

UNODA OCCASIONAL PAPERS

No. 17, OCTOBER 2009

PROMOTING THE UNIVERSALITY OF THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS



United Nations Office for
Disarmament Affairs

A joint project of the
United Nations Office for Disarmament Affairs
and the
European Union



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Contents

	<i>Page</i>
Foreword by Sergio Duarte	v
Foreword by Annalisa Giannella	viii
I. Introduction	1
II. Outcome, lessons learned and the way forward	3
III. Presentations	
<i>The Convention on Certain Conventional Weapons</i>	7
<i>The Convention on Certain Conventional Weapons and international humanitarian law</i>	13
<i>Amended Protocol II to the Convention on Certain Conventional Weapons</i>	17
<i>Protocol V on Explosive Remnants of War</i>	23
<i>Implementation of the Convention on Certain Conventional Weapons</i>	27
<i>A compliance mechanism for the Convention on Certain Conventional Weapons and its Protocols</i>	31
<i>The Convention on Certain Conventional Weapons and its Protocols: Plan of Action and Sponsorship Programme</i>	35
<i>Activities toward the universal ratification and implementation of the Convention on Certain Conventional Weapons</i>	39
<i>Mines other than anti-personnel mines</i>	41
<i>Cluster munitions and the Convention on Certain Conventional Weapons</i>	43
<i>The United Nations and mine action</i>	47
Appendices	
<i>List of participants</i>	53
<i>Acronyms</i>	57

Foreword by Sergio Duarte

THE CONVENTION on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW)—a key treaty encompassing both International Humanitarian Law and disarmament dimensions—builds upon the basic humanitarian principle that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited. Also known by the more opportune and expressive description of the “Convention on Inhumane Weapons”, this legal instrument seeks to ban or restrict the use of weapons that affect civilians indiscriminately or cause superfluous injury or unnecessary suffering.

The CCW was conceived amid growing concern over the use of weapons and methods of warfare that have an **inhumane and indiscriminate** impact. The Convention reflects the international community’s conviction that rapid advancements in military technology may lead to the use or emergence of weapons incompatible with the traditional humanitarian dimension of the Law of Armed Conflict. Inspired by this conviction, the international community has successfully elaborated under United Nations auspices this unique Convention, which provides a flexible and future oriented framework to address weapons that have an unacceptable humanitarian impact.

The CCW, however, is not yet universal. The Convention certainly enjoys the membership of the world’s major military powers. Yet important regions of the world remain underrepresented. Some of the states yet to accede are heavily affected by mines and explosive remnants of war—two major global humanitarian problems addressed under the CCW.

It is against this background that the United Nations Office for Disarmament Affairs (UNODA)—with financial support from the

European Union—has engaged in the practical implementation of the Plan of Action to Promote Universality of the Convention and its annexed Protocols, adopted by the CCW states parties in 2006. The Plan of Action also formed the basis for the initiative taken by the European Union through its Joint Action to embark on a journey to promote accession to the CCW, especially by developing and least developed states that are suffering from the effects of landmines and explosive remnants of war.

Engaging states that still remain outside the CCW through a series of six regional and subregional seminars was a strategy that has proven to be successful. These seminars sharpened the focus of those states to gather as much information as needed for accession to the Convention and its protocols. Each region had its own specificity and uniqueness hence the seminars were tailored to the prevailing situations and conditions. The fruits of this labour are now starting to materialize as parties to the Convention and its five protocols are steadily increasing.

This publication provides an overview of this initiative. It has two main purposes: to serve as a practical tool for the promotion of the universality and strict implementation of the Convention and its protocols, and to provide comprehensive information on the partnership built in the process of implementing this joint EU–UNODA initiative in support of the CCW.

For those not familiar with the spectrum of International Humanitarian Law or the CCW, this publication does not delve deep into substantive detail about the machinery of the Convention and its protocols. Instead it provides a general balanced examination of the legal and implementation aspects of the Convention and its operation. It is also a valuable source of lessons learned, as well as an assessment on how such an endeavour of this magnitude would be best organized in future.

Promoting respect for and strict compliance with the general rules of International Humanitarian Law, on the one hand, and with the detailed rules for specific weapons that provoke humanitarian concerns as they have been developed and incorporated in the CCW and its protocols, on the other, is a matter of primary and vital importance.

I am convinced that this publication and the initiative it describes will serve as a useful resource for this noble cause.

The United Nations Office for Disarmament Affairs is grateful for the generous financial support provided by the European Union for this initiative. We would also like to emphasize the valuable cooperation and assistance built during the implementation of this initiative with our partners from the European Union, the International Committee of the Red Cross, the United Nations Mine Action Service, and the United Nations Institute for Disarmament Research.

A handwritten signature in black ink, appearing to read 'S. Duarte', with a long horizontal flourish extending to the right.

Sergio Duarte

United Nations High Representative
for Disarmament Affairs

Foreword by Annalisa Giannella*

THE ADOPTION OF A PLAN OF ACTION for universalization of the 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) and a Sponsorship Programme at the Third Review Conference held in Geneva in November 2006 constituted a significant call to which the European Union was ready to respond. A Joint Action, a typical instrument of the Common Foreign and Security Policy (CFSP) of the European Union, was adopted in July 2007 in order to take action and mobilize the necessary financial resources.

The CCW attracted the attention of the EU member states for its potential as a dynamic instrument responsive to advances in weapons technology and developments in the nature and conduct of armed conflict. The entry into force of Protocol V on Explosive Remnants of War in 2006, eight months before the adoption of the Council Joint Action, was a good example of this potential. Earlier in 2007 the European Union had launched a series of diplomatic démarches to promote the CCW among states not party.

This EU initiative is fully consistent with our general approach to security as outlined in our Security Strategy, as well as in the Weapons of Mass Destruction and Small Arms and Light Weapons Strategies, all adopted by the European Council. These strategies are all based on the principles of effective multilateralism, prevention and international cooperation.

The European Union supports the promotion of the international treaties and conventions system and the full national implementation of those instruments. It does so by providing political support through diplomatic démarches and by providing assistance in a targeted manner in order to promote a particular treaty or convention and to reach out to non-state parties.

Shortly after the adoption of the Joint Action, an opening event was held in New York to mark the launch of the Joint Action in the

* Annalisa Giannella was appointed in October 2003 by Javier Solana, High Representative for the Common Foreign and Security Policy of the European Union, as his Personal Representative on non-proliferation issues.

margins of the First Committee of the 2007 UN General Assembly. It brought together the major actors behind the implementation of this Joint Action: the EU Presidency, the Council Secretariat and the United Nations Office for Disarmament Affairs (UNODA), with which the European Union has established a comprehensive and fruitful cooperation framework through our activities in support of UN Security Council resolution 1540, the Biological Weapons Convention, the International Tracing Instrument and of course the CCW. UNODA was selected by EU member states to organize and implement the activities envisaged by the Joint Action in support of the CCW.

The expertise and know-how of UNODA have been fundamental in the organization of the six regional seminars that began in the Dominican Republic in March 2008 and took us during 2008 to Togo, Kazakhstan, Morocco and Nepal in a remarkable effort to share knowledge and experience on the CCW in Latin America and the Caribbean, East and West Africa, the Horn of Africa, the Great Lakes region and South Africa, Central Asia, the Middle East and the Mediterranean, and in South-East Asia and the Pacific Islands. The support provided by each of the host countries must be acknowledged as well as the organizational effort made by the United Nations Regional Centres for Peace and Disarmament in Lima, Lomé and Kathmandu. The local EU Presidency took part in all the regional seminars, thus ensuring EU visibility.

The European Union is also grateful for the support of the International Committee of the Red Cross (ICRC), the United Nations Institute for Disarmament Research (UNIDIR) and the United Nations Mine Action Service (UNMAS), which contributed to the success of these seminars. The European Union thanks all the states parties to the CCW that took part in the seminars in order to share their practical experience and views on the CCW with states not party in each of the target regions.

The series of seminars served to identify particular areas of difficulty for states not party to the Convention and to clear up persistent misunderstandings about the CCW. The aspects raised during the proactive discussions included the lack of information on the CCW, the commitment to peace and security, the lack of human and material resources to undertake the ratification process, the crucial role played

by the military in outreach and education on obligations under the CCW, and the balance between military and humanitarian concerns.

The lessons learned from these regional seminars form the substance of this publication, which is financed by the Joint Action, and which aims to take forward the results of the seminars and serve as a reference for states that are ready to undertake the process of ratifying the CCW. In this light, the ratification kit prepared by the ICRC is of particular relevance.

During the seminars many participants announced their intention to report favourably to their governments and parliaments on the relevance of the CCW and to initiate the accession process. In September 2008 Jamaica ratified the CCW and all its annexed protocols. The seminars have helped to pave the way toward ratification and to strengthen regional networks by involving regional organizations.

Finally, the Joint Action has also served to channel an important EU contribution to the Sponsorship Programme. The Sponsorship Programme has financed the participation as observers in some of the CCW meetings held in Geneva of many of those who attended the regional seminars. Again the objective of the European Union was to encourage countries to accede to the Convention.

The European Union sincerely hopes to have contributed to the Plan of Action for CCW universalization agreed by states parties at the Third Review Conference of the CCW.



Annalisa **Giannella**

Personal Representative
to the High Representative for the
Common Foreign and Security Policy
of the European Union

I. Introduction

IN OCTOBER 2007, a joint project of the United Nations Office for Disarmament Affairs (UNODA) and the European Union (EU) to promote the universality and implementation of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW) was launched in New York during the First Committee of the sixty-third session United Nations General Assembly. UNODA, with the financial support of the EU, and in cooperation with the International Committee of the Red Cross, the United Nations Institute for Disarmament Research and the United Nations Mine Action Service, organized a series of six regional and subregional seminars during the course of 2008. The seminars were convened in: (i) Latin America and the Caribbean; (ii) West and East Africa; (iii) the Great Lakes Region and Southern Africa; (iv) Central Asia; (v) the Middle East and the Mediterranean; and (vi) South, Southeast Asia and the Pacific, respectively, with a total of sixty-nine States participating.

