

**GROUP OF GOVERNMENTAL EXPERTS 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**

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Item 8 of the provisional agenda

Working Group on Explosive Remnants of War

**ERW Framework Paper**

**Possible structure for an ERW instrument**

**Note by the Co-ordinator on Explosive Remnants of War (ERW)**

1. Annexed to this note, you will find a Framework paper on Explosive Remnants of War. This paper is circulated to the CCW States Parties under the personal responsibility of the Co-ordinator on ERW. Its purpose is to provide a basis for discussions in the fourth session of the Group of Governmental Experts (GGE) from 10-14 March 2003.
2. It is important to note that this paper does not aim to take any position on any issue. It is a collection of issues and examples to provide a framework for States Parties to prepare their positions and contributions for the March meeting of the GGE. Hopefully it will become clear at the fourth session whether or not this selection of examples for each of the articles is balanced. This framework paper does not preclude anything.
3. The Co-ordinator hopes that States Parties, on the basis of this paper or otherwise, would present written or oral proposals to the March meeting, both on the structure and the substance of the issues to be dealt with. The purpose of that meeting is to collect and compile views and proposals. On the basis of these views and proposals, the Co-ordinator will try to develop a first working-version of an Instrument, to be circulated on a timely basis before the June session of the GGE, in order to enable capitals to take a good look at it.
4. The Co-ordinator has included an example of an article dealing with Generic Preventive Measures as described in the second part of the negotiating mandate (a) (ii). The purpose of this example is to explore and determine whether the negotiations could successfully address this issue. Before the beginning of the fourth session of the GGE, the Co-ordinator will consult with individual States Parties, preferably on their own request.

Annex

**ERW Framework Paper**

**Possible structure for an ERW instrument**

1. General provisions
2. Scope of application
3. Definitions
4. Clearance, removal and destruction of explosive remnants of war
5. Recording and use of information
6. Provisions for the protection of civilian populations from the effects of explosive remnants of war
7. Provisions for the protections of humanitarian missions from the effects of explosive remnants of war
8. Existing explosive remnants of war
9. Co-operation and assistance
10. Generic preventive measures
11. Consultations of High Contracting Parties
12. Compliance

## **ERW Framework Paper**

(Article 1)

### **General Provisions**

#### **Issues:**

- An issue that needs to be considered is responsibility. Due consideration should be given to the different circumstances of High Contracting Parties, by virtue of their past or present involvement in a conflict which has given rise to the risks of explosive remnants of war, their control over areas where explosive remnants of war exists and/or their capacity to provide assistance in achieving the purposes of this Instrument.
- Paragraph 2 is based on Article 3.2 of Protocol II as Amended (APII).

#### **For example:**

1. The High Contracting Parties hereby undertake, through the observance of all relevant rules of international law applicable in armed conflict and through the implementation of the obligations and measures specified in this Instrument, to take all possible and appropriate steps, individually and in cooperation with other High Contracting Parties, to ensure the protection of civilians and of humanitarian operations from the risks and effects of explosive remnants of war.
2. In accordance with the provisions of this Instrument, each High Contracting Party or party to a conflict is responsible for all explosive ordnance used or deployed by it, which become explosive remnants of war.

## **ERW Framework Paper**

(Article 2)

### **Scope**

#### **Issues:**

- Material scope of application
- Situations to which the instrument applies (international and non-international armed conflicts or all circumstances)
- Possible inclusion in Article 1

In amended Protocol II these issues are dealt with in one article (Article 1) and could be dealt with in the same manner in an ERW instrument.

#### **For example:**

1. This Instrument relates to all explosive ordnance and explosive remnants of war, as defined herein.
2. This Instrument shall apply to situations referred to in the Amendment to Article 1 of the Convention adopted by the High Contracting Parties to the Second Review Conference on 21 December 2001.

## **ERW Framework Paper**

(Article 3)

### **Definitions**

#### **Issues:**

- Munitions or ordnance?
- The principle definitions that need to be addressed

#### **For example:**

**1. Explosive Remnants of War** - Not yet defined but a possible elaboration could be:

"Explosive Remnants of War" - means unexploded ordnance and abandoned explosive ordnance with the exception of anti-personnel mines, booby-traps, other devices and mines other than anti-personnel mines as defined in Protocol II as amended on 3 May 1996.

**2. Unexploded Ordnance** - IMAS defines this as:

"Unexploded ordnance" - explosive ordnance that has been primed, fused, armed or otherwise prepared for use or used. It may have been fired, dropped, launched or projected yet remains unexploded either through malfunction or design or for any other reason.

