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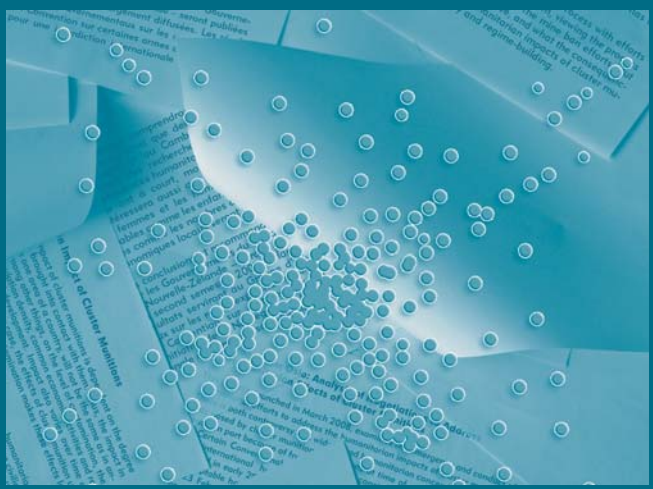

Implementing the Convention on Cluster Munitions

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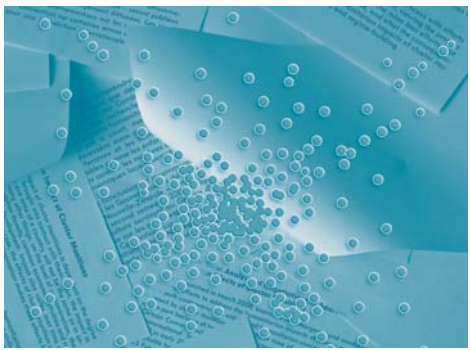

Implementing the Convention on Cluster Munitions

Editor in Chief
Kerstin Vignard

Editor (English)
Jane Linekar

French Translator
Valérie Compagnion

Palais des Nations
CH-1211, Geneva 10, Switzerland
Tel.: +41 (0)22 917 31 86
Fax: +41 (0)22 917 01 76
disarmamentforum@unog.ch
www.unidir.org

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Editor's note

Kerstin Vignard

On 16 February 2010 Burkina Faso and the Republic of Moldova ratified the Convention on Cluster Munitions (CCM), thereby bringing the total number of ratifications to 30 and thus triggering the six-month count-down to entry into force. The Convention will enter into force on 1 August 2010, and the First Meeting of States Parties will be held in Lao PDR in November. At the time of writing, over 100 countries have already signed this humanitarian disarmament treaty, negotiated in May 2008. While encouraging additional states to ratify is critical to the ultimate success of the treaty, international attention will be shifting to the nuts and bolts issues of implementation of the Convention's provisions.

The CCM comprehensively bans the use, production, stockpiling and transfer of cluster munitions. In addition, the treaty obliges its member states to assist victims of cluster munitions, clear cluster munition affected areas, destroy their stockpiles of the weapon, and cooperate and assist each other toward these ends. These are formidable tasks. How can states party to the Convention, in partnership with international organizations and civil society, ensure the treaty's practical goals are achieved? This issue of *Disarmament Forum* will examine what will be required to implement some of these humanitarian and development commitments.

Our next issue will focus on maritime security—a multifaceted and complex topic that touches on some of the most critical security challenges of the moment. There is rising concern about illicit transfers of weapons or WMD-related materials by sea. Armed non-state actors are exploiting busy shipping lanes for piracy and, some fear, for terrorist purposes. Container and port security are often depicted as the "weak link" in domestic security debates.

This year we are celebrating two important milestones: the thirtieth anniversary of the founding of the Institute, and the first ten years of *Disarmament Forum*. Throughout 2010, UNIDIR will host various anniversary-related events—check our web site or Facebook page for the latest updates.

With this issue of *Disarmament Forum,* we've made a few changes to make the journal more attractive and agreeable to read. We hope that you'll agree that what hasn't changed is our commitment to producing readable, accurate and thought-provoking analysis on a wide range of security, arms control and disarmament issues. Each issue will continue to serve as an entry point to a topic, where respected experts and analysts outline key aspects of the current debate or "over the horizon" thinking about what might lie ahead.

UNIDIR relies entirely on voluntary contributions from Member States to undertake its research and outreach activities—and this includes the production of *Disarmament Forum*. On behalf

of the Institute and the *Disarmament Forum* team, I would like to extend my gratitute to the Governments of Finland, France, Ireland, Israel, Luxembourg, Mexico, Norway, the Russian Federation, Switzerland and Turkey, as well as the Holy See, whose financial support makes the production and free distribution of *Disarmament Forum* possible—either through direct support for *Disarmament Forum* or through their contribution of core funding to the Institute.

The Ban Advocates: cluster munition victims' commitment to the implementation of the Convention on Cluster Munitions

Stan Brabant

> I get angry, furious when I hear military experts arguing that they will improve this weapon and make it humane and safe. To drop a high number of bombs close to civilians is a criminal act. If there is anyone at this conference who cannot understand why we need to ban a certain type of cluster munitions, I tell him: ask us, the victims of cluster munitions! We can help you to understand![1]

There was a lot of anger in the room when we organized the first meeting of the Cluster Munition Ban Advocates in Belgrade, Serbia, in September 2007.[2] The initial group included individuals from communities affected by cluster munitions in Afghanistan, Lebanon, Serbia and Tajikistan. Participants did not express only anger: they discussed devastation, the death of parents and relatives, babies torn apart, terror, trauma, blindness, horror and poverty. There was also guilt and uncertainty—why am I the only survivor of the family? Why did "they" kill my little brother, my mother, our sheep even? What should I do now? What do I have to live for, since cluster munitions have killed my family and neighbours?

Beyond suffering, there was a growing sense that there was a real possibility for cluster munition victims gradually to shape the upcoming international agreement on cluster munitions and to develop a new norm on victim assistance. One of the very first—and maybe the strongest—interventions of the Ban Advocates was when Sladjan Vučković told participants at the Belgrade Conference of States Affected by Cluster Munitions about his experience clearing cluster submunitions just after the 1999 NATO bombing (and just before his accident):

> In mid-April I was clearing an area near Kursumlija. The road and 50 metres on both sides of it were covered with cluster bombs. There wasn't a military target in the vicinity. I don't know why it was bombed, or at least I didn't know while I was travelling towards the spot. Right there, in front of a bridge, I saw a blue car. When I was about 100 metres away, I saw that all the doors were opened. The whole car was riddled by shrapnel from cluster bombs. I had to check the car and clear it of remaining cluster bombs. On the rear seat, full of blood, there was a kid's bag full of toys, also riddled with bombs. I don't know if they were dolls or small cars, it's not important, but they belonged to some children. Under the seat, there was a milk bottle with just a little milk left in it, also hit by some shrapnel. The bodies of the killed family, who had been fleeing the war, had already been removed.[3]

Stan Brabant has been with Handicap International, Belgium since 1994 and is currently the head of Handicap International's Policy Unit and a member of the Landmine Monitor Editorial Board. Brabant has been actively involved with the campaign against cluster munitions since 2005 and is a co-founder of the Ban Advocates initiative.

The atmosphere in the room changed radically as Sladjan spoke. According to the words of a delegate attending the meeting, "I can remember it vividly. We couldn't get too emotional, we couldn't just burst out crying. But most people felt like crying as the story was so terrible and told in such a factual manner. Luckily it was followed by another Ban Advocate talking about the practicalities of victim assistance so we were able to recompose ourselves. These moments had real impact on diplomats who after all are only human. It also increased our motivation to get the Convention."[4]

The Ban Advocates started formulating what they expected from the treaty before the formal treaty negotiations in Dublin—a complete ban on cluster munitions, nothing less: "Who would dare to try to explain to us what 'safe' cluster munitions are? My personal experience in clearing areas contaminated by cluster munitions tells me that there are no, and can never be any, 'safe' cluster munitions, weapons that will recognize and make a distinction between which persons to kill, maim or spare. We cannot make a distinction between different types or models or production dates of cluster munitions. All, literally all cluster munitions are killers, and that is their definition."[5] The Ban Advocates challenged states that were trying to weaken the treaty:

> Cluster munitions destroyed my dreams. People laugh at me and have a negative attitude toward me. They see me as a beggar. They pity me. Do you still want to talk to me about 'transition periods' or 'interoperability'? Do you still want to talk to me about 'exceptions'? Please, stay focused on what is really important. I ask you to work for the strongest possible victim assistance provisions and to make sure that those provisions are urgently implemented. I expect you to sign the Wellington Declaration, and I expect to see you all in Dublin in May. I challenge you to be creative and imaginative, to offer to future generations a better and safer world. I challenge you to go home and persuade the states that are not involved yet in this process to join us! In 10 years I will be 26 years old. In 10 years, I want to look back at the Cluster Munitions Treaty, and I want to be proud of you and the work you are going to do this week.[6]

But the Ban Advocates were not allowed to speak during the formal treaty negotiations on the prohibition. They therefore refocused their efforts on lobbying individual states. Testimonies from several diplomats and negotiators indicate that lobbying by the Ban Advocates has been critical to changing national policy.[7] During the Dublin negotiations the Ban Advocates team concentrated a large part of its time and efforts on meeting with countries that had reservations about a complete ban on cluster munitions. The team rapidly realized that these regular meetings with delegations were having an impact, as the positions and attitudes of the delegations were evolving on a daily basis. According to one respondent quoted in the external evaluation of the Ban Advocates initiative: "The [Ban Advocates] got us away from victims as numbers which don't mean much on a human level. It was much more powerful that the [Ban Advocates] were present in the form of living people and all that that means." One of the key negotiators from a country that had strongly opposed a comprehensive ban

on cluster munitions even wrote a letter to the Ban Advocates on the final day of the Dublin Conference, saying:

> During the 1999 Kosovo Campaign … I was unaware of the terrible post conflict effects of cluster munitions … I hope that the draft convention that we will adopt today and the contribution I have been able to make to achieving this historic goal to ban these arms that cause unacceptable harm will serve to redress the balance; so that in future civilians will not have to suffer the losses and injuries that you and your families have had to endure. … I have been inspired by your fortitude and good humour in the face of adversity and wish you all the best for the future."[8]

One of the main lessons of the initiative is that "when people who are directly affected by an issue engage on a personal, emotional and human level with diplomats it can make a powerful difference to the way officials and diplomats understand and view an issue. It can also contribute, alongside other factors, to influencing government positions."[9]

From agreement to implementation

After the adoption of the Convention on Cluster Munitions (CCM) in Dublin on 30 May 2008, the Ban Advocates expressed considerable joy and hope: "This process can help our lives. There is still a lot of work to do, and I will be really happy to return to Afghanistan with this strong treaty in mind, not only for myself, but for the thousands of victims in my country."[10] Six months later the same Ban Advocate said, "I am proud that our efforts and advocacy have led to this great convention that was adopted in Dublin this May. At that moment I felt as if I found my missing legs again. … But it will stay just a piece of paper if the states do not sign, ratify and implement the Convention."[11] Before leaving Dublin, several Ban Advocates asked what was going to happen next—what would be their role now that a treaty had been agreed? Together, we developed a plan to promote treaty implementation and universalization through national and international advocacy activities.

At the treaty signing conference in Oslo in December 2008, the Ban Advocates thanked all participants in the process: "It is an honor for us to be here before you today. We are proud of this treaty and particularly of the victim assistance provisions. You all have made a difficult decision, but it is the right decision. On behalf of all survivors, we stand here to thank you, to thank each and all of you, who have made this treaty a reality."[12] They received a standing ovation from delegates.

While the signature of the Convention on Cluster Munitions by 94 states was a tremendous victory, it was also clear that it marked the beginning of a long road to treaty implementation. Based on the experience of the Mine Ban Treaty, years of work will be needed to ensure that the treaty actually makes a difference on the ground. The Oslo statement by the Ban

Advocates continued with a call for implementation of the victim assistance provisions, Article 5 of the Convention:

> We believe Article 5 will make a real change in our lives. The question is no longer how assistance will be provided, but how quickly this assistance will be put in place. Please take urgent action now! Our Convention should not remain a piece of paper. Today I am 17 years old. I do not want to wait years until I am an old man to receive assistance in my community or to be able to get a job. People who are injured by cluster bombs should be able to receive emergency assistance and not be left to die in a hospital like I was until my father saved me. To do this we need countries to develop victim assistance national plans and budgets, including time frames; to designate a [victim assistance] focal point; to start collecting data and take steps to mobilize resources. We ask you to keep your promise. We, the Ban Advocates, are ready to work with you from tomorrow.[13]

The victim assistance provisions of the Convention are remarkably strong and clear. This is no coincidence: it results from concerted thinking and drafting by a series of actors, including affected and donor states, researchers, legal experts, practitioners, as well as the Ban Advocates.[14] The strength of these provisions is due to four key elements, which will be essential to implementation and monitoring when the Convention enters into force.

First, victim assistance is a legal obligation under the Convention on Cluster Munitions: "Each State Party with respect to cluster munition victims in areas under its jurisdiction or control *shall* … adequately provide age- and gender-sensitive assistance." [emphasis added]. Second, victim assistance is defined, and includes "age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as … social and economic inclusion." In addition, states parties must "make every effort to collect reliable relevant data with respect to cluster munition victims." This responds directly to a request from the Ban Advocates in September 2007.[15]

Third, Article 5(2) includes a series of concrete, specific and measurable steps that states parties must follow. Each state party shall: assess the needs of cluster munition victims; develop, implement and enforce any necessary national laws and policies; develop a national plan and budget, including time frames to carry out these activities; take steps to mobilize national and international resources; closely consult with and actively involve cluster munition victims and their representative organizations; and designate a focal point within the government for coordination of matters relating to the implementation of Article 5. This very important paragraph of the CCM, probably the most important for victims, directly echoes the Ban Advocates' recommendations voiced during the Wellington Conference of February 2008:

> A few practical steps to improve victim assistance implementation would be: establish or use an existing victim assistance implementation framework;

> nominate a focal point with responsibility for the implementation framework; develop and implement a national plan of action with clear objectives and timelines, as part of the framework; incorporate national and international laws as well as public policies into victim assistance planning and implementation. Last but not least: guarantee the inclusion of survivors, their families and communities in all aspects of victim assistance planning and implementation. Furthermore, and this is an especially important point, clear reference should be made to the full participation of survivors and persons with disabilities in decision-making, monitoring and implementation of the future Treaty... . States Parties should be obliged to report on their victim assistance plans and on their progress in implementing those plans, using a standardised format. These reports should be accessible to civil society, especially to survivors. Indeed, it is through these reports that civil society and survivors will be able to monitor the effective implementation of the Treaty. … The request [for assistance] should clearly indicate the assessment of the needs of victims, circumstances impeding the ability of the State Party to assist the victims, the nature of the proposed programmes, measurable objectives, a clear timeline for implementation, and any other information relevant to the request for assistance.[16]

Fourth, Article 2 of the Convention defines cluster munition victims as "all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities." This broad definition echoes a statement by a Ban Advocate and wife of a clearance expert severely injured by a cluster submunition: "I often ask myself the question, and now I am asking you, too: who is the cluster bomb victim? Is it just the one innocent person, the victim him or herself, who is certainly suffering the most, or are we, the ones close to that person, also suffering too? The actual number of cluster munitions victims is much larger than what statistics show. Whole families, whole communities are affected by them."[17]

Victim assistance implementation will require the involvement and resources of government departments that do not usually take part in the implementation of disarmament treaties. Victim assistance implementation will also require sustained political will from affected and donor countries, as well as sustained action by victim assistance operators. There are a number of factors though that should help with the implementation of the victim assistance provisions: the limited number of countries currently affected by cluster munitions,[18] the recent entry into force of the Convention on the Rights of Persons with Disabilities, the experience of the Mine Ban Treaty (although a lot of work remains in the field of victim assistance under the Mine Ban Treaty) and, of course, the commitment and dedication of the Ban Advocates and of civil society in general.

In the coming years, the Ban Advocates will concentrate their efforts on the universalization and the implementation of the Convention on Cluster Munitions, with a particular focus on victim assistance. They will work both nationally and internationally, in close cooperation with civil society partners from the Cluster Munition Coalition and the International Campaign to Ban Landmines, as well as other key partners active in the Oslo process (governments and international agencies). Several Ban Advocates have already expressed interest in civil society-based monitoring of the treaty and may become involved in research for Landmine Monitor.[19]

National advocacy

National advocacy efforts in particular will be essential. To help these national efforts, the Ban Advocates took part in a 10-day residential capacity-building programme covering project management, influencing skills, computer skills, writing skills and event management.[20] The programme also included an introduction to psychotraumatology and individual coaching sessions, as well as feedback from an external evaluation of the Ban Advocates initiative. One of the objectives of the training course was to enable Ban Advocates to manage small grants. The Ban Advocates' language skills will also receive attention through the small grant system, provided by Handicap International, Belgium. In the Lao People's Democratic Republic our field colleagues are currently gathering a Laotian Ban Advocates group, which should be active by the First Meeting of States Parties.

The Ban Advocates' national activities will be based on a thorough and ongoing analysis of the situation and challenges at the national level, undertaken by the advocates in cooperation with civil society partners. Several factors blocking or driving signature, ratification or implementation of the Convention have been identified already. They include: level of political will, financial and/or national security concerns, level of technical expertise, international pressures, lobbying from the arms industry, level of awareness, and national (in)stability.

