Will Oslo be the Next Ottawa? The Cluster-munitions Debate

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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 set in the line connecting weapons treaties and human rights.5 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 existing. 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 soon after starting an unprecedented leap in the way victims of weapons were addressed when it was drafted in 1997.

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 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 paradigm 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 responses 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

O 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’4 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 affected with unexploded cluster submunitions 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.5

Many advocates and government representatives celebrated the conclusion of the CCM. In his 30 May closing statement, Irish Minister for Foreign Affairs Michael Martin said, “I am convinced that together we will have succeeded in institutionalizing any future use of cluster munitions.” Cluster Munition Coalition Co-chair Steve Goose noted that it “can only be characterized as an extraordinary convention, one that is certain to save thousands and thousands of civilian lives for decades to come.”2

As if strong an international consensus develops around cluster munitions as has developed around anti-personnel landmines, such predictions may come true. During the CCM negotiations, however, compromises were made— notably on interoperability and the definition of cluster munitions—in order to maintain the support of a number of key countries. These compromises opened the door to future cluster use.

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.7 Although abstaining from the Oslo Process, the United States exerted pressure on its participants regarding the interoperability issue.

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[Image: Survivors of Cluster Munitions]

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Abramson: 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]
Countries possessing more than 90 percent of the world stockpiles do not take part in the Oslo Process and have no intention of acceding to the convention. Any comparison with the Ottawa Convention is misleading. Cluster munitions are much more important (than landmines) for a number of countries, constituting a very significant part of their firepower.4

Military Utility Remains Sticking Point

Estimating the size of the global stockpile is difficult, the United States alone has more than 700 million cluster submunitions.5 The definitional convention reached in Dublin reflects the fact that many countries still classe the use of cluster munitions as a legitimate part of their military strategy. Shortly after the conclusion of the accord, the U.S. Department of Defense clarified U.S. cluster-munition policy, stating:

“There remains a military requirement to engage target areas that include massed formations of enemy forces, individual target dispersals over a defined area, targets whose precise locations are not known, and time-sensitive or moving targets. Cluster munitions can be the most effective and efficient weapons for engaging these types of targets. A cluster munition is not a weapon of mass destruction; rather, it is designed to time-sensitively deliver submunitions of varying weights and explosive characteristics to areas of interest.”

While this statement is accurate, it is misleading to suggest that cluster munitions are not weapons of mass destruction. Cluster munitions are considered to be weapons of mass destruction under several international treaties, including the Chemical Weapons Convention and the Biological Weapons Convention. The use of cluster munitions in warfare is prohibited under these treaties.

SM-Art-155, which has only two submunitions, would meet this stringent requirement. Whether countries will choose to include SMArt-155, which has only two submunitions, would meet the following characteristics:
• Be designed to detect and engage a single target.
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The interaction of eventual CCM member states with nonmember states, especially concerning storage of cluster munitions at foreign bases, also promises to be noteworthy. CCM advocates have called for eventual States Parties to remove any cluster munitions by foreign bases, evidenced in part by the lack of similar measures for those countries signing the CCM. As the writing of this article, exactly what that protocol might entail is still unclear to a virtual ban on new deployments of anti-tank mines, evidenced in part by the lack of U.S. deployment of such weapons in Afghanistan and Iraq.7 A new CCW Protocol VI could provide a similar mechanism for those cluster munitions not ready to completely foreclose use of cluster munitions.

Assessing Future Progress

A number of indicators will provide clues as to what kind of global norm is being established—an effective ban on use of cluster munitions or a more general humanitarian effort to assist victims and close impacted areas. For both the CCM and a CCW protocol, the number of countries signing and the pace of their submission of articles of ratification will be early measures.

Until a new gap in uses develops, it will be difficult to judge whether the weapons themselves are becoming anathema.

The future of, is difficult to predict; nonetheless, it is reasonable to believe that the world will see less use of cluster munitions and more relief to those who have suffered due to those incendiary weapons.

See Endnotes, page 11/2

Portions of this article are drawn from the author’s earlier work, “If Countries Approve Cluster Munitions Treaty,” published in the July/August 2008 edition of Arms Control Today, available online at http://tinyurl.com/6ckvqv.

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