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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A Survey of Questions and Issues for the Group of Governmental Experts on Explosive Remnants of War

Discussion Paper prepared by the Delegation of Canada

Introduction

During the May 2002 Meeting of the Group of Governmental Experts (GGE) on Explosive Remnants of War (ERW), the Canadian delegation offered to develop a short paper to assist the GGE in its deliberations to identify ways to address the humanitarian impact of ERW. The Coordinator welcomed this offer, and this discussion paper has been produced as a result.

As discussions on this issue have covered a broad scope of issues and potential areas for solutions, this document attempts to catalogue the key issues based on the mandate of the GGE, and to provide States with a brief explanation of the background to each element of the mandate, and with a focus on some indicative questions that may be addressed for each mandate element. It is hoped that states can use this document at the July 15-26 meeting of the GGE, in a complementary way to the Coordinator's paper and the other papers submitted at the May Meeting.

Please note that it is not intended through this document to suggest that discussion be limited to certain issues, nor to prescribe issues that must be covered. The GGE is unlikely to be able to consider all of the questions and possible solutions at this time, and will almost certainly wish broader discussions in certain areas, or may wish to avoid certain topics entirely. This paper may be useful during the meeting in making such decisions, but it is up to the members of the GGE to so decide.

1. *Factors and types of munitions that could cause humanitarian problems after a conflict*

Background: As noted by the Coordinator, in proceeding with our deliberations on munitions and factors that may cause ERW, there are three options: focus discussions on specific weapons and weapons systems; focus on solutions compatible with a generic definition of ERW; or take a dual-track approach, focusing on specific weapons and general solutions as may be appropriate for the issue or mandate element being considered.

Considerations: Experts have raised a number of considerations with respect to either the specific or generic approach. For example, document CCW/GGE/I/WP.5 may provide some examples for discussion. With respect to the specific question, considerations include the difficulty in achieving agreement on definitions, confidentiality concerns, and the challenges of dealing with future weapons/systems. With respect to the generic approach, there are also definitional challenges, as well as limitations inherent in dealing with a broad approach to the issue.

Questions and Issues Raised by the GGE:

a. Defining ERW:

- Can we define Explosive Remnants of War in a generic way (noting the need to exclude munitions covered by Protocol II/APII and the Ottawa Convention)?
    - For example, could we designate: "All unexploded ordnance with the exception of mines" or is this too broad?
    - Should limits be placed on the breadth of the definition, for example some minimum size of explosive?
    - Should we distinguish between abandoned munitions and others?
- With regard to specific weapons:
    - For which elements of the mandate is it necessary or useful to specify or define certain classes or sub-classes of munitions for special attention and reference purposes?
    - Are Experts prepared at this time to develop acceptable definitions that can support the weight of international scrutiny and solutions to the ERW problem?
    - If not, is more time required for such work with the prospect of eventual agreements?
    - What are the classes/sub-classes of munitions that might be so designated, and how?

b. Approach:

- If agreement is possible with respect to both generic and specific definitions, are Experts agreed to pursue solutions based on one track or a dual track model?
- If a dual approach is preferred, can both approaches be pursued individually or in a phased way?

c. A number of factors have been identified which lead to ERW:

- Can we identify, for consideration, a list of factors (technical, social, economic, other?) that are most relevant to causing casualties after a conflict?
- Can the list be reduced to the most important factors that the GGE should consider?
- Relevant to mandate item 2 (see below):
    - Are there factors which apply to most or all ERW, and hence are conducive to consideration of generic solutions?
    - Are there factors which are weapon specific and for which it may be possible to set out specific solutions?

2. ***Technical improvements and other measures for relevant types of munitions, including submunitions, which could reduce the risk of such munitions becoming ERW***

Background: Just as a dual approach may be useful in considering mandate item 1, a similar approach may be useful for item 2. Unexploded ordnance may result from specific technical factors or imperfections relevant to specific munitions as well as from general factors applicable to most or all munitions such as production quality control, storage or handling methods, training, and so on. Many of these are addressed in document CCW/GGE/I/WP.4.

Considerations: Discussion of specific technical issues has raised concerns regarding confidentiality, protection of and access to technology, costs, technology sharing and assistance, military security, and so on. While less discussed to date, similar concerns may be raised with respect to generic approaches.