Each national context is different and will therefore require a specific approach, but national activities could include commemorations of cluster munition attacks, publication of reports, briefing parliamentarians and government officials, media events, speaking tours, supranational initiatives across regions, targeted lobbying to promote victim assistance implementation, as well as letter-writing campaigns. To ensure the success of these activities, the Ban Advocates will occasionally visit each other to provide mutual support and exchange expertise as well as lessons learned.

Ban Advocates' efforts to universalize the Convention will primarily cover non-signatory countries where a Ban Advocate is based. Such efforts can have impressive results: on 3 December 2008, intense lobbying by a Ban Advocate led to Afghanistan signing the treaty.[21] A Ban Advocate from the United States also showed the way on the eve of the US election when she said: "It is time to stop being afraid to stand up and do what is right. How can we live with ourselves if we don't take action when we know something is so very wrong? We cannot

give a child back their arms, their legs or their lives. We cannot give a parent back their child but we can prevent any more of this tragedy from happening and care for those who have been impacted."[22] Some encouraging signals from the new United States' administration will receive particular attention. One of the Ban Advocates who took part in a speaking tour of the United States' Midwest in late 2008 was hopeful after the United States announced its ban on cluster munition exports in March 2009:

> Honestly I felt very happy. How it will be exciting and historic in the world when the USA joins the Oslo process and signs, ratifies and implements the Convention on Cluster Munitions—the CCM. I am sure that when the USA joins the Oslo process those states that are not yet part of the Oslo process will also join it. I am calling on all people in the United States of America, especially the US Congress and the US Senate to support the President Barack Obama and encourage him to sign the CCM and as well other global treaties and stop the suffering of millions affected people and communities in the world, it is really a gold chance and please support your president.[23]

Other non-signatory countries[24] that will receive particular attention from the Ban Advocates include Ethiopia, Serbia, Tajikistan and Viet Nam. In Tajikistan, a combination of workshops with affected communities, briefings, meetings with embassies abroad and support from civil society colleagues from the region started generating results—a meeting with the Ministry of Foreign Affairs—in July 2009.[25] But more efforts will be needed. Growing support for the Convention is visible in Viet Nam, for example, but it still has not signed. As a Vietnamese Ban Advocate stated: "We, cluster bomb survivors, do hope that Viet Nam will soon consider participating in the convention so that Viet Nam can receive support from the international community to clear explosive remnants of war and help survivors. This is an opportunity to clean up contaminated land for our younger generations who will no longer endure the physical and spiritual sufferings we have been trying to overcome."[26]

International activity

At the international level, the Ban Advocates will remain active within meetings of the Oslo process, in order both to promote and monitor the universalization and implementation of the Convention, as well as to collect and share information. Experience from the Mine Ban Treaty indicates that international advocacy and networking are essential to support national efforts and facilitate exchanges of information.

Despite being neither diplomats nor legal experts, the Ban Advocates have a particular interest in ensuring treaty progress, and can make detailed, technical contributions to aid implementation. For example, Mina Zunac made a very practical statement on stockpile destruction to the Berlin Conference on the Destruction of Cluster Munitions, which she had prepared in cooperation with the International Campaign to Ban Landmines:

> The first point we want to make is that we want you to destroy your stockpiles now and not on the eve of the 8-year deadline. Good, early national planning is necessary to do that, including gathering the numbers, types and location of all cluster munitions stocks, how much it will cost, and what technical and financial assistance may be needed. … States should have a plan in place within one year of entry into force and begin destruction within two years or less. Planning should not take into account the possibility of an extension. … States should also let others know about any technical, financial or other challenges they are facing. Finally, since there is so little known now about stockpiles, we want to encourage states to make information on stocks known to-date, even before the treaty comes into force in order to build confidence, help understand what needs to be destroyed and make assistance in the future easier. … In everyday language … if you have a problem … don't be quiet or shy, say it and you'll get help. If you see somebody else has a problem, help them … because cluster munitions are really barbaric weapons and need to be destroyed. Now![27]

While more of these detailed statements on treaty implementation will be needed, the Ban Advocates will also keep stressing the practical, humanitarian nature of the Convention on Cluster Munitions in general. Branislav Kapetanović, one of the most visible Ban Advocates—and Spokesperson for the Cluster Munition Coalition—expressed this in Berlin in June 2009, when he said that "by the time of the First Meeting of States Parties next year in Laos, thousands and thousands of cluster bombs will already have been destroyed. By starting the practical implementation of this agreement already before entry into force states confirm that only agreements which are practically realized, have any meaning, and those that remain only words on paper are destined to be forgotten. This will not be the fate of the present agreement. It will endure as a landmark to both present and future governments, preventing them from using cluster bombs now or ever."[28]

The unique energy of the Oslo process resulted from a formidable alliance between a large number of actors driven and united by a common desire to address a humanitarian problem. The Ban Advocates are committed to their role as the voice of affected communities in this process: "… this treaty has great meaning for the whole world because we do not want to see people suffering and we don't want to see any more tears in the eyes of mothers and fathers. We need states to ratify and implement the Convention on Cluster Munitions urgently so no one has to be a victim of this horrible weapon. Once cluster munitions are banned, the future of humanity will be better."[29]

"I expect, and as a survivor I request, that States Parties accept their obligation to provide assistance to the victims, including affected families and communities. I want to see full responsibility taken for victims by affected states and at the same time by the international community, especially the countries that use cluster munitions. … The new text is very strong because [cluster munition] survivors have been involved in writing it."[30] Expectations of the

Convention were strong even before it was adopted: in the coming years, the Ban Advocates and civil society in general will be closely watching how effectively states implement their obligations under the CCM.

Eventually, the true measure of the success of the Convention on Cluster Munitions should be the satisfaction of affected individuals, families and communities. By accepting to involve such individuals in a diplomatic process, states have understood who their clients are. By continuing to listen to the voices of affected communities,[31] states and the international community as a whole have a unique opportunity to satisfy two worlds that do not have much in common but that share a goal: banning cluster munitions forever.

Notes

1. Dejan Dikic, Ban Advocate, intervention during the Ban Advocates press conference, Dublin, 26 May 2008. All the Ban Advocates' statements cited in this article can be found at <www.banadvocates.org>.
2. Handicap International, Belgium founded the Ban Advocates initiative as a pilot project in September 2007, thanks to the support of Norway, Germany and the Cluster Munition Coalition. The initiative is now supported by Australia, Ireland, the Netherlands, Norway and the Diana, Princess of Wales Memorial Fund. For more information on the first meeting of the Ban Advocates, see Stan Brabant, "What Do Survivors Think of Cluster Munitions?", 22 October 2007, at <disarmamentinsight.blogspot.com/2007/10/what-do-survivors-think-of-cluster.html>.
3. Sladjan Vučković, Ban Advocate, Statement to the Belgrade Conference of States Affected by Cluster Munitions, 3 October 2007.
4. Ruth Mayne, 2009, *External Evaluation of the Ban Advocates (BAs) Initiative,* July.
5. Sladjan Vučković, Ban Advocate, Statement to the Wellington Conference on Cluster Munitions, 19 February 2008.
6. Soraj Ghulam Habib, Ban Advocate, Statement at the opening session of the Wellington Conference on Cluster Munitions, 18 February 2008.
7. Ruth Mayne, op. cit.
8. John S. Duncan, United Kingdom Ambassador for Multilateral Arms Control and Disarmament, Open letter to the victims of cluster munitions present at the Dublin intergovernmental meeting, 30 May 2008.
9. Ruth Mayne, op. cit.
10. Soraj Ghulam Habib, Ban Advocate, cited in "The Ban Advocates' Thoughts on the Treaty (2/2)", blog by Stephanie Castanie, made at Dublin, 30 May 2008.
11. Soraj Ghulam Habib, Ban Advocate, Geneva, 28 November 2008.
12. Berihu Mesele, Ban Advocate, Statement at Oslo Signing Conference, 4 December 2008.
13. Soraj Ghulam Habib, Ban Advocate, Statement at Oslo Signing Conference, 4 December 2008.
14. The final wording of Article 5(2) of the Convention is largely based on a proposal tabled by 14 states: Proposal by Argentina, Ecuador, Guatemala, Uruguay, Dominican Republic, Mexico, Nicaragua, Panama, Peru, Costa Rica, Chile, Honduras, Zambia and Guinea for the Amendment of Article 5, document CCM/70, 21 May 2008, available at <www.clustermunitionsdublin.ie/pdf/CCM70.pdf>. For more information on the process that led to the adoption of the victim assistance provisions, see *Ban Newsletter,* no. 23, September 2008, p. 4, at <blog.banadvocates.org/public/Ban_Newsletter_23_EN.pdf>.
15. See Dejan Dikic, Ban Advocate, Statement to the Belgrade Conference of States Affected by Cluster Munitions, 3 October 2007.

16. Dejan Dikic, Ban Advocate, Statement to the Wellington Conference on Cluster Munitions, 20 February 2008.
17. Dusica Vučković, Ban Advocate, Statement during a victim assistance session of the Wellington Conference on Cluster Munitions, 20 February 2008.
18. While cluster munitions have been used in about 30 countries, we recorded cluster submunitions casualties in 24 countries and areas. For more information, see Handicap International, 2007, *Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities,* Brussels, May, pp. 148–149.
19. Landmine Monitor recently extended its scope to include monitoring of the Convention on Cluster Munitions.
20. The training was mainly provided by trainers from The Centre for Strategy and Communication (London) and supported by The Diana, Princess of Wales Memorial Fund.
21. See "Afghanistan Signs Cluster Bomb Treaty", *The New York Times,* 3 December 2008.
22. Lynn Bradach, Ban Advocate, Statement to the meeting of the Fifth Session 2008 of the Group of Governmental Experts, Convention on Certain Conventional Weapons, 3 November 2008.
23. Soraj Ghulam Habib, Ban Advocate, "Soraj's Reaction to the US Cluster Bomb Export Ban", Ban Advocates' blog, 31 March 2009.
24. As of 1 March 2010.
25. Umarbek Pulodov's report on the meeting with the Tajikistan Ministry of Foreign Affairs is available at <blog.banadvocates.org/index.php?post/2009/07/15/Umarbeks-report-on-an-important-meeting-with-the-Foreign-Ministry-of-Tajikistan>.
26. Pham Quy Thi, Ban Advocate, Statement to the National Workshop on Victim Assistance, Hanoi, 7 July 2009.
27. Mina Zunac, Ban Advocate, Statement to the Berlin Conference on the Destruction of Cluster Munitions, 25 June 2009.
28. Branislav Kapetanović, Cluster Munition Coalition Spokesperson and Ban Advocate, Statement to the Berlin Conference on the Destruction of Cluster Munitions, 26 June 2009.
29. Raed El Rahman Mokaled, Ban Advocate, Speech at the Ecumenical Service, Oslo, 2 December 2008.
30. Dejan Dikic, Ban Advocate, Intervention during the Ban Advocates press conference, Dublin, 26 May 2008.
31. See Handicap International, 2009, *Voices from the Ground: Landmine and Explosive Remnants of War Survivors Speak out on Victim Assistance,* Brussels, September.

Implementation aspects of stockpile destruction

Vera Bohle

Stockpile destruction will prevent future use and proliferation of cluster munitions. Article 3 of the Convention on Cluster Munitions (CCM) requires each state to destroy all stockpiles of cluster munitions under its jurisdiction and control within eight years of entry into force for that state party. This deadline can be extended for an additional four years and further extensions of four years may also be granted in exceptional circumstances. Article 6(5) requires that each state party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions, and Article 7 outlines the transparency measures that should be taken during the process.

The destruction of stockpiled cluster munitions is more complicated than the destruction of other conventional munitions such as anti-personnel mines due to their unique characteristics:

- there are large numbers of individual submunitions in a container, and each has to be removed individually for destruction;
- most explosive submunitions incorporate an integral detonator, which is very difficult to remove, and can, depending on the fuze, make manual reverse assembly hazardous or even impossible; and
- large amounts of metal casing and packaging remain after the destruction of the explosive components.

Scope of the problem

The Cluster Munition Coalition (CMC) believes that a total of 85 countries have possessed stockpiles of cluster munitions at some point in time.[1] Of these, 37 have signed the CCM as of March 2010. CMC considers 79 countries still to be in possession of stockpiles, of which 32 have signed the CCM. The total number of stockpiled cluster munitions is not known, but probably amounts to several billion submunitions.[2] Most countries acquired their stockpiles from national production or importation, while others "inherited" the munitions upon gaining independence.[3]

Table 1 summarizes the limited information available on global stockpiles. More than 200 different types of cluster munitions have been developed or produced.[4] Destruction of some has already taken place because they had reached the end of their shelf-life or were considered unreliable.[5]

Vera Bohle is Senior Expert in Evaluation and International Humanitarian Law at the Geneva International Centre for Humanitarian Demining.

Destruction of cluster munition stockpiles

The destruction of any munition is a potentially hazardous task. The risks are minimized if the correct procedures are followed. The obligations of the CCM will increase the number of cluster munitions to be destroyed significantly, and a number of countries do not yet have experience with cluster munition stockpile destruction; avoiding bottlenecks in the industrial destruction process will be an important consideration.

Standards and laws

The CCM obliges states parties to ensure that destruction methods comply with applicable international standards for protecting public health and the environment.[6]

Table 1. Submunitions contained in known stockpiles of cluster munitions

Signatory states	
United Kingdom	38,700,000
Germany	33,000,000
Netherlands	26,000,000
France	14,900,000
Norway	3,100,000
Austria	798,336
Spain	251,836
Slovenia	52,920
Non-signatory states	
United States	730,000,000
Bahrain	6,100,000
Jordan	3,100,000
Morocco	2,500,000
Egypt	2,200,000
Saudi Arabia	1,200,000

Source: Human Rights Watch, Landmine Action et al., 2009, *Banning Cluster Munitions: Government Policy and Practice,* Mines Action Canada, May, p. 20.

There are a number of standards available for the destruction of conventional ammunition stockpiles.

- The International Mine Action Standards (IMAS)[7] contain a *Guide for the Destruction of Stockpiled Anti-personnel Mines* (IMAS 11.10), but as the title indicates, this refers to the destruction of anti-personnel mines only.
- The North Atlantic Treaty Organization (NATO) Standardization Agreements (STANAGs) provide a number of standards related to conventional ammunition, for example on design principles, qualification for military use, storage, transport, safe disposal or whole life/safety assessment. However, they do not provide information specific to cluster munitions.[8]
- The *OSCE Handbook of Best Practices on Conventional Ammunition* provides general guidance on the destruction of conventional ammunition.[9] Again, nothing specific on cluster munitions is contained in this handbook.

The process to include relevant aspects of the CCM in IMAS, such as cluster munition stockpile destruction, is ongoing. A review of various IMAS chapters has been conducted to address the requirements of the CCM.

Furthermore, the UN General Assembly has mandated the production of International Ammunition Technical Guidelines.[10] These guidelines should be completed by end 2010.

They will cover, among other things, aspects related to the demilitarization and destruction of stockpiles of ammunition, including cluster munitions. They could eventually become a substitute for the IMAS related to stockpile destruction.

In summary, there are currently no specific international standards for the destruction of cluster munitions beyond what is set out in the CCM, but they will soon be available and there are standards for conventional ammunition overall. There are a number of regional and national laws and regulations relevant to cluster munition stockpile destruction, which cover environmental issues, accident prevention, worksite safety, transport, explosives handling, weapons control, foreign trade and demilitarization.

Environmental aspects

There are internationally accepted standards for the determination and measurement of air pollution from industrial processes, which apply to cluster munition stockpile destruction. However, these standards only apply to the measurement of emissions, they do not provide guidance on what the overall emission limits should be: this remains the responsibility of the national authority.

The only supranational legislation that covers emissions into the atmosphere from incineration of waste is the Directive of the European Parliament and Council on the incineration of waste.[11] It is relevant for the destruction of cluster munitions in the European Union and associated countries.

The directive is designed to promote environmental protection and human health by preventing or limiting negative effects on the environment from the incineration of waste, in particular pollution by emissions into air, soil, surface water and groundwater. This is achieved by means of stringent operational conditions and technical requirements, emission limit values, and by obliging member states to meet the requirements of other directives dealing with waste. The directive also foresees control and monitoring of emissions by the responsible national authority, and it defines measurement requirements.

The United Nations Environment Programme (UNEP)[12] has undertaken research on the environmental consequences of armed conflicts and explosive remnants of war. Based on a case study from Bosnia and Herzegovina, UNEP has pointed out that open ammunition destruction can lead to surface and subsurface contamination with heavy metal and unexploded explosives. Carcinogenic components can contaminate the ground and possibly drinking water. Secondary ground contamination can occur through the transport of contaminants, and as rain or rivers infiltrate contaminated material into groundwater. Air pollution is a serious problem when burning explosives—one of the products of burning TNT is nitric oxide (NOx), a major air pollutant. Levels of contamination depend on the quantity of neutralized ammunition and the duration of destruction operations.

Environmental aspects are also concerned with the degree to which components of the destroyed ammunition can be recycled. According to the NATO Maintenance and Supply Agency (NAMSA), some ammunition destruction companies claim to recycle 98% of materials, including metals, plastics and explosives.[13]

Techniques and facilities available

The techniques available for cluster munition stockpile destruction include open detonation, closed detonation, closed incineration, disassembly, cryofracture and harvesting of components.[14] The decision to opt for any particular technique is likely to be based on cost, safety and environmental considerations, as well as the type of munition being destroyed.

