

## WEAPONS OF WAR: NEW ISSUES AND CHALLENGES UNDER INTERNATIONAL LAW

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### *Abstract*

*The following paper aims towards the usage of war weapons in modern era and how it has affected the present world. The challenges before the international law as to how the world destruction can be stopped by the help of international organizations with the countries and thus peace could prevail worldwide. The exaggerated use of weapons has led to disruption of world peace and the money which could have been used for eradicating poverty, hunger and pollution from the world has been used for manufacturing deadliest weapons which could finish the human existence on the planet earth. The rapidly expanding use of mass-produced cluster munitions, quality-control problems in the highly competitive international arms market and budgetary pressures in the defense industry have increased the likelihood of malfunctioning munitions posing a threat to the civilian population and military personnel long after a conflict has ended. The presence of explosive matters in the hands of various countries has led to wars which mostly affected the civilians who are living at the places of war. The people have lost their lives and being taken away from their families, they have been displaced from their homes which have led to loss to humanitairism. The remnants of war are just unimaginable and the effects are long term. Thus, the paper aims towards discussing all the serious issues relating to war or remnants of war.*

**Keywords:** Weapons, international arms, peace, humanitairism

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## INTRODUCTION

There have been significant developments in recent years in the efforts to reduce the death, injury and suffering caused by anti-personnel landmines. These weapons are regarded as one of the major threats to civilians once an armed conflict has ended. Anti-personnel mines have killed and injured large numbers of men, women and children and showed the rebuilding of war-affected countries. The long-term and indiscriminate effects of these weapons led to the adoption in 1997 of the Convention on the Prohibition of the Use, Stockpiling, production and Transfer of Anti-personnel Mines on their Destruction.

Anti-personnel mines, however, are one part of a broader problem. Modern armed conflict leaves behind a wide array of explosive ordnance which, like anti-personnel mines, causes large numbers of civilian casualties and has serve socio-economic consequences for years, and sometimes for decades, after the hostilities end. Until recently, international humanitarian law contained very few requirements to lessen the impact of these ‘explosive remnants of war’ (ERW).

## DEFINING ‘EXPLOSIVE REMNANTS OF WAR’

There are no universal or formally agreed definitions of ‘explosive remnants of war’ or ‘unexploded ordnance’ (UXO). In addition, although often used interchangeably, they are not identical. One of the various drafts of the United Nations International Mine Action Standard (IMAS), for instance, defines UXO as:

*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.*<sup>1</sup>

However, even this definition is not necessarily self-evident, as landmines are excluded in the general understanding of its scope.<sup>2</sup>

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<sup>1</sup> Guide for the Application of International Mine Action Standards (IMAS), (IMAS 01.10), (New York, UN Mine Action Service, First Edition, October 2001), p. 14. A more up to date draft exists (although as of writing it had not been posted publicly), IMAS 04.10 dated 1 January 2003, but this appears to be identical to the version used here.

<sup>2</sup> United Nations Mine Action Service, Explosive Ordnance Disposal, (IMAS 09.30), (First edition, 2001-10-01), p. iv: ‘Unexploded ordnance (UXO) has many definitions, but for the purposes of IMAS the term applies to all munitions other than landmines which form part of a mine action programme, and which present a significant risk to human life.’ (Authors underline.)

Clarifying terms of reference became pertinent in the course of discussions on ‘explosive remnants of war’ leading up to the Second Review Conference of the Convention on Certain Conventional Weapons (CCW), which was held in Geneva in December 2001. The general view of delegates was that anti-personnel mines were dealt with adequately elsewhere, and thus did not need to be part of the CCW Group of Governmental Experts’ work. Anti-vehicle mines (AVM), euphemistically described in the CCW context as ‘mines other than anti-personnel mines’, were also viewed as distinct from work on ERW and to be considered under a different mandate.

Thus, a working term for ‘Explosive Remnants of War’ in the context of the CCW appears to have evolved. The CCW’s mandate to tackle ERW excludes anti-personnel mines and anti-vehicle mines left in operation after a conflict. And, it excludes ‘booby traps’ and ‘other devices’ (such as Improvised Explosive Devices (IED)) as defined by CCW Amended Protocol II and dealt with already by that instrument.<sup>3</sup> However, it includes all other ‘unexploded ordnance’, as well as abandoned ordnance.

