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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 dot in the line connecting weapons treaties and human rights.3 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.4 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 to make an unprecedented leap in the way victims of weapons were addressed when it was drafted in 1997.

Conclusions

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 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 provisions will inform and help shape the responses necessary to ensure that its purpose is furthered—namely, reducing the harm caused by cluster munitions.6

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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.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 stigmatizing any future use of cluster munitions.” Cluster Munitions 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.”6

If as 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 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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During a press briefing in the initial days of the Dublin meeting, Acting Assistant Secretary of State for Political-Military Affairs Stephen D. Mull repudiated 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 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 submunition remnants 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, 2008, and it will enter into force six months after 30 governments sign and ratify it.8

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 Munitions5 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.

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There remains a military requirement to engage area targets that include massed formations of enemy forces, individual targets dispersed 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 key feature of cluster munitions is that each weapon contains a large number of submunitions. The submunitions are usually small bomblets that are dispersed over an area, typically by a network of fuzes that detonate the bomblets once they land on the ground. This allows the cluster munition to deliver a large number of bomblets to a relatively small area, which can be used to create a barrier or to block an enemy’s movement. However, the use of cluster munitions has also raised serious concerns about the potential for civilian casualties and environmental damage. To address this, a new international treaty, the Convention on Cluster Munitions (CCM), was adopted in 2008. The CCM requires states parties to take steps to ensure that cluster munitions are not used in a manner that would be likely to cause unnecessary suffering or to be used in a manner that would be likely to render an area uninhabitable.

Countries possessing more than 90 percent of the world stockpiles do not take part in the Ottawa 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.

Rather than simply calling for a blanket restriction on cluster munitions use, the July draft allows for military purposes and relies on avoiding “incidental loss of civilian life, injury to civilians, [and] damage to civilian objects, which would constitute a breach of international humanitarian law” to declare use of cluster munitions inadmissible. “The use of cluster munitions in these situations would be consistent with the provisions of international humanitarian law,” the U.S. delegation argued.

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[Sources to be added after the end of the current issue, see Endnotes.]

See also, [citation needed for latest information].