Obviously the easiest and cheapest way to get rid of surplus ammunition is by sea dumping or landfill. This method is forbidden by law in those countries that have ratified the various related agreements and conventions.[15] Dumping is not only very environmentally harmful, it also means that a government no longer has control over its still existing ammunition.

Open burning or detonation is widely used in countries where other facilities are not available. There are some obvious risks, such as uncontrolled pollution of the soil, groundwater and air, the possibility of explosive items remaining undestroyed, and the dangers caused by the shockwave and fragments from the explosions. Under some circumstances, this technique is the only option available, but it is not suitable for large-scale destruction of cluster munition stocks: the initiator shockwave is not strong enough to secure the destruction of all submunitions within a cluster munition. In addition, beyond a certain quantity, open burning or detonation is not an economical method: at the Berlin Conference on the Destruction of Cluster Munitions, Canada noted that, based on its experience with supporting destruction projects for anti-personnel mines, if approximately one million mines had to be destroyed, it became less expensive to use other technologies.[16]

Closed burning requires more technology, but is suitable for mass destruction of a great variety of ammunition if it is carried out in accordance with national environmental laws, particularly on emissions. Some munitions need to undergo a pre-treatment step before burning, for example the removal of the shaped charge cone, otherwise the ammunition would destroy the oven. Most of the companies specializing in cluster munition destruction use a combination of manual techniques and machines for disassembly prior to burning. However, these machines can normally only deal with one type of cluster munition. They have to be adjusted before a new type can be prepared for destruction.

There are a number of additional techniques that have been used for conventional ammunition destruction, for example water jet washout (which, as the name suggests, removes explosive fillings through a high-pressure water jet) or experimental conversion techniques. These are the most sophisticated methods—the aim is to convert explosive waste into harmless components through chemical or electrochemical reactions, or through biodegradation with the help

of micro-organisms.[17] None of these techniques have yet been used for the destruction of cluster munitions.

There are relatively few companies in Europe that specialize in stockpile destruction of cluster munitions. NAMSA works with companies in France, Germany, Italy, Norway, Spain and the United Kingdom, but has also awarded contracts in Albania, Serbia and Ukraine through competitive tender on behalf of the NATO Partnership for Peace Trust Funds, and then monitored the destruction.[18]

Regional options and transfers

Not all states or regions of the world have specialized destruction facilities at their disposal. The requirements for new destruction facilities will need to be investigated. The CCM allows the transfer of cluster munitions for the purpose of destruction, so not every state has to have its own destruction facility, and there is an opportunity to find best market prices for destruction. However, it should be noted that cluster munitions for destruction can only be transferred to another CCM state party, which limits the market. For example, destruction companies in the United States, which have suitable technology for the destruction of cluster munitions, cannot at this stage be used. This clause also means also that recipient signatory states will have to authorize entities for the destruction of cluster munitions. Moreover, jurisdiction over the cluster munitions must be clear at every point in the transfer.

The process of transferring cluster munitions for the purpose of destruction will involve some administrative burden, such as the requirements stipulated in the CCM for detailed reporting on their planned and actual usage and the recording and tracking of lot numbers. There is relevant international and national legislation, which covers storing, handling, moving and processing of ammunition.

Norwegian People's Aid (NPA) and partners[19] are examining regional options for cluster munition stockpile destruction in South-East Asia. The project, located in Cambodia, explores options to combine manual disassembly, mechanized processes and explosive or pyrotechnic destruction. The aim is to find destruction options that are safe, affordable, easily constructed, simple to maintain and operate, built using readily-available materials, and capable of sustaining high rates of output. If this can be achieved, the advantages are obvious: savings on transportation, local investment, and some community benefits through the reuse of materials.

Cost

The cost of cluster munition destruction depends on the amount and types of munitions to be destroyed and the technology chosen. So far, there is no comprehensive study on the cost of cluster munition destruction, but countries have reported some figures:

- Germany estimates the cost of its stockpile destruction at approximately €40 million;
- Japan estimates about €15 million for its stockpiles;
- Italy approximately €8 million;
- Spain €4.9 million;
- Austria €1 million;[20] and
- Norway counts €40 per projectile.

The United States has destroyed around 7,000 tons of cluster munitions per year over the past decade at an average annual cost of US$ 6.6 million.[21] NAMSA notes that, based on its experience, the destruction of a BL755 cluster bomb costs around €400, depending on the degree of recycling of materials.[22]

Whatever the final figures amount to, it is clear that significant amounts of money have to be budgeted for the destruction of cluster munitions, if industrialized and environmentally friendly processes are used. During the Berlin Conference, a number of participants from governments, international organizations and non-governmental organizations (NGOs) pointed out that political will will be very important in committing to the financial cost of destruction.

International cooperation and assistance

The option for states parties to seek and receive assistance for the destruction of cluster munitions stockpiles, and the obligation of states parties to provide that assistance, if they are in a position to do so, is very important for the successful implementation of the CCM. It is of course first and foremost the responsibility of each state party to ensure the destruction of its own stockpiles within the eight-year deadline, but at the same time there is a collective responsibility for all states parties to facilitate the compliance of all with this obligation.

Assistance can be provided for both the development of national stockpile destruction plans and for the execution of those plans. Options for assistance include the provision of technical expertise—through military or other international experts, international organizations or NGOs, material support and financial assistance.

States parties in a position to assist others could use the funds and frameworks already established in the context of the Mine Ban Treaty, or they could explore options to establish a new fund specifically for the destruction of cluster munitions. The basic programming processes will essentially be similar to those of the Mine Ban Treaty. Generally, the managers of these funds do not have the technical expertise to directly develop and manage projects: in consequence, they would be likely to work with implementing partners. In the context of the Mine Ban Treaty, these have included ministries of defence, the United Nations, the Organization of American States (OAS), the Stability Pact for South Eastern Europe, NATO, the Geneva International Centre for Humanitarian Demining (GICHD), and NGOs. Fund managers should focus on establishing appropriate arrangements in cooperation with partners.[23]

The first step for states parties planning to seek assistance is the preparation of an inventory of weapons for destruction. This is very important in order to get an overview of how many states will require how much outside help. Based on these figures, plans for cooperation can be developed not only on national, but also on regional and international levels. Considering the high cost of destruction, regional solutions are likely to make sense in some parts of the world.

Transparency

Paragraphs 1(e) and (f) of Article 7 require states parties to report to the Secretary-General of the United Nations as soon as practicable, but not later than 180 days after the entry into force of the CCM for that state party, on the status and progress of programmes for the destruction of cluster munitions, with details of the methods that will be used, the location of all destruction sites, the applicable safety and environmental standards to be observed, and the types and quantities of cluster munitions destroyed.

The information provided shall be updated by states parties annually not later than 30 April of each year,[24] and the Secretary-General then transmits the reports to all states parties.[25]

Proper reporting is vital for any credible arms control or disarmament instrument. The fulfilment of this article is not only important for confidence-building, but will also help to identify and resolve problems anticipated or encountered in the implementation of the CCM in a timely manner, as it provides the opportunity to highlight technical, financial or procedural obstacles countries may face in their progress toward stockpile destruction, as well as the chance to learn from others' experience.

Article 7 reports could become a planning tool for all states parties, if types and quantities stockpiled, destruction methods and lessons learned during destruction are thoroughly recorded and reported. This is why it is particularly important to start the regular information feeding process from the very beginning of implementation.

As regards further transparency measures, Chile has highlighted the OAS Inter-American Convention on Transparency in Conventional Weapons Acquisitions, and the voluntary UN Register of Conventional Arms as models of regional/international transparency mechanisms.[26] NGOs have proposed to invite media and civil society organizations to witness destruction events (for example the first, last or millionth destroyed submunition).[27]

Retention and acquisition of cluster munitions

Article 3(6) allows the retention or acquisition of cluster munitions for the following purposes:

- the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques; or
- the development of cluster munition countermeasures.

The quantity of cluster munitions retained for these purposes should be "the minimum number absolutely necessary". It falls to each state party to determine what that number would be. It will be important to define the number of cluster munitions retained on a national level to allow for proper stockpile destruction planning. In this context, transparency and the application of criteria that can be understood by other CCM states parties will be vital.

Lessons learned from the Mine Ban Treaty

Even though the destruction of stockpiled cluster munitions is in many ways more challenging than the destruction of anti-personnel mines, a number of lessons can be learned from the implementation of the Mine Ban Treaty.[28]

- Technical concerns should be addressed as early as possible, for example through regional expert meetings or informal exchange of information.
- Information on types and quantities of stocks should be made available by CCM states parties to the other CCM states parties and used as quickly as possible in order to focus on specific and quantified implementation challenges.
- States should effectively chart progress, identifying potential problems and taking steps to overcome them. This implies a focus on the task at hand—there is a risk that political and legal aspects will take over the implementation agenda, preventing fruitful technical exchange.
- The obligation to provide assistance should be taken seriously: not many states provided support for the destruction of mines, but for cluster munitions this will be necessary due to the cost and technical complexity of the task.
- States parties should work with partners with specific technical capacities and expertise (GICHD, NAMSA) or with those who can act as reliable intermediaries between donor states and national armed forces (OAS, United Nations Development Programme).
- States are encouraged to take advantage of the opportunity to transfer munitions for destruction, because it may prove to be a cheaper and easier solution.
- Implementing voluntary transparency measures beyond treaty obligations will build confidence and help to promote both the CCM and states parties' compliance with the CCM.

Conclusions

The destruction of cluster munitions in a safe, effective and environmentally-friendly manner is technically more complex than the destruction of anti-personnel mines, and the number of submunitions to be destroyed is also much higher than the number of landmines that had to be destroyed by states party to the Mine Ban Treaty. At the same time, fewer states have to fulfil the CCM stockpile destruction obligations than the Mine Ban Treaty obligations, and the majority of them are wealthy states. This allows for focused assistance.

Each of the various destruction methods available has advantages and disadvantages. Specialized destruction facilities are already established for NATO countries (and can be used by other countries), but the limited number of existing specialized companies will need to received requests early to be able to respond—expansion requires significant investment and takes time.

In areas without established destruction facilities, alternative methods and combinations are being explored, but at this stage these techniques cannot deal with all types of cluster munition or large-scale stocks. The transfer of cluster munitions to other states parties for the purpose of destruction is an alternative, but this is costly and incurs an administrative burden. On a more positive note, experience shows that the recycling of components is environmentally friendly and reduces the cost of disposal. Nonetheless, some countries may require assistance for the establishment of a regional demilitarization factory,[29] or for the transportation of the cluster munitions to existing factories in other countries.

Transparency and proper reporting during the process of destruction will build confidence, facilitate planning, avoid bottlenecks in destruction, allow for lessons learned, and facilitate the creation of a network for international cooperation and assistance. The key to successful cluster munition stockpile destruction is political will and early national planning.

The next steps

To ensure the rapid destruction of cluster munition stockpiles, the first and immediate steps on a national level are:

- to make an inventory of the numbers and types of cluster munitions for destruction;
- to report the results from the inventory to the international community;
- to separate cluster munitions from the operational stocks; and
- to mark cluster munitions for the purpose of destruction.

The next steps are:

- to select the destruction technique suitable for the type of cluster munitions in the national arsenal, with the help of international experts as required; and
- to seek offers for destruction through competitive tender, if companies are to be used, or to identify and cooperate with other suitable partners.

To gain a comprehensive understanding of the scope of the task and the resources needed to complete it, governments should prepare and adopt a detailed national stockpile destruction plan covering deadlines, budgets, resource mobilization and technical and logistical concepts. This national planning process should start without delay. Early planning allows adequate time for the negotiation of international assistance agreements and facilitates the meeting of deadlines. To ensure full government support, it will be important for the national authorities in charge of destruction to engage parliamentarians in the planning process at an early stage.

For states parties to the CCM holding cluster munition stockpiles, the next national budget will have to include funds for cluster munition destruction.

States parties in a position to assist and support other states should:

- internally explore which funds (military, humanitarian) could be used and, as above, engage parliamentarians in the national planning process at an early stage to ensure budgeting for international assistance in the next national budget (this kind of planning could be linked with the CCM ratification process);
- support other states parties in developing and implementing national stockpile destruction plans by providing technical expertise, material support and/or financial assistance;
- explore methods of support—bilaterally, through international funds, or through international organizations or NGOs;
- make use of the technical expertise available in the international community, including international organizations and NGOs, and consider working through implementing partners; and
- establish appropriate contractual arrangements with partners.

On the regional and international level, consideration should be given to:

- supporting the development and implementation of national plans, including the development of a template for national planning, and researching hand-tailored solutions for destruction methods as well as costs for the quantity, type, place and budget available;
- developing a template for reporting on activities related to the destruction of cluster munitions;
- exploring the availability of destruction facilities for all regions and considering the establishment of regional destruction sites;
- considering organizing regional expert meetings to address technical concerns and to find synergies;
- developing international standards for cluster munition stockpile destruction;
- ensuring support mechanisms are available;
- considering the creation of an internet platform or using existing forums for informal technical exchange; and
- cooperating not only among states parties, but also with international organizations and NGOs, to make use of all the expertise available.

If states parties take the above-mentioned first and immediate steps effectively and without delay, and then follow-up with the next steps as described, they will be in a position to destroy the existing stockpiles of the CCM signatories within the 8-year time limit foreseen in the CCM.

Notes

1. CCM signatories in italics: Algeria, *Angola,* Argentina, *Australia, Austria,* Azerbaijan, Bahrain, Belarus, *Belgium, Bosnia and Herzegovina,* Brazil, *Bulgaria, Canada, Chile,* China, *Colombia, Croatia,* Cuba, *Czech Republic,* Democratic People's Republic of Korea, *Denmark,* Egypt, Eritrea, Estonia, Ethiopia, Finland, *France,* Georgia, *Germany,* Greece, *Guinea, Guinea-Bissau, Honduras, Hungary,* India, *Indonesia,* Iran, *Iraq,* Israel, *Italy, Japan,* Jordan, Kazakhstan, Kuwait, Libya, *Mali,* Mongolia, *Montenegro,* Morocco, *Netherlands, Nigeria, Norway,* Oman, Pakistan, *Peru,* Poland, *Portugal,* Qatar, Republic of Korea, *Republic of Moldova,* Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, Slovakia, *Slovenia, South Africa, Spain,* Sri Lanka, Sudan, *Sweden, Switzerland,* Syria, Thailand, Turkey, Turkmenistan, *Uganda,* Ukraine, United Arab Emirates, *United Kingdom,* United States, Uzbekistan, Yemen, Zimbabwe. Data available at <www.stopclustermunitions.org/the-problem/countries>, provided by Human Rights Watch.
2. Human Rights Watch et al., 2009, *Banning Cluster Munitions: Government Policy and Practice,* Mines Action Canada, May, p. 20. Countries that are no longer thought to have stockpiles include signatories Australia, Honduras, Mali and Spain, and non-signatories Argentina and Iraq. The report notes on page i: "At this point, there is still a marked lack of official, publicly available information about the use, production, transfer, and stockpiling of cluster munitions."
3. For example Azerbaijan, Belarus, *Bosnia and Herzegovina, Croatia, Czech Republic,* Georgia, Kazakhstan, *Montenegro, Republic of Moldova,* Serbia, Turkmenistan, Ukraine and Uzbekistan (CCM signatories in italics).
4. For details of types, see Human Rights Watch et al., op. cit., p. 17.
5. NAMSA reported at the Berlin Conference on the Destruction of Cluster Munitions (all conference documents are available on the conference web site <www.berlin-ccm-conference.org>) that they have destroyed M42, M46, M77, BL755, JP233, CBU87, CBU Mk20 (Rockeye) and CBU89 cluster munitions on behalf of a number of countries (Peter Courtney-Green, "Technical Aspects of Cluster Munition Stockpile Destruction"). Germany reported at the same conference the destruction of MW-1, BL755, DM602, DM612, DM632, DM642 and DM652 submunitions (Thomas Frisch, "German National Stockpile Destruction Programme"). Argentina and Honduras have destroyed their stockpiles of Rockeyes, and Argentina has also destroyed BLG66 stocks (Human Rights Watch et al., op. cit., p. 21).
6. Article 3(2): "… Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment."
7. The IMAS are available at <www.mineactionstandards.org>. The guidelines are issued and endorsed by the United Nations Mine Action Service and are the standards in force for all UN mine action operations. The aim of IMAS is to improve safety, quality and efficiency of mine action, and to build confidence. They become the basis for national mine action standards and standard operating procedures. The IMAS project is managed by GICHD on behalf of the United Nations. There is a continuous review process in place for extant IMAS, the development of new IMAS and an "outreach" support capacity to assist in the design of national mine action standards. International norms from the International Organization for Standardization, the International Labour Organization, and the European Committee for Standardization feed into IMAS on one side. On the other side, arms control and disarmament treaties like the Mine Ban Treaty or Protocols II and V of the Convention on Certain Conventional Weapons are relevant for IMAS.
8. The full list of Standardization Agreements is available at <www.nato.int/cps/en/natolive/stanag.htm>.
9. *OSCE Handbook of Best Practices on Conventional Ammunition,* Decision no. 6/08, 2008, Vienna.
10. *Report of the Group of Governmental Experts established pursuant to General Assembly resolution 61/72 to consider further steps to enhance cooperation with regard to the issue of conventional ammunition stockpiles in surplus,* UN document A/63/182, 28 July 2008, paragraph 72.
11. Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, Official Journal of the European Communities L 332/91.
12. Presentation by Mario Burger, UNEP, to the 2009 Meeting of Experts to the States Parties to the Convention on Certain Conventional Weapons Protocol V, Geneva, 23 April 2009.

