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Antipersonnel Landmines and
Cluster Munitions: an analysis
under International Law

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ABSTRACT

Lo scopo di questa tesi è quello di focalizzare l'attenzione sul tema delle mine antiuomo, una questione che affligge molti paesi nel mondo e che mette a rischio la vita delle persone ogni giorno. L'attenzione è stata rivolta principalmente all'analisi di due convenzioni internazionali, la prima con oggetto le mine antipersona e la seconda sulle bombe a grappolo.

Per prima cosa, è stato importante evidenziare una delle caratteristiche dei conflitti armati odierni, ovvero la crescente percentuale dei civili tra le vittime delle guerre. Per far fronte alle disastrose conseguenze delle guerre mondiali sono state adottate le Convenzioni di Ginevra nel 1949, che insieme ai Protocolli del 1977 e del 2005 costituiscono il centro del diritto internazionale umanitario (DIU). La questione delle mine si lega al DIU perché le caratteristiche principali di queste armi comportano la violazione di alcuni dei suoi principi fondamentali. Infatti, le mine antiuomo nascono per esplodere al contatto con le persone senza poter distinguere tra civili e soldati, violando così il principio di distinzione. Inoltre provocano amputazioni e ferite, infrangendo il principio che vieta ai belligeranti di causare sofferenze non necessarie.

Il primo capitolo ne illustra le principali caratteristiche. Inizialmente prodotte per proteggere i carri armati, sono state poi utilizzate su larga scala a partire dalla seconda guerra mondiale, e lo sviluppo tecnologico ha contribuito in breve tempo a produrre diverse e sempre più raffinate tipologie di mine, che cominciarono ad essere maggiormente impiegate perché utili sul piano militare. Infatti, queste armi sono poco costose e di semplice utilizzo, oltre ad essere efficaci per terrorizzare i civili, ostacolare lo sviluppo economico e lo sfruttamento delle risorse nei territori che ne sono affetti. Sin dagli anni '70 il Comitato Internazionale della Croce Rossa (CICR) si è occupato di denunciare la pericolosità delle mine antiuomo, tuttavia è mancata nel diritto internazionale una regolamentazione di queste armi fino all'adozione del Protocollo II del 1977, modificato nel 1996, che tuttavia ne regolava solo l'utilizzo senza proibirle completamente.

Nel secondo capitolo è stato analizzato il processo di Ottawa, ovvero quel percorso che ha portato all'adozione della Convenzione che proibisce l'uso, lo stoccaggio, la produzione, la vendita delle mine antiuomo e ne prevede la distruzione. Sono state perciò ripercorse le conferenze che si sono susseguite dal 1996 al 1997, partendo dalla conferenza del 1996 di Ottawa che diede il via al processo dopo la sfida lanciata dal ministro Canadese Axworthy agli Stati a ritornare ad Ottawa per firmare una Convenzione per proibire le mine entro Dicembre dell'anno successivo.

L'attenzione è stata rivolta alla stesura del testo della futura convenzione, che è stato oggetto di negoziati durante tutto il processo e alle particolarità di quest'ultimo. Infatti è considerato un caso unico nella storia per la velocità che ha caratterizzato la negoziazione di un accordo internazionale riguardante le mine, ovvero armi che fino a poco tempo prima erano considerate lecite, per aver fornito un forum alternativo a quello tradizionale per la negoziazione e adozione di un trattato internazionale e per essere caratterizzato da un'inusuale cooperazione tra Stati a favore della messa al bando, organizzazioni internazionali e non governative, tra cui spicca la Campagna Internazionale per

la messa bando delle mine antiuomo, una rete che oggi include più di mille organizzazioni non governative e che ha contribuito in maniera determinante all'adozione del trattato, attraverso campagne informative e mediatiche e esercitando molta pressione sugli Stati.

Il capitolo terzo è incentrato sull'analisi degli articoli della Convenzione di Ottawa che oggi conta 162 Stati Membri. Partendo dalla precisazione che essendo un trattato come tale si applica esclusivamente agli Stati Parte, sono stati poi esaminati alcuni articoli fondamentali. Innanzitutto sono state illustrate le definizioni in modo da definire con precisione l'oggetto della Convenzione, ovvero le mine antipersona, e successivamente sono stati presi in esame i principali obblighi. Gli Stati parte del trattato devono infatti rispettare quelli che sono considerati i pilastri del trattato, ovvero la proibizione dell'uso, la produzione, lo stoccaggio, e il trasferimento delle mine antiuomo. Dopo l'analisi di queste misure, è stato preso in considerazione l'obbligo della distruzione delle mine, ovvero sono stati esaminati gli articoli che dispongono l'eliminazione delle mine possedute dagli Stati nei territori sotto la propria giurisdizione. Infine, sono stati presi in esame ulteriori obblighi. Sono stati esaminati nell'ordine: l'obbligo in capo agli Stati di cooperare tra loro e di fornire assistenza agli altri membri nell'ottemperare agli obblighi previsti dalla convenzione; le misure legate alla trasparenza, ovvero la disposizione che impone agli Stati di redigere annualmente dei rapporti per monitorare e verificare l'adempimento agli obblighi previsti dal Trattato; le iniziative nazionali di attuazione della Convenzione, ossia l'obbligo di adottare le opportune misure legali per evitare qualsiasi violazione del trattato. Infine ampio spazio è stato dato all'articolo 8, relativo alla facilitazione e chiarificazione sull'attuazione del Trattato. Difatti, il meccanismo per monitorare e incoraggiare il rispetto delle disposizioni della Convenzione si compone di cinque fasi che cercano di risolvere le questioni relative al rispetto degli articoli del Trattato. Inserito nella Convenzione dopo lunghi dibattiti, esso contribuisce al successo del Trattato dato che istituisce un meccanismo di verifica e supporto degli obblighi affiancato da uno spirito di cooperazione tra gli Stati parte.

Con il quarto capitolo si apre la seconda analisi, quella relativa alla Convenzione sulle bombe a grappolo. Le preoccupazioni su questo secondo tipo di arma emergono più chiaramente solo negli anni 2000, anche in seguito allo straordinario successo del precedente Trattato contro le mine antiuomo. Questo capitolo inizialmente fornisce una descrizione di queste bombe, ordigni sganciati o da velivoli o da terra tramite artiglierie che contengono anche centinaia di sub-munizioni esplosive rilasciate al funzionamento della bomba a grappolo, la quale funge da contenitore. Utilizzate a partire dalla Seconda Guerra Mondiale, sono per alcuni aspetti molto simili alle mine antiuomo poiché gran parte delle sub-munizioni non esplodono al momento del rilascio e perciò giacciono a terra divenendo delle vere e proprie mine. Sono state oggetto di critica da parte delle organizzazioni internazionali fin dagli anni '70 ma soltanto negli anni 2000 quando l'uso estensivo di quest'arma mostrò in modo lampante la propria pericolosità, parte della comunità internazionale ne condannò l'utilizzo e cominciò a pensare a delle misure per ridurre l'impatto sulla popolazione civile. In questo capitolo si ripercorrono le tappe di questo percorso, il processo di Oslo, cominciato nel 2007 e terminato con l'adozione di una Convenzione che ha messo al bando queste armi nel 2008.

Il quinto capitolo si concentra sull'analisi del testo della Convenzione, focalizzandosi su alcune delle sue parti più significative e sottolineandone le innovazioni rispetto al Trattato di Ottawa al quale si ispira. Prima di tutto il preambolo ed alcune definizioni per definire l'oggetto del Trattato, poi le proibizioni, ovvero il divieto dell'uso, della produzione, dello stoccaggio e del trasferimento delle bombe a grappolo. Inoltre vengono esaminate le disposizioni relative al rapporto con gli Stati che non hanno aderito al Trattato e i cosiddetti "obblighi positivi", ossia le disposizioni inserite nella Convenzione per ridurre l'impatto di quest'arma sulla popolazione civile. Tra questi vengono analizzati l'obbligo di distruggere le bombe a grappolo possedute dagli Stati parte, gli obblighi umanitari, ovvero le misure che gli Stati devono adottare per individuare e rimuovere le sub-munizioni dal suolo, per fornire assistenza alle vittime e per svolgere delle attività educative per informare la popolazione civile ed educarla al rischio posto dagli ordigni inesplosi. Il quinto capitolo si conclude con l'analisi di altre tre disposizioni: l'obbligo della cooperazione ed assistenza tra gli Stati Membri; le misure legate alla trasparenza per controllare l'adempimento degli obblighi e rilevare eventuali difficoltà da parte degli Stati in modo poi da poter fornire la necessaria assistenza; le disposizioni per la chiarificazione di situazioni non chiare dal punto di vista dell'attuazione del Trattato; le misure nazionali da adottare per attuare la Convenzione.

Il sesto capitolo introduce un altro fondamentale elemento nell'analisi delle Convenzioni in oggetto, ovvero il ruolo dei maggiori attori internazionali. Il primo ad essere preso in esame è quello delle Nazioni Unite, da sempre impegnate in operazioni umanitarie e perciò protagoniste della crisi umanitaria causata da ordigni indiscriminati. A dimostrazione di questo impegno in questo capitolo vengono riportate alcune risoluzioni adottate sia in materia di mine che di bombe a grappolo. Inoltre, viene esaminato il ruolo svolto durante e dopo il Processo di Ottawa non solo attraverso le risoluzioni dell'Assemblea Generale, ma anche mediante alcune delle agenzie dell'ONU. Il capitolo prosegue con l'approfondimento di uno strumento non vincolante, ossia le risoluzioni annuali dell'Assemblea Generale delle Nazioni Unite riguardanti l'attuazione delle disposizioni del Trattato di Ottawa. Nonostante non siano vincolanti sono comunque un'opportunità anche per gli Stati non membri della Convenzione che con un voto a favore contribuiscono all'universalizzazione del Trattato. Infine, viene analizzato il ruolo dell'ONU nelle attività di "azione contro le mine" (*mine action*), e della relativa agenzia che se ne occupa, UNMAS.

Il sesto capitolo analizza anche il ruolo del Comitato della Croce Rossa che per primo si è occupato della questione delle mine. Viene quindi descritta la sua attività in questo ambito, ovvero delle conferenze che ha organizzato e delle relazioni che ha redatto per dimostrare la limitata utilità militare rispetto alle enormi e gravi conseguenze umanitarie. Il Comitato si occupa anche delle bombe a grappolo e perciò il capitolo esamina il lavoro svolto in questo settore. Queste attività continuano ancora oggi e mirano in particolare a promuovere l'adempimento degli obblighi della Convenzione e la sua universalizzazione, quest'ultima è tra gli obiettivi principali dato che le sue principali preoccupazioni sono di carattere umanitario.

Successivamente vengono analizzate le due Campagne protagoniste dell'adozione di entrambi i Trattati. La prima è la Campagna internazionale per la messa al bando delle mine antiuomo e la seconda è la Coalizione contro le bombe a grappolo. Rappresentanti della società civile, nei due paragrafi vengono descritti i loro meriti e le azioni svolte durante e dopo l'adozione delle Convenzioni.

Infine si concentra l'attenzione sull'Europa che sin dagli anni '90 ha svolto un ruolo attivo nell'affrontare le questioni riguardanti sia le mine che le bombe a grappolo, oltre ad essere uno dei principali protagonisti dei programmi legati alla *mine action*. Vengono quindi analizzati alcuni provvedimenti presi dal Parlamento Europeo e dal Consiglio d'Europa con l'intento principale di incoraggiare gli Stati ad aderire alle Convenzioni.

Il settimo capitolo illustra i motivi del successo del trattato di Ottawa e riprende in considerazione alcuni degli articoli esaminati in precedenza con l'intento di verificarne lo stato di attuazione. A questo scopo viene introdotto e descritto il Monitor, ovvero lo strumento principale di verifica per entrambe le Convenzioni. Il capitolo ottavo ha l'intento simile al precedente ma si riferisce agli articoli della Convenzione sulle bombe a grappolo, e descrive le innovazioni che quest'ultima ha introdotto.

Infine sono state fatte delle considerazioni riguardanti la formazione di una norma consuetudinaria sulle mine antiuomo. Analizzando i requisiti che sono necessari affinché una norma possa essere definita consuetudinaria, si è tentato di esaminare la questione dell'esistenza di una norma consuetudinaria che proibisce l'uso delle mine antiuomo e ciò è stato fatto analizzando diversi esempi di *opinio juris* e di *diuturnitas* a partire dall'adozione del Trattato di Ottawa fino ai giorni nostri.

INTRODUCTION

In the Nineties Gino Strada, the Italian surgeon and the founder of the independent nonprofit organization *Emergency*, stated that civilians had increasingly become victims of war, actually more than 90% of all of those injured were civilians.

Many Research Institutes, such as the Stockholm International Peace Research Institute and the International Peace research Institute of Oslo confirmed that trend.¹ Even though it is difficult to estimate the number of civilian casualties during a war,² in the present age it is evident a shocking trend: a growing number of civilians suffers most of the consequences of armed conflicts.

Since the Second World War civilians have been the main victims of wars. According to the International Committee of the Red Cross (ICRC) “Civilians have always suffered in war, but the brutal impact of World War II, which included mass extermination, indiscriminate attacks, deportations, hostage taking, pillage and internment, took a high toll of civilian life”³

After the end of the war, the disastrous consequences of the global conflict demonstrated the necessity of a system of international norms to protect civilians from the effects of armed conflict. Therefore, the subsequent adoption of the IV Geneva Convention in 1949 was intended to respond to this necessity.

Even if this chapter focuses on the civilian population, object of the IV convention, it is important to give some insights into the Geneva Conventions. These Treaties were adopted in 1949 and together with their Additional Protocols of 1977 and 2005, they form the core of the International Humanitarian Law. In fact, they contain the rules that protect people who are not involved in a conflict, such as civilians and medical personnel, and those who are no longer engaged in armed conflicts, such as prisoners of war and wounded soldiers. As regards the Additional Protocols, they were adopted in 1977 (Protocol I and II) and in 2005 (Protocol III) in order to strengthen the protection of victims of both interstate and intrastate conflicts because of the proliferation of internal conflicts and wars of national liberation. However, the ICRC advises that despite this international legislation, during the past 60 years civilians have been the main victims of wars, in particular because of “the lack of respect shown by weapons bearers.”⁴

¹ G. Strada, “The Horror of Landmines”, *Scientific American*, (1996), available at http://www.pbs.org/pov/afghanistanyear1380/legacy_feature02.php.

² A. Roberts, “Lives and Statistics: are 90% of War Victims Civilians?”, *Survival: Global Politics and Strategy June-July 2010*, 52, no.3 (2010): 116-118.

³ “Civilian protected under international humanitarian law”, ICRC, accessed December 2014, available online at <https://www.icrc.org/eng/war-and-law/protected-persons/civilians/overview-civilians-protected.htm>.

⁴ “Protection of the Civilian Population”, ICRC, accessed in December 2014, <https://www.icrc.org/eng/what-we-do/protecting-civilians/overview-protection-civilian-population.htm>. To deeper the issue of the International Humanitarian Law see for example, G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, (Cambridge: Cambridge University Press, 2010); Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, (Cambridge: Cambridge University Press, 2010); J. Carey, W. V. Dunlap, R. J. Pritchard, *International humanitarian law*, (Ardslay, N.Y.: Transnational Publishers, 2003); D. Thürer, *International humanitarian law: theory, practice, context*, (The Hague: Hague Acad. Of International Law, 2011).

The problem of noncompliance was highlighted in 2009, in the occasion of the 60th anniversary of the 1949 Geneva Conventions where the former President of the ICRC, Jakob Kellenberger asserted: “We see violations of IHL on a regular basis in the field ... Even wars have limits and if the existing rules were followed to a greater extent, much of the suffering caused by armed conflict could be avoided. On a more positive note, many of these violations are no longer going unnoticed. Increasingly, those responsible are being held accountable for their actions and that is a sign of progress.”⁵ Despite the difficulties and the evolving of the nature of armed conflict, the Geneva Conventions are still relevant as it has been recognized recently by the Chief Director of the Human Rights and Humanitarian Affairs Directorate in the Department of International Relations and Cooperation (DIRCO).

In fact, he declared that “Today’s wars have little in common with the battles of the 19th century. The fighting has gradually moved from clearly defined battlefields to populated areas. Traditional war between armies of opposing states is the exception, while non-international conflicts have become a norm. Nowadays, civilians are increasingly bearing the brunt of armed conflicts.”⁶

All these explanations lead to the main subject of this dissertation. The landmine⁷ issue not only falls within the International Humanitarian Law, but also it is tightly tied to the current form of modern conflicts. In fact, the main problem is that these weapons “pose an indiscriminate and persistent threat”⁸ against soldiers as well as civilians, because they do not distinguish between the foot of a child and the foot of a soldier.

I. LANDMINES: A GLOBAL AND LIVING ISSUE

1. What is a Landmine?

A landmine is an explosive device activated by a person, an animal or a vehicle.

It comprises a quantity of explosive, normally contained within some form of casing (typically in metal, plastic or wood), and a fusing mechanism to detonate the main explosive charge.

Most landmines are manufactured from durable materials such as plastic, glass or metal because they are designed to endure the effects of the weather and time and they can be buried under the ground, or fixed to objects above the ground, otherwise they can be placed on stakes.

⁵ “The Geneva Conventions at 60: learning from the past to better face the future”, ICRC, accessed in December 2014, <https://www.icrc.org/eng/resources/documents/news-release/2009-and-earlier/geneva-convention-60-news-060809.htm>.

⁶ “The Geneva Conventions 150 years later ... still relevant?”, ICRC, accessed in December 2014, <https://www.icrc.org/en/document/geneva-conventions-150-years-later-still-relevant#.VJiPjhBEA>.

⁷ Hereinafter, “landmine” or “mine” refer to antipersonnel landmines, unless indicated otherwise.

⁸ G. Strada, *supra* note (1).

Finally, they are activated in various ways: by pressure, trip wire, electrical command, radio signal, or electronic sensor and they are designed to damage vehicles and hurt or kill people.⁹

1.1. Types of Landmine: Anti-tank Mines and Antipersonnel Landmines.

Generally there are two type of landmines: anti-vehicle landmines and antipersonnel landmines. Anti-vehicle or anti-tank mines are larger than antipersonnel landmines and they are designed to damage tanks and other armored vehicles. They usually explode “under a high pressure (usually around 100 kg) in order to immobilize or destroy vehicles.”¹⁰

Antipersonnel landmines (APMs) are “explosive devices designed to be detonated by the presence, proximity or contact of a person. Placed under or on the ground, they can lie dormant for years and even decades until a person or animal triggers their detonation mechanism.”¹¹

1.2. Characteristics of Antipersonnel Landmines.

It is not simple to define this category of weapons, because there are hundreds different types of APMs.¹² However, it is possible to identify two major types of APMs: antipersonnel blast mines and antipersonnel fragmentation mines.

The former are usually small, flat and cylinder-shape and buried in the ground in order not to be found. This is why they explode when someone inadvertently steps on them. When detonated, blast mines can cause the amputation of the leg, injuries on other parts of the body or even kill the victim.¹³ While blast mines are primarily designed to cause injuries, the latter are considered “the most lethal in the deadly arsenal of landmines,”¹⁴ because they are able to maim or kill many people at the same time. In fact, once triggered, they project tiny metal fragments in a range of about 200 meters.

In addition, there are two type of fragmentation mines: the bounding fragmentation mines, which lie on the ground and when triggered they jump in the air at the height of one or two meters before exploding and causing deadly consequences, and the directional fragmentation mines, which project hundreds of metal fragments towards a planned direction.¹⁵

Antipersonnel landmines were deployed by hand, otherwise “in case of “scattarable” mines, by artillery, rocket or mortar dispenser attached to helicopters, fixed-wing aircraft, or land vehicles.”¹⁶

⁹ “Introduction to mine action”, Geneva International Centre for Humanitarian Demining, accessed in December 2014, <http://www.gichd.org/mine-action-topics/introduction-to-mine-action/#.VJmhXxBEA> ; F. Faulkner and L. Pettiford, “Complexity and simplicity: Landmines, peace and security in Central America”, in *Third World Quarterly* 19, no.1 (2010): 50-52; G. Strada, *supra* note (1).

¹⁰ D. Tepe, *The Myth about Global Civil Society*, (Basingstoke: Palgrave Macmillan, 2011), 80.

¹¹ “What is a landmine?”, ICBL, accessed in December 2014, <http://www.icbl.org/en-gb/problem/what-is-a-landmine.aspx>.

¹² Arms Project (Human Rights Watch), and Physicians for Human Rights (U.S.), *Landmines: a Deadly Legacy*, (New York: Human Rights Watch, 1993), 8. According to Human Rights Watch in the 1990s there were about 340 different types of APMs.

¹³ M. A. Cameron, R. J. Lawson, and B. W. Tomlin, “To walk Without Fear”, in *To Walk Without Fear: The Global Movement To Ban Landmines* (Toronto; New York: Oxford University Press, 1998), 2-5.

¹⁴ *Ibid.*, p.3.

¹⁵ R. Keeley, “Understanding Landmines and Mine Action” (2003): 3, available online at <http://web.mit.edu/demining/assignments/understanding-landmines.pdf>.

¹⁶ Arms Project, *supra* note (12), p. 20.

2. Historical Background.

There is still debate about the origin of landmines, however the predecessors of current landmines can be traced back to ancient times, as far back as 2500 years ago, when some types of non explosive device, such as the spikes and stakes were used as a defense strategy to obstacle enemy troops and oblige them to take certain paths.¹⁷ Even if the first example of what can be considered “an explosive mine” belongs to the eighteenth century, and mines were extensively used as military instruments (they were initially called “torpedoes”) during the American Civil War¹⁸, it was only during the First World War that “early precursors to the modern landmines”¹⁹ were used for the first time when “German soldiers used buried artillery shells with exposed fuses to block the advance of French and British tanks.”²⁰ In fact, with the introduction of this new piece of weaponry, i.e. the tanks, the development of anti-tank landmines was necessary to obstacle and blow up the enemy armored vehicles.

Initially produced and employed to protect anti-tanks landmines, which proved to be weak weapons as they could be easily removed by the enemy troops, since the Second World War antipersonnel landmines have been used extensively.

At first, they were useful to protect anti-tank landmines, but “it was not long before improvised explosive devices and anti-personnel mines were being used as weapons in their own right.”²¹

To give an idea of the wide employment of landmines during the Second World War, Human Rights Watch in 1993 reported the data of the US Defense Intelligence Agency (DIA), according to which more than 300 million anti-tank mines were used during conflicts (220 million by the Soviet Union, 80 million by German and 17 million by the United States).²²

During the war they were intended to protect strategic places, such as bridges and borders, but over time they developed into very offence weapons. After the war, the technological progress in weaponry promoted also some changes in the technological nature of landmines. In fact, “Advances in mine technology .. accelerated in the decades following World War II, primarily in response to changing battlefield requirements and the development of new military technologies.”²³

As an example, landmines were widely used during the Korea and Vietnam wars and during the Vietnam war the United States started using a new type of antipersonnel landmine, namely the “scatterable mines”. These mines were dropped from American airplanes and fell on the ground

¹⁷ S. Maslen, *Commentaries on arms control treaties: The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction, Vol.1* (Oxford: Oxford University Press, 2005), 2.

¹⁸ *Ibid.*, pp.2-3.

¹⁹ A. Vines, “The Crisis of Anti-Personnel Mines” in *To Walk Without Fear, the Global Movement to Ban Landmines*, *supra* note (13), p.118

²⁰ *Ibid.*, p.118.

²¹ *Ibid.*, p.119.

²² Arms Project, *supra* note (12), p. 16.

²³ *Ibid.*, p.17.

without exploding. “When stepped on, the device, which weighed only 20 grams, could tear off a foot.”²⁴

After the Second World War the traditional conflict patterns changed, (for instance, from static to unstable and composite battlefields and more internal conflicts rather than inter-States) and unintentionally those changes fostered the use of antipersonnel landmines. Since the 1970s they have been increasingly chosen to be deployed, not only by legitimate governments, but also by guerilla groups²⁵ without any respect for the International Humanitarian Law.

The military utility of these weapons explains their proliferation. In fact, landmines were regarded as mechanical soldiers, or “as Cambodian government and resistance soldier have called them 'eternal sentinels'- never sleeping, always ready to attack.”²⁶

2.1. Military Utility.

The principal arguments for the military utility of antipersonnel landmines can be summarized in four points. First, economically, landmines are cheap and easy to use. In fact, the cost is between \$3 and \$75 to produce one single mine.²⁷ Even though there have been some critics and doubts about these figures,²⁸ several renowned sources share these costs.²⁹

Second, they are build with a simple technology, therefore they are easy to use. In the military environment they can help a small military group who is fighting against a larger group. Following this reasoning, they not only carry out their function in the best possible way, but also they are less expensive than other weapons. Moreover, they are useful for denying the enemy access to certain strategic areas or to channel the enemy troops into some places where they are exposed and can be attacked.

Third, they are strategic weapons. They are used to protect borders, avoiding or at least delaying military raids, but also to oblige the enemy forces to walk through predetermined paths. Moreover, they are strategic in the sense that they can “inflict casualties on enemy personnel.”³⁰

Fourth, “they have proved highly effective when used to terrorize or control civilians, purposes contrary to international law.”³¹ In fact, it is sufficient the suspect of the presence of mines on a field to prevent the local population from crossing it and therefore inhibit the movement of the civilian population.

²⁴ *Ibid.*

²⁵ As an example, S. Maslen reports that in the post-1945 period, in many war-torn countries, such as Angola, Cambodia, Ethiopia, Nicaragua, etc. anti-personnel landmines were widely used as part of military strategy or simply to terrorize civilians or control their movements. See S. Maslen, *supra* note (17), p. 5.

²⁶ Arms Project, *supra* note (12), p. 22.

²⁷ Nicolas E. Walsh, and Wendy S. Walsh, “Rehabilitation of landmine victims – the ultimate challenge”, *Bulletin of the World Health Organization* 81, no.9 (2003): 665. These data have been also published by the United Nation. For more information see <http://www.un.org/en/globalissues/demining/>.

²⁸ For more information see R. Keeley, *supra* note (15).

²⁹ The U.S. Dept. of State, Bureau of Political-Military Affairs stated in a 1994 Report, “Hidden Killers: The Global Landmine Crisis” that “mines which cost as little as \$3 each on the open market cost up to \$1,000 each to clear. Similarly, the Geneva International Centre for Humanitarian Demining mentioned the same data. As an example, see the Report of GICHD, “Extraction of Landmine Signature from Ground Penetrating Radar Signal” available at <http://www.gichd.org/>.

³⁰ S. Maslen, *supra* note (17), 9.

3. Reasons for a Ban.

In the 1990s, in the wake of a growing concern for the humanitarian crisis caused by landmines, some humanitarian organizations engaged themselves in the study of military use and effectiveness of landmines.

For example, in 1996 the ICRC published a Report entitled “Anti-personnel landmines: Friends or Foe?” in which it was examined the use of these weapons in 26 conflicts since 1940.

This very detailed analysis found out that even when used on a large scale, landmines did not make the difference in the resolution of a conflict, and concludes that “The limited military utility of AP mines is far outweighed by the appalling humanitarian consequences of their use in actual conflicts. On this basis their prohibition and elimination should be pursued as a matter of utmost urgency by governments and the entire international community.”³²

By the 1990s, the majority of conflicts were characterized by the use of landmines, with repercussions on humanitarian, economic and environmental aspects. In a short time, it became dominant the idea that the human costs were high and that they exceeded military advantages. Then, the number of supporters for a global ban was growing, and thereby also the reasons for a ban.³³

3.1. Human Costs.

It is important to underline the reasons that brought into being the ban on landmines, labeled as “a weapon of mass destruction in slow motion.”³⁴

A report of the U.S. State Department³⁵ has estimated that about 65 million to 110 million antipersonnel landmines were “disseminated like seeds of death in fifty-six countries around the world.”³⁶

According to the ICRC, until 1996 more than 20.000 people were killed or maimed by antipersonnel landmines and more than one hundred million landmines laid worldwide,³⁷ therefore the problem of the human costs is placed at the top of the list of the arguments for a ban. In fact, landmines have two main features: they are indiscriminate weapons, indeed 70-85% of casualties are civilians; and they are inhumane, because when triggered, they kill or cause life-long injuries. Given their features,

³¹ Robert G. Gard, Jr, “The military Utility of Anti-Personnel Mines”, in *To Walk without Fear: The Global Movement to Ban Landmines*, *supra* note (13), 144.

³² ICRC, *Anti-personnel landmines: Friend or Foe? A study of the military use and effectiveness of anti-personnel mines*, (Geneva: International Committee of the Red Cross, 1996), available at <https://www.icrc.org/eng/resources/documents/publication/p0654.htm>.

³³ Even part of the military personnel began to support a ban on landmines. For further information, see S. Maslen, *supra* note (17), pp. 9-14.

³⁴ Arms Project, *supra* note (12), p. 11. They have been called in this way because “it is the gradual accumulation of mines that creates the potential for mass destruction; once there, however, the destruction is akin to that of a weapon of mass destruction.” To examine in depth the issue see chapter 1 of this report.

³⁵ The U.S. Dept. of State, Bureau of Political-Military Affairs, *supra* note (29).

³⁶ A. Parlow, “Banning Land Mines”, *Human Rights Quarterly* 16, no. 4 (1994): 718.

³⁷ C. Sommaruga, “Humanitarian challenges on the threshold of the twenty-first century: Keynote address, Cornelio Sommaruga, President of the International Committee of the Red Cross”, *International Review of the Red Cross*, no. 310 (1996), online at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5984608&fileId=S0020860400073332>.

landmines violate two basic principles of humanitarian law. First, the principle of distinction, i.e. “the Parties to the conflict shall at all times distinguish between the civilian population and combatants”³⁸ and second, the principle of proportionality, in other words the “excessive use of power or force that cause unnecessary death or destruction among civilians is prohibited. So too are methods and means that cause unnecessary suffering to enemy combatants.”³⁹

One of the most alarming elements is their long life span. In fact, they are considered the perfect terrorists since they can wait almost indefinitely for their victims and require nothing to maintain them. “Once planted, landmines don’t go away until they are removed”⁴⁰

3.2. Social and Economic Problems.

The employment of landmines is closely related to the degradation of the natural environment. In fact, once laid on the ground, they not only prevent people to take advantage of the natural resources, but also they “set in motion a series of events leading to environmental degradation in the forms of soil degradation, deforestation, pollution of water resources with heavy metals and possibly altering entire species’ populations by degrading habitats and altering food chains.”⁴¹

In addition, landmines cause economic problems, in particular “large tracts of land are rendered useless for cultivation or grazing”⁴², and this is a significant factor in countries that rely on their agriculture as their livelihood. Similarly, people cannot travel and go to work safely and they are deprived of other strategic areas, such as roads, water points and dams. Finally, survivors not only burden the health-care system, but also they have to live with psychological repercussions and usually at the margins of the society because of their physical handicaps.⁴³

4. The Path Towards a Ban on Antipersonnel Landmines: from 1949 to 1980.

During World War II landmines had been used to such an extent that it is striking to note the absence of a regulation of these weapons after the end of conflicts.

As a matter of fact, the 1949 Geneva Conventions only refer to the question of mine clearance through article 52 that states, referring to dangerous labor “Unless he be a volunteer, no prisoner of war may be

³⁸ Article 48 of the 1977 Additional Protocol I to the Geneva Conventions.

³⁹ Article 51(5)(b) of the 1977 Additional Protocol I to the Geneva Conventions. To deeper the issue of the principles of distinction and the principle of proportionality see for example H. M. Hensel, *The legitimate use of military force: the just war tradition and the customary law of armed conflict* (Aldershot, England; Burlington, VT: Ashgate, 2008); “Customary IHL”, ICRC, accessed in January 2015, online at https://www.icrc.org/customary-ihl/eng/docs/v1_rul.

⁴⁰ “Arguments for the Ban”, ICBL, accessed in December 2014, <http://www.icbl.org/en-gb/problem/arguments-for-the-ban.aspx>.

⁴¹ “Environmental Aspects of the International Crisis of Antipersonnel Landmines and the Implementation of the 1997 Mine Ban Treaty”, C. Torres-Nachón, accessed December 2014, <http://www.the-monitor.org/index.php/publications/display?url=lm/2000/appendices/environment.html>. For further information about the effects of landmines on the environment see A. A. Berthe, “The contribution of landmines to land degradation”, *Land Degradation & Development* 18, (2007), online at <http://eps.berkeley.edu/~aaberthe/Berthe%202007-%20LM%20and%20LD.pdf>.

⁴² A. Parlow, *supra* note (36), p.721. For further information on the economic problems related to landmine, see G. L. Bier, “The economic impact of landmines on developing countries”, *International Journal of Social Economics* 30, no. 5 (2003), online at <http://www.emeraldinsight.com/doi/abs/10.1108/03068290310471907>.

⁴³ Arms Project, *supra* note (12) chapter 5; ICBL, *supra* note (40).

employed on labour which is of an unhealthy or dangerous nature. No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces. The removal of mines or similar devices shall be considered as dangerous labour."⁴⁴

Later, in 1956 the ICRC published the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War.⁴⁵ This document was a progress, because for the first time landmines were considered "as a weapon of concern."⁴⁶ In fact, even though at that time landmines were still legal weapons, through the Draft Rules the ICRC wanted States go one step further in order to defend civilians in warfare.

Between 1973-1976 the ICRC organized a series of meetings in which several experts examined the problems caused by conventional weapons and "identified landmines (in general) as a means of warfare deserving particular legal regulation."⁴⁷

Their conclusions were taken into consideration in the following 1974 Diplomatic Conference on the Reaffirmation and Development of International Law Applicable in Armed Conflicts.

Known also as "Diplomatic Conference", it aimed at strengthen the international law in armed conflicts. In fact, it adopted two Protocols: Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

Especially, it reaffirmed some key principles in humanitarian law that are crucial in a landmine context, namely article 35, 48, 51(2) and 52(2) of Protocol I.

The first is about the nonexistence of a right for the parties of a conflict to fight using any means of warfare they want.⁴⁸ Plus, it prohibits the use of means of warfare that are intended to "Cause superfluous injury or unnecessary suffering."⁴⁹

The others articles are about the protection of the civilian population and in particular and focus on the importance of distinguishing between common people and soldiers.⁵⁰

⁴⁴ Article 52 of the Third Geneva Convention relative to the Treatment of Prisoners of War.

⁴⁵ ICRC's *Draft Rules*, available at <https://www.icrc.org/ihl/INTRO/420?OpenDocument>. See in particular article 15, which focuses on the use of mines in land operations during conflicts.

⁴⁶ M. Patrick Cottrell, "Legitimacy and Institutional Replacement: The Convention on Certain Conventional Weapons and the Emergence of the Mine Ban Treaty," *International Organization* 63, no. 2 (2009): 227.

⁴⁷ S. Maslen, *supra* note (17), p.15.

⁴⁸ In the Draft of the Protocol No.1 it was written, "The right of Parties to the conflict and of members of their armed forces to adopt methods and means of combat is not unlimited". Then, the term "combat" was replaced with "warfare" in order to enlarge the meaning. For more information on the terminology used in the Protocol 1, see "1949 Conventions and Additional Protocols, and their Commentaries", ICRC, accessed in November 2014, available at <https://www.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

⁴⁹ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, article 35(2).

⁵⁰ Article 51 is really important because it puts into writing the customary rule about the necessity to exclude civilians from wars. For more information about this article, see "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Commentary - Protection of the civilian population", ICRC, accessed in November 2014, available at <https://www.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/5e5142b6ba102b45c12563cd00434741>.

Despite these innovations, “final agreement on the regulation of three categories of conventional weapons -fragments not detectable by X-ray; landmines and booby-traps; and incendiary weapons- remained elusive,”⁵¹ therefore the responsibility to impose eventual restrictions on the use of conventional weapons was transferred to the United Nations. Hence, through Resolution 22 (IV), adopted on 9 June 1977,⁵² States were urged to convoke a Conference in order to reach agreements on restrictions or prohibitions concerning the use of conventional weapons before the end of 1979.

4.1. The 1980 Convention on Certain Conventional Weapons.

In 1977 the UN General Assembly through resolutions 32/152 (1977), 33/70 (1978) and 34/82 (1979)⁵³ decided to hold preparatory conferences aiming at restricting the use of conventional weapons. Eighty-five States took part into two sessions of the Conference on Prohibitions or Restrictions of the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects (the first session took place in Geneva from 10 to 28 September 1979, and the second session from 15 September to 10 October 1980).

The result of this Conference was the adoption of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW)⁵⁴ and of three annexed Protocols: Protocol on Non-Detectable Fragments (Protocol I), Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) and Protocol on Prohibitions on the Use of Incendiary Weapons (Protocol III).

4.1.2. Protocol II.

Protocol II of the CCW is about landmines and it is “the first formal multilateral arms control effort to deal with landmines.”⁵⁵ It comes from the development of three different beliefs related to landmines. The first is that landmines are practical and advantageous weapons for military purposes. At that time landmines were not yet brought into question as a means for military use, in fact their use was still considered “a generally accepted means of hampering enemy advance and of putting combatants out of action.”⁵⁶

The second belief goes against the first. In fact, it highlights the negative consequences of these weapons as they cause injuries to civilians. This principle focuses on the moral aspects of the issue.

⁵¹ S. Maslen, *supra* note (17), p.16.

⁵² Resolution 22(IV), adopted on 9 June 1977, available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=39C667DCDD4E6F08C12563CD0051EAC1>.

⁵³ A/RES//32/152 (1977); A/RES/33/70 (1978); A/RES/34/82 (1979). They are all available at <http://www.un.org/documents/resga.htm>.

⁵⁴ *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects* (or *Convention on Certain Conventional Weapons*), adopted on 10 October 1980 and entered into force on 2 December 1983, available at <https://www.icrc.org/ihl/INTRO/500?OpenDocument>.

⁵⁵ M. Patrick Cottrell, *supra* note (46), p.229.

⁵⁶ L. Maresca and S. Maslen, *The banning of anti-personnel landmines : the legal contribution of the International Committee of the Red Cross*, (Cambridge, UK ; New York, NY: Cambridge University Press, 2000), 89.

Actually, the moral and humanitarian aspects have already been discussed during the experts meetings between 1973-1977, where detailed reports about the indiscriminate effects of landmines were produced⁵⁷ and also the preamble of the Convention refers to the necessity of prohibiting “the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.”⁵⁸

Nevertheless, these contrasting tendencies found a compromise in the third principle, i.e. the regulation of these weapons. Thus, the necessities of the military apparatus and the humanitarian concerns found a place in the frame of an international agreement, and in particular in the Protocol II of the Convention.

In fact, Protocol II regulates the use of landmines. This was an important progress, even if it was not sufficient because it is only concerned with the use of these weapons without analyzing other aspects, such as the production and the commerce of landmines.

However, it not only distinguishes between mine, booby-trap, other devices, military objective and civilian objects, but also establishes the situations in which the use of mines and other devices is restricted.⁵⁹

Going deeper in the matter, article 2 defines mines as “any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle”; booby-traps as “any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act” and other devices as “manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.”⁶⁰

Furthermore, article 3 gives priority to the protection of the civilian population. First of all, it determines the prohibition of using mines, booby-traps and other devices “against the civilian population as such or against individual civilians” without exceptions. Then, it prohibits the indiscriminate use of those weapons and article 3.4 concludes that “All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article [3] applies [mines, booby-traps and other devices].”⁶¹

Article 5 bans the use of remotely delivered mines⁶² “within an area which is itself a military objective or which contains military objectives” unless the location of those weapons can be recorded or there is

⁵⁷ *Ibid.*, pp.19-89.

⁵⁸ Convention on Certain Conventional Weapons, *supra* note (54), Preamble.

⁵⁹ *Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices*, Geneva, 10 October 1980, online at <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=6258BAB1CD31AD0EC12563CD002D6DC9&action=openDocument>.

⁶⁰ *Ibid.*, article 2.

⁶¹ *Ibid.*, article 3.

⁶² *Ibid.*, article 2(1). Remotely delivered mines are defined as: any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft.

a mechanism able “to render a mine harmless or ... when ... the mine will no longer serve the military purpose for which it was placed in position.”⁶³

Finally, articles 7, 8 and 9 provides the rules in order that the parties in a conflict can record the positions of mines, and remove mines in order to protect the United Nations forces during missions and when the conflict ends.⁶⁴

4.2. Weaknesses of the CCW and of Protocol II.

Despite the high expectations, “the final outcome [of the CCW] was a major disappointment.”⁶⁵

The advocates of the Convention were not satisfied because they had wished a total ban on landmines, whereas the Protocol II only regulates the use of these weapons.⁶⁶ Moreover, norms about the restrictions and prohibitions of the use of conventional weapons were not detailed, with the risk of the arise of different interpretations.

Similarly, Protocol II proved to be insufficient. First, because it applied only to armed conflicts, second because it did not include provisions to control the States’ compliance to their obligations, third, except for the use of landmines, there were not provisions about the production and the commerce of those weapons and finally because States Parties’ commitments were too weak.⁶⁷

On the other hand, the following necessity to revise the CCW was due to other reasons, including the increased use of landmines during the 1980s.⁶⁸ During that time, thanks to other meetings held by the ICRC, the interest in the balance between arms and humanitarian law grew again.

A push for a change came from the struggle against laser blinding weapons. This issue also contributed to reawaken the landmine issue. In fact, the ICRC pushed for the adoption of a new Protocol about laser blinding weapons especially when in 1993 30 States asked for a Review Conference of the CCW.

In fact, on the occasion of the Review Conference of the 1980 CCW, was adopted the Protocol of Blinding laser Weapons (Protocol IV).⁶⁹ It is clear the link between this two campaign, although the

⁶³ *Ibid.*, article 5.

⁶⁴ *Ibid.*, articles 7, 8, 9.

⁶⁵ Robert J. Mathews, “The 1980 Convention on Certain Conventional Weapons: A Useful Framework Despite Earlier Disappointments,” *International Review of the Red Cross* 83, no. 844 (2001): 991-1012, online at <https://www.icrc.org/eng/resources/international-review/>.

⁶⁶ According to the supporter of the CCW there were several reasons to be dissatisfied with the results of the Convention. Besides the absence of an effective ban on the use of landmines, the CCW also lacked a prohibition on incendiary weapons and on fragmentation weapons. *Ibid.*, p.996.