## **EXPLOSIVE REMNANTS OF WAR: THE PREDICTABLE REMAINS OF MODERN ARMED CONFLICT<sup>4</sup>**

The end of an armed conflict does not bring an end to the suffering of civilians living in areas where fighting has taken place. There is often a wide range of dangers that threaten their lives and well-being. A significant threat is the presence of unexploded ordnance. Modern armed conflict leave behind enormous amounts of ordnance that has failed to detonate as intended or has been left as part of stock-piles near battlefield positions. Ordnance commonly found includes artillery shells, mortars, grenades, cluster bomb and other submunitions, air dropped

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<sup>3</sup> Two other areas identified by the GICHD that could fit within a broad definition of ERW were not explicitly included in the CCW’s mandate either:

- Explosive ordnance disposal (EOD) clearance of armoured fighting vehicles (AFV), which can involve clearance components such as surrounding mines and UXO, depleted uranium fragments, explosive reactive armour, smoke dischargers, unstable stocks of internally stowed ammunition and access denial devices and booby-traps; and
- Small arms and light weapons (SALW) which in themselves contain a very low risk of causing casualties, but whose interaction with the inhabitants of an area immediately post conflict are dangerous because of their desirability for revenge, criminal activity etc.

For further information see GICHD/ICRC, op cit, pp. 25-27.

<sup>4</sup> This section draws heavily on the Report of the International Committee of the Red Cross to the First Meeting of the Preparatory Committee for the 2001 Review Conference of the United Nations Convention on Certain Conventional Weapons, UN Doc. CCW/CONF.II/PC.1/WP.1, 11 December 2000.

bombs and other similar explosives. These ‘explosive remnants of war’ continue to kill and injure long after the fighting has ended.<sup>5</sup>

Explosive remnants of war are not a new phenomenon. National authorities and civilian populations in many regions of the world have had to deal with these weapons throughout the Twentieth Century. It is estimated that 84 countries are affected by explosive remnants of war.<sup>6</sup> Even today, countries across Europe continue to find and clear explosive munitions from the first and second world wars and civilians still fall victim to these weapons.<sup>7</sup>

While detained information on the scale of the problem is scarce, information from national authorities responsible for the clearance of explosive remnants of war provides some insight. In Poland, for example, its Corps of Engineers have cleared enormous amounts of explosive remnants of war left from World War II. Between 1944 and 2000 they removed and neutralized over 96 million pieces of ordnance. While a large part of these were cleared between 1994 and 1956, nearly 700,000 were cleared in 2000.<sup>8</sup> The human costs are even more staggering. It is reported that 4,094 civilians have been killed and another 8,774 injured by these weapons.<sup>9</sup> Laos is another example of a country currently dealing with long-existing explosive remnants of war problem. As a result of the conflicts in Sothern Asia during the 1960s and 1970s, it remains severely affected by explosive remnants of war. Information provided by the National UXO Programme in Laos shows that, since the end of the conflict in 1975, close to 12,000 people have been killed or injured by these weapons.<sup>10</sup> Particularly dangerous are cluster bomb submunitions, which were dropped in large numbers during the war. It is estimated that between

<sup>5</sup> The Phrase ‘explosive remnants of war’ has not been defined but it is generally understood to be synonymous with ‘unexpected ordnance’. Under the International Mine Action Standards (IMAS) published by the United Nations Mine Service, unexploded ordnance is ‘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 any other reason’ IMAS, 4.10, 1<sup>st</sup> Edn. 2001, at p.26

<sup>6</sup> Landmine Action, ‘Explosive Remnants of War: The Global Problem’, Paper presented to the Group of Governmental Experts to thee Convention on Certain Conventional Weapons, December 2002.