UNODA is publishing this *Occasional Paper* in an effort to share knowledge and continue to stimulate discussion on universalizing the CCW. This publication provides information on the six regional seminars held around the world and contains materials on how to accede to and implement the CCW and its various Protocols at the national level. Additionally, it offers insights into the relationship of the CCW with other disarmament/humanitarian treaties dealing with cluster munitions and landmines. The joint project underlines the commitment of the United Nations and the EU to promote international peace and security through universalizing international disarmament and humanitarian norms.

II. Outcome, lessons learned and the way forward

Overall assessment

THE UNODA-EU JOINT PROJECT on promoting the universality of the CCW and its Protocols was carried out through a series of six regional and sub-regional seminars. It was executed successfully and received positive feedback from participants. A total of sixty-nine States, the majority of which were non-State parties to CCW, and five regional organizations participated in the seminars.

The seminar project accomplished its main objectives, proving the regional/sub-regional approach effective in achieving a measurable impact. The joint effort led to an increase in CCW membership, whereby six States subsequently acceded to the Convention. Additionally, a number of participating States declared their intention to accede, some of which had even begun their national processes. The seminars also “planted the seeds” for more States to consider and act on early accession. Furthermore, several States parties to the CCW ratified or declared their intention to ratify additional Protocols, in particular Protocol V.

The seminars successfully promoted better understanding of the Convention and its humanitarian and disarmament goals by informing participants of key provisions, Protocols and how its machinery functions. The seminars raised awareness and interest of participants in International Humanitarian Law (IHL) in general, and the CCW and its Protocols, in particular. They also contributed to understanding better the specificity of each region, including the challenges facing States and their needs for assistance.

Experiences gained and lessons learned

Accurate and up-to-date information on the Convention, ongoing activities within its framework and national processes of accession and implementation were fundamental in promoting CCW accession. To achieve this, the core partners¹ synergetically shared their expertise and knowledge with the participating countries through informative presentations and interactive discussions. Comprehensive information on the Convention and its related diplomatic and legal processes were also disseminated through documents, such as key decisions of the CCW Conferences, the ratification/accession kit² and the CCW website.

At each seminar, the presentations and information-sharing prompted substantive interactive discussions. The less formal settings of the seminars and the involvement of States not party to the Convention to serve as chairs or speakers also facilitated frank and useful dialogues.

In addition, States parties from the same regions shared their knowledge of the instrument, national experiences in ratifying/acceding to the treaty and national legislations and practice in the ratification and implementation process, all of which proved to be invaluable.

Prior to each regional seminar, a questionnaire was distributed to State-nominated participants regarding their countries' status of accession, which proved to be an effective tool on two levels. It better prepared participants for interactive and productive discussions at the seminars and helped speakers tailor their presentations to address the different needs of each region or sub-region.

At the end of each seminar, regional network of contact points was initiated to: (a) maintain a continuous flow of information and communication among participating States and key organizers, and (b) follow-up on the outcome of the seminars.

¹ The United Nations Office for Disarmament Affairs, the European Union, the International Committee of the Red Cross, the United Nations Institute for Disarmament Research and the United Nations Mine Action Service are the core partners.

² The ICRC ratification kit is available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JR4W> (accessed 12 July 2009).

Finally, through improved coordination among the core organizers, the partnership formed between the United Nations entities, including the three regional centres in Lima, Lomé and Kathmandu, and other international and regional organizations, produced the synergy necessary to effectively implement the joint project. This partnership increased confidence among the participating States and helped promote the universalization of the Convention.

Despite implementation successes, there were areas that could be improved upon or be done differently. As a multi-partner project, intensive coordination and necessary adjustment are required both prior to and during implementation. Preferably, the implementing entity should be fully consulted regarding the details of such a Joint Action before it is finalized. Additionally, the implementation provisions should be formulated in general and flexible terms. All implementing partners should be involved fully in developing the detailed execution plan, which should include an overall outreach strategy. In disseminating treaty-related information, both in terms of its provision and accession, greater effort should be made to tailor the different situations and needs of each sub-region. Due to the complexity of the project, a dedicated project manager or coordinator, assisted by an administrative secretary, are indispensable elements of any such future initiatives. Ideally, two participants from each country should be invited, one from the Foreign Ministry, and another from the Ministry or Department of Defense or legislative bodies.

The way forward

The regional seminars also identified areas where further efforts were needed to achieve the universality of the CCW and its Protocols. These included the need: (a) to further promote awareness of the importance and impact of the CCW and its Protocols, particularly among Governments' high-level policy-makers; (b) for accession assistance and capacity-building for some States that are not party to the CCW, many of which are affected by landmines and/or explosive remnants of war (ERW); and (c) for States parties, relevant international and regional organizations, civil society and other stakeholders to join forces in promoting the universality of the CCW and its Protocols.

Since the Convention is complicated in substance and process, it is unrealistic to expect immediate, considerable change in its membership as a result of the regional seminars. However, these seminars served as a good starting point for a sustainable process to pursue the Convention's universality in order to achieve its humanitarian and disarmament goals. To best capitalize on the momentum generated by the regional seminars, it would be advantageous to start follow-up initiatives sooner rather than later. It would be efficacious for the core partners of the seminar project, such as the United Nations, including its regional centers for peace and disarmament in Lima, Lomé and Kathmandu, the EU and the ICRC to cooperate with regional organizations and civil society at the global, regional and national levels in taking coordinated follow-up actions.

Promotion efforts should focus on States not party to the Convention that fall into the following categories: signatory States, States that have declared their intention/ interest in accession, States that are affected by landmines and ERWs. The follow-up should also include promoting accession/ratification by States parties to the CCW with regard to those Protocols to which they are not yet party.

A number of specific follow-up actions were identified to foster CWC accession or ratification. These included: (a) convening national workshops, or small regional workshops for countries with similar situations and needs; (b) having the United Nations, the EU and their member States *démarche* and lobby States not party to the Convention at high political levels; (c) utilizing the existing national humanitarian coordination mechanisms, such as national IHL committees; (d) conducting, upon request, legal- and technical-assistance visits to States in need; (e) sharing national ratification and implementation experiences and lessons learned by CCW States parties, in an effort to persuade those States not party to accede. Moreover, it was recommended that ICRC consider: (i) adapting its CCW ratification/accession kit to accommodate different law systems; and (ii) making it available in different languages, as needed. It was also envisaged that the regional and national offices of the United Nations, the EU and the ICRC be given more prominent roles in the follow-up actions.

III. Presentations

The Convention on Certain Conventional Weapons

THE CCW is the product of the international legislative activities of the 1970s, which led to a considerable development of international humanitarian law (IHL). It came as a result of the concerted efforts of the international community that reflected the increasing awareness that rapid advances in military technology had led to the development of weapons that are not always compatible with the humanitarian aspects that have traditionally been part of the law of war.

The Convention was negotiated at the special United Nations Conference on the CCW, convened pursuant to resolution 32/152 of the United Nations General Assembly. The Conference met for two sessions in Geneva, on 10–28 September 1979 and on 15 September–10 October 1980, and successfully adopted on 10 October 1980 the CCW and its Protocols I, II and III. The Convention was open for signature in New York for a period of 12 months from 10 April 1981. Together with its first three protocols, it entered into force on 2 December 1983—six months after the date of deposit with the United Nations Secretary-General of the twelfth instrument of ratification.

The CCW is based upon and reflects basic humanitarian principles, such as the protection of the civilians against the effects of hostilities, or the principle that the right of the parties to an armed conflict to choose methods and means of warfare is not unlimited. The Convention aims at regulating or prohibiting on humanitarian grounds weapons that do not make distinction between civilians and combatants or that cause unnecessary suffering or superfluous injury. Though it contains provisions typical of disarmament and arms control treaties, such as weapons bans or provisions on transfer, this Convention is primarily an important IHL instrument and focuses on restrictions or prohibitions on the use of weapons considered inhumane. The CCW protocols not only reflect customary rules but also led to the establish-

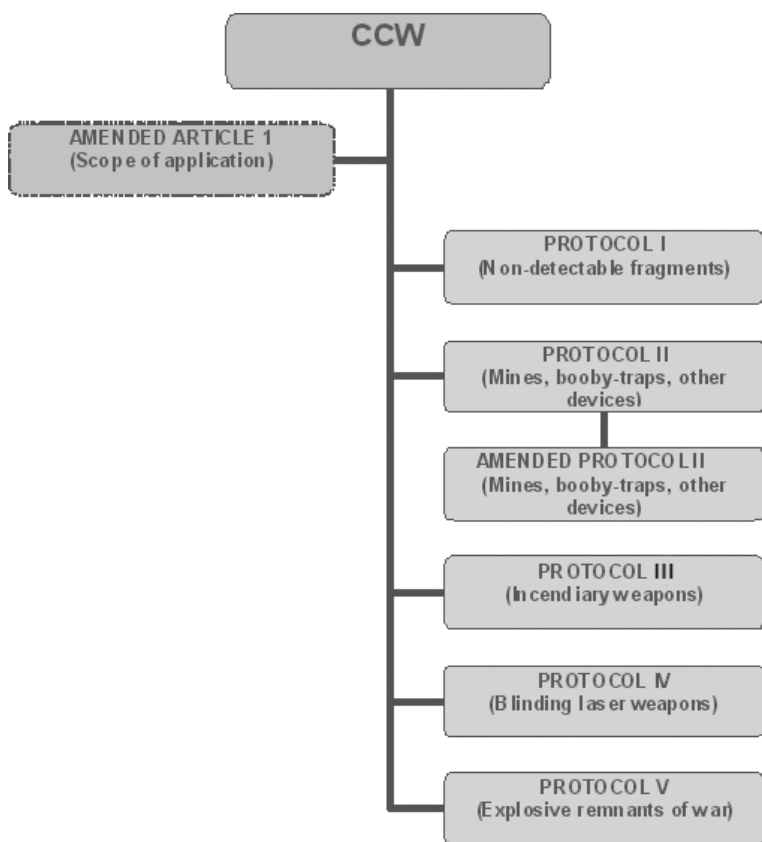
ment of customary international law, as in the case of Protocol IV on Blinding Laser Weapons.

The CCW has a distinctive and flexible structure. It consists of the main (framework) Convention and protocols annexed to it (see Figure 1). The main Convention does not contain prohibitions or restrictions on the use of any particular weapon. Instead, it only creates the legal framework within which the protocols operate. Thus it contains, *inter alia*, the typical final clauses of any international treaty, such as provisions on signature, ratification, acceptance, approval or accession, as well as entry into force of the CCW and its protocols; on review of the operation and the status of the CCW; and identifying the United Nations Secretary-General as the depository. These provisions are applicable to all the protocols and are not repeated therein.