⁶⁷ For example, article 6 of the CCW order States to “disseminate this Convention and those of its annexed Protocols by which they are bound as widely as possible in their respective countries and, in particular, to include the study there of in their programs of military instruction, so that those instruments may become known to their armed forces”. However, the necessity to “know” does not develop into a concrete military *modus operandi*. *Ibid.*, p. 997.

⁶⁸ According to the ICRC, since the 1970s landmines were being used extensively thanks to the progress in “the production methods, increased use of plastics and more compact design.” Therefore, APLs were cheap and easy to put in place with serious consequences on human beings, especially civilians. See Robert J. Mathews, *supra* note (65), p.998.

⁶⁹ For example, following the concern caused by the development of laser weapons designed to blind, the ICRC convened four experts meetings between 1989-1991. Despite the reticence of States, the ICRC insisted and published reports blinding weapons. Thanks to this effort and the help of other non-governmental organizations on 13 October 1995 was adopted the Protocol on Blinding Laser Weapons (Protocol IV). See L. Doswald-Beck, “New Protocol on Blinding Laser Weapons,”

review of the landmines issue reinforced with the Ottawa Process, it started from the examination of the blinding laser weapons, therefore the two issues helped each other.

Another element was the literature produced by the ICRC under the influence of alarming data about wounds caused by mines explosions.⁷⁰ For instance, the Report on the ICRC Symposium on Anti-Personnel Mines, published at the end of a meeting held in Montreux in April 1993 with the aim of understanding the situation and problems caused by landmines and trying to find out “measures and mechanisms available to limit anti-personnel mine use and to alleviate the suffering of mine victims.”⁷¹

In the same year (1993) the General Assembly adopting the resolution 48/79 decided to convene a Conference to review the 1980 CCW.⁷²

4.3. The Amended Protocol II: Innovations and Shortcomings.

The Review Conference took place between September 1995 and May 1996 with the major purpose of strengthening the constraints concerning landmines. Since its first meeting the Conference decided the work program and decided to divide the work among three Main Committees, which had to study any proposals relating to the Convention and its Protocols.

The major adopted decisions were two: the approval of the Protocol on Blinding Laser Weapons (Protocol IV) and during the 14th meeting, on 3 May 1996, the adoption of the Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices.⁷³

The Review Conference ended recommending both Protocols to States Parties since the main goal of the Convention was to achieve “the early entry into force of those instruments and the widest possible adherence to them.”⁷⁴

The Amended Protocol II widens the scope of application. Unlike the previous Protocol, article 1 specifies that this Protocol applies not only to international conflicts, but also to armed conflicts “not of an international character occurring in the territory of one of the High Contracting Parties.”⁷⁵

International Review of the Red Cross, no.312 (1996), available at <https://www.icrc.org/eng/resources/documents/misc/57jn4y.htm>.

⁷⁰ M. Patrick Cottrell, *supra* note (46), p.232.

⁷¹ L. Maresca and S. Maslen, *supra* note (56), p.129.

⁷² A/RES/48/79, adopted on 7 January 1994, available at

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/79. Through this Resolution the General Assembly refers to the 1980 CCW states:

Being desirous of reinforcing international cooperation in the area of prohibitions or restrictions on the use of certain conventional weapons, and particularly for the removal of minefields, mines and booby-traps,...

Welcomes the request to the Secretary-General to convene at an appropriate time, if possible in 1994, in accordance with article 8, paragraph3, of the Convention [CCW 1980], a conference to review the Convention.

⁷³ *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices* (usually referred to as Amended Protocol II). It entered into force on 3 December 1998 and it is available at

[http://www.unog.ch/80256EE600585943/\(httpPages\)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/4F0DEF093B4860B4C1257180004B1B30?OpenDocument).

⁷⁴ *Final Document*, Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to have Indiscriminate Effects, Pt. I, Geneva, 1996.

⁷⁵ The Amended Protocol II, *supra* note (73), article 1(3).

It is noteworthy that it has added the definition of anti-personnel landmine. In fact, article 2(3) states that ““Anti-personnel mine” means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Therefore, it has widened the range of weapons to be regulated.”⁷⁶

To reduce the dangers during mine-clearance operations the use of mines provided with devices “designed to detonate the munition by the presence of commonly available mine detectors” is forbidden. For the same reasons, it is not possible to employ “a self-deactivating mine equipped with an anti-handling device that is capable of functioning after the mine has ceased to be capable of functioning.”⁷⁷

Moreover, it prohibits the use and the transfer of APMs which are not detectable.⁷⁸ Since one of the main goals of the Amended Protocol is to facilitate the detection of mines, also in the Technical Annex of the Protocol there are some specifications about the concepts of self-destruction and self-deactivation.

For example, the Protocol introduces some provisions that requires mines to be constructed “so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement.”⁷⁹ In other words, all mines must be detectable not only to find out their position, but also to be removed when it is necessary, namely after the cessation of a conflict.

After the cessation of a conflict, according to the previous Protocol, States Parties had to take all necessary means to protect civilian population from the consequences of the persistence of minefields, this is why the record of the location of mines and booby-traps was already present in the Protocol (article 7).

However, only the Amended Protocol has introduced the obligation to clear, remove, destroy or maintain (in controlled fields) these weapons, soon after the end of a conflict.⁸⁰ Next, it prohibits the use of booby-traps and other devices that can be confused with products that seems to be innocuous, but actually that can contain explosive materials, such as kitchen utensils, religious objects, medical facilities and products addressed to children, for instance toys and “products designed for the feeding, health, hygiene, clothing or education of children.”⁸¹ The last key provision is the greater attention

⁷⁶ *Ibid.*, article 2(3).

⁷⁷ *Ibid.*, article 3(5) and 3(6) where the concept of “self-deactivating” means “rendering a munition inoperable by means of the irreversible exhaustion” and the notion of “anti-handling” signifies “a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with the mine,” Amended Protocol II, *supra* note (73), article 2(12) and 2(14).

⁷⁸ *Ibid.*, article 4.

⁷⁹ *Ibid.*, Technical Annex, article 3(a). Moreover, the Technical Annex insists on the detectability of anti-personnel mines, therefore it establishes that those produced after 1 January 1997 shall incorporate “a device that enables them to be detected by commonly-available technical mine detection equipment” and that the same mechanism shall be attached to those APMs produced before that date in order to satisfy the necessity of being detected, article 2(a) and 2(b) of the Technical Annex.

⁸⁰ J. Goldblat, “Anti-Personnel Mines: From Mere Restrictions to a Total Ban,” *Security Dialogue* 30, no.1 (1999):13.

⁸¹ The Amended Protocol, *supra* note (73), article 7.

paid to the protection from the effect of mined areas, to which humanitarian missions such as those of the International Committee of the Red Cross and the UN forces are exposed.⁸²

Despite the fact that the Amended Protocol is “an improvement over its original version in that it aims at further reducing civilian casualties and the loss of land for civilian purposes”⁸³ it had several lacks. First of all, it has established further restrictions on the use of mines, however, it has not banned them completely.

Another key point consists in the fact that it gives a definition of “anti-personnel landmine” that is one of the causes of the weakness of the Protocol. In fact, according to the Amended Protocol, an anti-personnel mine has the primary capability of “incapacitate, injure or kill one or more persons.”⁸⁴ Thus, mines that are built without the main capability of injuring or killing (even if it can happen) are not subjected to the restrictions of the Protocol.

Jozef Goldblat explains two consequences of this definition: the first is that “long-lived, so called 'dumb' APMs may continue to be produced and used if they are placed in fenced, marked and guarded minefields”, the second is that the so-called 'smart' APMs, which are able to self-deactivate and self-destruct, may be easily employed as it is provided in the Protocol. Consequently, according to the author, the Protocol legitimates the production of those smart mines going against its initial objective.⁸⁵

In addition, as well as the previous Protocol, the Amended Protocol does not provide a mechanism to ensure States Parties compliance, so it was difficult to verify the employ of self-destructive and self-deactivating mines.

Similarly, despite the recommendations of article 14 regarding the steps to follow in order to respect the Protocol provisions, States Parties are allowed to postpone the observance of the requirements of self-destruction and self-deactivation (for 9 years at most), therefore they can maintain their previous practices for a very long time.⁸⁶

At this point, it was clear that the disappointing results of the Review Conference were not sufficient to stop the use of the APMs. Several States, persuaded by some non-governmental organizations and in particular by the ICRC and the ICBL, undertook some initiatives to stop the production or the use of APMs.

However, it was necessary an international effort to obtain effective norms. The first step was the recognition of this urgency by the UN General Assembly. In fact, on 10 December 1996 it adopted a resolution in which:

Gravely concerned about the suffering and casualties caused to non-combatants as a result of the proliferation, as well as the indiscriminate and irresponsible use, of anti-personnel landmines, ...

⁸² For more information see the Amended Protocol *supra* note (73), article 12.

⁸³ J. Goldblat, *supra* note (80), p.14.

⁸⁴ The Amended Protocol, *supra* note (73), article 2(3).

⁸⁵ J. Goldblat, *supra* note (80), p.14.

⁸⁶ The Amended Protocol, *supra* note (73), article 14 and Technical Annex, part 3.

Recognizing the need to conclude an international agreement to ban all anti-personnel landmines as soon as possible, ...Urges States to pursue vigorously an effective, legally binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines with a view to completing the negotiation as soon as possible.⁸⁷

In the same Resolution, the General Assembly mentioned a Conference⁸⁸ (held few months before) that represents a turning point in the path towards a ban on landmines, because it launched the so-called Ottawa Process, i.e., the crucial political initiative that led to the adoption of the Mine Ban Treaty in 1997.

Details about that conference and the history behind the Treaty will be examined in the next chapter.

II. THE FIRST INTERNATIONAL LEGAL INSTRUMENT: THE CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION

1. The Ottawa Process.

The path just described, with its successes and failures, would not have been possible without the push of other forces that made a major contribution to achieve a ban on landmines. In fact, as seen above, the ICRC worked intensely towards that goal, however, its efforts proved not to be sufficient. So then, the presence of other elements explain the results accomplished.

Because of the disappointing results of the *Amended Protocol II*, at the end of the second session of the first *Review Conference* of the 1980 *Convention on Certain Conventional Weapons*, which took place in Geneva from 22 April to May 1996, the Canadian Ambassador announced that Canada was disposed to host a Conference in which States supporting a ban on landmines could elaborate a strategy to bring about a global ban on landmines.

1.1. The Strategy Conference, October 1996.

⁸⁷ A/RES/51/45, adopted on December 1996, available at <http://www.un.org/documents/resga.htm>.

⁸⁸ *Ibid.*, p.34. In fact, the General Assembly states:

Welcoming also the adoption of the declaration entitled "Towards a Global Ban on Anti-Personnel Mines" by participants at the Ottawa International Strategy Conference on 5 October 1996,⁵² including its call for the earliest possible conclusion of a legally binding international agreement to ban anti-personnel landmines, and further welcoming the follow-on conference at Brussels in June 1997.

That Conference, labeled as the Strategy Conference “Towards a Global Ban on Anti-Personnel Mines” (or Ottawa Conference) was held in Ottawa, Canada, from 3 to 5 October 1996 and it was characterized by the participation of seventy-four States,⁸⁹ the ICBL, the ICRC and the UN.

The most important result of this conference is that it launched the so-called Ottawa Process, the unusual diplomatic initiative that led to the adoption of the Convention banning the Use, Production, transfer, and Stockpiling of antipersonnel landmines (The so-called Mine Ban Treaty, or Ottawa Treaty). On the other hand, the conference itself was unusual because it took place “outside the normal diplomatic forum for negotiating international humanitarian law – the UN Convention on Certain Conventional Weapons (CCW).”⁹⁰

As said above, it represented a crucial point in the achievement of a ban on landmines since the main goal were to “consider short- and medium-term steps that needed to be taken to facilitate the goal of a global ban,”⁹¹ and to avoid that skeptical members of the international community could obstacle that achievement.⁹²

The Conference was a success. First of all, the so-called Ottawa Group (the group of the formal 50 participating States) adopted (on 5 October 1996) the Declaration of the Ottawa Conference, or just the Ottawa Declaration, by which they recognized the necessity of taking urgent action to halt the use of APMs. Moreover, the Declaration committed them “to work together to ensure the earliest possible conclusion of a legally binding international agreement to ban anti-personnel mines ... regional and sub-regional activities in support of a global ban on anti-personnel mines and a follow-on conference hosted by Belgium in 1997 to review the progress of the international community in achieving a global ban on anti-personnel mines.”⁹³

Next, the Conference approved a Global Plan of Action in order to define some concrete activities both on an international and regional levels and useful to achieve the main goal established by the Ottawa Conference.

In fact, it was important to outline detailed activities to be undertaken by the participants of the Conference in order to be prepared for the following meeting in Belgium in 1997 and to conclude a global agreement to ban APMs within a short time.

⁸⁹ The fifty States that fully participated to the Ottawa Conference were: Angola, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cambodia, Cameroon, Canada, Colombia, Croatia, Denmark, Ethiopia, Finland, France, Gabon, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, Iran, Ireland, Italy, Japan, Luxembourg, Mexico, Mozambique, the Netherlands, New Zealand, Nicaragua, Norway, Peru, the Philippines, Poland, Portugal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, the United Kingdom, the United States, Uruguay, and Zimbabwe. The other 24 countries that took part as official observers were: Albania, Argentina, Armenia, the Bahamas, Benin, Bulgaria, Brazil, Brunei Darussalam, Chile, Cuba, the Czech Republic, Egypt, the Federal Republic of Yugoslavia, the Holy See, India, Israel, Malaysia, Morocco, Pakistan, the Republic of Korea, Romania, the Russian Federation, Rwanda, and Ukraine.

⁹⁰ M. A. Cameron, R. J. Lawson, and B. W. Tomlin, *supra* note (13), p. 6.

⁹¹ Report of the Secretary-General, *Moratorium on the export of anti-personnel landmines*, A/51/313, p.8, available at <http://legal.un.org/avl/ha/cpusptam/cpusptam.html>.

⁹² M. Patrick Cottrell, *supra* note (46), pp. 237-238.

⁹³ L. Maresca and S. Maslen, *supra* note (56), p. 481.

Among those activities, participants were committed to: raise the public awareness of the social and human consequences of APMs in order to make the political class favorably inclined to the global ban, exchange information about data on APMs in order “to build the confidence and transparency necessary for rapid progress,”⁹⁴ and to take action to face the humanitarian crisis, i.e. developing mine clearance and victim assistance activities.

Both the Ottawa Conference Declaration and the Global Plan of Action demonstrate the willingness of several States, NGOs and international organizations to really deal with the problem of landmines and to take action to face them.

1.1.1. The Axworthy Challenge.

It was possible to achieve a total ban only with the support of the majority of the international community and as pointed out by M. Patrick Cottrell, “leadership was desperately needed within the formal, state-based diplomatic circles”.⁹⁵

In this respect, the Canadian Foreign Minister Lloyd Axworthy took the lead and during the concluding remarks of the Conference he challenged the international community inviting States to return in Ottawa by December 1997 to sign a Treaty to ban landmines.

The announce of Lloyd Axworthy was partly due to the concern that the Ottawa Conference would not have led to seriously deal with the landmine issue. In fact, at that time some States,⁹⁶ first and foremost the United States, were in favor of treating the landmine issue inside the set of the Conference on Disarmament (CD). The problem of the CD was its complicated and lengthy negotiation process and its calendar, because it was full of other issues to discuss.

Hence, there was the concrete risk that the landmine issue would be shelved for long. This explains the Axworthy’s will to provide a new “forum to negotiate an APL ban,”⁹⁷ and specifically, the Canada.

It is interesting that the Canadian Minister declared his intentions to the ICBL, the ICRC and the UN Secretary-General, before the official declaration in front of States.⁹⁸

The challenge of Lloyd Axworthy to the international community was the result of a strategy organized with the International Security and Arms Control Bureau. Despite the probable critics from other countries, the Minister decided to go on and launch the proposal for a ban treaty outside the conventional ways.

⁹⁴ *Ibid.*, p. 483.

⁹⁵ M. Patrick Cottrell, *supra* note (46), p. 238.

⁹⁶ Besides the United States, the other States that were: Australia, Finland, France and Italy. See K. Rutherford, *Disarming States: The International Movement to Ban Landmines* (Westport, CT: Praeger Security International, 2011), 86.

⁹⁷ *Ibid.*

⁹⁸ T. Ramesh and W. Maley, “The Ottawa Convention on Landmines: A Landmark Humanitarian Treaty in Arms Control? (cover story)”, *Global Governance* 5, no. 3 (1999).

In fact, in the first place he convened the ICRC, UN and ICBL in his office, where he stated his intentions aiming at “circumvent the UN bureaucracy and consensus-voting procedures, which they all blamed for holding up a ban agreement.”⁹⁹

Then, everything was planned in order to avoid opposition by some States: the Axworthy’s speech would be followed by speakers of the ICBL and then of the ICRC. Right after their discourses, the Conference would be closed. Following this reasoning, that was a real challenge because States were brought face to face with a question: to be in favor or not of a ban on landmines.

After the end of the Conference, it was essential the help of the civil society and of the NGOs to support the Axworthy’s ambition for three reasons: first, because some States, such as the United States, China and the Soviet Union were against a total ban, second because other governmental delegations which participated in the Ottawa Conference felt bypassed by the unilateral initiative undertaken by the Canadian government, and finally because it was really complicated to reach an agreement in only a year. On that occasion, the role of the civil society, of the ICRC and of the ICBL grow increasingly and it was crucial all along the negotiation and drafting process.¹⁰⁰

During that process, the main protagonists were a core group of pro-ban States, the ICRC and the ICBL, which will be examined later.

1.2. Peculiarities of the *Ottawa Process*.

Launched by the Ottawa Conference, the Ottawa Process – “the diplomatic and international NGO processes leading up to the December 1997 treaty-signing ceremonies in Ottawa”¹⁰¹ – led to the adoption of the Mine Ban Treaty. It is considered a unique process because the Treaty was the final result of an unusual partnership between States, international organizations and non-governmental organizations.

In fact, it was characterized by both the two tracks of diplomacy.

Track 1 involves the official discussions between political leaders, whereas track 2 concerns unofficial dialogues between for example NGOs and other civil society actors. Thanks to the “informal” character of this track, in this set the participants can discuss more freely and examine proposals that can be taken into account by the actors of the track 1.¹⁰²

During the Ottawa Process these two different levels of diplomacy worked together, i.e. both States and NGOs were engaged in the negotiation and drafting process of the following Mine Ban Treaty.

⁹⁹ K. Rutherford, *supra* note (96), p.87.

¹⁰⁰ Information about the role of the civil society and of the other NGOs involved in the Ottawa Process, such as the ICBL will be provided in the next chapters.

¹⁰¹ K. Anderson, “The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society”, *European Journal of International Law* 11, no.1 (2000), p. 108, online at <http://ejil.oxfordjournals.org/>.

¹⁰² “Tracks of diplomacy”, United States Institute of Peace, accessed in December 2014, <http://glossary.usip.org/resource/tracks-diplomacy>.

This process was such a success thanks to the extraordinary work of the ICRC and of many other NGOs all led by the ICBL. Both the ICBL and the ICRC were among the most active participants in the Ottawa Process. In addition, they played an important role in shaking people's conscience.

Further information about the origin and the role of the ICBL will be provided in details in the next chapters, however it is important to touch on the question since it has had a very important role in what has been discussed now, i.e. the Ottawa Process.

Hence, the International Campaign to Ban Landmine is "composed of 1.000 NGOs from over 60 countries."¹⁰³ It is a global network that works for a world free of antipersonnel landmines.¹⁰⁴

In the Nineties, this coalition made every effort to bring the plight of mines victims to the attention of the media, it increased funding for mine clearance and for the assistance to mines victims and "the mobilization of thousands of ordinary citizens, through the ICBL campaign network, played a crucial part in the adoption of this international treaty."¹⁰⁵ In fact, it participated since the beginning phase in the negotiation process.

Returning to the peculiarities of the Ottawa Process, it was able to connect some pro-ban States (both small and medium-sized States) that cooperated together in the negotiation process despite the lack of support by some great powers, such as China, Russia and the United States. Moreover, it provided an innovative forum for the negotiations and discussions, i.e. several conferences and consultations that were conducted outside the traditional channels (such as the UN Conference on Disarmament, or the mechanism of the CCW Review Conference).

A final characteristic was that the Ottawa Process was very quick. The Treaty was negotiated within a year and entered into force less than two years later, more quickly than any Treaty of its kind in history. In fact, only in exactly 14 months (from October 1996 to December 1997) the Convention was negotiated.

2. The Drafting Process.

The final step of the Ottawa Process was the adoption on 18 September of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction. The Convention entered into force on 1 March 1999, i.e. six months after 40 States had formally adhered to it.

To date, 162 countries are States Parties to the Convention¹⁰⁶ which "provides a framework for mine action, seeking both to end existing suffering and to prevent future suffering."¹⁰⁷

¹⁰³ M. A. Cameron, R. J. Lawson, and B. W. Tomlin, *supra* note (13), p. 5.

¹⁰⁴ "About us", International Campaign to Ban Landmines (ICBL), accessed in December 2014, <http://www.icbl.org/en-gb/about-us.aspx>.

¹⁰⁵ "The Treaty", ICBL, accessed in December 2014, <http://www.icbl.org/en-gb/the-treaty.aspx>.

¹⁰⁶ "Treaty Status", ICBL, accessed in December 2014, <http://icbl.org/en-gb/the-treaty/treaty-status.aspx>. See the text of the Convention and the list of signatories States in annex 1-3.

The deadline proposed by the Minister Axworthy during his final speech forced the Canadian officials “to complete a detailed assessment of the new political terrain surrounding the AP mine issue.”¹⁰⁸

In fact, the challenge was tough: gathering as many States as possible around the same negotiating table within a year, and furthermore, reaching an agreement on a Mine ban treaty. Hence, Canada needed help so as to realize its objective.

That help came from a “core group” of States that were supporting the ban, and initially that group included: Austria, Belgium, Canada, Ireland, Mexico, Netherlands, Norway, the Philippines, South Africa, and Switzerland.¹⁰⁹

Each one of these countries played an important role. For example, Austria was among the first supporters for a ban, Belgium holds the record of being the first country to adopt national legislation banning APMs, Canada launched the Ottawa Process, Ireland together with the Netherlands “played a key role within the European Union,”¹¹⁰ Mexico became a pro-ban State since the first phases of mobilization, Norway hosted “the formal negotiation of the ban Convention in the fall of 1997,”¹¹¹ the Philippines was a strategic country in the Asian context, South Africa was among the most mine-affected countries, therefore it had knowledge of the plight of landmines, and finally Switzerland hosted several meetings in Geneva.

It was the common purpose and the numerous meetings and consultations that enable this starting and small group of States to extend their influence to other countries until the adoption of the ban.

The first step was the legitimization of the UN. In fact, as already said in the previous chapter, although the UN resolution 51/45S of December 1996 did not mention the nascent Ottawa Process, it represents the necessary recognition of the necessity to take action as soon as possible, and it occurred at the right time pushing the International Community into the accomplishment of the negotiation of a ban on landmines. In short, the resolution (156 States voted that resolution, 10 of them abstained, and no one opposed) gave to the Ottawa Process the right level of significant legitimacy to pursue its aim even more actively.

2.1. The First Draft of the Convention.

The first step of the drafting process took place in a meeting in Vienna on 12-14 February 1997.

¹⁰⁷ “Overview and Convention Text”, AP Mine Ban Convention, accessed in December 2014, <http://www.apminebanconvention.org/overview-and-convention-text/>.

¹⁰⁸ R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, “The Ottawa Process and the International Movement to Ban Anti-Personnel Mines”, in *To Walk without Fear: The Global Movement to Ban Landmines*, *supra* note (13), 162.

¹⁰⁹ S. Maslen, *supra* note (17), p. 27.

¹¹⁰ R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), p.167.

¹¹¹ *Ibid.*

The aim was to “exchange views on the content of a Convention,”¹¹² as well as “to review a draft Austrian ban convention text”¹¹³ in order to develop “a draft text that can serve as a basis for negotiations.”¹¹⁴

In fact, a rough draft of the Convention had been already prepared and it had circulated in an informal way. This first draft had been prepared by the Austrian delegation in 1996, after the last disappointing session of the CCW Review Conference in April 1996.

This draft contained 11 articles and it prohibited to employ, product, transfer and stockpile APMs. Furthermore, it provided for the destruction of stockpiles and for the clearance of minefields within the set deadline, the former within a year after the treaty implementation and the latter within five years.

Even though it was the first draft, only its amended version (dated 30 September 1996) became the official Austrian draft of the Mine Ban Treaty.¹¹⁵ This first draft was more detailed, it comprised 13 articles and unlike the its initial version, it was made public.

However, that was only an Austrian text, it was not valid in either political or legal terms, and especially, it was not sufficient to distribute worldwide to turn it into the principal text as a ban proposal. Therefore it was necessary to “move from a purely 'Austrian' paper to an internationally established draft.”¹¹⁶

For this purpose, soon after the 1996 Ottawa Conference, the Austrian government was asked to circulate the draft and to request proposals from the other pro-ban States. In a few weeks they responded contributing with a great number of suggestions and proposals for the Austrian draft. At that point, the time was definitely right for going beyond the bilateral dialogues and ensuring that other States, besides who made proposal amendments, were included in the negotiation.

2.1.1. The Vienna Conference , February 1997.

With the purpose “to build legitimacy”¹¹⁷ it was convened the 1997 Vienna Conference, also known as the Experts Meeting on the Text of a Total Ban Convention (12-14 February). On that occasion, Austria invited all States, the United Nations, the ICBL and the ICRC. An unexpected and well-appreciated number of States (the participating States were 111) attended that meeting.

The credit for this high number belongs to Canada that worked hard to ensure a high participation, and thanks to the help of other States of the Core Group, it had provided financial support for the travel of delegations towards Vienna, in particular for those developing States that were seriously mine-affected.

¹¹² S. Maslen, *Anti-personnel mines under humanitarian law: a view from the vanishing point* (Antwerp; New York: Intersentia, 2001), 80.

¹¹³ R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), p. 170.

¹¹⁴ *Ibid.*

¹¹⁵ For the Draft Treaty Text, see S. Maslen, *supra* note (17), appendix 4 p. 396.

¹¹⁶ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, in *To walk without fear: The Global Movement to Ban Landmines*, *supra* note (13), 293.

¹¹⁷ *Ibid.*, p. 294.

The meeting aimed at discussing the Austrian first draft and the other suggestions, so as to improve it thanks to the multilateral dialogue. Almost all the participants was active in that meeting: States worked together with NGOs, which were present during the entire session, and as reported by Stuart Maslen, “Very few governments spoke out against a ban, demonstrating that international opinion was turning away from the legitimacy of anti-personnel mines as a means of warfare.”¹¹⁸

2.1.2. The Maputo Conference , February 1997.

An important step on the road of the negotiation process was the 4th International NGO Conference on Landmines, which was held in Maputo, Mozambique between 25-28 February 1997. This event is placed between the elaboration and discussion of the first draft of the Mine Ban Convention and the following second draft.

It was a noteworthy Conference for several reasons. First of all, it is the most relevant example of regional efforts that have been made at that time in order to widen the scope of the *Ottawa Process*.

In fact, since the beginning of this Process the Canadian government was aware of the necessity of regional initiatives to make the Ottawa Process successful and therefore to achieve a complete ban on APMs. In short, “While the Ottawa Process would remain global in its scope and objectives, it was clear that support for the process could most easily be generated through an integrated series of regional strategies.”¹¹⁹

Next, the Maputo Conference is noticeable because during the final declaration it underlined the need to support the Ottawa Process and it urged the 450 NGOs participants from 60 countries to engage in the negotiations for a ban treaty.

This stance on the landmines issue acknowledged the importance of the announce that both Mozambique and South Africa had made in that period, i.e. their will to support the ban.

Hence, that Conference illustrates the cooperation between Canada (and the Core Group of pro-ban States) and the NGOs. More details about the role of the non-governmental organizations will be provide later in chapter three, however regional activities, especially those undertaken in mine-affected areas like many African States, were useful to build consensus on a ban on landmines so as to link the efforts made on a international level with those made on a regional one and therefore being more effective.

2.2. The Second Draft.

Since many suggestions were gathered during Vienna Conference, it became necessary to hold another meeting to revise the text. In fact, it took place in Vienna in March 1997, where the Core Group met and elaborated the Second Draft (dated 14 March 1997).

¹¹⁸ S. Maslen, *supra* note (17), pp. 31-32.

¹¹⁹ R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), p. 172.

Even though this text was the result of multilateral consultations (about 70 States, the UN, the ICBL and the ICRC were engaged in that work), it was considered only an Austrian product and in fact, the paper was entitled “The Second Austrian Draft”. Thus, the contents remained the result of collective efforts, but only Austria and the Core Group were free to choose eventual amendments in line with their goal.¹²⁰

Some of the main amendments made to the first draft were: a change in the definition of what is an anti-personnel landmine, as well as the addition of the definitions of “minefield” and of “transfer”, the terms “key prohibitions” were replaced with “general obligations”. Moreover, it extended the time for the destruction of landmines, whose in stockpiles had to be eliminated within three years, and the deadline for the clearance of minefields was extended from five to ten years. Finally, it added provisions regarding the future review conferences and meetings between the States Parties.¹²¹

2.2.1. The Bonn Conference (24-25 April 1997) and the Third Draft.

Germany hosted this Conference, also known as The International Expert Meeting on Possible Verification Measures to Ban Anti-Personnel Landmines to express its support for a ban on landmines. This meeting was the continuation of the 1996 Ottawa Conference and it was intended to discuss measures related to both the verification and compliance.¹²² In fact, during the previous meeting in February in Vienna it emerged the need to deepen the issue of verification.¹²³

Hence, before the meeting Germany had prepared a paper “Options Paper for a possible verification scheme for a convention to ban anti-personnel landmines” aiming at implement “significant and intrusive verification measures”¹²⁴

The 121 States present at that Conference had different ideas about the verification measures that were necessary to provide. In fact, some States “affirmed that detailed verification was essential to ensure that any agreement was effective,”¹²⁵ whereas other States gave prominence to the humanitarian character of the convention still in the process of being established. Therefore, according to them and to the ICRC, which shared this latter point of view, the most important thing was to focus on the establishment of a norm able to prohibit APMs.¹²⁶

At the end of the meeting, Austria “presented a compromise solution that did not satisfy any side fully, but was conceptually acceptable for everyone.”¹²⁷

¹²⁰ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), pp. 294-295.

¹²¹ S. Maslen, *supra* note (17), pp. 32-33.

¹²² K. R. Rutherford, “Post-Cold War Superpower? Mid-size State and NGO Collaboration in Banning Landmines”, in *Reframing the agenda : the impact of NGO and middle power cooperation in international security policy*, (Westport, Conn.: Praeger, 2003), 27.

¹²³ “Disarmament Conference hears further calls for land-mine ban”, United Nations, accessed in December 2014, <http://www.un.org/press/en/1997/19970401.dcf295.html>.

¹²⁴ S. Maslen, *supra* note (17), p. 33.

¹²⁵ S. Maslen, *supra* note (112), p. 82.

¹²⁶ *Ibid.*

¹²⁷ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 301.

The resulted Third Draft¹²⁸ was submitted to the Core Group on 28 April 1997 and after a revision, on 13 May 1997 it was made public worldwide.

2.3. Towards Brussels.

May 1997 was characterized by some noteworthy developments, each of which represents a step forward in the adoption of the *Mine Ban Treaty*.

For one thing, the change of position of two States, both members of the UN Security Council, i.e. France and the UK. In fact, both of them announced their willingness in being more active in the Ottawa Process.¹²⁹

Next, as mentioned above regional activities were really important to make the Ottawa Process more effective, in fact about 10 global as well as regional meetings took place during the months leading up to the Oslo final conference. For instance, after the Maputo Conference of February 1997, another Conference was held in Kempton Park on 19-22 May 1997. It was the first Conference of African Experts on Landmines where “forty-three out of the fifty-three OAU[Organization of African Unity] members had pledged their support for the Ottawa Process.”¹³⁰

Finally, other conferences organized by governments and NGOs were held before the Oslo Conference in Stockholm, Ashgabat, Sydney, Manila, and New Delhi. All characterized by the will to support a landmine ban.¹³¹

At the end of spring 1997 some of the main concerns of the supporters of the Ottawa Process had been overcome. Indeed, during the first months, the founders of the Ottawa Process had been concerned about the risk of the formation of two parallel channels for the negotiation of a ban on landmines (the Ottawa Process and the Conference on Disarmament).

In fact, as already mentioned above, some States preferred the track of the CD rather than the unilateral Canadian initiative. Moreover, after the Axworthy challenge only few and middle-sized countries supported that initiative, so there was a serious risk of a failure.

Just before the Brussels Conference it was clear that the difficult times were over. During the first months of 1997 the Ottawa Process gained the support of over 40 countries.

More and more European countries as well as many African States began to endorse the Process and they influenced others to do the same. Hence, the Ottawa Process started as a risky initiative turned into the unique and real track for the realization of the ban on mines. All in all, “The all-important political momentum that coalition partners had hoped for was clearly developing.”¹³²

¹²⁸ Third Austrian Draft Text, in Appendix 4, S. Maslen, *supra* note (17), pp. 416-422.

¹²⁹ For further information about the changes in National policies in France and UK see S. Maslen, *supra* note (17), pp. 34-35

¹³⁰ R. M. Behringer, *The human security agenda : how middle power leadership defied U.S. hegemony* (New York: Continuum, 2012), 69.

¹³¹ *Ibid.*; S. Maslen, *supra* note (17) pp.35-36; R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), p. 173.

¹³² R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), p. 175.

2.4. The Brussels Conference, 24-27 June 1997.

Since the third draft had finally been widely accepted as the basis for the ban treaty, it was only necessary to plan the following stages for the official adoption.

One of the last phases was the International Conference for a Global Ban on Anti-Personnel Mines, or the Brussels Conference that was attended by 156 States and it is considered a turning point in the path towards the Mine Ban Treaty as it led quickly to the final Conference in Oslo.

One of its main outcomes was the adoption of the Brussels Declaration, which was signed by 97 participant States. Through this document States recognized some indispensable requisites of a ban treaty. For one thing, “a comprehensive ban on the use, stockpiling, production and transfer of anti-personnel mines”, next, “the destruction of all stockpiled and cleared anti-personnel mines, and the “international co-operation and assistance in the area of mine clearance in affected countries.”¹³³

Furthermore, the Declaration also accepted the third Austrian draft as the text for negotiations, then it convened the following Diplomatic Conference in Oslo, which was intended to be the forum for the treaty adoption, and it transmitted the third draft to the future Oslo Conference.¹³⁴

2.5. The Oslo Conference, September 1997.

The Diplomatic Conference on an International Total Ban on Anti-personnel Land Mines, or Oslo Diplomatic Conference, was attended by 85 countries and it aimed at negotiating the final treaty to ban landmines and therefore at making the Austrian draft a binding treaty.

The rules of procedure regarding the decision-making process (already announced at the end of the Brussels Conference) provided the vote of the two-third majority for cases where the mechanism of consensus was unrealizable, hence it was really difficult to change the draft treaty without a large consent.

However, soon after the opening of the Conference France emphasized the importance of achieving agreements by consensus, hence after its protests, the rules of procedure were adopted through that mechanism.¹³⁵

In addition, only States that had signed the Brussels Declaration were allowed to vote, while the others could participate only as observers together with the ICRC and the ICBL.

The Oslo Conference is also well-known for the events around the United States. In fact, despite the efforts of the Canadian delegates since the beginning of the Ottawa Process¹³⁶, they did not succeed in

¹³³ S. Maslen, *supra* note (17), p. 37 and S. Maslen, *supra* note (112), p. 83.

¹³⁴ *Ibid.*

¹³⁵ This decision prevented States to change the Austrian draft.

¹³⁶ Engaging the US would mean not having other strong opponents. Plus, the support of the US could help other important users of mines to join the process. For further details on the role of the US during Oslo Conference, see M. Dolan, C. Hunt, “Negotiating in the Ottawa Process: The New Multilateralism”, in *To Walk Without Fear, the Global Movement to Ban Landmines*, *supra* note (13).

engaging the US that indeed continued to promote the other forum for eventual negotiations on a ban on APMs, namely the Conference on Disarmament.

Just before the opening of the Conference, on 18 August 1997, the White House announced its participation at the Oslo meeting, however it imposed some conditions for an eventual acceptance of the treaty: the possibility of using mines in South Korea, the change of the definition of the term anti-personnel mine in order not to put obstacles in its use of mixed anti-tank and anti-personnel munitions systems, a delay in the entry into force, a reinforced verification regime, and the possibility for the States Parties to withdraw in case of a supreme national interest.¹³⁷

The negotiations were focused on the US proposals that aimed at obtain considerable changes. The US had few allies at that Conference, however there was the risk that it could convince other states to support its “non-negotiable changes”, which were labeled as the “red lines”¹³⁸ with a drastic impact on the draft text.

During the discussions, some States shared some of its changes, such as Japan, Australia, Spain, Ecuador, and Poland, however the majority of States firmly rejected the US proposals and spoke against them.

The most strict opponent was the ICBL that in its conference newsletter campaigned against them. During the discussions, the US found little support, therefore it tried to modify its proposals, however also the revised proposals did not attract any support. The US failed and on 18 September the American chairs were empty, therefore the treaty was formally adopted.¹³⁹

2.6. The Second Ottawa Conference, 3-4 December 1997.

In Ottawa 2.400 people participated at the Conference. Here, the Mine Ban Convention was opened for signature. 121 States signed the Treaty and “over a half-billion dollars would be pledged for mine action during the conference.”¹⁴⁰

The successful conclusion of the Ottawa Process was also highlighted by the Canadian Prime Minister Jean Chrétien who described it as victory “without precedent or parallel in either international disarmament or international humanitarian law.”¹⁴¹

In the same month, the UNGA Resolution 52/38A welcomed the conclusion of the Oslo Conference.¹⁴²

¹³⁷ S. Maslen, *supra* note (112), p. 84.

¹³⁸ . Tepe, *The Myth about Global Civil Society*, *supra* note (10), p. 90.

¹³⁹ M. Dolan, C. Hunt, “Negotiating in the Ottawa Process: The New Multilateralism”, in *To Walk Without Fear, the Global Movement to Ban Landmines*, *supra* note (13), pp. 414-415.

¹⁴⁰ R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), p. 181.

¹⁴¹ *Ibid.*

¹⁴² A/RES/52/38, available at <http://research.un.org/en/docs/ga/quick/regular/52>.

Welcoming the conclusion of negotiations on 18 September 1997 at Oslo on the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction,

1. *Invites* all States to sign the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, which was open for signature at Ottawa on 3 and 4 December 1997 ...

2. *Urges* all States to ratify the Convention without delay subsequent to their signatures ...

3. *Calls upon* all States to contribute towards the full realization and effective implementation of the Convention

.

III. ANALYSIS OF THE OTTAWA TREATY.

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, or the Mine Ban Treaty¹⁴³ was adopted on 18 September 1997 during the Oslo Diplomatic Conference and it was signed by 122 States in Ottawa during the Second Ottawa Conference between 2-4 December 1997.

The signature was a political act through which States engaged in ratifying the treaty at a later date. Then, the Convention could enter into force, as stated in article 17(1), “on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.”¹⁴⁴

That happened on 16 September 1998, when Burkina Faso signed the Mine Ban Treaty. The country was the 40th to ratify it, therefore conforming to article 17 the Convention entered into force on 1 March 1999¹⁴⁵ and according to the ICRC, the entry into force of this Treaty was “the fastest of a multilateral arms-related treaty.”¹⁴⁶

As stated by Eric Roethlisberger, at that time the Vice-President of the ICRC during the Ceremony on the entry into force: ¹⁴⁷

In the name of hundreds of thousands of victims and of the millions who live each day in fear of becoming victims, the ICRC whole-heartedly welcomes the entry into force today of the Convention ... which enter into force more rapidly than any previous multilateral arms-related treaty, represents a comprehensive response to the landmine crisis ... It represents the norm by which all efforts to address this humanitarian tragedy will be judged.

To date, there are 162 States Parties to the Convention, i.e. “over the 80% of the world’s countries.”¹⁴⁸ This Convention is the first to impose a real and complete ban on antipersonnel landmines and its main purpose consists in halting the casualties and suffering caused by these weapons. In fact, its very title and preamble point at focus the impact of landmines on human beings in the short as well as the long term.¹⁴⁹

¹⁴³ For the text of the Convention see Annex 1.

¹⁴⁴ The Mine Ban Treaty, article 17(1). Hereinafter unless indicated otherwise the articles cited in this chapter will refer to the Ottawa Treaty.

¹⁴⁵ The Landmine and Cluster Munition Monitor (or The Monitor), “Burkina Faso”, online at http://www.the-monitor.org/index.php/publications/display?url=lm/2004/burkina_faso.html, accessed in December 2014.

¹⁴⁶ L. Maresca and S. Maslen, *supra* note (56), p. 624.

¹⁴⁷ *Ibid.*, p.625.

¹⁴⁸ “Treaty Status”, ICBL, *supra* note (106).

¹⁴⁹ During the negotiations of the Treaty there had been discussions about the nature of the mine issue. Initially some opponents of the Ottawa Process stressed the importance of considering the implications for national security. On the other hand, the supporters of that Process highlighted the humanitarian crisis. Finally the latter point of view prevailed, hence it was decided to face the problem prohibiting the use of those weapons. For more details about this debate, see R. J. Lawson, M. Gwozdecky, J. Sinclair and R. Lysyshyn, *supra* note (108), pp. 162-166.

Therefore, it is not by chance that the first article of the Convention primarily imposes the prohibition of the use of APMs so as to deal with the humanitarian crisis.¹⁵⁰

Although the Convention belongs to the IHL it is also related to the disarmament law. In fact, it impose a complete ban on antipersonnel landmines and at the same time in the last paragraph of the Preamble, the States Parties recognize that the Convention is based on the main principles of the IHL, i.e. the non unlimited right of the parties during an armed conflict to choose any means they want; the prohibition (during a conflict) to employ weapons and that kind of warfare that cause unnecessary suffering; and finally the principle to distinguish between civilians and combatants.¹⁵¹

Starting from these principle of IHL, the States Parties through their ratification agreed to stop the suffering caused by the APMs.

1. The Scope of Application of the Convention.

Article 1 prohibits States Parties states:¹⁵²

To undertake *never under any circumstances*:

- a) To use anti-personnel mines;
- b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
- c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Focusing on the phrase “never under any circumstances” the article enlightens that the general obligations of the Convention apply always. In fact, the Convention does not have an article regarding its scope of application.