<sup>7</sup> ‘Greek experts defuse bomb from second world war at future olympic site’ <http://ca.news.yahoo.com/021129/6/qjiry.html>; ‘British wartime bomb is defused as city holds its breadth’, [http://archives.tcm.ie/irishexaminer/1999/09/23fhead\\_268.html](http://archives.tcm.ie/irishexaminer/1999/09/23fhead_268.html); ‘Teen killed by World War I Bomb’, [http://www.news.com.au/common/story\\_page/0,4057,5395877%255E401,00html](http://www.news.com.au/common/story_page/0,4057,5395877%255E401,00html)

<sup>8</sup> Engineering Forces of the Polish Armed Forces, ‘Polish Experiences with Explosive Remnants of War’, Document distributed to the Group of Governmental Experts to the Convention on Certain Conventional Weapons, December 2002.

<sup>9</sup> B.A. Molaski and J. Pajak, ‘Explosive Remnants of World War II in Poland’, in A.H. Westing, ed., *Explosive Remnants of War: Mitigating the Environmental Effects* (London, Taylor & Francis 1985) p. 26. Statistics based on information of the Polish Ministry of National Defence, Warsaw, Army Combat Engineer annual reports (unpublished archives)

<sup>10</sup> Lao National Unexploded Ordnance Programme, Annual Report 2000 (Vietnam, UXO Lao 2001) p.4

nine and 27 million of these submunitions failed to explode as intended.<sup>11</sup> Unexploded mortars, projectiles, rockets, large bombs and landmines are also present throughout the country.<sup>12</sup>

In addition to the human casualties, explosive remnants of war produce a range of indirect, but nevertheless destructive, consequences. Like anti-personnel mines, these weapons can have a serious socio-economic impact. Their presence prevents people from returning to their homes and hampers the reconstruction of vital infrastructure after the conflict, such as housing, schools, water systems and roads.<sup>13</sup> This, in turn, can hinder development and the resumption of commercial activities. Particularly damaging is the effect on agriculture. Farmland or pastures contaminated by explosive remnants of war may be abandoned or cannot be framed to capacity. Families and communities dependent on agriculture can be heavily affected.<sup>14</sup> Yet, in spite of the threat, economic necessity and other factors will often drive people to work their land or collect ordnance for scrap metal content. Such activities can increase the exposure to risk and result in even more casualties. Laos, Kosovo and World War II Europe are just a few examples of countries and regions dealing with the problem of explosive remnants of war. Their experience is by no means unique. Similar scenarios are found in other parts of the world.

### **THE REASONS WHY ORDNANCE FAILS TO EXPLODE AS INTENDED**

The reasons why explosive remnants of war occur are varied. The presence of such weapons after the end of hostilities is generally due to their failure to detonate as intended once they are fired, dropped or otherwise delivered. Such failures are often the result of the design, production and use of the weapon as well as environmental factors that affect its operation.

Experts have identified the following as some of the reasons why explosive ordnance fails to function as intended:<sup>15</sup>

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<sup>11</sup> Presentation of P. Bean, Programme Director Lao National UXO Programme, published in Expert Meeting on Explosive Remnants of War: Summary Report (Geneva, International Committee of the Red Cross, 2000) p.8

<sup>12</sup> UXO Lao <http://www.uxolao.org/clearance.html>. See R. Mc Grath, Cluster Bombs: The military effectiveness and impact on civilians of cluster munitions (London, UK Working Group on Landmines 2002) p.30

<sup>13</sup> Landmine Action, Explosive Remnants of War: Unexploded ordnance and post-conflict communities (London, Landmine Action 2002) pp.23-25

<sup>14</sup> Ibid., pp.33-35

<sup>15</sup> Information collated from Geneva International Centre for Humanitarian Demining (GICHD), Explosive Remnants of War: A threat Analysis (Geneva, Geneva International Centre for Humanitarian Demining 2002) p.7; C. King, Explosive Remnants of War: A study on submunitions and other unexploded ordnance (Geneva, International Committee of the Red Cross 2000) pp. 38-39; Mc Grath op. cit. n.11, at pp.25-27

*Poor Design* –poorly designed fusing and poor inflight stabilization of air delivered ordnance will often cause it to fail.

*Production* –related deficiencies –such as poor manufacturing and the use of substandard materials and components in production.

