Food-for-thought paper on existing explosive remnants of war

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Introduction

The most important objective of Protocol V on Explosive Remnants of War (ERW) is to eliminate the humanitarian threats posed by this problem. Protocol V has established a framework for addressing the humanitarian impact of future ERW. In order to achieve this objective, States which are potential users of explosive ordnance during an armed conflict need to consider what resources they could provide to and how they could carry out a clearance operation.

While States Parties to Protocol V have done much to prevent suffering caused by ERW from future conflicts, ERW from past military conflicts continues to pose potential and imminent threats. Otherwise known as “existing ERW”, the presence of such ERW can pose a serious danger for a number of countries and their populations. Seventeen States Parties to Protocol V reflected in their Protocol V annual reports the presence of existing ERW on their national territories.

For these reasons, I propose to allocate some time during the 2013 Protocol V Meeting of Experts for discussion on the issue of existing ERW. To facilitate the discussion, this paper sets out the definition of existing ERW and the obligations relating to this matter under Protocol V, reasons why existing ERW is a persistent threat and what are the challenges faced by States which have existing ERW on their territories. It is my hope that by considering the lessons learnt from the six years of past experience under Protocol V and through a discussion States could share their experiences of and processes for dealing with existing ERW and identify further means and tools to overcome the challenges posed by existing ERW.

It should also be noted that although Protocol V has been in force since 2006 only 81 States have joined. Greater efforts should be made to universalize the Protocol. Since Protocol V entered into force, there have not been any military conflicts between its States Parties.

What is the definition of existing ERW and what are the obligations concerning existing ERW under Protocol V?

Article 2(5) of Protocol V states that existing explosive remnants of war refers to “unexploded ordnance and abandoned explosive ordnance that existed prior to the entry into force of this Protocol for the High Contracting Party on whose territory it exists”.

During the Protocol V negotiations, the inclusion of existing ERW and the possibility of affected States being able to seek assistance was a key component of the final agreement to the Protocol. States recognised that even though Protocol V would be a largely forward looking instrument, it needed to address ERW already on the ground. As a result, Article 7 of Protocol V states:

“1. Each High Contracting Party has the right to seek and receive assistance, where appropriate, from other High Contracting Parties, from states non-party and relevant
international organisations and institutions in dealing with the problems posed by existing explosive remnants of war.

2. Each High Contracting Party in a position to do so shall provide assistance in dealing with the problems posed by existing explosive remnants of war, as necessary and feasible. In so doing, High Contracting Parties shall also take into account the humanitarian objectives of this Protocol, as well as international standards including the International Mine Action Standards.”

The importance of clearing existing ERW was expressed by States Parties at the Fourth Review Conference when in the Final Declaration, they “encourage[d] the High Contracting Parties to Protocol V to continue their much needed work on implementation in the areas of the clearance of explosive remnants of war, including existing explosive remnants of war as referred to in Article 7…”

The nature of existing ERW

The principle sources of occurrence of ERW:

- Big failure rate of explosive munitions used during past military conflicts. For example, 10-20% of all of munitions used during World Wars I and II, did not explode.
- Stockpiles of munitions which were abandoned by belligerents, especially during their quick retreat or offensive attacks. These abandoned stockpiles consisted of hundreds or thousands of different types of munitions such as hand grenades, landmines, artillery and mortar shells.

Special cases:

- Areas in which there was intensive fighting, especially long-duration trench battles. The levels of unexploded ordnance (UXO) contamination in such areas were and often continue to be very high.

The influence of terrain and soil on the future persistence of ERW:

- Flat and rocky soil is more steady and resistant to the penetration of UXO. Essentially, solid ground does not allow ammunition to penetrate deeper.
- In contrast, in those cases where fighting took place in areas with soft soil, unexploded munitions often penetrated the soil to a depth of 1-2 meters.