The first Austrian Draft contained an article that specified the scope of application, “This Convention shall apply in all circumstances including armed conflict and times of peace.”¹⁵³

However, during the negotiation process it was eliminated because it was not necessary since the article through that phrase “never under any circumstances” makes clear the concept. Still, the title as well as the preamble of the Treaty further contribute to avoid different interpretations.¹⁵⁴

In short, the Convention applies in all situations, both during conflicts and peace times, and at all times. In fact, article 20 affirms the unlimited duration of the Treaty. The right of withdrawal is respected but

¹⁵⁰ See the following paragraphs about the main obligations for more details about the prohibition of the use of APMs.

¹⁵¹ These principles were part of the customary law and they had been codified in articles 22 and 25 of the Hague Regulations Respecting the Laws and Customs of War on Land (1907), and then they had been included in the *Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (Protocol I), as mentioned in the first chapter.

¹⁵² Article 1.

¹⁵³ Article 1 of the First Austrian Draft. To see the text, S. Maslen, *supra* note (17), appendix 4, p. 396.

¹⁵⁴ S. Maslen, *supra* note (17), pp. 71-73.

restricted. In fact, if a State wants to withdraw it has to inform the other States Parties, the Depositary, i.e. the Secretary-General of the United Nations and the UN Security Council explaining the reasons.

Moreover, if that State is engaged in a conflict, the withdrawal will not occur before the end of the warfare.¹⁵⁵

Finally, the Convention provides the possibility, for States who wish to be bound by the Treaty before its entry into force, to declare in the moment of the deposition of the ratification, acceptance, approval or accession that they will apply article 1(1) even before the entry into force.¹⁵⁶

2. Definitions.

In the first place, article 2 offers different definitions in order to clarify the object of the Convention, i.e. the anti-personnel landmines. The first Austrian Draft Treaty reported the definition of AP mines adopted in the Amended Protocol II, i.e. “a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.”¹⁵⁷

This definition had been discussed during the Vienna Conference (12-14 February 1997). The core of the debate was around the word “primarily” because some States were in favor for keeping that word, and others not.

That word had been added by the technical committee of the CCW Review Conference to ensure the exclusion of the anti-vehicle mines and the hybrid mines from being included in the definition. The aim was to avoid those weapons to be regulated by the Amended Protocol II, therefore, during the Vienna Conference of 1997 there was great debate between the two sides.

The ICBL and the ICRC also intervened pushing for that elimination, and the latter during the meeting argued that “the development of this definition had prompted some manufactures to rename their mines to avoid the application of Amended Protocol II.”¹⁵⁸ At the end of the Conference, it was adopted the Second Draft of the Treaty, the word “primarily” was deleted, however it was included a specific exception for anti-vehicle mines equipped with anti-handling devices.¹⁵⁹

The ICRC already during the CCW Review Conference had expressed its concern stating that “such a mine [anti-personnel mine] must continue to be understood as any mine which is 'designed to be

¹⁵⁵ Article 20.

¹⁵⁶ Article 18. The entry into force for States that “deposit their instruments of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force ... six months after [that] date”, article 17.

¹⁵⁷ The *Amended Protocol II*, *supra* note (73), article 2(3).

¹⁵⁸ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p.297.

¹⁵⁹ This exception respected the declaration of Germany, shared by other 17 States, that occurred during the CCW Review Conference and that “introduced an official interpretation of the word " primarily " indicating that it means only that anti-tank mines with anti-handling devices are not anti-personnel mines.” P. Herby, “Third Session of the Review Conference of States Parties to the 1980 United Nations Convention on Certain Conventional Weapons (CCW)”, *International Review of the Red Cross*, no. 312 (1996), online at <https://www.icrc.org/eng/resources/documents/misc/57jn5e.htm>.

exploded or detonated by the presence, proximity or contact of a person', whatever other functions the munition may also have.”¹⁶⁰

However, both the ICBL and the ICRC were aware that it would be quite impossible reach an agreement including the anti-vehicle mines.¹⁶¹

For these reasons, in the adopted Convention an anti-personnel mine is defined as “a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons” and then “Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”¹⁶²

Article 2 includes other definitions. First, the definition of “mine” as “a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.”¹⁶³ It does not differ from the definition present in the Amended Protocol II, except for the order of the words.

Second, the definition of “anti-handling device” that was quite the same of the Amended Protocol II¹⁶⁴, with only an addition, that is “otherwise intentionally disturb the mine”¹⁶⁵ in order that “an anti-handling device would not be considered as such if it could be triggered by the innocent act of a passer-by.”¹⁶⁶

Next, the explanation of “transfer”¹⁶⁷, which is related to the core obligation of States and it will be described later in this chapter, and the definition of “mined area.” This one is described as “an area which is dangerous due to the presence or suspected presence of mines.”¹⁶⁸ The same explanation as well as the definition of other types of mined areas were included in the Amended Protocol II. The current article 2(5) was made simpler and broader during the negotiations of the Oslo Conference.

3. Obligations: an introduction.

As regard the general obligations, it is important to make one preliminary remark: the Convention is binding only for States that ratify it, indeed it does not apply to the others that do not want to ratify as well as the armed opposition groups which operate in the territory of one of the States Parties.

However, the Treaty try to regulate this evasive situation through articles 1(1)(c) and 9. The former forbids the Parties from supplying both other States and anybody else with landmines. Similarly, the

¹⁶⁰ *Ibid.*

¹⁶¹ S. Maslen, *supra* note (112), p. 97.

¹⁶² Article 2(1).

¹⁶³ Article 2(2).

¹⁶⁴ The Amended Protocol II, *supra* note (73), article 2(14).

¹⁶⁵ Article 2(3).

¹⁶⁶ S. Maslen, *supra* note (17), p. 127.

¹⁶⁷ Article 2(4).

¹⁶⁸ Article 2(5).

latter establishes that States Parties have to make every effort to hinder any violations of the Convention inside the territory under its jurisdiction.¹⁶⁹

3.1. Main Obligations.

The commitments that States Parties are required to respect can be divided in two groups: the main obligations that are the pillars of the Convention, and the additional obligations that are useful to implement the fundamental obligations.¹⁷⁰

3.1.1 The Prohibition of the Use of Landmines.¹⁷¹

This provision comes first so as to highlight its importance. It is a cornerstone of the Treaty, however it had not been simple for States during the negotiations to decide to bind themselves to respect the prohibition of the use of that weapons.

It was perceived as the most important restriction to accept “given the comprehensive nature of the undertaken.”¹⁷²

There is not a definition of what the Convention intends with the term “use”. If, the “use” covers new emplacements of landmines, the situation regarding the exploitation of landmines previously laid is not so simple. In fact, during the Oslo Conference the US raised the question asking “whether an army that moved into an area where mines are emplaced and which then uses them .. would violate the prohibition on use”¹⁷³ and also it proposed to include the clarification that the use meant only the act of emplacing a landmine.

Even if its proposals had been rejected, other States such as the UK and Australia faced the problem, wondering if there was violation of the Convention in case of an indirect use of mines laid by another State.

Today, it has been clarified that States Parties must not take advantages from this situation. In addition, as regards the concept of “emplacement”, it indicates the single act of display a landmine, but since this weapons is characterized by its long-term effects it was important not to accept the only meaning of emplacement. Therefore, it now falls within the notion of using a “mine”, in its broader sense.

Finally, if the maintenance of minefields consists in a violation of the prohibition of the “use”, this is not the case for the maintenance of fencing and marking signs around minefields, because here there is the purpose of protecting civilians.¹⁷⁴

¹⁶⁹ S. Maslen, *supra* note (17), pp. 74-75.

¹⁷⁰ Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 298.

¹⁷¹ Article 1(1)(a).

¹⁷² S. Maslen, *supra* note (17), p. 76.

¹⁷³ *Ibid.*, p. 78.

¹⁷⁴ *Ibid.*, pp. 77-83.

3.1.2. The Prohibition to Develop, Product, Acquire, Stockpile, Retain or Transfer Landmines.

The second main obligation is explained in article 1(1)(b), States are prohibited to develop, product, acquire, stockpile, retain or transfer landmines.

States Parties cannot develop and produce mines both directly and indirectly. Hence, it is forbidden not only the material construction of mines, but also the commission and the funding of all those activities that lead to the production of mines. Furthermore, States Parties have to avoid the acquisition of mines.

This specification aims at embracing all the situations that cannot be attributed to the obligation of not producing landmines, for example when a State receives them as a gift, or when it discovers a depository of mines and it do not proceed with the necessary weapons' destruction. Similarly, States Parties cannot stockpile or retain landmines.

This prohibition is linked to article 4, which requires the destruction of all stockpiled APMs under the control of the Parties of the Treaty within four years after its entry into force.¹⁷⁵

In addition, States Parties are forced to avoid the transfer of antipersonnel mines to anyone, be it another party to the Convention or not. Nevertheless, there are two exceptions that are explained in article 3: the transfer is permitted when the destination is the place for the destruction, and the transfer (or also the retention) of a limited amount of AP mines is allowed for improving activities of mine clearance, detection and destruction.¹⁷⁶

Finally, also article 2(4) provides a definition of "transfer" since it states that it regards the physical movement of landmines, but also the transfer of title to and control over mines.¹⁷⁷

Finally point (c) of article 1(1) forces a State Party not to assist or induce someone else in any activity that is prohibited by the Convention.

This provision appeared for the first time in the Second Austrian Draft and it was not modified until the adoption of the Treaty. However, there have been disagreements about the interpretation of the words "assist", "encourage" and "induce" because they are not defined by the Treaty.

As a consequence, some States, such as Australia, had interpreted this provision in a narrow way. As an example, as regards the first word "assist", only a direct assistance has been considered a violation of the Convention. However, the majority of countries have interpreted the provision in a broader way, that means avoiding for example training anyone in the use of APMs, or provide logistic support.¹⁷⁸

3.1.3. The Obligation of Destruction.

This obligation is regulated by articles 1(2), 3, 4, 5, 6, and 7.

¹⁷⁵ Article 4.

¹⁷⁶ Article 3.

¹⁷⁷ Article 2(4). To deepen the interpretation of the concept of "transfer", see S. Maslen, *supra* note (17), pp. 86-90.

¹⁷⁸ S. Maslen, *supra* note (17), pp. 90-97.

Article 1(2) obliges States parties to destroy its APMs. This core obligation is related to the AP mines which are under the jurisdiction or the control of a State Party.

The phrase in article 1(2) “to ensure the destruction of all anti-personnel mines” had been proposed by Sweden during the Oslo Conference with the purpose of regulating the possibility for a State to charge someone else, for example a private company, with doing the destruction. Although the disposal of AP mines is important, there are also some rules that States have to follow when they undertake this task. The standards to follow are the International Mine Action Standards (IMAS)¹⁷⁹, established by the UN Inter-Agency Coordination Group on Mine Action.¹⁸⁰

In fact, according to the Guide for the destruction of AP mines, although the methods for the disposal of ammunition and explosives are five, as regards the disposal four of these options are prohibited by the Mine Ban Treaty. Therefore, the only possibility is the destruction.¹⁸¹

This obligation cannot be avoided for example moving the weapons from the State’s territory to another “while keeping the title to and the control over the mines.”¹⁸²

Article 3, mentioned above, allow States to keep a limited number of AP mines on the condition that they use those weapons only for certain purposes, such as the development of mine clearance methods.

Article 4 and 5 represent the core obligation. The former is concerned with the destruction of stockpiled AP mines and moreover, it provides the deadline for the fulfillment of this duty, that is, within four years after the entry into force of the Convention. On the other hand, article 5 is related to the destruction of anti-personnel landmines that laid on the ground.

Beginning with article 4, first references of this obligation can be traced back to the draft prepared by Werner Ehrlich in 1996, which at article 5 stated that:¹⁸³

Each High Contracting Party undertakes to destroy stockpiles of anti-personnel mines it owns or possess, or that are located in any place under its jurisdiction or control within one year and anti-personnel mines already employed within five years of the individual entry into force of this Convention

¹⁷⁹ IMAS are the standards in force for UN mine operations. More information at <http://www.mineactionstandards.org/>.

¹⁸⁰ The UN Inter-Agency Coordination Group on Mine Action (IACG-MA) coordinates the mine activities within the United Nations, and it includes 14 UN departments, agencies, programs and funds. More information on the Mine Action will be provided in the next chapters.

¹⁸¹ As regards the banned options “The Mine Ban Treaty prohibits the sale, gift, or increased use of landmines at training whilst the Oslo Convention now bans deep sea dumping.” See IMAS, “Guide for the destruction of stockpiled anti-personnel mines”, available at <http://www.mineactionstandards.org/standards/international-mine-action-standards-imas/imas-in-english/>.

¹⁸² Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 299.

¹⁸³ “Convention on the Prohibition of anti-personnel mines” (1st draft by W. Ehrlich, April 1996), in S. Maslen, *supra* note (17), pp. 396-397.

All the drafts of the Convention¹⁸⁴ until the second one contained articles related to the obligation of destruction. After the 1997 Vienna Conference the Second Austrian Draft divided that obligation into three articles that became only two in the adopted Convention, i.e. article 4 and 5.

Returning to article 4, it only binds the States Parties and their stockpiled AP mines, in other words, anti-personnel landmines that are owned by a State Party or under its control must be destroyed. As previously stated, the Second Draft provided that States Parties had to destroy all stockpiled mines within three years after the entry into force of the Convention, however this deadline was later extended to four years.¹⁸⁵

Moreover, since according to article 18 there is the possibility for States to apply article 1(1) before its entry into force, it is worth highlighting that in this case they are not required to begin the destruction of stockpiled APMs before the entry into force. Conversely, they are not allowed to add other new landmines.¹⁸⁶

Although the object of the destruction is clearly defined in article 2, there is another ambiguous question that is relative to the terms “jurisdiction” and “control”.

Even if they have been used in other treaties¹⁸⁷, they have never been defined.

Around the concept of “jurisdiction”, i.e. “the power of a sovereign to affect the rights of persons, whether by legislation, by executive decree, or by the judgment of a court”¹⁸⁸, there have been different interpretations, sometimes it has been viewed in a broader way (i.e. that “encompass not only the judicial power of a State, but the full machinery of government, including legislative and executive power”)and others in a narrow one (that is, when it refers to the lawful power to move and enforce rules”).¹⁸⁹

The 1969 Vienna Convention on the Law of Treaties explains that the Convention has to be interpreted in the light of the object and purpose of a Treaty, therefore as regards *the Mine Ban Convention* the concept of jurisdiction has to be applied in a broader sense because it “defines the ambit and scope of

¹⁸⁴ The drafts of the Convention are: Convention on the Prohibition of anti-personnel mines (1st draft by W. Ehrlich, April 1996), (ICBL Draft) Convention on the prohibition of the development, production, stockpiling, transfer and use of anti-personnel mines and on their destruction (20 December 1996), Belgian Draft of a Convention on the total prohibition of anti-personnel mines, Convention on the prohibition of anti-personnel mines (First Austrian Draft Text), Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Second Austrian Draft Text), Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Third Austrian Draft Text), all available in S. Maslen, *supra* note (17), pp. 396-422.

¹⁸⁵ The first draft of the Convention established that stockpiles had to be destroyed within one year, than the deadline the deadline was extended to three years and in the final Convention it became of four years, in particular because for developing States needed a longer time to accomplish, T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 299.

¹⁸⁶ S. Maslen, *supra* note (17), p. 146.

¹⁸⁷ T. Hajnoczi in “The Ban Treaty”, *supra* note (116) gives some examples of those treaties: the Biological and Toxin Weapons Convention, Chemical Weapons Convention, Amended Protocol II to the CCW, and the Comprehensive Nuclear Test Ban Treaty. All these Conventions do not define the terms “jurisdiction” and “control”

¹⁸⁸ Joseph H. Beale, “The jurisdiction of a sovereign State”, *Harvard Law Review* 36, no.3 (1923): 241, online at <http://www.jstor.org/stable/1329779>.

¹⁸⁹ S. Maslen, *supra* note (17), p. 150.

the obligation to destroy or ensure the destruction of anti-personnel mines [article 4] in the broadest possible sense.”¹⁹⁰

Similarly, the Preamble of the Convention referring to the purposes and the commitments that States Parties decide to respect highlights that point stating that “it [is] necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction.”¹⁹¹

Nevertheless, according to the Austrian diplomats there seemed to be a common view about their meanings. According to this view, the term jurisdiction refers to an area over which a State exercises its sovereignty, and control is about the “administrative or long-term over an area”, however, both of the terms do not include a short-term occupation of a territory either by military forces, or by peacekeeping personnel.¹⁹²

In fact, during the negotiation process no one raised the question about the meanings of these words until Australia’s ratification. In that occasion it decided to declare its opinion about their meanings, and specifically it stated:¹⁹³

The phrase jurisdiction or control is intended to mean within the sovereign territory of a State Party or over which it exercises legal responsibility by virtue of a United Nations mandate or arrangement with another State and the ownership or physical possession of anti-personnel mines, but does not include the temporary occupation of, or presence on, foreign territory where anti-personnel mines have been laid by other States or persons.

As for the APMs issue, the problem arises in two situations.

First, when a State has territorial jurisdiction but it does not control it, for example because of the presence of opposing armed groups. Second, the case of US AP mines that are stored in several NATO countries. In fact, as examined by the Landmine Monitor¹⁹⁴, in 2000 the US still had its stockpiles in several countries that were both States Parties to the Convention or at least they had signed it.

To this regard, some States such as Germany, the UK and Japan declared that those stockpiles were not under their jurisdiction and control, and others such as Norway and Spain told the US that “they will be required to withdraw their stocks”¹⁹⁵ to take back its AP mines.

Therefore, every country that is or was affected by this situation acted differently¹⁹⁶ according “the individual circumstances.”¹⁹⁷

¹⁹⁰ S. Maslen, *supra* note (17), p. 150.

¹⁹¹ Preamble of the Mine Ban Treaty.

¹⁹² T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), pp. 299-300.

¹⁹³ S. Maslen, *supra* note (112), p. 120. The statement of Australia is only a declaration, in fact the Convention does not allow any reservation.

¹⁹⁴ The Landmine and Cluster Munition Monitor (hereinafter The Monitor), *Landmine Monitor Report 2000*, available at http://www.the-monitor.org/index.php/publications/display?act=submit&pqs_year=2000&pqs_type=lm&pqs_report=&pqs_section.

¹⁹⁵ The Monitor, *Landmine Monitor Report 1999*, available at <http://www.the-monitor.org/index.php/publications/display?url=lm/1999/>.

As stated by Ambassador Jean Lint of Belgium in February 2003, who was the President of the Convention's Fourth Meeting of the States Parties, "The compliance rate ... is extremely impressive." In fact, in that year 55 States Parties completed the destruction of their stockpiles or were in the process of doing so.¹⁹⁸

The positive trend continued and according to the data of 2008, the number of countries that completed the destruction rose to 83, with a total of 41 million AP mines destroyed.¹⁹⁹

As reported by the most recent figures about the destruction of stockpiled APMs, to date, States Parties have destroyed over 48 million stockpiled antipersonnel mines (about one million only in 2013). Moreover, among the Parties there are three countries, Belarus, Greece and Ukraine that are in violation of their obligations since they have not yet completed their stockpile destruction.²⁰⁰

The other provisions that constitute the core of the Treaty obligations are contained in article 5. In fact, it requires States Parties to destroy all AP mines in mined areas under their jurisdiction or control within 10 years after the entry into force of the Treaty.²⁰¹

In the previous drafts there was a distinction between minefield and mined areas, because there were differences in the mine clearance between the two situations. In fact, thanks to the recording of mines, whose on minefields were simpler to remove.

However, in the final text, the distinction between minefield and mined area was eliminated because according to the Core Group it "was going to be difficult"²⁰² to maintain. For this reason, in article 5 there is only the term "mined area", that is "an area which is dangerous due to the presence or suspected presence of mines."²⁰³

According to this article the Parties are required to destroy all the APMs emplaced on mined areas that are under their jurisdiction and control.

Here it is important to consider that the aim of mine clearance is to identify and remove or destruct landmines and unexploded ordnances (UXO) from a mined area "to a specified depth to ensure the land is safe for land users."²⁰⁴

Nevertheless, it is not always possible to establish the necessary depth of clearance, because it is not easy to detect the devices, in particular when they are made of plastic.²⁰⁵

¹⁹⁶ Further examples and information in S. Maslen, *supra* note (112) pp. 120-122.

¹⁹⁷ S. Maslen, *supra* note (17), p. 151.

¹⁹⁸ "Anti-personnel mine Treaty's Fourth Anniversary coincides with the first deadline: almost 30 million mines destroyed", United Nations Meetings Coverage and Press Releases (2003), available at <http://www.un.org/press/en/2003/dc2854.doc.htm>.

¹⁹⁹ "Backgrounder: Stockpile Destruction", ICBL (2008), available at <http://www.icbl.org/en-gb/news-and-events/news/2008/backgrounder-stockpile-destruction.aspx>.

²⁰⁰ The Monitor, *Landmine Monitor Report 2014*, available at <http://the-monitor.org/index.php/LM/Our-Research-Products/LMM14>.

²⁰¹ Article 5(1) Mine Ban Treaty.

²⁰² S. Maslen, *supra* note (17), p. 161.

²⁰³ S. Maslen, *supra* note (112), p. 125.

²⁰⁴ *Clearance requirements*, IMAS 09.10 (2003, amended 2013), available at <http://www.mineactionstandards.org/standards/international-mine-action-standards-imas/imas-in-english/>.

Plus, it is possible that States are not aware of the presence of APMs on their territory. As remembered by S. Maslen, many European States are still contaminated by UXO and landmines dating back to the WWII, thus they can proceed with the destruction of APMs only when they discover those weapons. Hence, despite the purpose of article 5, it is quite impossible to clear them all, and therefore respect the obligation completely.²⁰⁶

All in all, these practical difficulties tend to obstacle the achievement of the purpose of article 5, therefore the absolute fulfillment of the obligation has been replaced by a greater tolerance, thus the mine clearance does not aim at clear all APMs, but its purpose is to clear all the APMs which are dangerous for people.

As explained by S. Maslen “a distinction is increasingly made in mine action between making a country mine-impact-free as opposed to mine free.”²⁰⁷

Article 5 also contains the expression “to destroy or ensure the destruction of all anti-personnel mines in mined areas *under its jurisdiction or control* ...”. The questions of ensuring the disposal and that of “jurisdiction” and “control” have been discussed above, however, it is worth explaining that the control also pertains to territories outside the jurisdiction of a State Party, but under its effective control, such as occupied areas, hence the State has to observe its duties also in those areas.

On the other hand, when there is not an established government, the UN would take the control of the territories or weapons. However, there are different types of UN operations, therefore the mandates vary depending on the kind of operation. In general, if the armed forces of a Party operate for a long period, under the UN mandate, on a certain area, that State has the effective control on that zone, thus it is obliged to clear the eventual APMs.²⁰⁸

Article 5(2) demands that Parties “make every effort to identify all areas... in which anti-personnel mines are known or suspected to be emplaced.” Despite that the Convention does not explain what “every effort” means, this expression intends that States have to do their best depending on their resources and possibilities.

In addition, until the conclusion of the job of destruction, States have to ensure that mined affected areas are monitored, marked and well protected by fencing or other methods that have to respect the standards provided in article 5 of the Amended Protocol II and in its Technical Annex.

There is also something which needs consideration, that is the lack in article 5 of any direct warning for civilians. This is odd since in the Third Austrian Draft there was a reference to the necessity of providing “an immediate and effective warning to the population.”²⁰⁹

²⁰⁵ More information about the mine clearance in the next chapters.

²⁰⁶ S. Maslen, *supra* note (17), p. 164.

²⁰⁷ *Ibid.*

²⁰⁸ S. Maslen, *supra* note (17), pp. 166-167.

²⁰⁹ Article 5 and 6, Third Austrian Draft Text, in Appendix 4, S. Maslen, *supra* note (17), pp. 416-422.

On this point, the ICRC in its “Comments on the Third Austrian Draft” suggested the reformulation of article 5(2) so as to make it even more clear writing “ Each State Party shall make every effort to ... provide an immediate, effective and continuous warning to the civilian population until such time as the area is known to be clear of mines.”²¹⁰ Nonetheless, it is not known the reason why this provision had disappeared in the final text of the Treaty.²¹¹

Unlike article 4, here there is the possibility, for States who are not able to comply with their obligation within the set 10 years, to obtain an extension of the deadline.²¹²

In fact, not always States have the necessary economic and technical resources to satisfy this duty in time, in this case they have to “submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline”²¹³ that has to be in compliance with some requirements explained in article 5(4), such as the duration of the extension period (up to 10 years), the reasons for this extension, information on the progress of mine clearance, the financial and technical means used, and the circumstances that impede the destruction of AP mines.

Finally, it has to include information about the consequences on the humanitarian, social, economic, and environmental aspects. The request has to be accepted by the majority of States Parties participating at the meeting.

Plus, a State Party heavily contaminated is allowed to renew the request, but it has to be submitted with “relevant additional information on what has been undertaken in the previous extension period.”²¹⁴

According to the Landmine Monitor over the past five years 973 km² of mined areas have been cleared. Only in 2013 about 185 km² of these areas were cleared with the destruction of 275.000 APMs and 4.500 anti-vehicle mines and the largest total clearance of mined areas was achieved in Afghanistan, Cambodia and Croatia. Finally, the 2014 Report states that 38 States Parties are confirmed or suspected to be still affected by AP mines, hence they are under the process to fulfill the obligation of article 5.²¹⁵

3.2. Other Obligations: The International Cooperation and Assistance.

It is worth focusing on three articles to analyze the remaining obligations for States Parties. The first is article 6 concerning with the international cooperation and assistance. Its precursor was article 11 of the Amended Protocol II ²¹⁶, however there was not any specific dispositions regarding the international assistance until the Second Austrian Draft.

²¹⁰ L. Maresca and S. Maslen, *supra* note (56), p. 550.

²¹¹ S. Maslen, *supra* note (17), pp. 169-170.

²¹² Article 5(3).

²¹³ Article 5(3).

²¹⁴ Article 5(6).

²¹⁵ The Monitor, *Landmine Monitor Report 2014*, available at <http://the-monitor.org/index.php/LM/Our-Research-Products/Landmine-Monitor/LMM2014/LandmineMonitor2014>. The list of the 38 countries that are still mined-affected is available in the 2014 Report, p. 25.

²¹⁶ *The Amended Protocol II*, *supra* note (73).

This paper elaborated detailed provisions that outdid the dispositions of the article 11 of the Amended Protocol, which were limited to support for mine clearance, dealing with activities of cooperation and assistance in the destruction of APMs.

Then, during the negotiation process it had undergone several amendments, such as the inclusion of a provision on victim assistance, until becoming the current article 6.

The first paragraph provides that “each State Party has the right to seek and receive assistance” and this right is useful to help Parties to carry out Treaty obligations.

That right is counterbalanced by the following expression specifying that assistance is possible “where feasible, from other States to the extent possible.”

The Third Austrian Draft included “where feasible” and during the Oslo Conference States pushed for the inclusion of “to the extent possible” so as to underline that there was not a legal obligation to help.²¹⁷

Article 6(2) establishes the right for every State Party not only to get the necessary technological, scientific and material information, but also to exchange those information with other States Parties in order first to detect APMs and then to destruct them. Article 6(2) is more complicated and it was approved only after long debates. In fact, it refers to the duty for the Parties “in position to do so ... [to] provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs.”²¹⁸

The Treaty neither provides a definition for “assistance”, nor for “mine victim”, however it is believed that the “assistance” consists in financial, material and technical help, and that the subjects of this assistance are mine’s victims in general, not only who have been injured by AP mines.

Other organizations discussed these meanings. For instance, the ICBL defined a mine victim “who, either individually or collectively, have suffered physical, emotional and psychological injury, economic loss or substantial impairment of their fundamental rights through acts or omissions related to mine utilization.”²¹⁹

Thus, it went beyond a narrow definition, involving also a broader type of assistance. Similarly the International Mine Action Standards (IMAS) affirms that “in the context of victim assistance, the term victim may include dependants or other persons in the immediate environment of a mine/ERW casualty.”²²⁰

²¹⁷ There is not an obligation to provide assistance because not all the Parties have the necessary resources, however it “does provide a clear political message on the importance of doing so,” T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 304. See also S. Maslen, *supra* note (17), pp. 180-181.

²¹⁸ Article 6(2).

²¹⁹ ICBL, “Guiding Principles for Victim Assistance compiled by the Working Group on Victim Assistance of the International Campaign to Ban Landmines,” (2000), online at <http://www.icbl.org/media/919871/VA-Guiding-Principles.pdf>.

²²⁰ “Glossary of mine actions terms, definitions and abbreviations,” IMAS 0.10 (2003, amended 2014), available at <http://www.mineactionstandards.org/standards/international-mine-action-standards-imas/imas-in-english/>.

According to both the ICBL and IMAS the assistance refers to the support provided to victims to reduce the medical and psychological consequences. The ICBL adds other elements: first aid and ongoing medical care, physical rehabilitation, psychological support, social and economic reintegration, and disability law and policies.²²¹

Finally, States should engage in mine awareness programs. For this purpose States can ask the help of the United Nations or other institutions, in fact there are many mechanisms for the provision of assistance besides the UN and the ICRC. For example, one of the major agencies that deals with victim assistance is the UN Mine Action Service (UNMAS).²²²

Other provisions in the article establish that “States in a position to do so shall provide assistance for mine clearance and related activities ... for the destruction of stockpiled anti-personnel mines ... [and] to provide information to the database on mine clearance established within the United Nations system.”²²³

Mine clearance is not defined by the Treaty, however, according to IMAS “in the context of mine action, the term refers to tasks or actions to ensure the removal and/or the destruction of all mine and ERW hazards from a specified area to a specified depth.”²²⁴

Similarly, the type of assistance is not specified but it is believed to consist in: “funding, training, technical advice, equipment. and other material.”²²⁵ There are several mechanisms for providing this type of assistance, for instance bilateral assistance between States and the Voluntary Trust Fund for Assistance in Mine Clearance, which was established in 1994 by UN Member States to provide resources for mine action programs and that since the beginning it has received more than \$865 million.²²⁶

Finally the last provision states that Parties are allowed to ask the UN, other States Parties, or other regional or non-governmental organizations for being assisted in the elaboration of their national demining programs.

These programs include the scope of the AP problem, the necessary resources, the time needed to destroy mined areas, programs related to mine awareness to undertake, information on mine victims’ assistance.

²²¹ *Ibid.*; ICBL, “Guiding Principles for Victim Assistance,” *supra* note (219).

²²² Information about the mine awareness, (or mine risk education) in the next chapters.

²²³ Articles 6(4), 6(5), 6(6).

²²⁴ “Glossary of mine actions terms, definitions and abbreviations,” *supra* note (220).

²²⁵ S. Maslen, *supra* note (17), p. 189.

²²⁶ The Voluntary Trust Fund (VTF) is open to contributions of any government, organization and also individuals. Resolutions of the UN General Assembly encourage the use of this instrument to support mine action activities and respond to risks posed by mines, ERW, unsafe stockpiles. For more information about this Fund see The UN Voluntary Trust Fund for Assistance in Mine Action, available at <http://www.mineaction.org/funding/vtf>.

All in all, “the primary responsibility for mine action lies with the Government of the mine-affected state ... [however] in certain situations ... it may be necessary and appropriate for the United Nations, or some other recognized international body, to assume some or all of the responsibilities.”²²⁷

In fact, the explicit reference in the paragraphs of article 6 of the UN, ICRC and other regional and international institutions recognizes “the vital role they have played and can play in the humanitarian emergency caused by landmines.”²²⁸

It encourages the cooperation in order to comply with the obligations, and to face and overcome States Parties’ difficulties.

3.2.1. Other Obligations: The Transparency Measures.

Article 7 is concerned with the transparency measures. States Parties have to provide a first report to the UN Secretary-General within 180 days after the entry into force of the Convention, and then, they are required to draw up every year a report containing the measures that they have undertaken to ensure the respect of the Convention.

These measures include: the status of the implementation of national measures²²⁹, the number of stockpiled APMs (the purpose is to make easier the identification of these stockpiles and therefore their destruction, as established in article 4), the report “to the extent possible” (this phrase was added due to the impossibility for high contaminated States to obtain precise information on the location of AP mines) of the location of mined affected areas, and the quantities and types of landmines that a State Party retained, in accordance with article 3 of the *Mine Ban Treaty*.

Moreover, States have to assess: the conversion of the APMs production facilities; the status of the activities for the landmines destruction together with quantities and types of AP mines destroyed; technical features of the mines produced (in order to identify them and proceed with the disposal); measures to warn and protect civilians from mined areas.

The reports shall be submitted to the UN Secretary-General and not later than 30 April of each year. Then, these reports are posted on the website of the Department for Disarmament Affairs, therefore they are available to the other States Parties as well as the public.

In conclusion, the importance of this article has been recognized also by Ambassador Jean Lint in the occasion of the meeting of the Standing Committee on the General Status and Operation of the Convention on 12 May 2003, where he declared “We must remember that Article 7 [is] a valuable source of information to both support cooperation and assess progress.”²³⁰

²²⁷ “Guide for the application of International Mine Action Standards (IMAS),” IMAS 01.10 (2003, amendment 2013), available at <http://www.mineactionstandards.org/standards/international-mine-action-standards-imas/imas-in-english/>.

²²⁸ K. M. Georghiadis, “The Ottawa Convention: meeting the challenge of anti-personnel mines?”, *International Relations* XIV, no.3 (1998):58.

²²⁹ See article 9.

²³⁰ “General Status and Operation of the Convention 12 May 2003”, Standing Committee meetings 12-16 May 2003, AP Mine Ban Convention, available at <http://www.apminebanconvention.org/intersessional-work-programme/may-2003/>.

In fact, thanks to this article the Convention outlines the national measures to undertake in accordance with the obligations of the Treaty and States are led to believe “that the Convention is being effectively implemented.”²³¹

3.2.2. Other Obligations: National Implementation Measures.

To conclude the “supplemental obligations”²³², it is worth mentioning article 9, which refers to national implementation measures.

Under article 9 States Parties have to implement national measures to prevent any activity that breaches the dispositions of the Convention. Already the First Austrian Draft contained a provision similar to the current one, and also the ICBL in its draft included the establishment of national measures with also a deadline (one year after the ratification) to comply with the provision.²³³

According to the article States have to take all *appropriate* measures. The same adjective is present in article 14 of the Amended Protocol II ²³⁴, on which article 9 was based. The term is not defined by the Convention, hence it allows States to decide what measures to implement.

Moreover, it only refers to legal, administrative, or other measures, without any further specification. According the ICRC, to ensure that the prohibition of the use, stockpile, product, develop and transfer of anti-personnel mines is respected, States have to “adopt legal, administrative and other measures to prevent and punish any prohibited activity by persons or on territory under its jurisdiction or control ... this may require ... specific criminal legislation.”²³⁵

It leaves open the question of extraterritorial jurisdiction, in fact the article states “by persons or on territory under its jurisdiction or control”, thus each State Party is entitled to decide if impose its jurisdiction over nationals outside the border of its territory or not.²³⁶

3.2.3. Compliance.

There is another important issue to examine, the compliance. It is important to examine this aspect because it is related to the fulfillment of the obligations of the Convention by States Parties.

As regards the Ottawa Treaty, since its entry into force it “has been characterized by a high degree of co-operation and transparency rarely seen in multilateral treaty regimes.”²³⁷

It is one of the most successful multilateral arms treaties for several reasons: for the first time in history States agreed to ban completely a weapon in widespread use, it ensures investment at high levels in

²³¹ S. Maslen, *supra* note (17), p. 200.

²³² Thomas Hajnoczi distinguished between core obligations and supplementary obligations.

²³³ Article 6, First Austrian Draft Treaty, article 8 ICBL Draft Treaty, *supra* note (184).

²³⁴ The *Amended Protocol II*, *supra* note (73), article 14(1).

²³⁵ “Implementing the Ottawa Treaty: Questions and Answers” (1999), ICRC, available at <https://www.icrc.org/eng/resources/documents/misc/57jq3y.htm>.

²³⁶ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 306.

²³⁷ K. Lawand, “The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention)”, in *Making Treaties Work: Human Rights, Environment and Arms Control*, ed. Geir Ulfstein (Cambridge: Cambridge University Press, 2007), 324.

mine clearance and victim assistance, where implemented the number of victims has dropped, and it contributed in following efforts against the impact of both cluster munitions and explosive remnants of war (ERW).²³⁸

Furthermore, the success of the Treaty is due to its mechanism to monitor and foster the compliance. Both States who were active during the negotiation process (in particular the Core Group) and the non-State actors (especially the ICRC and the ICBL) established some compliance mechanisms that are part of this “unique negotiation process” called Ottawa Process.²³⁹

Article 8 is concerned with the mechanisms for facilitation and clarification of compliance, and it was the most difficult to approve because of the disagreement between States during the negotiation process.

The question of compliance was included already in the First Austrian Draft, and exactly in article 6 and 7 that dealt with “compliance” and its “verification”.²⁴⁰ Also the ICBL in its draft proposal introduced some similar provisions: article 7 “Reporting and transparency measures”, article 8 “National implementation measures”, article 9 “Consultation and fact-finding” and article 10 “Compliance”. In addition, it added an annex on “fact-finding regarding use or transfer of AP mines.”²⁴¹

The question of the compliance as the bone of contention emerged during the 1997 Vienna Conference (The Expert Meeting on the Convention for the Prohibition of Anti-Personnel Mines) where the ICRC declared that “Compliance monitoring will be an important element of a regime to end the use of anti-personnel mines.

The best method would be for an independent mechanism to investigate credible reports of the use of this weapon.” However, it also warned States not to permit verification to stand in the way of an absolute prohibition on the use, production, stockpiling and transfer of this weapon.”

In short, it affirmed that the verification had to support and strengthen the norms of the Treaty without prevailing over them and above all, that despite previous norms of” humanitarian law prohibiting the use of specific weapons had been established without verification ... they have been almost universally respected.²⁴²

In fact, there was considerable debate around the issue because some States preferred a limited system of verification, whereas others were in favor of a more “complex verification regime.”

²³⁸ P. Herby, E. La Haye, “How Does It Stack Up? The Anti-Personnel Mine Ban Convention at 10”, *Arms Control Today*, (2007), available at http://www.armscontrol.org/act/2007_12/Herby#bio.

²³⁹ K. Lawand, *supra* note (237), p.325.

²⁴⁰ Articles 6 and 7 First Austrian Draft Treaty, *supra* note (184).

²⁴¹ ICBL Draft, *supra* note 184.

²⁴² Maresca and S. Maslen, *supra* note (56), “Statement of the International Committee of the Red Cross”, p. 506.

Therefore, Germany organized a meeting so as to clarify this issue. The Expert Meeting on Possible Verification Measures was held in Bonn on 24-25 April 1997 and it gathered 121 States.²⁴³ States' delegates discussed the Second Draft trying to find a compromise on the issue of verification and compliance, however the views remained divided between who stressed the necessity of a detailed verification mechanism to "ensure that any agreement was effective", and others who focused on the humanitarian character of the Treaty, thus they priority was the adoption of a "clear norm prohibiting anti-personnel mines."²⁴⁴

The result of that Conference is well explained by Thomas Hajnoczi who stated "While some progress was achieved, no convergence of minds was in sight."²⁴⁵ The solution was found during the Oslo Conference where the Canadian delegation held some meetings and finally a compromise between the two approaches was found.

The result was the adoption of article 8, which combines verification elements with a cooperative approach.²⁴⁶ The "spirit of cooperation" appears immediately in the first paragraph of the article so as to "facilitate compliance by States Parties with their obligations under this Convention."²⁴⁷

It refers to the possibility for States to exchange information, informal discussions and meetings, all with the intention of clarifying situations in which some States Parties suspect a case of non-compliance with the Treaty.

However, if the cooperation is not sufficient to resolve the doubt, the Treaty provides a compliance procedure that consists in "a fact-finding mission of experts to the territory of the state in question to gather more information," and it takes place in five stages.

The first stage is the request made by one or more States Parties to clarify situations "relating to compliance with the provisions of this Convention by another State Party."²⁴⁸ The Request for Clarification is submitted through the Secretary-General of the UN and the State who receive this request has 28 days to respond with information to clarify the situation.

The second stage occurs when the requested State provides an insufficient response or when the requesting State does not receive a response at all. In these cases the requesting State "may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties."²⁴⁹ There is also the possibility to request a special meeting of the States Parties, also in this case through the UN Secretary-General, which will be held if one-third of the States Parties agree

²⁴³ S. Maslen, P. Herby, "An International ban on anti-personnel mines: History and negotiation of the 'Ottawa Treaty', *International Review of the Red Cross*, no. 325 (1998), available at <https://www.icrc.org/eng/resources/documents/article/other/57jpin.htm>.

²⁴⁴ S. Maslen, *supra* note (17), p. 218.

²⁴⁵ T. Hajnoczi, T. Desch, D. Chatsis, "The Ban Treaty", *supra* note (116), p. 301.

²⁴⁶ *Ibid.*, pp. 301-302.

²⁴⁷ Article 8(1).

²⁴⁸ Article 8(2).

²⁴⁹ Article 8(3).

(within 14 days).²⁵⁰ The requesting State is not obliged to proceed with the second stage however, when it decide to go on, the UN Secretary-General has to send the Request of Clarification and all the related information to all the States Parties.

The third stage is the meeting (regular or special) where first of all States have to “determine whether to consider the matter further ... they shall make every effort to reach a decision by consensus,”²⁵¹ but if they do not reach an agreement, a decision will be taken by the majority of States.

During this stage all the States have to participate actively, and if necessary, they can require a fact-finding mission and “decide on its mandate by a majority of States Parties present and voting.”²⁵²

Also the Requested State can invite a fact-finding mission on its territory and in this case without the need for an authorization.²⁵³

The fourth stage concerns the mission. It consist in nine experts chosen by the UN Secretary-General from a list prepared by States and “upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State party.”²⁵⁴

The requested State is responsible for the mission’s security and it has to “grant access for the fact-finding mission to all areas ... where facts relevant to the compliance issue could be expected to be collected.”²⁵⁵

The final stage consist in a review of all the information gathered during the mission. In fact, the mission reports “the results of its findings”²⁵⁶ through the Secretary-General to the Meeting of the States Parties that decide what measures the State, which has not complied with the Treaty, has to take “to address the compliance ... [then] the requested State shall report on all measures taken.”²⁵⁷

Finally, the Meeting of the States Parties may suggest other means and ways to further clarify or resolve the situation “including ... procedures in conformity with international law.”²⁵⁸ These are not explained in the Treaty, however they could be a suspension of the assistance provided by article 6 of the Convention, or a referral of the matter to the United Nations.²⁵⁹

²⁵⁰ Article 8(5).