*Improper storage and handling* –the storage of ordnance in unfavorable conditions (i.e., too hot or too cold) can accelerate deterioration and adversely affect the functioning of mechanisms and explosive composition. Rough handling in storage and transport can also damage munitions and effect reliability.

*Improper use of munitions*- common errors include the improper setting of fuses and incorrect launch profiles.<sup>16</sup>

*Unfavorable target environment*-as many types of ordnance are designed to explode on impact, soft terrain, dense vegetation and heavy precipitation can prevent detonation.

*Interaction with other exploding ordnance* –ordnance exploding nearby can cause damage to other munitions and prevent explosion.

It is difficult to accurately establish the extent to which ordnance may fail during a conflict. One indication of its reliability comes from data gathered during testing and in service trails prior to conflict. Militaries appear to accept a five percent failure rate during testing.<sup>17</sup> Conditions on the battlefield, however, often differ greatly from those found at testing sites and in testing procedures. As a result, failures rates during operations are known to be significantly higher<sup>18</sup>. In recent years, the data most widely available concerning the amount of explosive remnants of war found after a conflict has been that related to submunitions released fro air-dropped cluster bombs or land-based delivery systems.

## **THE PARTICULAR CONCERNS ABOUT SUBMUNITIONS**

Submunitions have been cited as a particular problem within the broader category of explosive

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<sup>16</sup> Examples of incorrect launch profiles would be the dropping of air-delivered weapons at too low an altitude, thus preventing them from arming properly.

<sup>17</sup> King, op. cit n.16, at p. 9 indicates that US Army acceptance tests for munitions identify a failure rate of 2.5 percent -5 percent as ‘acceptable’ for new ammunition. See also McGrath op. cit n. 11, at p.27

<sup>18</sup> Mc Grath, op. cit n. 11, at pp.27-28

remnants of war.<sup>19</sup> In recent years, their consequences have been widely reported in the media. Like other explosive ordnance, a certain percentage of submunitions will not explode as they are meant to. Yet submunitions are a special concern because of the very large numbers often used in conflict. During the war in Indochina, for example, perhaps as many as 90 million submunitions were dropped in Laos.<sup>20</sup> As stated above, it is believed that nine to 27 million failed to explode as intended; a 10-30 percent rate of failure.<sup>21</sup> Significant numbers of submunitions also failed to explode as a result of their use in Kosovo. NATO acknowledges dropping 1,392 cluster bombs, containing some 290,000 submunitions. While initial projections placed the number of unexploded submunitions at around 30,000 recent estimates has adjusted that figure to approximately 20,000.<sup>22</sup> Predictably, submunitions have caused large numbers of civilian casualties in situations where they have been used and pose serious challenges for organizations involved in the clearance of explosive remnants of war.<sup>23</sup>

An additional concern is the risks posed by submunitions during conflict when they are used against targets in or near populated areas. By design, submunitions are area weapons. Once released from the cluster bomb, rocket or other means of delivery, hundreds of them are disposed over an area of up to several thousand square meters. In light of the wide area of dispersal, there is a substantial risk that significant numbers of civilians could be caught in a submunition attack, particularly in situations where civilians and military targets are in close quarter. A report by Human Rights Watch has suggested that in such circumstances civilian casualties may be more extensive than those associated with traditional explosive ordnance.<sup>24</sup>

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<sup>19</sup> Submunitions are often mislabeled as ‘cluster bombs’ in media reports. A Submunition is any munition that, to perform its task, separates from a parent munition. This includes, for example, mines or munitions that form part of a cluster bomb, artillery shell or missile payload. A ‘cluster bomb’ is a bomb containing or dispensing submunitions. Cluster bombs are the dispensers, generally dropped from aircraft, which scatter submunitions over the area where an intended target is located. It is the submunitions that are the main focus of concern. GICHD, op. cit. n. 16, at p.23

<sup>20</sup> McGrath, op. cit. n. 11, at p.31

<sup>21</sup> Lao National Unexploded Ordnance Programme, UXO Lao: Work Plan 2002 (Vientiane, UXO Lao 2002) p.7; ICRC, op. cit. n. 10, at p.8