**3. Abandoned Explosive Ordnance**

Abandoned explosive ordnance is not defined in existing instruments. A definition needs to be developed.

Elements that need to be considered include explosive ordnance that has not been used and is not under the control of a party to the conflict, or that has been dumped in the territory of a state not party to the conflict, or a territory not under control of a state.

**4. Explosive ordnance**

IMAS gives the following definition:

"Explosive ordnance" - all munitions containing explosives, nuclear fission or fusion materials and biological and chemical agents. This includes bombs and warheads; guided and ballistic missiles; artillery, mortar, rockets and small arms ammunition; all mines, torpedoes and depth charges; pyrotechnics, clusters and dispensers; cartridge and propellant actuated devices; electro-explosive devices; clandestine and improvised explosive devices; and all similar or related items or components explosive in nature.

Issues concerning the definition of explosive ordnance:

- Delete: nuclear fission or fusion materials and biological and chemical agents
- Is it good to list items as examples of explosive ordnance?

A possible definition for the purpose of this Instrument could be:

“Explosive ordnance” - all munitions containing explosives that have not been covered by other international instruments.

Note: IMAS definitions used here are based closely on or adopted from NATO Standardization Agreement: Glossary of Terms and Definitions.

## **ERW Framework Paper**

(Article 4)

### **Clearance, removal and destruction of explosive remnants of war**

#### Issues:

- Follow APII approach where each party has its own obligations?
- Follow the structure of Amended Protocol II, where the issue of responsibility is dealt with in both Article 3(2) and Article 10?

#### Options:

- integrate both texts of APII Article 3 and 10 in one article
- do not mention the APII Article 3 text on responsibility and focus only on an “Article 10 approach”
- expand on the present language of APII as in the example below
- Should technical and material assistance be specified in a technical annex with examples of such assistance?
- Possible link with Article 5 on recording and use of information

#### For example:

1. Without delay after the cessation of active hostilities, all explosive remnants of war shall be cleared, removed or destroyed.
2. High Contracting Parties and parties to a conflict shall without delay take the following steps to facilitate effective clearance removal or destruction of explosive remnants of war:
  - Assessment of ERW threat.
  - Assessment of needs and prioritisation of clearance, removal or destruction of explosive remnants of war.
  - Development of plans for effective and rapid clearance, removal or destruction, including the mobilisation of resources.
3. As soon as possible, and on an annual basis thereafter, as provided for in Article 11, each High Contracting Party shall report with respect to areas under their control on priorities, progress, and sources of and needs for technical, financial, material and human assistance to accomplish Article 4.1.
4. High Contracting Parties and parties to a conflict bear such responsibilities with respect to all explosive remnants of war in areas under their control.
5. In areas where the user of explosive ordnance which have become explosive remnants of war does not exercise control of the territory, the user and party in control of the territory shall share responsibility for clearance, removal or destruction. The user shall provide to the party in control of the area pursuant to paragraph 3 of this Article, to the extent

permitted by such party, technical, financial, material and human assistance necessary to fulfil such responsibility.

(Refer to technical annex and/or article on assistance and co-operation?)

6. The parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States, relevant international organisations and non-governmental organisations, on the provision of technical, financial, material and human assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.



## **ERW Framework Paper**

(Article 5)

### **Recording and use of information**

#### Issues:

- Timing/phasing of provision of information.

#### For example:

1. High Contracting Parties and Parties to the conflict shall record and retain information, as identified in the technical annex, concerning the use of explosive ordnance to facilitate the rapid clearance, removal or destruction of explosive remnants of war and the dissemination of relevant information to civilians and civilian populations.
2. Such information shall, without delay after the cessation of active hostilities, be made available to the other party or parties to the conflict. It shall also, upon request, be made available to the Secretary-General of the United Nations and relevant organisations working in the clearance, removal or destruction of explosive remnants of war and risk education.

## **ERW Framework Paper**

(Article 6)

### **Provisions for the protection of the civilian populations from the effects of ERW**

#### Issues:

- Possible link with Article 4 on clearance, removal and destruction
- Possible link with Article 5 on recording and use of information
- Possible link with Article 9 on co-operation and assistance
- Decide on elements for technical annex

#### For example:

1. High Contracting Parties shall take all feasible precautions to protect civilians from the effects of explosive remnants of war. These precautions would include, but are not limited to, warnings, risk education to the civilian populations, marking, fencing, and monitoring.
2. High Contracting Parties shall give effective advance warning of the use of explosive ordnance which pose particular risks to become explosive remnants of war, unless circumstances do not permit.
3. As soon as possible and on an annual basis thereafter, as provided for in Article 11, each High Contracting Party shall report with respect to areas under their control on measures taken to implement this Article.