13. Peter Courtney-Green, NAMSA, "Technical Aspects of Cluster Munitions Stockpile Destruction", presentation to the Berlin Conference on the Destruction of Cluster Munitions, 25 June 2009.
14. For further descriptions of these techniques, see Geneva International Centre for Humanitarian Demining (GICHD), 2009, *A Guide to Cluster Munitions,* second edition, Geneva, pp. 54–56.
15. See The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), adopted 13 November 1972 and its 1996 Protocol; and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), adopted 22 September 1992.
16. LTC John MacBride, Senior Defence Officer, Department of Foreign Affairs Canada, "International Cooperation and Assistance", presentation to the Berlin Conference on the Destruction of Cluster Munitions, 25–26 June 2009.
17. For further details, see the *OSCE Handbook of Best Practices on Conventional Ammunition,* op. cit.
18. NAMSA has a list of companies it has cooperated with for the destruction of cluster munition stockpiles. More information can be found at <www.namsa.nato.int/services/demil_e.htm>.
19. NPA worked with C. King Associates and the Golden West Humanitarian Foundation. Colin King reported on the project in his presentation to the 2009 Berlin Conference on the Destruction of Cluster Munitions, "Regional Options for Stockpile Destruction". Colin King and Lee Moroney reported on a smiliar cluster munition disassembly and destruction project in the Republic of Moldova at "After Oslo 2008: Seminar on Cluster Munitions", held 8–11 February, Bestovje, Croatia.
20. These figures are of limited value in calculating the cost of destruction, because it is not clear how many submunitions they refer to.
21. Figures taken from Human Rights Watch et al., op. cit., p. 21.
22. Peter Courtney-Green of NAMSA is cited in the report of the Sofia Regional Conference on the Convention on Cluster Munitions: The Way Forward, held 18–19 September 2008.
23. During the Berlin Conference, Canada offered assistance for countries seeking advice on establishing programmes, based on its experience with the implementation of the Mine Ban Treaty. A useful source of knowledge on this area is GICHD's *A Guide to Contracting in Mine Action* (Geneva, 2009).
24. Article 7(2).
25. Article 7(3).
26. Matias Undurraga Abbott, Deputy Director, International Security of the Ministry of Foreign Affairs, Chile, "Reporting", presentation to the Berlin Conference on the Destruction of Cluster Munitions, 25–26 June 2009.
27. Mark Hiznay, Human Rights Watch, "Stockpiling and Destruction of Cluster Munitions: A Global Overview", presentation to the Berlin Conference on the Destruction of Cluster Munitions, 25–26 June 2009.
28. Kerry Brinkert, Director of the Anti-Personnel Mine Ban Treaty Implementation Support Unit, "Lessons Learned from the AP Mine Ban Convention for the Destruction and Retention of Cluster Munitions in Accordance with the Convention on Cluster Munitions", presentation to the Berlin Conference on the Destruction of Cluster Munitions, 25–26 June 2009.
29. A demilitarization factory could be designed to deal with different types of ammunition and thus support the goal to address the problem of surplus conventional arms in a comprehensive manner.

Assistance to cluster munition victims: a major step toward humanitarian disarmament

Markus A. Reiterer

As the first week of the Dublin Diplomatic Conference on Cluster Munitions came to an end numerous delegations hailed the provision on victim assistance as "ground-breaking" and "historic".[1] The agreed provision relating to victim assistance, which later would become Article 5 of the Convention on Cluster Munitions (CCM), was the result not only of 18 months of intensive negotiation and awareness-raising efforts, but was directly linked to experience gained and lessons learned in the context of other international treaties, most notably the 1997 Mine Ban Treaty and the 2006 Convention on the Rights of Persons with Disabilities.

Indeed, the new provision—in fact even better, the new package of provisions—on victim assistance is remarkable in many respects: it is the first time a disarmament treaty creates a direct link to human rights by stipulating that states parties shall adequately provide assistance to cluster munition victims in accordance with international human rights law; the new provision contains a strong legal obligation to assist the victims of a certain weapon without using the famous qualifier "states in a position to do so"; and it clearly sets forth who has to do what for whom and how. In doing so, the Convention contains a realistic definition of the term "cluster munition victim". It also commits states parties to provide international cooperation and assistance to states with victims under their jurisdiction or control.[2]

During its short existence as a legal text the CCM victim assistance package has started to gain the status of reference point and model for victim assistance efforts in related fields. Most notably, under the guidance of the coordinator Michael Schoiswohl from Austria, the states parties to Protocol V of the Convention on Certain Conventional Weapons (CCW) have agreed on an Action Plan on Victim Assistance that draws heavily on the relevant provisions of the CCM. Likewise, the Cartagena Action Plan, adopted at the Second Review Conference of the Mine Ban Treaty in December 2009, built on the progress made through the CCM, which provided some of the main building-blocks of the document. In a sense, the CCM "model" for victim assistance provides considerable "re-fertilization" to a treaty that pioneered the issue and remains the first ever international disarmament agreement to address the suffering caused by the weapons it bans.

Markus A. Reiterer acted as Co-Chair of the Standing Committee on Victim Assistance of the Mine Ban Treaty, as coordinator for victim assistance under Convention on Certain Conventional Weapons Protocol V and played a leading role in the negotiation of the Convention on Cluster Munitions, in particular concerning the victim assistance package; he also acted as Friend of the President for victim assistance during the Dublin Diplomatic Conference on Cluster Munitions in May 2008. He is now working for the Austrian embassy in Washington, DC. The observations made in this article are those of the author and do not necessarily coincide with those of the institution he is working for.

Yet, any legal text—to start with—is a mere legal text, as much as any action plan is a declaration of political intent: they are first steps in a larger process to improve the situation on the ground. The real value of these documents is established not through the language they employ, but through the advances they induce: for victim assistance the primary measurement of progress is the improvement in the victims' situations. Despite considerable efforts by the international community, progress often eludes us. A recent study carried out by Handicap International, *Voices from the Ground,* undertook to interview hundreds of individual survivors of mines, cluster munitions and explosive remnants of war (ERW) in 26 affected countries and reached some quite sobering conclusions.[3]

But already through placing human beings and communities at the centre of such an international agreement and by establishing a link to international humanitarian and human rights law, a major step toward a new humanitarian form of disarmament has been taken. This article aims to provide an overview of the content of the CCM victim assistance package as well as some thoughts on its implementation.

The CCM victim assistance package

Victim assistance as contained in the CCM is more than Article 5. It is a package of intertwined provisions contained in various parts of the Convention: in the preamble, in the first term to be defined in the definitions Article 2, in Article 5 itself, in Article 6 on International Cooperation and Assistance and finally in Article 7 on Transparency Measures. Including the obligation to provide assistance to the victims of cluster munitions in Articles 6 and 7 of the Convention as well as among the definitions ensures that victim assistance constitutes an obligation of the same legal relevance and value as the Convention's other major obligations, such as the prohibition of the use of cluster munitions and the requirements to destroy stocks and to clear contaminated areas. The Convention ensures that victim assistance is not a mere humanitarian after-thought: victim assistance figures centre stage as one of the core elements of this Convention.

For whom: definition of cluster munition victims

The first key feature of the CCM victim assistance package is the definition of the term "cluster munition victims", which covers "all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions." The definition goes further by clarifying that "[t]hey [victims] include those persons directly impacted by cluster munitions as well as their affected families and communities" (Article 2(1)).

The definition is intentionally broad and gives a realistic view of the factors defining how a person can become a victim, thereby setting the stage for the Convention's special victim assistance provision. It is fitting that in a treaty banning a weapon characterized by its wide

scope of contamination, which may endanger whole communities, the definition of victim mirrors those very characteristics and goes beyond injury to the individual. Moreover, appropriately for a treaty that embodies a human rights-based approach to victim assistance, the definition enumerates harm that is beyond the physical, and includes psychological injury, economic loss, social marginalization and impairment of the realization of rights.

The Oslo Declaration of February 2007 already committed participating states to the establishment of "a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation to survivors and their communities".[4] The drafters of the Vienna Discussion Text of December 2007—while not introducing a definition of cluster munition victims—wished to highlight a broad understanding of victims by including a preambular paragraph referring to "victims of cluster munitions, which inter alia include the persons directly affected, their families and communities."[5] This formulation reflected discussions on victim assistance that had previously taken place during the international process on cluster munitions at the conferences in Lima, Belgrade and Brussels: the rapporteur of the Brussels Conference's victim assistance session reported that:

> there was a general understanding that victim assistance is a broad and comprehensive concept, which should use as a starting point, but also as a constant reference point the needs and rights of victims. … Already the term *victim* as such is to be understood broadly, i.e. encompassing the survivor as such – the victim of the direct impact, but also other victimized persons, including family and affected communities. [italics in original][6]

This principled approach was essentially supported during the Vienna Conference and formed part of what the president of the Vienna Conference, Austrian Ambassador Wolfgang Petritsch called the "Vienna consensus on victim assistance", which reinforced the endeavours to establish victim assistance as "a key legal obligation of the same quality as the other main building blocks of the future treaty"[7] and hence work toward a definition of the term cluster munition victims.

For the first time, the Draft Convention on Cluster Munitions presented to the Wellington Conference in January 2008 included a draft definition of cluster munition victims.[8] The draft definition was basically designed as a mirror image of the provisions in Article 5 and essentially followed the assumption that any victim assistance provision would have to use the needs and rights of the victims as a starting and constant reference point. Whereas the definition highlights the injury or loss incurred by a victim of cluster munitions, Article 5 concentrates on how best to respond to the needs arising from such injury or loss. The draft definition intended to paint a realistic picture of victimization by portraying the defining factors that lead to the assumption that a particular person in fact has become a victim of the weapon.

The draft definition also built on two further documents. First, the description of the term "mine victim" as contained in the Review Document adopted at the 2004 Nairobi Summit on

a Mine-Free World, which states: "It is now generally accepted that victims include those who either individually or collectively have suffered physical or psychological injury, economic loss or substantial impairment of their fundamental rights through acts or omissions related to mine utilization".[9] Second, the definition contained in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: "For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."[10]

The Wellington Draft Convention signified two major developments as compared to the texts mentioned above: in addition to the concepts of physical and psychological injury, economic loss or substantial impairment of the realization of rights, the Wellington text also includes the concept of social marginalization as a form of victimization of a person. Second, the text further develops the idea contained in the phrase "either individually or collectively have suffered" by introducing a specific reference to the families and communities of persons directly impacted by cluster munitions.

In the final treaty negotiations, some clarifications to the definition were made: as regards families and communities, the term "affected" has been introduced to reflect that only affected families and communities could fall under the ambit of the definition. The definition also makes clear that the (legal) status of a person is irrelevant for the question of whether the person is a victim: the final version states that "all persons" that fulfil the criteria listed in the definition—be they migrants, internally displaced persons, non-combatants, combatants—would count as victims:

> Cluster munition victims means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.[11]

This formulation lists the defining elements of victimization, including the more obvious as well as other less obvious, yet serious elements. The use of the term "or" between the defining elements makes clear that it is sufficient that only one of the elements applies in a given case—as long as its occurrence is caused by the use of cluster munitions—in order for a person to fall under the scope of the definition.

Who bears the responsibility for victim assistance?

As compared to the victim assistance provision of the Mine Ban Treaty, Article 5 of the CCM represents a major step forward in clarifying who bears the responsibility for assisting the victims of cluster munitions. Whether it should be the state on whose territory the victims are, or the state who had used the munitions that should bear the primary responsibility for victim assistance had been asked repeatedly. The approach taken by the Mine Ban Treaty glossed over this question by committing each state in a position to do so to provide assistance to victims. In practice, this means that the Mine Ban Treaty combines the commitments by affected states and those of possible donor states to provide assistance for the care, rehabilitation, and social and economic reintegration of mine victims, and for mine awareness programmes. Although the historical significance and enormous ongoing importance of the Mine Ban Treaty's victim assistance provisions cannot be overstated, the approach taken has the disadvantage of qualifying the commitments of both possible donors and affected states with the phrase "in a position to do so". Article 5 of the CCM sets forth a much clearer conceptual framework and embodies a substantially more stringent legal obligation.[12] It identifies clearly who bears the responsibility vis-à-vis cluster munition victims: "Each State Party with respect to cluster munition victims in areas under its jurisdiction or control" shall provide the assistance required. It is important to note that it is either jurisdiction or control that is necessary, not the occurrence of both elements at the same time. In this context it is also important to note that Article 5 does not create any rights for individuals (as a human rights instrument would do); rather it creates a responsibility under international law on the side of states.

It is fair to say that those states with victims on their territories have undertaken substantial commitments for their well-being. Typically these are countries that have experienced or are still experiencing considerable unrest, security threats, military action, etc. and therefore are often facing severe economic difficulties. Many of these countries, such as the Lao People's Democratic Republic (PDR), belong to the poorer nations of the world. Naturally, Article 5 places quite a burden on these states, which needs to be cushioned by serious commitments on the side of the international community and those states that are in a position to assist.

During the 2007 Belgrade Conference of States Affected by Cluster Munitions, participating states unanimously accepted their responsibility for providing assistance to victims on their territories. This was done first because of the general responsibility of each state for the well-being of persons on its territory, and second because of clear commitments on the side of possible donor states to support their victim assistance efforts. These commitments have since been included in Article 6(7) of the CCM.

Human rights and humanitarian law

Victim assistance is all about human beings. It was hence all but natural to try and establish a link between a treaty that was designed as a humanitarian and disarmament treaty and the

realm of human rights. Yet, this was not so obvious when the negotiations started. Essentially, the victim assistance provision had very humble beginnings: the text presented for discussion at the Lima conference in May 2007 merely included a provision where states would endeavour to carry out some assistance to victims; it did not contain a link to human rights at all. The timely adoption of the Convention on the Rights of Persons with Disabilities (December 2006) helped in the development of the CCM.

The CCM negotiations showed overwhelming support for the establishment of the link between disarmament and human rights and consequently the Convention refers to human rights in three places: first, the preamble expresses states parties' determination to ensure the full realization of the rights of all cluster munition victims and recognizes their inherent dignity; second, the preamble bears in mind the Convention on the Rights of Persons with Disabilities; and third—and perhaps most important—Article 5 stipulates that victim assistance shall be provided "in accordance with applicable international humanitarian and human rights law". The CCM has thus chosen to uphold and promote the human rights of survivors and other victims. The Convention embodies a rights-based approach to victim assistance, i.e. an approach that takes as a reference point not only the needs of victims, but also their rights.

What

Under Article 5, states are obliged to "adequately provide age- and gender-sensitive assistance", including medical care, rehabilitation and psychological support as well as the social and economic inclusion of victims. The terms used are important: "adequately" ensures a level of flexibility in the actual provision of victim assistance—setting assistance in relation to prevailing circumstances, needs and capacities. The term age- and gender-sensitive sets an important marker, highlighting the need for assistance to take age and gender into account. And finally, Article 5(1) lists the constituent elements of victim assistance: medical care (which encompasses emergency and ongoing medical care), rehabilitation, psychological support (the importance of and need for which is often underestimated), and finally the elements of reintegration or inclusion of a victim in social and economic life.

All this makes very clear that victim assistance is not a short-term endeavour, but a long-lasting and quite complex commitment for the well-being of fellow human beings.

How

Article 5 concludes by setting out a non-exhaustive list of elements that provide the modalities for the implementation of victim assistance. The text was intended to provide sufficient guidance to states while at the same time avoiding being overly prescriptive. One of the issues discussed most intensively during the cluster munition treaty process was the question of non-discrimination:[13] in drafting the overall victim assistance provision it was of utmost importance

that the language ensured the best possible assistance to cluster munition victims without this being at the expense of victims of, say, landmines or ERW. In other words, the new provision was to be crafted in a way that would not allow it to be construed as creating a new category of victims enjoying "preferential" treatment at the expense of others. In response, Article 5(2)(e) prohibits discrimination against and among cluster munition victims as well as between cluster munition victims and those who have suffered injuries or disabilities from other causes. This again seemed a rather wide clause, which could potentially have been interpreted as an excuse for inactivity following the maxim that as long as everyone is treated in the same insufficient manner, no discrimination occurs. To avoid this, the second sentence specifies that differences in treatment should be related only to the actual need of the cluster munition victim.

Fulfilling the promise: implementing the victim assistance package

It is first and foremost affected states that bear the responsibility for implementing the victim assistance package. Two factors will be decisive for successfully implementing these obligations: their will and their capacity to comply with their obligations. Both elements are indispensable for proper implementation.[14] The structure of the victim assistance package takes this into account by defining the obligations of states to provide victim assistance and by providing for international cooperation and assistance for victim assistance. The transparency measures contained in Article 7 function to keep these obligations at the forefront of decision-makers' minds and hence foster the will to comply.

A number of key elements will help to determine the will and capacity for implementation: national ownership, international cooperation and assistance, and prudent use of limited resources, which requires the best possible use of existing structures and frameworks and the seeking of synergies and cooperation.

