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### Mine Action in the Midst of Internal Conflict: A Report on the Workshop Organised by Geneva Call and the International Campaign to Ban Landmines Non-State Actors Working Group

Geneva Call

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# MINE ACTION IN THE MIDST OF INTERNAL CONFLICT

A REPORT ON THE WORKSHOP ORGANISED BY GENEVA CALL  
AND THE INTERNATIONAL CAMPAIGN TO BAN LANDMINES  
NON-STATE ACTORS WORKING GROUP

ZAGREB  
27 NOVEMBER 2005



## GENEVA CALL

APPEL DE GENÈVE LLAMAMIENTO DE GINEBRA

**International** **TO BAN**  
**CAMPAIGN**  
**LANDMINES**  
NON-STATE ACTORS  
WORKING GROUP

ORGANISED WITH THE SUPPORT  
OF THE AUSTRALIAN NETWORK TO BAN LANDMINES



# ACKNOWLEDGEMENTS

Geneva Call and the Non-State Actors Working Group of the International Campaign to Ban Landmines would like to express their thanks to the speakers, in particular Ambassador Jean Lint and Dr Dijana Plestina, whose contributions made this workshop on “Mine Action in the Midst of Armed Conflict” both a possibility and a success. We would also like to thank the Australian Network to Ban Landmines for its kind support in this endeavour.



Panel members - Photo Credit: Geneva Call

The following report was  
compiled and edited  
by Matthew Pountney  
and Elisabeth Reusse-Decrey  
Geneva Call



## PREFACE

Mine action is often seen as an exclusively post-conflict activity. While such a perspective is understandable, it is nevertheless a limited view. An end to fighting does offer the best conditions for clearing battlegrounds of landmines, or for raising awareness of the dangers that mines and improvised explosive devices (IEDs) present, but focusing on the peace ignores the hardship inflicted on civilians by landmines throughout the war. Indeed, the majority of conflicts today happen within the borders of States, pitting armed non-State actors (NSAs) against the forces of the government. The drawn-out nature of many of these confrontations, lasting months if not years and often involving extensive mine-laying, demands that we not wait until the guns are silent and that landmines become a “legacy” of war before doing something to relieve the threat to civilians.

Co-organised by Geneva Call and the Non-State Actors Working Group (NSAWG) of the International Campaign to Ban Landmines, the workshop on “Mine Action in the Midst of Internal Conflict” was held on Sunday 27 November 2006, the day before the opening of the Sixth Meeting of States Parties to the Ottawa Convention in Zagreb, Croatia

The aim of the workshop was to better understand mine action in the midst of internal conflict through an exchange of views and experiences between mine activists and government representatives, to examine questions faced by such operations, and to look for possible strategies for mine action during an armed conflict, as well as at the benefits of doing so.

The following report is a summary of the workshop, a compilation of the main presentations made in its course, and some final reflections on mine action in the midst of conflict. The principal conclusions were that:

- Mine action in the midst of internal conflict is possible according to the limits imposed by the war;
- Mine action should be carried out for humanitarian purposes and not by the armed forces involved in the conflict;
- Mine action should be a depoliticised process that prioritises civilian welfare;
- A failure to perform mine action in the course of an internal conflict may be considered to be non-respect for the obligations of the Treaty by a State Party. Indeed, the State should facilitate, or at least not prevent, any mine action efforts by third parties or armed NSAs in areas no longer under its control but still under its jurisdiction; and
- Mine action can create confidence-building possibilities for opposing sides.

For those present, the feasibility of mine action during an internal conflict, especially in areas where fighting has abated, is equivalent to a responsibility to carry out such action. We hope that the workshop and this report will contribute to the debate on this issue in the future.

Elisabeth Reusse-Decrey, Geneva Call  
Simona Beltrami, NSA Working Group - ICBL

September 2006

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# WORKSHOP: MINE ACTION IN THE MIDST OF INTERNAL CONFLICT



**International** **TO BAN**  
**CAMPAIGN**  
**LANDMINES**

*Non-State Actors Working Group*

## **“IT’S NOT NECESSARY TO HAVE PEACE TO START SAVING LIVES”**

On the eve of the Sixth Meeting of the States Parties to the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, between 28 November and 2 December 2005 in Zagreb, Geneva Call co-organised a workshop on “Mine Action in the Midst of Internal Conflict” with the International Campaign to Ban Landmines Non-State Actors Working Group (ICBL-NSA Working Group).

As *Commandant E. Lino* of the Sudan People’s Liberation Army made clear: “it’s not necessary to have peace to start saving lives”. This was the dominant theme of the workshop that took place on 27 November 2005.

Those present included representatives of States, UN agencies, humanitarian non-governmental organisations (NGOs), demining specialists, Mine Risk Education professionals, mine victim assistance experts and other international organisations such as the International Committee of the Red Cross and the Geneva International Centre for Humanitarian Demining.



Participants in the workshop - Photo Credit: Geneva Call

## **Background**

The number of internal conflicts today far exceeds the frequency of inter-State wars; more and more rebel groups, liberation movements and guerrillas are active in open hostilities with government troops. The asymmetry of such conflicts, in which often under-resourced non-State actors (NSAs) confront the generally well-financed forces of the State, has made the landmine - cheap and easy to manufacture - into a weapon of choice for many armed groups.



“Weapon of the poor” it may be, but many casualties of NSA landmines and improvised explosive devices (IEDs) are often not military personnel or hardware, but civilians caught up in the conflict. Victim-activated anti-personnel landmines and IEDs are by nature indiscriminate weapons, whose use across a war zone leaves a lasting threat both to the people who live there and those who try to flee. Realising the death and injury, not to say economic and social damage that such mines can cause in the long-term, it is vital that humanitarian measures are taken as early as possible to address the problem; this includes mine action in the midst of the conflict itself.

However, establishing programmes of mine action (advocacy, mine clearance, victim assistance, Mine Risk Education and stockpile destruction) during ongoing hostilities presents many difficulties. For example, the mine activist must face the daily threats of war and the frustration of a cleared area being re-mined. Moreover, there is the problem of gaining the acceptance of the government concerned, the consideration of what role the regular armed forces should play, the choice of which organisation should be made responsible for mine action, the concern of how to get financial support for operations and the question of how to co-operate with an NSA in the name of mine action without giving it recognition or legitimacy.

The workshop aimed to share experiences and perspectives on mine action in the midst of internal conflict, and to find some solutions to the questions that this work confronts.

## Summary of Workshop Opening Statements

In her opening remarks, *Elisabeth Reusse-Decrey*, President of Geneva Call, posed four such questions based on Geneva Call’s experience:

- Is an agreement or engagement with an NSA a precondition for mine action during the conflict?
- Which actors are appropriate for undertaking mine action?
- What should the role of the concerned State be?
- If a State Party to the Mine Ban Treaty (MBT) does not co-operate with mine action taking place on its territory in the course of a conflict, could this be considered as non-compliance with the State’s treaty obligations?

*Mr Alvaro Jimenez*, Coordinator of the Colombian Campaign Against Landmines and Co-chair of the ICBL-NSA Working Group, reiterated the importance of resolving these issues, as well as the need for NSAs and State actors to reach humanitarian agreements and to facilitate mine action.

*Ambassador Jean Lint*, Director for Africa of the Belgian Ministry of Foreign Affairs and President of the Fourth Meeting of States Parties to the Mine Ban Treaty, summarized how the goal of encouraging armed non-State actors to cease and renounce the use, stockpiling, production and transfer of anti-personnel mines has been integrated into the Ottawa Process. Praising Geneva Call’s efforts to make this aim a reality, he underlined that engaging NSAs in a landmine ban in the course of an armed conflict can be conducive to confidence-building between the parties to the ban, as well as to promoting the Ottawa process if ever the NSA goes on to join the national government. He concluded with the behest that all actors, both State and non-State, “spare no effort to tackle the problem of anti-personnel mines”.

*Dr. Dijana Pleština*, Advisor on Mine Action to the Minister of Foreign Affairs, Croatia and Secretary-General of the Sixth Meeting of the States Parties, took the floor as the last speaker in the introductory section. When she first began working on the MBT, she was most surprised by the lack of attention it gave to NSA landmine use. Indeed, she was struck by the futility of a State

becoming party to the landmine ban whilst armed groups continued to deploy these weapons on its territory. Dr. Plestina has long-since supported the work of Geneva Call in addressing this blind spot in the MBT.

Nevertheless, she understood the caution of some States about beginning dialogue with an NSA. Even so, she stressed the obligation of all signatories to the MBT to work for universalising the Treaty's norms to all mine users, including NSAs. This means co-operation with organisations working with States within which NSAs operate, to facilitate dialogue for a total mine ban.

However, Dr. Plestina also urged caution. Dealing with NSAs in the name of achieving a universal mine ban must remain at all times a humanitarian activity, conducted with the cooperation of the States concerned, and never transgressing on their sovereignty. Failing in this would risk damaging the credibility of all attempts to work for the universalization of the MBT.

## Summary of Case Studies

A number of case studies of mine action in the midst of internal conflict were discussed at the meeting.

### *Colombia*

*Ms Sofia Reyes*, Social Communicator of Humanitarian Spaces in southern Bolívar - Peace Laboratory, Colombia, and *Mrs Diana Roa-Castro*, shared their experiences from the village of Micoahumado and surrounding settlements of Morales town in southern Bolívar Department, Colombia. Their fate to live in an area rich in natural resources and strategic importance meant that the people of Micoahumado found themselves caught up in the conflict tearing apart their region. Widespread mining in areas of civilian importance such as the local aqueduct, soccer pitch and arterial road, meant that daily life for the community was dictated by the rhythms of violence.

Confronted with this reality, the community chose a proactive response. They entered into a dialogue with local guerrilla groups and unilaterally declared Micoahumado a humanitarian space. All of this was part of what later became known as the “Sovereign Communitarian Process for life, justice and peace of Micoahumado”.

The initiative won a pledge from the ELN to move the conflict further from people's houses and to demine the aqueduct. Although the situation remained difficult, as time went on the Sovereign Communitarian Process gathered momentum and attracted support from several external actors, including the Colombian Campaign to Ban Landmines and Geneva Call.

Together, these actors have followed a strategy of “protection and guarantees” promoted through dialogue. This approach has yielded further advances in local demining projects, not least in respect to the commitment of the ELN to carry out its own demining programme on an area including the vital road.

Members of the community are now in negotiation with the Colombian Government, seeking formal verification and support from the national authorities for further development of the project and the region. Moreover, Micoahumado's successes have led to other similar initiatives in the regional context.

*Mrs Diana Roa-Castro*, Information Officer, from the Landmines and Explosive Remnants of War Focal Point Office for the Coordination of Humanitarian Affairs of OCHA in Colombia, explained the internal conflict in that country, as well as the progress of landmine action therein. She pointed out that the Colombian Government does not recognise the dispute as more than “a very serious social problem”, but asserted that there “are arguments enough” to view it as a situation of internal armed conflict. Certainly, due to a series of failed peace processes and little mine action, Colombia remains a country severely polluted by landmines.

Mrs Roa-Castro underlined that NSAs have been the main culprits of mine use since the Government of Colombia signed the MBT. The FARC is the principle perpetrator, followed by the ELN and the AUC, and hostility between these groups has aggravated the mine problem further.

Mine action in this conflict is particularly difficult for a number of reasons. The majority of landmines that are deployed are improvised explosive devices, which are of multiple shapes and explosive-content, making them hard to identify for the purposes of Mine Risk Education and demining, as well as causing wounds that vary significantly in severity.

Legislative efforts to address deficiencies in mine action have been made, but they have proven “precarious”. Indeed, there are no humanitarian demining projects underway in Colombia, with the military taking charge of the sporadic operations that do occur. This frustrating situation has led to untrained civilians sometimes attempting to demine their own communities.

Such chaotic and ineffective mine action is partly rooted in the lack of systematic recording of where accidents occur and how, and reliable knowledge of the mine situation in Colombia. Clearly, without this information mine action cannot be properly planned. Indeed, it is largely within the sphere of Mine Risk Education that activity has taken place under the conditions of the armed conflict.

However, the main obstacle to mine action is the continued existence of the conflict, and the use of these weapons by armed non-State actors. The ebb and flow of the fighting has meant that mine-free areas later become mined, few contaminated regions are marked or recorded, and access to mined zones is made difficult by ongoing hostilities. In short, mine action is hard to plan and complicated to execute, and this is aggravated by Bogotá’s staunch position against negotiation with NSAs.

Mrs Roa-Castro urged pragmatism as the best means to mitigate the impact of mines and carry out effective mine action. This may include dialogue with NSAs in order to undertake programmes in areas where they have de facto control. In this respect, she referred to Geneva Call’s work in promoting the role of NSAs in the solution to the landmine problem, as well as the indirect benefits to confidence building between parties to the conflict that its activities in Colombia have brought.

She concluded with a call to the “humanitarian imperative, framed in the principles of humanity, impartiality and neutrality” as a basis for mine action, and for overcoming the political and technical obstacles outlined above. She suggested that this imperative, once presented in inclusive dialogue with NSAs, may well see the way clear to mine action within the conflict. Indeed, she asserted, “there is no war...not mediated by human beings able to reason in the light of the humanitarian need”. In this respect, she underlined the important role that mine affected communities and NGOs can play in this mediation process.

## *Sudan*

*Mr Peter Moszynski*, former Landmine Monitor Researcher, discussed mine action in Sudan, citing this country as a “test case” for mine action during conflict. Twenty-two years of war has left Sudan as one of the most poverty-stricken and mine-affected countries in the world.

The conflict between the government in the north and the Sudan People’s Liberation Movement/Army (SPLM/A) in the south has been the main source of this mine contamination. Nevertheless, since 1997, the SPLM/A has sought to lessen the impact of landmines on the civilian population under its control. There have been domestic initiatives, including the foundation of an indigenous mine action organisation, and international projects such as the signing of the Geneva Call Deed of Commitment.

However, during the years of conflict, there was very little co-ordinated North-South mine action in Sudan, despite the efforts of UNMAS to develop a “one country” approach. Even so, the Burgenstock Nuba ceasefire from January 2002 did allow for some co-operative mine action training for deminers from both sides to the conflict.

Since the Comprehensive Peace Agreement of early 2005, things have changed somewhat. Indeed, as Mr Moszynski describes: “[t]here has been a rapid internationalisation of mine action... as multilateral agencies... overshadow the local initiatives.”

Nevertheless, there remains no unified national mine action authority in the country. Responsibilities are still shared between the North and the South with the support of the UN Mine Action Office. Consequently, despite efforts to develop national mine action cooperation and the hope that this might foster peace and confidence-building, the complexities of Sudan and the failure to achieve a comprehensive peace deal for the entire country, has meant that humanitarian mine action has mostly been conditional on the vagaries of the peace processes, rather than actually promoting them.

## *Sri Lanka*

Unfortunately, scheduled speaker, *Mr Chandru Pararajasingham*, Programme Coordinator from the Tamils Rehabilitation Organisation (TRO) of Sri Lanka could not attend the workshop due to sickness. *Ms Katherine Kramer*, Geneva Call Programme Director for Asia, spoke on his behalf in discussing Sri Lanka’s experiences of mine action in the course of conflict, as well as TRO’s efforts to counter the mine problem in the Northeast.

Through a discussion of the modern history of the ethnic conflict in Sri Lanka, Ms Kramer traced the development of the landmine problem on the island. Indeed, the cycles of civil war and ceasefire between the Liberation Tamil Tigers of Eelam (LTTE) and government forces have seen the widespread defensive and offensive emplacement of landmines in the Northeast by both sides.

Significantly, mine action has taken place in spite of hostilities. In fact, the first demining operations for humanitarian purposes began in 1999 in Tamil-held areas and were expanded after the 2002 ceasefire when a number of local and international organisations were able to undertake mine clearance in both government and LTTE-controlled regions. Mine Risk Education and victim assistance have also occurred with varying degrees of success.

Ms Kramer reflected on the political dimension of the mine problem. It is intimately linked to the country's peace process, she said, not least through the rehabilitation and resettlement programme for internally-displaced persons, that is part of the ceasefire agreement and dependent on mine clearance. Even so, and despite pressure from international and national quarters, the LTTE and Government of Sri Lanka have been reticent about committing to a mine ban as long as there is no further advancement towards peace. "This said", Ms Kramer added, "even as peace talks have stalled, significant demining activities have continued unabated and steadfast".

To conclude she cited some of the challenges that present themselves to mine action in Sri Lanka. Most of these arise directly from the existence of the conflict, or rather the situation of "no war/no peace". For instance, mine action teams face difficulties in moving their equipment between government and LTTE-controlled areas. Moreover, distrust between the parties to the conflict, coupled with political and military uncertainties, has hampered progress towards both parties accepting a mine ban. Certainly the nature of the cease-fire has meant that mines could be used at any point if hostilities were to break out again.

Despite all of these challenges, Ms Kramer asserted that the mine action that has taken place in Sri Lanka has reduced, and raised awareness of, the landmine threat within affected populations. The evidence that no new mines have been planted is encouraging. Be that as it may, a total ban on the weapons by both parties to the conflict might be a factor in persuading the international community to support more mine action in Sri Lanka in the future.

## Discussion

### Legal Aspects of Mine Action in Internal Conflict

*Mrs Kathleen Lamand*, Legal Adviser to the International Committee of the Red Cross Mines-Arms Unit, discussed the legal aspects of mine action in the midst of internal conflict, relating in particular to the allocation of responsibility for mine action in areas controlled by armed NSAs. (The views expressed were her own, and not necessarily those of the International Committee of the Red Cross.)

She argued that the positive and negative provisions of the MBT bind all persons on the territory of a State Party to the Treaty, be they government agents, members of NSAs or lone individuals. It is the State's responsibility to ensure that these obligations, which include carrying out mine action programmes, are met.

Yet how, in a situation of an internal conflict, can a State be expected to fulfil its obligations on parts of its territory that it does not control? Mrs Lawand's answer was that a State bears a direct responsibility to implement its obligations, except in the case of *force majeure* where conditions make it impossible for it to do so.

Thus, if an NSA controls part of its territory, a State can justify its failure to meet its mine action obligations in that region, but only so long as that *status quo* exists, and only to the extent that the State makes "good faith" efforts to uphold the spirit of the treaty in spite of the situation. For instance, it must not deliberately prevent the implementation of the MBT in areas of its territory that it does not control, must facilitate third party initiatives to carry out mine action in those areas and, where possible, facilitate such efforts conducted by the NSAs themselves.