Questions and Issues Raised by the GGE:

a. Generic measures:

- What is the range of actions that States may undertake in order to reduce the incidence of ERW/improve the reliability of weapons, outside of technical changes to the weapons themselves? E.g. Standards in: production; munition management; munition testing; storage; handling; training.
- Is there scope for development of guidelines or best practices for such actions in the view of military and other experts?

b. Specific technical measures:

- Are there specific technical changes that could be incorporated in: existing weapons systems; the design, development and manufacture of future systems.
- To which weapons/weapons systems should we apply any in-depth considerations of specific technical measures/changes at this time?
- What is the range of technical measures that could be considered?
    - Self-destruction, self-deactivation, self-neutralization (SD, SDA, SN)
    - Detectability for clearance
    - Redundant Fuse Systems
    - Other
- In the case of agreement on technical standards, what might be considered with respect to existing weapons which do not meet those standards; e.g.:
    - Decommissioning and retro-fitting
    - Transfer regulations or restrictions
    - Time-lines

c. International assistance and cooperation (A&C):

- Is there scope for international A&C for technical improvements and other measures to address ERW? In particular:
    - Should financial and technical assistance/sharing be considered to help states reduce the incidence of ERW in the context of these elements?
    - How might agreed international technical and other standards or guidelines be created, promoted, facilitated and implemented?

3. ***The adequacy of existing International Humanitarian Law (IHL) in minimizing post-conflict risks, both to civilians and to the military***

Background: As the GGE proceeds with discussions leading toward recommendations that may include suggestions for adding to the current body of International Humanitarian Law, it is important to consider the relationship of current IHL to the issues being considered with respect to ERW. More specifically, is existing IHL adequate in its coverage of: (i) the use of munitions that may become ERW; (ii) means to prevent munitions from becoming ERW (technical and other measures); and (iii) the post-conflict risks resulting from Explosive Remnants of War.

Considerations: Certain legal instruments have been suggested as being applicable to questions concerning the use of munitions, specifically the 1977 Additional Protocol I to the Geneva Conventions. With respect to the other two aspects (per above), it has been suggested that current legal instruments do not capture these matters as related to munitions that may become unexploded ordnance. Some instruments, however, have been suggested as providing coverage of somewhat analogous examples, thus suggesting that there is work out there that could be drawn from in assisting Experts in their considerations of the issue of ERW. Therefore, Experts may wish to refer to and examine the instruments and aspects of IHL related to each of these areas.

Questions and Issues Raised by the GGE:

a. Use of weapons likely to become ERW:

- Does current IHL adequately address planning, targeting, use of weapons that may cause ERW? Taking into consideration the references to Hague law, customary international law, and Additional Protocol I in documents CCW/GGE/I/WP.9 and CCW/GGE/I/WP.10, is there a need for additional legal elements to cover the use of weapons likely to become ERW?
- Given current IHL, do Experts see additional value in pursuing the development of legal restrictions on the use of specific weapons under specific circumstances?
- If not, would it be useful to reiterate or emphasize how existing laws and principles apply?

b. Technical and other measures to prevent ERW:

- Do Experts agree that this aspect of the potential solutions to ERW is not captured by current IHL?
- Do existing examples of IHL that address humanitarian concerns similar or related to those associated with ERW, such as Amended Protocol II of the CCW, provide a basis for consideration by the GGE of the development of similar, but issue-appropriate, mechanisms?

c. Addressing the post-conflict risks of unexploded ordnance:

- Does IHL adequately address key issues related to addressing the adverse humanitarian effects of ERW after the cessation of hostilities?
- If not, do existing examples of IHL that address humanitarian concerns similar or related to those associated with ERW, such as Amended Protocol II of the CCW, provide a basis

for consideration by the GGE of the development of similar, but issue-appropriate, mechanisms?

4. ***Warning to the civilian population, in or close to, ERW-affected areas, clearance of ERW, the rapid provision of information to facilitate early and safe clearance of ERW, and associated issues of responsibility***

Background: It may not be reasonable to expect that munitions will never become ERW; and even if possible, it is important to consider what we can do about the humanitarian impact of ERW that occur in the time it may take States to work towards preventing munitions from becoming ERW.

Considerations: In looking at what can be done to address the post-conflict risks of unexploded ordnance, it would be useful to consider instruments from which we might draw inspiration and input, and what new and customized developments might be necessary to address issue-specific elements of ERW. Various related issues and instruments are outlined in documents CCW/GGE/I/WP.2, CCW/GGE/I/WP.6, and CCW/GGE/I/WP.8. The GGE might wish to consider elements of existing, related instruments or standards, such as Amended Protocol II, International Mine Action Standards, and the Ottawa Convention, to determine what could be drawn in or built upon in consideration of the elements below.