National ownership

National ownership figures centre stage in all implementation efforts: without the ownership of the concerned states, implementation does not seem practicable. It is the concerned state that is best placed to shape the laws, plans, programmes and budgets that are necessary for implementation and to tailor them to its specific situation. Planning and programming will differ widely between a country like Albania, with some 300 ERW survivors primarily concentrated in one specific region, and Lao PDR, with tens of thousands of survivors all over its territory.

The country concerned is best placed to determine where existing structures and frameworks (medical and social system, human rights frameworks, etc) can be used, or where the development of new approaches is warranted—the CCM victim assistance package does not require the reinvention of the wheel by establishing a raft of new mechanisms, it simply requires the work to be done.

National ownership is also crucial for attracting the support of the donor community. Bodies like the European Union have moved away from thematic budget lines in their development cooperation and have adopted country-specific approaches. Hence, it is often up to the individual countries to define their priorities and communicate them to potential donors.

International cooperation and assistance

International cooperation and assistance have played a prominent role in the negotiation of the victim assistance package of the CCM and have proven essential in the actual implementation of any victim assistance work undertaken so far. The promise by possible donor states to states with victims on their territory has been an important factor for the latter to agree to the obligations contained in Article 5 of the Convention. Experience gained in the implementation of the Mine Ban Treaty shows that donor states in a position to do so do seriously endeavour to live up to their commitments for victim assistance. The provisions contained in Article 6 clearly highlight the need for cooperation and assistance in respect to victim assistance.

Prudent use of scarce resources: use existing structures, seek synergies, cooperate

Victim assistance efforts do not usually have to start from scratch. In most affected states, medical infrastructures and services, and facilities to assist psychological as well as social and economic inclusion already exist, either run directly by government entities, or by communities, international institutions or non-governmental organizations (NGOs). Most of the states concerned have at least some relevant legal and policy frameworks at hand, perhaps regarding disability or human rights. It is paramount to use those infrastructures, frameworks, plans and structures and to make them work for assisting cluster munition victims appropriately. The CCM does not require the establishment of new laws or plans for assisting cluster munition victims separately from victims of landmines, other ERW, small arms and light weapons or other persons with medical and other needs. The package requires that cluster munition victims are adequately provided with the necessary assistance.

International cooperation and assistance activities can also take advantage of existing mechanisms. Many donor countries already support the establishment of medical infrastructure and services in developing countries; in so far as such support also benefits cluster munition victims they are victim assistance projects. Projects for overall poverty reduction in areas affected by cluster munitions, support for the creation of economic opportunities in affected rural areas, the provision of microcredit to victims are all possible ways of supporting victim assistance efforts with means that are already in use by a number of donors. It is important to employ those mechanisms with a focus on victim assistance.

Global victim assistance efforts benefit from a multitude of actors: affected states, donor states, international institutions such as the World Health Organization, United

Nations Children's Fund, United Nations Mine Action Service, United Nations Development Programme, United Nations Office for Project Services, International Labour Organization, the International Committee of the Red Cross and an even greater number of NGOs active on various levels such as Survivor Corps (formerly known as Landmine Survivors Network), Handicap International, Licht für die Welt and Médecins Sans Frontières. The better these entities work together, the more efficiently resources can be used in order to ensure that every euro spent brings about improvements for the victims. Ensuring that level of coordination is the joint responsibility of all.

Despite occasional appearances to the contrary, each of the increasing number of international conventions and fora dealing with victim assistance—including the Mine Ban Treaty, the CCM and the CCW—has a specific role to fulfil and, wherever possible, synergies should be sought: synergies in the proper meaning of the ancient Greek word syn-ergos—working together! This may not always be possible, or easy, but it is necessary if the international community is serious about assisting victims of all types of mines, cluster munitions and ERW wherever they are.

Concluding remarks

The CCM victim assistance package is significant in more than one respect. Being a package in itself establishes victim assistance as one of the main pillars of the Convention, of the same legal (and political) importance as the other core issues such as the prohibition of the use of cluster munitions, the obligation to destroy stocks and to clear contaminated areas. In addition to Article 5, provisions relevant to victim assistance have been included in the preamble, the definitions, reporting requirements and the article on international cooperation and assistance. Victim assistance also falls under the ambit of the Convention's provision on compliance (Article 8).

The victim assistance package is not a radically new invention. On the contrary, the package is the (initial) culmination of efforts: it can be seen as the logical consequence—if not codification—of the work undertaken and lessons learned in implementing the victim assistance provision of the Mine Ban Treaty. The package in the CCM has itself become a reference point for victim assistance endeavours in other conventions, most notably Protocol V to the CCW. Would it be too daring to think that other treaties would be able to take similar steps?

The CCM has innovated in building coordination for victim assistance into its provisions: the preamble expresses "the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons".[15] This formulation has been drafted in the knowledge that the resources that states and the international community make available for victim assistance are finite, therefore the use of these resources must be optimized in order to achieve the best possible results on the ground. Consequently, this preambular paragraph also expresses a responsibility for the states party to the CCM, relevant

international organizations and civil society to seek synergies where possible and coordinate their efforts.

Finally, the victim assistance package establishes the CCM as a unique international instrument: an international agreement that focuses on the suffering caused by a weapon and tries to address this suffering comprehensively not only through measures of disarmament or clearance, but also through holistically attempting to improve the lives of those who have fallen victim to that weapon by enabling them to participate as full and productive members in the social and economic life of their communities. In doing so, the CCM places central importance on the human and humanitarian aspects related to a particular weapon. It not only addresses the technical and military side of the weapon's use, but also the human cost associated with it, and thereby has become a model for a new kind of treaty, which could be labelled "humanitarian disarmament".

The CCM is now entering its most crucial phase: implementation! Through the victim assistance package in the Convention on Cluster Munitions we have laid the groundwork for bringing about better lives for cluster munition victims. Now we have to live up to these promises.

Notes

1. The statements made are available at the conference web site, <www.clustermunitionsdublin.ie>.
2. It is here, in relation to providing assistance for victim assistance, that the qualifier "in a position to do so" is used, rather than in relation to victim assistance per se.
3. Handicap International, 2009, *Voices from the Ground: Landmine and Explosive Remnants of War Survivors Speak Out on Victim Assistance.*
4. See Declaration of the Oslo Conference on Cluster Munitions, 23 February 2007, paragraph 1(b).
5. See Vienna Discussion Text, Vienna Conference on Cluster Munitions, 5–7 December 2007, first preambular paragraph.
6. Markus Reiterer (rapporteur), *Summary on the Victim Assistance Discussion,* European Regional Conference on Cluster Munitions, Brussels, 31 October 2007, at <www.diplomatie.be/en/pdf/reiter.pdf>.
7. Closing remarks by Ambassador Wolfgang Petritsch at the end of the Vienna Conference. See also Katherine Harrison, 2008, *Report from the Vienna Conference on Cluster Munitions,* 5–7 December 2007, Women's International League for Peace and Freedom, January.
8. The draft definition reads as follows: "'Cluster munition victims' means persons who have suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their families and communities" Article 2, Draft Cluster Munitions Convention, agreed at Wellington, 21 January 2008, at <www.mfat.govt.nz/clustermunitionswellington>.
9. First Review Conference of the Mine Ban Treaty (Nairobi Summit on a Mine-Free World), *Final Report,* document APLC/CONF/2004/5, 9 February 2005, paragraph 64.
10. See UN General Assembly resolution 60/147 of 16 December 2005, UN document A/RES/60/147, 21 March 2006, Annex, paragraph 8.
11. Convention on Cluster Munitions, signed at Oslo, 2–4 December 2008, Article 2(1).
12. See Statement by Markus Reiterer, Friend of the President on Victim Assistance, delivered to the 2008 inter-sessional meeting of the Mine Ban Treaty's Committee on Victim Assistance, one week after the adoption

of the Convention, at <www.apminebanconvention.org/fileadmin/pdf/mbc/IWP/SC_june08/Speeches-VA/SCVA-OtherMatters-6June08-Austria-en.pdf>.

13. It was particularly the delegation of the International Committee for the Red Cross that advocated a stringent provision on non-discrimination.
14. For a wider discussion of compliance with international obligations see M.A. Reiterer, 2008, "Some Thoughts on Compliance with International Obligations", in Isabelle Buffard et al. (eds), *International Law between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner,* Leiden, Brill, pp. 943–958.
15. See preambular paragraph 10.

The Convention on Cluster Munitions: considering implementation from a battle area clearance perspective

Chris Clark

The Oslo Declaration of 23 February 2007 set out to achieve a legally binding international instrument that would address those cluster munitions that "cause unacceptable harm to civilians". The end result of this very clear statement of intent was the Convention on Cluster Munitions (CCM), agreed in Dublin, Ireland, on 30 May 2008 and opened for signature in Oslo, Norway, on 3 December 2008.

The CCM is considered to be a ground-breaking international treaty regarding the detailed nature of its various articles. In this paper we are only going to consider those articles that have a direct bearing on necessary practical clearance operations on the ground: Article 3, Storage and Stockpile Destruction; Article 4, Clearance and Destruction of Cluster Munition Remnants and Risk Reduction Education; and Article 6, International Cooperation and Assistance.

Let us first consider what clearance and destruction of cluster munition remnants involves. Article 2(7) comprehensively defines cluster munition remnants as "failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets". It is the large numbers of unexploded submunitions that present the main element of unacceptable harm to the civilian population and the greatest challenge to the clearance organization. These unexploded submunitions will invariably be spread over a wide geographical area and, depending on the soil consistency, the type and weight of the individual submunitions, the height of deployment and correct functioning of the in-flight stabilization system, they may be on the surface, below the surface (possibly up to 50cm deep), caught up in trees or bushes, on the roofs of houses and, when dropped in urban areas, often inside the houses themselves. As you can easily imagine, this creates a very different reality to that of clearance of anti-personnel landmines. While there have been numerous lessons learned regarding the clearance of landmines since the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction (Mine Ban Treaty) in 1997, not all of those lessons are directly transferable to the clearance of an unexploded submunition strike. In fact, changing the mindset of clearance personnel from landmines to submunitions is one of the greatest and earliest challenges that will be met in a large cluster munition clearance operation.

Defining a cluster munition contaminated area

Article 4 of the CCM requires the "clearance and destruction of cluster munition remnants located in cluster munition contaminated areas". These areas are defined in Article 2(11) as "an

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Chris Clark MBE MC is the Senior Liaison and Programme Officer at the United Nations Mine Action Service (UNMAS), Geneva. Parts of this article are based on a presentation made by the author to the Berlin Conference on the Destruction of Cluster Munitions, held 25–26 June 2009.

area known or suspected to contain cluster munition remnants". It is almost impossible for the exact and true extent of a contaminated area to be "known" and the "suspicion" can go on over a huge area.

Most cluster munition weapon systems are intended to disperse munitions over a pre-defined area on the ground; this is normally referred to as the "footprint" and is generally elliptical in shape with a long axis along the line of deployment and a shorter axis at its waist. In relation to clearance, once the weapon type and characteristics are known and a specific item is identified on the ground, it should then be a simple matter to superimpose the standard footprint and stop clearance at the identified boundaries. Unfortunately, cluster munitions are never dropped or fired in this textbook manner, and factors affecting the actual deployment at the time of firing, such as wind speed or height of drop or deployment, are not always known. The reality on the ground seen time and again in Iraq and Kuwait in 1991, Kosovo in 1999, Afghanistan in 2002, Iraq in 2003 and Southern Lebanon in 2006, is that continued and multiple strikes against the same target, or target area, result in an often indefinable area of contamination as individual elliptical footprints are overlaid on top of or adjacent to each other. Additionally, as some submunitions may have exploded as designed, random "gaps" are created in the footprint and the immediate area is covered with a huge number of small metal fragments, which, once buried below the surface, need to be investigated as if they were buried submunitions. All of this creates an undeterminable perimeter of the contaminated area.

It is therefore of vital importance that those authorities responsible for the implementation of a cluster munition clearance programme on the ground quickly develop and enforce criteria to establish a clearance methodology that starts at the perceived centre of a suspected contaminated area and works outwards, with an agreed set distance ("fade out") to be added from the last located submunition in any individual direction. By doing so they will not only ensure that minimum time is wasted searching large areas of ground which actually contain no submunitions, but also that the always scarce clearance assets will not routinely be bogged down in single, large "suspected areas" but rather put to task on confirmed contaminated areas where actual unexploded submunitions present a real and dangerous hazard to the civilian population. While this is now more common practice in landmine clearance it was not generally the case ten years ago and is a vital planning element in dealing with the much more widespread submunition strike areas.

Without such an approach from the outset it will be very difficult for those authorities responsible to achieve the clearance deadline set by the Convention: the CCM commits states parties to the clearance and destruction of cluster munition remnants from contaminated areas within 10 years of entry into force, or within 10 years of the end of the active hostilities during which the cluster munitions were dropped (Article 4(1)). Unless work begins now, a decade may in fact prove an ambitious target, due to the sheer number of unexploded submunitions to be cleared.

Article 4 also requires that cluster munition contaminated areas are "perimeter-marked, monitored and protected by fencing or other means to ensure the effective exclusion of civilians". While seeming straightforward, this provision is much more difficult to implement with any validity on the ground. As shown above, a cluster munition footprint is invariably ill-defined on the ground and its perimeters are best established by working from the inside out, pausing when no more submunitions are encountered and then continuing for an agreed fade-out distance. To avoid duplication of efforts, this demarcation of the clearance area is normally undertaken simultaneously with actual clearance, so often it is not practical to attempt to mark the perimeter prior to clearance. In addition, the size of a cluster munition strike area can (and often does) extend over entire square kilometres: is it therefore realistic, in resources, time and effort, to attempt to fence and allocate the resources to continually maintain the integrity of a fence over such a large distance? The issue of fencing is complicated by the fact that when you erect a physical barrier you are implying that the near side is safe and that beyond the barrier is not. This can be done with relative validity for a minefield, but it is fraught with danger for a cluster munition strike area. Even when an area has been subject to a systematic clearance operation, including an appropriate fade-out distance, there is no guarantee that one or two live, unexploded submunitions are not just beyond the stop point. Given that arable and grazing land is at a premium in an immediate post-conflict environment, the erecting of a physical fence could encourage farmers and herders to work right up to the fence, with potentially lethal results.

Focusing on the term "perimeter-marked" is a better way to approach the demarcation of a cluster munition contaminated area. Warning signs can be placed along the approximate edge of the strike, using natural barriers such as hedges, tree lines or roads. Such signs should be large and visible and clearly state (in the appropriate local language) that you are now crossing into an unexploded cluster bomb contaminated area. This approach can be carried out quickly and, coupled with a robust and community-orientated safety awareness and education process, can significantly help to mitigate against casualties until such time as each strike area can be physically searched and cleared.

Clearing a contaminated area

Not only is a cluster munition contaminated area likely to contain more unexploded ordnance over a space that is less easy to define than a minefield, but actual clearance of the remnants will also be more difficult. Much progress has been made in developing machines and refining mechanical procedures to aid and enhance clearance of landmines, but this is not the case with cluster munitions. Many submunitions that have to be cleared from affected countries are dual-purpose improved conventional munitions (DPICM), the dual-purpose referring to an anti-armour as well as an anti-personnel capability. This invariably means that the submunition contains a shaped charge warhead capable of penetrating military-grade armour, especially that of tanks. In almost all cases this will preclude the deployment of a mechanical asset in

clearance as the inadvertent disturbance and subsequent detonation of the unexploded submunition will cause the shaped charge to activate; this is dangerous for the machine and for the operator if the submunition is angled toward the machine, and poses potentially lethal danger for any person within a 1000m radius (in comparison, an anti-personnel mine has a maximum danger radius of 25–35m).

Stockpile destruction

Clearing contaminated areas is a challenge, but given the vast numbers of cluster munitions currently stockpiled, Article 3 on Storage and Stockpile Destruction could prove harder to comply with. The required destruction period of eight years should be considered the maximum time frame and all states should endeavour to fulfil this obligation as soon as possible: appropriate planning and resource mobilization must commence immediately and not necessarily await formal treaty ratification.

The destruction of stockpiled cluster munitions can be extremely complicated because of a number of factors: large numbers of individual submunitions are contained within the overall cluster munition container or carrier, and they all need to be individually removed for destruction; most explosive submunitions incorporate an integral detonator (certainly all those prohibited under the Convention), which complicates the process as the detonator must be manually removed from each submunition; and the removal of the explosives leaves a large amount of metal casing and packaging, which must also be destroyed or recycled.[1] The CCM requires that destruction methods comply with international standards for protecting public health and the environment. This is a factor common with the Mine Ban Treaty, and the United Nations Environment Programme (UNEP), which has worked with states on the Mine Ban Treaty and is already working on cluster munitions, may be of key assistance in this.

In accordance with the CCM, states must immediately separate those stocks of cluster munitions prohibited under Article 1 from other operational munitions and mark them for destruction. As all such cluster munitions contain an integral detonator, they may already be stored separately from other ammunition. It may be more efficient to move the prohibited cluster munitions directly to the destruction site. Consideration must be given to adequate storage and security facilities at the destruction site. Paramount importance and priority should be given to immediately removing access to those cluster munitions currently stored at forward or operational locations from combat-ready units in order to prevent accidental use.