To close, Mrs Lawand applied this legal theory to a number of specific practical questions.

## A Comment from a Mine Action Professional

*Mr Tim Carstairs*, from the Mines Advisory Group (MAG, UK), expressed concern over the dangers faced by humanitarian workers in times of war. Focussing on the difficulties of demining in particular, Mr Carstairs made a number of important points concerning field operations.

Firstly, he said that, within the context of a conflict, some degree of stability is needed to allow for demining, as well as an adequate guarantee of the security of the personnel involved.

Secondly, in order to create a humanitarian good, of benefit to all actors and sectors of the population, it must be clear to the parties to the conflict that demining personnel, equipment and operations are untouchable. Thirdly, because of the vagaries of conflicts, it is particularly difficult to lead demining operations that require static work over extended periods, as well as repeated travel in the same areas. Before beginning such work, a demining organisation must consider the degree of trust and confidence that it has in the parties to the conflict. Finally, there is the problem of destroying informal mine stocks belonging to individuals not affiliated either to States or to NSAs.

Mr Carstairs was also clear about the challenges to mine action that arise outside the war zone. In particular, he reflected that, owing to the ad hoc and dangerous nature of such work, it is often difficult to obtain funding from international donors. Moreover, he suggested that, to mitigate some of the dangers outlined above, it would be very useful for humanitarian deminers to benefit from the same legal, diplomatic or international protection for their operations as those granted to field operatives of the International Committee of the Red Cross.

## Conclusions

*Ambassador Jean Lint* offered a synthesis of the foregoing views. He called upon all actors, States or not, to spare no effort in tackling the problem of anti-personnel mines and in meeting their responsibilities in favour of a world forevermore without this weapon.

In the first of two closing statements, *Mrs Simona Beltrami*, Coordinator of the Italian Campaign to Ban Landmines and Co-chair of the NSA Working Group, chose to emphasise the politicisation of the landmine issue, and the way in which this obscures the human suffering caused by these weapons. The case studies presented, she said, clearly illustrated the need to create safe spaces for communities and individuals through the facilitation of humanitarian mine action, even in the midst of conflict.

The final speaker was *Mr Pascal Bongard*, Programme Director for Africa from Geneva Call. He was of the view that mine action in conflict is possible. Of course, he argued, there are many challenges and obstacles to such work. Indeed, there may be reluctance from the opposing parties to commit to the mine ban, politicisation of the issue and a lack of cooperation in mine action. Equally, progress in peace negotiations often conditions progress in mine action and continued fighting and insecurity will inevitably hamper mine action efforts as will lack of support by the international community, particularly donors.

However, not every region in a war-torn country will be affected by the conflict, and in such circumstances, mine action may potentially be undertaken. Moreover, granting that not all mine action pillars (deminig for example) can take place, there is nevertheless room for whatever action is possible. In many cases, advocacy, Mine Risk Education and victim assistance can be undertaken. These initiatives are helpful not only because they reduce the mine threat, but also because they lay the ground for a comprehensive mine action effort once peace has been achieved.



## TIMETABLE: Mine Action In the Midst of Internal Conflict

Sunday 27 November 2005 - 1:30 to 5:30 pm

Zagreb

1:30	<b>Conference Opening</b>
	<ul style="list-style-type: none"> <li>• Welcome address: <b>Mrs Elisabeth Reusse-Decrey</b>, President of Geneva Call and <b>Mr Alvaro Jimenez</b>, Coordinator of the Colombian Campaign Against Landmines and Co-chair of the International Campaign to Ban Landmines - Non-State Actors Working Group (ICBL-NSAWG)</li> <li>• Opening statement: <b>Ambassador Jean Lint</b>, Director for Africa, Ministry of Foreign Affairs - Belgium, President of the Fourth Meeting of States Parties to the Ottawa Treaty (Moderator)</li> <li>• Keynote address: <b>Dr Dijana Plestina</b>, Advisor to the Minister for Mine Action, Ministry of Foreign Affairs - Croatia</li> </ul>
2:00	<b>Case Studies</b>
	<ul style="list-style-type: none"> <li>• Colombia: <b>Mrs Diana Roa-Castro</b>, Information Officer, Landmines and ERW Focal Point Office for the Coordination of Humanitarian Affairs OCHA, Colombia, and <b>Ms Sofia Reyes</b>, Social Communicator of Humanitarian Spaces in South of Bolívar - Peace Laboratory, Colombia</li> <li>• Sudan: <b>Mr Peter Moszynski</b>, former Landmine Monitor Researcher</li> <li>• Sri Lanka: <b>Mr Chandru Pararajasingham</b>, Programme Coordinator, Tamils Rehabilitation Organisation, Sri Lanka</li> <li>• Questions and discussion</li> </ul>
3:45	<b>Discussion</b>
	<ul style="list-style-type: none"> <li>• Legal aspects <b>Mrs Kathleen Lawand</b>, Legal Adviser to the International Committee of the Red Cross, Mines-Arms Unit</li> <li>• Questions and discussion</li> <li>• Exchange and discussion of experiences and expertise with practitioners in humanitarian mine action</li> <li>• Questions and discussion</li> </ul>
5:00	<b>Conclusion</b>
	<ul style="list-style-type: none"> <li>• Synthesis and recommendations, <b>Ambassador Jean Lint</b></li> <li>• Closing Statement: <b>Mrs Simona Beltrami</b>, Coordinator of the Italian Campaign to Ban Landmines – <b>Mr Pascal Bongard</b>, Programme Director, Geneva Call</li> </ul>

# KEY DOCUMENTS AND SPEECHES FROM THE WORKSHOP

## Opening Statements

### Ambassador Jean Lint, Opening Statement

Since the foundation of Geneva Call in 2001, I have had the pleasure to work together with its dynamic president, Madame Elisabeth Reusse-Decrey. The achievements in such a short time are impressive.

The Non-State Actors Working Group of the International Campaign to Ban Landmines (ICBL) and Geneva Call representatives attending the Third Meeting of State Parties in Managua, Nicaragua, in September 2001, worked with the governments of Colombia and the Philippines to successfully introduce wording into the Managua Declaration affirming the need to engage NSAs.

During my presidency in 2002, I was in favour of the concept of having an informal meeting with non-State actors on the margins of the Conference in Geneva, where important discussions were held on promoting adherence to the aims of the Convention by armed, non-State actors and on how demining can be used as a confidence-building measure in peace-processes after internal and inter-State conflicts.

I certainly was glad that this helped to spur new language in the Final Declaration urging armed, non-State actors “to cease and renounce the use, stockpiling, production and transfer of anti-personnel mines” as an increasing number of conflicts were taking place within - rather than between - States.

For Sudan, the non-State actors were the Sudan People’s Liberation Movement/Army (SPLM/A). Those non-State actors are today in the Sudanese Government of National Unity, at the highest posts in the Ministry of Foreign Affairs. No doubt that their involvement of the past will be reflected in their will of today to rid their country of the problem of anti-personnel landmines.

Another big achievement for Geneva Call was the fact that it was able to have eleven non-State actors of Somalia talk together and agree to sign the Deed of Commitment of Geneva Call, making by that a remarkable confidence building measure.

In my present function at the Ministry of Foreign Affairs, I am in charge of the 48 African countries south of Sahara. In that respect, I am happy to see that 47 out of them are parties to the Convention, with the exception of Somalia. In that respect, I can tell you that last week, my minister of Foreign affairs met with the Prime Minister of the Transitional Federal Government of Somalia. During that meeting, the Prime Minister declared that once the government and Parliament are fully operational, accession to the Convention belongs to their priorities.

Burundi, which comes out of a difficult period of internal crisis and war, presents also the characteristics that the non-State actors of yesterday are now occupying major posts. The new President is coming from the CNDD-FDD, which signed the Deed of Commitment of Geneva Call two years ago. We can count on the engagement of the government to do everything to finish the job of mine clearance and stockpile destruction, without forgetting the necessary assistance to the victims.

In conclusion, I call upon all actors, States or not, to spare no effort to tackle the problem of anti-personnel mines and take their responsibilities in favour of a world definitively exempt of this inhuman weapon.

### **Keynote address: Dr. Dijana Plestina**

Dear colleagues, dear friends,

First of all, allow me to welcome you to Zagreb. It is wonderful seeing you here today. It is also both an honour and a pleasure to have the opportunity to speak on this important topic, as so many of you here today have considerably more knowledge and have as well the field experience on this issue that I do not have. However, because the issue is such an important one, I have agreed to say a few words and I thank you for inviting me to do so.

When I first began working on the Mine Ban Treaty some six years ago, I remember thinking after some time (after attending a number of intersessional meetings) that, while the Mine Ban Treaty is a very important instrument and an absolutely necessary one, it did not address one key problem area: that of “freedom fighters”, “guerrilla groups” or “insurgents” as they are often called - or, as we call them - armed non-State actors (NSA).

As a political scientist with considerable knowledge of and experience in development, I was only too aware of multi-level problems caused by land mines on the one hand, but also of the problem associated with nation and State building in a post colonial world within a framework of economic poverty and political dependency. What does it mean, I asked myself, to have a State sign and ratify the Mine Ban Treaty if armed groups operating within that State continue to use anti-personnel landmines? What difference can it possibly make to the local population who placed the land mine? It was the question that was not broached at our States Parties Meetings, and yet, one which surely we could not ignore. For the problem existed – and therefore clearly it had to be dealt with.

You can imagine how thrilled I was when I found out that there is a group of people who, first of all, acknowledge that the problem exists and, second, are working towards finding a solution by talking with and encouraging dialogue between the dominant State and its non-State actors engaged in armed conflict. Thus, from the beginning, I have been a supporter and promoter of Geneva Call and its work, as well as a fan of its president Madame Elisabeth Reusse-Decrey.

We all know that the very nature of this process, engaging armed non-State actors in dialogue, is difficult and risky, and that success is anything but assured. I am sensitive to the sometimes slippery line that separates dialogue between parties in an armed conflict from recognition of the legitimacy of armed groups, and the consequent hesitancy and/or even refusal of some States parties to embark on the process. But, and I believe this firmly, there is no option to taking that difficult and risky road.

For, if the purpose of our work is to eradicate all threat of anti-personnel landmines, everywhere and for all time, - and, as signatories to the Convention we have all pledged that, that is our purpose - then it becomes our responsibility to work, both, with the armed non-State actors to comply with the provisions of the Convention, and, with the State Party in whose jurisdiction or control they operate.

We all have the responsibility to work for the universal observance of the Convention, and that means taking appropriate steps to first, persuade all armed non-State actors to stop the use, stockpiling, production and transfer of APM; second, to enlighten those armed non-State actors oper-

ating in areas under States parties jurisdiction or control of their requirement to comply with the provisions of the Convention or be called to account for all violations; and third, to work with, or at least support, those who are working with the States within whose boundaries or control armed non-State groups operate to facilitate dialogue.

A word of caution: we must always remember that our task must be purely humanitarian. Though we may often feel that the humanitarian task requires a political solution in our work with the armed non-State actors, we can not and must not transgress on the sovereignty of the State in whose jurisdiction or control the armed NSA operates. The responsibility and obligation to refrain from meddling in the internal affairs of those States rests with each of us if we are to maintain credibility of our work in universalization of the Convention.

It is only by working in cooperation with the State (party to the Convention or not), and only by using arguments as tools of persuasion (no matter how slow, or frustrating that may be at times), that the credibility of the process itself and of those working to include armed non-State actors in the process, will be ensured, and that our mutual goal of universalization of the Convention and of a mine-free world can be achieved.



Panel members - Photo Credit: Geneva Call

## CASE STUDIES

### *Colombia*

**Ms Sofia Reyes**

#### **MICOAHUMADO: Building a humanitarian space**

Micoahumado is a small village belonging to Morales town in southern Bolívar Department, Colombia. It is situated at the edge of a mountainous region called “Serranía de San Lucas”. At the moment, Micoahumado and the nine small villages around it have 7000 (seven thousand) inhabitants.

To reach the village, it's necessary to cross the Magdalena River and then to cover 35 kms along a very difficult road.

Micoahumado's inhabitants live in precarious conditions, and its basic services, such as health care, education, drinking water, electricity, access roads, etc., are deficient. Ironically, this territory is full of natural wealth and resources, has fertile land and is strategically placed in the region. This is why armed actors fight each other for its control.

Basic norms of humanitarian respect have been broken in Micoahumado. The population has suffered blockading of roads and restrictions of food and medicines. Armed groups use spaces and houses belonging to civilians; who also suffer from frequent armed clashes around the small villages, as well as mined fields. Since 1998, fighting between the guerrilla and paramilitaries has become more intense. Twice, paramilitary groups have burnt the Farmers Association land, where beans and coffee are grown.

In December 2002, ELN guerrillas placed landmines in vital places of the community: the aqueduct of the town, a soccer field near private houses, and the road that serves the nearby villages of La Plaza, El Reflejo, La Caoba and La Guásima.

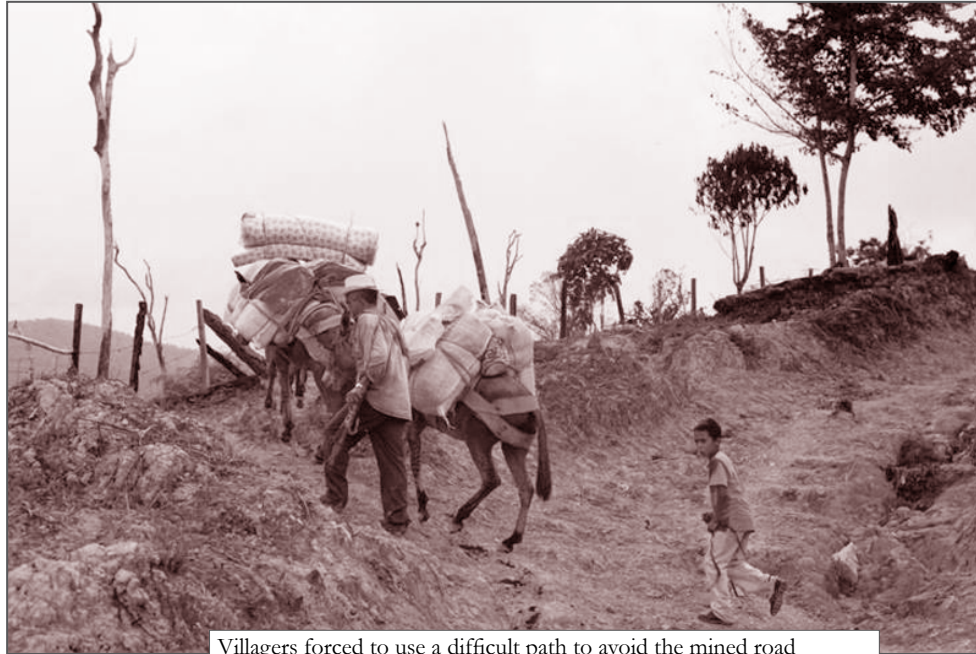
To address this situation, the community itself created a dialogue commission, composed of farmers, merchants, transport workers and teachers, with the support of the Magangué diocese (Catholic Church) and the Magdalena Medio Programme for Development and Peace (PDPM Peace Laboratory). As a result, the armed groups moved further away from civilian houses, and the aqueduct and the soccer field were demined - but not the road.

Amidst the critical situations, the crossfire, the fear and the stigmatization, people were accused of belonging to one or another of the warring factions, and yet they took the courageous decision to stay and not to let anyone displace them. For a month, the population took out white flags and stayed inside. And from this action was born the “Sovereign Communitarian Process for life, justice and peace of Micoahumado”, with the community confirming its territory as a humanitarian space, and creating the “Asamblea popular constituyente” which is a special form of citizen's participation.

At that time (December 2002) the situation was still difficult and the road was still mined.



The only way possible for farmers to take out and sell their products was a footpath. Whether walking or riding a mule or horse, taking this path meant that farmers, women and children took far longer than they would usually have taken by road. The difference was terrible: four or even six hours' on foot to reach Micoahumado market. Of course this increased the price of transport for every charge, affecting the domestic economy.

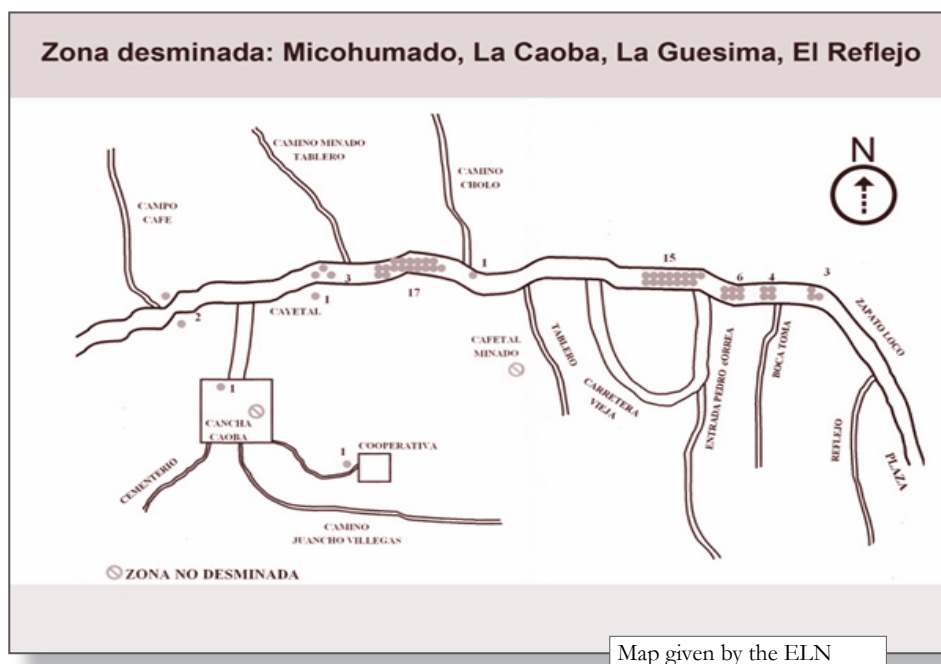


Villagers forced to use a difficult path to avoid the mined road  
Photo Credit: Colombian Campaign Against Landmines

In these conditions of humanitarian crisis, the creation of the “Sovereign Communitarian Process for life, justice and peace of Micoahumado” helped a lot to increase and strengthen the participation of several institutions and Micoahumado won the support and the presence of the Colombian Campaign to Ban Landmines and Geneva Call. Other organizations worked to support and joined the Micoahumado Process: Redepaz, Organización femenina popular, Credhos, Corporación Nación, and government institutions, such as the Office of the Ombudsman and the Social Solidarity Network. Finally, I must mention organizations with an international reach, such as PCS, Christian Peacemaker Teams (CPT), the Office of the UN High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees (UNHCR), and the International Committee of the Red Cross (ICRC).