Prohibitions and restrictions on the use of specific weapons are contained in the protocols annexed to the Convention. These are Protocol I on Non-Detectable Fragments; Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996 (amended Protocol II);¹ Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons; Protocol IV on Blinding Laser Weapons; and Protocol V on Explosive Remnants of War.

The provisions of the CCW and its protocols are softer than the provisions of some other similar treaties and often contain minimal implementation-related obligations. For instance, with very few exceptions, the protocols do not contain strict deadlines for the implementation of the obligations enshrined therein. Conditional language, like “as soon as practically feasible” or “as soon as possible”, is also used. CCW decision-making practice is often referred to as a reason for such soft provisions. Although not legally required under the Convention, its protocols, and the respective rules of procedure, in the deliberations and negotiations relating to the Convention and its annexed protocols, the High Contracting Parties have proceeded on

¹ Although the original Protocol II is—legally—still in force, it has little sense today as it did not prevent the humanitarian crisis of the 1990s associated with the use of mines, in particular anti-personnel landmines, and was superseded by the adoption of amended Protocol II and the Ottawa Convention on Landmines (the Mine Ban Convention).

Figure 1. Structure of the Convention and protocols

the basis of consensus and no decisions have been taken by vote. It is evident that this consensus-based decision-making practice places limits on the final outcome of the negotiations and—sometimes—even prevents their commencement. Consensus is, however, also regarded as one of the main reasons for the participation in the Convention and its protocols of all major military powers, which is often not the case in some other similar treaty regimes.

The CCW and its protocols apply different treaty techniques. They impose bans or regulate the use of certain weapons. Moreover,

besides establishing legally binding rules for its States parties, the CCW also makes use of other tools, such as best practices (the technical annex of Protocol V) or political decisions (the establishment of a compliance mechanism applicable to the CCW and its protocols, the Sponsorship Programme agreed upon by the Third Review Conference, the implementation mechanism under Protocol V, etc.).

To become a party to the Convention a State has to consent to be bound by at least two of its protocols. This particular requirement makes the CCW a very flexible treaty as a State may defer the accession to a specific protocol and still become a party to the Convention and the remaining protocols. But it also complicates its implementation, in particular at the international level, as it leads to the establishment of a variety of legal regimes. Thus, each of the protocols, once in force, commences its own “life” and creates its own stand-alone legal regime and membership. Together the States parties to all the protocols form the membership of the Convention. For this reason the Convention and each of its protocols have a different membership. An important step forward in the synchronization of these regimes was made at the Second Review Conference of the High Contracting Parties to the CCW in 2006, which adopted a Plan of Action on Promoting the Universality of the Convention, pursuant to which the States parties undertook, *inter alia*, to “Review thoroughly their participation in the CCW and its annexed Protocols with the view to consider acceptance, at their earliest convenience, of those Protocols and of the amendment of Article 1 of the CCW, which they have not yet ratified or otherwise acceded to” (Action #1).

As intended by its negotiators, the unique structure of the CCW makes it an open and future-oriented treaty as at any moment the States parties may decide to address the humanitarian challenge posed by another weapon not yet covered by the existing protocols and to negotiate and adopt a new protocol to the CCW. For instance, concerns about blinding laser weapons and their potential humanitarian impact led to a unique case in the history of arms control when a newly developed weapon system that had never been used in an armed conflict was banned by the adoption in 1995 of Protocol IV. Likewise, the humanitarian crises caused by explosive remnants of war (ERW) led to the development and adoption in 2003 of Protocol

V. Although the legislative activities under the CCW have not always been successful (the negotiations on a new protocol addressing the humanitarian impact of mines other than anti-personnel mines have not yet led to the adoption of a new protocol), the very fact of the existence of a forum to discuss and study alleged harm to civilians caused by a weapon makes the Convention a useful practical tool in the contemporary IHL architecture.

Like most IHL treaties, this Convention originally applied to international armed conflicts only. Taking into account that most major conflicts today are internal conflicts, the CCW States parties decided in 2001 to amend Article 1 of the Convention thus changing its scope of application—the way it was done five years earlier when the amendment to Protocol II was negotiated. As result the CCW and its protocols now apply to all armed conflicts, including those not of an international character. The expanded scope of application, however, does not apply automatically to future protocols, which may apply, exclude or modify the scope of their application in relation to Article 1 of the CCW.

The CCW and two of its protocols, amended Protocol II and Protocol V, have their own implementation processes, which function in parallel.

All CCW States parties meet annually at a Meeting of the States Parties to review the status and operation of the Convention and its protocols, and to consider the work done by the Group of Governmental Experts (GGE) that was established in 2001. They also decide on the mandate of the GGE, which may be to negotiate a new protocol or to study a specific problem or weapon, as well as on the number of sessions per year it may need to fulfil its mandate.

Amended Protocol II has its own implementation structure consisting of Annual Conferences. Its States parties may also establish a Group of Experts to consider its implementation or a specific problem.² The States parties to Protocol V have also established an implementation mechanism for the protocol consisting of Annual Con-

² Such a group was established by the First and the Second Annual Conferences. In 2008 the Tenth Annual Conference re-established the group and mandated it to consider the status and operation of the protocol, and to study the issue of improvised explosive devices.

ferences and meetings of experts to discuss specific problems of the implementation of the protocol, such as clearance of ERW or victim assistance. The discussions in the meetings of experts are facilitated by coordinators who then report to the Annual Conferences.

The CCW is not yet universal though its membership is increasing constantly. In order to boost its membership and increase participation in the CCW process, the States parties agreed to make accession to the Convention and its protocols a high priority and adopted in 2006 the Plan of Action to Promote the Universalization of the CCW and its Protocols.

The Convention on Certain Conventional Weapons and international humanitarian law

THE CCW prohibits or restricts the use of certain conventional weapons. These prohibitions or restrictions are based on certain rules of international humanitarian law (IHL), which are either treaty rules, applying only to the states that are party to the treaty, or customary law, applying to all States, as it flows from State practice. Within these legal regimes are general rules on the conduct of hostilities and rules relating to specific weapons.

IHL is based on age-old practices of the conduct of warfare and the protection of civilians and those *hors de combat*. However, the codification of weapons issues began in the middle of the nineteenth century with the St. Petersburg Declaration of 1868, which is generally accepted as the first agreement prohibiting the use of a particular weapon in warfare. It prohibits the use of any projectile under 400g that explodes or uses inflammable substances because these weapons would unnecessarily increase the suffering of men rendered *hors de combat*, or which would inevitably lead to their death.

Two conferences were then held in the Hague in 1899 and 1907 on issues relating to weapons and other conduct of hostilities. The general rule that was established and codified is that the rights and obligations of belligerents in the conduct of military operations and the means of harming the enemy are limited. The 1899 Conference adopted a declaration prohibiting the use of bullets that expand or flatten easily in the human body (dum-dum bullets) and another prohibiting the use of projectiles the sole purpose of which is to diffuse asphyxiating gases, which later led to the adoption of the 1925 Geneva Protocol.

The Geneva Conventions of 1949 aim to protect people from the effects of armed conflict and ensure that all persons not taking part in hostile acts are respected and protected. It was not until the advent of the Protocols Additional to the Geneva Conventions of 1977, however,

that concepts of the conduct of hostilities were introduced. Although neither the Geneva Conventions nor the Additional Protocols have rules on specific weapons, Additional Protocol I contains the general rules on the conduct of hostilities that have specific application with regard to weapons, such as distinction, proportionality, precautions and the prohibition of indiscriminate attacks. These principles underlie the prohibitions and restrictions of the weapons mentioned in the CCW.

The general principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, for example, is found in Article 35 of Protocol I additional to the Geneva Conventions. This language is reflected in paragraph three of the preamble to the CCW.

Regarding the prohibition on the use of weapons that cause unnecessary suffering or superfluous injury, Article 35 of Additional Protocol I asserts that weapons that are considered to cause injury to those participating in the conflict that is greater than that required to fulfil military objectives are not allowed. Moreover, it is prohibited to use those that intend or may be expected to cause long-term and severe damage to the environment. Both of these rules are also reflected in the preamble to the CCW.

Article 36 of Additional Protocol I obliges States to assess the legality of new weapons and means or methods of warfare in its study, development, acquisition or adoption of new weapons and to determine whether their employment would be prohibited by this Protocol or some other rule of IHL.

The rule of distinction says that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only. This rule relates to individuals and requires that a distinction be made between civilians and combatants, between persons who do not take direct part in the hostilities and persons who do, but also to objects, requiring a distinction between civilian and military.¹

¹ See the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 41.

Regarding proportionality, this balances the incidental loss of civilian life and the damage expected on the one side, with the concrete and direct military advantage anticipated on the other. Additional Protocol I States that “an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” is considered indiscriminate and is therefore prohibited.² The article also says that if an action does not have a specific military objective, or employs a method or means of combat that cannot be directed at a specific military objective or the effects of which cannot be limited, it is prohibited.

Article 57 of Additional Protocol I States that constant care shall be taken to spare the civilian population, civilians and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations. This rule is reflected in the second paragraph of the CCW preamble. The article requires States to “Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects”.³ The article continues by calling on States to “Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.⁴

Article 85 of Additional Protocol I refers to as grave breaches “Making the civilian population or individual civilians the object of attack” and “Launching an indiscriminate attack affecting the civilian

² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 51(5)(b).

³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 57(2)(a)(ii).

⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 57(2)(a)(iii).

population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects”, thus making them war crimes.

These rules of IHL are thus at the heart of the CCW and violation of these rules should be addressed in States’ domestic legislation dealing with the implementation of the Convention, as well as the legal implementation of Additional Protocol I to the Geneva Conventions.

Amended Protocol II to the Convention on Certain Conventional Weapons

PROTOCOL II TO THE CCW, on mines, booby-traps and other devices, was negotiated and adopted together with the Convention in 1980. The First Review Conference of States parties to the CCW amended Protocol II on 3 May 1996. It entered into force on 3 December 1998 and currently has 92 States parties. The amended Protocol constitutes one of the legal instruments on which the legal framework for United Nations mine action rests.¹ Its technical annex contains specifications for recording, detectability, self-destruction and self-deactivation, and on international signs for minefields and mined areas. It applies to situations of international and non-international armed conflict, meaning its rules apply also to parties in a conflict other than States.

