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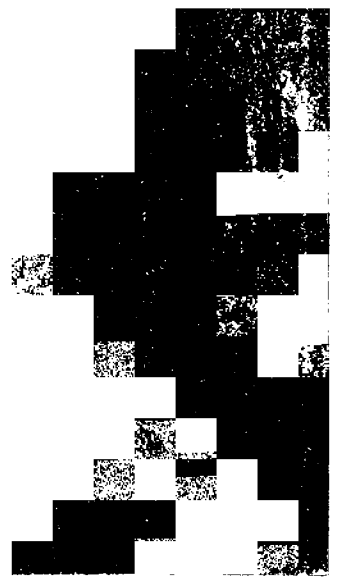
COUNCIL OF DELEGATES
Geneva, 11 - 14 November 2001

**UN CONVENTION ON CERTAIN
CONVENTIONAL WEAPONS:
EXPLOSIVE REMNANTS OF WAR AND
NON-INTERNATIONAL ARMED CONFLICTS**

(Item 8.2. of the provisional agenda)

Document prepared by
the International Committee of the Red Cross
in consultation with
the International Federation of Red Cross and Red Crescent Societies

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Executive Summary

The International Red Cross and Red Crescent Movement has played an instrumental role in efforts to limit the effects of weapons in armed conflict. Among other things, it has worked vigorously to rid the world of the effects of anti-personnel landmines and, as demonstrated by the *Movement Strategy on Landmines* which was adopted by the Council of Delegates in 1999, these efforts continue today. In many war-torn countries, however, large numbers of civilians are killed or injured by munitions other than anti-personnel mines such as cluster bomb submunitions, artillery shells, bombs, grenades and other unexploded ordnance. These "explosive remnants of war" often remain long after the hostilities have ended - sometimes for decades - and take a heavy toll among the civilian population, in both human and social terms.

In December 2001 the States Parties will hold the second Review Conference of the United Nations Convention on Certain Conventional Weapons. This meeting will provide an important opportunity to strengthen and develop international humanitarian law regulating weapons which may cause unnecessary suffering or have indiscriminate effects. The ICRC has called on States Parties to adopt a new protocol to address the problems caused by "explosive remnants of war". In an effort to ensure that the Convention's rules apply to all situations of armed conflict, the ICRC also proposes that the Convention's scope of application be extended to non-international armed conflicts.

In view of its mandate to alleviate the suffering of war victims, the Movement should take the opportunity offered by the 2001 Council of Delegates to voice its concern about these pressing humanitarian issues. In order to demonstrate the Movement's commitment to solving the problems caused by explosive remnants of war and to extending the Convention's scope of application, the Council of Delegates is invited to adopt a resolution calling on States to address these issues as a matter of urgency during the upcoming Review Conference.

DRAFT RESOLUTION**The United Nations Convention on Certain Conventional Weapons:
Explosive Remnants of War and Non-international Armed Conflicts**

The Council of Delegates,

alarmed by the widespread and preventable death and injury caused during and after armed conflict by explosive remnants of war which no longer serve any military purpose,

deeply concerned by the long-term consequences for civilian populations of unexploded munitions, particularly their role in preventing the return of refugees and internally displaced persons, blocking the delivery of humanitarian aid and other services to vulnerable populations, and hindering reconstruction and economic development,

stressing the need for the provisions of international humanitarian law governing specific weapons to apply in all situations of armed conflict,

noting that the second Review Conference of the United Nations Convention on Certain Conventional Weapons will take place from 11 to 21 December 2001,

recalling the Movement Strategy on Landmines adopted by Resolution 10 of the Council of Delegates in October 1999,

1. *welcomes* the proposals made by the ICRC for consideration by the Review Conference on explosive remnants of war and the extension of the Convention's scope of application to non-international armed conflicts;
2. *urges* all States party to the Convention to participate in the Review Conference;
3. *calls upon* the Review Conference to initiate negotiations, beginning in early 2002, on a new protocol to address the problems caused by explosive remnants of war;
4. *calls upon* States party to the Convention to reach agreement as quickly as possible on extending the Convention's scope of application;
5. *urges* all States which have not yet done so to adhere to the Convention as soon as possible and to participate in the Review Conference;