Together, those organizations, the Micoahumado community and PDPMM Peace Laboratory have developed the strategy of **protection and guarantees** for the defence and respect of the life of the community and civilian population. Developing this strategy through dialogue, Micoahumado's citizens asked the ELN guerrilla to demine the territory. This proposal met with a positive response from the ELN and the insurgent organization agreed to demine with its own resources the La Plaza – El Reflejo – La Caoba – La Guásima road. This opened up the possibility for a key experiment in humanitarian demining in southern Bolívar, Colombia.





On 26<sup>th</sup> January 2005, the demined road was given to the community. On the same day, the population and some institutions (as mentioned) held a symbolic celebration and made the following public announcement:

“We receive this road today, which we fully expect to contribute to peace and economic and social development, the respect for Human Rights and International Humanitarian Law.

The Sovereign Communitarian Process for life, justice and peace of Micoahumado asks the authorities for formal verification of the demining to be carried out by an international organization capable of this task. We also ask for this to be understood as a humanitarian demining, guaranteeing life and respect for the civilian population and the fulfilment of the Ottawa Convention.”



This request by the Micoahumado community was expressed to the government on 15 January 2005, and then by Geneva Call and the Colombian Campaign Against Mines, but there has not yet been any official verification in the field. It is very important for the community for action to be taken on this issue and for it to receive the support of the authorities. This is the call of Micoahumado's Process today.

The public communication along with a letter sent to highest authorities in Colombia expressed six specific requests:

1. To verify the demining.
2. To recognize Micoahumado's community as a civil actor able to build peace.
3. To search for a political solution to Colombia's armed conflict.
4. To support integrated development of the region and to build a fair economy.
5. To improve the basic public services for the population.
6. To guarantee to keep the road as a territory of peace, and of course out of the war.

Micoahumado's experience should be seen as part of the regional context. Similar processes have taken place, building humanitarian spaces in the whole Magdalena Medio region with Laboratory of Peace (PDPMM). At the moment, there are 12 spaces and they work along 4 strategic lines:

1. Support and strengthen the population's decision to declare their territory as a humanitarian space.
2. Conflict Identification and Description.
3. Formulation of a special plan of guarantees and protection
4. Formulation of an integrated proposal for development and peace (after guarantees for life, it is important for communities to find out how they want to live, to discover their vocation and to achieve the kind of life we are talking about - a life with dignity).

For some actors it is difficult to understand the sense of this "Sovereign Communitarian Process for life, justice and peace of Micoahumado" as an effort of civilians, organized citizens who want guarantees that their lives will be respected and who want to stay in their territory. Leaders and communities are frequently marked, but they have decided to stay without serving any armed group, in the defence and respect of life and the people's dignity, showing a way for the rest of the country: recovering dialogue and the spoken word as a strategy for conflict resolution. That is why they always say: **"Love life and work for peace!"**

## **Mrs Diana Roa-Castro, Mine Action in the Midst of Internal Conflict: The Colombian Case**

### **Armed Conflict, History and Current Situation**

Colombia, a country of 44 million inhabitants and a territory of more than 1'000'000 km<sup>2</sup>, has been immersed in an internal armed conflict for the last 45 years. Of eminently structural causes, associated with social inequality, poverty and the noticeable monopolies on land, resources and industry; the armed conflict has had diverse manifestations and involved a variety of legal and non-State actors with armed structures, clear hierarchies and ideologies. Armed groups in the service of economic interests and private armies under the command of drug dealers have become another part of the current picture.

Although the first documented examples of non-State armed groups in Colombia can be found back in the 1930s, it is possible to locate the genesis of the current conflict in the 1940s and 50s, in the period known as “La Violencia”, marked by confrontations between the Liberal and Conservative parties, which led to some 300’000 deaths. This stage was followed by the formation of “self-defence” groups derived from the liberal guerrillas, whose initial objective was to protect themselves from government persecution of farmers’ organizations, at that time promoted by the communist party.

In this context, the Revolutionary Armed Forces of Colombia, known as FARC, emerged in the 1960s as a guerrilla group, and became a more solid armed structure during the 1970s and 80s. The ELN (National Liberation Army) also emerged in the 1960s, growing out of the radicalization of the Liberal Revolutionary Movement - MRL. These two groups constitute the main Non-State Armed Forces in the country, and have approximately 15’000 and 5’000 combatants respectively. FARC has an active presence in 31 of the country’s 32 departments, on 62 battlefronts, whereas the ELN is active in 30 departments, concentrating itself in the northern, eastern and the central-western parts of the country through 30 military fronts. At least another 10 leftist armed groups have a presence in the national territory. Among these are the EPL (Popular Liberation Army)<sup>1</sup>, the ERG (Revolutionary Guevarista Army)<sup>2</sup> and the ERP (Revolutionary People’s Army)<sup>3</sup>. There is also a great presence of paramilitary or self-defence groups, which are dispersed all throughout the territory. These groups, whose beginnings can be located in the 1970s, grew at the end of the 1980s to become “... powerful military structures able to carry out coordinated actions in all the country”<sup>4</sup>. According to the Ministry of National Defence, “... illegal self-defence groups have had a significant growth and the greatest territorial expansion in recent years...”<sup>5</sup> At the moment, the great majority of paramilitary or self-defence groups, under the umbrella organization Colombian United Auto-defences – AUC, are involved in peace negotiations with the national government.

During the last 15 years, various peace processes have ended in the demobilization of at least four armed groups. Among the most successful processes, it is possible to emphasize those that took place with armed groups like the M-19, the PRT (Workers Revolutionary Party), the CRS (Socialist Renovation Current), the EPL (Popular Liberation Army) and the Quintín Lame. Nevertheless, some others have failed and therefore darkened the humanitarian panorama of the country.

Between 1998 and 2001, FARC maintained dialogues with the government of the former President of the Republic, Andrés Pastrana Arango. These dialogues finished without any agreements. Also between 1998 and 2002, the National Government and the National Liberation Army - ELN maintained peace dialogues. Among the issues discussed were the respect for children’s rights and a limitation on the use of antipersonnel mines. The process also ended without an agreement in June 2002.

As mentioned previously, the government of President Alvaro Uribe Vélez maintains a peace process with self-defence groups that began at the end of 2002. According to the Office of the High Commissioner for Peace, 11’119 men pertaining to 20 groups have demobilized during the past

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1. The EPL, a leftist guerrilla that appeared during the 1960s, took part in the peace agreements signed between 1990 and 1994. However, a faction of this group is still active and maintains the name of the original armed group. Francisco Caraballo, spokesman and former commander, is currently prisoner at the Maximum Security Prison of Itagüí.

2. The ERG is a separate faction of the ELN since 1993.

3. The ERP is a separate faction of the ELN since 1996.

4. Colombia. Los paramilitares en Medellín: ¿desmovilización o legalización?, Amnesty International, London, United Kingdom, September 2005, page 5.

5. Los grupos ilegales de autodefensa en Colombia, Ministry of National Defense, Bogotá, Colombia, December 2000, page 5.

three years. Until now, self-defence groups have handed over 7'298 weapons<sup>6</sup>. No mines or elements for their manufacture have been recorded.

It is important to highlight that the current government does not recognize the existence of an internal armed conflict in the country. In different national and international forums, President Alvaro Uribe has defended the thesis that "... in Colombia there is a very serious social problem that we must solve, but the actions of the violent groups cannot be framed nor defined as actions within an internal armed conflict. It is a terrorist threat against a State that is deepening the pluralist democracy. ”<sup>7</sup> However, different humanitarian and human rights organizations, such as the International Committee of the Red Cross and the United Nations Office of the High Commissioner for Human Rights have stated that the conditions of the armed confrontations and the impact on civilians mean that Colombia should be described as a nation with an internal armed conflict. They have also stated that the existence of terrorist acts does not modify the legal description of the conflict.

Today, between 1.8 and 2.6 million people are considered to be internally displaced<sup>8</sup>. Nearly 5,000 people have suffered injuries or have died due to landmines and other Explosive Remnants of War<sup>9</sup> and between 7'000 and 14'000 children have been forcibly recruited by illegal armed groups<sup>10</sup>. These figures, together with the evident lack of capacity of the national government to develop efficient protection and attention measures to civilians at risk, are arguments enough to consider the Colombian situation to be critical and to consider it as an Internal Armed Conflict.

## **Use of Mines**

In the context of the internal armed conflict, all the armed actors have used anti-personnel mines. The National Army, the Air Force and the National Navy declared that they have stopped using mines since 1999, although no moratorium has been issued. In 2001, with the entry into force of the Mine Ban Treaty, the Armed Forces officially ceased all use of this type of devices. At the moment, the Armed Forces continue to use Directed Directional Charges, which are not prohibited by the Treaty.

At least four groups of armed non-State actors present in Colombian territory are still using mines and other Improvised Explosive Devices, making Colombia the only country in the Americas region where landmines are used in a continuous and systematic way. The Revolutionary Armed Forces of Colombia - FARC, the National Liberation Army - ELN, the Revolutionary Guevarista Army - ERG and the umbrella paramilitary group United Self-defence of Colombia - AUC have used mines in different areas of the country, causing civilian victims. The increase and new outbreak of hostilities between armed groups in recent years have caused a growth in the number of areas affected by mines, as well as the number of civilian victims. This has also implied an increase in contamination by other Explosive Remnants of War.

According to the Landmines Observatory, FARC is considered the major presumed perpetrator of both civilian and military mine accidents, followed by the ELN and the AUC.

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6. The received weapons have been categorized as "Long weapons", "short weapons" and "accompaniment weapons". Nearly 5,000 grenades have also been recorded.

7. President's Uribe intervention during the Forum "Internal Conflict or Terrorist Threat?", Chía, Colombia, 26 April 2005.

8. Data provided by the Social Solidarity Network and the NGO "Consultoría para los Derechos Humanos y el Desplazamiento", October 2005.

9. Data provided by the Landmines Observatory from the Presidential Program for Human Rights and International Humanitarian Law, November 2005

10. Figures provided by UNICEF office in Colombia, June 2005.



## Types of mines used in Colombia

Although industrially manufactured mines have been used in the country, mostly developed by the Military Industry - INDUMIL<sup>11</sup> and imported from the United States, former Czechoslovakia and Belgium<sup>12</sup>; most of the mines in Colombian territory are handmade, and manufactured with easily obtainable, home-made materials. It is frequent to find the use of PVC tubes, plastic and aluminium fragments, mud and tin cans in the fabrication of these artefacts. The explosive charges, included in variable amounts, are accessible through black markets and are mostly manufactured legally in countries of the region, even Colombia. The handmade mines and improvised explosive devices - IED contain variable amounts of shrapnel, made up of metallic fragments, nails, sharp pieces of glass and other elements. The Colombian Armed Forces have denounced the addition of faecal matter, adhesive materials and other chemical ingredients in different classes of home made mines and improvised explosive devices, thus generating greater complications to the already complex injuries caused by this type of weapon.

The use of handmade mines and IED generates complex challenges for the development of humanitarian mine action activities. The identification of this kind of device is complex, since they do not correspond to determined standardized patterns in appearance or industrial characteristics. In this sense, the activities of Mine Risk Education are significantly difficult. The Mine Risk Education organizations recognize this issue as one of their main obstacles when trying to educate the people and communities at risk on the appearance of mines. It is also important to consider that this kind of mine can be manufactured in order to look inoffensive and sometimes useful objects, which may entice people into high-risk practices, such as tampering and manipulation.

In terms of victims' assistance, the proliferation of handmade mines and IED is also an important aspect to consider. The variability in the amount of explosive which this type of mine contains makes it impossible to determine its destructive power. Its shapes and appearances are also a matter of risk, given that tampering or manipulating these objects is usual in areas where no knowledge about these issues has been imparted. However, according to medical staff in areas of high prevalence of accidents, the major concern is the large quantity of materials that are used for the manufacture of these weapons, which disperse all throughout the residual limb and therefore lead to more amputations and secondary interventions<sup>13</sup>. The use of faecal matter and other toxic materials have generated injuries that go far beyond those seen in other kind of war-related injuries<sup>14</sup>.

But, without a doubt, the main challenges created by this type of device are for mine clearance activities. The military forces have experienced great difficulties in carrying out such activities, since the metallic amounts and explosive material are highly variable, making it difficult and sometimes impossible to use traditional metal detectors. A similar situation arises with the identification of alternative mechanical means and animals. The risks taken by deminers increase, since their protective equipment is not designed for this weaponry and sometimes insufficient to protect them from the explosive force of these mines.

11. INDUMIL, the Military Industry, depending from the Ministry of National Defence and in charge of the production of weaponry in Colombia, manufactured an undetermined number of antipersonnel mines under the references MAP-1 and MAP - 2. INDUMIL claims to have ceased the fabrication of mines and to have destroyed the infrastructure for the production of these weapons in 2001, after the entry into force of the MBT

12. Landmine Monitor 2004: Toward a Mine Free World, Colombian Chapter, "Transference", International Campaign to Ban Landmines, Washington D.C. United States, September 2004.

13. Information gathered through interviews with medical staff of Hospital Militar in Bogotá, Hospital San Vicente de Paul in Medellín, Hospital Ramón González Valencia in Bucaramanga, Hospital Universitario del Valle in Cali, and Hospital Manuel Elkin Patarroyo in Santa Rosa del Sur - Bolívar; Colombia. Information collected between 2003 and 2005.

14. Medical doctors of Hospital Universitario del Valle and Hospital San Vicente de Paul have recorded a growing amount of mine-related wounds where there was presence of animal faecal matter.

## Affected territory and mine victims

Between 600 and 660 municipalities are considered to be affected by the presence or suspicion of existence of anti-personnel mines and other Explosive Remnants of War<sup>15</sup>. A minimum of 4'892 victims have been recorded in 403 of the 1'098 municipalities of the country during the past 15 years<sup>16</sup>. Of these, at least 3'438 (70.2%) were injured between 2000 and 2005<sup>17</sup>, showing an increase in the annual and accumulated number of recorded victims. According to the Landmine Monitor Report 2004, Colombia has the third most new victims of any country in the world.

According to the National Landmines Observatory reports, between 2000 and 2004, 23% of the victims of mines died, while the other 77% were severely wounded or mutilated. Of these, 61.8% were combatants<sup>18</sup> and 38% civilians. Among civilians, children represent 30% of the victims and women 10%.

## Mine Action

Mine action in Colombia is limited in scope and marked by a high degree of centralism. In the last four years, since entry into force of the Mine Ban Treaty, important changes at policy and coordination levels have taken place, but progress in direct action in affected communities and victim assistance can be characterized as precarious in terms of reach, coverage, impact and funding. Evidently, the crisis generated by mines and ERW is growing faster than the national capacity to solve it and, in this sense, it is worth assessing mine action activities in the light of its pillars.

## Universalization

Colombia has been a State Party to the Mine Ban Treaty since 2001. The country is also party to the Convention on Conventional Weapons and its amended Protocol II, but it has not adhered to Protocol V. The Colombian Government has not issued a formal position regarding this Protocol, though there is a general consensus of the importance that this instrument could have for the future of the country<sup>19</sup>.

Colombia has adopted domestic legislation regarding mines. Law No. 759/03 deals with coordination issues, establishes a National Authority and introduces stiff penalties for breaking the MBT. However, key elements of the Law, such as the proposed humanitarian missions, have not yet been regulated, making this instrument inapplicable in some instances. The People's Ombudsperson Office, as well as the ICRC, the Colombian Campaign Against Landmines and UN Agencies have called for the need for these regulations to be issued and signed by the President of the Republic as soon as possible, in order to have more practical and effective tools to deal with the humanitarian crisis caused by mines and ERW in Colombia.

15. Statistics from the Antipersonnel Landmines Observatory for the Presidential Program for Human Rights and International Humanitarian Law, at <http://www.derechoshumanos.gov.co/minas> and the Survey Action Centre Preliminary Opinion Collection, developed in Colombia in October 2005.

16. Ibid.

17. Ibid.

18. 0.7% of these were recorded as non-State actors and 61.1% were from the Military Forces.

19. The International Committee of the Red Cross (ICRC) delegation in Colombia, the Colombian Red Cross, the Colombian Campaign Against Landmines, the People's Ombudsperson Communications Office, The United Nations Children's Fund (UNICEF), the UN Office for the Coordination of Humanitarian Affairs (OCHA), the UN Development Programme (UNDP) and the International Organization for Migrations (OIM), as well as other national NGOs have made pronouncements in various forums regarding the importance of having Colombia signing the CCW's Protocol V, in the light of the humanitarian imperative and as a confidence-building measure with the international community.



It is also important to highlight the efforts regarding universalization of the Mine Ban Treaty principles and spirit toward armed non-State actors that various groups have been making over recent years. Worth mentioning is the work that the Antioquia's Humanitarian Commission has undertaken, as well as that done by other key actors, such as the Colombian Campaign Against Landmines. Nevertheless, the government ban on promoting or developing contacts with armed non-State actors in this or any other matter, and specifically regarding humanitarian activities<sup>20</sup>, poses significant obstacles to this kind of work.