Mines are defined as munitions “placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle”.² Therefore, this protocol applies to both anti-personnel mines and to anti-vehicle mines, even though the latter are referred to in the Protocol as “mines other than anti-personnel mines” (MOTAPM).

Provisions on mines depend on the nature of the mines (anti-personnel or anti-vehicle), but also on the way they are used. Mines can mainly be used either by direct emplacement or by delivering them through artillery, missile, rocket or aircraft, in which case they would be considered as remotely-delivered mines.

One of the main principles in the Protocol relates to the responsibilities of the users of mines. This refers to the general obligations

¹ See *Mine Action and Effective Coordination: The United Nations Inter-Agency Policy*, United Nations Inter-Agency Coordination Group on Mine Action, 2005. This policy was approved by the Principals of the Inter-Agency Coordination Group on Mine Action on 6 June 2005.

² Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), art. 2(1).

of recording the use of mines; clearing, removing or destroying them; or maintaining them according to the Protocol.

With regard to anti-personnel mines, States parties can only use detectable mines, according to standards that are contained in the technical annex. Anti-personnel mines that are directly emplaced, manually for example, should be designed to self-destruct after a period of time, also in accordance with specific standards. However, a State party could be exempted from this obligation if the mined areas are marked around their perimeters, fenced and monitored or if the mined areas have been cleared before leaving. The use of remotely-delivered anti-personnel mines is in principle prohibited, but they could still be used if they are recorded and contain self-destruction and self-deactivation features.

Amended Protocol II is much less restrictive with regard to the use of MOTAPM than with anti-personnel mines. There is no clear restriction on the use of directly emplaced anti-vehicle mines and remote delivery, although prohibited in principle, could still be done if the use is recorded.

Booby-traps are defined in the Protocol as “any device or material which is designed, constructed or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act”.³ It establishes a considerable number of situations in which booby-traps are prohibited, including when attached to or associated with:

- Recognized emblems and signs;
- The sick, wounded or dead, as well as animals or their carcasses;
- Medical facilities, equipment, supplies or transportation;
- Children’s toys or other objects designed for their use; and
- Historic monuments and places of cultural or spiritual heritage.⁴

By “other devices”, the Protocol refers to manually emplaced munitions and devices, including improvised explosive devices,

³ Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), art. 2(4).

⁴ See Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), art. 7(1).

designed to kill, injure or damage and that are actuated manually, by remote control or automatically after a lapse of time. It does not establish any specific obligation with regard to their use, except for the general obligation of the user to record their use and ensure its clearance or, otherwise, its maintenance in accordance to the Protocol.

The Protocol contains provisions restricting or prohibiting the transfer of weapons falling under its scope. Weapons that are prohibited in use should not be transferred. Transfers to non-State actors are prohibited, as well as to States not party, unless the latter agree to use them in accordance to the Protocol.

Article 9 is very clear about the obligation of users of mines, booby-traps and other devices to record information on their use, as well as on minefields and mined areas. The information to be recorded includes the location (by coordinates for example), maps and diagrams, types of weapons used, their numbers and any other technical information. States are obliged to retain these records and use this information to protect civilians, for example by passing the information to the United Nations to facilitate protection, but also to other parties when the State is no longer in control of the territory where mines, booby-traps and other devices have been used.

Article 10 refers to the general obligation of clearance, removal and destruction of mines, booby-traps and other devices. These weapons should be removed after the cessation of active hostilities, as long as they are located in areas under the control of the territory of the States that have used them. If this is not the case, the user should provide the party in control of the affected territory with technical and material assistance for their removal.

Other obligations relate to technical cooperation and assistance (article 11), and to the protection of peacekeeping, humanitarian, fact-finding and International Committee of the Red Cross (ICRC) missions (article 12).

With regards to implementation, article 13 provides for annual conferences to facilitate consultations and cooperation among States parties to review the operation and the status of the Protocol, and to consider matters arising from the mandatory national annual reports and matters linked to the development of technologies to protect civilians from the indiscriminate effects of mines. The annual reports

should inform, among other matters, on the dissemination of information on the Protocol to armed forces and the civilian population, mine clearance and rehabilitation programmes, national legislation and measures taken on international technical information exchange.

Regarding compliance, article 14 requires each State party to take appropriate legislative and administrative steps and measures to prevent and suppress violations of the Protocol, including the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of the Protocol, wilfully kill or cause injury to civilians.

It is unquestionable that provisions on anti-personnel mines in the Amended Protocol are less restrictive than those in the Ottawa Convention on Landmines (the Mine Ban Convention). The latter represents a comprehensive ban on these weapons, while the former only establishes restrictions and some prohibitions on their use. The United Nations supports the Mine Ban Convention and promotes its universalization as a means to eliminate the problems caused by the use of anti-personnel mines.

Nevertheless, Protocol II is the only treaty specifically addressing anti-vehicle mines, booby-traps and other devices. While not banning them, it contains restrictions and some prohibitions, as well as the general obligations of recording, clearing, removing, destroying or otherwise maintaining these weapons. Therefore, the Protocol remains an important instrument of international humanitarian law and deserves universal adherence and implementation.

The United Nations Inter-Agency Coordination Group on Mine Action has repeatedly called on States parties to the CCW to enhance the existing treaty rules applicable to anti-vehicle mines, either through the negotiation of a new protocol on MOTAPM or through a new amendment of Protocol II. The Coordination Group, worried about the humanitarian impact caused by anti-vehicle mines, wishes that new provisions on these would at least match the standards on detectability and lifespan applicable to anti-personnel mines in the Protocol.

It should also be recognized that a number of provisions in the Protocol may be difficult to implement, thus requiring a careful reading and study to ensure a clear interpretation. This may be due to the

existence of various exceptions to general obligations, especially with regards to mines, but also to the technical standards that have to be met for detectability and lifespan of mines. Despite this challenge, the Protocol does not contain any specific monitoring mechanism. States parties could use the opportunity given by the annual conferences, and also by the compliance mechanism for the whole CCW regime, created by the Third Review Conference of High Contracting Parties in 2006, to promote faithful implementation by each State party. Except for the first two annual conferences, States parties to Protocol II have not made much substantial use of them for the promotion of compliance. The work in 2009 of a Group of Governmental Experts of States Parties to the CCW, as decided by the 2008 Meeting of States Parties to the CCW, could be an opportunity to promote clarification on the scope of provisions, facilitate training and effective national implementation of Protocol II.

Protocol V on Explosive Remnants of War

PROTOCOL V ON EXPLOSIVE REMNANTS OF WAR to the CCW was negotiated by the Group of Governmental Experts established for this purpose by the Second Review Conference of the High Contracting Parties to the Convention in 2001. After having studied for a year the humanitarian impact of explosive remnants of war (ERW) and possible approaches to deal with the problem, the group successfully negotiated the text of the new protocol, which was adopted on 28 November 2003 by the Meeting of the States Parties to the Convention. The protocol entered into force on 12 November 2006 and currently has 56 States parties.

The protocol is one of the treaties establishing the legal framework for United Nations mine action. Unlike the other CCW protocols, Protocol V does not address a specific weapon, but rather a problem that may occur as a result of the use of any explosive conventional munition (explosive ordnance). The protocol is also the first multilaterally negotiated instrument to deal with the problem of unexploded and abandoned ordnance and is intended to eradicate the daily threat that such legacies of war pose to populations in need of development and to humanitarian aid workers operating in the field to help them.

Under this protocol, ERW means unexploded ordnance (that is, munitions that have been fused, armed or otherwise prepared for use and used in armed conflict, but that have failed to function as designed) and abandoned explosive ordnance (explosive ordnance that have not been used but have been left behind by a party to a conflict and are no longer under its control).

The protocol does not apply to mines, booby-traps and other devices as defined in amended Protocol II, as they are prohibited or regulated by the latter and the Ottawa Convention on Landmines (the Mine Ban Convention). Several of its provisions create obligations only with respect to future ERW, but the protocol does not exclude

possible action with regard to existing unexploded and abandoned ordnance.

The protocol states explicitly that it shall apply to all situations that may occur as a result of both international and non-international armed conflict. This is so as Protocol V is the first CCW protocol to be developed and adopted after the entry into force of the amendment to Article 1 of the Convention, which changed the latter's scope of application.¹

The protocol establishes three levels of responsibilities: (i) those of the State party and party to an armed conflict with respect to ERW under its control, (ii) those of the user of explosive ordnance or abandoned ordnance, and (iii) those of the international community.

Pursuant to the protocol, each party in control of ERW-contaminated territory is under the obligation to take all feasible precautions to protect the civilian population, civilian objects and individual civilians from the risks and effects of ERW.

A key provision in this respect is the obligation of each State party and party to an armed conflict to clear the territories under its control. Pursuant to the protocol, after the end of active hostilities each party in control of ERW-affected territories shall survey and assess the threat posed by ERW, prioritize the needs for the implementation of its clearance obligations, mobilize the necessary resources, and mark and clear, remove or destroy ERW in affected territories under its control.

Other precautions for the protection of civilians that the party shall undertake could include warnings to and risk education of civilians, as well as marking, fencing and monitoring of the affected territory. The technical annex of the protocol contains elements of best practices with regard to the above actions.

Protocol V is also the first of the CCW protocols to establish obligations regarding the care, rehabilitation and social and economic reintegration of ERW victims. The respective provision in the protocol is identical to that of the Mine Ban Convention. Soon after the entry into force of the protocol, however, at the initiative of the

¹ Pursuant to amended Article 1 of the Convention, protocols adopted after 1 January 2002 may apply, exclude or modify the scope of their application in relation to Article 1.

first Protocol V coordinator on victim assistance, this obligation was further developed and led to the adoption of a special Plan of Action on Victim Assistance, which reflects the latest developments in the concept of victim assistance based on years of experience with mine victims.

The party in control of the ERW-affected territory shall also protect, as far as feasible, humanitarian missions and organizations, including through the provision of information on the location of ERW.

The second set of responsibilities pertains to the users of explosive ordnance that may become ERW or be abandoned. After the cessation of active hostilities the user shall provide assistance, directly or through a third party, to facilitate ERW marking, clearance or destruction. This assistance may be of any kind, including technical, financial, material or in human resources.