6. *reaffirms* the Movement's commitment to the Movement Strategy on Landmines, and to continuing its efforts in the fields of care and rehabilitation of victims of landmines and unexploded ordnance (UXO), mine and UXO awareness, and the promotion of adherence to and implementation of the relevant treaties of international humanitarian law;
7. *encourages* all components of the Movement to raise public and governmental awareness of the human cost of explosive remnants of war and to promote the negotiation of an effective new protocol to the United Nations Convention on Certain Conventional Weapons to address this problem;
8. *requests* the ICRC to report on the progress made on explosive remnants of war and the extension of the scope of application of the United Nations Convention on Certain Conventional Weapons to the 2003 session of the Council of Delegates.

UN Convention on Certain Conventional Weapons: Explosive Remnants of War and Non-international Armed Conflicts

1. INTRODUCTION

The International Red Cross and Red Crescent Movement has played a central role in efforts to limit the effects of weapons used in armed conflict. The Movement was instrumental in the development of the Convention on the Prohibition of Anti-personnel Mines (Ottawa treaty) and of Protocol IV to the UN Convention on Certain Conventional Weapons (CCW), which banned blinding laser weapons. Equally important have been the Movement's efforts to alleviate the suffering of mine victims and mine-affected communities through the provision of assistance to victims and mine-awareness programmes. The Movement's commitment to these efforts continues today in the framework of the Strategy of the International Red Cross and Red Crescent Movement on Landmines, adopted by the Council of Delegates in 1999.

The December 2001 Review Conference of the CCW will provide an opportunity to further strengthen and develop the rules protecting both civilians and combatants from the effects of weapons. The ICRC has called on States Parties to adopt a new protocol to address the problems caused by "explosive remnants of war". It has also proposed that the Convention's scope of application be extended to non-international armed conflicts. As regular review conferences are not required, this is a unique opportunity to improve the protection afforded by the CCW. This report outlines the ICRC's proposals to the Review Conference and sets out possible elements for a draft resolution on explosive remnants of war and the extension of the CCW's scope of application which could be adopted by the Council of Delegates.

2. EXPLOSIVE REMNANTS OF WAR

Every year large numbers of civilians are killed or injured by exploding munitions long after such weapons have served their military purpose. Most casualties occur when civilians step on or otherwise disturb a piece of unexploded ordnance (UXO) left from an earlier armed conflict. Such explosive remnants of war are often the primary threat to civilians following the end of hostilities. In addition to the immediate danger to life and limb, the presence of these unexploded munitions is an obstacle to the delivery of humanitarian aid, the cultivation of agricultural land and post-conflict reconstruction. Most modern conflicts have left huge amounts of UXO in their wake. With the spread of technology for large-scale delivery of munitions, the problem is likely to get worse rapidly unless action is taken soon.

Laos is a particularly grim example of the consequences of explosive remnants of war. Today, the country continues to suffer the effects of bombs and munitions dropped there nearly 30 years ago. It is believed that some 9 million pieces of UXO are scattered throughout the country. According to the main clearance agency in Laos,¹ approximately 11,000 people have been killed or injured in UXO accidents since 1973. In addition to this tragic human cost, the presence of unexploded munitions has had severe socio-economic effects which have exacerbated the country's poverty.

¹ National UXO Programme, Laos

Kosovo is a more recent example. In the year following the end of the conflict in that region 492 people were killed or injured in UXO accidents. According to data collected by ICRC mine-awareness staff throughout Kosovo, roughly a third of these victims were killed or injured by anti-personnel mines, a third by "cluster bomb" submunitions and a third by other ordnance.

There have also been large numbers of UXO victims in Afghanistan, Angola, Chechnya, Iraq and many other conflict zones. The recent conflict between Ethiopia and Eritrea left large areas of UXO in its wake which will take years to clear. In Poland, more than 12,800 people were killed or injured by UXO in the years after the end of World War II.² The problem is global, and growing with each new conflict.

2.1. The source of the problem

In **post-conflict situations** a variety of **unexploded munitions threaten civilians**. These include landmines, submunitions from airborne cluster bombs or land-based systems, artillery shells, hand grenades, rockets and other ordnance. With the exception of landmines, the problem generally results from explosive munitions which fail to detonate as intended when they are fired or delivered. These munitions are often considered to be harmless duds by civilians who later find them. In fact, they are highly lethal and unstable explosives which frequently detonate when disturbed.