## Humanitarian Demining

There are no humanitarian demining activities taking place in Colombia. According to the Landmines Observatory, the internal armed conflict constitutes the main obstacle to initiating such activities<sup>21</sup>. Nevertheless, with the support of the international community, the National Government has provided training and equipment for its military forces for mine clearance, which have been supported by the United States Government through the donation of equipment and training<sup>22</sup>. The Organization of American States - O.A.S. also supports the National Army through training a group of soldiers in standards and practical humanitarian mine-clearance<sup>23</sup> activities. According to a recent Press Release by this organization, the O.A.S. and the national Government will initiate mine-clearance operations in November 2005 in an area of the department of Bolívar, on the Colombian Atlantic Coast, called Mamonal. The O.A.S. will contribute with training, life insurance for the involved personnel, logistical support and international supervision for these activities<sup>24</sup>. Regarding this announcement, the Colombian Campaign Against Mines issued a press release in which it stated that these activities cannot be described as humanitarian demining, given that their direct intention is not to handover the cleared land to affected communities. In the same press release, the Campaign stresses the need "to prioritise the needs of the communities before commercial ones, in issues related to mine-clearance"<sup>25</sup>. There are no systematic mine-clearance activities and any that may take place do not conform to international standards nor correspond to priorities set by the affected communities. To date, the Landmines Observatory has received 35 requests to conduct humanitarian missions and mine-clearance operations in 16 departments and 34 sites of the country<sup>26</sup>. Nevertheless, according to this institution, "it is impossible to prioritize and to give a proper response to all the requests that arrive... since these missions are not regulated, it is impossible to give a response to these requests"<sup>27</sup>. The Observatory considers eight of these requests to have been solved while the other 27 remain pending<sup>28</sup>.

On the other hand, "village demining" activities are more frequent every day. These tasks, carried out by people without training, suitable protection or supervision, have been witnessed in communities of the departments of Cauca, Santander and Vaupés, where groups of natives and farmers have undertaken clearance operations either individually or in groups<sup>29</sup>. In most cases, the commu-

20. See the document "Lineamientos para el enfoque de los proyectos de cooperación internacional", High Commissioner for Peace Office, undated document, Bogotá, Colombia, 2005.

21. The Landmines Observatory stated in the document "Evaluación de Necesidades en ERM", that "One of the mayor difficulties presented by all the experiences is the impossibility of developing mine action in the context of the armed conflict, as well as the proliferation of handmade antipersonnel mines", undated document, Bogotá, Colombia, page 13.

22. Interview with Luz Piedad Herrera, director of the Landmines Observatory, Bogotá, Colombia, 15 November 2005.

23. OAS to Conduct Mine-Clearing Operations in Colombia, Press Communiqué E-261/05, 8 November 2005.

24. Ibid.

25. Communiqué No. 22, Colombian Campaign Against Landmines, 9 November 2005.

26. Emergencies related to antipersonnel mines reported to the Landmines Observatory between January and October 2005, Landmines Observatory, undated document, sent by e-mail on 15 November 2005.

27. Interview with Luz Piedad Herrera, director of the Landmines Observatory, Bogotá, Colombia, 15 November 2005.

28. Emergencies related to antipersonnel mines reported to the Landmines Observatory between January and October 2005, Landmines Observatory, undated document, sent by e-mail on 15 November 2005.

29. In different missions to communities, organizations such as UNICEF, OCHA, the European Union, the Landmines Observatory and the Colombian Campaign Against Landmines have evidenced these kinds of activities.

nities in which these initiatives have taken place have previously denounced the presence of mines and other ERW to civilian and military authorities, with no practical answers. In other cases, like the one of the indigenous community of Northern Cauca, where the Indigenous Guard has decided to develop periodic inspections of its territory and to remove mines and ERW, the motivation is not only to reduce the risk, especially to children, but also to avoid the entrance of any armed group into their ancestral territory. According to indigenous leaders, “this can be dangerous, we know it, but it is more dangerous to leave those things there or to let the armed men use our territory. That will jeopardize our people’s position of neutrality and autonomy regarding a conflict that does not belong to us”<sup>30</sup>. Regardless of the causes, the truth is that village demining puts those who undertake it at an enormous risk, which they decide to take due to the lack of practical, efficient and neutral responses.

## **Victims Assistance**

Colombia does not have a specific policy for mine victims’ assistance. According to the Landmines Observatory, attention to mine victims is developed under the same policies for victims of violence and attention to people with disabilities<sup>31</sup> and the Observatory has promoted this issue through the strengthening of medical facilities and in the departments of Valle del Cauca (Hospital Universitario del Valle) and Santander (Hospital Ramón González Valencia)<sup>32</sup>.

Victims’ Assistance continues to be one of the most worrying issues regarding mine action. It is important to note that war related injuries, and specifically those caused by explosive devices, mines and other ERW are not considered as a public health problem. No variables related to this kind of injuries are included in the Health Surveillance System and no data gathering mechanisms have been implemented at medical facilities at any level. In this sense, the loss of key information regarding injury patterns, risk sites, risk behaviours and critical routes for the attention of victims is continuous and irreparable.

Also a matter of deep concern is the lack of knowledge regarding war wounds and their treatment at municipal level, as well as the lack of basic first aid knowledge in affected communities. Even though the rate of mine accidents grows everyday, no mechanisms have been designed or applied for affected communities to have a basic knowledge of first aid attention and transportation of victims, and medical doctors at first level hospitals do not have the proper training and equipment to provide efficient care to the victims.

## **Mine Risk Education**

It is commonly said that Mine Risk Education – MRE, is the only possible mine action activity under the present circumstances in the country. Though this has proven not to be the case, it is accurate to say that this is the area in which most developments have been made, and in which most actors are currently working. According to the Landmines Observatory, MRE activities are being carried out by at least 12 organizations in 20 departments<sup>33</sup>. Since the process of National Standards for Mine Risk Education and the subsequent accreditation of MRE organizations is under construction at the moment, the organizations which are mentioned in the Observatory’s inventory have diverse levels of knowledge of the issue, different constructions of the Mine Risk Education concepts and very different capacities for carrying out such activities in the field.

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30. Interview with Nasa Indigenous leader, Caldono, Cauca, April 2004.

31. Interview with Luz Piedad Herrera, director of the Landmines Observatory, Bogotá, Colombia, 15 November 2005.

32. Ibid.

33. Mine Risk Education map of actors, Landmines Observatory, undated document, Bogotá, Colombia, April 2005.

The development of MRE plans, projects and activities in the context of the armed conflict poses, among many other challenges, the fact that it cannot be exclusively linked to humanitarian demining activities. In this sense, it is impossible to think about MRE with the plain indicators of accident reduction, or even to frame it in strict temporal schedules linked to mine-clearance operations. The most adequate definitions regarding change of behaviour and the adoption of safe and self-protective behaviour take a different perspective and all three components of MRE (Education, Communication and Community Liaison) become part of an ambitious goal, which is to build social capital in communities worn out by years of war. Mine Risk Education best practices in Colombia, show that MRE, and mine action as a whole, are tools to empower communities, and to provide them with knowledge and mechanisms, not only to protect themselves and their families, but also to enhance and strengthen their capacity to build humanitarian spaces.

## **Difficulties, Necessary Conditions and Successes**

### **• *Difficulties***

The continued use of mines by non-State actors is the most evident, but also the most difficult obstacle to carrying out mine action activities in the country. The appearance of new mine affected areas, as well as the changing characteristics of affected communities and priorities, makes it very difficult to determine the real needs of communities at risk and therefore to appropriately plan and carry out mine action activities. Directly linked to this aspect is the issue of marking and fencing affected zones. The lack of knowledge, will or capacity of mine users to mark dangerous areas, has resulted not only in an increased number of accidents but also in the impossibility of access to mined territories, which are mostly productive agricultural farms, generating important and long-term socio-economic problems. The inexistence of maps of mined areas adds significantly to the difficulties at the time of mine -clearance and other risk reduction methods.

Armed conflict and the continuity and intensity of hostilities are important factors too, given that this situation not only makes mine action difficult, but also increases the areas affected by ERW. It is considerably risky and very difficult to access many of the mine affected areas, not only for practical and logistical issues, but also for security reasons. In February 2005, during a workshop on Humanitarian Demining in Colombia, the Organization of American States, as well as the Vice-President's wife, acting as a Government delegate and permanent invitee of the National Intersectorial Commission for Mine Action, established the will of both the OAS and the National Government to carry out mine action activities, but highlighted the "impossibility of starting any humanitarian demining in affected areas while there are ongoing combats in nearly all the territory"<sup>34</sup> This situation, together with the negative government reaction to humanitarian spaces and agreements<sup>35</sup> that could allow the development of humanitarian mine action, increases the risk of vulnerable communities and survivors.

Another important obstacle is the lack of real knowledge on the actual impact of mines and other ERW. Although the Information Management System for Mine Action - IMSMA, under the direction and analysis of the Landmines Observatory, provides updated data on affected departments and municipalities as well as absolute cumulative frequencies of mine/ERW victims, the present geo-referenced system based on the official national cartography, does not have the capacity to

34. Statements by Ms Maria Victoria de Santos, Vice-president's wife and permanent invitee to the National Intersectorial Commission for Mine Action – CINAMA and statement by Colonel William McDonough at the first forum for humanitarian demining, Cartagena, Colombia, 22-24 February 2005

35. See the document "Lineamientos para el enfoque de los proyectos de cooperación internacional", High Commissioner for Peace Office, undated document, Bogotá, Colombia, 2005.

register events at the level of “corregimientos” and “veredas”<sup>36</sup>, therefore describing the risk areas as big polygons with no punctual definitions. On the other hand, no mechanism has been designed, adapted or implemented in order to evaluate the needs of affected communities. In this sense, the “Preliminary Opinion Collection - POC”, a recent study developed by the Survey Action Centre - SAC in association with the Colombian Campaign Against Mines has been the only systemic exercise designed to understand the impact of mines and ERW at a municipal level<sup>37</sup>. One of the major conclusions of this document is the need to evaluate the impact of mines and other ERW at a community level, rather than at a municipal one<sup>38</sup>. A document developed by the Landmines Observatory in order to identify the affected municipalities with the highest priorities in terms of mine action, identified 64 municipalities where at least MRE activities should be started as soon as possible<sup>39</sup>.

The subject of reliable data and information is also a central aspect of current difficulties in carrying out Mine Action activities. Today, basic IMSMA sources for this analysis are secondary ones, while the vast majority of them are either military or intelligence based. This situation does not only apply a considerable weight to the military variables of the data collection systems, therefore biasing the analysis; it also blurs the impact of these weapons on civilians and their attention and protection needs. Currently, mine action experts and workers consider a significant under registration of mine/ERW in Colombia as one of the major information problems. In this same sense, the lack of war related injuries variables in public health surveillance systems is an urgent need in order to identify a more accurate number of mine/ERW affected sites and risky behaviours, as well as critical routes for the attention of victims.

### • *Necessary conditions*

The crisis generated by mines and other ERW has fundamentally humanitarian characteristics and impacts. In this sense, the humanitarian imperative as defined in the United Nations Mine Action Policy, regarding the principles of humanity, neutrality and impartiality, must be devoted to the improvement of human security conditions<sup>40</sup>. As obvious as it might sound, the main necessary condition for ensuring that mine action activities are humanitarian, possible and sustainable, is a proper recognition of the humanitarian crisis that these weapons are causing, and the obligation to protect vulnerable civilians and affected communities. In this light, all alternatives designed to mitigate the impact of mines are to be considered, including, and sometimes privileging humanitarian dialogues and agreements in areas where armed non-State Actors have presence and/or control, in order to allow Mine Action Activities and even in some cases for them to carry out such activities. Humanitarian agreements and spaces are key instruments for a prompt start in the search of efficient solutions towards safer villages and individuals.

Support from the international community is yet another determining factor for successful and sustainable mine action. This cooperation must be understood in the spheres of funding, technical and political support, seeking maximum guarantees of humanity, neutrality and impartiality, as well as effectiveness and efficiency of its contributions. International cooperation should encourage capacity building at all levels and in a real participatory approach, where affected communities have

36. The Preliminary Opinion Collection Document delivered by the Survey Action Centre in October 2005 translates the words “Corregimiento” as municipality, and “vereda” as community.

37. The POC translates the Word “municipio” (municipality) as district.

38. Preliminary Opinion Collection, Survey Action Centre and Colombian Campaign Against Landmines, Washington, October 2005, page 16.

39. MRE Needs Assessment, Landmines Observatory, undated document, Bogotá, Colombia, May 2005

40. Mine Action and Effective Coordination: the United Nations Inter-Agency Policy, United Nations Inter-Agency Coordination Group on Mine Action, June 6 2005, page 10.

a main role to play, not as objects of intervention, but as subjects of positive changes and improvements in their own living conditions.

Of no less importance is the need to obtain reliable information, systematized and analysed at all levels, where both data and its analysis flow effectively, in order to design policies, plans, programmes and projects. In this sense, the strengthening and decentralization of data gathering and data analysis are urgently required. A public health based surveillance system also needs to be established as soon as possible to help understand the real impact of mine related injuries.

Lastly, it is vital to understand that, even though Colombia's situation is characterized by its complexity and variety of particularities, it must be framed in the global crisis generated by mines. Only by putting the Colombian situation in the context of a worldwide problem, will it be possible to understand the real capacity to solve the problem in a sustainable and effective way. Therefore, the need to apply recognized impact assessment methodologies, adapted to the local context and taking into consideration the changing environment that the conflict creates, is not only necessary, but also urgent.

### • *Successes*

Without doubt, the most important situation related to mine action that has taken place in the recent history of the country is the unilateral mine-clearance operation carried out by the National Liberation Army – ELN, at the beginning of 2005, covering 14 kilometres of the road between the communities of La Plaza, La Caoba and La Guásima, in the community of Micoahumado, Morales municipality, in the department of Bolívar<sup>41</sup>. Because of the processes that preceded the actual event, and the conditions of where and how it took place, this can be considered as a very important humanitarian Mine Action activity. The events that preceded this act, such as the previous dialogues held between the ELN and members of civil society, including the Colombian Campaign Against Mines and Geneva Call, were vitally important. But clearly, what made this process not only possible but also useful and successful, was the fact that an organized community was categorically asking for a fundamental right to be respected. The Micoahumado community understood not only their needs, but also their capacity and position, and managed to get armed, legal and non-State actors to respect and guarantee their fundamental rights. Once more, Micoahumado's success belongs to the organized and empowered community, and owes special gratitude to those who made it possible. Nonetheless it is important to highlight that this is not a finished process, given that the territory that was cleared is only a small portion of all the mine affected sites in this community. The aqueduct, the soccer field, some other sections of road and various agricultural fields continue to constitute high risks for people in the community. Moreover, the lack of expert reliable verification of what the ELN cleared in January 2005 makes this exercise not a demonstrative (and some would argue, invalid) one in terms of mine action.

In another region of the country, in the department of the Cauca, the Indigenous Guard of Jambaló has reached small temporary agreements with FARC, in order to obtain from them the clearance of community areas after fighting had taken place in these zones<sup>42</sup>. These agreements, although quieter and less supported given the complicated political situation of this department<sup>43</sup>,

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41. Letter sent by the ELN's Central Command the Geneva Call and the Colombian Campaign Against Landmines, signed by Francisco Galán, commissioned by the ELN's Central Command 4 January 2005.

42. Information provided during three interviews with Jambaló's local leaders, whose names are not published for their identity and life protection.

43. With the highest concentration of organized indigenous communities and one of the most critical country areas in terms of hostilities and armed actors presence, the department of Cauca turned in 2004 from the leadership of Floro Tunubalá, the first democratically elected indigenous departmental Governor, to a traditional party. During the actual period, the Governor, Juan José Chaux, has signalized the Indigenous Movement to be "infiltrated" and a t times "collaborating" with FARC. Chaux has also publicly minimized the indigenous communities problems and situation and compared them with other vulnerable communities, whose



are a significant landmark in the work of social organizations in the mitigation of humanitarian crisis and landmine/ERW impact. In this sense, it is important to emphasize the determination of the Indigenous Movement in Cauca to keep their ancestral territory as a mine free zone, framed in their Life Plans and community's interests. The Movement has also managed to gain humanitarian access to carry out Mine Risk Education activities, allowing affected communities to participate in such activities and therefore to protect themselves.

In another area, the inclusion of the anti-personnel mines issue on the negotiating agendas with both FARC<sup>44</sup> and ELN<sup>45</sup> during the peace dialogues between the former National Government and the two groups should be seen as an important political success, which will have to be further developed. However, it is important to say that no mention has been made whatsoever of the landmines issue during current negotiations with paramilitary or self-defence groups. While there is solid evidence that incriminates these groups in the use of mines<sup>46</sup> and an important group of demobilized persons are mine victims<sup>47</sup>, this issue remained absent from the negotiations. Although no formal statement has been made in this regard by either the Government or the Self-defence negotiators, the High Commissioner for Peace told the Antioquia's Departmental Government that "this issue (landmines) has not been included (in the negotiations), but we want to listen and attend to initiatives"<sup>48</sup>. Meanwhile valuable information about affected areas and the possibility of re-creating reference maps is lost every day.

The recent establishment of the Humanitarian Commission of Antioquia, designed to promote humanitarian agreements with armed non-State actors regarding mine action, and specifically humanitarian demining, as well as the inclusion of the landmines crisis issue in pastoral dialogues are also important successes.

Finally, one of the major successes of these processes has been the confidence building effects they have had toward the national and international community. This has meant valuable support to the global cause of having non-State actors respecting the Ottawa Conventional principles.

## **Politicization of Mine Action**

The current context of humanitarian action in Colombia has been significantly affected by the declarations made by the national government in the last two years. Because of its impact and potential application, it is important to highlight the document called, "Lineamientos para el Enfoque de los Proyectos de Cooperación Internacional" (Guidelines for International Cooperation Projects Approach) that was elaborated by the Office of the High Commissioner for Peace and distributed in June 2005 by the Director of the Presidential Agency for Social Action and International Cooperation. According to this document, key aspects of humanitarian activities, such as access to illegal armed actors for the establishment of dialogue, can only be carried out by the President of the Republic or his delegates<sup>49</sup>. The obligation to clearly emphasize the scope of all expressions con-

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critical situations have neither been solved.

44. Agenda Común por el Cambio hacia una Nueva Colombia, Negotiation Agenda between FARC and Nacional Government, La Machaca, Caquetá, Colombia, 6 May 1999

45. Mainz Agreement, signed by Civil Society representatives and ELN, Mainz, Germany, 16 July 1998.

46. Publicly but unofficially, several demobilized combatants from self-defense groups in Antioquia, Córdoba and Bolívar have accepted the use of mines as a weapon of war. The Landmines Observatory has also registered an undelivered number of mine/ERW accidents where self-defence groups are the presumed perpetrators.

47. At the beginning of the peace negotiations and the establishment of the negotiation table in Santafé Ralito, Córdoba, various organizations such as the Colombian Campaign and UN organizations witnessed a "rehabilitation centre" establish by self-defence groups, where at least 30 men had been wounded by mines or other ERW.