One of the most important provisions under Protocol V, however, as contained in its Article 4, establishes the responsibility of the user to record and retain information on the use or abandonment of explosive ordnance and the transfer of such information to the party in control of the ERW-affected areas. In order to facilitate the establishment of a national culture of recording and keeping such information, and with the aim of encouraging the users to provide it to the State in control of the ERW-affected areas, the States parties to the protocol have developed and adopted electronic templates (for keeping the records and for the transfer of information, as appropriate) and have recommended them for use by all the States parties. They also decided to keep this issue under review.

All States parties are also encouraged to undertake generic preventive measures such as those listed as best practice in the technical annex on munition manufacturing management, munition management, and training, transfer, and future production.

Last but not least the protocol provides for the responsibility of the international community to cooperate with, assist and consult with each other on all issues related to the operation of the protocol. On the one hand, a High Contracting Party in a position to do so shall provide assistance in dealing with the problems posed by existing ERW, in particular in marking, clearance, removal and destruction; victim

assistance; exchange of equipment; provision of information on means and technologies; and so forth. On the other hand, States parties in need of assistance may submit requests for assistance substantiated by relevant information.

In order to create the necessary conditions for the implementation of the cooperation and assistance requirements, the States parties have established an implementation mechanism consisting of the following:

- Annual Conferences of the States parties mandated to review the status and operation of the protocol, including all matters pertaining to national implementation, and to take all necessary decisions;
- Informal meetings of experts, facilitated by coordinators appointed by the Annual Conferences, aiming at fostering cooperation and assistance between those requesting assistance in dealing with the problems caused by both existing and future ERW, and those in a position to provide such assistance. A special form for requesting assistance was developed and recommended for use by the States parties; and
- An interactive website providing a permanent forum where needs may match resources is under development and is expected to become fully operational in the next two years.

The first meeting of experts took place in July 2008 in Geneva. Its deliberations, findings and recommendations were reported to the Second Annual Conference of the High Contracting Parties to the Protocol in November 2008, which also took decisions and mandated the next meeting of experts to pursue its work in 2009.

Implementation of the Convention on Certain Conventional Weapons

THERE ARE SEVERAL THINGS to consider when implementing the CCW. As well as more practical actions that need to be undertaken by States, there are legal measures that need to be considered.

As far as domestic legal measures are concerned, the CCW itself requires States to disseminate the Convention and its protocols widely, especially to the military (Article 6). This idea of dissemination also forms part of the non-binding technical annex to Protocol V.

The CCW regulates weapons by either prohibiting all use of a weapon in armed conflict or regulating its use in certain circumstances. To ensure that these rules are respected and to prevent and punish any violations, States should reflect these prohibitions in their domestic law and adopt penal sanctions for unlawful actions. Such action is already required for violations of amended Protocol II (see below). It is the only protocol that obliges States to take legislative measures for implementation. It expressly requires States, in Article 14, to “take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol”, including penal sanctions, “by persons or on territory under its jurisdiction or control”. It goes further to say that these measures should “include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict ... wilfully kill or cause serious injury to civilians ...”.

In accordance with the restrictions outlined in the CCW, therefore, a State will need to ensure that, under its domestic legislation, it prohibits the use of anti-personnel mines that are not detectable and that it prohibits mines, booby-traps and other devices that cause superfluous injury and unnecessary suffering, that employ a mechanism or device designed to detonate the munition by the presence of mine detectors, that are directed against the civilian population or individual civilians or civilian objects, that are used in an indiscrimi-

nate manner, or that are remotely delivered and that are not equipped with a self-destruct or self-neutralizing mechanism.

It should be noted that such measures are superfluous with regard to anti-personnel mines if the State is a party to the Ottawa Convention on Landmines (the Mine Ban Convention). However, even then there is still the requirement to legislate for such restrictions with regard to mines other than anti-personnel mines (such as anti-vehicle or anti-tank mines), booby-traps and other devices.

States are further obliged to prohibit the attachment to, or association with booby-traps, of articles such as children's toys, animals or sick, wounded or dead people. States need to create penalties for breaches of these prohibited acts.

A State should also consider how best to implement other provisions of amended Protocol II, for example the protection of civilians and civilian populations (Article 3.10), the recording of affected areas (Article 9), the removal and clearance of mines, booby traps and other devices (Article 10), the exchange of equipment and relevant information, provision of information to the United Nations database on mine clearance and assistance for mine clearance (Article 11).

In implementing amended Protocol II, States may also consider reflecting in their domestic law the prohibition of weapons under Protocols I and IV. In this regard the law should, in accordance with Protocol I, prohibit the use of a weapon the primary effect of which is to injure by fragments, which in the human body escape detection by x-rays. In addition, it may also be useful to prohibit the production, acquisition, stockpiling, retention and transfer of such weapons. Although prohibiting such acts is not specifically mandated by Protocol I, it will ensure that actions other than use, such as the development, production possession and transfer of such weapons, are equally proscribed. The prohibition of such acts has also been included in recently adopted weapons treaties such as the Mine Ban Convention and the Convention on Cluster Munitions.

A similar approach could be taken for Protocol IV, which bans the use of blinding laser weapons. This Protocol prohibits the use and transfer of blinding lasers and these acts should be included in domestic criminal legislation. Similar to what has been said above, explicitly prohibiting development, production and retention of these

weapons will ensure that prohibited weapons are not produced, possessed or sold.

Protocol III regarding the restriction of incendiary weapons may also be a subject for domestic implementation. States would then need to ensure that there is a prohibition against making the civilian population, individual civilians or civilian objects the object of attack by incendiary weapons; against attacks by air-delivered incendiary weapons on any military objective located within a concentration of civilians; against making any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects; and against making forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

A State party to Protocol V should ensure that the following provisions are addressed through domestic legal, regulatory or other measures:

- The marking, clearance, removal and destruction of explosive remnants of war (ERW) in any affected area under its control;
- The reduction of the risk posed by ERW in such areas by:
 - Surveying and assessing the threat posed;
 - Assessing and prioritizing needs and practicability in terms of marking and clearance, removal or destruction; and
 - Taking steps to mobilize resources to carry out these activities.

Taking into account international mine action standards, a State party should likewise ensure:

- The recording and retention of information on the use of explosive ordnance or abandonment of explosive ordnance;

- The taking of all feasible precautions to protect the civilian population, individual civilians and civilian objects from the risks and effects of ERW, including warnings, risk education to the civilian population, marking, fencing and monitoring of territory affected by ERW;
- The protection of humanitarian missions and organizations from the effects of ERW;
- The provision of assistance in dealing with the problems posed by existing ERW;
- The provision of assistance for the care and rehabilitation and social and economic reintegration of victims of ERW;
- The provision of information to the relevant databases on mine action established within the United Nations system; and
- The taking of generic preventive measures, such as appropriate management of munitions and their manufacture as well as training measures aimed at minimizing the occurrence of ERW.

A compliance mechanism for the Convention on Certain Conventional Weapons and its Protocols

THE ISSUE OF CLARIFYING AND FACILITATING COMPLIANCE with the CCW was first introduced in 1978–1980, during the original negotiations on the CCW when a number of States had proposed that the Convention should contain some form of compliance or monitoring mechanism. The proposal, however, did not gain consensus support.

The idea of establishing a compliance mechanism applicable to the CCW and all its protocols was reintroduced to and considered by the review conferences and the Meetings of the States Parties to the Convention, as follows:

- At the First Review Conference held in Vienna and Geneva in 1995–1996, several proposals were put forward but did not gain sufficient support. Nevertheless, some important steps were taken in the context of the negotiations on landmines. As a result, amended Protocol II contains compliance provisions, such as the obligation for the States parties to undertake all appropriate steps to prevent and suppress treaty violations, including to adopt national legislation, to impose penal sanctions and bring to justice persons who have killed or injured in violation of the protocol, to issue relevant military instructions and operating procedures and to provide adequate training to armed forces personnel. An implementation mechanism (Annual Conferences) for consultations and cooperation on the operation and the status of the protocol was introduced, as well as an annual reporting obligation on the implementation of the protocol.
- The Second Review Conference held in Geneva in December 2001 discussed the compliance proposals and decided to include the issue for consideration by the Group of Governmental Experts (GGE). In the course of the next five years the issue was negotiated by the GGE and the annual meetings of the States

parties. The following two proposals served as the basis for the negotiations:

- The proposal by South Africa modelled after amended Protocol II and that followed its structure and content; and
 - The proposal by the European Union promoting the establishment of a two-level mechanism comprising: (i) consultation and cooperation based on the respective provisions of amended Protocol II, and (ii) the establishment of facts, based partly on the concept of Article 90 of Additional Protocol I to the Geneva Conventions of 1949.
- The Third Review Conference in November 2006 considered the outcome of the negotiations held in the GGE and adopted a decision on the establishment of a compliance mechanism applicable to the CCW and all its protocols.
 - The 2007 Meeting of the States Parties to the Convention took some additional decisions aimed at adjusting and enhancing the mechanism established by the Third Review Conference.

Although originally planned and negotiated as an amendment to the framework Convention, the compliance mechanism was finally introduced through a compromise decision taken unanimously by the Third Review Conference. Obviously such a political decision has less weight than a formal amendment to the CCW that would have created legally binding obligations for the States parties. It has, however, the advantage of being adopted unanimously by all States parties at their highest political forum—the Review Conference. Moreover, it entered into force immediately for all the States parties thus avoiding the lengthy national ratification procedures that would have created two legal regimes (at least until the amendment is formally accepted by all States parties).

The compliance mechanism, as established, is less intrusive than originally proposed and supported by several delegations. As such, it is intended to complement, but not to substitute for, the existing relevant provisions on compliance contained in protocols annexed to the Convention. As it creates additional tasks for the States parties, upon its adoption and at the request of the States parties the Secretary-General of the United Nations advised States not party to the Convention on

this decision and its operation for the benefit of the High Contracting Parties.