<sup>22</sup> ICBL, op. cit. n.13, at p.824

<sup>23</sup> Submunitions have been cited as one of the principle causes of civilian casualties in conflicts in which they have been used. In Laos they are believed to have been responsible for a large part of the nearly 12,000 UXO related casualties. In Kosovo, submunitions were, along with anti-personnel mines, the leading cause of unexploded ordnance-related death and injury. Together, these weapons accounted for 73 percent (approximately 36 percent each) of the 280 incidents individually recorded by the ICRC between 1 June 1999 and 31 May 2000. A variety of other ordnance accounted for the remaining 27 percent of the casualties. ICRC, op. cit. n. 12, at p.9

<sup>24</sup> Human Rights Watch, *Fatally Flawed: Cluster Bombs and Their Use by the United States in Afghanistan* (Human Rights Watch, New York 2002) at p.10



In addition, most submunitions cannot be precisely once they are released and fall to the ground unguided. As such, their descent is often affected by environmental factors (wind, air density, etc.). Their small size, braking mechanisms (parachutes and ribbons) and other features mean that submunitions are prone to be affected by weather and land far from the intended target.

Based on these concerns, a number of non-governmental organizations called for a complete prohibition on the use of these weapons or a moratorium on use until the international regulations were strengthened.<sup>25</sup> At the Review Conference of State Parties to the Convention on Certain Conventional Weapons held in December 2001, several states, the ICRC and observer organizations participating in the conference called for a prohibition on the use of submunitions against any military target located in concentration of civilians.<sup>26</sup>

## **INTERNATIONAL HUMANITARIAN LAW**

International Humanitarian law contains a number of principles and rules which seek to limit the impact of weapons on civilians. Perhaps foremost is the principle that civilians enjoy a general protection against the dangers arising from military operations.<sup>27</sup> More detailed rules, such as the rules on distinction and the prohibition on indiscriminate attacks, give effect to this protection.<sup>28</sup>

Specific rules to limit the consequences of certain forms of explosive remnants of war first found expression in the CCWC.<sup>29</sup> Protocol II annexed to the convention requires that the parties to the conflict record the location of all mines, minefields and booby traps and take all necessary and appropriate measures to protect civilians from their effects once active hostilities have ended.<sup>30</sup> In 1996, states parties adopted amendments to strengthen the Protocol in response to

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<sup>25</sup> These include Human Rights Watch, ICRC, Landmine Action and the Mennonite Central Committee. On 13 February 2003, the European Parliament adopted a resolution on the harmful effects of unexploded ordnance and depleted uranium ammunition which called on EU member states to implement a moratorium on the further use of these weapons pending the conclusions of a comprehensive study of the requirements of international humanitarian law.

<sup>26</sup> See *infra* section 6.

<sup>27</sup> Art. 51 (1) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (Hereinafter 1977 Additional Protocol I)

<sup>28</sup> Art. 51(2) and 51(4) 1977 Additional Protocol I

<sup>29</sup> The full name is the Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (hereinafter CCWC). The Convention was adopted on 10 October 1980 and entered into force on 2 December 1983. As of 1 February 2003, there were 90 States Parties to the Convention.

<sup>30</sup> Art. 7 Protocols on Prohibition or Restrictions on the Use of Mines, Booby Traps and other Devices



the widespread problems caused by anti-personnel mines.<sup>31</sup> In addition to further restricting the use of these weapons during conflict and improving the requirement to take all necessary and appropriate measures to protect civilians from their effects, the Protocol mandates the clearance of mines, booby traps and other devices without delay after the cessation of active hostilities.<sup>32</sup> The protocol also establishes that parties to a conflict bear some responsibility for the mines, booby troops and other device employed by them.<sup>33</sup>

The Convention on the Prohibition of Anti-personnel Mines also requires that specific measures be taken to reduce the impact of anti-personnel mines.<sup>34</sup> Under its provisions, all areas containing anti-personnel mines must be cleared of these weapons. Until clearance is completed, the area must be marked, fenced and monitored for the effective exclusion of civilians.<sup>35</sup>

With the adoption of the amendments to Protocol II and the development of the Convention on the Prohibition of Anti-personnel Mines, the international community has begun to address the problems caused by explosive remnants of war through international humanitarian law. These instruments are important precedents, and their provisions contain important elements to address the problem. Until now, however, most of the developments in the law have focused on anti-personnel mines. Other explosive remnants of war, however, are not covered by the rules of amended Protocol II or the Convention on the Prohibition of Anti-personnel Mines. As has been indicated above, a wide range of other explosive remnants of war are nevertheless a significant part of the problem and cause large numbers of civilian casualties.