48. ¿Desmovilización con Minas?, Press Article by Álvaro Jiménez Millán in Revista Semana, edition 1177, Online version, 19 September 2004.

49. See the document "Lineamientos para el enfoque de los proyectos de cooperación internacional", High Commissioner for Peace's Office, undated document, Bogotá, Colombia, 2005.



taining the term “humanitarian” as well as the express prohibition to include activities “... denominated “humanitarian”, implying contact with illegal armed groups...”<sup>50</sup> also drew the humanitarian community’s attention and created a difficult environment for humanitarian organizations and activities. The government’s refusal to acknowledge the existence of an internal conflict according to the norms of International Humanitarian Law generates serious problems at the time of establishing dialogues and/or measures of protection for civilians at risk<sup>51</sup>.

Of a different, but also important, level of complexity, have been the positions of some armed non-State groups, who compare the discussions on the mine issue to those of other issues like bombings, the use of protected goods, etc<sup>52</sup>. In this respect, the politicization of mine action must be considered a permanent risk, exerted by all parties to the conflict, with still greater vehemence in issues related to limits for the war and limitations on the use of certain weapons.

The vehement attitude of the national government, asking all international cooperation for mine action to be centralized through government agencies, has generated concern among different actors, given the obvious disregard for humanitarian organizations and activities outside the government’s interests and priorities.

## **Role of the State**

The State has shown a diversity of capacities in the various institutions that carry out activities or hold responsibilities regarding mine action. Legally, the national measures of application of the Mine Ban Treaty remain weak, since they have failed to establish clear responsibilities in the different governmental organizations at central, departmental and municipal level. Also, the monitoring bodies lack the specific tools necessary to develop their monitoring functions. But the most troubling situation in this aspect is the lack of regulation of certain vital measures for mine action such as the humanitarian missions, provided for in Law No. 759/03. To date, concrete information does not exist on the legal course of the regulation of these missions, which are considered of great importance by major humanitarian actors<sup>53</sup>.

In relation to non-State actors and landmines, until 2003, Colombia maintained a progressive position, consistent with International Humanitarian Law, in which groups were called upon to agree to and respect the principles of the Ottawa Convention, and the international community was asked to participate in this effort. The change in policy of Colombia’s delegation to the Nairobi Summit calls the attention of the mine action community, given the political and humanitarian distance with the previous position<sup>54</sup>. Also worrisome is the position of the Government toward the peace process with paramilitary groups, as has already been mentioned.

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50. Ibid.

51. The document “Política de Defensa y Seguridad Democrática” which constitutes the governmental policy for the national defense, makes no mention to the internal armed conflict. In contrast, the term “terrorism” is mentioned more than 60 times in 68 pages.

52. In an interview given in 2003 by the ELN to a journalist of *El Colombiano*, a local newspaper, two of this group’s commanders said that “There could be agreements: that the Army and the paramilitaries stop bombing in an indiscriminate way and we won’t use mines”. In June 2004, in the framework of the International Forum on Antipersonnel Mines and Humanitarian Agreements, the ELN’s Central Command said that “The ELN proposes to work for a Humanitarian Agreement that beyond agreeing with the Colombian Government about the limitation on the use of mines and UXO, we could reach a general Amnesty for Political Prisoners and war prisoners and a bilateral ceasefire...”

53. In different opportunities and in a public way, organisms such as the People’s Ombudsperson’s Office and the ICRC have highlighted the importance of this instrument. They have categorically asked for this missions to be regulated so that they could be implemented as soon as possible.

54. See the Colombian delegation speeches during the Mine Ban Treaty Meetings in 2001, 2002, 2003 and 2004 and the press communiqué “Censura Política y Penal contra FARC, ELN y AUC por uso de Minas”, *Sistema de Noticias del Estado*, Nairobi, Kenya, 2 December 2004.

As stated previously, the role of the present government in relation to the progress made with the ELN over recent years has been absent and quiet, attached to the national policy of Democratic Security. Nevertheless, it is important to emphasize that there have been no direct attacks or sanctions to this initiative and this could be interpreted as a signal of approval<sup>55</sup>.

Some other sectors of the State have played an important role in the successes achieved so far and their role will have to be taken seriously in order to continue advancing along these paths. Social and non-governmental organizations have led a great majority of the practical mine action initiatives. They have also accompanied and participated in the development of national policies in this regard.

### **The Role of Armed Non-State Actors**

It is important to emphasize some clear responsibilities of armed actors towards International Humanitarian Law. Although the first and ultimate responsibility must be stopping the use of mines, this has to be acknowledged as a complex commitment that will require common efforts. In the meantime, aspects such as the proper and suitable marking and fencing of dangerous areas, as well as notification to the communities, must be an immediate imperative. Demands to obtain humanitarian spaces in order to carry out mine action activities, in particular mine clearance at sites of special interest, such as schools, roads, aqueducts; mine risk education activities, timely and adequate transportation and care of those wounded by mines, must be categorical and urgent.

In the practical scene, the progressive and crucial role of the ELN in dealing with mine action and other mine related issues has to be highlighted. Without ignoring their responsibility in hundreds and maybe thousands of the mine accidents in the country, it should be acknowledged that this group has developed a political position, has started punctual actions and has established clear patterns in the road to mine eradication. Evidently, the support of humanitarian, social and non-governmental organisations as well as some government institutions (both in the past and present) for these initiatives has served to deepen the dialogues and to advance in the way towards the profit of humanitarian commitments against mines.

FARC has had a more passive attitude, although it is important to recognize the explicit mention to landmines in its agenda of negotiation in 1999. As mentioned before, this group has made small, quiet agreements with the Indigenous Community of Cauca, not only clearing some spots where ERW remained after fighting in traditional sacred territories, but also allowing communities access to Mine Risk Education activities.

Finally, it is important to make a forceful call to self-defence or paramilitary groups, in order to obtain from their part, not only marking of affected areas, but also humanitarian access to MRE activities and attention to the victims. Of the utmost importance is that their former combatants in the process of demobilization deliver all the available information on areas mined by them, within the framework of the present process of negotiation. The opportunity offered by the extension in the timetable for these groups' demobilization must be taken as a golden one to correct the mistake made by forgetting to introduce the issue in the negotiation agreements.

### **Special agreements**

No formal agreements have been made with non-State actors regarding mine action. However, the

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55. Some analysts have seen the governmental permissions waived to ELN commander Francisco Galán, as clear but tacit approval for this group to continue in their path of commitment toward mine action.

punctual experiences mentioned above constitute a solid foundation for those to come. The work carried out by social organizations, including national and international NGOs and the ELN, although devoid of legal mechanisms or verification of its fulfilment, must be considered an important basis for future work. The statements made by the ELN over the last two years have opened up spaces to discuss the possibility of these agreements becoming more formal. In relation to FARC, no publicly known approaches have been made as yet. The same is true with regard to self-defence groups.

## **The Role of States and the International Community**

The participation of other governments in this sense has been sporadic and intermittent. In addition to the declaration of the European Parliament, encouraging the Colombian Government to convene Non-State armed actors to fulfil the Ottawa principles and to allow mine action activities regarding these actors, the work of international organizations such as Geneva Call has been a key issue to understand the extent of the role these groups have to play in order to eliminate the risks posed by mines and ERW. It is worth saying that this organization has accompanied and supported special efforts made by national NGOs and civil society, giving them a sense of international recognition.

## **Other effects**

Without a doubt, the most important effect of these approaches and possible agreements with non-State actors, has been the confidence building. A detailed analysis of the interventions and actions developed in the work with the ELN, shows progress in the treatment of these aspects, which opens the door to new subjects of the same tenor. It is clear that the process has been carried out in a responsible way, therefore contributing to the possibility of its expansion. One clear sign of this is the establishment of the Humanitarian Commission of Antioquia, which has been endorsed by ample sectors in the country. Equally important has been the visibility that these efforts have obtained, positioning the subject of mine action as one of the most urgent humanitarian needs in Colombia.

## **Conclusions and lessons learned**

The main inspiration and basis for this type of activity must always be the humanitarian imperative, framed in the principles of humanity, impartiality and neutrality as grounds for Mine Action. Only having in mind the real needs and the evident risks that the affected communities take everyday, will it be possible to surpass the tactical and political barriers that today prevent the development of humanitarian agreements regarding mine action.

The participation of the affected communities in all the processes of dialogue and negotiation for the establishment of humanitarian agreements is key to ensuring not only the real satisfaction of their needs, but their legitimacy, sustainability and pertinence. This type of exercise not only provides the possibility for building humanitarian spaces and reaching agreements with armed actors, but strengthens the social capital of vulnerable communities under constant threat.

The endorsement and the participation of social and non-governmental organizations in the construction of these common efforts toward the eradication of mines and their impact is one of the major elements to guarantee the suitable development of these activities. The role of civil society has proven to be fundamental for the benefit of humanitarian objectives and humanitarian mine action. Nevertheless, this situation cannot underestimate nor supplant the State or the communities themselves, which must be empowered and supported at all times. But to give real possibilities to

these initiatives, it is necessary to count on the determined support of the highest levels of society and government. Equally necessary is the support of the international community in political, technical and financial matters.

Finally, the main lesson of this ongoing process, and also its main conclusion, is that, contrary to the beliefs of many national and international sectors, it is possible to have Humanitarian Mine Action in the midst of conflict. It is not to be forgotten that armed groups of any nature or tenor are made up of the same human mass: men and women who are part of some community, who have families, fears, and hopes. It is with them that agreements are made, on the basis of confidence and faith in human kind. However sophisticated wars may be, they are always mediated by human beings able to reason in the light of the humanitarian need. Mines, as one of the most atrocious weapons of war, are on the way to becoming extinct, but without the commitment of those who are still using them, it will not be possible to fulfil the humanitarian principles that gave life to Ottawa and that keep it alive and effective today.

## *Sudan*

### **Mr Peter Moszynski, Mine Action in the Midst of Internal Conflict: The case of Sudan**

As Sudan moves towards implementation of a fragile peace deal signed last January, it has become one of the major priorities for the international mine action community. As Sudan is something of a test case for mine action during conflict it is perhaps worth examining this complicated case history in more detail.

#### **Background to the Conflicts**

Sudan has seen very little peace in its 50 years since independence. An Anglo-Egyptian “Condominium” until 1 January 1956, Africa’s largest country is also one of its most diverse: geographically, culturally, linguistically, and so on. The north of the country has long been under Arab and Moslem influence but the South was cut off until the mid-nineteenth century due to the impassable barrier to Nile river traffic presented by the Sudd swamps. The subsequent history of slave raiding and Islamic expansion (until finally curtailed by a British invasion in 1898) has left lasting distrust towards Khartoum’s rule by almost all the African people of the South - a distrust shared by many people on the periphery of this vast country.

Although North-South divisions have led to decades of war, this is not the country’s only tension. Many people in the west (Darfur) the east (adjacent to the Red Sea), the far north, the south-east (Blue Nile) and the centre (Nuba Mountains and Abyei) also have long-standing grievances with the central government that have caused further conflicts between the ruling elites and those who regard themselves as the “marginalised majority”.

War broke out between North and South in 1955 due to a decision to make Sudan a unitary State after decolonisation. The conflict ended with a peace deal signed in Addis Ababa in 1972, granting the South regional autonomy. In May 1983 the war restarted following President Numeiri’s decision to repudiate the 1972 agreement. What began as a localised military rebellion became all out war following Numeiri’s imposition of Islamic Sharia law throughout the country. The Sudan People’s Liberation Army (SPLA) was originally formed by defecting Southern army units but the insurrection soon spread to areas outside of the south, particularly the Nuba Mountains and Blue Nile, where there was

strong resentment against the perceived Arabisation and Islamicisation plans of central government. The SPLA gradually won control of most of the South and large enclaves in the north, which allowed its leadership to claim that it was fighting for the entire country - a “New Sudan” - rather than just for the South, although this was not widely supported by southern fighters and civilians who thought that the struggle was for independence. As talks began to end the civil war in the South, low intensity conflicts in Darfur and the east flared up into full-scale warfare, largely due to their exclusion from the peace process, leading to widespread ethnic cleansing, a situation that has yet to be rectified.

22 years of conflict has left Sudan as one of the most poverty-stricken and mine affected countries in the world, with millions of people dependent on outside food aid provided since 1989 by Operation Lifeline Sudan, one of the largest relief operations in history. The presence of huge reserves of petroleum in the South has heightened outside interest - as well as making the prospect of Southern independence increasingly unattractive to Khartoum.

### Landmine threat

Sudan still has mines dating back to the Second World War, particularly along its northern borders. There was some limited mine use in the 55-72 civil war, mostly in the far south, and fairly extensive mine use during the 83-05 conflict. Whilst the SPLA controlled much of the hinterland, Khartoum’s army was mostly based in garrison towns, leaving much of the actual fighting to various militias and proxy forces, which in turn led to widespread inter-clan and inter-tribal violence that fluctuated as temporary alliances, peace deals and inter-factional fighting ebbed and flowed. Thus there have been few permanent front lines in the conflict, other than around besieged government garrisons, so mine use has been both widespread and sporadic.

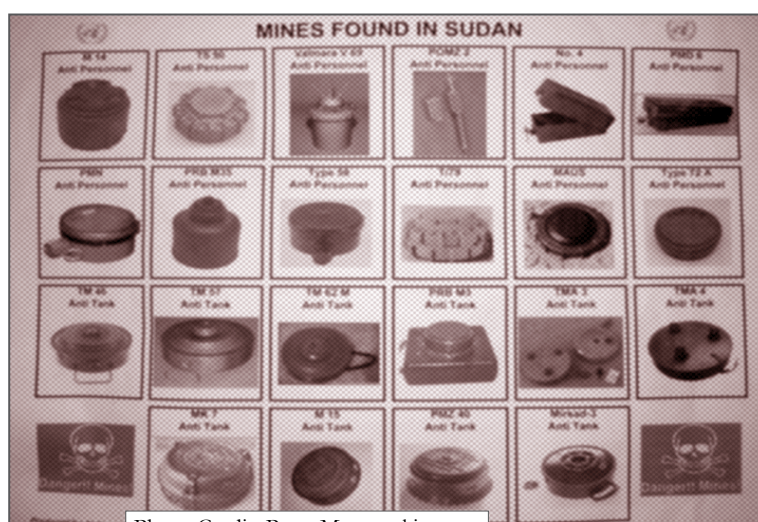


Photo Credit: Peter Moszynski

The existing mine threat is largely in the South and in the east, south east and the Nuba Mountains in the centre, the areas where most of the fighting between Government of Sudan (GoS) and SPLA took place and mostly now under SPLM control. There are few organised minefields and mines have not been laid following specific patterns. Areas such as bridges or water wells are frequently contaminated. A large amount of Unexploded Ordnance (UXO) is found near populated areas, on the edges of roads and around abandoned camps and garrisons. Many villages have ammunition supplies that they are often reluctant to surrender until they are confident of the peace process.



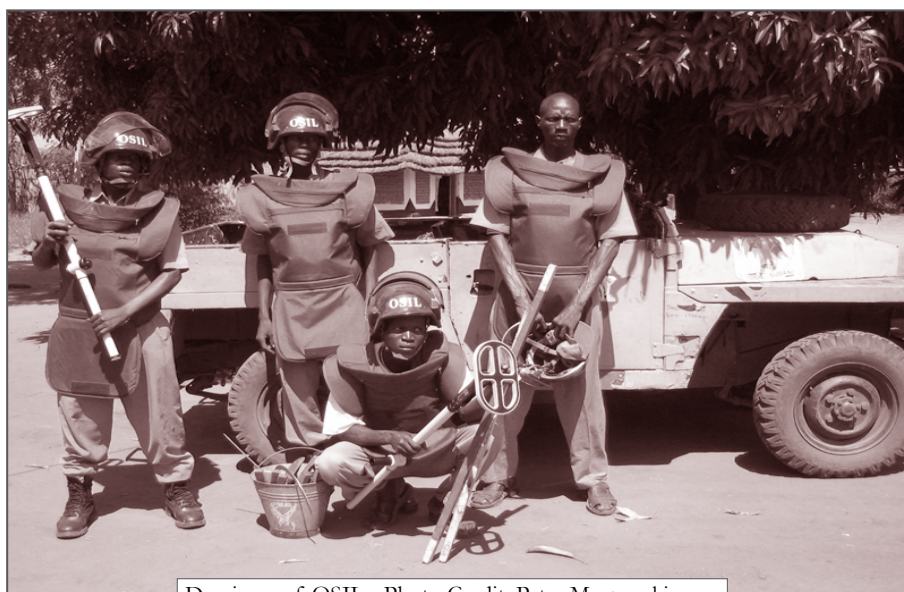
Many roads were blocked by mines, which led to restricted access by aid agencies and an increase in the cost of food and other items. The World Food Programme (WFP) estimates that mines directly affect two million people's food security. Landmines and UXO are also a serious obstacle for reconstruction projects. The country's huge size and severely limited infrastructure as well as its extreme climate create additional problems for humanitarian mine action (HMA).

GoS forces appear to have ringed most of their garrisons and outposts with randomly laid anti-personnel mines, whilst the SPLA frequently used anti-tank (AT) mines to cut roads and ambush convoys. Both sides appear to have had substantial stocks of both types at various times, although the SPLA - being largely a guerrilla force - was generally more involved in a war of movement which both hindered its logistics and lessened its reliance on fixed defensive positions. The areas where there were fixed lines of confrontation are clearly the most heavily affected, although widespread "nuisance mining" has left many areas suspected of being contaminated.

### **Mine Ban Policy**

After participating in the Ottawa Process, Sudan signed the Mine Ban Treaty on 4 December 1997, which was ratified on 13 October 2003 and entered into force for the government on 1 April 2004. The SPLM had declared a unilateral moratorium on the use of AP mines in 1996, although this was not widely disseminated in the field until later.

By 1998 there was growing tension between those within the SPLM who wanted to reduce the mine threat to civilians in the huge areas now under their control and most international organisations who felt that humanitarian mine action wasn't really possible in situations of ongoing conflict. The SPLM had created Operation Save Innocent Lives (OSIL) as an indigenous mine action organisation in 1997, and began to develop a cadre of trained humanitarian deminers, with limited international donor and technical support, but was unable to secure sufficient funding to make much impact outside a few small border areas. As an NSA, it found it difficult to obtain much international recognition, especially in the wake of a 1997 UN mission that concluded that it was not feasible to conduct HMA during Sudan's ongoing conflict. It also had virtually no contact with the Sudan Campaign to Ban Landmines and other organisations working on the government side.