The main elements of the compliance mechanism established pursuant to the relevant decisions taken by the Third Review Conference and the 2007 Meeting of States Parties are as follows:

- With a view to ensuring compliance with the provisions of the Convention and its protocols, the High Contracting Parties undertook to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations, or through other voluntary international procedures, regarding any concerns that relate to the fulfilment of their legal obligations or to resolve any issue that may arise with regard to the interpretation and application of the provisions of the Convention and any of its annexed protocols by which they are bound. For this purpose, the High Contracting Parties decided to include the issue of the status of implementation of and compliance with the Convention and its protocols in the agenda of the annual meetings of the High Contracting Parties.
- With regard to all protocols the High Contracting Parties undertook obligations similar to those already contained in amended Protocol II or Protocol V, namely to take all appropriate steps, including legislative and other measures, as required, to prevent and suppress violations of the Convention and any of its annexed protocols, including, where necessary, appropriate measures to ensure the imposition of penal sanctions against persons who, in violation of the relevant treaty provisions, have killed or injured civilians, and to bring such persons to justice; as well as to issue relevant military instructions and operating procedures and train their armed forces personnel to comply with the provisions of the Convention and any of its annexed protocols.
- National reporting was introduced and all States parties were encouraged to submit their reports on an annual basis before 1 October of each calendar year. For this purpose, reporting forms were adopted and recommended for use by the High Contracting Parties on any of the following matters:

- Dissemination of information on the Convention and its annexed protocols to their armed forces and to the civilian population;
 - Steps taken to meet the relevant technical requirements of the Convention and its annexed protocols and any other relevant information pertaining thereto;
 - Legislation related to the Convention and its annexed protocols;
 - Measures taken on technical cooperation and assistance; and
 - Other relevant matters.
- A pool of experts was established, consisting of representatives of the States parties of acknowledged impartiality and recognized technical, legal or other appropriate competence, acting in their personal capacity. Any High Contracting Party may seek assistance from the pool of experts regarding concerns on the fulfilment of its legal obligations under the provisions of the Convention and its annexed protocols. The experts selected by the United Nations Secretary-General to fulfil the task shall submit a report containing recommendations on the issue raised by the High Contracting Party concerned.

The list of experts is handled by the CCW Secretariat on behalf of the United Nations Secretary-General and is located on the CCW website. The database of the national reports submitted by the States parties is also located at the CCW website at www.unog.ch/ccw/compliance.

The Convention on Certain Conventional Weapons and its Protocols: Plan of Action and Sponsorship Programme

Plan of Action

RECOGNIZING THAT ACHIEVING THE UNIVERSALITY of the CCW and its protocols is a priority for the international community, the Third Review Conference of High Contracting Parties to the CCW in 2006 adopted a Plan of Action to this end. Seven concrete actions were identified in the Plan of Action, namely, that States parties should:

- Review as soon as possible, with a view to accepting, those protocols to which they are not yet party;
- Accord importance to ratification by the six States signatories;
- Undertake bilateral contact with States not party in order to encourage accession;
- Accord priority to adherence in regions of conflict;
- Make special efforts on adherence in regions with a low acceptance level;
- Take measures to prevent and suppress violations in areas under their jurisdiction or control; and
- Seek cooperation with all relevant partners, including the United Nations, regional organizations, the International Committee of the Red Cross, parliamentarians and non-governmental organizations, in promoting universal adherence.

States parties should undertake specific measures to promote wider adherence, including utilizing bilateral contacts and diplomatic channels; raising awareness and enhancing knowledge of the CCW and its protocols through regional and subregional seminars and workshops, and publications; and taking coordinated regional actions, especially in regions with a low acceptance level, with key roles to

be played by the three United Nations Regional Centres on Peace and Disarmament and relevant regional organizations.

United Nations efforts to implement the Plan of Action

The United Nations Secretary-General has sent letters annually to heads of States or Governments not party to the CCW, calling upon them to consider early accession.

The Presidents of the CCW Annual Conferences of States parties send letters to ministers of foreign affairs of States not party, inviting them to consider early accession.

The United Nations and the European Union joined hands in designing a global project to promote the universality of the CCW and its protocols. The joint project included six regional and subregional seminars in various regions of the world for States not party to the CCW.

The High Representative for Disarmament Affairs utilizes bilateral contact with non-party States, urging them to give priority to their States' accession.

The CCW Secretariat under the United Nations Office for Disarmament Affairs (UNODA) has undertaken efforts to provide assistance and support to States parties' efforts in this regard, including through a sponsorship programme.

The 14 member agencies (including the International Committee of the Red Cross) of the United Nations Inter-Agency Coordination Group on Mine Action have made coordinated and collaborative efforts to promote universality of the CCW.

Sponsorship Programme

The Sponsorship Programme was established pursuant to a decision by the CCW Third Review Conference. One main objective of the Programme is to support the universalization of the Convention and its annexed protocols.

Contributions to the Programme are made on a voluntary basis and the Programme has been conducted in an informal and flexible way with full respect for the specific ad hoc nature of Convention-related meetings and events.

One of the operational purposes is to provide signatory States and States not yet party to the CWC and its protocols with an opportunity to participate in activities related to the Convention and to become acquainted with the work related to it. Preference should be given to States that are least developed countries, and States that are on the path toward accession.

Its operational modalities include a Steering Committee consisting of donor States and UNODA to provide guidance on implementation of the Programme. The coordinators of regional groups, China, the president-designate of Meetings of States Parties and the United Nations Mine Action Service are invited as observers and advisors. Technical management of the Programme is entrusted to the Geneva International Centre for Humanitarian Demining.

Main donors to date include Australia, Canada, China, Denmark, France, India, Lithuania, the Netherlands, Spain, Switzerland, Turkey and the European Commission. Since the launching of the Programme, 66 representative from 35 States have received sponsorship to participate in the annual meetings of States parties to the CCW and conferences on Amended Protocol II, and on Protocol V, as well as in the meetings of the Group of Governmental Experts on cluster munitions held in Geneva.

There are two ways to get sponsorship. First, the Steering Committee decides which States are to be sponsored based on the criteria as stipulated in the basic operational purposes (see above). Second, interested States submit a written request to the Coordinator of the Sponsorship Programme, and subsequently the Steering Committee takes a decision on the requests. For more detailed information, including on application procedures, please refer to the UNODA website on the CCW at www.unog.ch/ccw or send an e-mail to ccw@unog.ch.

Activities toward the universal ratification and implementation of the Convention on Certain Conventional Weapons

THE CCW REQUIRES SEPARATE RATIFICATION of the Convention and each protocol, as well as for the amendment of Article 1 of the framework Convention providing for an extension of the jurisdiction of the protocols to non-international armed conflict.

To date, five countries have signed the CCW but have yet to ratify it. These States would need to ratify the Convention, but for all other States that are not parties, they would need to accede to the CCW to become a State party. This process requires that a State formally declare its consent to be bound by the Convention in accordance with its national legal procedures (usually requiring assent by parliament). A ratification instrument must be signed by the Head of State/Government or foreign minister or a person with full powers, and the original deposited with the United Nations Secretary-General (United Nations Treaty Section). There must be an expression of consent to be bound by two or more of the protocols as required by the Convention, and then entry into force takes place six months after deposit of the ratifying instrument. The International Committee of the Red Cross (ICRC) has a ratification kit that will assist States to undertake this process.

Entry into force makes the CCW legally binding on States parties. They have an obligation to take all appropriate legal, administrative and other measures to implement the Convention. Implementation requires a number of elements, for example, the political will of the Government and the parliament, in order to undertake the commitments; knowledge and expertise on the part of various groups such as ministries, parliament and universities; and there is often a role played by national committees on international humanitarian law (IHL), whether they are ad hoc or permanent. These committees have a role advising the Government on IHL matters; of drafting IHL instruments; of studying, coordinating and promoting IHL and are made

up of people who have responsibility for IHL matters in the various ministries such as foreign affairs, justice and defence.

The ICRC can assist States in the adoption of national legislation for the CCW and its protocols by providing technical assistance to the relevant ministries with the drafting of law, through its Advisory Services Regional legal advisers or through ICRC headquarters in Geneva. The ICRC also has a model law on the domestic legal implementation of the CCW, which will provide drafters with a framework for their implementing law.

The ICRC also organizes conferences and seminars at national and regional levels, which offer State representatives in depth knowledge of the CCW and guidance in the required implementation work.

Mines other than anti-personnel mines

THE NOTION OF MINES OTHER THAN ANTI-PERSONNEL MINES, or MOTAPM, was introduced as a reference to anti-vehicle mines (AVM). This issue was one of the priority topics for the CCW process during the first years after the entry into force of amended Protocol II, and—since 2000—of the CCW process established by the Second Review Conference in 2001.

MOTAPM are considered unfinished business from the First Review Conference (1995–1996) when the original Protocol II was amended to address the huge humanitarian crisis associated with the use of landmines. Those negotiations, however, focused mostly on anti-personnel mines (APM), which were the major cause of the crisis. Hence amended Protocol II, though covering all landmines, including AVM, contains much weaker regulations with regard to MOTAPM. APM are also under the scope of application of the Ottawa Convention on Landmines (the Mine Ban Convention) negotiated thereafter, which, however, does not refer to AVM.

There is much evidence from various relief organizations that the irresponsible use of MOTAPM also poses serious humanitarian problems. Like all other mines they also kill and maim, although the number of direct victims is less than that of APM as MOTAPM are used in smaller numbers. However, the long-term humanitarian impact of MOTAPM is even more important as these weapons represent a serious impediment to peacekeeping, reconstruction and development, result in disruption in the flow of humanitarian relief, and prevent local populations from rebuilding their lives. Thus, the humanitarian consequences of the conflict are prolonged and continue to seriously impede the post-conflict reconstruction of the affected areas long after the end of active hostilities. An overwhelming majority of States, however, considers that AVM still have military utility.

In order to fill the gap left behind by the negotiations in the mid-1990s, a proposal was made to strengthen the rules applicable to

AVM. In particular, it was suggested to make all MOTAPM detectable by commonly available mine-detection equipment (by introducing a minimum metal content), and to limit the lifespan of remotely delivered MOTAPM by incorporating a self-destruct mechanism, or a mechanism for self-neutralization, with a self-deactivation backup.

The proposal was introduced for consideration by the Second Review Conference,¹ which decided to mandate the Group of Governmental Experts to study it. Between 2001 and 2006 a considerable amount of work on the 30-nation proposal (as the proposal is known because it was supported by 30 States parties) resulted in a new draft protocol covering, in addition to the original ideas, elements such as a ban on transfers, cooperation and assistance provisions, warning and protection of civilians, transparency measures, issues related to the use of AVM by non-State actors, MOTAPM with sensitive fuses and others.