Early planning and logistical management will be critical to achieving compliance within the eight-year deadline. Such planning will need to take into account a number of technical and practical challenges.

- There is no "one size fits all": all of the existing cluster bomb destruction facilities—most of which are privately owned—were originally established to destroy particular types of weapons as part of a country's routine armament management programme. They

therefore have a finite capacity and are designed to deal with only one type of cluster munition. There are a limited number of facilities around the world and they cannot be expected to deal with the massive increase in need generated by Article 3 obligations.

- Transportation: if states are intending to "outsource" their stockpile destruction they must take into account that the costs of transportation will significantly increase the overall destruction costs.
- Planning: potentially the biggest challenge at the outset is to identify clearly amounts and types of cluster munition held; the vast numbers involved often make this harder than expected. Once numbers and types have been properly identified a valid plan for separation, storage, transportation and ultimately destruction must be established. This plan must be allocated an appropriate and complete budget to avoid a "start/stop" process that is ultimately more costly and jeopardizes meeting the 8-year deadline.

Assistance in clearance and destruction

While the Convention on Cluster Munitions is new, severe unexploded submunition contamination is not. Many countries and clearance organizations have been working to clear vast areas of cluster bomb contamination for many years. The author first came into contact with the extensive complications and sheer magnitude of a post-conflict cluster bomb clearance operation in Kuwait and southern Iraq following the Gulf War in 1991 and most recently in Southern Lebanon in 2006, both before the CCM. There is already a pool of knowledge and experience in the clearance of cluster munition contaminated areas from which CCM states parties can benefit.

Article 6, International Cooperation and Assistance, makes a provision for affected states to seek and receive assistance. However, those in a position to offer assistance must consider all elements of the hazard posed by explosive remnants of war (ERW), including landmines, general unexploded ordnance (UXO) and submunitions, and priority should be given according to the prevailing threat to the civilian population and their livelihood. Very few countries are solely contaminated by cluster munitions and most have a mix of landmine, UXO and cluster munition remnants to deal with. To further complicate matters, several countries have a cluster munition problem superimposed on a landmine problem. It would therefore not be a practical course of action to single out assistance for the clearance of one particular type of explosive hazard over another.

The systematic clearance of a cluster bomb strike is very different from the clearance of a minefield: it is not possible to identify and follow any pattern, the use of mechanical assistance is an extremely limited and problematic option, the number of unexploded submunitions far outweighs those of emplaced landmines, and there are fewer (safe) possibilities to manually neutralize a submunition for later bulk destruction. In fact, many submunitions cannot be neutralized at all due to the fuzing mechanism being contained internally. So while cluster

munition clearance can be quicker—depending on terrain and vegetation—it is invariably more resource heavy, in particular because it requires many more explosives and accessories in order to conduct "blow in situ" demolitions. In most countries the acquisition or import of appropriate explosives and subsequent maintenance of supply is problematic. One important aspect of assistance is therefore that those organizations conducting cluster bomb clearance operations are properly, and continually, supplied with explosives and accessories to enable their work to progress unhindered.

There is also a need for training. Most organizations providing assistance in cluster munition clearance are originally demining organizations, and they need to alter the perceptions of their workforce, both national and international, regarding the inherent differences between demining and submunition clearance. Generally, deminers are equipped and trained to search for the smallest amounts of metal contained in minimum metal landmines (unfortunately there is still no such thing as a "mine detector", only a metal detector that detects the metal present in the mine). In contrast, an unexploded submunition is invariably a large piece of metal and much easier to detect, even when located in heavily metal-contaminated ground. This implies that the detection of individual unexploded submunitions is easier and while it often is, this is of little benefit if clearance personnel are still employing demining procedures and techniques that require the smallest indication of metal to be investigated and unearthed. Maximum use of opportunities to cross-train and expose conventional deminers to the differences relevant to the clearance of unexploded submunitions should therefore be taken.

The United Nations has been assisting governments dealing with cluster bomb contamination for many years and therefore stands ready to use this knowledge in support of the CCM. This support may include, inter alia, acting as a common focal point for lessons learned and best practices, both new and those established through the implementation of the Mine Ban Treaty, and working to develop a specific International Mine Action Standard (IMAS) for cluster bomb stockpile destruction.[2] The United Nations is also well placed to provide key assistance with initial planning for clearance and stockpile destruction and may also develop tools such as templates and checklists to pool our global knowledge.

The Voluntary Trust Fund for Assistance in Mine Action and other UN-managed funds currently serve as an effective depository for financial assistance in landmine and other explosive remnants of war clearance and destruction activities and may be well utilized in support of the CCM.

The systematic response to and clearance of unexploded cluster munitions has been ongoing for over a decade now, the hard-won lessons learned in intense and complicated situations in the Lao People's Democratic Republic, Kosovo, Southern Lebanon and elsewhere have yielded many best practices and effective approaches and procedures in this time-consuming and dangerous activity. Affected states are encouraged to seek access to and thereby benefit from this experience and states offering assistance are urged to build on this practical knowledge to

better focus their support and thereby quickly fulfil the intent of rapidly removing unexploded submunitions that "cause unacceptable harm to civilians".

Notes

1. For more details on the stockpile destruction issue, including methods of destruction, see Vera Bohle's article in this issue of *Disarmament Forum*.
2. For more information on IMAS, see Phil Bean, *International Mine Action Standards: Some Frequently Asked Questions and Answers*, at <maic.jmu.edu/journal/8.2/notes/bean.htm>, and <www.mineactionstandards.org/imas.htm>.

The role of NGO activism in the implementation of the Convention on Cluster Munitions

Thomas Nash

States will only be able to create a healthy and viable regime that fulfils its purpose to "put an end for all time to the suffering and casualties caused by cluster munitions" if they further develop genuine partnerships with civil society throughout the implementation of the Convention on Cluster Munitions (CCM).[1] The decade of implementation of the Mine Ban Treaty is testimony to this, and other treaties developed since 1997, such as the Rome Statute of the International Criminal Court and the more recent Convention on the Rights of Persons with Disabilities reinforce this approach. States need civil society as a source of expertise and analysis, of accountability and legitimacy, and of energy, enthusiasm, passion and political space. These features need to permeate non-governmental organizations' (NGOs)[2] work to ensure the full and effective implementation of the Convention on Cluster Munitions.

This article considers five areas of work in which NGO activism can contribute to implementation. The first is the communication of the ban and the treaty so that they remain on the agenda of those who must implement it. The second is the provision of analysis of the challenges for implementation and contribution to the policy debate. The third is monitoring of compliance by states parties with their treaty obligations. The fourth is advocacy and activism, using the data gathered through NGO monitoring, to promote compliance and positive practice and to speak out against non-compliance. The fifth and final area is to promote universal adherence to the treaty, to reinforce the stigma against the weapon and to help build the norm of a global ban.

Communication of the ban and the treaty

If you don't know something exists, you will not be able to understand it, use it, promote it and act upon it. NGOs have a role to play in communicating the existence, importance and utility of the CCM to the public, media, governments and civil society and in sending a range of messages to a range of audiences. In this regard the Cluster Munition Coalition (CMC), as an entity retaining exclusive focus on the issue of cluster munitions and the Convention, has been crucial.[3] The existence of the CMC has allowed for the prioritization of the messages around the prohibition of cluster munitions and efforts to end the suffering they have caused. The specific focus on and priority for the Convention on Cluster Munitions has likely been stronger than it would have been if no such dedicated single-issue campaign existed.

Thomas Nash joined the international Cluster Munition Coalition (CMC) in early 2004 and has served as Coordinator throughout the successful global campaign to achieve an international treaty banning cluster bombs. Nash has written several reports and articles on cluster munitions, including Landmine Action's post-conflict investigation *Foreseeable Harm: The Use and Impact of Cluster Munitions in Lebanon: 2006* (October 2006), the first report documenting their massive use in Lebanon during the 2006 conflict.

The ban on cluster munitions exists, therefore, due to the hard work of many people and some important political attention, but it has not been (nor is it) central to the political or personal agendas of a large number of countries, organizations or individuals. Affected countries such as Lao People's Democratic Republic (PDR) and Lebanon, and key drivers of the process such as Norway are arguably exceptions rather than the norm. Without constant efforts by the CMC and its NGO members to keep the issue of cluster munitions "hot" it could easily slip down the agenda. This would jeopardize realization of the treaty's great potential.

Political will will be crucial to treaty implementation just as it was to treaty negotiation. For example, United Kingdom Prime Minister Gordon Brown's decision to adopt the CCM at the negotiations in Dublin in May 2008 was likely to have been primarily political,[4] and this will no doubt also be the case for many decisions on implementation. While technical analysis will always be necessary for effective implementation, key decisions on military necessity, on resources for stockpile destruction, clearance or victim assistance are essentially about political priorities.[5] Implementation is a question of meeting legally binding obligations, but some of these cost money, and allocating funds in the face of competing priorities requires—and is an expression of—political will.

NGOs can assist government officials by working through the media, parliaments and the public to ensure sufficient political will exists to make critical decisions at key moments. NGOs must be able to attract the attention of political leaderships; to communicate to political decision makers in such a way that leaders see a benefit to themselves, their governments and their political agenda in taking action.

Communicating urgency

Fostering a climate of on-time compliance will be one of the biggest challenges for NGOs. The most effective tool is to develop the impression that non-compliance with legal obligations will not be politically tolerable. However, non-compliance by Belarus, Greece and Turkey with the Mine Ban Treaty's stockpile destruction obligation in 2008 and 2009 has not resulted in widespread condemnation by states, nor does the issue appear to be on the agenda of political decision makers. This underlines the need for political leaders to address implementation in order to set the right tone early in the life of the Convention on Cluster Munitions. For the CCM, this "start early" message will be a critical rallying point at the First Meeting of the States Parties to be held in Lao PDR in November 2010.

A related challenge for this communications role is that the CCM is a largely preventive effort, with a more limited problem of extant contamination than was presented by anti-personnel landmines—around 30 countries are affected by cluster munitions in contrast to almost 90 states affected by anti-personnel mines.[6] This makes it more difficult to mobilize public, media and government attention—anti-personnel mines were a more prominent global issue upon the signature of the Mine Ban Treaty in 1997 than cluster munitions were in 2008. Indeed, many

Latin American and African countries that championed the cluster bomb ban did so precisely because they had experienced landmine contamination, but not cluster bombs, and they did not want to see a similar problem caused by the billions of submunitions stockpiled around the world.[7]

Communicating urgency on a preventive effort requires a comprehensive strategy that will relate the problem to the political priorities of key countries and keep it on their agendas. With the right resources, NGOs can react quickly to changing situations and have the time to plan and work proactively on media strategies to exploit upcoming events. NGOs benefit from a certain freedom to communicate and the agility to manage a media response. NGOs may even have a comparative advantage on media mobilization around issues such as cluster munitions, which is amplified with a coalition approach and global membership. The media reports produced by the CMC after the Dublin and Oslo conferences in 2008 show impressive results delivered on the basis of a specific strategy.[8] This professional, targeted approach to media bears lessons for the implementation phase. Key targets could be states that are slow to get implementation work under way and, of course, states whose deadlines are approaching. For many states, an NGO-fuelled media campaign can be a highly effective way of mobilizing public opinion and political will.

Ultimately, the CCM shows that preventive action is possible, that the global community can take action before a problem reaches crisis proportions around the world, and this is important for civil society engagement on other issues in the future.[9]

Analysis of the problem and policy contributions

At the same time as the treaty and its obligations and humanitarian potential are being effectively communicated, NGOs need to provide detailed analysis and opinion on what the problems posed by cluster munitions are and what needs to be done. NGOs have a particularly important role in this area of work as they are often the closest actors to the problem. For example, survivors of cluster munitions offer a unique perspective on the challenges of treaty implementation and effective solutions. Therefore, survivors' advocates and representative organizations must be involved in the policy debate.

States such as Norway have consistently highlighted field expertise and knowledge as the key contribution of NGOs during the Oslo process.[10] Directly injecting the passion of those individuals and organizations faced with performing surgery or dealing with poverty and despair exacerbated by the effects of cluster munitions into political and diplomatic processes without (or with very little) filter can have a powerful impact.[11] If they are effective, field-based NGOs working on cluster munition-related issues provide a set of eyes and ears that can understand the specific circumstances of a country or a community and can listen and report without undue bias or political agenda.

The importance of NGOs for ensuring the success of diplomatic processes on humanitarian issues has since been recognized by states working on other initiatives. For example, the United Kingdom has worked closely with NGOs advocating an Arms Trade Treaty and Switzerland has engaged NGOs in promoting the agenda of work on armed violence and development. Indeed, the concept of the "Norwegian model" of close cooperation with NGOs is increasingly recognized as a means of delivering policy change at the international level.[12]

In terms of implementation, NGOs can keep the work programme of the CCM relevant to changing situations on the ground. For this reason, the work programme of the CCM should carry forward the informal and pragmatic culture of the Oslo process and be as open and flexible as the work programme of the Mine Ban Treaty has been. A slow-moving policy debate that is not open to NGO input is less likely to keep up with reality in the field. As Tamar Gabelnick of the International Campaign to Ban Landmines notes: "Field-based operators provide key information and perspectives, but often the political work with governments happens at a different level, so the flow of ideas between the field and the Cluster Munition Coalition will be critical during the implementation phase."[13]

NGOs can help ensure an effective interplay between individuals undertaking field-based work (in both NGOs and government-run bodies) and those working on policy at the international level, such as diplomats and NGO policy makers.

Victim assistance

States are obliged under Article 5 of the CCM to "consult with and actively involve cluster munition victims" in the implementation of their broader victim assistance obligations. This paves the way for survivors' more systematic involvement in analysing the problem and contributing to the international-level policy debate and decision-making processes. Survivors were closely involved in the CCM negotiations and provided valuable experience and powerful advocacy.

However, it will be more challenging to ensure this involvement in a sustained and complex implementation phase.[14] Thus, the CCM's programme of work should ensure continued, meaningful participation of survivors and victims in the future decision-making processes of the CCM: the victim assistance focal points and parallel work processes of the Mine Ban Treaty work programme provide valuable lessons here.[15]

NGOs must benefit from and build on the lessons learned in the implementation of the Mine Ban Treaty over the past 10 years. Positive lessons include keeping up the pressure over a sustained period; maintaining effective networks in a range of key countries; maintaining a close-knit community of practice among governments, organizations and civil society; making progress on ensuring national ownership of problems at the levels of planning, coordination and communication; and keeping the focus on the humanitarian imperative at all times. However, the lack-lustre reporting by states in relation to the Mine Ban Treaty and the fact that

some have waited until the last minute to start work on time-bound obligations are a cause for concern. Starting early on clearance and stockpile destruction will be a key NGO message at the start of the CCM's implementation phase.

Monitoring states parties' compliance

With the ban being widely and effectively communicated and the problem being comprehensively analysed, NGOs will have a role to play in monitoring states parties' compliance with the treaty. The influence of Landmine Monitor on the Mine Ban Treaty over the past 10 years is a central model for this third area of work. At the same time, states' own reporting on their implementation must continue to improve and NGOs have a role to play in supporting states with this. The mechanisms and structures created to implement the CCM—in particular the reporting formats established, any bodies set up to support states' implementation work and the interactions set out with NGOs—will be crucial influences on the standards created for monitoring and compliance with the treaty and must be open to and inclusive of NGOs.

Landmine Monitor has embedded civil society in the implementation structure of the Mine Ban Treaty, as the systematic research by NGOs around the world has built up strong relationships with government officials who are themselves implementing the treaty. Landmine Monitor has also kept civil society engaged with governments to ensure that implementation work actually happens. The Landmine Monitor has promoted transparency and made it the norm for states to share information with NGOs on issues that were previously quite sensitive (such as military stockpiles).[16]

The reports of the Landmine Monitor have become *the* reference for delegates to Mine Ban Treaty meetings. Arguably, Landmine Monitor has also influenced the quality and quantity of Article 7 reporting within the Mine Ban Treaty and even influenced changes to the forms for reporting. It has been central to the "evidence-based advocacy" described by Landmine Monitor pioneer Mary Wareham and has influenced other NGO monitoring regimes specific to global treaties, including those of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons.[17] Crucially, Landmine Monitor has been able to showcase the great progress achieved through the Mine Ban Treaty while at the same time highlighting the key challenges that remain, and this has steered the policies of states and the Mine Ban Treaty community.

Just as it was critical to have a specific, focused effort to monitor the anti-personnel mine issue and the Mine Ban Treaty, the same will be true for cluster munitions and the CCM. A variety of factors support a specific reporting regime on cluster munitions: the states parties to the CCM differ to those of the Mine Ban Treaty; the CCM creates new and different obligations to the Mine Ban Treaty (on victim assistance, data gathering and reporting, for example); and

the CCM's scope goes beyond victim-activated weapons to deal with the indiscriminate area effect of cluster munitions during attacks. This last point is fundamentally different from the anti-personnel mine issue and explosive remnants of war, and relates to the emerging concept of explosive weapons as a broader category, in particular their use in populated areas.[18]

NGOs will undertake a specific monitoring initiative on cluster munitions, closely linked to the Landmine Monitor and its network and processes.[19] With fewer states affected by cluster munitions than landmines there will be relatively less monitoring to do on clearance, risk education and victim assistance than there has been for NGO monitoring work on anti-personnel mines.[20] However, there will be substantial work to do on production, transfer and destruction of stocks as well as on the policies of non-signatories.