Cluster bomb and other submunitions are a particular concern because of the huge numbers that can be delivered and the high percentage that fails to explode on impact. In Laos, for example, there are credible estimates of a failure rate of 25-30% in some areas. Half of the country's estimated 11,000 UXO victims are believed to have been killed or injured by submunitions.³ A similarly high rate of failure (20-40%) has been given for the submunitions used during the Gulf war, and NATO has estimated a failure rate of 10% for their use in Kosovo.⁴ In these and other regions of the world, cluster submunitions which have failed to explode have resulted in large numbers of civilian casualties.

During conflict the use of submunitions against military objectives in populated areas is a matter of particular concern. By design, submunitions are area weapons. When delivered by cluster bomb, rocket or artillery systems, they can be dispersed over an area of up to several thousand square metres. As with other gravity ordnance, the precision of submunition delivery will depend on weather (wind and air density), drop height and drop speed. When targeting is imprecise or a targeting error occurs, the effects of missing the military target in a civilian area can be far greater than with traditional ordnance. In addition, as large numbers of the individual submunitions will fail to explode as intended, there will be a lingering threat to civilians, for whom essential activities such as obtaining food, water and medical care will become dangerous.

Unlike other munitions, which threaten civilians when they fail to function as designed, **landmines** cause civilian casualties when they perform as intended. They remain live and ready to explode for years after the conflict. In addition to anti-personnel mines, anti-vehicle mines are a frequent problem in many contexts and have a severe impact on the civilian

² Boguslaw A. Molaski and Jan Pajak, "Explosive remnants of World War II in Poland", in Arthur H. Westing, ed., *Explosive Remnants of War: Mitigating the Environmental Effects*, Publication of SIPRI and UNEP, Taylor and Francis, London, 1985. Statistics based on information from the Polish Ministry of National Defence, Warsaw (unpublished archives).

³ Information provided by Phil Bean, Director, National UXO Programme, Laos, at the Expert Meeting on Explosive Remnants of War held in Nyon, Switzerland, 18 and 19 September 2000.

⁴ "NATO-dropped cluster munitions", document presented by NATO to the UN Mine Action Coordination Centre (UNMACC) in Pristina/Prishtine, undated [1999].

population by preventing the delivery of humanitarian assistance,⁵ limiting the movement of people and slowing the rebuilding of the country affected.

The problems caused by explosive remnants of war are both predictable and preventable. Although the horrific consequences of anti-personnel mines have been addressed by the adoption of and wide adherence to the 1997 Ottawa treaty, other unexploded munitions also pose a significant threat to civilians. Yet the provisions of existing treaties do not address the long-term consequences of such weapons. Given the increasing capacity of armed forces to deliver huge quantities of munitions over great distances, the problem is likely to become more acute unless urgent action is taken.

2.2. What can be done?

The human cost of explosive remnants of war can be significantly reduced. New international rules regulating the design and clearance of explosive munitions must be adopted. In order to minimize the dangers these weapons pose to civilians, the ICRC has proposed a **new protocol to the CCW** containing rules which would:

- establish the **responsibility of those who use explosive munitions** for clearing munitions that remain following the end of hostilities or, if they are not in control of the territory, for providing the technical and material assistance needed to ensure such clearance; this responsibility could be supported by a variety of technical measures including, for example, the requirements that munitions (including submunitions) be equipped with self-destruction mechanisms and be made detectable;
- require the **rapid provision of technical information** to the UN and demining bodies to facilitate swift clearance and minimize the risk to clearance personnel;
- require those who use munitions likely to have long-term effects to provide **information to organizations conducting mine/UXO-awareness** activities and to give the civilian population effective advance warning of the delivery of such munitions;
- prohibit the use of submunitions against any military objective located within a concentration of civilians.

2.3. The 2001 Review Conference of the CCW

The CCW establishes important rules regulating weapons which may cause unnecessary suffering or have indiscriminate effects. Through its four Protocols the Convention seeks to minimize the suffering of combatants and protect civilians from the immediate and long-term effects of specific categories of weapons. The rules proposed above already apply to other types of weapons covered by the CCW regime.

