Connecting the Dots: The Ottawa Convention and the CCM

States Parties to the Convention on Cluster Munitions have refined the victim-assistance concepts found in the Ottawa Convention by defining victim assistance and clarifying VA obligations in the CCM. As the authors note, States Parties recognize that change can only be created through the people who implement it.

by Kenneth Rutherford [Survivor Corps and Missouri State University] and Nerina Čevra and Tracey Begley [Survivor Corps]

Victims are individuals, families and communities. In the Ottawa Convention on Cluster Munitions (CCM), none of these terms are defined. The CCM Preamble refers to victims only in the context of States Parties ‘endeavour[ing] to prevent and reduce the effects of cluster munitions’. The CCM also states that ‘[p]enalties for breaches of this Convention shall be imposed in accordance with international law’ [Article 31]. The CCM Preamble prohibits the use of cluster munitions as weapons and encourages international cooperation in order to ‘achieve the complete and verifiable prohibition of the use of cluster munitions as weapons’ [Article 1].

None of these references make any mention of ‘victims’. The term is used in a very narrow sense to address individuals who have been physically harmed. The concept of ‘victims’ is vague and does not specify the meaning behind the term. The CCM Preamble also states that no matter what States Parties make of their rights, the CCM confirms the notion of victim assistance as a core obligation of the treaty. Importantly, the CCM recognizes victim assistance as a responsibility shared with any other treaty obligations. It addresses all areas related to victim assistance and includes a separate article dedicated to this issue. Article 5 of the CCM describes the concept of victim assistance and articulates national-level measures for implementation.

The Focus of Responsibility

The Ottawa Convention placed victim assistance strictly within the framework of international cooperation in Article 6. Without explaining that each State Party is primarily responsible for providing assistance to the victims under its jurisdiction, the CCM recognizes that victim assistance is not simply a medical or rehabilitative issue, but it is a human rights issue. Ten years of implementing the Ottawa Convention have helped the global community realize the importance of victim assistance, and gain a broader perspective than is outlined in Article 6.5 of the Ottawa Convention. At the Ottawa Convention’s 2004 Nairobi Review Conference, States Parties expanded and codified a more comprehensive understanding of victim assistance. Since the Nairobi Conference, States Parties’ governments have continuously affirmed that landmine survivors should be seen as part of a larger group of persons with disabilities. States Parties have endorsed the new Convention on Cluster Munitions and Article 5 codifies these developments by requiring that victim assistance be implemented in accordance with international human rights and humanitarian law.

Reporting Requirements

In another dramatic change from the Ottawa Convention, which does not require reporting on victim assistance, the CCM provides for mandatory reporting. Article 32 requires States Parties to report on the status of the implementation of measures under Article 5. This requirement will ensure greater accountability and transparency in the implementation of victim assistance. It also encourages the inclusion and participation of survivors in reporting to ensure information is accurate.

In the Ottawa Convention, Article 6 states that victim assistance should be provided by those “states in a position to do so.” This language has been used by States Parties as a justification for failure to implement their obligations landmine survivors. Article 5 of the CCM, by contrast, creates an unequivocal legal obligation for States Parties to report on the status of the implementation of victim assistance. It also includes not only those persons directly impacted by cluster munitions but also their families and communities. The Ottawa Convention placed victim assistance strictly within the framework of international cooperation in Article 6. Without explaining that each State Party is primarily responsible for providing assistance to the victims under its jurisdiction, the CCM recognizes that victim assistance is not simply a medical or rehabilitative issue, but it is a human rights issue. Ten years of implementing the Ottawa Convention have helped the global community realize the importance of victim assistance, and gain a broader perspective than is outlined in Article 6.5 of the Ottawa Convention. At the Ottawa Convention’s 2004 Nairobi Review Conference, States Parties expanded and codified a more comprehensive understanding of victim assistance. Since the Nairobi Conference, States Parties’ governments have continuously affirmed that landmine survivors should be seen as part of a larger group of persons with disabilities. States Parties have endorsed the new Convention on Cluster Munitions and Article 5 codifies these developments by requiring that victim assistance be implemented in accordance with international human rights and humanitarian law.

TABLE 1: Comparison of language in the Ottawa Convention and the CCM

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<thead>
<tr>
<th>Victim definition</th>
<th>Ottawa Convention</th>
<th>Convention on Cluster Munitions</th>
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<tr>
<td>None</td>
<td>Victims are individuals, families and commu-</td>
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<td>nities affected by the weapon. [Article 2]</td>
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<td>in accordance with international human rights</td>
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<td>man rights in in-</td>
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<td>Victim assistance</td>
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<td>reporting in in-</td>
<td>Mandatory reporting on victim assistance</td>
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<td>age for victim</td>
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The Ottawa Convention on Cluster Munitions (CCM) is an international treaty that includes legal obligations for ensuring effective implementation of victim assistance. The CCM recognizes the importance of adequate allocation of resources and requires that States Parties develop an action plan and budget for victim assistance, and that they mobilize national and international resources for implementation.