Despite all the work done during these years and even the elaboration of a text of a draft protocol, the CCW States parties have never managed to agree on a formal negotiating mandate due to the opposition by some countries. Financial or technological concerns or conceptual reasons were advanced by the latter.

Against this background, at the Third Review Conference in 2006 several States parties made a formal declaration pursuant to which they undertook unilaterally to implement at national level the detectability and self-destruct/self-deactivation requirements with regard to MOTAPM. The issue was kept on the agenda of the annual Meetings of the States Parties, but its further consideration by the Group of Governmental Experts was discontinued.

¹ The original idea was to enhance the rules contained in amended Protocol II, but it was rejected on the grounds that amending again the recently amended Protocol would create confusion and complicate its universalization.

Cluster munitions and the Convention on Certain Conventional Weapons

THE CCW IS INTENDED TO REGULATE THE USE OF WEAPONS in armed conflict, specifically those that cause unnecessary or unjustifiable suffering to combatants or that affect civilians indiscriminately. Cluster munitions belong to this group in that they can create explosive remnants of war. For this reason, there is growing international concern over their negative humanitarian effects.

What are cluster munitions?

Cluster munitions or cluster bombs are composed of a container or a canister used to disperse a quantity (from 10 to many hundreds) of smaller explosive devices. Those devices, called submunitions or bomblets, are the active element causing damage, injury and casualties through blast, incendiary effects or fragmentation.

Cluster munitions were originally designed for use against concentrations of armoured vehicles, because of their explosive effect over a wide area, especially to break up massed vehicles and infantry. They can be dropped from aircraft or fired from the ground, breaking open at a determined time or altitude and dispersing their submunitions over a given area.

From June 1943, when 1,000 “butterfly bombs” were dropped on the British port of Grimsby, to the last several decades, cluster munitions have been widely used by States and non-State actors in many parts of the world.¹ Currently, some 25 countries are affected by cluster munitions.²

¹ For example, South-East Asia in the 1960s and 1970s; Afghanistan in 1979, late 2001 and early 2002; Kosovo in 1999 (with well documented humanitarian costs to civilians); Iraq in 1991 and in 2003; Chechnya, Sudan, Eritrea and Ethiopia in 2000; Lebanon in mid-2006; and Georgia in 2008.

² Afghanistan, Albania, Bosnia and Herzegovina, Cambodia, Chad, Croatia, Eritrea, Ethiopia, Georgia, Iraq, Israel, Kosovo, Kuwait, Laos, Lebanon,

The humanitarian and economic impact of cluster munitions

Cluster munitions, when failing to explode on impact, remain on the ground, in vegetation or underground, and may detonate upon handling. They can persist for years with the potential to kill or maim, causing psychological trauma, death and life-long injuries. A failure rate of only 1% still represents a considerable amount of unexploded bomblets: 1% of 1,000,000 submunitions delivered is equivalent to 10,000 unexploded submunitions.

The presence of unexploded submunitions can deny access to land and water for agriculture, livestock, as well as fishing and other productive means; they also disrupt communities, and cause environmental damage. Communities and populations are also affected in that cluster munitions destroy or render unusable infrastructure (such as bridges, roads and airports) and utilities (such as water services and power stations). In addition, cluster munitions can also provide a perverse and dangerous form of economic activity: persons untrained in clearance collect them for scrap metal or for payment.

These use of these weapons presents a long-lasting impediment to the restoration of peaceful life and subsistence activities: clearance must be carried out before rebuilding. Humanitarian aid workers and agencies are hampered in their work by the presence of cluster munitions.

Furthermore, victims of cluster munitions are an economic and social burden within their communities. Children are particularly at risk: the small size, shapes and colours of submunitions make them look like toys; that is why 23% of victims are under 18 years of age. Most of the victims (98%) are civilians, with 33.5% of these men and 7% women; a small percentage (respectively 1.1% and 0.6%) are military and deminers.

Cluster munitions are weapons presenting a risk of excessively injurious and unnecessary suffering to civilians, both during active armed conflict and after return to peace. Besides, once scattered or spread over a wide area, submunitions cannot discriminate between

Montenegro, Morocco (Western Sahara), the Russian Federation (Chechnya), Saudi Arabia, Serbia, Sierra Leone, Sudan, Syria, Tajikistan and Viet Nam.

civilian and military personnel or targets. Hence, their use must be addressed.

Addressing cluster munitions

Within the CCW

There were some attempts to deal with the issue of cluster munitions during the negotiations that led to Protocol V to the CCW. Cluster munitions were put on the agenda of the CCW following the July 2006 events in Lebanon, just before the Third Review Conference. The Secretary-General of the United Nations, in his address to the States parties, stated that “recent events show that the atrocious, inhumane effect of these weapons—both at the time of their use and after conflicts end—must be addressed immediately”.³ He urged States parties to the CCW:

to make full use of this framework to devise effective norms [in order to] reduce and ultimately eliminate the horrendous humanitarian and development impact of these weapons ... [to] freeze the use of cluster munitions against military assets located in or near populated areas ... [to] freeze the transfer of those cluster munitions that are known to be inaccurate or unreliable ... [and] establish technical requirements for new weapons systems so that the risk they pose to civilians can be reduced.⁴

In November 2007, the Meeting of the High Contracting Parties to the CCW created a Group of Governmental Experts with the mandate to “negotiate a proposal to address urgently the humanitarian impact of cluster munitions, while striking a balance between military and humanitarian considerations”;⁵ this group met in 2008 and will

³ See Department of Public Information, *Secretary-General calls for legal norms to eliminate horrendous humanitarian impact of cluster munitions, in message to Geneva Conference*, United Nations document SG/SM/10720, 7 November 2006.

⁴ Ibid.

⁵ See *Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, United Nations document CCW/MSP/2007/5, 3 December 2007, p. 9.

continue in 2009, making every effort to conclude its negotiations as rapidly as possible.

Within the Oslo Process

In 2007, 46 States signed the Oslo Declaration committing themselves to “Conclude by 2008 a legally binding international instrument that will ... prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and ... [ensure] adequate provision of care and rehabilitation to survivors and their communities, [and] clearance of contaminated areas”.⁶

The Oslo Process held conference with States, United Nations agencies, the International Committee of the Red Cross and non-governmental organizations in Oslo (February 2007), Lima (May 2007), Vienna (December 2007), Wellington (February 2008) and Dublin (May 2008). At the Dublin conference of 30 May 2008, 107 States adopted the Convention on Cluster Munitions, which was opened for signature in Oslo on 3 December 2008.

The Convention on Cluster Munitions prohibits the use, stockpiling, production and transfer of cluster munitions; it also has provisions for the destruction of stockpiles, the clearance of contaminated areas and the assistance of victims. The Convention prevents States parties from assisting, encouraging or inducing anyone from engaging in activities prohibited by the Convention.

Conclusion

The issue of cluster munitions remains a matter of high concern for States parties to the CCW. No doubt the work of Governmental expert groups will need universalization initiatives similar to those taken by the European Union and the United Nations. They are needed to set the stage for building a secure world for future generations.

⁶ See the Declaration of the Oslo Conference on Cluster Munitions, 23–23 February 2007.

The United Nations and mine action

THE UNITED NATIONS IS COMMITTED to ensuring that its support to countries affected by mines and explosive remnants of war (ERW) is strategic, effective and delivered in a timely manner. Mine action comprises all those “activities which aim to reduce the social, economic and environmental impact of mines and ERW”,¹ as defined in the International Mine Action Standards (IMAS). Therefore, mine action is more than demining and it is more than mines.

Mine action is composed of five pillars: landmine and ERW clearance, mine risk education, victim assistance, stockpile destruction and advocacy. The IMAS definitions will be used to explain these pillars. It is important, however, to bear in mind that some of the pillars have evolved slightly since the adoption of the initial IMAS. ERW were added to IMAS on an almost equal basis with landmines. The adoption of Protocol V to the CCW and its entry into force contributed to this expanded approach.

Clearance involves “activities which lead to the removal or mine and ERW hazards, including technical survey, mapping, clearance, marking, post-clearance documentation, community mine action liaison and the handover of cleared land”.² This pillar includes activities that take place before, during and after the effective demining, thus clearly dissociating itself from the typical military demining operations, both in its scope and aims.

Mine risk education comprises “activities which seek to reduce the risk of injury from mines and ERW by raising awareness and promoting behavioural change including public information dissemination, education and training, and community mine action liaison”.³

¹ *International Mine Action Standards*, 2nd ed., United Nations Mine Action Service, p. 20, 3.158.

² See “demining” in *International Mine Action Standards*, 2nd ed., United Nations Mine Action Service, p. 8, 3.53.

³ *International Mine Action Standards*, 2nd ed., United Nations Mine Action Service, pp. 21–2, 3.168.

Mine risk education was previously known as mine awareness and now is also called risk reduction education.

Victim assistance is “all aid, relief, comfort and support provided to victims (including survivors) with the purpose of reducing the immediate and long-term medical and psychological implications of their trauma”.⁴ The concept of victim goes therefore beyond the dead and the survivors, to also include affected families and communities.

The fourth pillar consists of the “physical destructive procedure towards a continual reduction of the national stockpile [a large accumulated stock of explosive ordnance]”,⁵ and it is called stockpile destruction.

The last pillar is advocacy, consisting of “public, support, recommendation or positive publicity with the aim of removing, or at least reducing, the risk from, and the impact of, mines and ERW”.⁶ Advocacy comprises activities aiming at promoting a world free of landmines and ERW, including through the universalization and effective implementation of the relevant legally-binding instruments.

While these weapons were created in the nineteenth century and have been extensively used since the First World War, the post-conflict concerns they raise were not fully addressed until the last quarter of the twentieth century. Demining operations were either mainly military operations or ad hoc activities done with no particular professional skills by affected communities. Mine action, as a humanitarian-based set of activities, started in the 1980s and gained momentum with the appeal made by the United Nations in 1988 for humanitarian demining in Afghanistan.