It has been suggested that international humanitarian law rules governing the use of weapons during conflict may prohibit or restrict the deployment of weapons likely to become explosive remnants of war. This discussion has generally focused on submunitions in light of the civilian casualties often associated with the large number that fail to explode as intended. One central issue is whether the use of submunitions, and presumably other explosive ordnance that may

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<sup>31</sup> Protocol on Prohibitions or Restrictions on the use of Mines, Booby Traps and other devices as amended on 3 May 1996 (hereinafter amended Protocol II). The Protocol entered into force on 3 December 1997 and as of 1 February 2003 there were 68 states parties.

<sup>32</sup> Art. 10 Amended Protocols II under Article 2(5), 'other devices' are defined as 'manually emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually by remote control or automatically after a lapse of time'.

<sup>33</sup> Art 3(2) Amended Protocol II

<sup>34</sup> The full name is the convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-personnel Mines and on their Destruction. It was adopted on 18 September 1997 and entered into force on 1 March 1999. As of 1 February 2003 there were 131 states parties.

<sup>35</sup> *Ibid*, Art. 5

similarly fail to explode, would violate the prohibition on indiscriminate attacks found in Article 51 of the 1977 Additional Protocol I to the Geneva Conventions.

While there has not been extensive legal analysis published on this point, several commentators have suggested that the high numbers of submunitions that fail to explode, and the foreseeable civilian casualties likely to follow, may offend Article 51(4) (C). This is because submunitions will have effects that are indiscriminate and would violate key provisions of the Additional Protocol, such as the rule that a distinction between civilians and combatants must be made at all times.<sup>36</sup> Another argument is that the use of these weapons may offend the rule of proportionality under Article 51(5)(b).<sup>37</sup> the argument here is that the foreseeable civilian casualties caused by submunitions are likely to be excessive in relation to the military advantages gained.<sup>38</sup> This argument assumes that the long-term effects of explosive ordnance must be taken into account when making the determinations required by the principle of proportionality.

A more limited view of the role of the foreseeable effects of unexploded submunitions, and explosive remnants of war more generally, under Article 51(5)(b) has been taken by professor Christopher Greenwood. In a paper submitted to the Group of Governmental Experts established by the State Parties to the CCWC, he suggested that the effects of explosive remnants of war do have a role to play in the determination of proportionality.<sup>39</sup> In his view, however, only the immediate risks, that is, the threats posed by explosive ordnance during an attack and the threat of explosive remnants of war in the hours following an attack, can be a factor. As the determination of proportionality must be based upon the information reasonably available at the time of an attack, he finds that the long-term risks of explosive remnants of war are too remote to be capable of assessment at that time.

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<sup>36</sup> Under Art. 51(4) (C) of Additional Protocol I, indiscriminate attack are ‘those which employ a method or means of combat that effects of which cannot be limited as required by this Protocol’. Human Rights Watch, op. cit. n. 25, at p. 14; V. Wiebe, ‘Footprints of Death: Cluster bombs as indiscriminate weapons under international humanitarian law’, 22 Michigan JIL(2000) pp. 113-119.

<sup>37</sup> *Ibid*

<sup>38</sup> Art. 51(5)(b) of 1977 Additional Protocol I considers an attack as indiscriminate if it ‘may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated’.

<sup>39</sup> C. Greenwood, ‘Legal issues Regarding Explosive Remnants of War’ Working paper submitted to the Group of Governmental Experts of the State parties to the convention on Prohibitions or restrictions on the Use of Certain Conventional Weapons which may be deemed to the excessively injurious or to have indiscriminate effects, UN Doc. CCW/GGE/I/W/P/ 10,22 May 2002.