## **ERW Framework Paper**

(Article 7)

### **Provisions for the protections of humanitarian missions from the effects of ERW**

#### Issues:

- Following example is based on APII, Article 12

#### For example:

##### 1. Application

(a) With the exception of the forces and missions referred to in sub-paragraph 2(a) (i) of this Article, this Article applies only to missions which are performing functions in an area with the consent of the High Contracting Party on whose territory the functions are performed.

(b) The application of the provisions of this Article to parties to a conflict which are not High Contracting Parties shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

(c) The provisions of this Article are without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for a higher level of protection to personnel functioning in accordance with this Article.

##### 2. Peace-keeping and certain other forces and missions

(a) This paragraph applies to:

(i) any United Nations force or mission performing peace-keeping, observation or similar functions in any area in accordance with the Charter of the United Nations;

(ii) any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:

(i) so far as it is able, take such measures as are necessary to protect the force or mission from the effects of explosive remnants of war in any area under its control;

(ii) if necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all explosive remnants of war in that area; and

(iii) inform the head of the force or mission of the location of all known explosive remnants of

war affected locations in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such areas and explosive remnants of war.

### 3. Humanitarian and fact-finding missions of the United Nations System

(a) This paragraph applies to any humanitarian or fact-finding mission of the United Nations System.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

(i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b) (i) of this Article; and

(ii) if access to or through any place under its control is necessary for the performance of the mission's functions and in order to provide the personnel of the mission with safe passage to or through that place:

(aa) unless on-going hostilities prevent, inform the head of the mission of a safe route to that place if such information is available; or

(bb) if information identifying a safe route is not provided in accordance with sub-paragraph (aa), so far as is necessary and feasible, clear a lane through explosive remnants of war affected areas.

### 4. Missions of the International Committee of the Red Cross

(a) This paragraph applies to any mission of the International Committee of the Red Cross performing functions with the consent of the host State or States as provided for by the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

(i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b) (i) of this Article; and

(ii) take the measures set out in sub-paragraph 3(b) (ii) of this Article.

### 5. Other humanitarian missions and missions of enquiry

(a) Insofar as paragraphs 2, 3 and 4 above do not apply to them, this paragraph applies to the following missions when they are performing functions in the area of a conflict or to assist the victims of a conflict:

(i) any humanitarian mission of a national Red Cross or Red Crescent Society or of their International Federation;

(ii) any mission of an impartial humanitarian organisation, including any impartial

humanitarian ERW clearance mission; and

(iii) any mission of enquiry established pursuant to the provisions of the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall, so far as is feasible:

(i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b) (i) of this Article, and

(ii) take the measures set out in sub-paragraph 3(b) (ii) of this Article.

#### 6. Confidentiality

All information provided in confidence pursuant to this Article shall be treated by the recipient in strict confidence and shall not be released outside the force or mission concerned without the express authorisation of the provider of the information.

#### 7. Respect for laws and regulations

Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, personnel participating in the forces and missions referred to in this Article shall:

(a) respect the laws and regulations of the host State; and

(b) refrain from any action or activity incompatible with the impartial and international nature of their duties.

## **ERW Framework Paper**

(Article 8)

### **Existing explosive remnants of war**

#### Issues:

- Some of the possible approaches:
  1. This Instrument is only relevant for “new” explosive remnants of war, after entry into force of the Instrument
  2. This Instrument is also relevant for all existing explosive remnants of war
  3. “All states parties in a position to do so will provide assistance...”
  4. Encouragement for “the parties concerned” to reach agreement
  5. “Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on ...”

#### Examples:

1. Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on the clearance, removal or destruction of existing explosive remnants of war, receive technical assistance, where appropriate, for the provision of warnings to the civilian populations and for victim assistance.
2. In situations where explosive remnants of war from a previous armed conflict are in the territory of a High Contracting Party prior to the entry into force of this Instrument, the states parties concerned shall endeavour to reach agreement both among themselves and, where appropriate, with other States and international organisations, on the provision of technical and material assistance to clear, remove or destroy the existing explosive remnants of war, provide warnings to civilians and provide victim assistance.
3. Each High Contracting Party in a position to do so shall provide assistance for dealing with existing explosive remnants of war.