Assistance as a Human-rights Issue

Under the CCM, victim assistance should be incorporated into existing disability, development and human-rights frameworks in each country. In this way, the CCM aims to ensure more cost-effective and sustainable national mechanisms for victim assistance and their representative organizations in all phases of implementation. The CCM also recognizes the importance of adequate allocation of resources and requires that States Parties develop an action plan and budget for victim assistance, and that they mobilize national and international resources for implementation.

Table 1: Comparison of language in the Ottawa Convention and the Convention on Cluster Munitions

The Ottawa Convention on Cluster Munitions (CCM) is an international treaty that includes legal obligations for ensuring effective implementation of victim assistance. The CCM recognizes the importance of adequate allocation of resources and requires that States Parties develop an action plan and budget for victim assistance, and that they mobilize national and international resources for implementation.
by stating “Each State Party shall” provide victim assistance (emphasis added).

The significant differences between the Ottawa Convention and Convention on Cluster Munitions are due in large part to the existence of the Convention on the Rights of Persons with Disabilities, which represents another dot in the line connecting weapons treaties and human rights. It had a profound effect on the understanding of victim assistance because it outlined a rights-based approach to disability, which provides a much more progressive, holistic view than previously existed. The key to creating a permanent change in the way weapons treaties are developed and implemented is to acknowledge that the people are at the core of treaties. The CCM is much closer to recognizing this than the Ottawa Convention, which itself was seen as much closer to recognizing this than the Ottawa Convention, which itself was seen as

Conclusion

While it is important to recognize the significance of the CCM in taking the concept of victim assistance into the 21st century, it is necessary to keep in mind that the missing dots required to address the full spectrum of victims’ rights. One example is in the context of small arms and light weapons, where no provisions on victim assistance have been articulated yet. It is also necessary to give some serious thought to the potential for a general legal framework that addresses the rights of victims of conflict. The shift in paradigms toward understanding the rights of various victims and groups of victims in addressing issues that affect their lives is, for the first time, clearly present in a legally binding instrument—the CCM. Adopting its view will inform and help shape the response necessary to ensure that its purpose is furthered—namely, reducing the harm caused by cluster munitions. See Endnotes, page 111

Will Oslo be the Next Ottawa?

The Cluster-munitions Debate

More than a decade has passed since the monumental Ottawa Mine Ban Convention was opened for signature in December 1997. Now, with the adoption of the text of the Convention on Cluster Munitions in May 2008, the global community is closer than ever to an international agreement prohibiting the use of cluster munitions. A review of the key issues underpinning the debate on cluster munitions follows. by Jeff Abramson [Arms Control Association ]

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n 30 May in Dublin, Ireland, 107 countries participating in the Oslo Process agreed to the text of a new convention that bans virtually all existing cluster munitions. Using some of the language of the Ottawa Mine-ban Convention, and led by many of the same advocates who pushed for that convention more than 10 years ago, the CCM represents the possibility that we will see a new global norm against the use of cluster munitions, with stockpiles eliminated, lands cleared and victims assisted. Whether and how that comes about, however, may be determined in a separate process held within the Geneva-based Convention on Certain Conventional Weapons’ Negotiators there are working to create a separate cluster munitions protocol that could have the backing of the world’s major stockpilers of cluster munitions, such as China, India, Israel, Pakistan, Russia and the United States, most of whom have thus far remained outside the Oslo Process.

Interoperability and Definition: Oslo Compromises

The text agreed to in Dublin requires the destruction of all cluster munitions (as defined by the Convention) within eight years and the clearance of all areas afflicted with unexploded cluster munitions within 10 years. Extensions may be requested if these deadlines cannot be met. The accord also includes measures for international assistance to victims of cluster munitions. Countries were able to sign the Convention beginning in December, 2000, and it will enter into force six months after 30 governments sign and ratify it.

A major question going into the Dublin conference was whether eventual CCM States Parties would be able to cooperate militarily with nonmember States Parties that maintain cluster munitions. Because the current policy of the United States is to retain the right to use certain cluster munitions, the desire to maintain interoperability put U.S. allies in a particularly difficult position. Although abstaining from the Oslo Process, the United States exerted pressure on its participants regarding the interoperability issue.

Using some of the language of the Ottawa Mine-ban Convention, and led by many of the same advocates who pushed for that convention more than 10 years ago, the CCM represents the possibility that we will see a new global norm against the use of cluster munitions, with stockpiles eliminated, lands cleared and victims assisted. During a press briefing in the initial days of the Dublin meeting, Acting Assistant Secretary of State for Political-Military Affairs Stephen D. Mull defended U.S. interoperability arguments that the draft convention could be read as calling for the criminalization of military cooperation between eventual member and nonmember states. Because U.S. ships carry cluster munitions, he further extended the argument to say that U.S. disaster relief and humanitarian assistance could be cut off, raising the stakes for the global community. Mull also said that “such a move would effectively be a way to go about this is to pursue technological fixes that will make sure that these weapons are no longer viable once the conflict is over.”

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“Raising the Voices Against Cluster Munitions” survivor Corps trainers and training participants, who are persons with disabilities, including conflict survivors. Livingstone, Zambia.

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