Irresponsible behavior of combatants which has impacted on the future persistence of ERW:

- Due to the difficult situations they operated in, the combatants often were unable to destroy newly developed UXO. The UXO was simply dumped into deep shell holes, abandoned trenches, natural pits and covered with a thin layer of earth. Also, UXO was dumped on beaches and in ponds, lakes or rivers.
- Militaries did not map or in any way record the location of abandoned UXO.
- In the chaos of a conflict, witnesses or participants in such operations would be killed the next day.
- Even after a few months it was difficult to find any traces and evidence of the abandoned UXO.
- An example of a worst case scenario was UXO abandoned in sand dunes. In such cases the abandoned UXO disappeared into the desert within hours. Detection and extraction of such ERW is extremely difficult for future clearance operations.

Why is existing ERW such a persistent problem?
Post conflict clearance operations are useful in eliminating the dangers of ERW. However, the reality is that even comprehensive clearance cannot completely eliminate the threats posed by ERW. It is well known that standard detection equipment can identify UXO which are buried to a depth of 30-40 cm, but often in the areas of intensive fighting the ground is contaminated by ERW to the depth of 1-2 meters. Therefore even after well conducted comprehensive operations a significant number of ERW still remains in the deeper soil strata. Adding to these problems is that annually, under the combined action of soil pressure, seismic activity and low temperatures, wartime landmines and ERW make their way to the land surface or are washed up. The above-mentioned explanations give us an understanding of why existing ERW is a persistent problem.

**Threats posed by existing ERW**

A number of States Parties to the Protocol V reflected in their annual reports the presence of ERW dated from World Wars I and II on their national territories. Of course the most serious dangers are associated with existing ERW which remains after later military conflicts of the 20th century.

**Main threats associated with existing ERW:**
- Imminent or potential risk of being blown up by UXO for populations, vehicles and livestock. Old UXO can be difficult to identify as it is either overgrown or very rusty and as a result people are often not aware that they actually found a munition.
- Loss of farmlands/arable lands due to ERW threat, especially during first post-conflict years.
- Existing ERW constitutes a potential threat for builders and construction workers while they are digging deep construction pits and trenches.
- UXO can be attractive for those seeking scrap metals as a source of support for their livelihoods or those seeking explosive material for criminal or terrorist activities.

**National measures to be taken by States to overcome problem of existing ERW**

**Basic and necessary measures to address existing ERW include:**
- Establishing national legislation and procedures devoted to resolution of the existing ERW problem.
- Developing national mechanisms, structures and procedures to deal with existing ERW, including the following:
  - Allocate necessary financial resources for national programs working on clearing existing ERW.
  - Organize training for personnel involved in clearance operations.
  - Empower appropriate national authorities responsible to pursue clearance operations.
  - Work to create awareness amongst the population concerning the risk and dangers associated posed by existing ERW.
  - Develop national programs related to victim assistance.

Depending on the scale of the ERW problems, the States may face the following dilemma, whether to start new expensive and time consuming comprehensive clearance operations or to establish national emergency response systems aimed at neutralizing and destroying the newly discovered UXO.
International assistance for clearance, removal or destruction of ERW under Protocol V

As already stated, States Parties to Protocol V have the right to seek and receive international assistance in dealing with the problems posed by existing ERW. An ERW database was established by the First Conference of the High Contracting Parties to the Protocol. To that end, countries requiring assistance are encouraged to submit their requests for assistance under Articles 7 and 8 of the Protocol to the mentioned database and to set these out in their national reports.

The way forward

I believe that an exchange of views on this matter will help us to better understand the nature of existing ERW and threats posed by this problem. In order to prepare for this discussion, I encourage States to focus on the following questions:

1) If you represent a State affected by existing ERW, does your government have reliable data on: (a) the extent of the contamination, (b) where the ERW is located, and (c) what type of explosives and munitions caused the ERW?
2) What are the reasons for existing ERW being a persistent problem on your State’s territory?
3) Has your government evaluated the long term impact of existing ERW?
4) Which government agency or department is responsible for dealing with existing ERW?
5) What resources are available for the clearance of existing ERW?
6) If a civilian finds a piece of existing ERW, would he or she know who to notify to ensure that the ERW is cleared and destroyed?
7) From the work carried out under Protocol V, what do you consider to be important to support States affected by existing ERW? What more could be done under Protocol V to support affected States?

I hope that our discussion will produce new ideas and even solutions to assist States affected by existing ERW. In any case, our exchange of views could help us to better understand national strategies and methodologies for addressing existing ERW.