²⁵¹ Article 8(6).

²⁵² Article 8(8).

²⁵³ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 302.

²⁵⁴ Article 8(11).

²⁵⁵ Article 8(14).

²⁵⁶ Article 8(17).

²⁵⁷ Article 8(18).

²⁵⁸ Article 8(19).

²⁵⁹ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), p. 303.

IV. THE SECOND INTERNATIONAL LEGAL INSTRUMENT: THE CONVENTION ON CLUSTER MUNITIONS.

1. The Convention on Cluster Munitions: an Introduction.²⁶⁰

Contrary to the general impression, the concerns about cluster munitions (CMs) are not a recent phenomenon, in fact it dated back to the 1970s. However, only in the 2000s there were the conditions for beginning the process that led to the ratification of the Convention on Cluster Munitions.

Historical reasons, disappointing results of the CCW and the extraordinary success of the *Mine Ban Treaty* explain this noteworthy process. On 30 May 2008 107 States decided to adopt the Convention on Cluster Munitions (CCM). This Convention was the final result of a process, the so-called “Oslo Process” that began on 23 February 2007 in Oslo when 46 States made a epoch-making declaration. In fact, “Recognizing the grave consequences caused by the use of cluster munitions and the need for immediate action, states commit themselves to:”²⁶¹

1. Conclude by 2008 a legally binding international instrument that will:
 - (i) prohibit the use, production, transfer and stockpiling of cluster munitions ...
 - (ii) establish a framework for cooperation and assistance that ensures ... provision of care and rehabilitation to survivors and their communities, clearance of contaminated areas, risk education and destruction of stockpiles of ... cluster munitions. ...
4. Meet again to continue their work

The Oslo Process lasted two years and it provided the appropriate structure to transform the concerns linked to the humanitarian consequences for the use of the cluster munitions, into an international legal instrument. Prior to the CCM, the use of the cluster munitions was allowed, the only limitation was that like the other weapons also the cluster munitions were subjected to the IHL. In particular, in the 2000s there were concerns and debates around the indiscriminate effects of unexploded ordnances since this issue was deeply related to two essential principles of the IHL, the rule against the indiscriminate attacks and that of the proportionality. To understand the reasons of a ban on cluster

²⁶⁰ Convention on Cluster Munitions, for the text see annex 2. It entered into force on 01 August 2010, and to date 116 States have joined the Convention, of which 89 are States Parties, and 27 States are signatories, see “Treaty Status”, Cluster Muniton Coalition (CMC), accessed in January 2015, available at <http://www.stopclustermunitions.org/en-gb/the-treaty/treaty-status.aspx>.

²⁶¹ Oslo Conference on Cluster Muniton, 22-23 February 2007, Declaration, available at <http://www.clusterconvention.org/documents-and-resources/documents-from-the-process-on-cluster-munitions/>.

munitions it is necessary to examine what these weapons are and what are the problems related to their use.²⁶²

2. What are Cluster Munitions?

A cluster munition, or cluster bomb is a weapon containing multiple explosive submunitions that are released over a large area.

As the name suggests, the container of this weapons may contain explosives, smoke, tear gas, chaff, pyrotechnics, leaflets or other items and the number of submunitions varies from two up to hundreds. They are dropped from aircraft or they can be fired from the ground or sea.

According to Human Rights Watch, which is a founding member of the Cluster Munition Coalition (CMC), this weapon endangers civilians not only during a conflict, but also when it ends. In fact, they are scattered over a wide area and anybody within that area (be they a soldier or a civilian) risks to be injured or killed.

Moreover, although they are designed to explode when they fall on the ground, a very large number of the submunitions released fails to explode therefore they lay on the ground waiting for their victims, “becoming *de facto* landmines.”²⁶³

In fact, they are an indiscriminate weapon like the landmine, however according to Handicap International they are more likely to kill and to cause multiple casualties.²⁶⁴

2.1. Military use.

Initially emerged during the Second World War, cluster bombs were considered a powerful weapon by the military sphere.

They were increasingly developed after the end of the war because the trends of war changed, therefore militaries wanted weapons able to kill more efficiently and over a larger area.

The United States during the Cold war used and developed the technology of cluster bombs as they aimed at using the superior technology to defeat manpower.

In fact, in that period and exactly during the Korean war the American military feared that its technological superiority could be defeated by the overwhelming numbers of Chinese and North Korean troops.

Hence, the US promoted the development of the weaponry, in particular military technology focused on the “fragmentation”, since the fragmentation bombs could, after the explosion, scatter hundreds of

²⁶² B. Rappert, R. Moyes, “The Prohibition of Cluster Munitions: Setting International Precedents for Defining Inhumanity”, *The Nonproliferation Review* 16, no.2 (2009): 237-240.

²⁶³ “Cluster Munitions”, Human Rights Watch, available at <http://www.hrw.org/>. See also “Introduction to mine action”, GICHD, available at <http://www.gichd.org/mine-action-topics/introduction-to-mine-action/#.VK0LLMstDmI>; and “What is a cluster bomb?”, CMC, available at <http://www.stopclustermunitions.org/en-gb/cluster-bombs/what-is-a-cluster-bomb.aspx>.

²⁶⁴ “Cluster Bombs”, Handicap International, available at http://www.handicap-international.us/cluster_bombs. All accessed in December 2014.

fragments at a high speed killing or seriously injuring everything on a wide area. These weapons were therefore used in many conflicts, for example in Indochina between the 1960s and 1970s.

Despite the different names that were used (antipersonnel bombs, or pellet bombs) and the wide variety of these weapons (according to the Cluster Munition Monitor there are over 200 types of cluster munitions)²⁶⁵ it became possible to include every variety inside the denomination of “cluster munition.”

2.2. The Path Towards a Ban on Cluster Munitions: from 1970s to 2006.

In the 1970s, the discourse about the respect for humanitarian rules during a conflict gained momentum, because the changed trends of warfare (from international to internal conflicts, and from organized armies to guerrilla groups) impeded the application of IHL principles.

As already said in the first chapter, to respond to this necessity and in particular to ensure the protection of civilians, the *Diplomatic Conference* adopted two Additional Protocols to the Geneva Conventions, however they did not address a specific weapon.

Between 1974 and 1977 a Committee on Conventional Weapons proposed to ban cluster munitions because of the devastating effects of the “fragmentation”.

Similarly, the ICRC was engaged in this issue and during the 1970s it held meetings and published a report “Weapons that may Cause Unnecessary Suffering or Have Indiscriminate Effects” in which it analyzed the principal categories of weapons (including the fragmentation weapons) the existing limitation rules and aimed at compiling “facts – legal, military and medical – relevant to any discussion to that end [to present proposals for the prohibitions or restriction of the use of any of the weapon systems discussed] which governments ... and other international bodies may undertake.”²⁶⁶

Although it was recognized that the cluster munitions were among the categories of weapons that caused unnecessary suffering and had indiscriminate effects, the 1980 CCW did not include rules on these devices. In fact, it applied only to incendiary weapons, mines and booby-traps, and weapons designed to cause casualties through very small fragments.

Afterwards, the attention of governments and civil society focused on the humanitarian impact of the AP mines. In fact, as examined above, the 1990s were characterized by the extraordinary *Ottawa Process* and “the challenges of bringing the new Mine Ban Treaty into legal force and practical implementation loomed.”²⁶⁷

²⁶⁵ See “The Cluster Munition Coalition” at <http://www.stopclustermunitions.org/en-gb/cluster-bombs/what-is-a-cluster-bomb.aspx>, accessed in December 2014.

²⁶⁶ L. Maresca and S. Maslen, *supra* note (56), p. 42.

²⁶⁷ J. Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won* (New York; Geneva: United Nations, 2009), 34.

Prior to 2006, many NGOs demanded a “freeze or moratorium” on the cluster bombs.²⁶⁸ In 1999 Human Rights Watch was the first non-governmental organization to “call for a halt on use” of this weapon²⁶⁹, however there was the tendency not only to discuss the permissibility of such a weapon from a military point of view, but also to assume that it was permissible until proven otherwise.

According to the ICRC “The use of cluster bombs and other types of submunitions against military objectives in populated areas should be prohibited ... should be fitted with mechanisms which will ensure their self-destruction immediately after the device fails to explode upon impact as designed ... The use of cluster bombs should be suspended until an international agreement on their use and clearance has been achieved.”²⁷⁰ This last sentence refers to a suspension, not a ban and therefore it represented the opinions of that time.

2.2.1. States’ Approaches before 2006.

States’ approaches before 2006 were three: while some States thought that cluster munitions did not pose any particular threat to people, others had different ideas and sought limited reforms because they differentiated between types of cluster munitions. A third approach belonged to some States that wanted to raise the reliability rate.

For example, the US the Secretary of Defense William Cohen established that its purpose was to reach a functioning rate of CMs of 99%.²⁷¹ Other States, such as Argentina, Denmark and Germany set minimum reliability rates at 99%.²⁷²

For instance, Germany was among the first supporters who wanted to reduce “the humanitarian impact of cluster munitions, primarily through technological improvements aimed at improving the reliability and accuracy of the weapons.”²⁷³

The last approach belonged to States that urged “substantial action”. On 13 December 2001 the European Parliament adopted a resolution on cluster bombs:²⁷⁴

[it called upon a] moratorium until an international agreement has been negotiated on the regulation, restriction or banning of the use, production, and transfer of cluster munitions under the CCW.

²⁶⁸ B. Rappert, R. Moyes, *supra* note (262), p. 241.

²⁶⁹ S. D. Goose, “Cluster Munitions: Ban Them”, *Arms Control Today* (2008), online at https://www.armscontrol.org/act/2008_01-02/goose.

²⁷⁰ “Existing Principles and Rules of International Humanitarian Law Applicable to Munitions that May Become Explosive Remnants of War,” ICRC 2005.

²⁷¹ The Monitor, *Banning Cluster Munitions: Government Policy and Practice* (Ottawa: Mine Action Canada, 2009), 18; “Cluster Munitions too costly: Department of Defense FY 2005 Budget requests related to cluster munitions”, Human Rights Watch (2004), 4.

²⁷² B. Rappert, R. Moyes, *supra* note (262), p. 242.

²⁷³ The Monitor, *supra* note (271), p. 78.

²⁷⁴ European Parliament, *European Parliament Resolution on Cluster Bombs*, 13 December 2001, online at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P5-RC-2001-0765&language=EN>.

In the same year, Norway declared its support to a process that could bring about a ban on cluster munitions, however this approach did not gain support until 2006. Several armed conflicts contributed to raise the attention on the impact of this weapon. In 1999 both the NATO and Serb forces used CMs during the conflict in Kosovo, where about 295.000 submunitions in about 1.765 cluster bombs were released and as denounced by the ICRC they also caused deaths and injuries between civilians.²⁷⁵

Since the NATO campaign was intended to be a humanitarian mission the errors in targeting raised “serious concerns under international humanitarian law ...[which] prohibits indiscriminate attacks”²⁷⁶ with repercussions on the post-conflict period: at least 1.200 civilian casualties and the resulted \$30 million of expenditure for the clearance.²⁷⁷

The unreliability of CMs and the high failure rates demonstrated that CMs were problematic weapons. In the post-conflict situation in Kosovo Human Rights Watch addressed the members of the CCW “calling for a global moratorium on the use of cluster bombs”²⁷⁸ and also other NGOs, such as Mines Action Canada and Landmine Action joined the work of Human Rights Watch. The experience of Kosovo together with reports on the consequences of cluster munitions in other places succeeded in bringing the matter in the CCW forum.

3. Protocol V.

Meetings and negotiations between 2000 and 2002²⁷⁹ culminated in the adoption of Protocol V, a Protocol on Explosive Remnants of War (ERW).²⁸⁰

It was adopted by the Meeting of the States Parties to the CCW on 28 November 2003 and it contained measures to reduce the humanitarian impact on civilians of ERW, for example it provides that after the end of a conflict States Parties had to clear the territories under their control and to take all the useful precautions to protect civilians from ERW.

However, it does not contain provisions “to prevent munitions from becoming ERW ... nor does it address the use of cluster munitions during armed conflicts.” In the same month it was launched the

²⁷⁵ ICRC, *Humanitarian, military, technical and legal challenges of cluster munition* (Geneva: ICRC, 2007), 16, available online at <https://www.icrc.org/eng/resources/documents/publication/p0915.htm>.

²⁷⁶ Human Rights Watch, *Ticking Time Bombs: NATO's use of cluster munitions in Yugoslavia* (1999), available at <http://www.hrw.org/reports/1999/06/01/ticking-time-bombs>.

²⁷⁷ Human Rights Watch, *Civilian deaths in the NATO air campaign* 12, no. 1 (2000), 3, online at <http://pantheon.hrw.org/reports/2000/nato/>; ICRC, *supra* note (275), p. 16.

²⁷⁸ “Cluster Bombs: Memorandum For Convention on Conventional Weapons (CCW) Delegates,” Human Rights Watch (1999), available at <http://www.hrw.org/pt/news/1999/12/15/cluster-bombs-memorandum-convention-conventional-weapons-ccw-delegates>.

²⁷⁹ For more information on the events behind the agreement on the explosive remnants of war (ERW) see J. Borrie, *supra* note (267), pp. 44-49.

²⁸⁰ Protocol on Explosive Remnants of War (Protocol V to the 1980 CCW), negotiated in 2002-2003, adopted on 28 November 2003 and entered into force on 12 November 2006, the text is available at [http://www.unog.ch/80256EE600585943/\(httpPages\)/C7DDB8CCD5DD3BB7C12571D8004247FA?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/C7DDB8CCD5DD3BB7C12571D8004247FA?OpenDocument). The term ERW describes a wide range of unexploded or abandoned ordnances that remain on the ground after the end of armed conflicts. Examples of ERW are: artillery shells, grenades, submunitions, and other explosive devices. See “Explosive remnants of war”, ICRC, available at <https://www.icrc.org/eng/war-and-law/weapons/explosive-remnants-war/overview-explosive-remnants-of-war.htm>, accessed in December 2014.

Cluster Munition Coalition (CMC) and it immediately expressed its disappointment for the lack of Protocol V, thus it urged States to reach an agreement to address the problem of CMs.

The CMC is an international coalition of NGOs “working in around 100 countries to eradicate cluster munitions, prevent further casualties ... and put an end for all time to the suffering they cause.”²⁸¹

However, until 2006 the CMC’s efforts made little headway since the attention was concentrated on the implementation of the Mine Ban Treaty.

4. 2006: The Turning Point.

In June 2006 Belgium was the first country to formally prohibit the manufacture, trade and use of CMs. Nonetheless, in July during the conflict in Lebanon between Hezbollah and Israel, cluster munitions were largely deployed, in particular by the Israeli army during the last days. These “massive quantities of ground-launched cluster munitions ... underlined both the humanitarian risks” and the high submunition failure rate in operational activities.²⁸²

In the same year, though UN team visited Lebanon and in its report it condemned Israel’s way of conducting hostilities because of its “refusal to ... distinguish Hezbollah fighters from civilians” and also its “reckless, perhaps even deliberately reckless use of cluster munitions.”²⁸³ In the same report it recommended the Human Rights Council to “take urgent action to add cluster munitions to the list of weapons banned under international law.”²⁸⁴

An increasing number of States began to support and call for a ban on CMs, and in the occasion of the Third Review Conference of the CCW (November 2006) the UN Secretary-General Kofi Annan “called for a ‘freeze’ on the use of cluster munitions in populated areas and for ‘inaccurate and unreliable’ cluster munitions to be destroyed.”²⁸⁵

At the end of the Review Conference a group of States that were against the CMs made a declaration through which they called for “an agreement that should ... prohibit the use of cluster munitions within concentration of civilians, prohibit ... the use of cluster munitions that pose serious humanitarian hazards.”²⁸⁶

²⁸¹ “About CMC”, Cluster Munition Coalition, available at <http://wearecmc.tumblr.com/Aboutcmc>, accessed in December 2014.

²⁸² G. Nystuen, S. Maslen, *The Convention on Cluster Munitions: a commentary* (Oxford; New York: Oxford University Press, 2010), 15.

²⁸³ Human Rights Council, *Report of four Special Rapporteurs on their mission to Lebanon and Israel* (2006), available at http://www.humanrightsvoices.org/assets/attachments/documents/4_special_rpas_report_2nd_session.pdf.

²⁸⁴ *Ibid.*, p. 25. See also B. Rappert, R. Moyes, *supra* note (262), p. 243.

²⁸⁵ G. Nystuen, S. Maslen, *supra* note (282), p. 16.

²⁸⁶ “Declaration on Cluster Munitions” 20 November 2006, presented by Austria, Belgium, Bosnia-Herzegovina, Croatia, Costa Rica, Czech Republic, Denmark, Germany, Holy See, Hungary, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, New Zealand, Norway, Peru, Portugal, Serbia, Slovakia, Slovenia, Sweden And Switzerland, available at <http://www.hrw.org/legacy/backgrounder/arms/cluster0207/7.htm>.

Meanwhile, Norway announced its intention to organize an international Conference in Oslo “to start a process towards an international ban on cluster munitions ... the time is ripe to establish broad co-operation on a concerted effort to achieve a ban”²⁸⁷ and invited other States to join it.

5. The Oslo Process.

49 States, UN agencies, the CMC and the ICRC participated in the Oslo Conference (22-23 February 2007). It ended with the Declaration mentioned above that constituted an engagement to conclude by the end of 2008 a legal agreement to ban CMs.

The second international meeting took place in Lima (23-25 May 2007). Here 67 States discussed on the first draft text of the Convention and they indentified some pillars for the future Treaty: the prohibition of the use, production and trade of CMs, the necessity of deadlines to destruct the stockpiles and clear the areas affected by CMs and finally the obligation to assist victims.

As during the Ottawa Process, during the Oslo Process also several regional meetings were organized and they contributed to strengthen the international path towards a ban on CMs. For example, meetings were held in Costa Rica, Belgrade and Brussels and in the same year it was celebrated the first Global Day of Action on CMs, organized by the CMC. Despite the opposition of several States, which continued to express their intention not to adopt a ban on this weapon and to use as their point of reference the CCW, the Oslo Process proceeded.

The following meeting was held in Vienna (5-7 December 2007). This Conference was full of noteworthy events. First of all, it saw the participation of 138 countries and delegates of the civil society from 50 States.

Moreover, in that occasion it became evident the wide consensus around some key points of the future Treaty: the clearance of affected territories, the necessity of assisting victims, the international cooperation and assistance, and the destruction of stockpiles. Nevertheless, there were different opinions on other issues, and in particular on the definition of cluster munition.²⁸⁸

The fourth international Conference was held in Wellington (18-22 February 2008) and it was characterized by polemics and divisions.²⁸⁹ It gathered 106 countries and they discussed the draft “Cluster Munitions Convention” dated 21 January 2008, which had been revised after the Vienna Conference.

The text was the biggest contentious issue during the negotiations because some States proposed to amend the text. The main proposals wanted to provide exceptions from the prohibition on the use of CMs, a transition period in which States Parties would not be obliged to comply with the Convention, and the possibility for States Parties to join military operations with States not Party.

²⁸⁷ “Norway takes the initiative for a ban on cluster munitions,” Norwegian Ministry of Foreign Affairs, Press release, 17 November 2006, www.regjeringen.no.

²⁸⁸ G. Nystuen, S. Maslen, *supra* note (282), pp. 14-36.

²⁸⁹ J. Borrie, *supra* note (267), pp. 204-226.

Obviously, many other States, the CMC and the ICRC opposed these proposals because they could turn the Convention into a weak agreement. Given the presence of two opposite sides the draft text remained unchanged and it was “adopted a ... solution to ease the tensions.

It forwarded the draft convention text to Dublin as the basis for negotiations and compiled the proposals into an attached 'Compendium' for further considerations.”²⁹⁰ The Wellington Conference ended with the adoption of a Declaration that reiterated the main purposes already announced in the Oslo Declaration, and especially it committed the Signatories to negotiate the text of the Convention in the following meeting in Dublin using the Wellington text as the basis for the negotiations.

Finally, during this Conference States also decided the rules for the decision-making process. As for the negotiation of the Ottawa Treaty, international organizations and the CMC were allowed to participate in the formal talks as observers, and regarding eventual amendments, States decided that any change could be accepted after the approval of the two-thirds of the participants.²⁹¹

The Dublin Conference (19-30 May 2008) was attended by 127 States that discussed article-by-article the draft text and despite the different opinions on several issues (the deadlines for stockpile destruction, provisions for victim assistance, the definition of CMs, etc.) States wanted to cooperate and find compromises.

Surely, the lobbying activities of the CMC delegates had an essential role in the success of the negotiations. In fact, they provide advices to States, publicized information on the draft text, involved the media to reach the public opinion and organized public events in Dublin. On 28 May an agreement on the draft text was reached and after two days it was formally adopted by 107 States.²⁹²

The final step of the Oslo Process was the Convention on Cluster Munitions Signing Conference that was held in Oslo (3-4 December 2008). Here 94 States signed the Convention on Cluster Munitions that entered into force on 1 August 2010, the first day of the sixth month after the deposit of the thirtieth instrument of ratification (article 17 of the Convention).²⁹³

V. ANALYSIS OF THE CONVENTION ON CLUSTER MUNITIONS.

Once again, governments together with international organizations and non-governmental organizations achieved a legal instrument that addressed both disarmament and humanitarian obligations.

As said by one of the delegates who attended the 2008 *Oslo Conference* “The value of this treaty goes far beyond its provisions alone. It is the proof that the international community can work together to

²⁹⁰ Human Rights Watch, *Meeting the challenge* (2010), available at <http://www.hrw.org/reports/2010/11/22/meeting-challenge>, accessed in December 2014.

²⁹¹ For more information on the Wellington Declaration see J. Borrie, *supra* note (267), p. 216.

²⁹² Human Rights Watch, *supra* note (290).

²⁹³ The Monitor, *supra* note (271), p.9.

take decisive action in the face of humanitarian suffering. It is proof that bold new steps are possible in the disarmament arena.”²⁹⁴

It is worth analyzing some provisions of the Convention in order to understand the two souls of the CCM, i.e. articles related to the disarmament (the ban on use, production and trade of CMs and the deadline for the stockpile destruction), and those concerned with the humanitarian aspects (the clearance of the contaminated areas, risk education, victim assistance and international support).²⁹⁵

The final outcome of 15 months of negotiations, the Convention is composed by 23 articles that can be divided into two groups: negative and positive obligations.

1. Preamble and Definitions.

Beginning with the Preamble of the Convention, it affirms that civilians “bear the brunt of armed conflict”, and it discloses the goal of the Treaty “determined to put an end ... to the suffering and casualties caused by cluster munitions” underlining that this weapon cause damages not only during but also after the end of armed conflicts.

Two relevant aspects are the presence of five paragraphs dedicated to the theme of victim assistance, which confirms the importance of this issue for the Convention and the reference to the “armed groups” that the Preamble distinguishes from the armed forces of a State. This is interesting because for the first time a weapons convention “explicitly names non-state armed groups as forces whose actions must also be addressed.”²⁹⁶

Prior to the obligations it is important to clarify the definitions. This issue had been the object of debates all along the negotiation process. In fact, since the beginning the draft treaty wanted to define what should be banned, however this was not simple. In fact, some States argued that “cluster munitions” and “cluster munitions that cause unacceptable harm to civilians” were not synonyms and they cited the Oslo Declaration as a proof.

On the other hand, other countries as well as the CMC called for “no exemptions for permissible cluster munitions within the treaty.”²⁹⁷ In point of fact, in the end of negotiations they agreed (in view of reaching an agreement) that “weapons that contain submunitions are not likely to have the same negative effects that make cluster munitions objectionable, that is, indiscriminate area effects and risks posed by unexploded ordnance (UXO), and therefore these weapons should not be considered cluster munitions.”²⁹⁸

²⁹⁴ “New Zealand Statement, Signing Ceremony”, 3 December 2008, available at <http://www.osloccm.no/pop.cfm?FuseAction=Doc&pAction=View&pDocumentId=17943>. Statements of other States are available at <http://www.osloccm.no/nationalstatements.cfm>.

²⁹⁵ “Introduction”, Landmine and Cluster Munition Monitor, available at http://www.the-monitor.org/index.php/publications/display?url=cm/2009/CMM_Intro.html#footnote-9915-15, accessed in December 2014.

²⁹⁶ Preamble of the Convention on Cluster Munition, see the text in Annex 2. Hereinafter unless indicated otherwise the articles cited in this chapter will refer to the CCM.

²⁹⁷ B. Rappert, R. Moyes, *supra* note (262), p. 245.

²⁹⁸ The Monitor, *supra* note (271), p. 8.

The structure of the definition of cluster munition decided during the Vienna Conference did not undergo relevant changes until the final adoption in 2008 and it established that “all weapons falling within the initial, broad category of cluster munitions were regarded as impermissible until the case was made otherwise.”²⁹⁹

Article 2(2) provides an objective and technical definition affirming that it “means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions.”

Then, it enumerates a number of exclusions for devices that do not fall under this definition. Article 2(2)(c) begins with the phrase “A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics” and then it provides a list of criteria that a weapon has to entirely possess to escape the prohibition.

Thus, the phrase indicates that States Parties have not to build devices that pose the same risks of unexploded submunitions and then, thanks to the detailed list of criteria, it extends the range of weapons prohibited.

Finally article 2(7) explains the meaning of “cluster munition remnants” that include: failed cluster munitions, abandoned CMs, unexploded submunitions and unexploded bomblets, all defined in article 2. Therefore, the structure of article 2, thanks to numerous and precise details that a device has to possess not to fall under the prohibition, ensures a broad ban.

It is interesting the history behind this article since it has been the result of the shifting of the burden of the proof. In fact, during the negotiation of the draft the humanitarian consequences of CMs became increasingly well-known and this provoked an important change: until 2006 the humanitarian impact was weighed against the military utility of CMs, after 2006 States who wanted exclusions had the burden of proof, so it was up to them to demonstrate that some types of CMs were permissible. Thus, this “structure favored a broader definition.”³⁰⁰

2. Prohibitions.

Since the measures of the Treaty aim at “eliminate future humanitarian problems from cluster munitions”, it is evident that the first main obligation, i.e. article 1(a) concerns the prohibition of the use of CMs. For the same reason, article 1(b) prohibits States Parties to develop, produce, acquire, stockpile an transfer CMs.

The last point (c) forbids States from assisting or encouraging others in any activities prohibited under the Convention. This provision like the others applies “under any circumstances” and it is addressed to anyone, that is not only States but also individuals or other groups.

²⁹⁹ B. Rappert, R. Moyes, *supra* note (262), p. 246.

³⁰⁰ B. Rappert, R. Moyes, *supra* note (262), pp. 242-248.

Moreover, it refers to a wide range of activities, for instance, storing CMs that belong to a non-state party, requesting a non-state party to use CMs, or encouraging it in the CMs production. These are only some examples, and in general the prohibition of assistance has to be understood as any active or passive activity that incite the involvement in activities prohibited by the CCM.

As in the Ottawa Treaty these general obligations contained in article 1 are introduced by the warning “never under any circumstances” to highlight that they are intended to be respected both during and after armed conflicts as well as other national activities.

2.1. Assistance and Relations with Non Members States.

The issue of assistance is linked to article 21, which refers to “Relations with States not party to this Convention”, one of the most debated question during the negotiation process.

Since this article allows States Parties to “engage in military cooperation and operations with States not party that might engage in activities prohibited to a State Party”³⁰¹ this seems to be in contrast with article 1(1)(c).

The Vienna Convention of the Law of Treaties provides the essential rules for the interpretation of treaties, stating that a Treaty “shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”³⁰², hence considering the purpose of the CCM, i.e. the elimination of CMs in order to halt the suffering they cause, article 21 cannot be interpreted as going against the main purpose of the Convention.

On the contrary, a joint military operation between a State Party and a non-State Party “that might engage in activities prohibited to a State Party”³⁰³ should to be interpreted as being permissible as long as “the ban on assistance with prohibited acts is maintained.”

Unlike the Mine Ban Treaty, the CCM contains article 21 that was included later during the negotiation process and it has long been debated. Article 21(1) and (2) encourages States to promote the Convention so that other States ratify it, and to dissuade States not party from using CMs.

The other two paragraphs regulate the relations with non-party States in case of military cooperation.

Paragraph 3 clearly allows the interoperability (joint military operations with States not party), and paragraph 4 specifies that some activities are not permissible during that military cooperation, for examples the production, the use, the stockpile and transfer of CMs. This paragraph shall be understood as a further support to the similar prohibitions included in article 1.

³⁰¹ Article 21(3).

³⁰² Article 31(1), Vienna Convention on the Law Of Treaties (Vienna, 23 May 1969), entered into force 27 January 1980, online at <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

³⁰³ Article 21(3).

Since the negotiation of the Treaty some States have considered article 21 as the possibility to bypass the prohibition on assistance during joint military operations. In point of fact, taking into account the rules for the interpretation of Treaties, it turns out that “while paragraph 3 ... states that participation in joint operations is permitted it would contradict the object and purpose of the convention to understand it to waive the prohibition on assistance during these operations.”³⁰⁴

Despite the fact that today the majority of States have agreed that the prohibition on assistance is always effective, this issue is still debated, also because the provisions of article 21 have never appeared in a weapons treaty before the CCM.³⁰⁵

3. Positive Obligations: The Destruction of Stockpiles.

There are also some positive obligations related to both the disarmament and the humanitarian aspect.

Beginning with article 3, it is intended to halt the threat posed by the use of CMs by the destruction of stockpiles. In fact, it requires States Parties to “destroy or ensure the destruction of all cluster munitions ... as soon as possible but not later than eight years after the entry into force of this Convention.”³⁰⁶

This provision has been elaborated by States because they were deeply concerned about the large number of CMs stockpiled around the world, therefore it was necessary to destroy them so as to also eliminate the possibility for States to use them or deliver these devices to other armed groups.

As already announced in the Preamble the most serious and compelling question were “the dangers presented by the large national stockpiles of cluster munitions retained for operational use”, hence it adds “ [The States Parties to this Convention are] *determined* to ensure their rapid destruction.”

In order to better understand the urgency of this obligation it is useful to mention that according to the available information between 2002 and 2009 the number of States that possessed stockpiles of CMs grew from 56 to 85.

Despite the fact that several States even before the ratification of the Convention had begun to destroy their stockpiles, according to the Monitor in 2009 there were around billions submunitions contained in cluster munitions.³⁰⁷

There is also the possibility to extend the deadline for complying with this obligation. In fact, unlike the *Mine Ban Treaty* here States can demand for an extension up to 4 years, but it is specified that this request is allowed for “exceptional circumstances” and States have to provide “a detailed explanation

³⁰⁴ “Staying True to the Ban on Cluster Munitions”, Human Rights Watch (2009), available at <http://www.hrw.org/news/2009/06/22/staying-true-ban-cluster-munitions>.

³⁰⁵ Human Rights Watch, *supra* note (290), p. 144.

³⁰⁶ Article 3(2) and 3(3).

³⁰⁷ “Global Overview of Government Policy and Practice”, The Landmine and Cluster Munition Monitor (2009), in *Banning Cluster Munitions: Government Policy and Practice*, *supra* note (271), pp. 11- 26. To see States that possessed stockpiles of cluster munitions before the entry into force of the Convention, see “A global overview of explosive submunitions”, Human Rights Watch (2002), available at <http://www.hrw.org/legacy/backgrounder/arms/submunitions.pdf>.

of the proposed extension ... a plan for how and when stockpile destruction will be completed ... the quantity and type of cluster munitions and explosive submunitions held at the entry into force of this Convention” plus the quantity of CMs already destroyed and finally the remaining quantity.³⁰⁸

3.1. Positive Humanitarian Obligations.

As regards the humanitarian obligations, they are concerned with the clearance, risk education and victim assistance, i.e. articles 4, 2(1) and 5. As for AP mines in the Ottawa Treaty, according to article 4 States are obliged to clear CMs in the territories under their jurisdiction or control as soon as possible but not later than 10 years after the entry into force.³⁰⁹

During this activity, States Parties “shall take the following measures”: assess and record the threat posed by CMs “making every effort” to identify the areas contaminated, mark and monitor those areas in order to protect civilians, develop a plan to undertake the clearance, and finally proceed with the clearance of all cluster munitions remnants.

Finally States have to provide risk education “to ensure awareness among civilians living in or around cluster munition contaminated areas.”³¹⁰

As for the provision on the destruction of stockpiles, States can demand an extension of the deadline up to five years. To do so, they have to submit their request to a Meeting of States Parties or to a Review Conference.³¹¹

One interesting provision is article 4(4), according to which:

in cases in which cluster munitions have been used or abandoned by one State Party prior the entry into force of this Convention ... and have become cluster munitions remnants that are located in areas under the jurisdiction or control of another State Party ... the former State Party is strongly encouraged to provide ... assistance to the latter ... to facilitate the ... clearance and destruction of such ... remnants.³¹²

Through this article, for the first time a weapons Convention places some responsibility on States that used CMs prior the entry into force of the CCM.

The novelty is that for the first time a weapons treaty “imposes retroactive responsibility on user States to assist with clearance of failed weapons.”³¹³ Paragraph (a) states that the “user” State has to provide assistance to the affected one, directly or through a third party, such as the UN system.

³⁰⁸ Article 3(4).

³⁰⁹ Article 4(1).

³¹⁰ Article 4(2).

³¹¹ Article 4(5); details that have to be included in the request are explained in article 4(6) and they are similar to those needed for the deadline extension for the destruction of stockpiles.

³¹² Article 4(4).

³¹³ B. Docherty, “Breaking New Ground: The Convention on Cluster Munitions and the Evolution of International Humanitarian Law”, *Human Rights Quarterly* 31, no. 4 (2009), pp. 952-953, online at <http://www.jstor.org/stable/40389982>.

There are various types of assistance: technical, financial, material and human resources. Paragraph (b) says that the assistance “shall include ... information on types and quantities of the cluster munitions used, precise locations ... and areas in which ... remnants are known to be located.”³¹⁴

On the occasion of the Wellington Conference (February 2008) Human Rights Watch expressed its satisfaction for the inclusion of such a provision in the draft treaty, because it claimed that a ban on production, transfer, stockpiling, and use of CMs was not sufficient to eliminate the danger posed by devices that had been scattered on the ground before the negotiation of the Convention.³¹⁵

The most similar precedents to this provision are located in Protocol V to the CCW, i.e. article 7(2) and 3(1).³¹⁶ Article 7(2) establishes that States Parties “in a position to do so shall provide assistance in dealing with the problems posed by existing explosive remnants of war, as necessary and feasible.”³¹⁷

While it explicitly refers to preexisting CMs, it does not establish any responsibility for the user States.

On the other hand, article 3(1) requires a user State to “provide where feasible, inter alia technical, financial, material or human resources assistance ... to facilitate the marking and clearance, removal or destruction of such explosive remnants of war.”³¹⁸ Here, it is mentioned the responsibility of user States, however it only applies to ERW placed after the entry into force of the Convention.

In short, article 4(4) of the CCM brings these two principles together, therefore it can help affected states meet their obligations and finally, it could be a model for future treaties that could establish retroactive responsibilities for other post-conflict situations in order to make a step forward in the path towards civilian protection.³¹⁹

As regards the provisions on victim assistance, they are considered “the most groundbreaking part”³²⁰ of the CCM. Bearing in mind the object of the Treaty, articles related to victim assistance aim at halting the sufferings many people were subjected to. Article 2(1) provides a definition of cluster munition victim that includes persons who have been killed as well as who suffered physical and psychological injuries, economic and social difficulties because of the use of CMs. In addition, the definition extends its scope and even families and communities of victims fall under it.³²¹

Then, article 5 is completely dedicated to this issue. It requires States Parties to provide age and gender assistance including medical care, rehabilitation, psychological, social and economic support.³²²

³¹⁴ Article 4(4)(b).

³¹⁵ “User State Responsibility for Cluster Munition Clearance”, Human Rights Watch (2009), available at <http://www.hrw.org/news/2008/02/19/user-state-responsibility-cluster-munition-clearance>.

³¹⁶ There are further examples of the principle of placing part of the responsibility on user States that preceded the CCM, to deeper this issue see B. Docherty, *supra* note (313), p. 954, and “User State Responsibility for Cluster Munition Clearance”, *supra* note (315).

³¹⁷ Protocol V, *supra* note (280), article 7(2).

³¹⁸ *Ibid.*, article 3(1).

³¹⁹ B. Docherty, *supra* note (313), pp. 952-955.

³²⁰ R. E. Williams Jr., P. R. Viotti, *Arms control: theory, and policy*, Vol.1 (Santa Barbara, CA: Praeger, 2012), 272.

³²¹ Article 2(1).

³²² Article 5(1).

Paragraph 2 explains how States have to fulfill their obligations. For example, they have to assess the needs of victims, develop national laws, a plan and the budget, make available resources, not discriminate between victims, involve the victims.³²³

Going deeper in this matter, unlike its “predecessors”³²⁴, the CCM highlights its main objective, i.e. the protection of civilians, giving to the definition of cluster munition victim the first place in article 2, in fact it comes even before the definition of cluster munition.

Next, it considers victims not only who has been directly injured, but also its family or community. Furthermore, every provision throughout the Convention that is related to victim assistance uses the verb “shall” to make the related obligations stronger.

Finally, the “assistance” has to be provided “in accordance with applicable international humanitarian and human rights law.”³²⁵

This is extremely relevant because it requires States to respect the Convention on the Rights of People with Disabilities (entered into force in 2008). Therefore, references to “rights”³²⁶ in the CCM not only “help to ensure that victims of cluster munitions are treated in ways that meet the current standards for people with disabilities,”³²⁷ but also “establish an important precedent for victim assistance in future treaties.”³²⁸

3.2. Additional Positive Obligations: International Cooperation and Assistance.

Article 6 is about the international cooperation and assistance.

Under this provision, States who need help to fulfill their obligations have the right to “seek and receive assistance” and States “in position to do so” *shall* supply them with technical, material and financial assistance.

The verb *shall*, as already explained wants to highlight the sense of duty for every State Party.³²⁹

Paragraphs 3-9 are all concerned with different type of assistance and cooperation between States Parties, thus article 6 establishes the exchange of equipment, scientific and technological information, assistance in the clearance and stockpiles destruction and exchange of information about the technologies to undertake these activities.

In addition, measures for emergency assistance, such as risk education, marking of the contaminated areas, medical care and rehabilitation as well as economic and social assistance.³³⁰ Every type of

³²³ Article 5(2).

³²⁴ The Mine Ban Treaty, and Protocol V to the CCW.

³²⁵ Article 5(1).

³²⁶ References to human “rights” are in the Preamble, in article 2(1), 5.

³²⁷ B. Docherty, *supra* note (313), pp. 949-952.

³²⁸ R. E. Williams Jr., P. R. Viotti, *supra* note (320), p. 272.

³²⁹ Article 6(1) and 6(2).

³³⁰ Article 6(3)-(9).

cooperation can be provide directly or indirectly through trust funds, the UN system or international organizations.

This article is entirely committed to the detailed explanation of the assistance that is a duty for every State Party, and this obligation is stronger than past treaties. However, not only States Parties who are “in position to do so” *shall* provide resources to assist the others, but also those States that in the past tended to “avoid their responsibility by saying they were not in a position to provide help.”³³¹ Indeed, article 6(10) requires States who receive assistance to “take all appropriate measures in order to facilitate the timely and effective implementation of this Convention.”³³²

3.2.1. Additional Positive Obligations: Transparency Measures.

Article 7 is not only related to the transparency issue, but also to the assistance issue because through its provisions it facilitates the identification of States who need help in the fulfillment of their obligations.

In fact, under this article States Parties are required to report the efforts that they make every year to meet their Treaty obligations.

The purpose is to find out eventual shortcomings in a State Party’s report, thus the other Parties are aware of the difficulties and can provide the most appropriate assistance.³³³ States shall report the implementation of their obligations every year and their reports have to contained detailed information on numerous subjects included in the article, such as the characteristics of CMs produced in the past, the status of the stockpile destruction, the location of contaminated areas, risk education activities undertaken, national measures and resources to implement the Convention.³³⁴

Although some of the required information are similar to whose demanded in the Mine Ban Treaty, in the CCM the list is longer and it adds new points: (g) stockpiles of CCM discovered later, that is after the beginning of the process to destruct them; (i) and (k) information related to risk education activities and about the measures undertaken to implement the obligations under article 5 (victim assistance)³³⁵; (l), (m) and (n), i.e. information about the institutions that carry out the measures established by article 7, the quantity of national resources available to implement the obligations outlined in article 3, 4 and 5 of the CCM, and the latter, data about the assistance received or provided under article 6 of the CCM.

³³¹ B. Docherty, *supra* note (313), p. 951.

³³² Article 6(10).

³³³ Human Rights Watch, *supra* note (290), p. 149.

³³⁴ For the complete list of the information required in the annual report see article 7(1).

³³⁵ In article 7 of the Mine Ban Treaty there is no reference to the necessity of report on the measures undertaken to assist anti-personnel landmine victims. There is only the requirement to provide information about “The measures taken to provide an immediate and effective warning to the population in relation to all [mine affected] areas”. See Mine Ban Treaty, article 7(1)(i).

In short, the details of article 7 have improved previous provisions, thus these measures of transparency promote State's compliance with its obligation, and in turn encourage other Parties to do the same.³³⁶

3.2.2. Additional Positive Obligations: Article 8, Facilitation and Clarification of Compliance.

This issue is regulated by article 8. The CCM use a “cooperative approach” as regards the compliance. In fact, as a first step States have to “consult and cooperate with each other regarding the implementation of the provisions” of the Convention “and to work ... in a spirit of cooperation to facilitate compliance by States Parties with their obligations under” the CCM.³³⁷

In the event that this is not sufficient, that is when a State has doubts about the compliance of another State Party it “may submit ... a Request for Clarification of that matter to that State Party.”

