Chapter Thirteen

Explosive Remnants of the War between Eritrea and Ethiopia†

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The guns may stop firing and the soldiers return to base, but for many civilians the legacy of war will haunt them long after the conflict has ended. Millions of unexploded munitions in all shapes and sizes are left behind and all too often these Explosive Remnants of War (ERW) claim the lives or the limbs of innocent civilians.

(International Committee of the Red Cross)

Landmines, booby traps and other munitions left on the battlefields are one of the most devastating problems which modern armed conflicts tend to create. The magnitude of the problem has increased dramatically over the last two decades, to the extent that thousands of people have been killed and horrendously maimed and large areas of land have become wasteland. The problem is particularly serious in Africa and parts of Asia insofar as the explosive remnants of war (ERW) have become one of the main barriers to development in substantial parts of these continents. The Eritrea-Ethiopia war of 1998–2000 led to a considerable increase in ERW in these two countries both of which already had a massive problem with landmines, booby traps and other explosive devices from previous conflicts: the Italian invasion of 1935–1936, the 1963–1993 Eritrean War of Independence, and for Ethiopia, the 1980 Ogaden War with Somalia. This essay focuses on the international legal side of ERW: it focuses on the rights and duties

† It is a great pleasure to contribute to this volume in honour of Colin Warbrick. I admire his multi-faceted work in several areas of the law, in particular with respect to human rights and recognition. I am also most grateful to him for his wise advice and support ever since we met in 1995 at a memorable event in the city of Nijmegen, The Netherlands. This is a slightly modified version of ‘Explosive Remnants of War’; in Andrea De Guttry, Harry Post and Gabriella Venturini (eds.), The Armed Conflict between Eritrea and Ethiopia, TMC Asser Press/Cambridge University Press, 2009.

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which exist in general international law and on international humanitarian law in particular with special reference to the ERW situation in Eritrea and Ethiopia.

Part I introduces the main legal terminology on landmines, booby traps and other explosive ordnance producing ERW. Here we will employ the terminology used in the four international instruments (see below) explicitly addressing the munitions and devices that produce ERW. Part II introduces the magnitude of the problem of ERW in Eritrea and Ethiopia in general and in particular as a consequence of the Eritrean–Ethiopian armed conflict which raged between 1998 to 2000. It thereby also provides a picture of the devastating effects of the war and the presence of ERW on these poor countries. This Part also provides an initial assessment of the policies of both States insofar as is relevant to and affected by the explosives of war. As indicated above, this essay undertakes to put the subject matter of explosive remnants of war in the larger perspective of international humanitarian law. In keeping with the approach adopted by the Eritrea Ethiopia Claims Commission (also referred to as EECC and the Claims Commission) this will be done primarily by assessing the state of the relevant rules of international customary law, as at the time of the war, neither Eritrea nor Ethiopia were parties to any of the three international legal instruments then in force that explicitly regulate the kind of weaponry here examined. Since the end of the war, both States have become parties to the 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (hereinafter referred to as the Ottawa Convention). For Eritrea, the Convention entered into force in 2002 upon its accession in 2001.

Ethiopia signed the treaty in December 1997 and ratified it in June 2005 and thus became a party thereto. The two States, however, are not parties to the following:

(a) the 1980 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (hereinafter referred to as the 1980 Protocol II);
(b) the 1980 Geneva 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, or the Conventional Weapons Convention (hereinafter referred to as CCW);
(c) the 1996 Amended Protocol II to the 1980 CCW (hereinafter referred to as Amended Protocol II); and
(d) the 2003 Protocol on Explosive Remnants of War to the 1980 CCW (hereinafter referred to as Protocol V).

These four instruments entered into force in 1999, 1983, 1998 and 2006, respectively.

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1 See EECC Partial Award-Central Front, Ethiopia’s Claim 2, paragraph 18. The three instruments are those identified in paragraphs (a), (b) and (c) above.