be found in the existing instruments of the CCW as well as in proposals put forward by the ICRC, Switzerland (sub-munitions)² and others.

Scope of application

Measures on ERW should apply to international and non-international armed conflicts, in accordance with article 1 of the CCW as amended at the Second Review Conference of December 2001.

Material scope

There are different approaches on this, each having its own merits. One could envisage a *comprehensive approach* to tackle the problems, such as combining general provisions with weapon-specific requirements in one legal instrument. Such an instrument could have a general part including provisions on practical applications of existing humanitarian law, the duty to inform civilians, promote early clearing, etc. Another part could contain weapon-specific requirements for selected munitions and ordnance on, for example, detectability and self-destruction mechanisms. Another approach to dealing with the problem could be a

¹ Paper CCW/CONF.II/PC.3/WP.10

² Paper CCW/CONF.II/PC.3/WP.4

weapons-specific approach, e.g. with separate Protocols for specific categories of munitions, such as sub-munitions.

An issue to consider is how to deal with possible overlaps between a Protocol on ERW and other Protocols of the CCW.

Preventive measures

The aim of a legal instrument to deal with ERW would be twofold. Firstly, it should deal with munitions before they become ERW. It should strive to prevent the occurrence of explosive remnants, inter alia, through establishing provisions for enhanced reliability and self-destruction. Secondly, the instrument should aim at preventing injury caused by explosive devices once they have become ERW. This could be done by requiring, inter alia, detectability for clearance, rapid warning to the public and information to facilitate clearance and other steps to promote early clearance. Technical and non-technical solutions could be accommodated on both categories of preventive measures.

1. With regard to measures to prevent munitions from becoming ERW, technical requirements need to be considered with regard to, inter alia, increased reliability of fuses, self-destruction/neutralization devices and deactivation. The European Union believes that the Swiss proposal on deactivation and self-destruction of sub-munitions is a valuable contribution to those discussions.

As International Humanitarian Law (IHL) applies to all spheres of armed conflict, the EU believes that this should be reflected in an instrument on ERW. Further discussions are necessary on practical application of IHL in view of the specific characteristics of ERW.

2. For munitions which have failed to explode the question of responsibility for providing information to the general public and to those clearing has to be addressed. Inspiration for such provisions could be found in Amended Protocol II. The technical aspect of detectability also has to be considered.

A legal obligation should require parties to a conflict to provide information and education, as soon as it is available or they are able to do so, but at any rate expeditiously after hostilities have ceased, for civilians on what munitions were used in specific areas and particularly, of the dangers unstable unexploded ordnance may cause. Therefore it may be necessary to include provisions on the recording and submission of information.

With regard to clearing, the aim would be to promote rapid and safe clearing. This requires that ERW are easy to detect and that those working in clearing (inter alia UN agencies, governments and other relevant actors) are provided, taking operational security considerations into account, with the appropriate technical information on munitions used.

A separate issue that needs to be addressed is the regulation of munitions and ordnance which do not fulfil the new technical standards. In this context, decommission requirements for old stockpiles and provisions allowing for retrofitting within an appropriate time-line, as well as transfer ban on munitions which do not meet the new standards, could be considered.

Compliance

The European Union is of the opinion that measures of ERW should be subject to compliance mechanisms, and is open to discussions on how this best can be achieved.

Process forward

The European Union welcomes the establishment of a Group of Governmental Experts to address the issue of ERW. It is the position of the EU that the Group should start as soon as possible negotiating on a legally binding instrument (protocol). In this sense, the EU believes that the submission of the Group's report to the States Parties should take place no later than December 2002. This report should contain concrete measures and proposals, in order to facilitate an early commencement of the negotiating phase.
