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Item 8 of the agenda

Working Group on Explosive Remnants of War

**Comments of the Inter-Agency Coordination Group on Mine Action
on the draft proposed Instrument on Explosive Remnants of War**

Prepared by United Nations Mine Action Service (UNMAS)

The significance of a relevant instrument for UN mine action

1. The Inter-Agency Coordination Group on Mine Action¹ urges the Group of Governmental Experts to the CCW Convention to use its last scheduled meetings from 17-24 November 2003 to facilitate post-conflict mine action and improve the protection of civilian population and humanitarian workers by amending the current draft instrument on explosive remnants of war.
2. As UN partners engaged in mine action in over 35 countries or areas worldwide, we are cognizant of the extent to which a revised text, along the lines proposed below, would enable us to begin our work earlier, armed with crucial information, and thus prevent more injuries to innocent civilians. Equally important, the proposed revision would mean greater protection for UN and other humanitarian personnel. Not only has the UN suffered first-hand the consequences of readily available explosive remnants of war, which were used to bomb the UN headquarters in Baghdad on 19 August 2003, but the UN 5-year mine action strategy commits UN agencies to support efforts to further develop instruments related to the problem of explosive remnants of war.
3. The instrument that results from this process will form the framework for post-conflict mine action and should be legally-binding and embody obligations that facilitate the work of the UN and the international mine action community.

The IACG-MA proposal for a revised text

4. Having carefully studied the draft instrument distributed by the Coordinator of the Working Group of the Group of Governmental Experts on ERW (CCW/GGE/VI/WG.1/WP.1 22

¹ The United Nations Inter-Agency Coordination Group on Mine Action (IACG-MA) comprises 14 UN departments and agencies involved in mine action including: the United Nations Mine Action Service (UNMAS), the UN Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Office for Project Services (UNOPS), the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations High Commission for Refugees (UNHCR), the United Nations High Commission for Human Rights (OHCHR), the United Nations Department for Peacekeeping Operations (DPKO), the United Nations Department for Disarmament Affairs (DDA), the World Health Organization (WHO), the Food and Agriculture Organization (FAO), the World Food Programme (WFP), the World Bank, the Office of the Special Adviser on Gender Issues (OSAGI).

September 2003), the IACG-MA supports the retention of existing language in Articles 1, 2, 5, 6, and 8; however, we concur with the proposal set forth by the International Committee of the Red Cross calling for amended text in articles 3 and 4 and in the Technical Annex.

Article 3: clearance, removal or destruction of ERW

5. In the current draft, the user of munitions that have become explosive remnants of war is obliged to clear ERW in territory they control, but is required only to cooperate to facilitate clearance of ERW that ends up in territory controlled by a former adversary. The obligation to cooperate extends to the provision of technical, financial, materiel and human resources assistance. This obligation should be specific. Amended Protocol II requires parties to clear all mines, booby traps and other devices in territory they control and to provide technical and material assistance to facilitate the removal of these weapons in territory they no longer control. The new instrument should impose the same requirements.

6. In sum, we support the ICRC in proposing that Article 3(1) be amended to read as follows:

“High Contracting Parties and parties to a conflict shall bear the responsibilities set out in this article in respect to all explosive remnants of war in territory under their control. In cases where the user of explosive ordnance, which have become explosive remnants of war, does not exercise control over the territory where such explosive remnants of war are found, the user shall provide, bilaterally or through a third party, including inter alia the United Nations or other relevant organizations, the technical and material assistance to facilitate the clearance, removal or destruction of explosive remnants of war.”

Article 4: recording, retention and transmission of information

7. As currently drafted, Article 4 requires parties to the conflict to record, retain and transmit information to the opposing party and to organizations involved in mine/ERW clearance or mine risk education, on explosive remnants of war. Of course, explosive ordnance only become ERW once they are either abandoned, or used and fail to function as intended. Article 4 should require parties to the conflict to record and retain information on the types and location of explosive ordnance used and their fuzing mechanisms; such information should be provided bilaterally or through a third party, including inter alia the United Nations or other relevant organizations. In Kosovo, Afghanistan and again in Iraq, the UN obtained such information from Coalition forces at early stages in the conflict and mine action was tremendously facilitated as a result. To ensure that the provision of such information is timely and consistent, we propose that Article 4 be amended to read as follows:

- 1. High Contracting Parties and parties to the conflict shall, to the maximum extent possible, record and retain the information specified in the technical annex concerning the explosive ordnance used and abandoned explosive ordnance.*
- 2. High Contracting Parties and parties to the conflict which have used or abandoned explosive ordnance, which has become explosive remnants of war, shall, without delay after the cessation of active hostilities, as far as practicable and subject to their legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through a third party, including inter alia the United Nations or other relevant organizations, to facilitate risk reduction, the rapid clearance, removal or destruction of explosive remnants of war and the provision of relevant information to civilian populations in that area.*

8. Alternatively, we propose to merge Article 4(1) and Article 4(2) to read as follows:

1. High Contracting Parties and parties to the conflict shall, to the maximum extent possible, record and retain the information specified in the technical annex concerning the explosive ordnance used and abandoned explosive ordnance. Such information shall, without delay after the cessation of active hostilities, as far as practicable and subject to legitimate security interests, be made available to the party or parties in control of the affected area, bilaterally or through a third party, including inter alia the United Nations or other relevant organizations, to facilitate risk reduction, the rapid clearance, removal or destruction of explosive remnants of war and the provision of relevant information to civilian populations in that area.

Part 1 of the Technical Annex

9. The language of Article 4 and the Technical Annex should be reconciled to ensure consistency and preclude future interpretation problems. The Technical Annex should provide a clear structure for recording, retaining and transmitting the information referred to in Article 4, but should in no way cloud or modify those obligations.

10. To this end, we support the ICRC in proposing that the Technical Annex be amended to read as follows:

“I. Recording, retaining and transmission of information

1. Recording of information

The following information shall be recorded as accurately as possible:

- a) the location of areas targeted using explosive ordnance;***
 - b) the approximate number of explosive ordnance used in the areas under a);***
 - c) the type and nature of explosive ordnance used in the areas under a);***
 - d) the general location of known and probable UXO;***
 - e) features to identify explosive ordnance including colour, size, shape and other relevant markings;***
 - f) procedures for safe disposal of explosive ordnance used.”***
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