The first phase of mine action saw the creation of the first mine action programmes in the late 1980s and early 1990s (in Afghanistan, Cambodia, Mozambique and Angola), and as well the emergence of the first international mine action non-governmental organizations. In a second phase (1995–1998), standards for mine action were adopted, including the first IMAS (1997), as well as treaty-based standards, such as those in amended Protocol II to the CCW and in the Ottawa

⁴ Ibid., p. 34, 3.281.

⁵ Ibid., p. 31, 3.254.

⁶ Ibid., p. 2, 3.7.

Convention on Landmines (the Mine Ban Convention). Also during this period of time, the United Nations started to organize coordinated assistance to mine affected countries. A United Nations Voluntary Trust Fund for mine action was established in 1994 and in 1997 the United Nations Mine Action Service (UNMAS) was created to serve as the United Nations focal point for mine action. In the following year the United Nations Inter-Agency Policy was adopted to facilitate response to the problems posed by landmines and ERW.

A third phase is characterized by the professionalization of mine action. New IMAS were adopted, to refer to pillars other than clearance. Mine action began to be perceived not just as humanitarian action, but also as a means to promote development. This phase also coincides with the adoption of new mine action-related treaties, such as Protocol V to the CCW (2003) and the Convention on Cluster Munitions (2008). The United Nations Inter-Agency Policy for Mine Action was revised in 2005, followed by a new United Nations mine action strategy for 2006–2010. Gender mainstreaming into mine action and the relationship between mine action and human rights also gained momentum.

As stated in the revised United Nations mine action policy, “The vision of the United Nations is a world free of the threat of landmines and explosive remnants of war ... where individuals and communities live in a safe environment conducive to development and where the needs of mine and ERW victims are met and they are fully integrated into their societies”.⁷ Based on this vision, the following United Nations strategic goal for 2006–2010 was identified: “The United Nations will work with national authorities and in partnership with [non-governmental organizations], the private sector, international and regional organisations and others to reduce the humanitarian and socio-economic threats posed by landmines and explosive remnants of war, at which point United Nations mine action assistance will no longer be necessary”.⁸ This strategic goal reflects the evolution of mine action since its origins.

⁷ *Mine Action and Effective Coordination: The United Nations Inter-Agency Policy*, United Nations Inter-Agency Coordination Group on Mine Action, 2005, p. 5.

⁸ *United Nations Inter-Agency Mine Action Strategy: 2006–2010*, United Nations Inter-Agency Coordination Group on Mine Action, 2006, p. 9.

The policy also indicates that United Nations mine action is conducted on the basis of resolutions of the General Assembly and Security Council and is guided by the relevant international instruments prohibiting or restricting the use of landmines and addressing ERW, and the general principles of international humanitarian law on the conduct of war and the protection of civilians. The legal framework for United Nations mine action rests, among others, on two protocols to the CCW: amended Protocol II on mines, booby-traps and other devices and Protocol V on ERW, as well as in the Mine Ban Convention and in the recently signed Convention on Cluster Munitions. The Convention on the Rights of Persons with Disabilities, which entered into force in 2008, serves as a framework for victim assistance. It addresses the needs of survivors of landmines and ERW, as well as their families.

To facilitate United Nations assistance in mine action, the Inter-Agency Coordination Group on Mine Action (IACG-MA) was created, which is sometimes known as the United Nations Mine Action Team. This mechanism comprises 14 United Nations departments, programmes, funds and agencies that are involved in mine action to varying degrees and in accordance with their respective mandates.⁹ The Under-Secretary-General for Peacekeeping Operations chairs the IACG-MA at the principals level and the Director of UNMAS, a division within the Department of Peacekeeping Operations, chairs the team at the working level.

The above-mentioned Inter-Agency Policy details who can request assistance in mine action from the United Nations. Primarily these are Governments themselves. They could request this assistance either through their permanent missions to the United Nations or

⁹ Members of the IACG-MA: the Department of Peacekeeping Operations (DPKO), UNMAS, the United Nations Office of Disarmament Affairs (UNODA), the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the United Nations Office of Project Services (UNOPS), the Food and Agriculture Organization of the United Nations (FAO), the Office for the Coordination of Humanitarian Affairs (OCHA), the Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP) and the World Health Organization (WHO). The World Bank is an observer.

through the senior United Nations official in their country. However, the senior United Nations official in a specific country could also make this request in the context of a humanitarian or some other emergency. Finally, the Security Council can also submit a request in the context of a specific peacekeeping or peace support operation.

The IACG-MA evaluates the requests and, in consultation with the senior United Nations official in the relevant country, decides on the coordination of an inter-agency multi-sectoral assessment mission. The findings of the assessment mission are discussed in the IACG-MA, which decides on the type of assistance the United Nations could provide to the specific country, if any. The results are then communicated to the Government in question. In case of immediate need for mine action response, the IACG-MA could decide to avoid the assessment mission and undertake emergency response, using a special inter-agency framework adopted by the IACG-MA.

There are basically two broad categories of United Nations mine action programme activities: national mine action programmes and mine action programmes managed by the United Nations. In the first category, the programmes are managed by the relevant States, with the United Nations assisting them, most frequently through the United Nations Development Programme or the United Nations Children's Fund. In the other category, the United Nations is asked to manage the mine action programme itself (normally through UNMAS), usually in the context of a Security Council resolution. This second category is used less frequently than the first.¹⁰ Nevertheless, over time the UN-managed programmes should be transferred to the States themselves, passing through different stages of transition.

The assistance that the United Nations can provide in mine action apply to all five pillars, but also to capacity-building and development, information management and outreach or even resource mobilization. A number of standards, guidelines and other tools have been developed for this purpose. About 50 States and territories have benefited so far from United Nations support in mine action.

¹⁰ For example in Kosovo (UNMIK), Ethiopia/Eritrea (UNMEE), southern Lebanon (UNIFIL), the former Yugoslav Republic of Macedonia, Afghanistan, the Sudan, the Democratic Republic of the Congo (MONUC), Iraq, Burundi (UNOB), Western Sahara (MINURSO) and Nepal (UNMIN).

The United Nations advocates for the universalization and implementation of the mine action-relevant treaties. As mentioned before, two of these treaties are protocols to the CCW, and they form part of the legal framework for United Nations mine action. Amended Protocol II on mines, booby-traps and other devices and Protocol V on ERW are also the largest protocols to the CCW and the only ones containing their own implementation and compliance mechanisms.

Appendices

List of participants

Latin America and the Caribbean Santo Domingo, 11-12 March 2008

Member States

Antigua and Barbuda, Argentina,* Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Mexico,* Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago

United Nations

United Nations Office for Disarmament Affairs, United Nations Children's Fund, United Nations Mine Action Service, United Nations Institute for Disarmament Research and the United Nations Regional Centre for Peace and Disarmament in Latin America and the Caribbean

Other intergovernmental organizations

EU Presidency, European Union, European Commission, International Committee of the Red Cross, Organization of American States and the Caribbean Community

West and East Africa Lomé, Togo, 21-22 April 2008

Member States

Cameroon,* Côte d'Ivoire, Gabon,* Guinea, Mauritania, Nigeria, Sao Tome and Principe, Sudan, Tanzania and Togo*

* States parties to the Convention.

Lithuania (President of the Second CCW Protocol V, Conference of the High Contracting Parties to CCW)

United Nations

United Nations Office for Disarmament Affairs, United Nations Mine Action Service, United Nations Institute for Disarmament Research and the United Nations Regional Centre for Peace and Disarmament in Africa

Other intergovernmental organizations

European Union, European Commission and the International Committee of the Red Cross

**The Great Lakes Region and Southern Africa
Lomé, Togo, 24-25 April 2008**

Member States

Angola, Congo, Democratic Republic of Congo, Eritrea, Madagascar, Mozambique, Swaziland, Uganda* and Zambia

Lithuania (President of the Second CCW Protocol V, Conference of the High Contracting Parties to CCW)

United Nations Organization

United Nations Office for Disarmament Affairs, United Nations Mine Action Service, United Nations Institute for Disarmament Research and the United Nations Regional Centre for Peace and Disarmament in Africa

Other intergovernmental organizations

European Union, European Commission and the International Committee of the Red Cross

**Central Asia
Almaty, Kazakhstan, 24-25 September 2008**

Member States

Afghanistan, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Russian Federation* and Tajikistan

Other intergovernmental organizations

EU Presidency, European Union, European Commission, International Committee of the Red Cross and the Organization for Security and Cooperation in Europe

United Nations Organization

United Nations Office for Disarmament Affairs, United Nations Mine Action Service, United Nations Institute for Disarmament Research and the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific

**The Middle East and the Mediterranean
Rabat, Kingdom of Morocco, 19-20 November 2008**

Member States

Algeria, Bahrain, Iran, Iraq, Jordan,* Kuwait, Lebanon, Libya, Morocco,* Saudi Arabia, Syria and the United Arab Emirates

Lithuania (President of the Second CCW Protocol V Conference of the High Contracting Parties to CCW)

Other intergovernmental organizations

European Union, European Commission, International Committee of the Red Cross and the League of Arab States

United Nations Organization

United Nations Office for Disarmament Affairs, United Nations Mine Action Service, United Nations Institute for Disarmament Research and the United Nations Regional Centre for Peace and Disarmament in Africa

**South, Southeast Asia and the Pacific
Kathmandu, Nepal, 17-18 December 2008**

Member States

Australia,* China,* Fiji, Indonesia, Malaysia, Myanmar, Nepal, Palau, Papua New Guinea, Samoa, Solomon Island and Thailand

Other intergovernmental organizations

EU Presidency, European Union, European Commission and the International Committee of the Red Cross

United Nations Organization

United Nations Office for Disarmament Affairs, United Nations Mine Action Service, United Nations Institute for Disarmament Research, United Nations Children's Fund and the United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific

Acronyms

AVM	anti-vehicle mine
APM	anti-personnel mine
CCW	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects; Convention on Certain Conventional Weapons
CFSP	EU Common Foreign and Security Policy
ERW	explosive remnants of war
GGE	Group of Governmental Experts
IACG-MA	UN Inter-Agency Coordination Group on Mine Action
ICRC	International Committee of the Red Cross
IHL	international humanitarian law
IMAS	International Mine Action Standards
MOTAPM	mines other than anti-personnel mines
UNIDIR	United Nations Institute for Disarmament Research
UNMAS	United Nations Mine Action Service
UNODA	United Nations Office for Disarmament Affairs

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