The second Review Conference of the CCW will be held in Geneva from 11 to 21 December 2001. The ICRC does not expect the Conference to finalize a new protocol but is calling for it to adopt a mandate for negotiations beginning in 2002 with the goal of concluding a new protocol within one to two years. Such a protocol could significantly reduce the human casualties and socio-economic consequences caused by anti-vehicle mines, cluster bomb submunitions and other unexploded ordnance.

There is wide support for work on this proposal since it was presented to States at an ICRC expert meeting held in Nyon, Switzerland, in September 2000. At the second Preparatory

⁵ During the 1990s, 20 incidents involving anti-vehicle mines in 11 countries cost the lives of 16 ICRC and National Society staff and injured 63. Each incident resulted in the suspension of assistance operations for already vulnerable populations.

Committee for the Review Conference, held in Geneva from 2 to 6 April 2001, 28 States, including most major regional powers, supported continued work on explosive remnants of war in the context of the CCW Review Conference and closer consideration of the solutions proposed. No State opposed this effort.

3. APPLICATION OF THE CCW TO NON-INTERNATIONAL ARMED CONFLICTS

In addition to its proposal relating to explosive remnants of war, the ICRC has encouraged governments to extend the application of the CCW to non-international armed conflicts. Most modern armed conflicts take place within the borders of a single State and all too often it is civilians who suffer the consequences. Under its current terms, however, the CCW and its Protocols do not apply to such situations and are applicable only in international armed conflicts. (The sole exception is Protocol II on mines, booby-traps and other devices which was specifically amended in 1996 to apply also to non-international armed conflicts.) There is therefore an urgent need to ensure that the CCW is relevant to the nature of the conflicts occurring today and that its fundamental humanitarian norms protect victims in such situations.

There is broad support for extending all the CCW's Protocols to non-international armed conflicts, either through the adoption of a new protocol or through amending the framework Convention itself. While both approaches entail advantages and disadvantages which merit consideration, the overall goal of applying the CCW's norms in all situations of armed conflict would be an important development of international humanitarian law and must be encouraged.

4. WHAT CAN THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT DO?

Although governments have recognized the problem, the effectiveness of the solution will depend on the active involvement of the entire International Red Cross and Red Crescent Movement, international organizations, the mine-clearance community and specialized non-governmental organizations. The Movement played a key role in the development and promotion of the Ottawa treaty and Protocol IV to the CCW banning blinding laser weapons. Now is the time to continue these efforts.

The Movement is urged to take the opportunity provided by the 2001 Review Conference to express its concern about the humanitarian problems caused by explosive remnants of war and stress the need to extend the CCW's scope of application. To demonstrate its commitment to these issues, it would be very useful if the Council of Delegates, which will be held only a month before the Review Conference, would adopt a resolution.

Such a resolution would:

- highlight the humanitarian implications of explosive remnants of war;
- call on States to begin negotiations on a new protocol to address this problem in the context of the CCW Review Conference and to take other practical steps;
- commit the Movement to working to ensure the success of such negotiations in the coming years;

- reaffirm the Movement's commitment, contained in the Movement Strategy on Landmines, to taking practical action for the care and rehabilitation of mine and UXO victims and for raising community awareness of the mine and UXO threat;
- call on States to extend the scope of application of the CCW to non-international armed conflicts; and
- urge States to ratify the CCW and all its Protocols, if they have not already done so.

5. CONCLUSION

A new protocol on explosive remnants of war and the extension of the CCW's scope of application would be major steps towards reducing the human suffering caused by armed conflicts. These steps will help ensure that the CCW remains a dynamic treaty that addresses the realities in war-torn areas. The ICRC's proposals build upon the efforts already made by the public and governments to limit unnecessary damage caused by weapons. Recent treaties banning anti-personnel mines and blinding laser weapons demonstrate that it is possible to take strong measures to limit the consequences of conflict and prevent new human tragedies.

The International Red Cross and Red Crescent Movement has played a central role in recent achievements in this area of law. The Movement can now build on its commitment to the protection of war victims, its experience in the field of mine and UXO awareness and its successful work on anti-personnel mines by taking the lead in the effort to address the issues of explosive remnants of war and the extension of the scope of application of the CCW to non-international armed conflicts.