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Victim-assistance History in International Humanitarian Law: From Somalia to Geneva to Lao PDR

In the following article, Ken Rutherford, Director of JMU's Center for International Stabilization and Recovery and a landmine survivor, examines how victim assistance has changed and argues that while victim assistance is a more integral element of mine action today than ever before, there is yet room to move forward.

by Kenneth R. Rutherford [Center for International Stabilization and Recovery]

After the 17-hour Battle of Mogadishu resulted in 102 U.S. military casualties and more than 800 Somali losses, the global community pulled away from helping Somalia rebuild. As part of one of the few remaining humanitarian projects in the country, my colleagues and I worked to rebuild communities devastated by years of war. Soon thereafter, I was injured by a landmine, resulting in the eventual loss of both my legs and an emergency evacuation to *Geneva's Hopital de la Tour*, where I underwent several medical operations before returning to the United States to recover.

Little did I know I would return to Geneva many times under the auspices of the International Campaign to Ban Landmines and the Cluster Munitions Coalition to help advocate for the dignity and rights of war survivors, especially fellow amputees and their families. Now, more than a decade later, my advocacy continues as Director for the Center for International Stabilization and Recovery at James Madison University in the hopes of building the political momentum generated by the *Geneva Declaration on Armed Violence and Development* (2006) and the *Convention on Cluster Munitions* (2008) to strengthen the concepts and practices used in armed-violence assistance and survivor rights.

Victim Assistance in International Treaties

After my hospitalization, I returned to Geneva in 1996 for the Third Session of the Review Conference of the *Convention on Prohibitions or Restrictions on*



Adnan Badzak lost his eyesight and his right arm to a landmine in 1992. In 2006 he received assistance from LSN to expand his business in Mostar. All photos courtesy of Paul Jeffrey.

the use of *Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects*. At that time, victim assistance was not codified in arms-control law, and the CCW did not mention it. To help account for this oversight, I co-founded the Landmine Survivors Network,¹ the



Eldar Voloder lost his left leg at age four. LSN has assisted him in obtaining new prostheses as he grows older.

first global organization for landmine survivors founded by landmine survivors, in the basement media facilities of the *Palais des Nations* in Geneva. Thankfully, when the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction* (also known as the Anti-personnel Mine Ban Convention or APMBC) was signed in December 1997, assistance to landmine survivors became a state obligation through Article 6, paragraph 3, making it the first weapons-control agreement in history to include victim-assistance provisions. The APMBC's victim-assistance inclusion was a tremendous success in achieving global recognition for those affected by landmines. The APMBC also served as a major advocacy tool to help develop and promote disability rights for the *Convention on the Rights of Persons with Disabilities*, which entered into force in May 2008. The provision further served as a precedent in subsequent disarmament negotiations, specifically with Protocol V to the CCW.² As a re-

sult, governments believed that including victim assistance in CCW Protocol V helped provide a more comprehensive solution to addressing the humanitarian suffering caused by explosive remnants of war, and it became the first CCW protocol to include a victim-assistance provision.

The 2008 *Convention on Cluster Munitions*, which bans cluster munitions, also set a precedent for victim assistance. The CCM mandates "Each State Party, with respect to cluster munition victims in areas under its jurisdiction or control, shall, in accordance with applicable international humanitarian and human-rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion." In addition, "Each State Party shall make every effort to collect reliable, relevant data with respect to cluster-munition victims."³

In the article "Connecting the Dots: The Ottawa Convention and the CCM",⁴ Nerina Čevra, Tracey



The LSN-sponsored Bosnia and Herzegovina volleyball team won first place in the Athens 2004 Paralympic Games. The team consists of Bosnian Serbs, Bosnian Muslims and Croats.

Begley and I argued that States Parties to the CCM, which entered into force in 2009, have refined the victim-assistance concepts found in the APMBC, by defining and clarifying victim assistance in the CCM. We also noted that the CCM establishes a new and higher standard for victim assistance, including legal obligations for ensuring the rights and dignity of the victims, thereby broadening contemporary thinking on survivor populations and victim assistance.

From Vientiane to Geneva

One of the main ways the APMBC influenced other international arms-control agreements was through its legal provisions. Since the APMBC held its 10th States Parties meeting in Geneva, and the CCM held its first such meeting in Vientiane, Lao PDR in November 2010, it is highly apropos to discuss the changes in these legal measures.

The APMBC set a precedent for disarmament treaties by articulating for the first time an international standard for victim assistance and forever revolutionizing the way weapon prohibitions deal with this issue in part by the lessons learned from 10 years of implementation of the APMBC. In this convention victim assistance was placed within the framework of international cooperation; however,

it did so without explaining that each State Party is primarily responsible for providing assistance to the victims under its own jurisdiction. As a result of lessons learned from this, CCM Article V defines victim assistance as a national concern, first and foremost, thereby ensuring States Parties take an active approach in the matter.

The CCM negotiators also came to believe that victim assistance was not only a medical or rehabilitation issue, but an inalienable human-rights issue.⁵ Since the 2004 Nairobi Review Conference⁶ for the APMBC, States Parties have continuously affirmed that landmine survivors should be seen as part of a larger group of persons with disabilities, and endorsed the *Convention on the Rights of Persons with Disabilities* as an international framework that helps States Parties implement their APMBC obligations.

Unlike the APMBC, the CCM requires reporting on victim assistance. However, over the course of the last 10 years, the APMBC States Parties have committed to optional reporting to help ensure victim assistance happens. Mandatory reporting on victim assistance would ensure that there is accountability and transparency. Including survivors in the reporting process would also guarantee that victims receive the most accurate information as survivors know their own needs best.

	APMBC	Convention on Cluster Munitions
Definition of Victim Assistance	None	Article 2: Victims are individuals, families and communities affected by the weapon
Victim Assistance Article	Article 6: International Cooperation	Article 5: Victim Assistance Article 6: International Cooperation
Human Rights Clause	None	Preamble Article 5(1): Victim assistance must be implemented in accordance with international human-rights law
Reporting Requirements	None	Article 7(1)(k): States required to report on "status and progress of its implementation obligations" for victim assistance

Figure 1: The Mine Ban Convention and Conventions on Cluster Munitions' treatment of victim assistance.

Summary

Because the APMBC was the first major arms-control agreement to include victim assistance, diplomats referred to it as a benchmark model for the CCM. On the other hand, we know that, despite all the efforts and funding allocated to landmine survivors resulting from the APMBC, there is a weak link in measurability and monitoring of victim-assistance implementation. As a result, in negotiating the CCM, many governmental delegates referred to the importance of including stronger victim-assistance obligations. As the Australian delegate said during the November 2007 Vienna negotiating session in developing the CCM, "We should aim for a higher standard."⁷

While the CCM negotiators, including Cluster Munitions Coalition members and the International Committee of the Red Cross legal staff, should be commended for an excellent job,^{8,9} much more work remains. In order to effectively commit to banning the indiscriminate weapons violent conflicts leave behind, we must also continue preventing and providing assistance to those, either individually or collectively, injured or victimized by those weapons.⁷ ♦

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