This request, as it was for the Mine Ban Treaty, is submitted to the UN Secretary-General and the “requested” State shall respond within 28 days providing “all information that would assist in clarifying the matter.”³³⁸

Whether the response does not satisfy the requesting “State” it can go ahead with the procedure, thus demand the UN Secretary-General to submit the issue to the next Meeting of States Parties, and in this case the Secretary-General has to give send all the information related to the Request for Clarification to all States Parties.

Comparing the CCM with the Mine Ban Treaty it emerges that as regards the procedure for the Clarification of Compliance until this point, i.e. the Meeting of the States Parties, they contain the same provisions.

From here on, the provisions differs. First of all, the Mine Ban Treaty provides the possibility of convening a special Meeting of the States Parties to consider the matter, and then be it the planned or a special meeting, States after having decided that further clarification is needed, they authorize a fact-finding mission to the territory of the requested State, which pursuant the rules described in the article gathers information and writes a report.

Finally, on the basis of this report the Meeting of States Parties decides for appropriate measures to undertake, including “the use of cooperative measures referred to in Article 6.”³³⁹

Returning to article 8 of the CCM it shares with the provisions just listed only the last phrase placed within quotation marks.

³³⁶ Human Rights Watch, IHRC, *Staying strong: Key Components and Positive Precedent for Convention on Cluster Munitions Legislation* (2014), available at <http://www.hrw.org/reports/2014/09/03/staying-strong>.

³³⁷ Article 8(1).

³³⁸ Article 8(2).

³³⁹ The Mine Ban Treaty, article 8(5)-(20).

In fact, after the Meeting of States Parties decide “to consider the matter further” they suggest to the request State “means to clarify or resolve the matter under consideration” but the interesting thing is that the article provides that “In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the request State Party, the Meeting of States Parties may recommend appropriate measures, including the use of cooperative measures referred to article 6.”³⁴⁰

Hence, the Convention emphasizes the spirit of cooperation between States Parties. Unlike other arms control treaties that require rigorous “verification regimes”, as regards this aspect the CCM seems to be more similar to the structure of the IHL.³⁴¹ In fact the cooperative approach appears clearly in this article, among the various ways that are provided by the CCM to resolve the matter of compliance.³⁴²

3.2.3. Additional Positive Obligations: National Implementation Measures.

Under article 9 “Each State Party shall take all appropriate legal, administrative and other measures to implement this Convention”³⁴³ and the measures shall include penal sanctions to face any violation.

Compared to the same article of the *Mine Ban Treaty*, article 9 of the CCM has added the phrase “to implement this Convention” in order to ensure the implementation the Treaty obligations.

States Parties must implement all the obligations, both negative and positive through their national legislation since it is “binding, unequivocal, and enduring”, hence it is the strongest means.³⁴⁴

VI. INTERNATIONAL ACTORS.

1. The role of the United Nations: Introduction.

The problems of landmines and explosive remnants of war, including cluster munitions have been increasingly recognized by the United Nations in the Nineties. In fact, with the wide employment of those devices in many conflict during and after the Second World War, as explained in the first chapter, the peacekeeping operations has faced these problems.³⁴⁵

Peacekeeping and humanitarian operations dealt with numerous difficulties, not only it was difficult for the UN forces to carry out the humanitarian activities, but also they risked their lives. In short,

³⁴⁰ Article 8(5).

³⁴¹ Human Rights Watch, *supra* note (290), p. 151.

³⁴² Article 8(6) specifies that “States Parties may decide to adopt ... other general procedures or specific mechanisms for clarification of compliance.”

³⁴³ Article 9.

³⁴⁴ “National Implementation and Interpretation of the Convention on Cluster Munitions”, B. Docherty (2011), available at <http://www.hrw.org/news/2010/06/03/maximizing-ban>.

³⁴⁵ M. A. Cameron, “Democratization of Foreign Policy: The Ottawa Process as a Model” in *To Walk Without Fear, the Global Movement to Ban Landmines*, *supra* note (13), p. 430-434.

these weapons deny the access to land, they constitute a physical barrier to socio-economic development, and also they cause a high number of civilian casualties, including the peacekeepers.³⁴⁶

Therefore, some documents in the early Nineties notice how important was to undertake demining actions. In fact this activity resulted to be an essential priority in the process to alleviate the consequences of armed conflicts in war-torn countries.

As an example, in a 1992 report the UN Secretary-General affirmed “it is evident that peace-building after civil or international strife must address the serious problem of land mines, many tens of millions of which remain scattered in present or former combat zones. De-mining should be emphasized.”³⁴⁷

1.1. The United Nations’ Engagement.

Through resolution E/CN.4/RES/1993/83 the UN Commission on Human Rights “Alarmed at the information that some particularly injurious weapons, especially anti-personnel mines, continue to strike long after conflicts have ended, ... Requests all States to render full support to prevention of the indiscriminate use of anti-personnel mines.”³⁴⁸

This document aimed at reflecting on the effects that armed conflicts had on children and it also mentioned the landmine issue, anticipating the following UN efforts and resolution on this subject.

As it has been explained in the Ottawa Process the negotiation of the Mine Ban Treaty “took place not under the aegis of the United Nations or some other agglomeration of all States, but instead merely as a group of like-minded countries that could set any rules of participation they liked.”³⁴⁹

Nevertheless, the United Nations already before the negotiation of the Ottawa Treaty strongly supported a regulation to ban landmines.

The first two important steps were two resolution adopted by the General Assembly.

First, resolution A/RES/48/7 (19 October 1993) related to the assistance in mine clearance in which the Assembly “deplored the adverse consequence that can be caused by the failure to remove mines and other unexploded devices remaining in place after armed conflicts.”

Therefore, considering a matter of urgency to face, it requested the Secretary-General to submit “a comprehensive report on the problems” caused by landmines in order to outline the manner in which the UN could contribute to the solution of those problems.

³⁴⁶ “Hidden Killers: The Global Landmine Crisis”, *supra* note (29). To deeper the issue, see as an example of the impact of landmines in peacekeeping operations in Africa, “The Landmine Factor in the Peacekeeping Debate in Africa” (2003), Institute for Security Studies, available at <http://dspace.africaportal.org/jspui/bitstream/123456789/31254/1/PAPER80.pdf?1>.

³⁴⁷ “An Agenda for Peace Preventive diplomacy, peacemaking and peace-keeping” (1992), Report of the Secretary-General, available at <https://www.globalpolicy.org/component/content/article/226/32313.html>.

³⁴⁸ UN Commission on Human Rights, *Effects of armed conflicts on children's lives*, 10 March 1993, E/CN.4/RES/1993/83, available at: <http://www.refworld.org/docid/3b00f08114.html> [accessed 13 January 2015]. The UN Commission on Human Rights (UNCHR) was later replaced by the United Nations Human Rights Council in 2006. More information about this inter-governmental body within the United Nations at <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>.

³⁴⁹ K. Anderson, *supra* note (101), p. 112.

Moreover, it laid down the basis for the foundation of the currently “Voluntary Trust Fund for Assistance in Mine Action” requesting the Secretary-General “to include in his report consideration of the financial aspects of activities related to mine clearance and, ... of the advisability of establishing a voluntary trust fund to finance ... programmes relating to mine clearance.”³⁵⁰

Furthermore, on 16 December 1993, in the context of the CCW the UN General Assembly encouraged the establishment of a group of experts to prepare the Review Conference of the CCW to Amend Protocol II.

In this second resolution, A/RES/48/75K (16 December 1993) it also urged States to “agree to a moratorium on the export, transfer or purchase of anti-personnel land-mines and related devices.”³⁵¹

Later, in 1994 the UN Secretary-General presented its first report about the mine clearance, where it described the scope of the problem caused by landmines, the effects on the society, the costs to the international community and the effects on the UN programs. In fact, at that time the mine problem was present in areas where the UN had peace-keeping operations. According to the report “The best and most effective way to achieve this [to solve the landmine problem] is to ban completely the production, use and transfer of all land-mines,” hence it encouraged States to establish such a ban.³⁵²

Moreover, other agencies supported a ban on AP mines. For instance, the United Nations High Commissioner for Refugees (UNHCR) witnessed the difficulties “the delays in repatriation, reintegration and resettlement” in mine affected countries, thus it not only was involved in activities to reduce the risks for civilians, such as the marking of the contaminated areas, but also it advocated for a ban.³⁵³

Similarly, the United Nations Children’s Fund (UNICEF) was among the main supporters for a ban on AP mines. From its point of view, children were seriously endangered by these devices, often because many landmines were shaped like toys, therefore they attracted children’s curiosity. Unlike the adults, a child is more likely to pick up these colored objects so they are an easy mark for the enemy military forces.

Likewise, they are often too young to read and understand the signs of warning nearby the mine affected areas and they are more likely to die from injuries rather than adults.³⁵⁴

UNICEF has been deeply concerned with the seriousness of the impact of landmines on children, therefore it has conducted activities of mine-awareness education in schools, advocacy to clear landmines and ERW, and support for injured children.

³⁵⁰ A/RES/48/7, 27 October 1993, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/7.

³⁵¹ A/RES/48/75K, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/48/75.

³⁵² A/49/357, 6 September 1994, Report of the Secretary-General, available at [https://disarmament-library.un.org/UNODA/Library.nsf/4ee08733dc7c863985257631004e4fc2/0bd8f85e92691b2b8525769400702688/\\$F11LE/A-49-357-Assistance%20in%20mine%20clearance.pdf](https://disarmament-library.un.org/UNODA/Library.nsf/4ee08733dc7c863985257631004e4fc2/0bd8f85e92691b2b8525769400702688/$F11LE/A-49-357-Assistance%20in%20mine%20clearance.pdf).

³⁵³ *Ibid.*, p. 12.

³⁵⁴ G. Machel, *Impact of armed conflict in children: Land-mines: A deadly inheritance* (1996). Retrieved by UNICEF (March 2010), available at <http://www.unicef.org/graca/graright.htm>.

Also after the entry into force of the Mine Ban Treaty, besides these activities, it has been working to ensure that this Convention is implemented.³⁵⁵

In December 1996, the General Assembly adopted a resolution that was the turning point in the Ottawa Process, because it urged States to “pursue ... an effective, legally binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines.”³⁵⁶

After the adoption of the *Ottawa Treaty* the role of the UN has become increasingly important. In fact, it convenes the annual meetings of the States Parties as well as the Review Conferences, it supports the implementation of the Convention and more importantly it has developed mine action programs.

1.2. A Non-Binding Instrument: The UN General Assembly Resolutions on the Ottawa Treaty.

Every year States Parties, international organizations and NGOs gather in two different meetings, the Meeting of the States Parties and the Intersessional Standing Committee Meeting. In addition every five years a Review Conference is held.

Among these meeting there is a non-binding instrument, which is strongly recommended by the ICBL, that is provided by the annual meetings of the UN First Committee.³⁵⁷ It debates disarmaments, and international security issues and then it recommends resolutions to adopt by the plenary session of the UN General Assembly.

This is related to the landmine issue because since 1997 the General Assembly has adopted every year a “Resolution on the Implementation of the 1997 Convention on the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction”.³⁵⁸

These resolutions are an important non-binding instrument for both States Parties and States not Party. While for the former a vote in favor of a resolution symbolizes their support for the implementation of the Convention, for the latter a vote in favor has a greater importance, because it signifies that even if they have not yet ratified the Convention they “support the treaty’s humanitarian objective of a world free of antipersonnel landmines.”

Surely, a vote in favor that shares the main purposes of the Mine Ban Treaty is considered a step forward in the path towards the global implementation of the Convention.³⁵⁹

³⁵⁵ “UNICEF in Emergencies and Humanitarian Action”, UNICEF (2003), available at http://www.unicef.org/emergencies/index_landmines.html.

³⁵⁶ A/RES/51/45, *supra* note (87).

³⁵⁷ The First Committee deals with disarmament, global challenges and threats to peace. More information at <http://www.un.org/en/ga/first/>.

³⁵⁸ From 1997 to 2014 UNGA resolution on the Mine Ban Treaty are: (1997) 52/38 A; (1998) 53/77 N; (1999) 54/54 B; (2000) 55/33 V; (2001) 56/24 M; (2002) 57/74; (2003) 58/53; (2004) 59/84; (2005) 60/80; (2006) 61/84; (2007) 62/41; (2008) 63/42; (2009) 64/56; (2010) 65/48; (2011) 66/29; (2012) 67/32; (2013) 68/30. The last resolution, 69/34 has been adopted on 2 December 2014 and it has received 164 votes in favor, none against and 17 countries abstained.

³⁵⁹ “Frequently Asked Questions Regarding the UNGA Mine Ban Treaty Resolution” ICBL, available at <http://www.icbl.org/en-gb/the-treaty/treaty-meetings/un-first-committee/frequently-asked-questions-regarding-the-unga-mine-ban-treaty-resolution.aspx>.

According to the ICBL, this non binding instrument has gained more and more support over the last years. For example, since 2006 the UN resolutions have received at least 160 votes in favor.

However, there is a group of States not party that have continued to abstain: Cuba, Egypt, India, Iran, Israel, Myanmar, North Korea (since 2007), Pakistan, Russia, South Korea, Syria, Uzbekistan (since 1999), the US, and Vietnam (since 1998).³⁶⁰

The process for the adoption of these resolutions provides an initial debate and vote in October by the UNGA First Committee on disarmament and international security and then the final vote by the entire UN General Assembly every year in December.

This non-binding instrument is strongly supported by the ICBL. In fact, every year it exhorts States to use the UN General Assembly and its First Committee to accede to the Ottawa Treaty, to promote its global implementation through statements during the First Committee discussions and to vote in favor of the annual UN General Assembly Resolution on the Ottawa Treaty.³⁶¹

1.3. The UN Position on Cluster Munitions.

Despite the UN support to the landmines issue, the process that brought about the ban on these weapons stepped outside the CCW and the UN frameworks.

The same happened with the *Cluster Munitions Convention*. In fact, as explained above, a group of 13 States (the Core Group), encouraged by the success of the *Ottawa Process* and dissatisfied with the slow progress discussions inside the CCW context, “welcomed the Norway lead in sponsoring the Oslo Process,”³⁶² hence, it has been undertaken outside the UN framework, again.

It is worth remarking that the UN is a wide and complex framework since it consists of many States, and each of them has a different idea.

In fact, of the 193 UN States Parties³⁶³ the majority is also part of the CCW, the Convention on Conventional Weapons that together with its Protocols was negotiated under the UN auspices.

This preface wants to understand the reasons why the UN has been put aside by the advocates of both the Processes, in fact different point of view among member States and also among the numerous UN agencies do not help the formation of a unique front on both the landmine and CCMs issues.

Despite these difficulties, as for the landmines subject, also for the CCMs, the UN demonstrated its concern about these weapons.

³⁶⁰ *Ibid.*

³⁶¹ “UN First Committee”, ICBL, accessed in December 2014, available at <http://www.icbl.org/en-gb/the-treaty/treaty-meetings/un-first-committee.aspx>.

³⁶² K. Hulme, “The 2008 Cluster Munitions Convention: Stepping outside the CCW Framework (again)”, *International and Comparative Law Quarterly* 58 (2009), pp. 219-227.

³⁶³ The list of the UN members is available at “Member States” UN, accessed in December 2014, <http://www.un.org/en/members/growth.shtml#text>. The list of the 76 UN members that are not party to the CCW, online at “States parties and signatories”, UNOG, last accessed in December 2014, [http://www.unog.ch/80256ee600585943.nsf/\(httpPages\)/3ce7cfc0aa4a7548c12571c00039cb0c?OpenDocument&ExpandSection=3%2C4#_Section3](http://www.unog.ch/80256ee600585943.nsf/(httpPages)/3ce7cfc0aa4a7548c12571c00039cb0c?OpenDocument&ExpandSection=3%2C4#_Section3).

The end of the Cold War and the numerous peacekeeping operations from 1980s³⁶⁴ obliged the UN to deal with landmines and explosive remnants of war, and therefore to establish some demining programs, “a development that would inevitably require coordinated UN policies and strategies”, i.e. the following establishment of the UN Mine Action Service.³⁶⁵

In 2005, the UN Inter-Agency Coordination Group for Mine Action’s (IACG-MA) formed a working group on cluster munitions³⁶⁶ with the purpose of develop the UN position on those weapons. The working group believed that international action was needed to alleviate the humanitarian impact of CMs. If around this goal there was agreement, the problem was to decide how to achieve it since the different point of views of the IACG-MA working group’s members.

In particular, there were two opinions. The first, which belonged to the UNDP was in favor of an elimination of the CMs, the second, supported by the Disarmament Affairs, feared that eventual drastic measures on the CCW could cause the opposition of some States and damage the CCW framework.

Despite the internal conflicts there was common agreement on the fact that greater studies and analysis were needed to really understand the impact of CCMs. The conclusions of the experts who conducted the studies were clear, those weapons posed serious problems, and they were a threat for the civilian population.

However, the attempts to build a UN policy have continued to fail, and also the position of the UN Secretary-General Kofi Annan did not help to solve the situation.

For instance, in his message for the annual meeting of the States Parties to the CCW, which took place on 24-25 November 2005 he declared that “The issue of cluster munitions continues to be a topic of particular importance ... they often claim the lives of civilians”, hence he urged States “to place the range of issues related to cluster munitions” on the agenda, however he only called upon “all States to respect existing, applicable humanitarian law regarding the use of cluster munitions” until “new measures were agreed”, but he did not explain what measures he was referring to.³⁶⁷

The turning point was the Southern Lebanon conflict in July-August 2006, where “over 1.277 locations” were bombarded “with more than 4 millions cluster munitions ... affecting over 1 million people.”³⁶⁸

³⁶⁴ Details on peacekeeping operations and how they have changed after the end of the Cold War online at <http://www.un.org/en/peacekeeping/operations/surge.shtml>, last accessed in December 2014.

³⁶⁵ See next chapters.

³⁶⁶ The working group included more than 12 UN departments and agencies, members of the ICRC and of the UNIDIR.

³⁶⁷ “Disarmament and arms control processes can impact human security positively, Secretary-General tells Parties to Certain Conventional Weapons Convention”, United Nations, Press Release, 25 November 2005, available at <http://www.un.org/press/en/2005/sgsm10230.doc.htm>; see also J. Borrie, *supra* note (267), pp. 240-241.

³⁶⁸ Mine Action in Lebanon, *A review of the Lebanon National Mine Action Programme and UNDP support to mine action in Lebanon, Final Report* (2001), p. 12, online at <http://erc.undp.org/evaluationadmin/manageevaluation/viewevaluationdetail.html?evalid=5566>; see also Human Rights Watch, *Flooding South Lebanon*, (2008), available at <http://www.hrw.org/reports/2008/lebanon0208/index.htm>.

As a demonstration of such a change in his message to the Third Review Conference of the CCW the UN Secretary-General declared that “recent events show that the atrocious, inhumane effects of these weapons ... must be addressed immediately.”³⁶⁹

Similarly, Jan Egeland, the United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, on 7 November 2006 urged “all States to implement an immediate freeze on the use of cluster munitions ... essential until the international community puts in place effective legal instruments to address urgent humanitarian concerns about their use.”³⁷⁰

These statements together with the UNMAS Director’s message on the same day that called for the establishment of effective norms to reduce the impact of CMs explain the new concerned approach of the UN.

Throughout the Oslo Process the UN expressed several times its support to the development of the process to deal with CMs, without claiming that it was less legitimate than another one (i.e. a process inside the CCW framework), because it could achieve a concrete result.

An important date is 17 September 2007 because on that day the IACG-MA adopted a new UN Inter-Agency position. Sharing the ideas of the Oslo Process, through this new position the UN urged Member States to conclude a “legally binding instrument of international humanitarian law that: prohibits the use, development, production, stockpiling and transfer of cluster munitions ... require the destruction of current stockpiles of those munitions ... provides for clearance, risk education ... activities, assistance and cooperation, and compliance and transparency measures.”³⁷¹

The UN position can be defined as an everlasting challenge between the two opposite sides: who endorsed the CCW framework to deal with an eventual regulation on the CMs, which generally were against a ban³⁷², and who was convinced of the necessity of a new and fast track, i.e. the *Oslo Process*, to halt the humanitarian threats caused by those weapons. For the United Nations the question of a balance was really complicated, since it was difficult to be active in and sustain both the tracks. Only when the Oslo Process demonstrated to be able to achieve its goal and thanks to the growing awareness of the effects of CMs the humanitarian aspects prevailed and so the Convention on Cluster Munitions.³⁷³

1.4. The Mine Action.

³⁶⁹ “Secretary-General’s message to the Third Review Conference of the Convention on Certain Conventional Weapons”, 7 November 2006, United Nations, available at <http://www.un.org/sg/statements/?nid=2289>.

³⁷⁰ “Annan calls for immediate action to curb use of cluster bombs”, 7 November 2006, UN News Centre, available at <http://www.un.org/apps/news/story.asp?NewsID=20514&Cr=disarm&Cr1>.

³⁷¹ “Prohibiting Cluster Munitions: Our chance to protect civilians”, UNDP (2008).

³⁷² More concerned with the military utility of the CMs, States who tried to obstacle a ban on CMs generally were the possessors of these devices, such as: Brazil, China, India, Israel, Pakistan, Russia and the United States.

³⁷³ J. Borrie, *supra* note (267), pp. 235-248.

According to the definition provided by the International Mine Action Standards (IMAS)³⁷⁴, mine action concerns “activities which aim to reduce the social, economic and environmental impact of mines and UXO”.

Moreover, it defines five categories of activities, the five “pillars” of Mine Action: mine risk education, humanitarian demining, victim assistance, stockpile destruction, and advocacy against the use of AP mines.

The role of the UN in mine action is defined in some UN resolutions that consider “mine action to be an important component of United Nations humanitarian and development activities” and it encouraged “all relevant multilateral and national programmes and bodies to include, in coordination with the United Nations, activities related to mine action.”³⁷⁵

The origin of activities related to mine action can be traced back to October 1988 when the UN made a plea for funds on behalf of Afghanistan to finance demining operations that were necessary to alleviate humanitarian problems caused by landmines.

Before, other similar activities had been undertaken by national armies, however Afghanistan did not have a functioning army, hence the UN decided to intervene.

The UN appealed for funds aimed at developing “humanitarian demining” activities, i.e. the clearance of mine-affected areas as well as mine risk education initiatives.

Subsequently, under the aegis of the UN, some NGOs engaged in these activities began to develop, for instance HALO Trust, which was the first international humanitarian NGO involved in mine clearance.

The spread of demining activities in the Nineties can be explained by the largely unregulated use of those devices in the conflicts of the 1970s and 1980s, where significant mine clearance operations had not been undertaken because of the long Cold War conflicts.

Only towards the end of the 1980s, the international community became more aware of the dangers caused by mines that “remain in the ground as brutal reminders that successful peace-building and development are still beyond the horizon.”³⁷⁶

³⁷⁴ The International Mine Action Standards (IMAS) are documents that have been developed by the UN since the 1990s to “provide a framework to improve safety, effectiveness and efficiency in the mine action sector.” They define guidelines, clearance requirements, and technical information to conduct the mine action operations, and they are also designed to be a guide for the development of National Mine Action Standards (NMAS). See GICHD, *A Guide to Mine Action*, Fifth edition, (2014), available at <http://www.gichd.org/mine-action-resources/publications/detail/publication/guide-to-mine-action-2014/#.VLgvc8s5Dmf>; and “IMAS”, International Mine Action Standards, <http://www.mineactionstandards.org/standards/international-mine-action-standards-imas/imas-in-english/>, accessed in January 2015.

³⁷⁵ A/RES/53/26 (1998). The following resolutions on mine action are: A/RES/54/191 (1999), A/RES/55/120 (2000), A/RES/56/219 (2001), A/RES/57/159 (2002), A/RES/58/127 (2003), A/RES/60/97 (2005), A/RES/62/99 (2007), A/RES/64/84 (2009), A/RES/66/69 (2011), A/RES/68/72 (2013), all available at <http://research.un.org/en/docs/ga/quick/regular/69>.

³⁷⁶ B. Boutros-Ghali, “The Land Mine Crisis: A Humanitarian Disaster”, *Foreign Affairs* 73, no.5 (1994), online at <http://www.foreignaffairs.com/articles/50320/boutros-boutros-ghali/the-land-mine-crisis-a-humanitarian-disaster>.

In 1995 the UN organized an International Meeting on Mine Clearance in Geneva to promote funds for mine clearance activities and the UN Voluntary Trust Fund for Mine Clearance was established. During the first half of the Nineties, the UN undertake clearance operation in many countries, such as Kuwait, Cambodia, Mozambique and Angola, however during this first phase there were some difficulties in the assignment of the different responsibilities, lacks during the mine actions operations and in the UN leadership.³⁷⁷

Later, in the second half of the 1990s the UN approach became more detailed and organized, in 1998 the UN defined its roles related to the mine action issue in a paper entitled “The Mine Action and Effective Coordination: The UN Policy” that enclosed the key principles of the UN mine action: improve its ability to support the affected countries, support the efforts of the international community, and improve its effectiveness.³⁷⁸

The former UN Inter-Agency Coordination Group on Mine Action (IACG-MA) today is the UN Mine Action Team which bring together 14 UN departments, programs, agencies and funds³⁷⁹, all involved in mine action and it is chaired by the United Nations Mine Action Service (UNMAS). The basic idea of the Mine Action Team is “a world free of the threat of landmines and explosive remnants of war (ERW), where individuals and communities live in a safe environment conducive to development.”³⁸⁰

1.4.1. UNMAS.

This is the focal point for UN mine action, it was formed in October 1997 and it is the responsible for the cooperation of all the activities related to mine action.

UNMAS together with the other members of the Mine Action Team establishes the priorities of mine-related operations, it dialogues with the international communities about landmine problems, it manages the Trust Fund, it continues to examine mine aspects, and it works for supporting the achievement of a global ban on landmines and cluster munitions.

Obviously, mine action is not only addressed to landmines, but also to any type of unexploded ordnances (UXO). This term comprises a wide variety of devices “that fail to detonate as designed but remain volatile and can kill if touched or moved”³⁸¹, including cluster bombs. As for the Mine Ban Treaty, also with the entry into force of the CCM mine clearance related to these devices has become stronger since Member States have to meet deadline for clearance and destruction of CMs stockpiles.

³⁷⁷ GICHD, *A Guide to Mine Action*, Second edition (2004), pp. 19-28, online at <http://www.gichd.org/>.

³⁷⁸ “Mine Action and effective coordination: United Nations policy”, A/53/496, Annex II, 14 October 1998, in *Assistance in mine clearance: report of the Secretary-General*, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/309/20/PDF/N9830920.pdf?OpenElement>.

³⁷⁹ UN Mine Action Service, Department of Disarmament Affairs, Department of Peacekeeping Operations, Food and Agriculture Organization, Office for the Coordination of Humanitarian Affairs, Office of the Special Adviser to the Secretary-General on Gender Issues and the Advancement of Women, Office of the UN High Commissioner for Human Rights, UNICEF, UN Development Programme, UN High Commissioner for Refugees, UN Office for Project Services, World Bank, World Food Programme, World Health Organization.

³⁸⁰ “What else is happening on victim assistance?”, UNOG, accessed in December 2014,

[http://www.unog.ch/80256EE600585943/\(httpPages\)/5A52D8868D556EE2C125791F004D4B41?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/5A52D8868D556EE2C125791F004D4B41?OpenDocument).

³⁸¹ “Mine action entails more than removing landmines from the ground”, UNMAS, accessed in December 2014, <http://www.mineaction.org/issues>.

To date, UNMAS has been engaged in 18 missions that can deal with only one or more aspects (“pillars”) of mine action, according to the country or the aim of the mission. The countries involved are: Afghanistan, Central African Republic, Columbia, Cote d’Ivoire, Cyprus, Democratic Republic of Congo, Haiti, Lebanon, Libya, Mali, Palestine, Somalia, Sudan, Abyei, Darfur, South Sudan, Syria and Western Sahara.³⁸²

For the period 2013-2018 the UN has established a program with some objectives to achieve in the mine action context. That is, it aims at reduce the risks to individuals and the socio-economic consequences of both mines and cluster munitions, then to advocate and assist national as well as international actors to ensure their commitment in mine victims’ support. Similarly, it wants to facilitate the transfer of mine action activities from the UN context to national actors, and finally it wants to make sure that the universalization of mine action conventions will be promoted.³⁸³

2. The Role of the International Committee of the Red Cross (ICRC) regarding the landmines.

Already in 1955 the ICRC expressed its concerns about landmines since after their extensive use during WWII prisoners of war had been employed for the clearance of contaminated lands.

Its efforts continued in the 1970s since those weapons had a disproportionate impact on human beings, and in the 1980s since they had been used on a large scale, rather than decreasing, hence it held numerous meetings, such as the Montreux Symposium on Mines in 1993. This was the first meeting organized by the ICRC that dealt with the issue of antipersonnel landmines.

It gathered 60 participants including , diplomats, delegates of humanitarian organizations, weapons experts, surgeons, and also military strategists, hence numerous experts from different disciplines in order to obtain the most “accurate overview of the scope of the problem” consequently, examine the existing methods to reduce the impact³⁸⁴ and alleviate the sufferings of mine victims, identify the gaps in those methods, establish a “remedial action” and finally to write a final report that could become a point of reference for future measures.³⁸⁵ The multidisciplinary approach favored the examination of many different aspects of the AP mines, such as the use and trade of mines, the humanitarian consequences, the technical characteristics, demining methods, the legal situation, i.e. the applicable

³⁸² “The Focal Point For UN Mine Action”, UNMAS, accessed in December 2014, <http://www.mineaction.org/unmas/about>. Further details on the development of UNMAS missions in these countries online at <http://www.mineaction.org/programmes>.

³⁸³ “The Strategy of the United Nations on mine action 2013-2018”, United Nations, accessed in December 2014, available at <http://www.mineaction.org/unmas>.

³⁸⁴ L. Maresca and S. Maslen, *supra* note (56), p.129.

³⁸⁵ ICRC, “Report of the ICRC for the review conference of the 1980 UN conventions on Prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects: Annex I : Results of the Montreux symposium on anti-personnel mines”, *International Review of the Red Cross*, no. 299 (1994), available at <https://www.icrc.org/eng/resources/documents/misc/57jmcs.htm>.

law and its limitations, indeed the report became an important basis for the ICRC, governments and NGOs in the process to achieve a ban.³⁸⁶

Another noteworthy stage was the 1994 declaration of the President Cornelio Sommaruga: “from humanitarian point of view we believe that a worldwide ban on antipersonnel landmines is the only truly effective solution.”³⁸⁷

This statement was remarkable since at that time no other important international organization had expressed the willingness to support a total ban on landmines.

Subsequently, between 1994 and 1995 on the occasion of the meetings of governmental experts in preparation of the Review Conference of the CCW the ICRC prepared a report on the issues related to landmines that could help States in their work to review the Convention.

In that report, the ICRC called for a ban rather than a restriction on landmines, the necessity of a clear definition of AP mines and it made some proposals, for instance the addition of an obligation to destroy the AP mine stockpiles.³⁸⁸

Similarly with the same aim, in November 1995 it launched an international media campaign to mobilize a greater support for a ban on AP mines. The campaign, conducted in collaboration with some national Red Cross societies, started with the message “Landmines must be stopped” and included workshops, seminars, advertisements on television and radio aiming at activating the public opinion and at making people more conscious of the indiscriminate consequences of landmines.

Strategically, it had been launched some months before the 1996 Review Conference of the CCW and it was useful because of the stagnant situation in addressing the landmine issue.

As denounced by Cornelio Sommaruga the role of the media was really crucial to shock the conscience of people since he criticized that “there is little political will for dramatic change, and that most military powers ... still resist the elimination of anti-personnel mines”³⁸⁹, hence the appeal to the public conscience took place.

In 1996 the ICRC publication of a study entitled “Anti-personnel landmines: Friend or Foe?”³⁹⁰, which examined the military effectiveness of landmines to demolish the perception of their military

³⁸⁶ More details on the report of the ICRC Symposium on anti-personnel mines in L. Maresca, and S. Maslen, *supra* note (56), pp. 129-256.

³⁸⁷ ICRC, “The call of the ICRC for a global ban on anti-personnel mines: Statement of Cornelio Sommaruga 24 February 1994”, in L. Maresca and S. Maslen, *supra* note (56), pp. 264-265.

³⁸⁸ Despite the fact that the ICRC stressed that a complete ban would be more effective, it also submitted some alternatives for States to consider, such as the manufacturing of detectable and self-neutralizing mines, however also these lighter measures encountered some opposition. See ICRC, “Meetings of governmental experts to prepare the Review Conference 1994-1995”, in L. Maresca and S. Maslen, *supra* note (56), p. 266-327.

³⁸⁹ “Launching of the International Media Campaign on Anti-personnel Landmines by the ICRC and National Red Cross and Red Crescent Societies: Statement by Cornelio Sommaruga, President of the International Committee of the Red Cross, Press Conference, Geneva, 22 November 1995”, ICRC (1995), online at <https://www.icrc.org/eng/resources/documents/misc/57jmnny.htm>. See also ICRC, “ICRC launches media campaign against anti-personnel mines”, *International Review of the Red Cross*, no. 309 (1995), available online at <https://www.icrc.org/eng/resources/documents/misc/57jmsz.htm>.

³⁹⁰ ICRC, *Anti-personnel landmines: Friend or Foe?*, *supra* note (32).

utility. The fact that it was conducted by military commanders and that at the end of the study they agreed on the limited utility of AP mines compared to the humanitarian consequences of their use, made that study a “key tool of the ICRC’s campaign”.

More importantly, the conclusions of this study, adopted by a dozen of military officers and then supported by about fifty senior military officers, called for an elimination of AP mines “as a matter of utmost urgency by governments and the entire international community.”³⁹¹

Then, during the Ottawa Process until the adoption of the Mine Ban Treaty (September 1997) the ICRC acting as an expert observer it took part in several meetings. In fact, it offered active support and advocated “the adoption of the strongest possible resolution”³⁹² throughout the entire Ottawa Process, beginning with the Conference Towards a Global Ban on Anti-Personnel Mines (Ottawa 1996), which launched the Ottawa Process, to the Oslo Diplomatic Conference that on 18 September 1997 officially adopted the Mine Ban Treaty.

It also contributed in the drafting negotiation, for example the third Austrian draft of the Convention was integrated with the ICRC proposals, such as its appeal for not providing a the possibility of making reservations, and the importance “of having an unambiguous definition of antipersonnel mines,” the necessity of a comprehensive ban on the production, stockpile, transfer and use of AP mines, and the importance of the universal application of the Convention.³⁹³

The universality is still among the current objectives of the ICRC as well as its engagement in preventive activities, such as risk education, but also surgical assistance and rehabilitation programs in around 27 countries, including Cambodia, Colombia, Afghanistan and Georgia. Despite that today the prohibition on landmines is widely accepted the efforts of the ICRC” cannot stop until the scourge of anti-personnel landmines is completely eradicated.”³⁹⁴

3. The Role of the ICRC regarding the cluster munitions.

The same efforts has been addressed to the cluster munitions issue. In a 2000 Report the ICRC claimed that cluster munitions as well as antipersonnel landmines were the major cause of death or injuries in Kosovo, according to the ICRC data they caused about 73% of incidents between June 1999 and May 2000.³⁹⁵

³⁹¹ L. Maresca and S. Maslen, *supra* note (56), pp. 415- 419.

³⁹² *Ibid.*, p. 491.

³⁹³ S. Maslen, P. Herby, *supra* note (243). To deeper the role of the ICRC during each phase of the Ottawa Process see L. Maresca, S. Maslen, *supra* note (56), part 3 “The Ottawa Process. From regional initiatives to an international prohibition of anti-personnel mines”.

³⁹⁴ “15 years on from mine ban: no time for complacency”, ICRC, online at <https://www.icrc.org/eng/resources/documents/news-release/2014/06-20-mozambique-maputo-third-review-conference-anti-personnel-mine-convention-conference-beerli.htm>; “Anti-personnel landmines: going, going but not quite gone!”, ICRC (2002), available online at <https://www.icrc.org/eng/resources/documents/misc/5gfdks.htm>, all accessed in December 2014.

³⁹⁵ ICRC, *Cluster Bombs and Landmines in Kosovo: Explosive Remnants of War* (2000), p. 9, revised in 2001, online at <https://www.icrc.org/eng/resources/documents/report/explosive-remnants-of-war-brochure-311201.htm>.

This report was presented together with another one, which was concerned with the submunitions, on the occasion of the 2000 Meeting of Experts on ERW in Nyon (Geneva), convened by the ICRC with the purpose of including the issue in the priorities of the CCW.

The reports served as a basis for discussion between the governments' representatives, NGOs and humanitarian organizations and in the ICRC's intentions there was the ambition of achieving a ban on the use of CMs against military targets nearby concentrations of civilians.

Then, it proposed an additional Protocol to the CCW to deal with the humanitarian problems caused by ERW, including CMs, however its approach was cautious and aimed at regulating their use, rather than banning them.³⁹⁶

As seen before, the following adoption of Protocol V did not represented a little progress in the regulation of the ERW without coping directly with CMs. In 2006, after the impressive employment of these devices in the conflict in Southern Lebanon the ICRC changed approach and urged States to deal with the issue and in November 2006 it prepared a list of proposals to submit to States for the forthcoming Review Conference of the CCW.

Among its proposals there were the "end of the use of inaccurate and unreliable cluster munitions", the prohibition of the use of CMs "against any military objective located in a populated area", and the elimination of "stocks of inaccurate and unreliable cluster munitions and, pending their destruction [States would not] transfer such weapons to other countries."³⁹⁷

In addition, it stated that "a new international instrument is needed to comprehensively and effectively address the problem of cluster munitions."³⁹⁸ Then, it supported the Oslo Process, as it did earlier with the Ottawa Process and the President Jakob Kellenberger engaged personally stating that "the ICRC is more certain than ever that a new international treaty is essential to prohibit those cluster munitions which have such high costs for civilian populations" and it called upon States to achieve an international agreement as soon as possible.³⁹⁹

In the meantime it solicited States to suspend the use of CMs.⁴⁰⁰ It also participated with its proposal in the drafting of the Convention, for example it proposed some amendments to clarify key concepts and obligations to the Wellington draft text⁴⁰¹ and since the adoption of the Convention it has been engaged in its implementation to ensure that "maximum number of States to become parties as soon as

³⁹⁶ A. R. Nuiten, P. Herby, "Explosive remnants of war: Protecting civilians through an additional protocol to the 1980 Convention on Certain Conventional Weapons", *International Review of the Red Cross*, no. 841 (2001), online at <https://www.icrc.org/eng/resources/documents/misc/57jqyv.htm>.

³⁹⁷ "ICRC statement to the Third Review Conference of the Convention on Certain Conventional Weapons" (2006), ICRC, available at <https://www.icrc.org/eng/resources/documents/statement/conventional-weapons-statement-071106.htm>.

³⁹⁸ *Ibid.*

³⁹⁹ "The ICRC's position on cluster munitions and the need for urgent action", ICRC (2007), online at <https://www.icrc.org/eng/resources/documents/statement/cluster-munitions-statement-251007.htm>.

⁴⁰⁰ J. Borrie, *supra* note (267), pp. 227-235.

⁴⁰¹ "Comments of the International Committee of the Red Cross on the Wellington draft of a future cluster munitions convention", ICRC (2008), available at <https://www.icrc.org/eng/resources/documents/misc/cluster-munitions-wellington-080208.htm>, accessed in December 2014.

possible.” Moreover, its role also addresses at organizing meetings and seminars to promote adherence and compliance.⁴⁰²

In short, for the ICRC the universalization of the CCM is among its main objectives since its predominant humanitarian concerns, and this is quite clear in the words of Mr. Olivier Vodoz, the ICRC Vice-President, who during the Fourth Meeting of States Parties to the CCM stated “We believe that global acceptance of the Convention’s obligations is crucial to the success of the treaty ... I would take this opportunity to urge ... signatory States to ratify the treaty as quickly as possible ... The ICRC believes that the universalization and implementation of the Convention are important elements of achieving a world free of cluster munitions.

After all, the CCM is the only humanitarian treaty that includes an article that demands States Parties to “encourage States not party ... to ratify ... this Convention, with the goal of attracting the adherence of all States”⁴⁰³, thus this is in line with the ICRC’s approach to ensure the end of the civilian suffering caused by the use of CMs.⁴⁰⁴

4. The role of the Global Civil Society: The International Campaign to Ban Landmines (ICBL).

The International Campaign to Ban Landmines was formed after the increasing concern of several NGOs on the indiscriminate effects of antipersonnel landmines.

Today it is a global and flexible network⁴⁰⁵ in 100 countries that works for a world free of AP mines. In 1997 the Campaign was also awarded the Nobel Peace Prize in recognition of its efforts to bring about the Mine Ban Treaty.

It was launched in October 1992 by a group of six NGOs: Handicap International, Human Rights Watch, Medico International, Mines Advisory Group, Physicians for Human Rights, and Vietnam Veterans of America Foundation in the wake of their concern due to the fact they witnessed the impact of landmines on the territories in which they were undertaken their missions.

Thanks to their direct experience they understood that mines obstacle the development of contaminated areas, hence they began calling for a ban on AP mines because they thought that a total prohibition could be the only effective solution.

Owing to its multifaceted composition, the Campaign could see the landmine issue from several points of view, according to the different NGO. The six NGOs issued a “Joint Call to Ban Anti-Personnel

⁴⁰² “The Convention on Cluster Munitions - frequently asked questions”, ICRC (2009), online at <https://www.icrc.org/eng/resources/documents/faq/cluster-munitions-questions-and-answers-130109.htm>, accessed in December 2014.

⁴⁰³ Convention on Cluster Munitions, article 21(1).

⁴⁰⁴ “Fourth Meeting of States Parties to the Convention on Cluster Munitions, Statement by Mr. Olivier Vodoz 10 September 2013”, ICRC, online at <https://www.icrc.org/eng/resources/documents/statement/2013/09-10-cluster-munitions-4th-meeting.htm>, accessed in December 2014.

⁴⁰⁵ The ICBL today comprises hundreds of members in all corners of the world. The membership list is available at “ICBL-CMC Members”, ICBL, <http://icbl.org/en-gb/about-us/who-we-are/members/icbl-cmc-members.aspx>, accessed in December 2014.