An overarching consideration involves the need to balance legitimate security interests with humanitarian concerns and solutions. In addition, Experts will probably want to determine what differences might exist between the problems associated with UXO and mines to take into account any different measures that should be considered. Experts may also wish to determine whether special considerations are required for abandoned weapons.

Questions and Issues Raised by the GGE:

a. Associated issues of responsibility:

- What is meant by "responsibility"? Are Experts interested in pursuing legal issues such as individual and state criminal and civil responsibility for ERW; or, can we speak in a generic sense of a general duty?
- Who is considered to be responsible: States which create ERW; Governments on whose territory the ERW resides; others? Is there a need to consider shared responsibility, and if so, on what basis?
- Under what conditions should a state be considered responsible in whole or in part for (ensuring) clearance of ERW post-conflict?
- How might we address the matter of "past" ERW?
- What is the range of responsibilities that could be usefully discussed: e.g. financial, information, technical, humanitarian support, equipment, expertise, labour?
- Is there a relationship between responsibility and assistance and cooperation?

b. Clearance:

- What ERW should be cleared (i.e. where)?
- Who should undertake the actual clearance of ERW?
- When should clearance commence?

- Should there be timeframes specified for the post-conflict clearance of ERW?
- Should standards be developed/agreed for clearance and clearance operations?
- What are the ways clearance can be monitored and verified?

c. Information:

- What information is required for safe/effective clearance operations and warnings to civilian populations? E.g. Munition type and number used; fusing and warhead details; dimensions and visual characteristics of munitions and packaging and delivery canisters; location; details of explosive composition, propellants; other technical details (e.g. "life"/active period; SD/SDA/SN details; detectability); destruction methods and 'render safe' procedures; avoidance procedures. Mapping and other location relevant information?
  - How (and by whom) should this information be recorded/collected?
  - What are the considerations for the provision of such information by a State?
  - To whom should this information be provided?
  - What format(s) would be the most appropriate/easiest to use?
  - When should this information be provided?
  - Can states be encouraged/required to put in place procedures to collect, retain and disseminate such information (to avoid ad hoc procedures in situations of conflict)?
  - How can legitimate security interests be taken into account? What information might require safeguarding? How can sensitive information be safeguarded?

d. Warnings:

- How can States ensure civilians are warned/made aware of the risks of ERW?
- When should warnings be provided?
- Who should deliver warnings/risk education?
- Could we develop appropriate standards and methods of warnings or risk education, noting the need to consider social and economic factors in affected regions and the linkages to clearance operations?

5. ***Assistance and co-operation (A&C):***

Background: Toward ensuring the realization of the intentions of States to address the humanitarian impact of unexploded ordnance, it will be useful to consider the role of assistance and cooperation. Related models of assistance and cooperation exist, that might provide a useful foundation for deliberations.

Considerations: Assistance and Cooperation could usefully be considered for solutions related to technical and other measures to prevent munitions from becoming ERW; for the measures applicable to addressing the risks of unexploded ordnance in post-conflict contexts; and potentially with respect to assistance to victims. As the Coordinator suggests, it might make sense to think of the post-conflict aspects of A&C in a generic sense, whereas the character of A&C for technical measures could also take on a more specific character. As mentioned in document CCW/GGE/I/WP.3, Experts may wish to consider the examples provided by Articles 10 and 11 of Amended Protocol II, and determine if these provide a useful example; and if it might be valuable to go beyond this example in speaking of A&C with respect to measures to address ERW.

Questions and Issues Raised by the GGE:

a. Generic:

- Can we speak of a general duty of cooperation?
- How could such a duty be framed?
- What are the types of multilateral measures that could be helpful?
- What might be the role for bilateral assistance and cooperation?
- What is the relationship between responsibility and assistance and cooperation?

b. Technical and other measures:

- How can A&C be developed to adequately address the gaps among States in military technologies? How can A&C be developed in a non-discriminatory fashion?
- How can A&C facilitate an exchange of equipment, material, scientific and technological information?
- What is the relationship to issues of access to and transfer of technology?
- How can A&C be best implemented to take into consideration technical and financial difficulties?
- Would it make sense for A&C considerations occur on a case-by-case basis for specific munitions in question?