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Humanitarian Disarmament

This article examines the evolution of international humanitarian law, specifically as it relates to the conventions banning or restricting conventional weapons. *The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* and the *Convention on Cluster Munitions* are discussed here, as they form a distinctive type of disarmament—humanitarian disarmament.

by Pascal Rapillard [GICHD]

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (also known as the Anti-personnel Mine Ban Convention or APMBC) and the *Convention on Cluster Munitions* crystallize the two main dimensions that have driven the evolution of international humanitarian law: restrictions on the means and methods of warfare and the protection of victims. *The Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight* (St. Petersburg Declaration of 1868) was the first formal agreement aiming to ban the use of certain weapons. Russia proposed prohibiting explosive-projectile use in accordance with what is now a cardinal principle of international humanitarian law: to ban the use of warfare means and methods that cause superfluous injury or unnecessary suffering. Later, the *Hague Convention* of 1907 confirmed this customary rule by stating that “the right of belligerents to adopt means of injuring the enemy is not unlimited.”¹

More than a century after the 1907 *Hague Convention* adoption, restrictions on warfare means and methods have developed considerably, as shown particularly by the legal framework relating to mines and explosive remnants of war. However, not only has warfare conduct seen normative changes, but the regulations concerning war-victim protection, both during and after a conflict, have also been regulated. The *Geneva Conventions* of 1949 aim to protect people who do not, or who no longer, take an active part in hostilities. In fact, this is a third revision of the *Geneva Convention* of 1864 to improve the conditions of wounded military person-

nel. In 1949, the regulations were codified through four Conventions, of which the fourth is concerned exclusively with wartime civilian protection. Additionally, Article 3, common to the four *Geneva Conventions*, which applies to non-international armed conflicts, expanded on the *Hague Convention* restrictions by providing minimum humane treatment standards for both combatants and civilians and requiring that they be treated with humanity and without adverse discrimination. Common Article 3 prohibits murder, mutilation, torture, cruelty, humiliation and degrading treatment, the taking of hostages, and unfair trials. Common Article 3 represented a major step forward by providing criteria for the proper treatment of individuals with respect to non-international armed-conflict situations.

Only in 1977, with the adoption of the Additional Protocols to the *Geneva Conventions*, were the two fundamental dimensions of international humanitarian law combined: restrictions on warfare means and methods and the protection of victims. This concurrence is illustrated by Article 35 of Additional Protocol I, which provides that the “methods and means of warfare are not unlimited” and further states that in any armed conflict, the Parties are “prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering [...]” Additional Protocol I, which provides protections of victims through Article 35, reiterates the language found in Article 23 of the *Hague Convention*, which also prohibits weapons causing superfluous injury, in addition to the use of poison, the killing or wounding of enemies who have surrendered arms, and the misuse of flags, insignia and uniforms.²



A plenary session of a mine-action conference.
Photo courtesy of Harshi Gunawardana, GICHD.

The Concept of Humanitarian Disarmament

The individual’s protection is central to recent developments in the humanitarian-disarmament field, while the protection of strategic national interests and international stability dominate other disarmament treaties and negotiations—particularly for nonconventional weapons. Recent examples include the APMBC and the CCM. States Parties to these conventions have determined that anti-personnel mines and cluster munitions are not essential in ensuring their security in order to confirm the protection of civilians from the effects of these weapons. These States Parties have determined the protection of the individual takes precedence. Finally, strategic disarmament necessitates the involvement of major powers, which is not indispensable for humanitarian disarmament.

These humanitarian-disarmament conventions are symptomatic of the paradigm shift in international relations after the Cold War’s end, when the security of the individual became more prominent than the security of the state. The appearance of the

term **human security** described in the United Nations Development Programme’s 1994 *Human Development Report*³ conceptually reflects this change.

Victims at the Core of the Commitments

Although the question of victim assistance received limited attention during the first years of APMBC implementation, it is now central to the States Parties’ concerns. At the Second Review Conference of the APMBC in December 2009, the President of the conference called on the international community to focus on survivors’ rights and mine-affected communities. Twenty-six States Parties have indicated having responsibility for a significant number of victims, and therefore have an increased need for support to cope with victim assistance. The role of national programs in this context is crucial as the programs can serve as information channels for and about the victims, act as a conduit for their needs, and plead on their behalf for increased consideration by the relevant authorities. A coherent international framework now



Mine victims playing volleyball in Afghanistan.
Photo courtesy of Sheree Bailey, GICHD.

exists for victim protection, not only through the APMBBC, but also through the CCM and 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*, Protocol V. The recently enacted *Convention on the Rights of Persons with Disabilities* reaffirms the protection of survivors' rights as laid out in the APMBBC.

The Disarmament/Development Link

In December 2009, the Second Review Conference of the APMBBC was held in Cartagena, Colombia, which led to the adoption of an action plan for the following five years. To achieve the action plan's objectives, support for the mine-action programs' capacity development will be essential in the years to come. In particular, aligning a mine-action strategy with the wider priorities of reconstruction and development of the country concerned has become increasingly important. In many countries, mines and ERW not only are a humanitarian problem but also impede recovery and development efforts. In mine action's first years, emphasis was mainly placed on safe and efficient mine and ERW clearance, but in the transition from an emergency situation to stabilization, post-conflict reconstruction and development assume heightened importance.

A Comprehensive Approach

While the response to the challenges raised by the use of conventional weapons has been translated up to now by the adoption of regulatory frameworks and the prohibition of certain specific categories of arms, current developments are characterized by a more global approach. The *Geneva Declaration on Armed Violence and Development*, a diplomatic initiative concerned with armed violence's impact on development, is a good example of this. The United Nations Institute for Research in Disarmament project, *Discourse on Explosive Weapons*, whose objective is to stigmatize the use of explosive weapons in populated areas in order to enhance the protection of civilians, is also an indicator of this approach. *The United Nations Programme of Action on Small Arms and Light Weapons* to prevent, combat and eradicate the illicit trade in small arms and light weapons, is also relevant. As a politically-binding international instrument adopted in 2001, the Programme of Action aims to fight SA/LW proliferation and contains political engagements and concrete action. These include the development of SA/LW national legislation and the encouragement of international cooperation and assistance in order to strengthen the States' capacity to identify and trace illicit weapons and light arms. In addition, a discussion process is under way on a future treaty



Women attending a mine-risk- education session in Sri Lanka.
Photo courtesy of Eric Filippino, GICHD.

(*Arms Trade Treaty*) to increase conventional-weapons regulation. In this author's opinion, these different instruments and international procedures all share the same objective: reducing armed-violence impact on civilians.

Conclusion

Together with the customary regulations of international humanitarian law, the APMBBC, the CCM, and CCW Protocol II and Protocol V form an international legal framework that aims to restrict and eventually end the serious consequences of indiscriminate-weapons use. This legal framework stems from different political processes, but it deals with weapon types that have similar effects on the civilian population, raise similar operational challenges and call for a comprehensive response on the national and the international level. It was from the perspective of humanitarian disarmament that these instruments were negotiated and then adopted; an approach that aims to protect individuals and that takes into account the importance of development in the countries affected by these weapons.

The actual and potential results of fully implementing the APMBBC, CCM and CCW show us how the St. Petersburg Declaration and its underlying humanitarian concerns not only remained central to the development of international humanitarian law, but also retain relevance today.

The international community will need to closely follow new weapons development and adapt the legal regime accordingly.

see endnotes page 82

Editor's note: For more information about various international treaties and conventions, visit: <http://bit.ly/eIqyNW>.



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