Landmines”, the founding document of the ICBL that called for an international ban on the use, production, stockpiling, sale, transfer and export of the AP mines; for the establishment of an international fund to finance mine awareness activities and clearance missions; and for convincing States responsible for the production and use of AP mines to contribute to the fund.⁴⁰⁶

Soon after its establishment, the ICBL organized meetings and campaigns to raise awareness on the landmine issue calling for a ban and explaining to the public opinion the reasons. Being a network help it diffusion, hence more and more NGOs became members of the Campaign. In fact, already in 1993 50 representatives of 40 NGOs participated in a ICBL conference and joined the Campaign and its goal.

Then, in the same year, the French Foreign Minister after being lobbied by Handicap International (HI) requested a Review Conference of the CCW. Always in the same year the UN General Assembly called for a review Conference as well as a moratorium on the export of AP mines.⁴⁰⁷

Therefore, more actors became engaged in the landmine issue and now it is clear also the key role of the ICBL in lobbying governments to join its Campaign.

1995 was an important year because Belgium was the first country to adopt a national law banning AP mines, The Cambodia Campaign to Ban Landmines host the Third International NGO Conference on Landmine where more than 400 people from over 40 countries participated. This is an example of how quickly the Campaign network was extending, also thanks to the media campaign launched by the ICRC, exactly in the same year. 1996 is the turning point with the launch of the Ottawa Process by Canada and the following year it took place the Fourth NGO Conference on Landmines in Maputo.

At that point the drafting of a Convention had begun. In fact, Austria was hosting the first meeting in which about a hundred of countries discussed the core elements of a ban treaty. In October, the Nobel Peace Prize was awarded jointly to ICBL and Jody Williams, the founding coordinator of the ICBL and now ICBL Ambassador, “for their work for banning and clearing of anti-personnel mines.”⁴⁰⁸

In fact, it is recognized that thanks to her efforts in 1997 the Campaign grew from a small NGO to a worldwide network. She cooperated with governments as well as the UN and the ICRC and she was the spokesperson for the ICBL. Her efforts together with the work of the rest of the ICBL had been rewarded not only by the Nobel Peace Prize, but also by the achievement of the Treaty banning antipersonnel landmines during the Diplomatic Conference in Oslo, some weeks before (September 1997).⁴⁰⁹

⁴⁰⁶ GICHD, *supra* note (377), p. 38.

⁴⁰⁷ S. Maslen, *supra* note (112), p. 17. See also Don Hubert, *The Landmine Ban: A Case Study in Humanitarian Advocacy* (Providence: The Thomas J. Watson Jr., Institute for International Studies, 2000).

⁴⁰⁸ “The Nobel Peace Prize 1997”, Nobel Peace Prize, accessed in December 2014, online at http://www.nobelprize.org/nobel_prizes/peace/laureates/1997/.

⁴⁰⁹ More information on Jody Williams online at “Ms. Jody Williams”, ICBL, <http://icbl.org/en-gb/about-us/who-we-are/icbl-ambassadors/ms-jody-williams.aspx>, accessed in January 2015.

In 1998 it extended and renamed its Coordination Committee because of its numerous members. In addition, it created the Landmine Monitor, an important instrument that controls States Parties' compliance with their obligations and writes a detailed report every year on all aspects of the landmines and cluster munitions providing data and information for every country. When the Convention became a binding international law in March 1999 the ICBL became a coalition of more than 1.300 NGOs in more than 75 States.⁴¹⁰

Therefore, it worked to achieve the adoption of the Ottawa Treaty and today it still engaged in ensuring the implementation of the Convention. In particular, its task is twofold: it urges not Party States to join the Treaty and non-state armed groups to accept and respect its main obligations, and it promotes the implementation of the Treaty for States Parties since it believes that the Mine Ban Treaty is the "most effective framework for eliminating antipersonnel landmines." Consequently, it actively cooperates with States and international organizations to ensure the compliance with Treaty's obligations, its implementation, victim assistance, stockpile destruction, and mine clearance.⁴¹¹

4.1. Secrets of the success of the ICBL.

One secret of its success was its capacity to influence governments and policy makers. An example of the influence on States by the civil society is the "First Forty" campaign, launched by the ICBL and aimed at "pressing governments to be among the first forty governments to ratify the treaty and thus contribute to its rapid entry into force."⁴¹² National campaigns hurried inside the territories of States and also those countries that immediately ratified the Convention urged others to do the same. In nine months the Convention obtained the necessary 40 ratification, an extraordinary achievement considering that for the first time it was reached an agreement to prohibit a weapon that had been commonly used in warfare.

At the core of the campaign against landmines there were the humanitarian concerns because it originated from the direct experience of NGOs in mine affected countries, thus the success of the Treaty is also a victory of who claimed that humanitarian dramatic consequences outweighed military reasons. The ICBL was composed by organizations directly engaged in mine assistance and they documented the continuous threats posed by landmines in everyday assistance in war-torn communities. Their documented experiences became unbeatable compared to military excuses, and when in 1995 the ICRC launched a massive media campaign the impact of landmines on every aspect of everyday life in many countries became clear for the public opinion, hence it contributed to accelerate the process to ban them.⁴¹³ It should not be forgotten that the ICBL is not an NGO, but

⁴¹⁰ GICHD, *supra* note (377), p. 38.

⁴¹¹ The Monitor, *Landmine Monitor 2013*, p. 5, online at http://www.the-monitor.org/index.php/publications/display?act=submit&pqs_year=2013&pqs_type=lm&pqs_report=&pqs_section=.

⁴¹² The Monitor, *Landmine Monitor Report 1999: Towards a Mine-Free World* (1999), p. 930, online at <http://www.themonitor.org/index.php/publications/display?url=lm/1999/intro/>.

⁴¹³ D. Hubert, *The Landmine Ban: A Case Study in Humanitarian Advocacy* *supra* note (407), pp. 29-38.

instead “the voice of civil society in the diplomatic arena”⁴¹⁴, thus it is composed by a Governance Board and an Advisory Committee that manage and control the action of the entire ICBL, and by the most interesting element, that is the broader coalition of hundreds of organizations. The source of strength of the ICBL was its capacity to act as a unique organism, meanwhile the different scopes of action enriched the Campaign since they could handle every aspect related to the landmine issue.

It was the flexible and at the same time cohesive “network” of the ICBL that played the major role and shaped and influenced the global policy in behalf of the civil society.⁴¹⁵ Another secret of the success was its simplicity. In fact, the ICBL organized and used the preexisting structures and networks between the various national organizations avoiding excessive new expenditures for the Campaign.⁴¹⁶

In short, the goal was twofold: raise the public attention and convince States to undertake a process to ban landmines. Indeed, members of the ICBL were really helpful in the shifting the policies towards landmines in countries such as the UK and France.⁴¹⁷

In 2007 it began supporting the *Oslo Process*, and for the first time it espoused a different issue, i.e. the cluster munitions. In fact, it has been working with the Cluster Munition Coalition with the purpose of halting the humanitarian suffering caused by another indiscriminate weapon.⁴¹⁸

5. The Role of the Global Civil Society: The Cluster Munition Coalition. (CMC).

The Cluster Munition Coalition was launched in November 2003 with the purposes of achieving a moratorium on the use of CMs, a recognition of responsibility for States that have being using them to handle with the consequently humanitarian problems and to contribute with more resources to resolve them.

It was created by NGOs that concerned with the humanitarian consequences of CMs saw only disappointing results, since the CCW had not made progress in dealing with these weapons.

Its history can be traced back to a Conference held in Dublin in April 2003 concerned with outlining the problems caused by ERW. Although it wanted the CCW to focus on the threats posed by ERW, many of the presents in Dublin began to concentrate on cluster munitions in particular because they had been extensively used in Afghanistan and Iraq. The ICBL was concerned with this issue, however its Steering Committee believed that it “would be too much for the landmine campaign to take on.”

Indeed, at that time the Ottawa Treaty was under the implementation process and they feared that another issue could weaken the ICBL’s efforts in broaden the acceptance of that Treaty.

Thus, 10 NGOs decided to launch a new initiative taking as a model the ICBL and focused only on cluster munitions.

⁴¹⁴ “Who we are”, ICBL, accessed in December 2014, online at <http://icbl.org/en-gb/about-us/who-we-are/the-icbl.aspx>.

⁴¹⁵ M. Bolton, T. Nash, *supra* note (412), p. 172.

⁴¹⁶ D. Hubert, *supra* note (407).

⁴¹⁷ *Ibid.*, pp. 34-35.

⁴¹⁸ The Monitor, “International Campaign to Ban Landmines”, in Landmine Monitor Report 2009: Towards a Mine-Free World, available at <http://www.the-monitor.org/index.php/publications/display?url=lm/2009/>.

The choice of the name is interesting because it highlights the initial uncertainty in which this new initiative started. In fact, unlike the ICBL the CMC chose the term “coalition” instead of “campaign” because during the first years after its formation, CMC’s action was committed in building its network and in gathering information to sustain their purpose.

After the well-known events in 2006 the CMC became the main actor in the Oslo Process, and today it is still engaged in supporting the implementation, universalisation and monitoring of the CCM.

Some of the key aspects of the work of the CMC are: gathering information, which was important to provide data and information to understand the problems. For instance, the report of Human Rights Watch on the impact of CMs in Kosovo, Afghanistan and Iraq.⁴¹⁹

Another aspect is the advocacy. NGOs of the Coalition works to convince skeptical governments through seminars, meetings and similar activities. As during the Oslo Process, also today the CMC has been coordinating all these activities and providing its members with the arguments and data that are necessary to influence not party States to join the Convention.⁴²⁰ Today the CMC is active in 100 countries and in cooperation with national governments it works “to change the policy and practice ... to ensure countries join the Convention on Cluster Munitions” and to promote universal compliance with the spirit of the Treaty.⁴²¹

6. Europe.

The response of the European Union to landmines and cluster munitions is carried out in particular by the European Parliament, through its resolutions, and the Council of Ministers with the adoption of its Joint Actions. Moreover, it has been engaged since the beginning in practical action, i.e. mine action activities.⁴²²

Since the Nineties, the European Union has been playing an active role in the landmine and cluster munition issue, in particular in the mine action. In fact, since 1992 the European Parliament has adopted some resolutions. For example, resolution B3-1744/92 entitled “The injuries and loss of lives caused by mines”, which aimed at achieving a moratorium on the sale, transfer and export of landmines.⁴²³

Then in 1995 other resolutions, such as A4-0119/95 on landmines and blinding laser weapons, and resolution A4-0149/95, which is on landmines considered “a murderous impediment to development

⁴¹⁹ Human Rights Watch, *supra note* (276); “Fatally Flawed: Cluster Bombs and their Use by the United States in Afghanistan” (2002) HRW, available at <http://www.hrw.org/reports/2002/12/18/fatally-flawed>; “Off Target: The Conduct of the War and Civilian Casualties in Iraq” (2003) HRW, available at <http://www.hrw.org/node/12207/section/2>.

⁴²⁰ M. Bolton, T. Nash, “The Role of Middle Power - NGO Coalition in Global Policy: The Case of the Cluster Munitions Ban”, *Global Policy* 1, no. 2 (2010).

⁴²¹ “Who we are: The CMC”, Cluster Munition Coalition, accessed in December 2014, <http://www.stopclustermunitions.org/en-gb/about-us/who-we-are/the-cmc.aspx>.

⁴²² European Commission, *The Response of the European Union to the anti-personnel landmines challenge* (Luxemburg: Office for Official Publications of the European Communities, 2000), 8.

⁴²³ Resolution B3-1744/92, (1992), online at http://eur-lex.europa.eu/search.html?DTN=1744&DTA=1992&qid=1421742015359&CASE_LAW_SUMMARY=false&DTS_DOM=ALL&type=advanced&SUBDOM_INIT=ALL_ALL&DTS_SUBDOM=ALL_ALL.

⁴²⁴ and through which it called upon States to adopt national legislation to ban the production, stockpiling, transfer, sale, import, export and use of APLs.

In the same period, and exactly in 1996 the Council of the European Union adopted a Joint Action. This document expressed the willingness of the European Union not only to support “a common moratorium on exports” of APLs, as already stated in precedent resolutions of the European Parliament, but also it asserted “The European Union is committed to the goal of the total elimination of anti-personnel landmines.” In addition, it expressed its support to mine clearance activities, including humanitarian aid, development cooperation, and financial support. ⁴²⁵

Another Joint Action was adopted the following year to restate its commitment “to the goal of total elimination” of AP mines and encourage States to participate actively in the conferences that were being held to negotiate a Convention banning the AP mines (the Ottawa Process was underway). ⁴²⁶

Other resolutions were adopted by the European Parliament in the 2000s. For instance, in 2004 on the occasion of the first Review Conference of the Mine Ban Treaty and in 2007 for the 10th anniversary of the Convention it urged States that had not signed the Ottawa Treaty to accede to it, and it called on Member States “to fully implement all their obligations.”⁴²⁷

Similarly, the EU expressed its engagement in the cluster munition issue. Before the adoption of the CCM the European Parliament reaffirmed “the need to strengthen international humanitarian law as it applies to cluster munitions” and the urgency of adopting an international legal instrument to ban this weapon. In the meantime, it demanded UE Member States to adopt national measures to prohibit any use of CMs. ⁴²⁸

Then after the adoption of the Convention on Cluster Munitions, the European Union has continued to address the issue. For instance, resolution P6_TA(2008)0565 ⁴²⁹ urged UN Member States “to sign, ratify and implement the CCM” and to “provide technical and financial assistance for the clearance and destruction of cluster munitions.”

Finally, even after the entry into force of the CCM the EU has maintained its attention on the issue. As an example, in resolution P7_TA(2011)0512 the European Parliament urged States to accede to the

⁴²⁴ Resolutions all available online at http://eur-lex.europa.eu/search.html?lang=en&text=landmines&qid=1404383967294&textScope=ti-te&type=advanced&SUBDOM_INIT=EU_CASE_LAW&instInvStatus=ALL&DD_YEAR=1995.

⁴²⁵ Joint Action of 1 October 1996 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on anti-personnel landmines (96/588/CFSP), online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1404383967294&uri=CELEX:31996E0588>.

⁴²⁶ Joint Action of 28 November 1997 adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on anti-personnel landmines (97/817/CFSP), available online at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1404383967294&uri=CELEX:31997E0817>.

⁴²⁷ Resolution P5_TA(2004)0383 and P6_TA(2007)0621, all available online at http://eur-lex.europa.eu/search.html?lang=en&text=landmines&qid=1404383967294&textScope=ti-te&type=advanced&SUBDOM_INIT=EU_CASE_LAW&AU_CODED=EP&instInvStatus=ALL&FM_CODED=IRESOLUT.

⁴²⁸ Resolution P6_TA(2007)0484, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007IP0484&rid=1>.

⁴²⁹ Resolution P6_TA(2008)0565, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008IP0565&rid=4>.

Treaty in order to reduce the humanitarian impact of cluster munitions and called on Member States to take steps “to discourage states from providing cluster munitions to non-state actors.”⁴³⁰

The focus of the EU with regard to landmines and cluster munitions is the mine action. Besides the two basic pillars of mine action, the stockpile destruction and the clearance of affected areas, it addresses its interest towards activities of rehabilitation, cooperation, reconstruction, research and assistance to victims. It carries out not only numerous operations but also it is one of the major financial contributors. To date, it has assigned to those activities around EUR 1.5 billion.⁴³¹ Only in 1999 its contribution amounted to EUR 100 million,⁴³² and in 2014 it is the second contributor in the list of the top five donors.⁴³³

The European Union has carried out some projects aimed at empower mine victims in Angola, Bosnia-Herzegovina, Cambodia, Laos, Afghanistan, Croatia, Northern Iraq, Laos, Lebanon, Kosovo, Mozambique.

Activities of mine action have been organized and planned in detailed programs. Aiming at reinforcing the EU efforts, in 2001 the Council through regulations 1724/2001 and 1725/2001 established all the procedures for mine action operations, always remembering that the main aim consists in the achievement of a total elimination of those weapons. On these basis, it was formed the European Community Mine Action Strategy, that comprises the guidelines that are useful to support mine action operations. Indeed, it is a strategy that has the purpose of equipping all the contaminated territories “with the necessary means and capacity to properly and efficiently manage the problem” while, alleviate the problems and dangers which civilians are exposed, and help them in their economic and political development.⁴³⁴

To date, there have been three EC Mine Action Strategies, the first related to the period 2002-2004, the second 2005-2007 and the last one from 2008 to 2013. Still in this period the main objectives are: give the necessary assistance to whose countries who need help to comply with their obligations, eliminate mines and resolve the related social and economic difficulties.⁴³⁵ Moreover, since the second Strategy Program the EU has established an ambitious goal, that is trying to approach to the “zero-victim” target, this aim is not so far to reach since in 2013 the number of recorded casualties

⁴³⁰ Resolution P7_TA(2011)0512, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011IP0512&rid=2>.

⁴³¹ “The EU and Mine Action”, European Union External Action, accessed in January 2015, online at <http://eeas.europa.eu/non-proliferation-and-disarmament/anti-landmines/>.

⁴³² European Commission, *supra* note (414), p. 5.

⁴³³ “The UN Voluntary Trust Fund For Assistance in Mine Action”, UNMAS, accessed in January 2015, <http://www.mineaction.org/funding/vtf>. Activities related to mine action are financed through the UN Voluntary Trust Fund that channels the financial resources towards the areas that need aid to carry out mine action operations (the five pillars). For more information see note (226).

⁴³⁴ EU, *EC Mine Action 2002-2004: Strategy and Multiannual Indicative Programming*, available online at http://eeas.europa.eu/non-proliferation-and-disarmament/anti-landmines/docs/strategy_mip_02_04_en.pdf.

⁴³⁵ EU, “*Mine Action: Not just about “de-mining”: what is mine action?*”, online at http://eeas.europa.eu/non-proliferation-and-disarmament/anti-landmines/docs/mine_action_en.pdf, last accessed in January 2015.

dropped to the lowest level ever (about 3.308 victims, the decline is 24% from the 4.325 victims in 2012).⁴³⁶

Nevertheless, according to the data of the ICBL every day about 10 people remained killed or injured by mines or ERW, this is a great news if compared with the average of 25 people who lose their life or a limb in 1999, but it cannot be defined a success. As stated by Megan Burke, the co-coordinator and editor for the Victim Assistance Team of the Monitor “we can’t forget that there are hundreds of thousands of landmine survivors waiting for their needs to be met and their rights to be fulfilled”⁴³⁷ and the number of victims is not zero, hence the process to reach that number is still under way.

VII. THE MINE BAN TREATY: IMPLEMENTATION AND COMPLIANCE

One of the major feature of this Convention is its success. In fact, unlike other treaties it has been characterized by a high degree of cooperation and transparency. The success of its implementation is due to the same factors that have played a crucial role all along the process to adopt it, that is the ties and interconnections between formal and informal tracks, where the first comprises States that since the beginning advocated a ban of landmines, and the second includes the non-State actors, i.e. NGOs and international organizations that played a major role in bringing about the Treaty. Currently, they still support its implementation, control Member States’ compliance with their obligations, and are engaged in mine action activities.⁴³⁸ To understand its successful implementation it is necessary to analyze the elements that are the causes of its fortune.

1. The Success of the *Mine Ban Treaty*: key factors.

The peculiarities of the Ottawa Process have already been examined, however to understand the great success of the Convention it is worth retracing its history, but this time what will be highlighted are some distinctive traits that make this Convention “the most comprehensive” and successful “international instrument for eradicating landmines.”⁴³⁹

The chain of events that unfolded in the Ottawa Process help to understand its success. At the beginning of the Nineties the ICBL and the ICRC raised the public attention on the scourge of landmines, and it is at least an astonishing the fact that only five years after the launch of the ICBL the Convention to ban landmines was adopted. To date, that is fifteen years after the entry into force of the

⁴³⁶ The Monitor, *Landmine Monitor Report 2014*, *supra* note (200), p. 2.

⁴³⁷ “Sharp drop in landmine casualties”, December 2014, ICBL, online at <http://www.icbl.org/en-gb/news-and-events/news/2014/landmine-monitor-2014-launch.aspx>; see also “Why Landmines are Still a Problem”, ICBL, accessed in January 2015, <http://www.icbl.org/en-gb/problem/why-landmines-are-still-a-problem.aspx>.

⁴³⁸ K. Lawand, *supra* note (237), pp.324-325.

⁴³⁹ “The Issues: Mine Ban Treaty”, The Monitor, accessed in December 2014, online at <http://www.the-monitor.org/index.php/LM/The-Issues/Mine-Ban-Treaty>.

Treaty, there are 162 States Parties but the interesting thing is that already when it entered into force in 1999 71 States ratified it.⁴⁴⁰

Therefore, not only the Convention was negotiated within a year, but even more astonishing is the speed at which the Treaty, once adopted, entered into force. In fact, article 17 provides that the Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification has been deposited.”⁴⁴¹ Burkina Faso was the forty country to ratify it on 16 September 1998, therefore, it took less than two years for the Convention to enter into force. As reported by the Monitor, “This is believed to be the fastest entry into force of any major treaty ever.”⁴⁴² This pace of the ratification is a consequence of the effort of the ICBL, ICRC and pro-ban States, such as Canada and Norway.

Another key point that created the ideal conditions to trigger a banning process are linked to the post Cold War period. As mentioned above, it favored the passage for the landmines from being hypothetically restricted to be concretely forbidden. For one thing, while during the Cold War conflicts in the developing world were seen as the result of confrontation between the two superpowers’ fronts, with the disintegration of the Soviet Union the end of the Cold War left room for becoming aware of the humanitarian repercussions of the military employment of landmines and similar explosive devices.

Likewise, the process of reconstruction in war-torn countries where UN peacekeeping operations took place, such as in Cambodia, Angola, Mozambique, Namibia, etc. brought to the fore the dangers for the UN peacekeepers. Thus, the changed nature of conflicts caused the development of UN Peacekeeping operations that began to deal with the consequences of intra-State conflicts and civil wars. Therefore, also the objectives changed and the priorities of the international community were: the reconstruction in war-torn communities, the building of institutions, and the resolution of conflicts. Consequently, new figures were needed to flank the military personnel, such as civil governance and communications experts, de-miners, legal specialists, humanitarian workers, economists, etc.⁴⁴³ Direct dangers for the humanitarian workers urged States to take action, and also the ICBL denounced the fact that landmines “hamper the provision of aid and relief services” besides injuring and killing aid workers.⁴⁴⁴

Secondly, with the end of the Cold War the two blocs disintegration fostered the emergence of unilateral actions by States that influenced others to do the same. For instance, in 1992 President Bush

⁴⁴⁰ “Landmine ban success reaps results”, The Monitor, 23 June 2014, available at <http://themonitor.org/index.php/LM/Press-Room/Press-Releases/Press-release-Third-Review-Conference-to-the-Mine-Ban-Treaty>.

⁴⁴¹ The Mine Ban Treaty, article 17(1).

⁴⁴² The Monitor, *Landmine Monitor Report 1999: Toward a Mine-Free World* (1999), p. 2, online at <http://www.themonitor.org/index.php/publications/display?url=lm/1999/intro/>.

⁴⁴³ While in the early years of peacekeeping operations their missions were mainly concentrated on the implementation of peace agreements, and therefore missions were composed by military personnel with observational roles, then the end of the bipolar confrontation changed the context for their missions, forcing them to notice that it was needed a new approach, new instruments, and multiple tasks not only to implement peace agreements, but also to preserve the security, and support the establishment of democratic institutions. See “Post Cold-War surge”, United Nations Peacekeeping, accessed in December 2014, <http://www.un.org/en/peacekeeping/operations/surge.shtml>. The timeline of peacekeeping operations from 1948 to 2013 is available at <http://www.un.org/en/peacekeeping/documents/operationslist.pdf>.

⁴⁴⁴ “Arguments for the Ban”, *supra* note (40).

enacted a moratorium on the export of APLs for a year. Despite the fact that still today the US are among non-Member States to the Ottawa Treaty, that measure was the first important step by any country to deal with landmines. This approach was then followed by other States, Belgium, France, Germany, Greece, the Netherlands, and South Africa, which established export ban.⁴⁴⁵ In fact, Belgium is often mentioned as being among the first countries that took action against AP mines. Indeed, in March 1995 it adopted the first national law banning them, and three months later Norway did the same. By mid-1997 around 30 States prohibited the use of AP mines and few months later 122 States signed the Ottawa Treaty, a great success considering that its process was initiated by NGOs, and not by States.⁴⁴⁶ However, it is important to highlight that these unilateral actions were strongly influenced by the lobbying activities of NGOs, thus in background all along the Ottawa Process almost any political decision was conditioned by the work of a non-governmental organization of the ICBL network. An example of this is the request that France made to the UN Secretary-General in 1993 to convene a review conference of the CCW and its Protocol on landmines. This happened thanks to the pressure of the NGO Handicap International that during the state visit of the French president Mitterrand in Cambodia, it presented a petition with 22.000 signatures, collected to support the end of the so-called “Coward’s War” and to ask the government to establish a moratorium on the sale, export and transfer of AP mines.⁴⁴⁷

In 1994 both Italy and Sweden called for a ban on APLs under the pressure of their national ban campaigns and during the first years of the Nineties the first three meeting of the NGO Conference on Landmines occurred. The first in 1993 in London with 50 delegates from 40 NGOs, the second in 1994 in Geneva where representatives from over 75 NGOs participated, and the last one in 1995 in Cambodia. This is interesting not only because this three-day event was attended by 400 people from 42 countries, but also because it demonstrated that the movement against landmines was not only an initiative of the developed world aimed at resolve a problem that mainly afflicted the Third World, on the contrary countries of the Third World were in the first line among the other countries.⁴⁴⁸

All that to recall the tight link and interconnection between States’ decisions and NGOs influence, which is a thing that makes unique the Ottawa Process.

2. The Landmine & Cluster Munition Monitor: the instrument to evaluate the implementation of the Mine Ban Treaty and of the Cluster Munition Convention.

⁴⁴⁵ “United States of America: Practice Relating to the Prohibition of Certain Types of Landmines”, ICRC, accessed in December 2014, https://www.icrc.org/customary-ihl/eng/docs/v2_cou_us_f8profce; “Timeline of the International Campaign to Ban Landmines,” ICBL, available online at www.icbl.org.

⁴⁴⁶ R. M. Behringer, *supra* note (130), p. 66; K. R. Rutherford, “A theoretical examination of disarming States: NGOs and anti-personnel landmines”, in *Global society in transition: an international politics reader*, ed. D. N. Nelson, L. Neack (New York: Kluwer Law International, 2002), 271, 272. See also L. Maresca and S. Maslen, *supra* note (56), pp. 460-461.

⁴⁴⁷ “France: Practicing Relating to the Prohibition of Certain Types of Landmines”, ICRC, accessed in December 2014, https://www.icrc.org/customary-ihl/eng/docs/v2_cou_fr_f8profce; Arms Projects (Human Rights Watch), *supra* note (12), pp. 323-324.

⁴⁴⁸ Petrice R. Flowers, “The Ottawa Process: Domestic Interests, Transnational Civil Society, and States Identity”, in *Leadership in global institution building: Minerva’ rule*, ed. Y. Tiberghien, (Houdmills, Basingstoke, Hampshire: Palgrave Macmillan, 2013), 116-118; ICBL, *supra* note (445).

Before recalling the articles that have been analyzed to assess their implementation it is essential to better explain the primary instrument that examine the implementation of both the Conventions, i.e. the Monitor. The Landmine Monitor is an initiative created in 1998 by the ICBL to monitor and assess the implementation of States' obligations and to report their progresses, needs and eventual violations. In fact, after the Mine Ban Treaty was open to signature in December 1997 the ICBL recognized the necessity to create an instrument able to report (and control) its implementation. In short, it is useful for two reasons: as an instrument of control Member States are evaluated through the annual reports that are public published, on the other hand, it is an aid for States Parties to understand what they are required to do so as to comply with their obligations.⁴⁴⁹ The first report is dated 1999, and since that time, it has been published each year before the annual Meeting of the States Parties to the Ottawa Treaty.

Later, in 2008 when the Cluster Munition Convention was opened for signature the tasks of the Landmine Monitor were enlarged to also monitor the implementation and universalization of the CCM. Already before the adoption of the CCM the Landmine Monitor dealt not only with landmines but also with ERW, i.e. cluster munitions were took into consideration, however with a Convention that focused on this specific weapon the Monitor could better report on the cluster bombs problem and its Treaty implementation. Therefore, in May 2009 it published its first report on cluster bombs and few months later, in December 2009 the Landmine Monitor became the Landmine & Cluster Munition Monitor. Since then, it has produced reports on Countries Profiles, cluster munitions, landmines and factsheets on the main international meetings.⁴⁵⁰

Reporting on all the issues related to landmines, ERW and cluster bombs, and examining the development of countries' compliance and trends it is recognized as being "the *de facto* monitoring regime for the Mine Ban Treaty and the Convention on Cluster Munitions".⁴⁵¹ Moreover it is widely respected and considered an impartial and independent instrument. Its reports are the results of the work of a network that comprises over 70 researchers, which are managed by an Editorial Team, that is composed by members of some NGOs, such as Mine Action Canada, Action on Armed Violence, Handicap International, Human Rights Watch and Norwegian People's aid. Then, the contents and information gathered by the experts and researches are checked by the Monitoring and Research Committee.

Since the beginning the work of the Monitor is took into consideration by States, international organizations, media, as well as other NGOs and individuals.

Its publications have the purpose of supporting the universalization and implementation of both the Ottawa Treaty and the Cluster Munition Convention, helping the decision-making process for Member

⁴⁴⁹ "Landmine & Cluster Munition Monitor", Mine Action Canada, accessed in January 2015,

<http://www.minesactioncanada.org/learn/landmine-and-cluster-munition-monitor-background>.

⁴⁵⁰ "About Us: History", The Monitor, accessed in January 2015, <http://www.the-monitor.org/index.php/LM/About-Us/History>; "About Us: What We Do", The Monitor, accessed in January 2015, <http://www.the-monitor.org/index.php/LM/About-Us/What-We-Do>.

⁴⁵¹ "About Us: What is the Monitor?", The Monitor, accessed in January 2015, <http://www.the-monitor.org/index.php/LM/About-Us/What-is-the-Monitor>.

States, understanding what States still have to do as regards the main obligations: stockpiles destruction, clearance of mined areas, assistance to mine victims, mine education activities.

In addition, there are also two other goals that deserve to be highlighted. First, public reports can be used by civil society's actors as a trusted documentation to encourage governments of States Parties to respects their commitments.⁴⁵² On the other hand, they can serve also to exhort non-Member States to join the Conventions.⁴⁵³ Second, they help to hold the attention of the public opinion on these issues, thus the support to mine action activities in response to the dangers that those weapons provoke.⁴⁵⁴ That said, and having recognized that the Monitor is "the knowledge leader on the landmines, cluster munitions, and explosive remnants issues"⁴⁵⁵ thanks to its global research network, it is possible to examine its reports to evaluate the situation regarding the implementation of both the Conventions.

3. Implementation of the *Mine Ban Treaty*.

In September 1997 in the occasion of the Oslo Diplomatic Conference on landmines the UN Secretary General welcomed that final step before the signing of the Convention describing that moment as a "historic event in the peacemaking efforts" and he expressed the desire on behalf of the United Nation to make landmines "a weapon of the past".⁴⁵⁶ Only few months later, he welcomed the Convention, he labeled it as "a landmark step in history of disarmament", and he said "I am confident that it will provide the final impetus for a universal ban, encompassing all mine-producing and mine-affected countries."⁴⁵⁷ Therefore, what is the status of its implementation?

Of the 135 countries that signed Treaty in 1999, 71 also ratified it (data of March 1999). Under article 17 the Treaty enters into force "on the first day of the sixth month after the 40th instrument of ratification has been officially deposited"⁴⁵⁸, and with the ratification of Burkina Faso, the Treaty became a binding agreement for the first forty countries that had ratified it, which were required to report their implementation measures to the UN Secretary-General, under article 4 they had to destroy their stockpiles by 1 March 2003 and clear their mine affected areas by 1 March 2009 (article 5).

⁴⁵² "Landmine & Cluster Munition Monitor", *supra* note (449).

⁴⁵³ "Take action", ICBL, accessed in January 2015, <http://icbl.org/en-gb/finish-the-job/take-action/ten-things-you-can-do.aspx>; "Individuals", CMC, accessed in January 2015, <http://www.stopclustermunitions.org/en-gb/take-action/individuals.aspx>. Both the Campaigns address individuals to take action to eradicate landmines and cluster bombs. Among the things that they can do, they can support their national campaigns or start one, make donations, write to local newspapers and stay informed following the social medias. Furthermore, people can send the documentation provided by the ICBL and CMC on their websites to governments, or write lobbying letters to urge them to end the destruction caused by those weapons, and then share with the ICBL and CMC the responses to help their work. On the websites there are some template letters and the instructions to follow to be directly engaged. Examples of the documents, namely the lobbying letters are available at "Campaigning Tools", ICBL, accessed in January 2015, <http://icbl.org/en-gb/resources/campaigning-tools/lobbying-letters.aspx>, and "Documents", CMC, accessed in January 2015, <http://www.stopclustermunitions.org/en-gb/resources/documents/template-letters.aspx>.

⁴⁵⁴ "Landmine & Cluster Munition Monitor", *supra* note (449).

⁴⁵⁵ "About Us: Experts", the Monitor, accessed in January 2015. Here it is also possible to see who are the members of the Monitor staff, i.e. researches, Monitor and Research Committee, Editorial Team, online at <http://www.the-monitor.org/index.php/LM/About-Us/Experts>.

⁴⁵⁶ "Secretary-General Kofi Annan, International Community Urged to Make Land-Mines 'A Weapon of the Past and a Symbol of Shame'", 3 September 1997, United Nations Press Release SG/SM/6313, available online at <http://www.un.org/Depts/mine/UNDocs/sgsm6313.htm>.

⁴⁵⁷ "Secretary-General welcomes Convention banning landmines as 'landmark step in history of disarmament'", United Nations Press Release, 2 December 1997, online at <http://www.un.org/press/en/1997/19971202.SGSM6410.R1.html>.

⁴⁵⁸ The Mine Ban Treaty, article 17(1).

3.1. The prohibition of the use.

While between 1980-1990 an average of 4 million mines were replaced every year, in the mid-1990s that data declined to 2.5 million mines. However, at that time only 80,000 mines were being removed annually.⁴⁵⁹ Later, data of 1998 showed that the number of AP mines in place around the world was around 30 to 50 percent lower than previously estimated and that they were being cleared at a higher rate than being planted.⁴⁶⁰ This trend is believed to have occurred thanks to the global movement to ban landmines that took place in the Nineties. Therefore, while in 1994 the challenge seemed to be “insurmountable” with around 80-110 million mines on the ground and a rate of 2.5 million mines planted each year, in 1998 with around 60 million mines and an increase of mine clearance operations that surpassed the planting rate. As a consequence, experts began to believe that it was really possible to overcome the huge scourge of landmines.⁴⁶¹

In 2004, the year of the first Review Conference of the Ottawa Treaty, the number of States Parties rose to 143.⁴⁶² As reported by the Monitor between 1999 and 2004 the compliance rate for States Parties increased, as an example, 65 of them declared that they had completed their stockpile destruction. As regards the prohibition of the use, there was a marked drop, and this is one of the main achievements of the Treaty. However, it recorded the use of landmines by several non-Member States, such as Russia, and Myanmar that had used them continuously in the period 1999-2004. In addition, besides States there were some Non-State Actors (NSAs) that in the same period 1999-2004 used APLs in around 16 countries.⁴⁶³

According to the Monitor’s researchers between 1999-2009 the use of mines by governments was rare, and while in 1999 they identified 15 States that had used them, this number gradually declined: 12 in 2000, 9 in 2003, 4 in 2005 and 2 between 2007-2009. Despite the fact that there was no confirmation by States Parties, the Monitor reported the use of landmines by two Members, Uganda and Zimbabwe.⁴⁶⁴

Fortunately, in December 2014 the Monitor published the last Report, thus current data are available. To date there are 162 Member States, and regarding the use, it recounts that any State party employed APLs, however the non-Member State Myanmar has continued to use AP mines, even if for the last two years its level of mine employment has been lower. In addition, the government of Syria has begun to use mine since the end of 2011 to protect its borders. In April 2014 it was recorded the use of a type of remotely-delivered anti-vehicle landmine that is extremely dangerous, because it has a sensitive anti-handling device. The Convention does not prohibit anti-tank landmines, however whose

⁴⁵⁹ The U.S. Dept. of State, *supra* note (29), p.1.

⁴⁶⁰ *Ibid.*, p. v.

⁴⁶¹ *Ibid.*

⁴⁶² The list of Member States in 2004 is available online at http://www.themonitor.org/index.php/publications/display?url=lm/2004/states_parties.html.

⁴⁶³ “Banning antipersonnel mines”, The Monitor, 2004, available online at <http://www.themonitor.org/index.php/publications/display?url=lm/2004/intro/banning.html#fn15>.

⁴⁶⁴ “Ban Policy: 1999-2009 Overview”, The Monitor, 2009, online at http://www.themonitor.org/index.php/publications/display?url=lm/2009/es/ban.html#1999-2009_overview.

types with sensitive fuses that make them to easily explode, even by the passage of a civilian, are considered AP mines and therefore banned.⁴⁶⁵

Also Non-state armed groups used landmines between 2013 and 2014 in seven countries: Afghanistan, Colombia, Yemen, which are Member States, and Libya, Myanmar, Pakistan and Syria, which are non Member States.⁴⁶⁶

3.2. The Prohibition to Develop, Product, Acquire, Stockpile, Retain or Transfer APLs.

About 190 million mines were produced from 1968 and 1993, and despite it is not easy to obtain certain data, the 1999 report recorded a sharply drop in the production between 1980s-1990s (around 5 million mines produced per year). More importantly, 38 States of the 54 APLs producers stopped this activity, and among them there are some of the biggest producers: Belgium, Bosnia, Bulgaria, Czech Republic, France, Hungary, Italy, and the United Kingdom.⁴⁶⁷ Thanks to the influence of the ICBL, since 1996 States have enacted moratoria on the export and transfer of landmines, including some non-Member States, such as China and the United States. In fact, the ICBL had immediately understood that the export of mines worsened the landmine crisis, and the situation was even more complicated since often mine affected countries imported the landmines from other States. This is why, the ICBL since its inception has pushed for halting the export of APLs. According to the Monitor in the past 34 States exported landmines, but already in 1999 some of them signed the Treaty and others had moratorium or export ban in place. Although some suspicious, since 1996, the Monitor has not documented any significant activities related to the export and transfer of APLs. This does not mean that “no AP mines have been transferred” because it is not simple to control the mine trade, however the *de facto* global ban of export and transfer that has established before the adoption of the Ottawa Treaty helped to end this activity.⁴⁶⁸

As a matter of fact, the most recent data identify that there is a low level of illicit trade and transfer of landmines, such as in Sudan and Yemen. On the other hand, nine States not party, including six producers have in force moratorium of the export of AP mines: China, India, Israel, Kazakhstan, Pakistan, Russia, Singapore, South Korea, and the United States. At present, active producers are: India, Myanmar, Pakistan, and South Korea.⁴⁶⁹

3.3. The obligation of destruction.

When the Treaty entered into force 131 States possessed stockpiles (about 260 million AP mines). Then, during the first years of the Treaty implementation these figures sharply declined, also thanks to the rejection in the use by non-Member States. In 2004 65 of the 78 States that reported to possess

⁴⁶⁵ M. Hiznay, “Remotely delivered antivehicle mines spotted in Syria”, Landmine and Cluster Munition Blog, 25 April 2014, online at <https://landmineandclustermunitionblog.wordpress.com/2014/04/25/remotely-delivered-antivehicle-mines-spotted-in-syria/>.

⁴⁶⁶ The Monitor, *Landmine Monitor 2014*, pp. 7-10, online at <http://www.the-monitor.org/index.php/LM/Our-Research-Products/Landmine-Monitor>.

⁴⁶⁷ “Banning antipersonnel mines”, The Monitor, 1999, online at http://www.the-monitor.org/index.php/publications/display?url=lm/1999/english/exec/Execweb1-02.htm#P168_8819.

⁴⁶⁸ *Ibid.*; “Banning antipersonnel mines”, *supra* note (463).

⁴⁶⁹ *Landmine Monitor 2014*, *supra* note (466), pp. 1-2.

stockpiles completed the destruction, with a total amount of 37.3 million mines destroyed, of which 7.1 million were destroyed by Italy. The 1 March 2003 was the four year-deadline for the destruction of stockpiles for all the countries that were party when the Convention entered into force, and quite all of them met their obligations, and most States completed this operation two or one year before the deadline.

However, the largest quantity of stockpiled mines was held by non-States Parties, around 180-185 million mines and they were held in particular by three States: China (110 million), Russia (50 million), and the U.S. (10.4 million), followed by Pakistan (6 million), and India (4-5 million). Over time even non-States Parties have decided to destroy part of their stockpiles for several reasons, for example, to prepare themselves to accede to the Convention, or for “routine ammunition management practice”.⁴⁷⁰

In 2009 the Monitor defined the compliance with the stockpile destruction as “impressive” since most Member States, except for 4 countries, completed the elimination of stockpiles far in advance of their deadlines.⁴⁷¹ To date, a total of 156 of the 162 States Parties do not stockpile AP mines. Among the 156 States there are 88 countries that completed the destruction of stockpiles (about 48 million mines destroyed since 1999), and 65 declared not to possess stockpiles. For the remaining 3 States the situation is unclear.⁴⁷² On the other hand, 6 Member States still have to comply with this obligation: Finland, Guinea-Bissau, Poland, Belarus, Greece and Ukraine (for a total of 9 million mines remaining to be eliminated) and the last three are violating their obligations since their 4-year deadlines are over.⁴⁷³

Currently, according to the Monitor evaluations, 31 of 35 non-States Parties stockpile APLs (a total of 160 million mines). In point of fact, among countries with the largest stocks of APLs, both China and the U.S. in 2014 declared to have reduced their stockpiles: less than 5 million for China, and 3 million for the U.S.⁴⁷⁴

Under article 5 States Parties have the legal obligation to clear all mine affected territories under their control within 10 years. Thanks to the ban on the use of APLs and the clearance operations undertaken by UNMAS, the ICBL Campaign Manager Firoz Alizada on the occasion of the Third Review Conference stated “Now it’s time to finish the job and to do it within ten years”⁴⁷⁵ According to the

⁴⁷⁰ “Banning antipersonnel mines”, 2004 *supra* note (463).

⁴⁷¹ “Ban Policy: 1999-2009 Overview”, *supra* note (464).

⁴⁷² *Landmine Monitor 2014*, *supra* note (466), p. 16.