Deminers of OSIL - Photo Credit: Peter Moszynski

The SPLM began to seek greater international involvement in addressing the massive mine problem. In March 2000, OSIL and the SPLM took part in a landmark meeting in Geneva organised by the Swiss Campaign to Ban Landmines in association with the Colombian, Philippine and Zimbabwean Campaigns to Ban Landmines, the UK Working Group on Landmines (subsequently reconstituted as Landmine Action UK) and Mines Action Canada. Entitled “Engaging Non-State Actors in a Landmine Ban”, this pioneering conference paved the way in achieving recognition of the role that NSAs had to play in the universalisation of the Mine Ban Treaty.

The SPLM signed the Geneva Call “Deed of Commitment” on 4 October 2001 in Geneva. Speaking for the SPLM, Nhial Deng asked: “Do we have to wait for a political peace to be declared after which to move to save innocent lives? If it has been possible for the international community to save millions of innocent lives from famine and diseases for the past eleven years during conflict, what then would be the logic of vaccinating a child against polio for it to be maimed or killed a day or moments after by a mine?”

Whilst the motives were nominally humanitarian, there was also a desire to obtain funding to allow the movement to restore order in areas it now controlled. Deng explained: “The SPLM/A is fully conscious of the fact that although it is a non-State actor, the world has come to expect from it humanitarian standards, approaching if not on a par with those expected of sovereign governments. This constitutes a daunting challenge and a tremendous burden for our Movement, and unless the international community comes to our aid with increased levels of humanitarian assistance, especially in the field of health, education and human resources development, we will not be able to continue to live up to those high expectations.”

International attitudes towards mine action in Sudan began to change due to the increasing international profile of the SPLM and its involvement in the mine ban process, through Geneva Call and the International Campaign to Ban Landmines (ICBL) NSA working group, which led to greater contacts in the outside world and support for HMA. In September 2003, Geneva Call, SPLM/A and OSIL held a workshop in New Site, South Sudan, with funding provided by the European Commission. Participants included SPLM/A leader Dr. John Garang de Mabior, political leaders, commanders and soldiers, local civil authorities and mine action agencies. This year the SPLM started regional mine ban education workshops in South Sudan, in collaboration with Geneva Call and the Kenyan Coalition Against Landmines. The first took place in Rumbek from 27 to 29 July 2005. Opened by Governor Pagan Amum it brought together SPLA commanders, civil authority and community leaders, UN agencies, mine action NGOs, Landmine Monitor and, for the first time, the northern-based Sudan Campaign to Ban Landmines. A second workshop was expected to take place immediately after in Equatoria region, but was cancelled due to the tragic death of Dr John Garang.

## **Mine Action**

HMA in Sudan can be divided into four phases:

- 1) Indigenous mine action 1997-2002
- 2) Mine action in Nuba Ceasefire 2002-2004
- 3) Internationalisation of mine action following north-south ceasefire 2004-2005
- 4) Post CPA Jan-Aug 2005 onwards

## **Mine Action prior to 2002**

Established in 1997, Operation Save Innocent Lives (OSIL) was the SPLM de facto authority for landmine issues. OSIL disputed the UN finding that HMA was not possible during conflict and

began clearance in SPLA-controlled areas. However, OSIL's effectiveness was constantly limited by insufficient funding and non-existent infrastructure, and although help from groups like Mines Advisory Group (MAG) and CAMEO allowed it to train a basic cadre of humanitarian deminers who made valiant efforts to clear certain areas, it was not entirely geared up to international standards. Between September 1997 and April 2003 OSIL says it cleared 10.5 million square meters, destroying 3'512 antipersonnel landmines, 732 antitank mines and 116'930 UXO.

A rival local group later appeared, the Sudan Integrated Mine Action Service (SIMAS), and together they formed a core for future demining efforts on the SPLM side. There was basically no HMA conducted on the GoS side. Given the huge problem faced in such a huge area, the under-funded local initiatives made little headway before the involvement of the international players in the wake of the peace process.

As peace talks progressed the United Nations Mine Action Service (UNMAS) became involved and began to develop a planning strategy for post-conflict mine action - loosely based on a "one-country" approach. The UN system has always found it difficult to deal with NSAs and only has formal relations with the government of the country, so diplomacy always required a notional one-country approach, whatever the situation on the ground where there were - and still are - effectively two separate administrations.

A series of meetings with Sudan CBL, OSIL and others resulted in the involvement of Britain's Landmine Action UK in another "Crossline" project, the Sudan Landmine Information Response Initiative (SLIRI) which planned to conduct survey work with SIMAS and other local partners on both sides of the divide.

### **The second phase of mine action: The Burgenstock Nuba Ceasefire agreement**

Despite the work of international civil society in attempting to bridge Sudan's North-South divisions, the first involvement of both sides in mine action came from an unexpected development: the B rgerstock ceasefire for the Nuba Mountains agreed in January 2002. Existing plans for North-South participation in Crossline mine action were hastily adapted to take advantage of this regional truce, which saw a military stand down in the Nuba area whilst hostilities increased in the rest of the country. The Nuba enclave had previously been off-limits to relief from Operation Lifeline Sudan, because it was technically in North, rather than South Sudan. It had been virtually cut off from the outside world since 1992 and the ceasefire finally permitted outside aid to reach the population.

The UN Office for the Coordination of Humanitarian Affairs (OCHA) pointed out the opportunities presented by the Burgenstock agreement, as well as the need for mine action to effectively monitor and implement the ceasefire: "Whilst Sudan has been torn by civil war for many years, an internationally monitored cease-fire agreement has been in place in the Nuba Mountains since January 2002 and this has resulted in increased opportunities for direct mine clearance intervention. Any wider cease-fire agreement achieved at the internationally supported peace talks at Machakos/Kenya will also result in further opportunities for direct mine clearance intervention." Landmine threat throughout the Nuba Mountains, OCHA 19/11/2002

Landmines had "a significant negative effect on the mobility of the international monitoring force, the Joint Monitoring Commission (JMC) and hence their ability to properly monitor and give credibility to the cease-fire. It is also a threat to the free movement of the population and hindrance to NGO/Agency humanitarian intervention." Many areas had "become isolated and paralysed due to the presence of landmines along access routes/roads and denying access to basic facilities... The

delivery of humanitarian aid is similarly restricted with the bulk continuing to be delivered by air, at increasing financial and time-consuming cost. The expected increase in population movement, particularly IDPs, will additionally overburden this situation and place new and more vulnerable people, including humanitarian aid staff, at greater risk.”



Photo Credit: Peter Moszynski

HMA in the Nuba Mountains saw demining teams from both sides coming together for training in a neutral area of no-man’s-land after the local ceasefire was established, although they were subsequently segregated when they began actual work. DanChurch Aid trained teams from JASMAR on the GoS side and OSIL on the SPLM side. The lack of a regional peace deal to go with the ceasefire on the ground rather precluded the widespread confidence required for true crossline activity and in practice there were two separate operations on either side of the military divide. A somewhat parallel framework was created by SLIRI and LMA-UK, which also took advantage of the Burgenstock agreement to apply its own plans for Crossline activities within the space presented by the local ceasefire.

There are several factors which differentiate the Nuba Mountains from the rest of Sudan. Although the area was largely controlled by the SPLM, the people are not southerners and the CPA does not grant them the same rights as people in the South. Many Nuba fear for their future if the southern part of the country decides to opt for independence in a referendum planned for 2011. However, there was almost no Nuba representation at the peace talks and none in the initial negotiations for HMA. Concentration on the Nuba enclave rather diverted attention from the South during this period, leading to a virtual standstill in indigenous HMA in the area, although the experience of working in the Nuba Mountains gave international actors a better understanding of the problems facing future activities once the peace process addressed the country’s main conflict.

### **Towards Nationwide HMA**

In September 2002, a National Mine Action Office (NMAO) was established in Khartoum, with assistance from UNMAS. A regional mine action office was set up in Kadugli in the Nuba Mountains. In February 2003, SPLM and UNMAS established a Southern Sudan Mine Action Coordination Office in Rumbek. UNMAS later reported: “The slow pace of peace negotiations has affected the pace of information gathering. There has been little coordination between the national NMAO in Khartoum and the sub-offices in Rumbek and Kadugli.”



In mid-2003 a general ceasefire was agreed to create a conducive atmosphere for the stalled peace talks. In August agreement was reached on a national strategy for HMA, envisaging that Sudan would remain a conflict situation until a comprehensive peace agreement was fully implemented. UNMAS stated: “The ongoing civil war in Sudan currently precludes the implementation of a conventional centralised Mine Action programme; this situation is likely to remain during the Interim Period of any Ceasefire/Peace Settlement resulting from the current Machakos Peace Talks. It is therefore the intention of the UN Emergency Mine Action Programme in Sudan to work within the confines of this conflict situation and wherever possible develop cross-conflict, peace building initiatives, that will demonstrate a tangible peace dividend to all communities and help to build trust and confidence between the two separate authorities.”

HMA in the South restarted early in 2004, with a number of new international actors coming in under UN auspices following the agreement of the general ceasefire. Mechem and FSD were involved in the emergency road construction plan drawn up by WFP, while other groups such as MAG, NPA and SLIRI began surveying, training local deminers, UXO disposal and spot clearance tasks. As in the Nuba enclave, most of the schemes were nominally “crossline” but in practice included separate components working on GoS and SPLA sides. However, there was very little contact between the two sides on the ground prior to the CPA being implemented, which severely restricted cooperation. Teams on both sides faced constant delays, threats and harassment from local troops and authorities when beginning the priority demining task, opening of the main transport corridors.

The Humanitarian Aid Commission (HAC), under the auspices of the Ministry of Humanitarian Affairs, became Khartoum’s focal point for mine action coordination. The Sudan Campaign to Ban Landmines (Sudan CBL) was the civil society network responsible for the coordination of mine action in government-controlled areas of Sudan. There were 33 national and international NGOs in the Sudan CBL as of March 2004. The Sudan CBL convened a workshop in Khartoum in December 2003 to address planning for the post-peace period. Participants included officials from HAC, the Army, UN and NMAO. On 9 May 2004, the SPLM passed a decree creating the New Sudan Authority on Landmines (NSAL) and the New Sudan Mine Action Directorate (NSMAD), with OSIL losing its previous coordinating role.

In August 2004, UNDP and UNMAS held meetings to formulate a “Mine Action Strategic Framework for Sudan.” Participants included representatives from the National Mine Action Authority, National Mine Action Office, the Southern Sudan Mine Action Authority, Southern Sudan Mine Action Directorate, Sudanese civil society, international and local NGOs, international institutions, UN agencies and international donors. UNMAS stated, “The rapidly changing political environment and developments within the mine action programme have overtaken the original strategy and it is recommended that it is revised as a matter of urgency. This will also facilitate the formulation of feasible project proposals linked to a realistic national mine action strategy and work plan and increase donor interest as well.”

In December the authorities from North and South came together to address the Nairobi Summit for a Mine Free World, requesting international funding for a joint HMA, as a peace deal would soon be implemented. The CPA was signed a month later. In June 2005 representatives of both authorities gave a joint presentation at the Geneva intersessional meeting of the mine ban treaty.

## **Current Mine Action**

In November 2004 the United Nations said comprehensive mine clearance programmes in South Sudan were “virtually impossible before the government and the rebels started discussing peace and the end to the decades-long civil war.” Delays and mistrust effectively restricted many planned



activities in the crucial period leading up to the final agreement of the CPA but there has been huge progress in HMA this year.

Substantive mine action activities (outside of the Nuba enclave) during the conflict were limited by lack of funding and delays in finalising the peace process, but since the war officially ended this year things have changed considerably. The total requested for HMA for 2005/6 is \$82'633'630, a fourfold increase on the previous year and many times that spent in 2002. There has been a rapid internationalisation of mine action since the peace process took hold, and a complete change in the nature of mine action as multilateral agencies began to overshadow the local initiatives.

The UN High Commissioner for Refugees (UNHCR) became involved in mine action in 2005 as part of its mandate to ensure safe return and resettlement of IDPs and refugees. UNHCR has two partners: MAG and NPA, who have been supporting the UNHCR deployment in Western Equatoria since June 2005. The UNMIS and AMIS peacekeeping operations for the South and Darfur also have mine action components.

By June 2005, 704 dangerous areas (DAs) had been identified through limited survey and community-based impact assessments. The most affected States are: Western Equatoria, Eastern Equatoria, Bahr al-Jabal, Bahr al-Ghazal, Lakes, Jonglei, and Upper Nile in the South; South Kordofan (Nuba Mountains) and Blue Nile in the contested areas and Kassala and Red Sea in the east. Darfur is also a concern and UNMAS recently opened an information office there.

Currently, there is effectively still no unified national mine action authority in Sudan. Responsibilities for mine action are shared between the North and the South with the support of the UN Mine Action Office. The tripartite structure consists of: National (North/GoS) Mine Action Office supported by a National Mine Action Technical Committee (NMATC); New (South/SPLM) Sudan Mine Action Directorate supported by a New Sudan Authority on Landmines (NSALM); and the UN Mine Action Office (UNMAO) with the overall task of assisting both parties' demining efforts by providing technical advice and coordination.

### **Specific agreements**

In addition to the Ottawa protocol and Geneva Call Deed of Commitment, mine ban provisions were included in both the Burgenstock and Machakos agreements, the ceasefire requirements and the CPA. At the 4th Meeting of States Parties to the Mine Ban Treaty, representatives of the GoS, SPLM and UNMAS agreed to a tripartite Memorandum of Understanding (MoU), signed on 19 September 2002. The UN would "seek to help both parties to jointly develop a national mine action strategy that meets the immediate needs of the emergency humanitarian situation and plans ahead to post conflict Sudan. Such strategy will eventually lead to a mutually agreed National Mine Action Plan." UNMAS, 23 Jan 2003

In August 2003 UNMAS suggested general principles for Mine Action in Sudan:

- "a) Where possible, and feasible, all intended projects should plan their activities to be cross-conflict in nature and seek to develop an equal capacity in both GoS and SPLM controlled areas.
- b) Where planned activities are cross-conflict they must be fully endorsed by the Sudanese Mine Action focal points in both GoS and SPLM. All such projects should have a clear peace-building component and be formalised with a tripartite Memorandum of Agreement (MoA) between the Mine Action organisation the GoS and SPLM.
- c) The Project should seek to turn direct mine/UXO clearance actions into immediate and tangible benefits for the affected community. Such benefits may include: the rehabilitation of mine/UXO cleared roads, restoring preconflict livelihood and access to basic services."



Photo Credit: Peter Moszynski

There is a question as to whether the SPLM is still an NSA now that it is in government. There is also the question of which government it represents: the new Government of South Sudan in Juba or the Government of National Unity in Khartoum. Whilst the issue of transition from NSA to stakeholder in government is clearly an interesting one in its own right, there is also the question of intentions and perceptions during the peace process. How much of what each side says is reality, and how much is it a negotiating position? The CPA calls for both sides to work for national unity but until the proposed referendum on independence is conducted at the end of the six year interim period in 2011, there is likely to be a continuation of the “twin track approach” with two separate mine action authorities.

### **Conclusions and lessons learned**

Prior to the peace negotiations only one organisation, OSIL, was active in mine clearance and that was only in rebel-controlled areas of the South. Subsequently almost all plans called for a “Crossline” approach but this has frequently been more reflected by rhetoric than by reality as neither side was prepared to make concessions on the ground prior to the final implementation of the peace process. There have been virtually no demining activities outside areas covered by internationally monitored ceasefire agreements.

Crossline mine action was envisaged as a confidence-building measure, although the lack of confidence between the two parties appears to have instead delayed the implementation of planned programmes as well as prevented the free flow of information. The MoU’s in-built lack of transparency not only delayed an effective survey of the affected areas, it also precluded the involvement of the country’s underdeveloped civil society and undermined the effectiveness of both international and local civil society monitoring mechanisms.

Despite the claims of crossline mine action cooperation and its possibilities for peace and confidence-building, the complexities of Sudan and the failure to achieve a comprehensive peace deal

for the entire country has meant that HMA has mostly been conditional on the existence of the appropriate peace processes, rather than enabling them. It has been difficult to detect the planned one country approach being implemented on the ground. Prior to the CPA there was virtually no cooperation between the parties in the field, and afterwards the SPLM changed from being the de facto administration of South Sudan into de jure rulers of a new interim autonomous government, with a power-sharing role in the new federal government in Khartoum.

Repeated conflict has established deep antagonism and mistrust with little belief on either side that commitments will be honoured in the long term. The specific history of the breakdown of the Addis Ababa peace agreement in 1983 has led to widespread suspicion among many southerners that the CPA is little but a ploy to buy time and they may need to return to arms again if they opt for independence at the end of the current interim period. It is unlikely Sudan will truly be in a post-conflict situation until 2011 at the earliest.

Although the CPA is between two warring parties - the GoS and SPLM - there are numerous other conflicts, parties and other armed groups. The war is not simply a North-South issue and the SPLM/A is not the sole NSA involved in the conflict, although it has been the only one active in the Geneva Call process. There is no civil society organisation in the South comparable to the Sudan CBL in the North and there is extremely limited international access to the areas where peace has yet to be realised. The fact that there are active conflicts still ongoing in other parts of the country suggests that this is not the final settlement. The areas where fighting is currently occurring are not covered either by the CPA or the Geneva Call Deed of Commitment.

## **Proposals**

The fact that there is now a successful HMA programme in Sudan could be viewed as a vindication of those who claimed that humanitarian mine action was possible during an ongoing civil war. However, it may also be seen as the failure to find a comprehensive formula for peace.

The doctrine of crossline demining has become something of a mantra but such programmes seem entirely conditional on the existence of a local military stand-down. Whilst the Nuba experience can be seen as a successful initiative of mine action during conflict, in some ways, it is only because the war in the Nuba Mountains was essentially a separate conflict to that between the GoS and SPLA, even though the protagonists were nominally the same.

The complexities of countries like Sudan often leads to their specific political micro-environments being ignored by outsiders, who often fail to understand the complex dynamics at work. At the same time, concentration on the opportunities presented for HMA by the Nuba ceasefire diverted attention and resources from OSIL attempts at unilateral mine action in the south just as diplomatic attention towards securing the CPA for the North/South conflict diverted attention from the conflict in Darfur.