In developing the civil society monitoring report on cluster munitions, the encyclopaedic country-by-country approach taken for anti-personnel mines may benefit from some adjustment, with increased use of thematic reporting and a renewed focus on key challenges and recent developments. Handicap International's report on victim assistance may provide useful lessons on thematic reporting, while the recent and very comprehensive report by Human Rights Watch and others may offer lessons on swift, lean and effective production, emerging as it did within 12 months of the Convention's adoption.[21]

A key area of focus for this monitoring tool will be to balance the positive progress against the challenges ahead: showing tangible results is necessary to attract others to the treaty and increase its legitimacy as a norm, but highlighting challenges and calling states out on failures is necessary to ensure compliance and the credibility of the instrument.[22]

While NGOs have been effective at monitoring compliance through Landmine Monitor, reporting by states must improve for the CCM. This should be seen in the context of the growing recognition that collection of data on the impact of armed violence is a fundamental responsibility of states to their citizens, as has been recognized in the Geneva Declaration on Armed Violence and Development[23] and with respect to cluster munitions victims in the CCM.[24] In advance of the First Meeting of States Parties, governments and organizations should also work on developing reporting formats and procedures that elicit meaningful responses and help improve the quality of reporting.

The Landmine Monitor system has been successful at getting information out of governments and this practice needs to continue, but a focus must be placed on the responsibility of states to gather the data that is so crucial for them to meet their treaty obligations. The central role for NGOs will be to push for states to produce good quality reports and annual updates in a timely manner. NGOs should be wary of effectively substituting for states. If states are borrowing language from Landmine Monitor to draft their Article 7 reports, this raises questions as to whether they have undertaken the necessary research internally to provide a meaningful report.[25]

An area of potential innovation on NGO monitoring of compliance could be to distinguish between states that collect and present data effectively and states that are deficient. While some analysis of implementation would need to cover both groups, NGOs could focus their concerns on the latter, supplementing state data with more detailed research and highlighting areas where improvements are needed.[26]

The communications, analysis, monitoring and advocacy work of NGOs will be of more benefit to the Convention if it is integrated into the formal and informal structures supporting implementation of the Convention, because it will be more coordinated and more accessible. This has been a lesson learned from the Mine Ban Treaty, where NGOs have had an integral role in the work programme and have been closely consulted on policy and key decisions throughout the life of the treaty.

Advocacy and activism to promote compliance and positive practice

Using data gathered through monitoring and field-based analysis of the challenges of implementation, NGOs must undertake coordinated and effective advocacy to ensure compliance and speak out against non-compliance. One key message from NGOs will be urging states to start early on their obligations and pressurizing states that are not doing enough to fulfil obligations—NGOs must respond robustly to clear situations of non-compliance. By maintaining a close dialogue with government officials NGOs can help flag concerns and push state action forward before potential problems arise.

NGOs must push states to start early with clearance and stockpile destruction and to aim for no extensions on either obligation. Part of the NGO role will be to work with states to establish a meaningful partnership with two-way communication. NGOs must have a genuine capacity to provide support through political encouragement and policy dialogue for those states willing to take a leadership role, to help cultivate "champion" states, and to work with those states that are struggling to meet their obligations. Even where states are not clearly in violation of the Convention, NGOs must put pressure on states to undertake further action and set the benchmarks for good practice on areas open to interpretation, such as cooperation and assistance, to ensure the success of the treaty. Here NGOs will need to press donors to give more and new funds for cluster munition clearance. This is true in particular for Lao PDR and Lebanon, which, as future CCM states parties, arguably both need to see a positive step shift in clearance and victim assistance funding given their specific cluster munition problems.

It falls to civil society to speak out when states will not. NGOs must respond swiftly, loudly and unequivocally to non-compliance. Like the Mine Ban Treaty, the compliance mechanisms in the CCM are deliberately light. This means that compliance depends on the stigma developed around non-compliance.[27] NGOs must create and protect this stigma and not allow it to be weakened. States have arguably not been strong enough in condemning non-compliance in the Mine Ban Treaty: early on they chose not to pursue allegations of use by Uganda and

they have not condemned the violation of stockpile destruction deadlines by Belarus, Greece and Turkey. This gives NGOs added responsibility to condemn non-compliance. Indeed, states can rely on NGOs to make statements they are diplomatically unable to make. However, NGOs must also push for states to condemn non-compliance, in order to prevent precedents from emerging that might erode the power of the treaty's obligations and the stigma against the weapon.[28]

Maintaining a dialogue for governments and NGOs to talk through issues of concern can help avoid compliance problems. NGO campaigners able to focus on cluster munitions, with the support of the CMC's global network, can be a vital source of motivation and assistance for government officials stretched for capacity over many issues and who may simply be unaware of a potential problem. This is a hallmark of the partnership between government officials and NGOs in the Mine Ban Treaty's intensive work programme.

Cooperation between national campaigns and CMC staff is also crucial. Advocacy may work better in capitals in some cases, away from the spotlight of outsiders, and in other cases it may work better at the international level, where NGOs can feel supported and show their governments that the world is watching. Donor-funded small grants to campaigners around the world can be a strategically beneficial tool to promote this dialogue between states and civil society, and the effective link between national and global advocacy.[29]

Universalization, stigmatization and norm-building

Implementation and universalization have been seen as two separate activities, but they are inextricably linked and part of one another. Ensuring no further use by universalizing adherence to the treaty and its norms will help reduce the future burden of key implementation tasks such as clearance and victim assistance. Through implementation, key precedents set in the CCM can be nurtured and established.

Working toward universalization is in any case a legal obligation of the Convention to be implemented by states parties. Under Article 21, each state party must "encourage States not party … to ratify, accept, approve or accede" to the Convention, must "notify the governments of all States not party to the Convention … of its obligations under this Convention" and must "promote the norms it establishes". NGOs will most certainly have a role to play in eliciting clarity from states about what these obligations mean in practice and ensuring they are implemented.

There is another clear link between implementation and universalization, whereby positive results attributed to the CCM will attract further signatures. If Lao PDR, for example, sees an increase in funding following its adherence to the Convention on Cluster Munitions, this will surely have a positive influence on the prospects for neighbouring Viet Nam, a fellow affected country, to join the Convention. All those countries affected by cluster munitions are a critical target group for universalization of the Convention. At the time of writing, Cambodia, Serbia,

Tajikistan and Viet Nam, to name a few, had not joined the Convention. Arguably, these are more important to have on board than the producers and stockpilers, who are often cited as the biggest gaps in the treaty's reach.

Even while they are outside the treaty, key stockpilers can contribute to the establishment of the global norm against the weapon by introducing measures nationally to ban transfers, as Singapore announced days before the Convention's signing conference in Oslo, or to stop production, as Argentina has made clear on a number of occasions.

Establishing a powerful norm reaching beyond the states parties to the Convention is one of the key roles for NGOs. We have seen above that international law is more difficult to enforce than domestic law, so the development of an effective norm—through a combination of legally binding instruments, political will and diligent implementation—is the only way to achieve success. NGOs must elicit and collate statements such as that of UN High Representative for Disarmament Sergio Duarte, who noted recently that the cluster munition is a weapon "that is viewed around the world as inhumane".[30]

Central to protecting the stigma and norm against cluster munitions will be influencing the interpretation of certain provisions. NGOs must promote the most restrictive and most far-reaching interpretation of provisions in Article 1(1)(b) on transit, Article 1(1)(c) on interoperability and disinvestment, the effects-based definition of cluster munitions in Article 2(2)(c),[31] Article 3 on retention of cluster munitions and the positive universalization obligations in Article 21. NGOs have a role to play in promoting clear and positive interpretations early on in the implementation phase of the CCM.

NGOs consistently set the terms of the debate during the Oslo process. For example, the CMC established cluster munitions as a fundamentally humanitarian issue, overcoming government arguments that tended toward the technical or military nature of the question.[32] By changing the discourse of states, NGOs are able to promote modified behaviour. However, the implementation of the Convention will be a test for how significant the precedents set in the CCM will become.

The CCM has raised questions of interpretation that will affect not only the implementation of the Convention, but also future agreements. It is beyond the scope of this paper to consider all of these, but in times to come NGOs and governments will have to focus on the importance and relevance of precautionary approaches in the prohibition of weapons (the interpretation of the definition of a cluster munition is important here); the switching of the burden of proof during the negotiation of the Convention; the prohibition of cluster munitions on the basis of their area effects and unexploded ordnance risks and what this means for the broader category of explosive weapons and their use in populated areas; and the precedent set by the victim assistance obligation to gather data and how this relates to data gathering on armed violence more broadly.[33]

Notes

1. Preamble of the Convention on Cluster Munitions, signed in Oslo, 2–4 December 2008.
2. Throughout this article, the term "NGO" is used to describe a wide range of types of formal and semi-formal non-state institutions and actors.
3. The Cluster Munition Coalition was established in November 2003 by a group of NGOs and it now has around 400 member organizations in around 90 countries, see <www.stopclustermunitions.org>.
4. Sebastian Taylor of Landmine Action has noted in correspondence with the author that it may be "worth distinguishing 'positive' from 'negative'" political choices (e.g. choices calculated for positive gain versus those calculated to avoid negative consequences). It seems interesting to what extent Brown's political decision to support the Convention was based on the positive desire to acquire a new treaty, or the negative desire to avoid loss of international status, popular support, etc. This also has ramifications for how states act on compliance after the fanfare moment of signing. Civil society can have quite specific and acute effects on both positive and negative political calculations.
5. Human Rights Watch, 2009, *Cluster Munition Coalition Position Paper on Stockpile Destruction and Retention,* June.
6. Cluster Munition Coalition, "Affected Countries and Territories", at <www.stopclustermunitions.org/the-problem/countries>; Landmine Monitor, 2009, *Landmine Monitor Report 2009,* Mines Action Canada and International Campaign to Ban Landmines.
7. During their statements at the Dublin Diplomatic Conference on Cluster Munitions in May 2008, several negotiating states made clear that prevention was a key factor underpinning their positions. See, for example, the country reports on Burundi and Cambodia in Human Rights Watch et al., 2009, *Banning Cluster Munitions: Government Policy and Practice,* Mines Action Canada.
8. CMC, media reports from the Dublin Diplomatic Conference, May 2008, at <www.stopclustermunitions.org/calendar/?id=518> and from the Oslo Signing Conference, December 2008, at <www.stopclustermunitions.org/wp/wp-content/uploads/2009/04/oslo-media-report.pdf>.
9. One state criticized *Banning Cluster Munitions: Government Policy and Practice* at its launch for recalling very clearly the negative positions taken during the process. The authors considered that it was important to show the remarkable change in position by key countries in order to give confidence to those involved in future processes that such a turnaround is possible even when it seems well beyond one's grasp.
10. Human Rights Watch et al., op. cit., p. 139.
11. Human Rights Watch et al., op. cit., p. 177.
12. The Norwegian Ministry of Foreign Affairs' recent government white paper, Norway's Humanitarian Policy (October 2008), touches on the "Norwegian model". For further discussion see Samantha Bolton and Thomas Nash, forthcoming, "The Role of Middle Power–NGO Coalitions in Global Policy: The Case of the Cluster Munitions Ban", *Global Policy.*
13. Correspondence with Tamar Gabelnick, Treaty Implementation Director, International Campaign to Ban Landmines, September 2009.
14. For more on the role of survivors in CCM implementation, see the article by Stan Brabant in this issue of *Disarmament Forum*.
15. For more on ICBL Victim Assistance Focal Points, see "Progress on the Ground: VA Focal Points Get Down to Work", *ICBL News,* March 2009, at <www.icbl.org/index.php/icbl/Library/News-Articles/08_Contents/ICBL-NEWS/nwslmar09/vafocalpoints>.
16. Mary Wareham, 2006, "The Role of Landmine Monitor in Promoting and Monitoring Compliance with the 1997 Anti-personnel Mine Ban Convention", in John Borrie and Vanessa Martin Randin (eds), *Disarmament as Humanitarian Action: From Perspective to Practice,* Geneva, UNIDIR, pp. 79–108.

17. Mary Wareham, 2008, "Evidence-based Advocacy: Civil Society Monitoring of the Mine Ban Treaty" in Jody Williams, Mary Wareham and Stephen D. Goose (eds), *Banning Landmines: Disarmament, Citizen Diplomacy, and Human Security,* Lanham, MD, Rowman & Littlefield, p. 61.
18. See Richard Moyes, 2009, *Explosive Violence: The Problem of Explosive Weapons,* London, Landmine Action.
19. In 2008, the CMC asked the Landmine Monitor to undertake research and monitoring on the CCM. Precise modalities for this work were under consideration at the time of writing.
20. For example in the *Landmine Monitor Report 2008,* of Cambodia's 21-page country report two pages cover "mine ban policy" and "production, transfer, use, stockpile destruction and retention" while the remainder of the report covers the impact of mines and efforts to address the problem through clearance, victim assistance and international cooperation.
21. Handicap International, 2009, *Voices from the Ground,* Brussels; Human Rights Watch et al., op. cit.
22. The contrast is notable between the key 2008 International Campaign to Ban Landmines press release and its cautionary tone toward states following Greece and Turkey's violation of the Mine Ban Treaty ("States Must Keep Their Word to Landmine Survivors and Mine-affected Communities", ICBL press release, 24 November 2008) and the celebratory and positive tone of the CMC press release issued the following week, which promoted signature of the Convention on Cluster Munitions in Oslo on the basis that the treaty would provide real benefits for survivors and communities in need of clearance and other support. ("Campaigners Welcome Signing of Historic International Treaty Banning Deadly Cluster Munitions", CMC press release, 3 December 2008).
23. Geneva Declaration on Armed Violence and Development, adopted 7 June 2006.
24. Richard Moyes and Brian Rappert, forthcoming, "Enhancing the Protection of Civilians from Armed Conflict—Precautionary Lessons", *Medicine, Conflict and Survival.*
25. Wareham, 2008, op. cit., p. 53.
26. Correspondence with Richard Moyes, October 2009.
27. Brian Rappert, 2008, *A Convention beyond the Convention: Stigma, Humanitarian Standards and the Oslo Process,* Landmine Action.
28. It was for this reason that after the adoption of the CCM, when Georgia and the Russian Federation used cluster munitions in the conflict over South Ossetia, CMC mobilized intensively to rally condemnation of the use of cluster munitions. Together with condemnation from the Foreign Ministers of Ireland and Norway, for example, the denials by both sides (Georgia eventually admitted use) arguably served to strengthen the stigma against cluster munitions. ("Norway and Ireland Condemn Russia's Use of Cluster Munitions", Cluster Munition Coalition news, 22 August 2008; Government of Ireland, Department of Foreign Affairs, Statement by Minister for Foreign Affairs on Alleged Use of Cluster Bombs in Georgia, press release, 21 August 2008; Human Rights Watch, "Russia/Georgia: Cluster Bombs' Harm Shows Need to Join Ban", 14 April 2009.)
29. Chris Stalker, 2008, *Local Voices, Global Ban: How Small Grants to Campaigners Can Contribute to Global Change,* London, Landmine Action and Diana, Princess of Wales Memorial Fund.
30. Sergio Duarte, United Nations High Representative for Disarmament, "Remarks on Cluster Munitions and International Peace and Security", Regional Conference for Latin America and the Caribbean on Cluster Munitions held at Santiago, Chile, 15 September 2009.
31. See Richard Moyes and Brian Rappert, 2009, "The Prohibition of Cluster Munitions: Setting International Precedents for Defining Inhumanity", *The Nonproliferation Review,* vol. 16, no. 2, July, p. 250.
32. "Anti-personnel mines and cluster munitions were each initially treated at the international level as questions of arms regulation. But both the Ottawa and Oslo processes that subsequently emerged were framed in humanitarian terms using concepts and terminology that fit a humanitarian discourse. Such a discourse drew attention to the impact of these weapons rather than their military utility. In the two processes, supporters focused on the effects of landmines and cluster munitions on civilians during and after an armed conflict and on the human cost of the weapons' past and future use. A direct and strong link

was thus established between the weapons and their impact on human beings." John Borrie et al., 2009, "Learn, Adapt, Succeed: Potential Lessons from the Ottawa and Oslo Processes for other Disarmament and Arms Control Challenges", *Disarmament Forum,* nos 1–2, p. 20.

33. See, for example, Moyes and Rappert, op. cit; the forthcoming legal commentary of the Convention to be published by Oxford University Press; and John Borrie's history of the Oslo process (*Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won,* Geneva, UNIDIR, 2009), which also provides useful detailed insight into many of these points.

New publication

Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won
John Borrie (UNIDIR, 2009, 532 pages, sales number GV.E.09.0.8, ISBN 978-92-9045-196-9, English, US$ 65 plus shipping and handling)

This is an excerpt from John Borrie's recent book, *Unacceptable Harm*, which explains how the Convention on Cluster Munitions was achieved through the "Oslo process", a partnership of governments, international organizations and civil society. It examines why it took so long for the world to act, why it eventually did, and what lessons banning cluster munitions might hold for future efforts on a pressing challenge of our time: protecting civilians from the effects of explosive weapons.