## **A NEW PROTOCOL ON EXPLOSIVE REMNANTS OF WAR**

Negotiations on post-conflict remedial measures to reduce the risks of explosive remnants of war were held in Geneva from 10-14 March, 16-27 June and 17-24 November 2003. Basing their discussions on a series of papers prepared by the Coordinator of the negotiations, Ambassador Chris Sanders of the Netherlands, the Group made considerable progress. Agreement was reached in a number of important areas. The Protocol on Explosive Remnants of War was subsequently adopted by the Group and formally approved at a meeting of State Parties on 28 November 2003. It is the fifth protocol annexed to the CCWC.

The protocol is an important addition to international humanitarian law. It is the first multilateral international agreement to broadly deal with the problems caused by unexploded and abandoned ordnance. The Protocol's principle obligations require each party to an armed conflict to:

- 1) Clear ERW in territory it controls after the end of active hostilities.
- 2) Provide technical, material and financial assistance to facilitate the removal of unexploded or abandoned ordnance in areas it does not control resulting from its operations. This assistance can be provided directly to the party in control of the territory or through a third party, such as the UN, NGO's or other organizations
- 3) Record information on the explosive ordnance employed by its armed forces and to share that information with organizations engaged in ERW clearance or conducting programs to warn civilians of the dangers of these devices.
- 4) Take all feasible precautions in its territory to protect civilians from the risks and effects of ERW. Such measures may include the marking, fencing and monitoring of ERW affected areas and the provision of warnings and risk education to civilians.

Although these obligations are only required 'where feasible' or 'where practicable', they nevertheless provide an outline of the measures required to address an ERW problem and a framework to support the activities of organizations conducting ERW clearance and risk education programs. The provisions on the recording and sharing of information will facilitate a rapid response to an ERW problem.

These rules also highlight that it is no longer acceptable for the parties to an armed conflict to do nothing when ERW are present. Regardless of whether the ERW are on their territory or resulting from munitions they used, the parties will have an obligation to take specific action to reduce the danger. This is a further strengthening of international humanitarian law, which

parallels developments to remedy the problems caused by landmines. International humanitarian law now has a comprehensive approach towards addressing such problems.

## CONCLUSION

The problem of explosive remnants of war (ERW) has become more and more alarming in recent years. The rapidly expanding use of mass-produced cluster munitions, quality-control problems in the highly competitive international arms market and budgetary pressures in the defence industry have increased the likelihood of malfunctioning munitions posing a threat to the civilian population and military personnel long after a conflict has ended. In the 1991 Gulf war and the 2000 Kosovo Conflict, ERW killed and injured more military personnel after the end of the conflict than during the conflict. ERW not only endanger the life of the civilian population, but also impede post-conflict reconstruction efforts, including the repatriation of displaced civilians.

In my concluding remarks I would like to mention that there are several key issues/challenges that should be addressed to ensure that ERW victims and their families receive adequate and appropriate assistance. These include:

- ☞ Creating a comprehensive mechanism to record ERW casualties to ensure that resources are used most effectively where the needs are greatest;
- ☞ Facilitating access to appropriate healthcare and rehabilitation facilities;
- ☞ Affordability of appropriate healthcare and rehabilitation;
- ☞ Improving and upgrading facilities for physical rehabilitation;
- ☞ Increasing availability of psycho-social support, including peer support groups and opportunities to participate in sport and recreation;
- ☞ Creating opportunities for employment and income generation, including special attention for the spouses of ERW victims;
- ☞ Capacity-building and ongoing training of health care practitioners, including doctors, trauma surgeons, nurses, physiotherapists and orthopedic technicians;
- ☞ Capacity-building of government officials in the relevant ministries;
- ☞ Gender balance among healthcare and rehabilitation practitioners to ensure that the specific needs of men, women, boys and girls are met;
- ☞ Raising awareness on the rights and needs of persons with disabilities;
- ☞ Inclusion of ERW victims in policy-making decisions;

- ☞ Establishing an effective social welfare system and legislation to protect the rights of all persons with disabilities, including ERW victims; and
- ☞ Mainstreaming ERW victim assistance projects into development programmes as part of poverty reduction strategies but with special attention to the particular needs of ERW survivors and other persons with disabilities.