As an NSA, the SPLM had to work hard to gain recognition from international organisations and its attempts to gain an equal footing with the government led to a crossline approach being adopted, implying a unitary authority for mine action. However, the political conditionalities created by such an approach in many ways delayed the deployment of HMA which was constantly affected by delays in the peace process.

The repeated call for a one-country approach often fitted better with diplomatic niceties than with the realities on the ground. Had the local organisations been sufficiently funded, unilateral mine action efforts could well have made better progress. As it stands, despite the CPA's insistence that both sides work for national unity, South Sudan now has its own autonomous administration. Per-

haps it is now time for mine action organisations to start dealing with the realities on the ground rather than continuing the fiction that HMA in Sudan is based upon a one-country approach. International actors should perhaps be more pragmatic and be prepared to engage with NSAs more openly and robustly.

Rather than dissipating their effectiveness by trying to work within a diplomatically-defined approach, the mine action community should perhaps be more prepared to listen to the aspirations and intentions of the people on the ground and offer their representatives more realistic alternatives. As South Sudan strives to rebuild itself after decades of war and neglect, perhaps the key decisions on mine action strategy should be made by those most affected by the problem themselves.

As Darfur continues to deteriorate and the appalling murders of two FSD deminers last month so tragically demonstrate, Sudan is not yet really at peace. Future HMA should also perhaps be considered to be programmes undertaken in the midst of conflict.

## Timeline

- 1955 Beginning of first civil war between north and south.
- Jan 1956 - Sudan gains Independence
- 1972 The Addis Ababa Agreement, granting autonomy for the South, ends 17 years of civil war.
- 1983 War resumes. The government adopts Islamic sharia law. Southern rebels, led by John Garang, form Sudan People's Liberation Army (SPLA).
- 1989 Lt. Gen. Omar Hassan al-Bashir takes power in bloodless coup.
- 1996 SPLA declares moratorium on mine use
- 1997 Khartoum signs Mine Ban Treaty
- 1999 Sudan begins to export oil.
- 2001 October SPLM/A Signs Geneva Call Deed Of Commitment
- January 2002 Nuba Mountains Ceasefire
- July 2002 - Government and SPLM sign Machakos Protocol agreeing formula to end civil war. Government accepts South's right for self-determination after six-year interim period.
- September 2002 Tripartite MoU between UN SPLM and GoS heralds start of international mine action
- February 2003 Start of large scale fighting in Darfur
- September 2003 Geneva Call Mine Ban Workshop at Garang's HQ in New Site
- October 2003 Government ratifies Mine Ban Treaty
- May 2004 Government and southern rebels agree on power-sharing protocols.
- August 2004 National Mine Action Policy Framework and Strategy endorsed by the GoS and SPLM
- November-December 2004 Nairobi Summit for a Mine Free World. Joint SPLM/GoS delegation
- January 2005 Comprehensive Peace Agreement, ends North/South civil war. Conflicts in Darfur and East continue.
- April 2005 Donors conference in Norway pledges \$4.5 billion to help South Sudan recover from the war.
- June 2005 Joint SPLM/GoS presentation at Geneva intersessional meeting.
- July 2005 Garang takes office as first vice president. Three weeks later, Garang dies in a helicopter crash in southern Sudan. Deputy Salva Kiir takes his place.
- July 2005 Mine Ban Workshop in Rumbek
- August 2005 Formation of Government of National Unity and semi-autonomous Government of South Sudan



## *Sri Lanka*

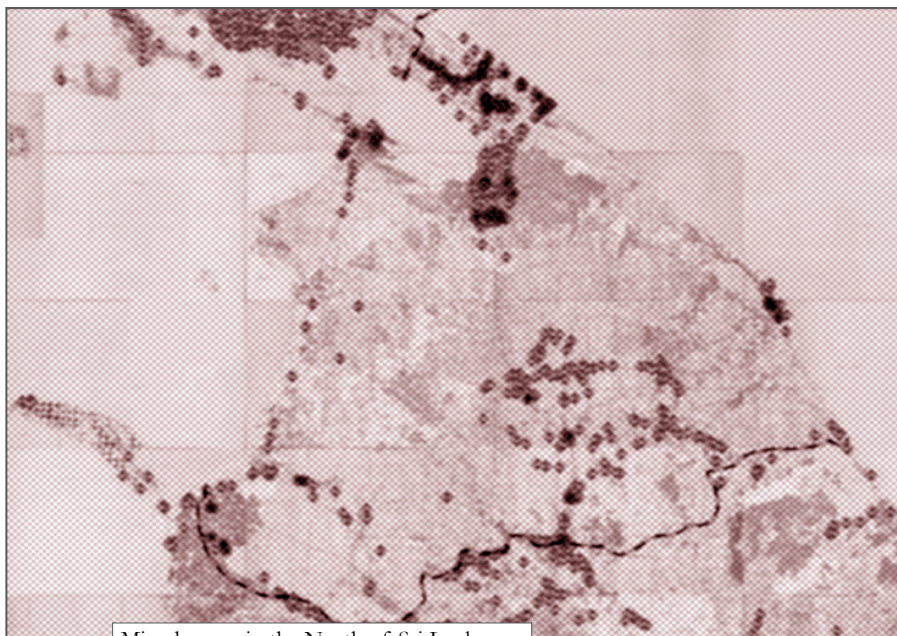
### **Ms Katherine Kramer (on behalf of Mr Chandru Pararajasingham), Mine Action in the Midst of Internal Conflict: Tamils Rehabilitation Organisation (TRO)**

Sri Lanka, then known as Ceylon, gained its independence from the British in 1948. At the time, it seemed ready for self-rule, having enjoyed universal franchise since 1931, long before any of the other colonies. In fact, it was known as the “Island without problems”.

However, in 1958, this illusion changed. The island was engulfed in anti-Tamil violence that continued for the next 25 years, and culminated in the riots of July 1983.

In the 1970’s, programmes were launched that were considered discriminatory against the Tamils, eliciting a violent response from Tamil communities. The first reaction was in the form of sporadic attacks against the Government’s agents (police and army) stationed in Tamil regions. However, by the 1980’s, the violence had escalated into a civil war.

Between 1983 and 1987, following an agreement between the Government and some of the Tamil armed groups (with the exception of the Liberation Tigers of Tamil Eelam [LTTE]), the Government of India intervened by sending a peace keeping force charged with “disarming” the Tamils on behalf of the government. The situation worsened and, in the end, the Indian troops departed, having failed in their task.



Mined zones in the North of Sri Lanka

In 1994, Chandrika Kumaratunga was elected president with an overwhelming majority supporting her peace endeavours. A ceasefire agreement was signed between the LTTE and the government the same year. However, after an initial series of discussions, the peace process failed and renewed hostilities broke out after a few months.



The war intensified after 1995 with major displacements of communities in the Northeast. Army camps proliferated in the same region resulting in the laying of landmines for defensive as well as offensive purposes.

In February 2002, another ceasefire was signed between the LTTE and the government, facilitated by the Government of Norway. One of the main priorities of the agreement was the resettlement of internally displaced persons (IDPs). To achieve this, extensive mine clearance needed to be undertaken. It was clear that the support and expertise of international mine action agencies would be required to address this mammoth humanitarian task.

The Ceasefire agreement has remained in force for almost 4 years, though there have been numerous reports of violations to the agreement by both sides.

### **Mine/IED Status**

According to the Landmine Monitor 2005 report, between 1.5 and 2 million mines were planted during the conflict. In April 2005, Sri Lanka reported over 150 square kilometres of known and suspected mine/UXO affected land.

During nearly two decades of conflict, both the Sri Lanka Army (SLA) and the LTTE used anti-personnel mines extensively for both defensive and offensive purposes. Increased fighting in 2000 and 2001 resulted in increased use of antipersonnel mines by both sides. Since December 2001, there have been no confirmed reports of new mine use by either the Government of Sri Lanka or the LTTE. Nevertheless, there were allegations made by the LTTE about mine use in August 2004 and in June 2005 about an armed group supported by the Sri Lankan military. The army has denied these accusations.

<b>Types of mines used by the government:</b>	<b>Types of mines/IEDs used by the LTTE:</b>
<ul style="list-style-type: none"> <li>▪ P4, Type 69, P3 Mk 1 &amp; P4 Mk1 (Pakistan)</li> <li>▪ Type 69, Type 72 &amp; Type 72A (China)</li> <li>▪ VS/50 (Italy/Singapore)</li> <li>▪ NR409/PRB (Belgium)</li> <li>▪ M409 &amp; M696, PRB 409 (Portugal)</li> <li>▪ M18A1 Claymore mine (US)</li> <li>▪ PRB 413 (Pakistan/Portuguese)</li> </ul>	<ul style="list-style-type: none"> <li>A Jony 95 (wooden box)</li> <li>B Jony 99/Rangan 99 (copy of the Pakistani P4 Mk1)</li> <li>C SN 96 (Claymore type)</li> <li>D Amman 2000 (AV mine)</li> </ul>

### **Mine Action Activities**

#### **• *Mine Clearance***

The first demining activities for humanitarian purposes began in 1999 with the launch of the Tamils Rehabilitation Organisation's Humanitarian Demining Unit (HDU), operating exclusively in LTTE-controlled areas of the Northeast. At the time, the extent of the minefields was unknown, as proper surveying had not been carried out and minefield maps were unavailable.

However, following the 2002 ceasefire agreement, mine clearance has been undertaken in both the Government-held and the LTTE-controlled areas with the help of local and international organisations.

<b>Mine clearance organisations active in government-controlled areas:</b> <ul style="list-style-type: none"> <li>▪ SLA</li> <li>▪ RONCO</li> <li>▪ HALO Trust</li> <li>▪ DDG</li> <li>▪ FSD</li> <li>▪ Milinda Moragoda Institute for People's Empowerment (in collaboration with the Indian NGOs Horizon and Sarvatra)</li> <li>▪ Japan Centre for Conflict Prevention</li> </ul>	<b>Mine clearance organisations active in LTTE-controlled areas:</b> <ul style="list-style-type: none"> <li>• TRO/HDU</li> <li>• MAG</li> <li>• NPA</li> <li>• FSD</li> <li>• DDG</li> </ul>
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Mine clearance, in addition to MRE and Victim assistance, is overseen by the National Steering Committee for Mine Action which reviews and approves national priorities for mine action. Chaired by the Secretary of the Ministry of Relief, Rehabilitation and Reconciliation, it has representatives from relevant ministries, government agents, TRO, donors, mine action operators, UNDP and UNICEF. It is based in Colombo and meets every six weeks.

Prioritisation, operational coordination and tasking are provided by regional mine action offices in all mine-affected areas. TRO has also established a Regional Mine Action Office (RMAO) in Kilinochchi with the assistance of UNDP to oversee the coordination of Mine Action activities. The RMAO undertakes tracking of demining activities, oversees needs prioritisation and liaises with TRO's international demining partners.

#### • ***Mine Risk Education***

MRE is conducted by four national NGOs: Sarvodaya, White Pigeon, Community Trust Fund (CTF) and the Tamil Refugee Rehabilitation Organisation, and by Mines Advisory Group working with White Pigeon and HDU. UNICEF provides assistance to local NGOs and the Ministry of Education.

#### • ***Victim Assistance***

In the past, Sri Lanka reportedly had sufficient transportation and medical infrastructure to provide the necessary medical care to civilian landmine casualties. However, following the tsunami in December 2004, major damage was inflicted on the health sector, particularly in the Northeast.

Several prosthetics clinics are available to respond to the physical rehabilitation needs of victims.

There are also organisations and centres that provide physical rehabilitation, psychological support and socio-economic reintegration activities.

In the LTTE-controlled areas of the Northeast, these activities are undertaken by White Pigeon, another arm of the TRO, as well as by other NGOs.

Sri Lankan military survivors receive full rehabilitation within the armed services.

#### **Politicization of mine activities**

Mine action is intricately linked with the peace process, specifically as the rehabilitation and resettlement of IDPs is part and parcel to the ceasefire agreement, which is dependent on mine clearance and the HSZ.

There has also been a lot of pressure placed on both parties by the international and national communities to make mine ban commitments (the government by acceding to the MBT and the LTTE by signing the Geneva Call Deed of Commitment). Donor governments have increasingly shown hesitation in funding mine action programmes without such a commitment. Both parties however have shown some reservations to making such a commitment so long as there is no significant progress towards peace.

This said, even as peace talks have stalled, significant demining activities have continued unabated and steadfast.

### **Role of State/NSA & International community**

The government and LTTE continue to support mine action.

The international community is also continuing its support for mine action while hoping to achieve a breakthrough in commitments to the total ban on AP mines.

### **Challenges**

- A The tsunami not only devastated the health care system, but it also delayed mine clearance by some 3 to 6 months as well as changing the prioritisation for mine clearance.
- B Obstacles have occurred to the smooth conduct of mine action, most notably in relation to difficulties in the transportation of equipment from government-controlled areas to LTTE-controlled areas.
- C The political and military uncertainties and lack of confidence between parties significantly hamper progress towards the ban.
- D The ground reality of “no war/no peace” has created a situation where the parties to the conflict could use mines if hostilities broke out.
- E Landmine-affected areas are confined to the Northeast, and the national press, based primarily in the South has demonstrated a lack of interest in the mine problem and its victims.

### **Conclusions and lessons learned**

Sri Lanka, with a total square mile area of 25'332, has a significant landmine problem. Due to the ceasefire agreement that is currently being maintained, the mine action programme in the last four years has significantly reduced the problem, as well as creating awareness among the mine-affected population as to the danger.

The overwhelming evidence that no new mines have been planted is encouraging. The hope that the two parties to the conflict could agree on a ban on landmines would be a factor that would encourage the International community to support mine action in Sri Lanka.

## LEGAL ASPECTS OF MINE ACTION

### Mrs Kathleen, Lawand Legal Adviser to the ICRC, Mines-Arms Unit, Mine Action in the Midst of Internal Conflict: Legal Aspects\*

#### Introduction

This paper aims to provide an overview of the legal aspects of mine action in situations of internal armed conflict, relating in particular to the allocation of responsibility for mine action in areas controlled by armed non-State actors (hereafter referred to as NSAs).

I was provided with a series of questions to assist me in preparing this paper. These are dealt with in the last part of the paper, applying the legal theory outlined in the first parts.

When referring to the responsibility of States, this paper assumes that they are party to the Ottawa Convention.

#### Key obligations under the Ottawa Convention

There are essentially two types of obligations under the Convention on the Prohibition of Anti-personnel Mines (hereafter referred to as the Ottawa Convention):

First, there are the “don’ts”, i.e. the obligations “not to do” certain things, in other words, the prohibitions. These are the activities listed in Article 1, paragraph 1 of the Convention, i.e. the prohibition to use, produce, acquire, stockpile, retain or transfer anti-personnel mines, and to assist anyone in carrying out prohibited activities.

Then there are the “dos”, i.e. the obligations “to do” certain things, that is to perform certain acts. The acts that States Parties to the Ottawa Convention are required to perform can be essentially summarised as:

- acts aimed at eliminating anti-personnel mines (stockpile destruction and mine clearance),
- acts aimed at protecting civilians while awaiting the completion of mine clearance (“mine awareness” for example), and
- acts aimed at caring for mine victims (victim assistance).

This “to do” list makes up what is commonly known as “mine action”, although that term is not used anywhere in the Convention.

What I am being asked to discuss in this paper is who is responsible for carrying out the items on the “to do list” and what is the scope of their responsibility in the territory of a State Party to the Ottawa Convention that is under the control of NSAs. The answers to that question come in part from an examination of who is responsible for respecting the Convention’s “don’ts” – i.e. the prohibitions.

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\*On her personal capacity, see p. 6

## Who is bound by the Convention's prohibitions?<sup>56</sup>

The prohibitions of the Ottawa Convention bind all persons on the territory of a State Party to the Convention, be they government agents, members of NSAs or lone individuals. This holds true even in parts of the territory that are not under the control of the State.

By definition, a treaty is an agreement between States, which are the primary subjects of international law. There is therefore no option for NSAs to join international treaties, but paradoxically treaties concluded between States can create legal obligations for NSAs. A good example of treaties that expressly bind armed NSAs are the 1949 Geneva Conventions, in particular common Article 3 applying to non-international armed conflicts, and their Second Additional Protocol of 1977, the treaties containing the main rules of International Humanitarian Law (IHL). They require all parties to an internal armed conflict, be they government forces or armed NSAs, to respect certain rules, such as for example the obligation to treat humanely and protect persons that are not, or are no longer, taking part in hostilities (e.g. wounded combatants, prisoners of war, and of course civilians).

One of the fundamental rules of IHL is that, in conducting hostilities, combatants must at all times distinguish between on the one hand military targets, which combatants are allowed to attack, and on the other hand civilians and civilian objects, which combatants are prohibited from attacking. In this connection, IHL prohibits “indiscriminate attacks”, that is attacks that are incapable of distinguishing military targets from civilians. This rule is important to bear in mind in relation to landmines. As stated in the preamble to the Ottawa Convention, the ban on anti-personnel mines is based on this rule.

The Ottawa Convention creates obligations primarily for the States Parties. The obligations to perform certain acts (the “dos”) and the prohibitions (the “don’ts”) are formulated as the obligations of “*each State Party*”. Unlike the Geneva Conventions, the Ottawa Convention does not expressly refer to non-State parties to a conflict. Nonetheless, NSAs as individuals, like all other individuals within the territory of a State Party, must respect the obligations contracted by that State in the Ottawa Convention and in particular, they must not engage in any of the activities prohibited by the Convention.

In order to ensure that all individuals within its territory respect the Ottawa Convention’s prohibitions (the “don’ts”), each State Party is required by Article 9 to adopt national legislation enabling prosecution and punishment of violations.

How does all this fit in with the “dos”, that is the “mine action” obligations of the Convention? Well, if all persons in a State Party’s territory are prohibited from using and stockpiling anti-personnel mines, it should follow that if they retain stockpiles and maintain minefields, they would be in violation of the prohibition to retain and to use anti-personnel mines. I will return to this issue in a moment.

With that background in mind, I wish now to turn to the question of a State Party’s responsibility for mine action in areas controlled by NSAs.