⁴⁷³ *Ibid.*, pp. 16-17; “Fact sheet: Banning Antipersonnel Mines: A 15-Year Overview of Major Findings 1999-2014”, The Monitor, June 2014, available online at <http://www.the-monitor.org/index.php/LM/Our-Research-Products/Factsheets>.

⁴⁷⁴ States not party that may stockpile APLs are Armenia, North Korea, South Korea, Azerbaijan, Saudi Arabia, Bahrain, Kyrgyzstan, Singapore, Lao PDR, Sri Lanka, Cuba, Lebanon, Syria, Egypt, Libya, UAE, Georgia, Mongolia, Morocco, Uzbekistan, Iran, Myanmar, Vietnam, Israel, Nepal, Kazakhstan, Russia, Pakistan, India, China, US (the last five possess the largest stocks), *Ibid.*, pp. 10-11.

⁴⁷⁵ “Historic Mine Ban Treaty Meeting in Maputo Expected to Highlight Achievements and New Commitments to End Suffering from Landmines by 2025”, ICBL, 23 June 2014, online at <http://www.icbl.org/en-gb/news-and-events/news/2014/historic-mine-ban-treaty-meeting-in-maputo-expected-to-highlight-achievements-and-new-commitments-to-end-suffering-from-landmines-by-2025.aspx>.

ICBL this is a possible achievement if “operators, donors, and national authorities employ the right resources in the right way.”⁴⁷⁶

While in the first years after the adoption of the Treaty a total of 88 States and over ten areas were affected by landmines⁴⁷⁷, over few years (from 1999 to 2009) about 1.100 km² of mined areas were cleared (only in 2008 mine action programs cleared 160 km² of affected territories, which was the highest figure until that year).⁴⁷⁸

More recent data show that since 1999 to October 2014, 28 States have declared themselves mine-free, a number that grows every year, and another positive data is that in 2013 mine action programs cleared about 185 km² of mined areas. On the other hand, 56 States and other 4 areas are still affected by mine contamination, and 32 of them are States Parties. In particular, the most affected territories are:

Afghanistan, Cambodia, Turkey, Iraq, Bosnia and Herzegovina, with a contamination of more than 100 km², and Angola, Azerbaijan, Croatia, Thailand, and Zimbabwe, with a mine contamination that ranges from 20 km² to 100 km².

It is worth mentioning some data about the mine clearance to understand to what extent mines affected many areas around the world. Thus, the Monitor indicates that over the past five years the sum of the mine clearance operations has cleared about 973 km² of mined areas with the destruction of more than 1.48 million of APLs.⁴⁷⁹

As regards the obligations under article 5, the Monitor underlines that the compliance with the clearing of contaminated areas is one of the most difficult tasks for States. since the entry into force in 1999 27 Members States⁴⁸⁰ have cleared their territories and 38 are confirmed or suspected to be still affected, thus they have to respect their obligation under article 5.⁴⁸¹

A matter of concern is the large number of requests for a deadline extension. This is a possibility provided under article 5 and in theory only in exceptional cases. Nevertheless, since the large number of States that request an extension even more than one time, the ICBL recommended States to comply with their clearance obligations as soon as possible, without postponing and relying upon an extension.

⁴⁸² In fact, of the 32 States that have still to complete the clearance, 23 are availing themselves of extensions. In order to face this routine, the ICBL denounced that “several requests would probably not have been needed if the work had started earlier or had been more efficient”, thus it calls upon

⁴⁷⁶ “Fact Sheet: Mine Action and Support for Mine Action 1999-2014”, The Monitor, June 2014, online at <http://www.themonitor.org/index.php/LM/Our-Research-Products/Factsheets>.

⁴⁷⁷ “Humanitarian Mine Action”, The Monitor 2000, available online at <http://www.themonitor.org/index.php/publications/display?url=lm/2000/intro/hma.html>.

⁴⁷⁸ “Mine Action: 1999-2009 Overview”, The Monitor, online at http://www.themonitor.org/index.php/publications/display?url=lm/2009/es/mine_action.html.

⁴⁷⁹ *Landmine Monitor 2014*, *supra* note (466), p. 22.

⁴⁸⁰ States Parties that have cleared their mined areas, and therefore completed the implementation of article 5 are: Albania, Bhutan, Bulgaria, Burundi, Congo, Costa Rica, Denmark, France, Macedonia, Gambia, Germany, Greece, Guatemala, Guinea-Bissau, Honduras, Hungary, Malawi, Montenegro, Nicaragua, Nigeria, Rwanda, Suriname, Swaziland, Tunisia, Uganda, Venezuela, Zambia. See *Landmine Monitor 2014*, *supra* note (466), p. 24.

⁴⁸¹ *Ibid.*, the list of the 38 States is available at p. 25.

⁴⁸² *Ibid.*; “ICBL Comments on Mine Clearance, 12th Meeting of States Parties to the Mine Ban Treaty”, AP Mine Ban Convention, 5 December 2012, online at http://www.apminebanconvention.org/fileadmin/APMBC/MSP/12MSP/day3/10bi_ARTICLE_5_OTHER_STATES_PARTI_ES_COMMENTS_-_ICBL.pdf.

States to better explain the circumstances that lead them to demand for an extension together with reliable documentation and to request only the strictly necessary number of years to comply with article 5. On the other hand, it also asks States Parties that have to decide on the requests, to be more careful in this procedure, raise questions and demand regular reports.⁴⁸³

3.4. Fulfillment of other obligations.

As regards the transparency reports, except for Equatorial Guinea and Tuvalu all the other States Parties produce their initial reports. Another positive element is the submission of voluntary reports by several non-Member States, such as Morocco (in 2012), Azerbaijan (in 2008 and 2009), Lao PDR (in 2010), Mongolia (in 2007), Palestine (in 2011), and Sri Lanka (in 2005). However, the Monitor has reported a decrease in the presentation of annual transparency reports, as in recent years only the 50-60% of Member States has complied with this obligation under article 7.⁴⁸⁴

The implementation and compliance with the Ottawa Treaty has been exemplar, and another demonstration of that is linked to article 8. In fact, as explained before, it provides the steps that States have to undertake when there is the necessity of clarifying a compliance situation. Until now, no Member State has used the mechanism under article 8, conversely, States have preferred to consult each other when allegations of non compliance have been raised.

Admittedly, the mechanism is believed not to be used for other reasons, rather than the willingness of States to favor informal consultations “under the spirit of cooperation”. As pointed out by S. Maslen, only the request to begin such a procedure would be seen “as a diplomatically hostile gesture”, and especially during the first years after the entry into force of the Convention, it could have hampered the adherence to the Convention.⁴⁸⁵ There are also other opinions. For example, T. Hajnoczi stated that this mechanism was “a remarkable achievement”, and its very formation serves to foster compliance.⁴⁸⁶

Recently, the Monitor has identified some questions of compliance, hence the ICBL has called upon States to adopt a more “effective approach to address current cases of non-compliance and help prevent new ones.”⁴⁸⁷ Examples of current issues of concerns are five. The first is the use of APLs by Yemen. In December 2013 during the Thirteenth Meeting of States Parties it admitted the use of AP mines in 2011 during the uprising against the former President Ali Abduallah Saleh, and it promised to investigate and then provide a report on the issue. In March 2014 it submitted a report with information about its plan for clearance, marking, victim assistance and risk education, however according to Human Rights Watch these activities have been undertaken only in part. At present, the

⁴⁸³ “Clear mines, Extension Requests”, ICBL, accessed in January 2015, <http://www.icbl.org/en-gb/finish-the-job/clear-mines/extension-requests.aspx>.

⁴⁸⁴ “Fact sheet: Banning Antipersonnel Mines: A 15-Year Overview of Major Findings 1999-2014”, *supra* note (473), p. 4.

⁴⁸⁵ S. Maslen, *supra* note (112), p. 164-165.

⁴⁸⁶ T. Hajnoczi, T. Desch, D. Chatsis, “The Ban Treaty”, *supra* note (116), pp. 303-304.

⁴⁸⁷ “Fulfill Other Treaty Obligations”, ICBL, accessed in January 2015, <http://icbl.org/en-gb/finish-the-job/fulfil-other-treaty-obligations/ensuring-compliance.aspx>.

situation is even more complicated since in October 2014 the contaminated areas fell under the control of rebels, and it has not been cleared.⁴⁸⁸

Second, allegations of use of APLs have been raised in Sudan (in 2011 and 2013), South Sudan (in 2011), and on the border between Thailand and Cambodia (in 2013), however to date they have not been confirmed. Third, in 2013 Turkey has sentenced with an initial verdict some members of the Turkish Armed Forces because of the use of APLs in 2009. Nevertheless, this is not the definitive decision of the Court, and more importantly, the sentences do not mention the illegal use of APLs, thus it was not connected with the obligations accepted by Turkey when ratified the Convention.⁴⁸⁹

Fourth, the violation of obligations under article 4 by Belarus, Greece and Ukraine, which as already mentioned, have not yet completed the destruction of their stockpiles. Despite the appeals of the ICRC and the ICBL, at present they have not presented a plan for the elimination of the remaining stocks.

Fifth, the ICBL is worried about the issue of “mines retained for training and research.”⁴⁹⁰

Indeed, 73 States retain landmines, as it is allowed under article 3 for “the development of and training in mine detection, mine clearance, or mine destruction”⁴⁹¹, and according to the ICBL this is a concerning situation since 39 States of the total of 73 of whose retaining mines possess more than 1.000 APLs, and what is more serious is that 31% of them have not submitted their annual transparency reports. The non presentation of the reports cause uncertainties, because States do not explain their purposes and if and how they use APLs.

Moreover, also non exhaustive reports constitute a problem, since recently some States have reported a decreasing number of APLs retained without explaining the details of those reductions,⁴⁹² raising doubts in the ICBL.

Consequently, faced with these issues of serious violations, the ICBL has encouraged States to use the mechanism provided by article 8 so as to handle and resolve issues of compliance in a clear way, and to “establish an informal body to ensure compliance concerns ... [and] insist on maximum transparency.”⁴⁹³ States Parties have recently recognized this urgency and as a consequence at the Third Review Conference they agreed to create a Committee on Cooperative Compliance with the purpose to “assist the States Parties in acting upon their commitments under article 8(1)” and in case

⁴⁸⁸ *Landmine Monitor 2014*, *supra* note (466), pp. 12-13; For more information see also “Yemen Mine Use Official Communiqué 17-11-2013”, ICBL, 22 November 2013, online at <http://www.icbl.org/en-gb/news-and-events/news/2013/yemen-mine-use-official-communique%C3%A9-17-11-2013.aspx>; “Yemen Initial Report to the president of the Thirteenth meeting of the States Parties”, 29 March 2014, online at <http://www.apminebanconvention.org/fileadmin/APMBC/IWP/IM-apr14/Yemen-interim-report-29Mar2014.pdf>;

⁴⁸⁹ *Landmine Monitor 2014*, *supra* note (466), p. 14-15; Turkey acceded to the Mine Ban Treaty on 25 September 2003, and the Convention entered into force on 1 March 2004, see <http://www.apminebanconvention.org/states-parties-to-the-convention/turkey/>.

⁴⁹⁰ *Landmine Monitor 2014*, *supra* note (466), p. 17.

⁴⁹¹ Mine Ban Treaty, article 3(1).

⁴⁹² Examples of States that have never reported a utilization or reduction of APLs for permitted purposes, so the number of those AP mines is still the same, are: Burundi, Cape Verde, Cyprus, Djibouti, Ethiopia, Nigeria, Senegal, and Togo. States that reported reduction in the number of mines retained without any explanation are: Burundi, Bhutan, Bosnia and Herzegovina, Brazil, Czech Republic, Lithuania, the Netherlands, Slovakia, Thailand, and Turkey, *Landmine Monitor 2014*, *supra* note (466), pp. 18-19.

⁴⁹³ “Fulfill Other Treaty Obligations”, *supra* note (487).

of compliance issues help States to clarify the situation and present recommendations to better resolve the problems and therefore “ensure that the Convention remains strong and effective.”⁴⁹⁴

VIII. THE CLUSTER MUNITION CONVENTION: IMPLEMENTATION AND COMPLIANCE.

The convention on cluster munition represents “the most significant achievement in humanitarian arms control in the last decade.”⁴⁹⁵ Adopted in May 2008, opened for signature in December 2008 and entered into force on 1 August 2010, i.e. “on the first day of the sixth month after the month in which the thirtieth instrument of ratification, acceptance, approval or accession has been deposited.”⁴⁹⁶ To date there are 89 States Parties, and 27 Signatories, the remaining 81 have not joined the Convention.⁴⁹⁷ Ratifying the Treaty, Members States commit not to use, produce, stockpile, or transfer cluster munitions. In addition, they have subscribed to other commitments: to destroy existing CMs, to clear the contaminated areas, to assist victims, to provide help to other States Parties, to compile transparency reports and to foster the universalization of the Convention.⁴⁹⁸

Similar to the Mine Ban Treaty, also the CCM is an international Treaty that not only tries to deal with the humanitarian consequences caused by the use of this weapon, but also it provides a framework to act to halt its use. Indeed, it comprises two groups of provisions: one is related to the prohibition of the CMs and the destruction of stockpiles, and the other one addresses the humanitarian aspects, such as the assistance for victims, the rehabilitation, and risk education activities.⁴⁹⁹

In order to grasp the value of this Convention and the necessity to listen to the call of the CMC that encourages States to ratify it as soon as possible, it is inevitable to look at the negatives consequences of the CMs, i.e. the problems that it causes. Actually, they have already been pointed out in previous chapters, however to analyze the status of implementation and compliance of the Convention it is useful to remember that the extensive use of CMs even if it occurred in the past it conditions the present reality.

Despite their characteristics that provoke quite the same consequences and problems of those caused by APLs, they were considered legal until the turning point in 2006, when faced with the evidence of the grave humanitarian crisis posed by the use of CMs, several countries began to change opinion,

⁴⁹⁴ “Decisions on the Convention’s Machinery and Meetings”, Maputo Conference, 27 June 2014, p. 4, <http://www.maputoreviewconference.org/fileadmin/APMBC-RC3/3RC-Decisions-Machinery-27Jun2014.pdf>.

⁴⁹⁵ B. Rappert, *A convention beyond the Convention: Stigma, humanitarian standards and the Oslo Process*, (London: Richard Moyes, Landmine Action, 2008), 3.

⁴⁹⁶ Cluster Munition Convention, article 17(1).

⁴⁹⁷ See the list of States Parties in annex 3.

⁴⁹⁸ “Operative Commitments”, Convention on Cluster Munitions, accessed in January 2015, <http://www.clusterconvention.org/the-convention/operative-commitments/>.

⁴⁹⁹ “The Convention on Cluster Munitions”, Convention on Cluster Munitions, accessed in January 2015, <http://www.clusterconvention.org/>.

from defending this weapon to sustain a prohibition.⁵⁰⁰ The Oslo Process, launched in November 2006 by Norway, followed in the footsteps of the successful Ottawa Process and it “provided a fast-track multilateral response to the humanitarian problems posed by cluster munitions.”⁵⁰¹

Another similarities with the Ottawa Process is one of the main characteristics of the Oslo Process, that is the cooperation of different actors: governments, international organizations, UN agencies and the CMC on behalf of the civil society. Their efforts brought about the 2008 CCM.

Useful to strike both broad and moving targets, cluster bombs contain a large variety of submunitions, hence they are multi-purpose weapons. The main problems of the CMs are two: submunitions are scattered in a way that everything in their area effect can be hit, whether it is a soldier, a building, or a civilian. Second, cluster bombs leave a multitude of unexploded submunitions that are still dangerous, hence, like landmines, they kill and injure long after conflicts have ceased, and they affect the everyday lives, since they prevent access to community resources.⁵⁰²

1. Innovations of the Convention on Cluster Munitions.

Underline some key innovations introduced by the CCM is useful to grasp its significance.

It is a humanitarian and a disarmament treaty and its key words are two: extend and create. First of all, it has been constructed taking from the Ottawa Treaty the combination between provisions halting the use of CMs and those that address the humanitarian crisis, that is two types of measures: preventive and remedial. However, there is a fundamental difference between the two Treaties that derives from the characteristics of the CMs.

In fact, while APLs are built to explode when triggered by someone, on the other hand, CMs are designed to explode and release submunitions only when they strike the ground. If this does happen, and submunitions explode after the impact of their container (the cluster bomb) with the ground, this means that they did not function well. The CCM innovation is here, as it has established a preventive norms that prohibits the use of CMs in general, i.e. the cluster bombs that had functioned well, as well as those that have failed to do so.⁵⁰³

This is important, because for the first time a Treaty, through a comprehensive ban on the use of CMs, has not only addressed the use of this weapon, but also its effects.

⁵⁰⁰ As an example, Afghanistan was among those countries that immediately signed the Convention, explaining that it had suffered from overarmament and from the widespread use of CMs by the Soviet forces during 1979-1989 and by the U.S. during 2001-2002, hence the push to sign the Treaty came also from the Afghan victims. See J. Abramson, “Countries Sign Cluster Munitions Convention”, *Arms Control Today*, 16 January 2009, online at http://www.armscontrol.org/act/2009_01-02/ClusterMunitionsConvention.

⁵⁰¹ The Monitor, *Banning Cluster Munitions: Government Policy and Practice*, supra note (271), p. 1.

⁵⁰² R. Nixon, “Of Land Mines and Cluster Bombs”, *Cultural Critique*, No. 67 (2007), pp. 160-174; UNDP, *Prohibiting Cluster Munitions: Our chance to protect civilians* (2008), available online at <http://socialsciences.exeter.ac.uk/politics/staff/moyes/research/>.

⁵⁰³ CMs are imprecise weapons, and even in optimal conditions a quarter of submunitions fail to explode when released. As an example, the UN Mine Action estimated that in the 2006 conflict in South Lebanon the failure rate of CMs was between 32-40%, hence approximately 1.5 million unexploded devices added to previous landmines already on the ground, see K. Maes, “The human impact of cluster munitions”, *Humanitarian Exchange Magazine* 37, no. 37 (2007), online at <http://www.odihpn.org/humanitarian-exchange-magazine/issue-37/the-human-impact-of-cluster-munitions>.

As an example, already the Preamble discloses the presence of prohibitive and reparative provisions stating that the States Parties are “Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned.”⁵⁰⁴ In short, the Convention is concerned with the use and the malfunctioning of CMs, thus as a preventive measure it halts the employment of cluster bombs, and as remedial norms it addresses the effects of submunitions that failed to explode through the clearance of contaminated areas and the assistance to victims.

The second extension concerns the definition. Like other treaties, it contains exclusions, i.e. weapons that do not fall under the definition of cluster bombs; conversely, it does not permit any exception, so as to avoid to consider “some types of cluster munitions acceptable.”⁵⁰⁵ Since the major aim of the CCM is to prevent the humanitarian sufferings, articles 2(2)(a) and (b) list some types of weapons that are not considered CMs because “they are not intended to cause personal injury or property destruction.”⁵⁰⁶

Then, it mentions a category of weapons that can be excluded from the ban only if it meets all the criteria enlisted.⁵⁰⁷ As a result, it narrowed the possibilities of exclusions, and therefore it is possible to affirm that the Convention “defines and bans cluster munitions entirely and without exceptions.”⁵⁰⁸ Other treaties have definitions with exclusions⁵⁰⁹, however only in the CCM the exclusions are very detailed to “create a sweeping definition of cluster munitions”, thus to ensure a complete and absolute ban on them.⁵¹⁰

The other key word is “creation”. In fact, other innovations of the CCM are the creation of new obligations. The CCM improves the international law introducing “provisions that increase the humanitarian impact of the treaty.”⁵¹¹ As seen in the chapter dedicated to the analysis of the Convention, victims assistance obligations are strengthened and put at the core of the Convention. Indeed, part of the Preamble is dedicated to this issue, as well as four articles of the Treaty.⁵¹²

The precedent of the CCM, the Mine Ban Treaty and the Protocol V dealt with the assistance for victims, however they do so in a less detailed way. For example, the Ottawa Treaty does not suggest a definition of mine victim, and it refers to the assistance only in the Preamble and in article 6, when it encourages States “in a position to do so” to provide assistance.⁵¹³

That said, the CCM innovates, and it gives a first definition of mine victim, which comes even before the definition of the object of the ban, i.e. the cluster bomb. As seen above, it is also a broad definition, and both its scope and position in the text serve to emphasize what are the main concerns of the CCM.

⁵⁰⁴ *Convention on Cluster Munitions*, Preamble. The intentions of dealing with CMs, regardless of whether they function as designed or not, are also evident in articles 1(1) and in articles 4, 5 and 6, which provide preventive and remedial norms.

⁵⁰⁵ B. Docherty, *supra* note (313), p. 946.

⁵⁰⁶ Human Rights Watch, *supra* note (290), pp. 140-141.

⁵⁰⁷ CCM, article 2(2)(c).

⁵⁰⁸ Human Rights Watch, *supra* note (290), p. 141.

⁵⁰⁹ See for example the Ottawa Treaty, article 2(1).

⁵¹⁰ B. Docherty, *supra* note (313), pp. 942-948.

⁵¹¹ *Ibid.*, p. 935.

⁵¹² CCM, articles 2(1), 5, 6, 7.

⁵¹³ *Mine Ban Treaty*, article 6(3).

⁵¹⁴ Then, article 5 is completely committed to victim assistance.⁵¹⁵ In the Mine Ban Treaty States Parties have the obligation to provide assistance, however their duty is lightened by the phrase “Each State Party in a position to do so shall provide assistance.”⁵¹⁶

By contrast, the obligations are stronger in article 5 of the CCM and definitely more detailed. For example, for the first time the CCM introduces more specific obligations of assistance related to the gender and age. Another innovation is included in article 7, since it obliges States Parties to present transparency reports not only with information on stockpiles destruction, or clearance operations, as provided by the Ottawa Treaty, but also information on how States have been implemented obligations under article 5.

Another novelty is the fact that in the CCM for the first time States Parties that in the past had used CMs are made responsible in the clearance activities.⁵¹⁷ This is really interesting because yet again States are called upon to assist other Parties in the fulfillment of their obligations, but more striking, no other previous weapons treaty contains such a retroactive responsibility.⁵¹⁸ This article is also relevant to reinforce the core of the CCM, i.e. to “minimize civilian harm from cluster munitions.”⁵¹⁹ In fact, placing more responsibilities on States that disposed AP mines, the CCM not only concentrates on the importance of alleviate the sufferings caused by CMs, but also it believes that this new responsibility can accelerate the clearance process, and finally, it stresses the importance of the cooperation between States Parties that share the same objectives.⁵²⁰

The final innovation is the explicit reference to non-state armed groups. Even if they cannot ratify the Convention, the reference included in the preamble places further responsibilities on States stating that everything possible must be done to impede these groups from undertaking any activity that breaches the CCM.⁵²¹ In the rest of the Convention there is not any explicit reference to armed groups, nevertheless there are three article that are indirectly linked to them. Article 1(1)(b) obliges States not to “retain or transfer to anyone, directly or indirectly, cluster munitions”⁵²², thus non-state armed groups are included in the phrase “to anyone.” Likewise, article 1(1)(c) that in a similar way states that States Parties shall not “assist, encourage or induce anyone to engage in any activity prohibited.”⁵²³ The expression “to anyone” is also present in the articles of the Ottawa Treaty that regulate the same

⁵¹⁴ CCM, article 2(1).

⁵¹⁵ CCM, article 5. See also chapter V for further details on the analysis of this article.

⁵¹⁶ *Mine Ban Treaty*, articles 6(3), 6(4), and 6(5).

⁵¹⁷ CCM, article 4(4).

⁵¹⁸ While the *Ottawa Treaty* does not contain this type of commitment, its predecessor, the *CCW Amended Protocol II* demands States Parties that had laid AP mines to “provide technical and material assistance necessary to fulfill such responsibility [the removal of mines]”, see *Amended Protocol II, supra* note (73), article 10(3). However, this provision cannot be regarded as a precedent-setting, since unlike CMs, the fact that APLs lay on the ground means that they are perfectly functioning, therefore, when the article requires States to provide assistance in clearing mines that they had contributed to place on the ground, this obligation falls under the obligation that ban the use of APLs. See B. Docherty, *supra* note (313), pp. 952-954.

⁵¹⁹ B. Docherty, *supra* note (313), p. 954.

⁵²⁰ Human Rights Watch, “User State Responsibility for Cluster Munition Clearance”, (February 2008), available online at <http://www.hrw.org/legacy/backgrounder/arms/arms0208/arms0208.pdf>.

⁵²¹ CCM, Preamble.

⁵²² CCM, article 1(1)(b).

⁵²³ CCM, article 1(1)(b).

prohibition, with the only difference that the latter Convention is concerned with APLs. However, the phrase “to anyone” is made more meaningful in the CCM since for the first time a weapons treaty makes explicit reference to non-state armed groups, hence it recognizes their existence.⁵²⁴

2. Implementation of the Convention on Cluster Munitions.

With the opening for signature in December 2008, Thomas Nash, the coordinator of the Cluster Munition Coalition declared “This is an historic moment, the world has come together and today we have banned cluster bombs forever.”⁵²⁵

Last 2 January Palestine became the 89th State Party to the CCM. Its accession is the first in 2015 and the fifth since states met in Costa Rica in September 2014 for the Fifth Meeting of States Parties in which several states plus the CMC and the ICRC urged Signatory States to ratify the Convention not only to “reinforce the important prohibitions and norms that this Convention is establishing” but also to fully participate as States Parties at the next review conference that will be held in 2015.⁵²⁶ Palestine is the fourth State in the Middle East, after Iraq, Lebanon and Tunisia, to join the Convention and this step forward has been welcomed by Costa Rica, which holds the Presidency of the Fifth Meeting until September 2015, and its delegates expressed the wish that this accession can influence other States in the region to adhere to the CCM.⁵²⁷

This example is useful to understand what is the current aim of the Members of the CCM, that is the universalization of the Treaty. Indeed the CMC seized the on this last news to restate that “The Cluster Munition Coalition urges all states that have not joined the Convention on Cluster Munitions yet, to do so as soon as possible.”⁵²⁸ Similarly, holding the Presidency for a year, Costa Rica has launched an appeal: to reach 100 States Parties to the Convention in 2015, before the first Review Conference, to be held in September 2015 in Croatia.

This call came after the ratification of Belize on 2 September 2014 that made the Central America the first region free of CMs. Therefore, riding this positive trend Mr. Manuel González Sanz, the Minister of Foreign Affairs of Costa Rica launched this proposal aiming at “redouble efforts to ensure that during the First Review Conference, we can tell the world that over 100 countries have decided, by a binding instrument, to say NO MORE cluster munitions.”⁵²⁹

The intent is always the same: broadening the adherence to the Convention to ensure a greater stigma on the use of CMs.

⁵²⁴ B. Docherty, *supra* note (313), p. 960.

⁵²⁵ “Historic treaty bans cluster bombs and stigmatizes use”, CMC, (2008), online at <http://www.stopclustermunitions.org/en-gb/media/news/2008/press-release-historic-treaty-bans-cluster-b.aspx>.

⁵²⁶ “ICRC Statement on Universalization”, ICRC September 2014, online at <https://www.clusterconvention.org/files/2014/09/ICRC2.pdf>.

⁵²⁷ “Costa Rica celebrates accession of the State of Palestine to the Convention on Cluster Munitions”, CCM, accessed in January 2015, online at <http://www.clusterconvention.org/2015/01/12/costa-rica-accession-palestine/>.

⁵²⁸ “Palestine Accedes to Convention on Cluster Munitions”, CMC, accessed in January 2015, available online at <http://www.stopclustermunitions.org/en-gb/media/news/2015/palestine-accedes-to-convention-on-cluster-munitions.aspx>.

⁵²⁹ “Costa Rica launches a call to reach 100 States Parties to the Convention on Cluster Munitions in 2015”, CMC, accessed in February 2015, online at <http://www.stopclustermunitions.org/en-gb/media/news/2014/costa-rica-launches-a-call-to-reach-100-states-parties-to-the-convention-on-cluster-munitions-in-2015.aspx>.

As seen before the Landmine Monitor extended its scope to include the monitoring of the implementation and compliance of the CCM, and since 2009 it has become the research arm also for the CMC.

2.1. The prohibition of the use and of production.

It is interesting that prior the CCM, several States decide to enact national law to ban CMs, or a moratorium on the use of this weapon. For instance, Belgium in 2006 was the first country to adopt a national law prohibiting the use, production, transfer, and stockpiling of CMs. Then, it was followed by Austria that in December 2007 adopted the same law. Even before the adoption of the Convention other States established moratoriums on this weapon and this was important because it contributed to make public “the change in attitude of some states towards the ban.”⁵³⁰

In short, CMs have been undergoing a process of stigmatization and this fact has had an impact also on the practice of States that have not yet joined the Convention.⁵³¹ Thus, States that declared a moratorium before the entry into force of the Convention were: Norway in May 2006, Hungary in May 2007 during the Lima Conference on CMs, the Netherlands in June 2007, Croatia in December 2007. And then in 2008 they were followed by Bosnia and Herzegovina, Bulgaria, and Spain. Although some of these moratoriums were intended to be temporary suspensions they represented a further support for the Campaign against cluster bombs, until the achievement of an international binding agreement.⁵³²

CMs have been used during conflicts in about 38 countries since the end of the Second World War, and they have affected every region of the world. As pointed out by Monitor’s researches, today many countries that used in the past CMs are States Parties (for example France, Iraq, the Netherlands, the UK), or Signatories (Colombia, Nigeria, and South Africa). Furthermore, there are three interesting observations to make. For one thing, the majority of States that are not party to the Convention have never used CMs, however, three of them, i.e. the United States, Israel and Syria have been among the major users of cluster bombs.⁵³³ Second, a positive consideration is that since the entry into force, there have never been any allegations of use of CMs by any State Party.⁵³⁴

As regards the production, the Monitor has identified 34 States as producers of over 200 types of cluster munitions. The list of these countries has changed over time, and one of the most reliable list was presented in a 2002 report of Human Rights Watch, where it identified a total of 33 States

⁵³⁰ Also the efforts of the CMC and of the few countries of the core group to bring states on board on the issue all along the Oslo Process, contributed to influence a change in States’ policies. See G. Mukherjee, *Lethal Legacy: The Adoption of The Convention on Cluster Munitions*, 2014, Kindle e-book, p. 65.

⁵³¹ “Banning cluster munitions: from political vision to practical action”, (2011), ICRC, available online at <https://www.icrc.org/eng/resources/documents/statement/cluster-munitions-statement-2011-09-13.htm>.

⁵³² The Monitor, *Banning Cluster Munitions: Government Policy and Practice*, supra note (271), p. 12.

⁵³³ One of the most extensive use of CMs occurred in Cambodia, Lao PDR, and Vietnam by the United States between 1965 and 1975, where, only in Lao PDR the US dropped more than 260 million cluster submunitions, *Ibid.*, p. 13.

⁵³⁴ The Monitor, *Cluster Munition Monitor 2014*, p. 11, available online at <http://the-monitor.org/index.php/LM/Our-Research-Products/CMM14>.

producing “at least 208 munitions that contain submunitions.”⁵³⁵ Over time, this number has decreased. In fact, already in 2008, 14 of the listed countries signed the Convention⁵³⁶, and nowadays there are 16 former producers that have joined the Convention. Finally, outside the Convention there are still several countries that produce CMs, such as Brazil, China, Egypt, Greece, India, Iran, and Israel.⁵³⁷

2.2. The obligation of destruction.

First data identified that 85 countries possessed stockpiles of CMs in 2009. Over time this number grew thanks to new available information, thus according to the most recent studies, prior the adoption of the CCM there 91 countries that possessed stocks of cluster bombs.⁵³⁸ As regards States Parties, 33 countries have stockpiled CMs, however to date 19 of them have already complied with the obligation of destruction as provided by article 3 of the CCM, while 14 are still under the process of destruction.⁵³⁹

A positive element that highlights the compliance of States is that also three Signatory States have voluntarily decided to adhere to article 3(2), i.e. Colombia, Central African Republic and the Republic of Congo.⁵⁴⁰ Unfortunately, it is not possible to precisely estimate the stocks of CMs possessed by non Member States, unless their willingness to make these data public, as an example, the United States in 2011 declared to own 6 million cluster bombs.⁵⁴¹ On the other hand, there are also States that declared not to possess stocks, usually through information presented in their transparency reports.⁵⁴²

There is a high level of compliance with the obligation of destruction as demonstrated by the recent information. Indeed, 22 States Parties declared the elimination of CMs, for a total of about 1.16 million cluster bombs, which contained nearly 140 million submunitions. This is relevant since these figures represent the destruction of 80% of the sum of stockpiled CMs that States Parties declared to possess.

According to article 3 Member States have to destroy cluster bombs as soon as possible, but not later than 8 years after the entry into force of the Convention, hence while 19 States have already complied with this provision, others are still working to respect their obligation. For instance, during the Fourth

⁵³⁵ Human Rights Watch, “Memorandum to CCW Delegates: A Global Overview of Explosive Submunitions”, (2002), p. 6, available online at <http://www.hrw.org/legacy/backgrounder/arms/submunitions.pdf>.

⁵³⁶ The 14 States are: Australia, Belgium, Bosnia and Herzegovina, Chile, France, Germany, Italy, Japan, Netherlands, South Africa, Spain, Sweden, Switzerland, and UK, The Monitor, *Banning Cluster Munitions: Government Policy and Practice*, *supra* note (271), p. 16.

⁵³⁷ The other two countries that joined the CCM are Croatia and Iraq, The Monitor, *Cluster Munition Monitor 2014*, *supra* note (534), p. 16.

⁵³⁸ The Monitor, *Banning Cluster Munitions: Government Policy and Practice*, *supra* note (271), p. 20; The Monitor, *Cluster Munition Monitor 2014*, *supra* note (534), p. 17.

⁵³⁹ The 14 States are: Bosnia and Herzegovina, Botswana, Bulgaria, Croatia, France, Germany, Guinea-Bissau, Italy, Japan, Mozambique, Peru, Spain, Sweden, and Switzerland, *Ibid.*, p. 18.

⁵⁴⁰ *Ibid.*, p. 19; see also CCM, article 3(2). More information on the possess of stockpiles by Signatory States and data about the quantities of CMs destroyed by States Parties are available in the same page.

⁵⁴¹ These data were provided on the occasion of the Fourth Review Conference to the CCW on 14 November 2011, see “Opening Statement for the United States Delegation”, available online at “Previous Meetings of the Convention on Certain Conventional Weapons (CCW)”, UNOG, accessed in January 2015, [http://www.unog.ch/80256ee600585943.nsf/\(httpPages\)/700bd7373a1fe2bcc12573cf005afc00?OpenDocument&ExpandSection=12#_Section12](http://www.unog.ch/80256ee600585943.nsf/(httpPages)/700bd7373a1fe2bcc12573cf005afc00?OpenDocument&ExpandSection=12#_Section12).

⁵⁴² The Monitor, *Cluster Munition Monitor 2014*, *supra* note (534), p. 20.

Meeting of States Parties held in September 2013 Germany stated that it will be able to complete the destruction in 2015, and more recently, Italy during the Fifth Meeting, which took place in Costa Rica in September 2014, declared “our process of stockpile destruction is on track for completion by 2015, three years ahead of the deadline foreseen by the Convention.”⁵⁴³

2.3. Compliance with other obligations: transparency reports and national implementation legislation.

Under article 7 States Parties have to submit an initial report and then, annually a transparency report “not later than 30 April of each year.”⁵⁴⁴ As regards the initial reports, 77% of Member States presented their initial reports, which is a rate that has improved compared to the data of the previous reports of the Monitor. In fact, data about the transparency reports of 2013 reported a rate of 70%. However, to date there are 18 States that have not yet presented their initial reports.⁵⁴⁵ On the other hand, the majority of States Parties has submitted their annual reports, and only 21 have not yet provided them.⁵⁴⁶

Moreover, it is worth examining the situation of the national implementation legislation. As established by article 9 States Parties have to implement the CCM through legal, administrative, and other measures, including penal sanctions.⁵⁴⁷ The Monitor has identified 22 States that have adopted national measures on the issue of cluster bombs, 26 other countries declared that “their existing national laws are sufficient to implement the Convention” and 19 States Parties are working to enact specific legislation measures.⁵⁴⁸ For the remaining States, the situation is unclear since they have not submitted detailed transparency reports. It is interesting that even several Signatories have declared their intention to adopt national legislation on the CMs issue, a sort of continuation with the trend inaugurated before the entry into force of the CCM, i.e. Belgium and Austria, as seen before.

2.4. The clearance.

According to the data of 2014, at present there are 23 States and 3 other territories affected by cluster remnants, and 11 of them are Members of the Convention, thus they are obliged to complete the clearance within 10 years after the entry into force.⁵⁴⁹

The level of contamination differs. Indeed, among the States Parties 11 are affected by cluster remnants.⁵⁵⁰ For example, mine action activities in 2014 identified 19 contaminated areas only in

⁵⁴³ “Fourth Meeting of States Parties to the Convention on Cluster Munitions” CCM (Lusaka, 9-13 September 2013), Statement by Germany; “Fifth Meeting of States Parties to the Convention on Cluster Munitions” CCM (San Jose’, 1-5 September 2014), Statement by Italy, all available online at <http://www.clusterconvention.org/meetings/intersessional-meetings/>.

⁵⁴⁴ CCM, article 7.

⁵⁴⁵ These States are listed in *Cluster Munition Monitor 2014*, *supra* note (534), p. 25.

⁵⁴⁶ *Ibid.*

⁵⁴⁷ CCM, article 9.

⁵⁴⁸ *Cluster Munition Monitor 2014*, *supra* note (534), p. 25.

⁵⁴⁹ CCM, article 4. An updated table with the contaminated countries is available in *Cluster Munition Monitor 2014*, *supra* note (534), p. 36.

⁵⁵⁰ The 11 States Parties affected by CMs are: Afghanistan, Bosnia and Herzegovina, Chad, Chile, Croatia, Germany, Iraq, Lao PDR, Lebanon, Montenegro, and Mozambique, *Ibid.*, pp. 36-37.

Afghanistan, which involve nearly 4.000 people.⁵⁵¹ Nevertheless, the Monitor reports that information on the clearance of CMs are not always complete and detailed. According to its information, in 2013 over 54.000 submunitions were destroyed, clearing 31 km² of affected areas. States Parties are obligated to identify and clear all the unexploded submunitions on territories under their control, and in order to help States in complying with this obligation the CMC in June 2011 has elaborated a guide for land clearance, encouraging States to follow the listed principles, which for example underline the importance of technical surveys and desk assessment of the ground conditions to better identify the contaminated areas and therefore to undertake effective clearance operations.⁵⁵²

Final considerations: Antipersonnel landmines: a customary law?

There is debate around the possibility of the emergence of a customary norm that bans antipersonnel landmines. The question originates from the great success of the Mine Ban Treaty, since it is characterized by a broad participation (at present, only 35 States have not joined the Convention), as well as the rapidity of its negotiation and entry into force, as previously discussed. Therefore, it is possible to raise the question whether or not there is today a customary norm banning AP mines.

Customary norms are among the sources of law identified by the Statute of the International Court of Justice (ICJ) under article 38, together with the international conventions, and the general principles of law.⁵⁵³ Among the sources there is also article 53 of the Vienna Convention on the Law of Treaties, which introduces the peremptory norms, also called *jus cogens* as “rules of international law that admit of no derogation and that can be amended only by a new general norm of international law of the same value.”⁵⁵⁴ However, the aim of this paragraph is to examine whether a customary norm on landmines already exists or is under development, hence the focus will be on the concept of customary norms.

The ICJ defines the international custom as “evidence of a general practice accepted as law”⁵⁵⁵, and from this definition it is clear that a norm of customary international law has two requirements. First, the *usus* or *diuturnitas*, that is the general state practice, and second, the *opinio juris*, i.e. the conviction that such practice reflects an obligation under international law.

Customary international law is important for the issue of landmines, because if the prohibition of APLs becomes part of customary law, even non States Parties will be obliged “to obey those

⁵⁵¹ The mine action program undertook in Afghanistan is one of the largest clearance operation since this is one of the most ERW affected countries. For further details on this program, which is called MAPA (Mine Action Program in Afghanistan) see <http://www.mineaction.org/programmes/afghanistan>.

⁵⁵² *Cluster Munition Monitor 2014*, *supra* note (534), p. 40. For more information on the CMC Guideline see “CMC Guiding Principles for Implementing Article 4 of the Convention on Cluster Munitions” (2011) CMC, online at <http://www.stopclustermunitions.org/media/131812/cmc-guiding-principles-on-article-4-june-2011.pdf>.

⁵⁵³ “Statute of the International Court of Justice”, article 38(1), http://www.icj-cij.org/documents/?p1=4&p2=2#CHAPTER_II.

⁵⁵⁴ D. Shelton, “Normative Hierarchy in International Law”, *The American Journal of International Law* 100, no. 2 (2006), p. 297 (pp total 291-323), <http://www.jstor.org/stable/3651149>. To examine in depth the issue of peremptory norms see U. Linderfalk, “What Is So Special About Jus Cogens?- On the Difference between the Ordinary and the Peremptory International Law”, *International Community Law Review* 14, no. 1, (2012), pp. 3-18.

⁵⁵⁵ “Statute of the International Court of Justice”, *supra* note (553).

prohibitions.”⁵⁵⁶ In fact, as one of the primary sources of international law, customary norms create rules of international law that are binding for the entire international community. Thus, every State is obligated to respect a customary norm, no matter if it has not participated in the formation of that norm, or if it does not accept it.

Further considerations on both the aspects are important since a rule of customary law is created by the combination the *diuturnitas*, i.e. the material element and the *opinio juris*, i.e. the psychological element.