Some lessons learned in Southern Lebanon for the Convention on Cluster Munitions

I find myself standing in a wheat field designated as zone CBU-614 near the village of Safeed Al Battikh, which is in Area 3—one of the eight clearance zones Southern Lebanon is carved into. Two Norwegian People's Aid battle area clearance (BAC) teams are carrying out subsurface survey and clearance here. Two feet away from me an unexploded M-42 submunition peeks out from the rocky soil. It is armed, and therefore dangerous, and (naturally) I feel slightly nervous about that. Looking carefully at it, Kerei Ruru, Operations Chief for the Southern Lebanon UN Mine Action Coordination Centre (MACC), along with the leader of the BAC team clearing this zone, are keen to point out the features of the tiny M-42's arming mechanism. I am surprised by how small the submunition is, and how closely its dull, dusty surface blends in with the ground: I could easily have missed seeing it without the wooden stakes joined with red and white plastic hazard tape the BAC team have erected around it. Seen close up, the partially uncovered M-42's arming mechanism looks a bit like the top of a miniature spray-paint can. Its nylon ribbon is invisible, either still buried or rotted away.

Although it is mid-October and this morning is overcast, the temperature here is at least 20ºC. In summer the heat climbs into the high 30s and the sun bakes the ground until it sets like concrete and the fields shimmer. Even now in autumn the ground is still firm, and the myriad rocks not only radiate heat back from the ground, they can interfere with the hand-held metal detectors the BAC searchers use to locate submunitions and other unexploded ordnance. Norwegian People's Aid BAC personnel nearby in bulky clearance gear—local Lebanese men—smile wanly, and wave to us as we make our way into the field. Perversely, because

of its large scale, battle area clearance of submunitions is a big employer of local people, and a relatively well-paid and thus sought-after job. But it is hard work, and I can barely imagine what toiling in the fields in mid-summer wearing a protective vest (which resembles a thick flak jacket) and perspex faceplate must be like.

As marginal as this land seems for agriculture to me, the submunition we are examining was found by a local farmer ploughing his field to plant wheat. For economic reasons farming must go on, even though it is a known Israeli cluster strike zone and not yet free of unexploded bomblets. Facing roughly south, the hillside field was on the receiving end of a cluster munition strike from Israeli 155mm artillery during the 2006 conflict—overlapping elliptical patterns of submunitions falling roughly longitudinally upon it. The action of rain and plough submerged this submunition in the ground and now ploughing has brought it closer to the surface.

The presence of this submunition in a field that, we are told, has been ploughed a dozen times or more since the conflict underlines that these are not de facto anti-personnel mines, as they have sometimes been described.[1] An anti-personnel mine is a simple device designed for a purpose: to lie in wait until something or someone comes into contact with it, at which point it explodes. In other words, it is designed for a purpose and, although utterly indiscriminate, anti-personnel mines perform their task reliably. Rather, this submunition is here because it has *failed* to function as designed: it signally lacks a mine's predictability or reliability. Leaning over the hazard tape and peering at the M-42, Kerei points out the submunition's stab detonator mechanism: this dud might be ploughed over repeatedly without exploding, each time being disturbed and probably moved slightly. At some point, though, a plough blade will hit the submunition at an angle that will activate the detonator, or someone will inadvertently step on it with the same effect, and the submunition may finally explode. But the submunition was not designed with a view to blowing off a person's limbs like an anti-personnel mine; it is a weapon designed to punch through several centimetres of steel plate to kill an armoured vehicle's occupants. Farmers driving tractors, shepherds on foot and livestock do not stand a chance.

Of the 261 civilian casualties recorded from unexploded ordnance in Southern Lebanon from the mid-August 2006 ceasefire until the end of September 2008, 215 were due to submunitions. Twenty of these people were killed, and the rest injured, many grievously. Casualty figures fail to tell the full story, of course, because they do not take into account the other socio-economic costs of land denial, and loss of income and opportunity brought about by submunition contamination on such a massive scale. A 2008 UNDP-funded report produced by the British non-governmental organization (NGO) Landmine Action looked at the cost of lost agricultural production in Southern Lebanon specifically caused by cluster munition contamination, the cost of the response through internationally assisted clearance and risk reduction operations and the economic cost of deaths and injuries directly resulting from it. The report came up with a cost estimate of between US$ 153.8 million and 233.2 million:

> Considering only the costs of lost agricultural production, and estimating based on the size of average land holdings in affected areas, post-conflict cluster

> munition contamination would have cost some 3,105 individual landowners an average of around US$ 8,000 each—this in a country where the 2006 per capita GDP was US$ 5,300.[2]

There were costs for the international community too. While noting that without it the socio-economic costs of cluster munition contamination would have been much greater, Landmine Action's report estimated that clearance and risk reduction activities in Southern Lebanon cost humanitarian donors around US$ 120 million in the period between the ceasefire and May 2008: substantially higher than the US$ 30 million Landmine Action estimated as the cost of the 1999–2005 response to NATO's use of cluster munitions in Kosovo in 1999.[3] And there have been inevitable accidents involving clearance personnel—inevitable because, despite strict rules, training, and regular quality assurance by the MACC of all clearance teams working under their authority, conditions are difficult, human beings make errors and, most of all, submunitions are highly dangerous and unpredictable. Fourteen clearance personnel were killed and 41 were injured in Southern Lebanon between mid-August 2006 and the end of September 2008.[4] Experience in Southern Lebanon supports the view that submunitions are particularly risky for humanitarian clearance.

Southern Lebanon's lessons

As I interviewed MACC staff, personnel from various demining organizations working in Southern Lebanon and talked with the Lebanese themselves, it struck me that the consequences of the cluster munition contamination resulting from the Southern Lebanon conflict hold a number of lessons of particular importance for the Convention on Cluster Munitions' successful implementation.

The first lesson is that acquisition of strike data as soon as possible after a conflict such as the number, types and locations of munitions fired makes a big difference in reducing the hazards to returning civilians. MACC staff spent a lot of time in the 2006 conflict's aftermath just trying to get an overall sense of the extent and geographical focus of the contamination. While they were familiar with older submunitions such as the BLU-63s they had been clearing for years (and which were used again in 2006 by Israeli forces, despite the weapon's age, many—again—failing to function), a number of the submunitions found by explosive ordnance disposal personnel took some time to identify.[5] Many submunitions such as the M-42, M-77 and M-85 look much like another, and are often damaged or partially obscured in some way when explosive ordnance disposal personnel first encounter them. Experts were puzzled for some time by Hizbullah's Chinese-made MZD-2 bomblet—itself a copy of the Yugoslav KB-1, in turn an effort to reproduce Western submunitions.[6] (Many MZD-2s were found in contaminated zones intermingled with unexploded Israeli submunitions, as in some cases Israeli bombardment had destroyed Hizbullah weapons caches or rocket firing platforms and, in the ensuing explosions, scattered the munitions.)

Not knowing *where* to focus limited survey and clearance resources was the biggest problem, however, for the MACC and the Lebanese Army as the hours and days after ceasefire ticked away and large numbers of civilians returned to salvage their homes and livelihoods and tend the harvest. Strike data from the Israel Defence Forces (IDF) would have helped immensely in reducing civilian casualties from unexploded ordnance (UXO), which spiked in the day following the ceasefire, and would slow to a steady, bloody trickle lasting long afterwards. Indeed, Protocol V to the Convention on Certain Conventional Weapons (CCW) on explosive remnants of war contains provisions encouraging the timely exchange of this kind of information precisely because it saves lives.[7] Despite repeated pleas by states in the UN Security Council and at the bilateral level, Israel did not provide information about where it targeted its cluster munitions, or how many and what types it used until more than two years after the end of the 2006 conflict.[8] When I visited Southern Lebanon in late 2008, MACC staff showed me the sole fruit of their requests to the IDF, stuck to the wall of their operations briefing room in Tyre: a single hand-sketched map in Hebrew on graph paper with firing angles identifiable but little else. As a result, the MACC and other authorities had to build a picture of contamination from scratch from August 2006, and civilians and clearance teams in Southern Lebanon kept encountering new and unexpected areas of contamination. In mid-May 2009, Israel belatedly handed over some technical data and related maps to the UN.[9]

The second lesson is that a surge in capacity to survey and clear submunitions and to provide warnings to civilians post-conflict makes a major difference in reducing immediate humanitarian harm. This is particularly crucial where use of cluster munitions is concerned as failed submunitions tend to be generated in large numbers, and because they are small it means they are hard for civilians to see (and so avoid) and get caught in trees, shrubs, house roofs and the like. Nevertheless, the harm to civilians caused in Southern Lebanon by massive quantities of unexploded Israeli submunitions fired in the final days of the war was less than it might have been: the area's pre-existing mine and UXO problem meant that expertise and coordination mechanisms such as the MACC were already in place and swung into action very quickly. Efforts by the United Nations and the broader humanitarian community to raise resources to begin post-conflict clearance activities in Southern Lebanon had begun during the conflict itself. Of course, during the fighting, nobody in the UN had any idea of the extent of the submunition contamination that would be caused in the final three days of the conflict, and the amount of resources needed had to be repeatedly revised upwards as the picture became clearer. When the conflict ended, there were only a few international demining teams and explosive ordnance disposal resources in-country,[10] along with the Lebanese Army's capacity—all of which saved civilian lives by intervening in contaminated areas. But at least there was a capacity there, which could be expanded. The lesson is plain: more teams on the ground quickly means more civilians are saved. And where coordination capacities to handle survey, clearance and other tasks to reduce the hazards of cluster munitions do not exist post-conflict, they must be established with haste, and with the cooperation of national and local authorities in the country they operate in.

The third lesson is that submunition clearance is not the same as mine clearance in terms of its methodology. This might seem obvious, but it is not always so in the mine action sector, which is well established in terms of its standards and methodologies and has mature "standard operating procedures" (SOPs)—for clearing mines, that is, not submunitions. The aftermath of the 1999 Kosovo NATO air campaign was a wake-up call in this respect, and served as a laboratory for a number of people who would later be significant in terms of tackling the problems caused by submunitions post-conflict in Southern Lebanon. These included some in the MACC, who understood the differences in methodology between mines and submunitions (since they, in effect, developed some of it as they went along) and what needed to be done. So did some of the NGO demining organizations such as Norwegian People's Aid.[11] But in other areas of the mine action community, awareness of differing methodologies lagged (and still lags) behind, for instance among some newly arriving field staff (the majority of whom have military backgrounds trained in mine clearance) but also among some of those developing related policy at the international level, and among funders. Related to this is the controversy around area reduction. Pioneered in the context of mine clearance, the idea of area reduction was initially bitterly resisted by many in the mine action community as potentially unsafe because it released land back to civilian use after determining through cross-checked information, including interviews with locals, that some areas were free of mines, rather than through painstaking and time-consuming manual clearance. (There was concern that safeguards on the accuracy of cross-checked information might be insufficient to ensure the safety of civilians.)

The fourth lesson of Southern Lebanon is that it shows that area reduction is crucial to reducing the risks of submunitions, since not every square inch of ground can be turned over in the search for them. Kerei Ruru, the MACC's Operations Chief who showed me around submunition-contaminated areas of Southern Lebanon, knows this better than most, as he went from site to site for several years overseeing the BAC teams at work there. He confirmed: "area reduction can save a lot of time and money. But it has to be based on solid data, and with technical survey assets in order to check".[12] To be effective in releasing land back to civilian use, both clearance and area reduction activities have to be understood by the locals, and have to engender confidence. "You've got to have a system for post-clearance review", Ruru said.

> It's important to go back to the communities you've worked in a year after clearance to ask the local people if they're actually using the land. If they are, then what are they using it for? If they're not using the land, then why not? Is it because they lack the confidence that the land is safe? Or is it for some other reason like lacking the money to replant the trees in their orchards?[13]

The fifth lesson of Southern Lebanon was one heeded in the Oslo process. For years, discussions both in the CCW and at the national level in many countries had assumed that technical fixes were possible to take care of the post-conflict hazards that cluster munitions cause. Specifically, the technical "improvement" most often mentioned was reducing the

failure rate of submunitions so that fewer would be left on the ground in a dangerous state. Self-destruct mechanisms were seen by many governments as a key means of achieving this. Yet the lesson demonstrated in Southern Lebanon in 2006 was that self-destruct clearly did not work to a satisfactory standard. Large numbers of dud Israeli M-85 bomblets with self-destruct—unexploded submunitions that should not have existed—were being found in Southern Lebanon, and were just as dangerous to dispose of as other unexploded submunitions.[14] And the massive quantities fired by the IDF in the war's closing stages had shown the central weakness of any reliability improvement argument—that even low failure rates could still create significant numbers of hazardous duds.

Self-destruct and other technologies in submunitions could, at best, be only part of the solution in reducing the risks to civilians of cluster munitions. The same was true of the other line of discussion in the CCW—to improve the implementation of existing international humanitarian law rules rather than creating new, weapon-specific law for cluster munitions. International humanitarian law prohibits indiscriminate attacks; that is, "those which are not directed at a specific military objective" or "which employ a method or means of combat which cannot be directed at a specific military objective".[15] Yet, egregiously, Hizbullah launched rockets at Israel throughout the conflict (at least a few containing submunitions)[16] too inaccurate to distinguish between military and civilian targets—and there seems precious little evidence Hizbullah made any attempt to observe such a distinction.[17] Combined with the high risk that cluster munitions can pose to civilians, the 2006 conflict underlined the need for concrete international rules to keep such weapons out of the hands of those inclined to use weapons without regard for humanitarian law.

Israel's use of cluster munitions also underlined the problems associated with the weapon. Israeli warplanes bombed targets in Lebanon during the war with cluster munitions containing very old BLU-63s with ensuing high failures—casings from some of the US-manufactured CBU-58 containers showed their warranties expired in the mid-1970s. And yet there was no international rule to prevent Israel from using ancient stocks of such unreliable munitions again. Then there was the IDF's firing of massive quantities of ground-launched cluster munitions in the final days of the conflict, perhaps intended to interdict Hizbullah forces pulling back. The dispersal of massive numbers of submunitions, combined with their higher operational failure rate than other kinds of explosive munitions like unitary warhead artillery projectiles, mortar rounds and the like, left large numbers of deadly unexploded duds on the ground or hanging from vegetation.

Cluster munition use by Hizbullah and Israel in 2006 underlined that debates on the technical characteristics of weapons and their supposed effects can be a very long way from the effects as seen on the ground. Outrage internationally about cluster munition use in Southern Lebanon would help to commence the Oslo process. The lesson of the Southern Lebanon conflict that alleged technical "fixes" like self-destruct mechanisms were not sufficient in themselves to address the humanitarian problems cluster munitions create took longer to sink in. But in

that respect, the post-conflict lessons gathered in Lebanon concerning the M-85 submunition would play a direct role within the Oslo initiative. Nor should the lessons of that conflict be forgotten in implementing the CCM.

Notes

1. For instance, see *Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1,* UN document A/HRC/3/2, 23 November 2006.
2. Greg Crowther, 2008, *Counting the Cost: The Economic Impact of Cluster Munition Contamination in Lebanon,* Landmine Action, p. 3. The Landmine Action report does not include direct costs borne by the Lebanese government in funding Lebanese Armed Forces clearance.
3. Ibid.
4. Figure taken from MACC, "September 2008 Report of the Mine Action Co-ordination Centre, South Lebanon", 6 October 2008, p. 3, table "Demining/CBU Accidents". Although these figures also apply to incidents in the course of clearance of mines (which were not used, as far as the MACC is aware, in the 2006 conflict), the vast majority are from incidents involving submunitions.
5. Eventually, the MACC was to identify at least 10 basic types of cluster munition in Southern Lebanon: the M-42/M-46, M-77, M-85, MZD-2, BLU-63B, BLU-61A, M-43, BLU-18, BLU-26B and Mk-118, not counting various carrier projectiles. See MACC, *War 2006: Threat Factsheet,* ver. 2, 10 April 2008.
6. Author's interview with Colin King, 4 September 2008, and discussions with MACC SL staff, 5–12 October 2008.
7. See Article 4 of CCW Protocol V on explosive remnants of war. Although Israel is not yet a party to Protocol V, Amended Protocol II on mines, booby-traps and other devices to which it is party recognizes the importance of providing information on mined areas after the cessation of hostilities; see Article 9(2).
8. Dalila Mahdawi, "Israel to Hand over Cluster Bomb Maps—Israeli Media", *The Daily Star* (Beirut), 6 March 2009.
9. UN News Service, "Israel Hands over Cluster Bomb Maps to UN Force in Lebanon", 13 May 2009.
10. Primarily those of the British demining NGO Mines Advisory Group, and those of the UN Interim Force in Lebanon (UNIFIL).
11. Author's interview with Knut Furunes and Per Nergaard, 8 October 2008.
12. Author's discussion with Kerei Ruru, 11 October 2008.
13. Idem.
14. According to the MACC, M-85 submunitions with self-destruct cannot be rendered safe; see MACC, op. cit., p. 6.
15. See for instance Article 51(4) of the 1977 Additional Protocol I to the 1949 Geneva Conventions, which is widely considered to reflect customary law in the matter.
16. These were 122mm Type 81 rockets containing 35 MZD-2 submunitions. The number launched is unknown. See MACC, *Threat Factsheet,* op. cit., p. 9. More information is available at <www.globalsecurity.org/military/world/para/hizballah-rockets.htm>.
17. See Human Rights Watch, 2007, *Civilians Under Assault: Hezbollah's Rocket Attacks on Israel in the 2006 War,* p. 3.

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