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56. This section is based on elements developed in more detail in a paper on legal issues relating to engaging NSAs in the Ottawa Convention which the author contributed to Philippine Campaign to Ban Landmines (ed.), *Looking Back, Looking Forward, Lessons Learned in Engaging Non-State Actors in a Landmine Ban*, Papers and Proceedings of a Workshop on 13 September 2003 in Bangkok, Thailand, ICBL and Geneva Call, 2004.



## Is a State Party to the Ottawa Convention responsible for mine action in parts of its territory controlled by NSAs?

The mine action requirements of the Convention are to be performed by the State Party, i.e. the government. This is very clear from the text of the treaty, which identifies the subject of the obligations as “each State Party”.

But how can the government perform acts on a part of its territory that it does not control? This question can be answered by taking a closer look at the wording of the mine action provisions of the Convention, in particular of Articles 4 and 5 dealing with stockpile destruction and mine surveying, awareness and clearance:

“Each State Party undertakes to destroy or *ensure the destruction* of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction *or* control...” (Art. 4)

“Each State Party undertakes to destroy or *ensure the destruction* and of all anti-personnel mines in mined areas under its jurisdiction *or* control.” (Art. 5(1))

“Each State Party shall make *every effort* to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced, and *shall ensure* [that measures are taken] to ensure the effective exclusion of civilians...” (Art. 5(2))

Several observations can be drawn from the wording of these provisions. First, in relation to the scope of the obligation – mines under the State Party’s “jurisdiction *or* control” – it is significant that the term “*and*” was not used. This appears to indicate that even if a State does not control a part of its territory, on which it however has “jurisdiction” in the sense of “sovereignty”, it is still in principle obliged to carry out stockpile destruction and mine clearance pursuant to Articles 4 and 5.

But surely this is unrealistic: how can a State perform its mine action obligations in territory it does not control? This is where the second significant feature of Articles 4 and 5 comes into play, in the use of the terms “destroy or *ensure the destruction*” and “*shall ensure*” other mine action measures to protect civilians. This would indicate that if for some reason the State Party is not in a position to itself destroy anti-personnel mines within its jurisdiction or control, it must nonetheless “ensure their destruction”. So how can a State party to the Ottawa Convention “ensure the destruction” of anti-personnel mines located in parts of its territory that are not under its control?

A fundamental rule of the law of treaties, embodied in the Latin maxim *pacta sunt servanda*, is that States party to a treaty must perform their obligations under that treaty in good faith.<sup>57</sup> According to the rules of treaty interpretation, “good faith” means that a State is required to “refrain from any acts calculated to prevent the due execution of the treaty or otherwise frustrate its objects.”<sup>58</sup>

Taking the obligation to “ensure the destruction” of anti-personnel mines, the good faith performance of this requirement arguably means that, at the very least, a State Party must, to the extent feasible and within the means at its disposal, facilitate efforts to clear and destroy mines in the parts of its territory that are controlled by NSAs.

In interpreting and implementing the Convention’s mine action obligations in relation to areas controlled by NSAs, the Convention’s provisions on international cooperation and assistance (Article 6) should also be taken into account. Pursuant to these provisions, a State Party has the right to seek and

57. The rule of *pacta sunt servanda* is codified as follows in Article 26 of the Vienna Convention on the Law of Treaties: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

58. Article 55(2) of the Vienna Convention on the Law of Treaties.

receive assistance if need be from other States Parties and international organisations and NGOs. This would arguably include the right to seek assistance from other States Parties and relevant actors to enable mine action activities in areas that the government does not control.

Under the law of State responsibility, a State may justify its failure to implement its obligations on the grounds of what is known as “*force majeure*” -- meaning events which are outside of the control of the State. Article 23 of the UN Draft Articles on State Responsibility, drawn up by the International Law Commission, provides:

“The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the act is due to *force majeure*, that is the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation.”<sup>59</sup>

In this context, the term “act of a State” includes a failure to perform a legal obligation, such as for example mine action obligations under the Ottawa Convention. This provision essentially means that a State will not be legally responsible for non-compliance with its treaty obligations if it is materially impossible for it to carry them out.

In its Commentary to this provision, the International Law Commission has qualified “material impossibility” as including events due to “human intervention”, for example “loss of control over a portion of the State’s territory as a result of an insurrection or devastation of an area by military operations carried out by a third State.” The Commentary goes on to say that “the wrongfulness of the State’s conduct is precluded for so long as the situation of *force majeure* subsists.”<sup>60</sup>

Therefore a State Party to the Ottawa Convention may be able to justify its non-compliance with its mine action obligations only so long as a non-international armed conflict continues and as parts of its territory escape from its control, if not its jurisdiction. In other words, the justification for non-performance of the Convention requirements is only temporary.

I wish to re-emphasise that the State Party must at all times act in good faith. As Stuart Maslen has put it in his Commentary to the Ottawa Convention: “A State that is unable, for reasons beyond its control, to implement certain obligations, can legitimately claim to be acting in good faith as long as it does not exploit an internal armed conflict in order to avoid implementing all of its obligations.”<sup>61</sup>

In sum, a State Party to the Ottawa Convention can justify its failure to fulfil its mine action obligations in areas of its territory that it does not control, for as long as it does not control those areas, but it is still bound to make “good faith” efforts to perform its treaty obligations. In particular, it must:

- refrain from deliberately preventing the execution of the treaty in those areas of its territory that it does not control; and
- facilitate efforts made by third parties (e.g. other States, international organisations or NGOs) to carry out mine action in those areas and, if feasible, facilitate such efforts made by the NSAs themselves.

59. International Law Commission, « Articles on Responsibility of States for Internationally Wrongful Acts », General Assembly Official Records, Supplement No. 10, A/56/10, 2001, at p.48.

60. Ibid., at p.184.

61. S. Maslen, Commentaries on Arms Control Treaties Vol. I: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction, Oxford University Press, 2004, at p.152.

This brings me to the concluding part of my presentation, where I will attempt to answer the questions that have been put to me in light of the above-mentioned legal framework.

### **Questions regarding the responsibility for mine action in areas controlled by NSAs**

**1. Are mine action activities in areas controlled by NSAs under the responsibility of the State?**

They most definitely continue to be the responsibility of the State party to the Ottawa Convention, but the non-performance of mine action would be justified by the fact that the State Party does not control the territory and that it is therefore under a “material impossibility” to carry out these activities. However, the State Party must at all times act in good faith, and in particular it should not act in such a way as to prevent the Convention from being executed in the parts of its territory that it does not control. In particular, it should not obstruct efforts made by others to clear mines and carry out other mine action activities. This stems from the State Party’s obligation under Articles 4 and 5 of the Convention to “*ensure*” that mine action is carried out, and would include the obligation to facilitate efforts made by third parties (e.g. mine action organisations) or even, where feasible, by the NSAs themselves.

**2. Is a refusal by a State Party to allow mine action activities in areas controlled by NSAs a violation of the Ottawa Convention?**

Depending on the circumstances, such refusal could amount to a violation of the State’s obligation to “ensure the destruction” of stockpiled anti-personnel mines and of mines in the ground, among other mine action measures. For example, if a State Party arbitrarily -- i.e. without due regard to the humanitarian needs and opportunities on the ground -- refuses to allow mine action activities proposed by willing and able third parties in areas controlled by NSAs, it would be difficult for it to argue that it is under a “material impossibility” to perform its treaty obligations in those areas. Moreover, its refusal would most certainly constitute a violation of the Convention if it is shown to amount to an act “calculated to prevent the due execution of the treaty or otherwise frustrate its objects” (per above-cited Commentary of the International Law Commission).

**3. What is the responsibility of the State vis-à-vis its own population living in areas under the control of NSAs?**

I believe this question refers to the duty of States to protect their population from the effects of mines, notably through marking and fencing, and mine risk education. Again, because the Convention provision (Art. 5(2)) is formulated as an obligation *to ensure*, there is a duty to facilitate efforts by third parties, such as mine action organisations, or where feasible by NSAs themselves, to carry out mine action.

**4. In particular, under the Ottawa Convention, what is the responsibility of the State vis-à-vis the victims of mines laid by NSAs?**

A State party to the Ottawa Convention has the responsibility to care for all mine victims within its jurisdiction or control, regardless of whose mines caused the casualties. There can be no discrimination against victims on the grounds that they were injured by the acts of NSAs or third parties.

The victim assistance obligation under the Convention is formulated as one of “international cooperation and assistance”. In particular, pursuant to Article 6(3) of the Convention, the duty of States Parties to assist mine victims is incumbent on all States Parties

– both mine-affected States and other States that are “in a position to” provide assistance to victims.

But again, whether the State Party can carry out its obligations in the parts of its territory that escape its control depends on what is materially possible under the circumstances. At the very least, the State must not prevent victim assistance activities from being carried out by third parties, or by NSAs themselves, and it must facilitate the carrying out of these activities in any way that it can, for example by allowing humanitarian organisations to have access to the said territories.

This is also in line with the duties of parties to an armed conflict, under International Humanitarian Law and Human Rights Law, to allow entry, passage and distribution of impartial and neutral humanitarian assistance to civilian populations in need.<sup>62</sup>

**5. Who is responsible for the destruction of stockpiles belonging to NSAs?**

In principle, the State Party is responsible in accordance with Article 4 which, as previously mentioned, continues to apply even if the State is not in control of the territory. Again, applying this obligation in good faith, the State Party must at least refrain from acting in such a way as to prevent stockpile destruction from taking place. Pursuant to its obligation to comply with the treaty in “good faith” and to “ensure” that stockpile destruction can take place, it must facilitate efforts that may be made by others (e.g. mine action organisations) to do so.

**6. Are NSAs obliged to carry out mine action in the areas they control (always assuming that the State is party to the Ottawa Convention)?**

As mentioned earlier, NSAs are bound to respect the prohibitions of the Ottawa Convention.

Accordingly, the prohibition to stockpile anti-personnel mines would require the NSA to destroy stockpiles in its possession. The NSA would also be required to clear minefields in the areas it controls, to the extent that leaving the mines in the ground may constitute “use”, which is absolutely prohibited by the Convention.

Pending clearance of minefields, the NSA should facilitate or engage in related mine action activities, i.e. mine risk education and risk reduction in the areas it controls. This also stems from the general International Humanitarian Law requirement to protect the civilian population from the effects of hostilities. Similarly, NSAs would also be required to allow access to the areas under their control by impartial and neutral humanitarian organisations providing assistance for mine and other war victims.<sup>63</sup>

62. See Ruth Abril Stoffels, « Legal regulation of humanitarian assistance in armed conflict : Achievements and gaps », International Review of the Red Cross, Vol. 86, No. 855 (September 2004), pp. 515-546,

63. See *ibid*.

## CONCLUSION

### *Closing Statements*

**Mrs Simona Beltrami,  
Coordinator of the Italian Campaign to Ban Landmines  
Co-chair of the NSA Working Group – ICBL**

I would like to echo the words of Ambassador Lint in the opening, acknowledging that, in the past five years, the international community has really come a long way with regard to recognising the need to engage non-State armed groups in efforts to achieve a truly universal ban on landmines.

The growing recognition of this need has been achieved thanks to the tireless work of NGOs like Geneva Call and member campaigns of the ICBL, who – despite many dangers and difficult conditions – work day in day out in many countries to engage with non-State armed groups on humanitarian issues. Thanks to their efforts, the necessity of entering into a dialogue with non-State armed groups with a view to achieving a total mine ban, has been sanctioned by statements and resolutions in authoritative fora including Meetings of the States Parties of the Ottawa Convention, the Nairobi Action Plan for a mine free world, produced during the 1<sup>st</sup> Review Conference of the Convention, as well as the European Parliament.

Still, we cannot deny that there is still staunch resistance from many quarters to efforts to work with non-State armed groups towards the goal of a mine-free world. The issue of non-State actors' involvement in the mine ban process remains highly politically charged, like everything that concerns these groups.

And yet, today's presentations, in all their diversity and complexity, reminded us brilliantly of what lies behind the smoke screen of the political battles around legitimization of armed groups. And what lies behind this is the human suffering of communities caught in the cross fire of civil conflicts, stuck in minefields, whose basic rights – life, physical integrity, access to resources, freedom of movement – are constantly being denied because of mine use. The case studies presented today clearly illustrated the need to create safe spaces for communities and individuals through the facilitation of humanitarian mine action even in the midst of conflict. And they spelt out the need for all of us who work on the landmine issue to step up our efforts to take the process of engaging non-State armed groups yet one step further, thus allowing the saving of innocent lives to take place even as war continues.



**Mr Pascal Bongard,  
Programme Director for Africa, Geneva Call**

On behalf of the organizers, Geneva Call and the ICBL Non-State Actors Working Group, I would like to thank all of you for having participated in and contributed to this workshop.

Special thanks must go to our speakers for their very rich and interesting presentations, and to Ambassador Jean Lint who kindly accepted the invitation to chair this meeting.

I think this workshop shows that mine action in the midst of internal armed conflict is possible. In Sudan, the government and SPLM/A agreed to renounce the use of AP mines whilst the war was still being fought, and the Government of Colombia chose to sign the MBT despite its own internal conflict. Moreover, in Sudan but also in Sri Lanka, mine risk education, victim assistance and even demining began during wartime.

Of course, there are many challenges and obstacles to such work. For instance, the Sudanese example teaches us that progress in mine action is often conditioned by progress in peace negotiations. Similarly, there may be reluctance among the opposing parties to commit to a total ban on AP mines, as has been seen in Sri Lanka. Alternatively, the issue might become politicised, with the actors involved demonstrating less cooperation with mine action efforts as a result; this was evident in the refusal of the Government of Colombia to grant authorisation for international verification in Micoahumado and in the obstruction of the transportation of demining equipment encountered in Sri Lanka. What is more, continued fighting and insecurity will inevitably hamper mine action efforts, as will scepticism and a lack of support by the international community, particularly donors.

These challenges are real, but they should not discourage us. I see two main reasons why this is so:

Firstly, a country may be at war, but there are likely to be pockets of relative stability conducive to mine action. Indeed, this was the case in some areas of Southern Sudan and Sri Lanka. It is also descriptive of the situation in Somalia, where important mine action projects, including demining and stockpile destruction, have been running for several years in northern regions. Similar developments have been observed in Iraqi Kurdistan since 1991.

Regional disparities do therefore exist in conflicts; in zones where war is over or stability exists, it is not necessary to wait for a comprehensive settlement of the conflict before trying to initiate some degree of mine action. This point was well encapsulated in the course of the workshop in the comment that: "it's not necessary to have peace to start saving lives".

Secondly, granting that in situations of armed conflict only limited mine action can take place, there is room for progress within these restrictions. For example, in many cases, advocacy, MRE and victim assistance work is possible. Demining is more problematic as it might be militarily driven, and recovered mines might be recycled or cleared areas mined again. It could also be problematic, if not impossible, to begin demining operations for security reasons. Even so, we have heard that local initiatives have been taken in Southern Sudan (OSIL since 1997), as well as in Sri Lanka (HDU since 1999). These initiatives are helpful not only because they have served to reduce the mine threat but also because they lay the ground for a comprehensive mine action effort once peace has been achieved, as is happening now in Southern Sudan.

So, to conclude, a variable-geometry approach whereby mine action is taken to different lengths according to the exigencies of a conflict, is very important and worthy of increased support including in areas under the control of NSAs.

We hope this workshop will contribute to the process and build support for such an approach.

Thank you.

## SUMMING UP

Clearly, this workshop brought together a richness of different views on, and experiences of, mine action in the course of armed conflicts. Even so, some common conclusions have emerged.

Firstly, all contributors to the workshop more or less agreed on a basic point: mine action is possible in the midst of war and armed dispute. From Asia, Africa and South America, representatives were able to bear testament to this fact, bringing with them concrete examples of how advocacy, mine clearance, victim assistance, Mine Risk Education and stockpile destruction, may be undertaken in spite of hostilities.

Secondly, if mine action is to be carried out, then it must be done so for humanitarian reasons. We must prioritise helping the communities that are afflicted by a landmine problem, whether in terms of removing the mines, educating the local population about the risks that they face, or providing assistance to mine victims. If, on the contrary, mine action is performed from a military standpoint, then it enters into the logic of the conflict itself. In these circumstances, combatants may re-use the mines taken from the ground, or employ cleared areas for their own use. Demining must benefit civilians first, and giving ownership of it to the military may subvert their interests.

Thirdly, mine action should be depoliticised. In Colombia, the political agenda has meant that the government has been unwilling to negotiate with NSAs, even in the name of a dialogue focussing on ways and means to reduce the impact of landmines on the civilian population. Equally, the LTTE and Government of Sri Lanka have tied any commitment to adhere to a full mine ban to the contingencies of the ongoing conflict. Indeed, the evidence from these cases is that an overly political dimension is likely to affect mine action for the worse.

Fourthly, a failure to perform mine action in the course of an armed conflict may be deemed as non-respect of the MBT. As Kathleen Lawand explained, although a signatory State might be prevented from implementing the provisions of the MBT in those parts of its territory that are not under its control, the State and the NSAs operating in that area should nevertheless endeavour to carry out mine action according to the spirit of the MBT. To this end, the State should facilitate, or at least not prevent, any mine action efforts by third parties or the NSAs themselves. Indeed, Action #46 of the Nairobi Action Plan urges States in a position to do so to:

***“Continue to support, as appropriate, mine action to assist affected populations in areas under the control of armed non-State actors, particularly in areas under the control of actors which have agreed to abide by the Convention’s norms”***

Recognising this responsibility is, however, only a first step. The important effort that must now be undertaken is to ensure that States take this responsibility seriously and that they act on it.

Finally, the discussion presented further evidence for what is already considered a possible consequence of mine action in the course of armed conflict, namely that it leads to confidence building between the sides to the dispute. Certainly, negotiations on this subject, such as agreements to allow mine action in a conflict zone, might serve as an avenue to discussion on other more contentious issues.

This workshop therefore left its participants with the certainty that mine action in the midst of an internal conflict is both possible and a humanitarian imperative. Not every region in a war-torn country will be affected by warfare and it is in such areas that mine action may be undertaken in different forms according to what is possible. This is likely to provide immediate benefits to the local population, as well as to lay the groundwork for a comprehensive mine action effort once peace has been made.

Indeed, one must not wait until the last bullet is fired before seeking ways and means to prevent the human suffering caused by landmines.





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