

**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**

CCW/GGE/IV/WG.1/WP.4
12 March 2003

Original: ENGLISH

Fourth Session
Geneva, 10-14 March 2003
Item 8 of the provisional agenda

Working Group on Explosive Remnants of War

Amendments on the Protection of the Civilian Population from the Effects of ERW
[Article 6 of the ERW framework paper]

Proposal by the International Committee of the Red Cross

1. Protections for the benefit of the civilian population have a central role to play in addressing the problem of explosive remnants of war (ERW). The principal obligations upon High Contracting Parties and parties to the conflict for ERW clearance and the sharing of information are found in Articles 4 and 5 of the ERW framework paper.
2. In the view of the ICRC, the purpose of Article 6 of the ERW framework paper is an important one. It outlines measures other than clearance and information sharing which need to be taken to protect civilians from the effects of ERW. As drafted, it includes measures to be taken during and after active hostilities.

General comment on terminology

3. Paragraph 1 of Article 6 requires High Contracting Parties to take all feasible precautions to protect civilians from the effects of explosive remnants of war. Under international humanitarian law the phrase "feasible precautions" has generally been used when discussing precautions to be taken by a party to the conflict in the conduct of military operations prior to the use of a weapon or at the time of its use. Effective advance warnings are a part of these precautions. See for example Article 57 of 1977 Additional Protocol I and Article 3 of the amended Protocol II of the CCW.
4. In describing the use of information after the end of active hostilities to protect civilians for the effects of mines, booby traps and other devices, Art. 9 of amended Protocol II says parties the conflict shall take "all necessary and appropriate measures" to protect civilians from the effects of minefields.
5. It would seem useful to maintain this framework and terminology in Article 6 of the ERW framework paper. In other words, when identifying measures, such as advance warning, which may be take before or during an attack, one would speak of taking "feasible precautions." Alternatively, actions to be taken after the end of active hostilities would be identified as

"necessary and appropriate measures." This would be consistent with the structure of existing law and language already agreed upon by States.

6. It would also seem logical to reverse the order of paragraphs 1 and 2 to be more in line with chronological order in which steps would be taken.

Examples of feasible precautions

7. Past conflicts have provided examples of feasible precautions, including advance warning, which could be taken for the protection of civilian populations. For instance, during the Second World War warnings of impending attack were sometimes given to civilians by radio or by means of pamphlets in order to allow them to leave a targeted area. One specific example is the bombing of the Skoda armament works in Czechoslovakia on 25 April 1945. Prior to the bombing of the plant, a warning was broadcast to workers indicating the likelihood of an attack. During the Korean War, United Nations Forces in some instances warned the civilian population in North Korea of impending aerial bombardment by leaflet and radio. It is also reported that in 1982 Israel dropped several million leaflets in Lebanon to warn civilians to depart areas where conflict was anticipated.

8. The use of mass media may have a particularly useful role in the dissemination of warnings. The ICRC and other organizations often use radio and television to inform civilians about the presence and dangers of ERW immediately after the end of active hostilities when civilian casualties are often high. In the appropriate circumstances, such media may also be used to spread general warnings during a conflict or prior to an attack.

Proposal for Article 6 of the framework paper

9. In light of the above comments Article 6 could read:

1. High Contracting Parties and parties to the conflict shall take all feasible precautions, including effective advance warning, in the use of explosive ordnance that pose risks to become explosive remnants of war to minimize the potential dangers to civilians. Such precautions would include, but are not limited to ensuring that the use of explosive ordnance is in accordance with military doctrine, the broadcast of warnings through mass media or other means and the distribution of leaflets or other written materials prior to or immediately after the use of explosive ordnance.
 2. High Contracting Parties and parties to the conflict shall take all necessary and appropriate measures after the cessation of active hostilities to protect civilians from the effects of explosive remnants of war. These measures would include, but are not limited to providing or facilitating risk education to the civilian population and the marking, fencing and monitoring of areas known to be affected by explosive remnants of war in accordance with the technical annex.
 3. As provided for in Article 11, each High Contracting Party shall report on measures taken to implement this Article.
-