## **ERW Framework Paper**

(Article 9)

### **Co-operation and assistance**

- **Technological**
- **Support to mine/UXO-risk education**
- **Victim assistance**

#### Issues:

- Possible overlap with article on protection from the effects of explosive remnants of war (Article 6)
- Possible overlap with article on recording and use of information (Article 5)
- Separate articles on “support to mine/UXO-risk education” and “victim assistance”? Or should these all be in one article?
- Following example is based on APII

#### For example:

1. Each High Contracting Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information necessary for the implementation of this Instrument and means of clearance of explosive remnants of war. In particular, High Contracting Parties shall not impose undue restrictions on the provision of clearance equipment and related technological information for humanitarian purposes.
2. Each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations System, especially information concerning various means and technologies of ERW clearance, and lists of experts, expert agencies or national points of contact on ERW clearance.
3. Each high Contracting Party in a position to do so shall provide assistance for the clearance removal or destruction of explosive remnants of war, risk education to civilian populations, victim assistance and related activities through the United Nations System, other international bodies, intergovernmental or non-governmental organisations, national organisations or on a bilateral basis.
4. Requests by High Contracting Parties such assistance, substantiated by relevant information, may be submitted to the United Nations, to other appropriate bodies or to other States. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organisations.
5. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and, in co-operation with the requesting High Contracting Party, determine the appropriate provision of assistance in the clearance of explosive remnants of war or implementation of the Instrument. The

Secretary- General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required.

6. Without prejudice to their constitutional and other legal provisions, the High Contracting Parties undertake to co-operate and transfer technology to facilitate the implementation of the relevant provisions and restrictions set out in this Instrument.



## **ERW Framework Paper**

(Article 10)

### **Generic preventive measures**

#### Issues:

- Best practices approach
- What elements?

#### For example:

1. Each High Contracting Party agrees to take generic preventive measures, where feasible, aimed at reducing the occurrence of explosive remnants of war. These measures shall include, but are not limited to, the measures referred to in the technical annex:
  - research and development
  - management of manufacturing
  - munition management:
    - storage systems
    - handling systems and transport
    - quality control systems
  - national organisation of explosive ordnance disposal
  - training and use
  - transfer of munitions
2. In accordance with Article 11, High Contracting Parties will, on a voluntary basis, and subject to national security concerns, exchange information related to efforts to promote and establish best practices in respect of paragraph 1 of this Article.
3. In order to promote the purposes of this Instrument, each High Contracting Party that transfers a weapon that is likely to cause explosive remnants of war:
  - (a) Undertakes to inform the recipient State of the best practices on generic preventive measures as contained in the technical annex.
  - (b) Undertakes to inform the recipient State of all information which may be deemed relevant to the future clearance, removal or destruction of such ordnance in the event that it becomes an explosive remnant of war.

## **ERW Framework Paper**

(Article 11)

### **Consultations of High Contracting Parties**

#### Issues:

- Consultations of High Contracting Parties are also related to the work being done on this issue for the CCW as a whole.
- Is there a need for this mechanism?

#### For example:

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Instrument. For this purpose, a conference of High Contracting Parties shall be held annually.
2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.
3. The work of the conference shall include:
  - (a) review of the operation and status of this Instrument;
  - (b) consideration of matters identified in paragraphs 4 and 5 of this Article;
  - (c) preparation for review conferences.
4. The High Contracting Parties shall provide annual reports to the Depositary, who shall circulate them to all High Contracting Parties in advance of the Conference, on any of the following matters:
  - (a) dissemination of information on this Instrument to their armed forces and to the civilian population;
  - (b) types and quantities of ERW cleared, removed and destroyed and other steps taken to implement Article 4;
  - (c) victim assistance and rehabilitation programmes;
  - (d) warnings to the civilian populations and risk education and other steps taken to implement Article 6;
  - (e) steps taken to implement Article 5 on recording and use of information
  - (f) relevant preventive generic measures
  - (g) steps taken to meet technical requirements of this Instrument and any other relevant information pertaining thereto;
  - (h) legislation related to this Instrument;
  - (i) measures taken on international technical information exchange, on international co-operation on the clearance, removal or destruction of explosive remnants of war, and on technical co-operation and assistance; and
  - (j) other relevant matters.

5. High contracting parties are encouraged to also provide information in their annual reports and during the meetings of the High Contracting Parties on possible preventive measures aimed at improving the design of certain specific types of munitions, including submunitions, with a view to minimise the humanitarian risk of these munitions becoming explosive remnants of war.
6. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

## **ERW Framework Paper**

(Article 12)

### **Compliance**

#### **Issues:**

- Compliance is also related to the work being done on this issue for the CCW as a whole
- Follow Amended Protocol II?

#### **For example:**

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Instrument by persons or on territory under its jurisdiction or control.
  2. The measures envisaged in paragraph I of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Instrument, wilfully kill or cause serious injury to civilians and to bring such persons to justice.
  3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Instrument.
  4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Instrument.
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