Beginning with the material element, “to establish a rule of customary international law, State practice has to be virtually uniform, extensive ... representative,”⁵⁵⁷ and it has to repeat over time. There are not precise time requirements, however some time, even short, is considered necessary to crystallize a customary norm.⁵⁵⁸

As stated by the ICJ in 1969 “State practice, including that of States whose interests are specially affected should have been both extensive, and virtually uniform ... [and the *diuturnitas* has to] show a general recognition that a rule of law or legal obligation is involved.”⁵⁵⁹

The development of a rule of customary international law depends also on the conviction that the State practice complies with law. The necessity of this second element and the interconnection between the two requirements of customary law are well explained by the ICJ “Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it ... The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.”⁵⁶⁰

That said, it is clear that both the requirements are essential, as restated by the ICJ in the Advisory opinion of 1996 on the legality of the threat or use of nuclear weapons.⁵⁶¹

Therefore, now it is possible to make some remarks on the link between the theory of customary law with the landmine issue. In order to affirm the existence of a customary norm on landmines, States should believe that “the practice of not using AP landmines is required by law.”⁵⁶²

However, usually the way in which norms are constructed is influenced by economic, or political needs, or as in the case of APLs by social pressure, and Japan and Australia are two example of this fact. Indeed, their leaders decided to join the Convention only when they understood that “the balance

⁵⁵⁶ S. Benesch, G. Mc Grory, C. Rodriguez, R. Sloane, “International Customary Law and Antipersonnel Landmines: Emergence of a New Customary Norm”, *Landmine Monitor Report 1999: Toward a Mine-Free World*, available online at http://www.the-monitor.org/index.php/publications/display?url=lm/1999/appendices/custom_law.html.

⁵⁵⁷ “Assessment of Customary International Law”, ICRC, accessed in January 2015, online at https://www.icrc.org/customary-ihl/eng/docs/v1_rul_in_asofcuin#Fn_80_30.

⁵⁵⁸ N. Ronzitti, *Introduzione al diritto internazionale* (Torino: G. Giappichelli Editore, 2009), 156-157.

⁵⁵⁹ ICJ, *North Sea Continental Shelf*, Judgment, ICJ Reports, 1969, p. 43, online at <http://www.icj-cij.org/docket/index.php?p1=3&p2=5&p3=-1&y=1969>.

⁵⁶⁰ *Ibid.*, p. 44.

⁵⁶¹ ICJ, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Reports 1996, online at <http://www.icj-cij.org/docket/index.php?p1=3&p2=5&p3=-1&y=1996>.

⁵⁶² R. Price, “Emerging customary norms and anti-personnel landmines” in *The Politics of International Law*, ed. C. Reus-Smit (Cambridge, UK; New York: Cambridge University Press, 2004), 106-130.

had tipped such that resistance signaled outlier status.”⁵⁶³ Although since 1996 Japan has declared its support for a global ban on APLs, it was reluctant to take part in the Ottawa Process and it was in favor of the U.S. proposal of negotiating an agreement in the Conference on Disarmament (CD). Similarly, Australia attended all the meetings of the Ottawa Process, but it always declared that it favored the CD framework. Despite the dissent their stances shifted. The change in the Japanese and Australian governments occurred after external pressure, rather than for the role of their civil societies, i.e. the “momentum created by the Ottawa Process ... the tragic death of Princess Diana and the awarding of the Nobel Peace Prize to the ICBL”⁵⁶⁴, as well as “the continued cascade of other reluctant states.”⁵⁶⁵

The external pressure was the primary reason for that change, but then States began to consider APLs illegal weapons, hence as stated by Richard Price these examples “identify how a concern with emergent elements of obligatory force shapes who state actors are and what they want.”⁵⁶⁶ As previously discussed, the use of landmines had been considered for long an acceptable practice of warfare, and then in the Nineties, over a very brief period the movement to ban APLs was able to bring about a treaty to ban them. This change was an unprecedented event and it occurred so quickly that it is not easy to state that the previous “consensus among all states that landmines were legal”⁵⁶⁷ has been replaced by a new customary norm that ban them.

This issue on the replacement of a previous norm with another one was examined by the ICJ in its advisory opinion on the legality of nuclear weapons. The advisory opinion of the ICJ on the “Legality of the Threat or Use of Nuclear Weapons”⁵⁶⁸ offers the opportunity to better analyze the issue and to draw some considerations. On 8 July 1996 the Court delivered an advisory opinion under the request of the UN General Assembly concerning the legality of the threat and the employment of nuclear arms.

In the conclusions of the advisory opinion the Court stated that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict and in particular the principles and rules of humanitarian law” however it “cannot conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”⁵⁶⁹

⁵⁶³ R. Price, “Reversing the Gun Sights: Transnational Civil Society Targets Land Mines”, *International Organization* 52, no. 3 (1998): 635, online at <http://www.jstor.org/stable/2601403>.

⁵⁶⁴ “Japan: Mine Ban Policy”, and “Australia: Mine Ban Policy” in The Monitor, *Landmine Monitor Report 1999*, *supra* note (195).

⁵⁶⁵ R. Price, *supra* note (563).

⁵⁶⁶ R. Price, *supra* note (562), p. 110.

⁵⁶⁷ K. R. Rutherford, “The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines”, *World Politics* 53 (2000): 74, online at <http://www.jstor.org/stable/25054137>.

⁵⁶⁸ ICJ, *supra* note (561). For more information on the contents of this advisory opinion see for example, N. Ronzitti, “La Corte Internazionale di Giustizia e la questione delle licità della minaccia o dell’uso delle armi nucleari,” *Rivista di diritto internazionale* (1996): 861-881; Michael J. Matheson, “The Opinions of the International Court of Justice on the Threat or Use of Nuclear Weapons”, *The American Journal of International Law* 91, no. 3 (1997): 417-435, online at <http://www.jstor.org/stable/2954181>; L. Doswald-Beck, “International humanitarian law and the Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons”, *International Review of the Red Cross* 37, no. 316, (1997): 35-55, online at <https://www.icrc.org/eng/resources/documents/misc/57jnmf.htm>.

⁵⁶⁹ *Ibid.*, par.105(2)(E).

It also concludes stating that there is not a customary rule that prohibits the threat or the use of nuclear weapons⁵⁷⁰, and although the advisory opinion is focused on nuclear arms, some observations can be also useful to reflect on the eventual existence of a customary norm on APLs.

In fact returning to the initial issue, the Court noted that “international customary and treaty law does not contain any principle or rule of international law which would make the legality of the threat or use of nuclear weapons or any other weapons in general ... dependent on a specific authorization. State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorization but, on the contrary is formulated in terms of prohibition.”⁵⁷¹

Despite that, the Court later refers to the large number of customary rules developed by the practice of States, and states that “States do not have unlimited freedom of choice of means in the weapons they use”⁵⁷² and then referring to the Martens clause it affirmed that “humanitarian law ... prohibited certain types of weapons either because of their indiscriminate effects ... or because of the unnecessary suffering caused to combatants.”⁵⁷³

In short, the Court confirms that it has not found any customary rule, nor a conventional rule that prohibits the use or the threat of nuclear arms. In point of fact, it remarks the restrictions placed upon States, which derived from the core of the International Humanitarian Law.

This reasoning can be really useful in the landmine framework. First of all, the lack of a norm prohibiting the use of a weapon does not mean that there are not any prohibitions on its use, because of the presence of some restrictions imposed by the respect of principles of IHL. The same applies to landmines, indeed, even in case of an absence of a Treaty that ban them, the same norms of IHL have to be respected. As seen at the beginning of this dissertation, two principles of the *jus in bello*, i.e. the principle of distinction between civilians and combatants and the prohibition of the infliction of unnecessary sufferings were the main arguments that advocates of a ban on APLs had used to argue that landmines were already illegal under the IHL. Thus, it is evident the role of these principles of customary law in creating the legal ground for the Campaign to legitimate its claims against AP mines.⁵⁷⁴

In the analysis of the existence of a customary norm on APLs it is important to bear in mind this reasoning since there are States, such as India, which oppose a comprehensive ban on landmines adducing that they can use APLs and respecting the IHL at the same time. The only way in which India can satisfy this circumstance is to improve its capacity in protecting the principles of IHL.⁵⁷⁵ Obviously, this fact can endanger the emergence of a customary norm, conversely there is also a positive consideration, i.e. the strengthening of IHL, thus, a potential reduction of risks for the civilian population, that is exactly what the advocates of a ban on AP mines urged.

⁵⁷⁰ *Ibid.*, par.105(2)(B).

⁵⁷¹ ICJ, *supra* note (561), par. 52.

⁵⁷² *Ibid.*, par. 78.

⁵⁷³ *Ibid.*; see also R. Ticehurst, “The Martens Clause and the Laws of Armed Conflict”, *International Review of the Red Cross*, no.317 (1997), online at <https://www.icrc.org/eng/resources/documents/article/other/57jnhy.htm>.

⁵⁷⁴ R. Price, *supra* note (562), pp. 111-112.

⁵⁷⁵ *Ibid.*

Nevertheless, there are considerable examples of *opinio juris*. Evidence can be traced in the official statements by even those States who are not parties to the Convention. For example, the United States while seeking to impose some exceptions to the prohibition of APLs during the negotiation process and the fact that it has not yet signed the Treaty, several times it declared its intention to pursue an agreement to ban landmines. For example, in 1994 President Clinton was the first leader to call for the elimination of APLs, and in 1996 the U.S. proposed a UN General Assembly resolution to urge States to negotiate a treaty as soon as possible.⁵⁷⁶ Recently, in June and September 2014 the US government announced a new policy regarding AP mines, and President Obama declared “we’re going to continue to work to find ways that would allow us to ultimately comply fully and accede to the Ottawa Convention.”⁵⁷⁷

Similarly, China has always maintained its opposition to join the Mine Ban Treaty, however it also stated that it “supports the ultimate objective of comprehensive prohibition of antipersonnel landmines” and that even if it could not accede to the Convention, it “ascribes to the goal and principles of the convention and highly appreciates the humanitarian spirit embodied in the convention.”⁵⁷⁸

Other States, such as Russia, Angola and Sri Lanka made similar declarations, i.e. they made statements supporting a ban, while stating their impossibility to join the Convention.⁵⁷⁹

More importantly, with the increasing success of the Campaign to ban AP mines, States’ attitude has changed when they faced with cases of allegations of using APLs. In fact, a new pattern of awareness of the issue began to develop and more and more States when accused of using APLs have preferred to deny instead of admitting that fact. For instance, in 2001 15 countries were accused of using AP mines and the majority (9 States) denied such use. As an example, Angola, which signed the Convention in 1997, refused the accusations of having used APLs, “until it could no longer denied such use in 2001.”⁵⁸⁰

This new awareness to the norm is also evident in the behavior of non States Parties, such as Russia. The Landmine Monitor in 2000 discovered the use of landmines by Russia in Chechnya in the Nineties against the separatist forces. The decision-makers avoided to respond and preferred to remain in silence, however some lower-level officials confirmed the use of APLs, and after that also the highest military levels admitted the large-scale use of AP mines during the conflict, however they rejected the allegations of an indiscriminate use by Russian forces.⁵⁸¹

⁵⁷⁶ “United States of America: Mine Ban Policy”, in The Monitor, *Landmine Monitor Report 1999*, *supra* note (195); “United States: Mine Ban Policy”, in The Monitor, *Landmine Monitor Report 2014*, *supra* note (200).

⁵⁷⁷ “Remarks by the President at Clinton Global Initiative”, The White House, Office of the Press Secretary, 23 September 2014, online at <http://www.whitehouse.gov/the-press-office/2014/09/23/remarks-president-clinton-global-initiative>.

⁵⁷⁸ “Statement at the Third Review Conference of the Anti-Personnel Mine Ban Convention by Madame Dong Zhihua, China” 26 June 2014, available online at <http://www.maputoreviewconference.org/daily-summaries-statements/>.

⁵⁷⁹ For more information on the stances of these countries see “Country Profiles”, The Monitor, online at <http://www.the-monitor.org/index.php>.

⁵⁸⁰ R. Price, *supra* note (562), pp. 117-119. See also “Banning antipersonnel mines”, in The Monitor, *Landmine Monitor Report 2001*, online at <http://www.the-monitor.org/index.php>, and “Angola” in *Landmine Monitor Report 2004*, online at <http://www.the-monitor.org/index.php/publications/display?url=lm/2004/angola.html#Heading3211>.

⁵⁸¹ “Russia” in The Monitor, *Landmine Monitor 2001*, online at http://www.the-monitor.org/index.php/publications/display?act=submit&pqs_year=2001&pqs_type=lm&pqs_report=&pqs_section=

This fact is interesting because while non States Parties, such as Russia, have continued to provide justifications of their need for AP landmines to explain their decisions not to join the Convention, on the other hand, they have avoided to admit the use of landmines, and this demonstrates that even non Member States now do not consider the use of landmines as “normal and uncontroversial behavior” since they try to conceal it.⁵⁸²

Thus, the declaration of key non Member States, that it the U.S., China, and Russia are notable and help the construction of a customary norm on landmines. Although they remain outside the Treaty justifying this choice generally with the phrase “issues of national security, or national defense needs”, they contributed to the formation on the *opinio juris*, thanks to their declarations supporting “the treaty’s humanitarian objectives”⁵⁸³, or when they state that they ascribe “to the goal and principles of the convention”⁵⁸⁴, and when they declare that they “will not produce or otherwise acquire any anti-personnel munitions that are not compliant with the Ottawa Convention in the future.”⁵⁸⁵ They have also been contributing in the formation of the *diuturnitas*. For example, Russia since 1997 has been researching alternatives to mines, and in November 2004 it has for the first time released official data on its stocks of mines and it declared the intention of destroying around 23 million APLs between 2005 and 2015.⁵⁸⁶

China was one of the largest producers of APLs, however since 1997 it has reduced the production and more importantly it has began to communicate with the Landmine Monitor. Recently, it has informed the Monitor that it has sharply reduced the quantities of AP mines in its stockpiles, and that it has not used these weapons in the past decade.⁵⁸⁷

Finally, as regards the US use of APLs, they have not been used since 1991 except in 2002 in Afghanistan. In 2011 the policy of President George W. Bush prohibited the use of AP mines lacking a self-deactivate devices, and more recently, in June 2014 it has launched a new landmine policy halting the use of landmines everywhere, except in the Korean Peninsula.⁵⁸⁸ Moreover, it is the largest donor for activities of mine action (since 1993 it has financed these operations with around \$2 billion). For example, only in 2012 it devoted \$134.4 million to mine action, through various organizations engaged in those operations in the affected countries.⁵⁸⁹

Returning to the *opinio juris*, according to Richard Prize and others that examined the issue before him, the declarations of States, allegations denied, and the fact that States generally have ceased to

⁵⁸² R. Price, *supra* note (562), p. 119.

⁵⁸³ “Russia: Mine Ban Policy”, in The Monitor, *Country Profiles*, last updated 11 October 2012, online at http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/3819#_ftn2.

⁵⁸⁴ “Statement at the Third Review Conference to the Ottawa Convention by China”, *supra* note (570).

⁵⁸⁵ “Statement by Ambassador Griffiths, United States Embassy Maputo”, Third Review Conference to the Ottawa Convention, 27 June 2014, online at <http://www.maputoreviewconference.org/daily-summaries-statements/day-5-friday-27-june/statements/>.

⁵⁸⁶ “Russia: Mine Ban Policy”, *supra* note (575).

⁵⁸⁷ “China: Mine Ban Policy”, in The Monitor, *Country Profiles*, last updated 29 November 2014, online at http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/3346#_ftn4.

⁵⁸⁸ “U.S. Landmine Policy, Press Statement”, U.S. Department of State, 23 September 2014, online at <http://www.state.gov/r/pa/prs/ps/2014/09/231995.htm>.

⁵⁸⁹ “United States: Support for Mine Action”, in the Monitor, *Country Profiles*, last updated 22 November 2013, online at http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/3972.

defend the use of APLs, all confirm the building of an “international consensus on the issue.”⁵⁹⁰ On the other hand, while in 1999, given the impressive success of the Mine Ban Treaty with its 40 ratifications in only 9 months, some doctrine was convinced that “a comprehensive ban on landmines was rapidly emerging as a customary norm”⁵⁹¹ and even if “a customary norm can be said to exist if states generally cease to defend the use of landmines, even before they actually stop using them,” there are many States that obstruct the development of the *opinio juris*. Egypt, India, Pakistan, Iran, Iraq, North and South Korea, Cuba, Israel, Libya, Syria are just a few examples of States that oppose a global ban on APLs.⁵⁹² The positive aspect is that they are not considered as “persistent objectors”, because they have not manifestly and continuously objected to the development of the customary rule. In fact, while it is true that they maintain opposition to a comprehensive ban, they have never “unambiguously and persistently” rejected the norm, so as to be qualified as persistent objectors.⁵⁹³ An example of this “ambiguous” position is that of Israel. Indeed, it declared to have ceased all the production and imports of APLs, and it enacted a moratorium on the transfer of APLs in 1994, which was effective until July 2014. On the other hand, it has used APLs. For example, in 2011 they have been placed in the Golan Heights along the borders with Syria. As regards its policy, it has always confirmed its impossibility to join the Convention due to its regional conditions that require military and security measures to defend itself from terrorist invasions. In short, it has not made any statements against the Treaty.⁵⁹⁴

Similarly, Pakistan has not acceded to the Convention, and reports of the use of AP mines have been recorded, however it put the record straight, hence it attributed the use of APLs to terrorists. While it is believed to possess a large stock of AP mines (according to the data of the Monitor, the fifth largest stockpile in the world), it has not issued a statement on this matter.

To complete this uncertain framework, in 2013 Pakistan reaffirmed that it “remains committed to pursue the objectives of a universal ... ban ... in a manner which takes into account the legitimate defence requirements of States.”⁵⁹⁵

It is evident that there are not clearly declarations against a ban, and this fact is viewed as positive in the process of the development of a customary norm.

Richard Price is even more optimistic, as according to him the lack of persistent objectors means that even those non-States Parties are “in important respects participating in normative and legal change.”

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⁵⁹⁰ S. Benesch, G. Mc Grory, C. Rodriguez, R. Sloane, “International Customary Law and Antipersonnel Landmines: Emergence of a New Customary Norm”, in *Landmine Monitor Report 1999*, *supra* note (195).

⁵⁹¹ *Ibid.*

⁵⁹² R. Price, *supra* note (562), pp. 121-122.

⁵⁹³ *Ibid.*, p. 129.

⁵⁹⁴ “Israel: Mine Ban Policy”, in The Monitor, *Country Profiles*, last updated 28 November 2013, online at http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/3552.

⁵⁹⁵ “Pakistan: Mine Ban Policy”, in The Monitor, *Country Profiles*, last updated 29 November 2014, online at http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/3767.

⁵⁹⁶ R. Price, *supra* note (562), p. 129.

Nevertheless, at present, the status of both the *opinio juris* and state practice can be interpreted as being in favor of an emerging customary norm, and to verify the establishment of such a norm the supporters of the Campaign against APLs should request an advisory opinion to the ICJ.⁵⁹⁷

Nevertheless, it is fundamental to remain objective since as remarked by the Court in the advisory opinion on nuclear weapons, a large number of States that declare their support is not sufficient to create *opinio juris*. In fact, the Court quotes article VI of the Treaty on the Non-Proliferation of Nuclear Weapons:⁵⁹⁸

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

Despite the fact that the Court appreciates the broad adherence to the obligations of article VI (at the time of the advisory opinion there were 182 States Parties, today that number is 190), it does not consider this fact as sufficient to be an element of *opinio juris* in an eventual customary norm on nuclear weapons.⁵⁹⁹ This is strictly related to the landmine issue, since if almost the entire international community that join an obligation to conclude an agreement aiming at the nuclear disarmament is not enough to constitute *opinio juris*, the same applies to the success of the Ottawa Treaty. Not only the high number of States Parties, but also the declarations in favor of a ban by non Member States are not sufficient. The language of States has to be supported by evident state practice. While the analysis of the implementation of the Convention, as seen before, demonstrates a positive trend, today there are some critical situations to consider.

Bearing in mind that the full implementation and universalization of the treaty remain key objectives for the supporters of the Ottawa Convention, some current questions of international relations are endangering the safety of people.

For example, the ICBL has recently reported the use of APLs by the Ukrainian and Russian forces in the Ukrainian town of Slovyansk in July 2014. While Russia is not party to the Convention, Ukraine became a State Party in 2006, hence it is obliged not to use APLs. In June 2014 Ukraine in its document related to the implementation of the Ottawa Treaty, submitted to the Third Review Conference of the Convention, denounced the military aggression of Russia against its territory and it stated that Russia used AP mines. Thus, Ukraine reported that several soldiers remained injured because of the landmines, and complained “the disparity in the balance of military capabilities ... given that Russia is not party to the Ottawa Treaty.”⁶⁰⁰ The ICBL is concerned for the tensions and

⁵⁹⁷ S. Benesch, *supra* note (582).

⁵⁹⁸ Treaty on the Non-Proliferation of Nuclear Weapons (NPT), article VI, available at <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>.

⁵⁹⁹ ICJ, *supra* note (561), par. 99-100.

⁶⁰⁰ “Information submitted by Ukraine to the Third Review Conference of the Ottawa Convention”, 18 June 2014, available online at <http://www.maputoreviewconference.org/documents/>.

conflicts between the two sides, and it has urged both of them “to ensure no antipersonnel mines are used by any actor.”⁶⁰¹

Another issue of concern is the use of AP mines in Libya by some militia groups in July and August 2014. Human Rights Watch has denounced this fact urging Libya to join the Ottawa Treaty and encouraging all the involved parties to clear and destroy any stocks of APLs. In November 2014 the government voted for a non-binding UN General Assembly resolution supporting the Ottawa Treaty because it stated that Libya despite the fact that at present it cannot join the Convention, “it shares the humanitarian concerns over antipersonnel mines”⁶⁰² However, the use of AP mines by armed groups is not under the control of the government, hence it constitutes a serious problem.

The question of armed groups has also been mentioned by Ukraine when in the document submitted to the Third Review Conference of the Ottawa Treaty, it has expressed its concerns about the risks that the stocks of APLs previously possessed by Ukraine in the region of Crimea in accordance with article 3 of the Mine Ban Treaty could be delivered to terrorist groups sent to Ukraine and supported by Russia.⁶⁰³

Aiming at facing this challenge the Geneva Call, which is a non-governmental organization that fosters the respect of international humanitarian norms by armed non-State actors (ANSAs), has encouraged these actors “to reduce the impact of AP mines on the civilian population”⁶⁰⁴ through the *Deed of Commitment for Adherence a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*. This initiative was launched in 2000, the same year of the formation of the Geneva Call, and with this document, also the armed groups can subscribe to the obligations under the Ottawa Treaty. In fact, through their signatures they engage themselves not use, production, stockpiling, and transfer APLs under any circumstance, and to cooperate with international and non-governmental organizations in activities of stockpile destruction, mine clearance, and assistance to victims.⁶⁰⁵

To date, the Geneva Call reports that 48 armed non-state actors have joined the Deed of Commitment and the majority of them have cooperated in mine action activities aiming at alleviate the impact of APLs on people. Obviously, the signing of that document does not means being obligated to respect the obligations on a legal ground, but it can help the universalization and implementation of the Treaty.

The problems raised by the use of AP mines and CMs by armed groups was also recognized in the Convention on Cluster Munitions that is the first weapons Treaty to admit the importance of dealing with these actors. This novelty, together with the retroactive responsibility and a major attention for

⁶⁰¹ “Troubling Reports of Landmine Seizures and Use in Eastern Ukraine”, ICBL, 8 July 2014, <http://icbl.org/en-gb/news-and-events/news/2014/troubling-reports-of-landmine-seizures-and-use-in-eastern-ukraine.aspx>.

⁶⁰² “Libya: Evidence of New Landmine Use in Tripoli”(November 2014), Human Rights Watch, online at <http://www.hrw.org/news/2014/11/04/libya-evidence-new-landmine-use-tripoli>.

⁶⁰³ “Information submitted by Ukraine to the Third Review Conference of the Ottawa Convention”, *supra* note (600).

⁶⁰⁴ “Landmine ban”, Geneva Call, accessed in January 2015, online at <http://www.genevacall.org/what-we-do/landmine-ban/>.

⁶⁰⁵ More information on the Geneva Call, its activities and the Deed of Commitment on Landmines on “Geneva Call” at <http://www.genevacall.org/>.

the assistance to victims are the innovations introduced by the Convention on Cluster Munitions. However, there are also new matters of concern as regards cluster bombs. In fact, recent data gathered by the Monitor report new use of these weapons in Syria, South Sudan and Ukraine.

In Syria CMs have been widely used since July 2012, and the government has increased the use of these weapons over time to face the intensification of conflicts with the rebels groups. The international community has several times condemned the Syrian government's actions⁶⁰⁶, however Human Rights Watch still continues to denounce and report cases of the use of CMs.⁶⁰⁷

In Ukraine and South Sudan the use of cluster bombs occurred during 2014, and in both cases not only the government's forces, but also the armed non-state groups are involved in the use of this weapon. It is not always easy to identify the responsible of the use, and while the government of South Sudan denied the use of cluster bombs, Ukraine has neither confirmed nor denied using them.⁶⁰⁸ Anyway, Sarah Blakemore, the director of the CMC referring to South Sudan stated that "Use of cluster munitions anywhere by anyone is outrageous," and called for investigations.⁶⁰⁹ The CMC reports that recently other States Parties (58) have expressed their concerns about reports of use of CMs against civilians in Syria, South Sudan, and Ukraine, however it is evident that the question of the use of these weapons by non-state groups shall be better addressed in the future.⁶¹⁰

Over time weapons Treaties have extended their scope, and this emerges clearly examining the Convention on Cluster Munitions. Indeed, compared with past weapons Treaties, it includes functioning as well as malfunctioning munitions, it has placed greater attention to the assistance to victims, and following the Ottawa Treaty, it has adopted preventive measures to halt the use of cluster bombs.

Innovations of the Convention on Cluster Munitions originate from the necessity to deal with the characteristics of cluster bombs. Like landmines, they threaten the civilian population during and after the end of conflicts, however given the fact that a single cluster bomb is designed to released hundreds of explosive submunitions, dangers are multiplied. As examined before, submunitions are designed to explode when released, but they often fail to do so, thus they remain on the ground waiting for victims to explode, as landmines. In this regard, they are even more dangerous since they can injure and kill during and after the release of cluster bombs.

⁶⁰⁶ For example, in 2013 a total of 91 States, including several non Member State to the CCM, signed a document through which they expressed their contrariety to the use of cluster bombs by the Syrian government. See the list of the signatory States in The Monitor, *Cluster Munition Monitor 2014*, *supra* note (534), p. 13.

⁶⁰⁷ Human Rights Watch monitors and reports the use of CMs in Syria. Related articles are available at <http://www.hrw.org/news/2014/04/04/technical-briefing-note-use-cluster-munitions-syria>.

⁶⁰⁸ The Monitor, *Cluster Munition Monitor 2014*, *supra* note (534), pp. 14-15.

⁶⁰⁹ "Cluster munition use in South Sudan", CMC, accessed in February 2015, <http://www.stopclustermunitions.org/en-gb/cluster-bombs/use-of-cluster-bombs/cluster-munition-use-in-south-sudan.aspx>.

⁶¹⁰ "EU general statement", Fifth Meeting of States Parties to the Convention on Cluster Munitions (2-5 September 2014, San José, Costa Rica), http://www.clusterconvention.org/files/2014/09/CCM_5MSP_EU_statement_FINAL1.pdf. The other States that aligned to this statement are listed online, see "Cluster munition use in South Sudan", *supra* note (609).

Given their features, the Convention has included preventive as well as remedial provisions, taking as a model the Mine Ban Convention, adding something new that could be useful for future treaties. In short, this Treaty can be a model for the future of humanitarian law, since it bans not only the functioning munitions, but also the weapons that failed to work as designed. For example, States will be able to negotiate other treaties on munitions or submunitions and byproducts of weapons that are not included in the definitions of AP mine and cluster bomb but that pose humanitarian risks.⁶¹¹ As stated by the ICJ in its advisory opinion on nuclear weapons “If an envisaged use of weapons would not meet the requirements of humanitarian law, a threat to engage in such use would also be contrary to that law.”⁶¹² This can be an incentive to halt the use of weapons like landmines and CMs in the future.

⁶¹¹ B. Docherty, *supra* note (313), pp. 942-945.

⁶¹² ICJ, *supra* note (561), par. 78.

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ANNEX I

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997

Preamble

The States Parties,

Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognizing that a total ban of anti-personnel mines would also be an important confidence-building measure,

Welcoming the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly Resolution 51/45 S of 10 December 1996 urging all States to pursue vigorously an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant fora including, inter alia, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,

Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

Article 1

General obligations

1. Each State Party undertakes never under any circumstances:
 - a) To use anti-personnel mines;
 - b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
 - c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2

Definitions

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.
2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.
3. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.
4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.
5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

Article 3

Exceptions

1. Notwithstanding the general obligations under Article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.
2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

Article 4

Destruction of stockpiled anti-personnel mines

Except as provided for in Article 3, 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, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

Article 5

Destruction of anti-personnel mines in mined areas

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.
2. 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 as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing

the destruction of such anti-personnel mines, for a period of up to ten years.

4. Each request shall contain:

a) The duration of the proposed extension;

b) A detailed explanation of the reasons for the proposed extension, including:

(i) The preparation and status of work conducted under national demining programs;

(ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and

(iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;

c) The humanitarian, social, economic, and environmental implications of the extension; and

d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 6

International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.

2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.

4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, inter alia, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia:

a) The extent and scope of the anti-personnel mine problem;

b) The financial, technological and human resources that are required for the implementation of the program;

c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;

d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;

e) Assistance to mine victims;

f) The relationship between the Government of the concerned State Party and the relevant governmental, inter-governmental or non-governmental entities that will work in the implementation

of the program.

8. Each State Party giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.

Article 7

Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- a) The national implementation measures referred to in Article 9;
- b) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;
- c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were emplaced;
- d) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorized by a State Party to retain or transfer anti-personnel mines, in accordance with Article 3;
- e) The status of programs for the conversion or de-commissioning of anti-personnel mine production facilities;
- f) The status of programs for the destruction of anti-personnel mines in accordance with Articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- g) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with Articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with Article 4;
- h) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and
- i) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of Article 5.

2. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8

Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.
4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.
5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one-third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.
6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.
7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.
8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to 9 experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.
9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.
10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.
11. Upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.
12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used

exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

- a) The protection of sensitive equipment, information and areas;
- b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- c) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

Article 9

National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10

Settlement of disputes

1. The States Parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

3. This Article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.

Article 11

Meetings of the States Parties

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:
 - a) The operation and status of this Convention;
 - b) Matters arising from the reports submitted under the provisions of this Convention;
 - c) International cooperation and assistance in accordance with Article 6;
 - d) The development of technologies to clear anti-personnel mines;
 - e) Submissions of States Parties under Article 8; and
 - f) Decisions relating to submissions of States Parties as provided for in Article 5.
2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.
3. Under the conditions set out in Article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.
4. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

Article 12

Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.
2. The purpose of the Review Conference shall be:
 - a) To review the operation and status of this Convention;
 - b) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of Article 11;
 - c) To take decisions on submissions of States Parties as provided for in Article 5; and
 - d) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.
3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

Article 13

Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.
2. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.

3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.
5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14

Costs

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.
2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

Article 15

Signature

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

Article 16

Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17

Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18

Provisional application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Article 19

Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20

Duration and withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.
4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

Article 21

Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 22

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX II

Convention on Cluster Munitions, 30 May 2008

Preamble

The States Parties to this Convention,

Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflict,

Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned,

Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years

after use,

Deeply concerned also at the dangers presented by the large national stockpiles of cluster munitions retained for operational use and *determined* to ensure their rapid destruction,

Believing it necessary to contribute effectively in an efficient, coordinated manner to resolving the challenge of removing cluster munition remnants located throughout the world, and to ensure their destruction,

Determined also to ensure the full realisation of the rights of all cluster munition victims and *recognising* their inherent dignity,

Resolved to do their utmost in providing assistance to cluster munition victims, including medical care, rehabilitation and psychological support, as well as providing for their social and economic inclusion,

Recognising the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups,

Bearing in mind the Convention on the Rights of Persons with Disabilities which, *inter alia*, requires that States Parties to that Convention undertake to ensure and promote the full realisation of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability,

Mindful of the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons, and *resolved* to avoid discrimination among victims of various types of weapons,

Reaffirming that in cases not covered by this Convention or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law, derived from established custom, from the principles of humanity and from the dictates of public conscience,

Resolved also that armed groups distinct from the armed forces of a State shall not, under any circumstances, be permitted to engage in any activity prohibited to a State Party to this Convention,

Welcoming the very broad international support for the international norm prohibiting anti-personnel mines, enshrined in the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,

Welcoming also the adoption of the Protocol on Explosive Remnants of War, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its entry into force on 12 November 2006, and *wishing* to enhance the protection of civilians from the effects of cluster munition remnants in post-conflict environments,

Bearing in mind also United Nations Security Council Resolution 1325 on women, peace and security and United Nations Security Council Resolution 1612 on children in armed conflict,

Welcoming further the steps taken nationally, regionally and globally in recent years aimed at prohibiting, restricting or suspending the use, stockpiling, production and transfer of cluster munitions,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the global call for an end to civilian suffering caused by cluster munitions and *recognising* the efforts to that end undertaken by the United Nations, the International Committee of the Red Cross, the Cluster Munition Coalition and numerous other non-governmental organisations around the world, *Reaffirming* the Declaration of the Oslo Conference on Cluster Munitions, by which, *inter alia*, States recognised the grave consequences caused by the use of cluster munitions and committed themselves to conclude by 2008 a legally binding instrument that would prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and would establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation for victims, clearance of contaminated areas, risk reduction education and destruction of stockpiles, *Emphasising* the desirability of attracting the adherence of all States to this Convention, and *determined* to work strenuously towards the promotion of its universalisation and its full implementation, *Basing* themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, and the rules that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only, that in the conduct of military operations constant care shall be taken to spare the civilian population, civilians and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations,

HAVE AGREED as follows:

Article 1

General obligations and scope of application

1. Each State Party undertakes never under any circumstances to:
 - (a) Use cluster munitions;
 - (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;
 - (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.
2. Paragraph 1 of this Article applies, *mutatis mutandis*, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.
3. This Convention does not apply to mines.

Article 2

Definitions

For the purposes of this Convention:

1. “Cluster munition victims” means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation

of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities;

2. "Cluster munition" means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:

(a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;

(b) A munition or submunition designed to produce electrical or electronic effects;

(c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:

(i) Each munition contains fewer than ten explosive submunitions;

(ii) Each explosive submunition weighs more than four kilograms;

(iii) Each explosive submunition is designed to detect and engage a single target object;

(iv) Each explosive submunition is equipped with an electronic selfdestruction mechanism;

(v) Each explosive submunition is equipped with an electronic selfdeactivating feature;

3. "Explosive submunition" means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact;

4. "Failed cluster munition" means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so;

5. "Unexploded submunition" means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended;

6. "Abandoned cluster munitions" means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use;

7. "Cluster munition remnants" means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets;

8. "Transfer" involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants;

9. "Self-destruction mechanism" means an incorporated automaticallyfunctioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;

10. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition;

11. "Cluster munition contaminated area" means an area known or suspected to contain cluster munition remnants;

12. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

13. "Explosive bomblet" means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact;

14. "Dispenser" means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release;

15. "Unexploded bomblet" means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

Article 3

Storage and stockpile destruction

1. Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.

2. Each State Party undertakes to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article as soon as possible but not later than eight years after the entry into force of this Convention for that State Party. Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article within eight years of entry into force of this Convention for that State Party it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the

deadline for completing the destruction of such cluster munitions by a period of up to four years. A State Party may, in exceptional circumstances, request additional extensions of up to four years. The requested extensions shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 2 of this Article.

4. Each request for an extension shall set out:

(a) The duration of the proposed extension;

(b) A detailed explanation of the proposed extension, including the financial and technical means available to or required by the State Party for the destruction of all cluster munitions referred to in paragraph 1 of this Article and, where applicable, the exceptional circumstances justifying it;

(c) A plan for how and when stockpile destruction will be completed;

(d) The quantity and type of cluster munitions and explosive submunitions held at the entry into force of this Convention for that State Party and any additional cluster munitions or explosive submunitions discovered

after such entry into force;

(e) The quantity and type of cluster munitions and explosive submunitions destroyed during the period referred to in paragraph 2 of this Article; and

(f) The quantity and type of cluster munitions and explosive submunitions remaining to be destroyed during the proposed extension and the annual destruction rate expected to be achieved.

5. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 4 of this Article, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter

extension than that requested and may propose benchmarks for the extension, as appropriate. A request for an extension shall be submitted a minimum of nine months prior to the Meeting of States Parties or the Review Conference at which it is to be considered.

6. Notwithstanding the provisions of Article 1 of this Convention, the retention or acquisition of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster

munition counter-measures, is permitted. The amount of explosive submunitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.

7. Notwithstanding the provisions of Article 1 of this Convention, the transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 6 of this Article, is permitted.

8. States Parties retaining, acquiring or transferring cluster munitions or explosive submunitions for the purposes described in paragraphs 6 and 7 of this Article shall submit a detailed report on the planned and actual use of these cluster munitions and explosive submunitions and their type, quantity and lot numbers. If cluster munitions or explosive submunitions are transferred to another State Party for these purposes, the report shall include reference to the receiving party. Such a report shall be prepared for each year during which a State Party retained, acquired or transferred cluster munitions or explosive submunitions and shall be submitted to the Secretary-General of the United Nations no later than 30 April of the following year.

Article 4

Clearance and destruction of cluster munition remnants and risk reduction education

1. Each State Party undertakes to clear and destroy, or ensure the clearance and destruction of, cluster munition remnants located in cluster munition contaminated areas under its jurisdiction or control, as follows:

- (a) Where cluster munition remnants are located in areas under its jurisdiction or control at the date of entry into force of this Convention for that State Party, such clearance and destruction shall be completed as soon as possible but not later than ten years from that date;
- (b) Where, after entry into force of this Convention for that State Party, cluster munitions have become cluster munition remnants located in areas under its jurisdiction or control, such clearance and destruction must be completed as soon as possible but not later than ten years after the end of the active hostilities during which such cluster munitions became cluster munition remnants; and
- (c) Upon fulfilling either of its obligations set out in sub-paragraphs (a) and (b) of this paragraph, that State Party shall make a declaration of compliance to the next Meeting of States Parties.

2. In fulfilling its obligations under paragraph 1 of this Article, each State Party shall take the following measures as soon as possible, taking into consideration the provisions of Article 6 of this Convention regarding international cooperation and assistance:

- (a) Survey, assess and record the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas under its jurisdiction or control;
- (b) Assess and prioritise needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilise resources and develop a national plan to carry out these activities, building, where appropriate, upon existing structures, experiences and methodologies;
- (c) Take all feasible steps to ensure that all cluster munition contaminated areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means to ensure the effective

exclusion of civilians. Warning signs based on methods of marking readily recognisable by the affected community should be utilised in the marking of suspected hazardous areas. Signs and other hazardous

area boundary markers should, as far as possible, be visible, legible, durable and resistant to environmental effects and should clearly identify which side of the marked boundary is considered to be within

the cluster munition contaminated areas and which side is considered to be safe;

- (d) Clear and destroy all cluster munition remnants located in areas under its jurisdiction or control; and

- (e) Conduct risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

3. In conducting the activities referred to in paragraph 2 of this Article, each State Party shall take into account international standards, including the International Mine Action Standards (IMAS).

4. This paragraph shall apply in cases in which cluster munitions have been used or abandoned by one State Party prior to entry into force of this Convention for that State Party and have become cluster munition remnants that are located in areas under the jurisdiction or control of another State Party at the time of entry into force of this Convention for the latter. (a) In such cases, upon entry into force of this Convention for both States Parties, the former State Party is strongly encouraged to provide, *inter alia*, technical, financial, material or human resources assistance to the latter State Party, either bilaterally or through a mutually agreed third party, including through the United Nations system or other relevant organisations, to facilitate the marking, clearance and destruction of such cluster munition remnants.

- (b) Such assistance shall include, where available, information on types and quantities of the cluster munitions used, precise locations of cluster munition strikes and areas in which cluster munition remnants are known to be located.

5. If a State Party believes that it will be unable to clear and destroy or ensure the clearance and destruction of all cluster munition remnants referred to in paragraph 1 of this Article within ten years of the entry into force of this Convention for that State Party, it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the clearance and destruction of such cluster munition remnants by a period of up to five years. The requested

extension shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 1 of this Article.

6. A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of the time period referred to in paragraph 1 of this Article for that State Party. Each request shall be submitted a minimum of nine months prior to the Meeting of States Parties or Review Conference at which it is to be considered. Each request shall set out:

- (a) The duration of the proposed extension;
- (b) A detailed explanation of the reasons for the proposed extension, including the financial and technical means available to and required by the State Party for the clearance and destruction of all cluster munition remnants during the proposed extension;
- (c) The preparation of future work and the status of work already conducted under national clearance and demining programmes during the initial ten year period referred to in paragraph 1 of this Article and any subsequent extensions;
- (d) The total area containing cluster munition remnants at the time of entry into force of this Convention for that State Party and any additional areas containing cluster munition remnants discovered after such entry into force;
- (e) The total area containing cluster munition remnants cleared since entry into force of this Convention;
- (f) The total area containing cluster munition remnants remaining to be cleared during the proposed extension;
- (g) The circumstances that have impeded the ability of the State Party to destroy all cluster munition remnants located in areas under its jurisdiction or control during the initial ten year period referred to in paragraph 1 of this Article, and those that may impede this ability during the proposed extension;
- (h) The humanitarian, social, economic and environmental implications of the proposed extension; and
- (i) Any other information relevant to the request for the proposed extension.

7. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 6 of this Article, including, *inter alia*, the quantities of cluster munition remnants reported, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate.

8. Such an extension may be renewed by a period of up to five years upon the submission of a new request, in accordance with paragraphs 5, 6 and 7 of this Article. In requesting a further extension a State Party shall submit relevant additional information on what has been undertaken during the previous extension granted pursuant to this Article.

Article 5

Victim assistance

1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall:

- (a) Assess the needs of cluster munition victims;
- (b) Develop, implement and enforce any necessary national laws and policies;
- (c) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
- (d) Take steps to mobilise national and international resources;
- (e) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;

- (f) Closely consult with and actively involve cluster munition victims and their representative organisations;
- (g) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and
- (h) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 6

International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance.
2. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by cluster munitions, aimed at the implementation of the obligations of this Convention. Such assistance may be provided, *inter alia*, through the United Nations system, international, regional or national organisations or institutions, non-governmental organisations or institutions, or on a bilateral basis.
3. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision and receipt of clearance and other such equipment and related technological information for humanitarian purposes.
4. In addition to any obligations it may have pursuant to paragraph 4 of Article 4 of this Convention, each State Party in a position to do so shall provide assistance for clearance and destruction of cluster munition remnants and information concerning various means and technologies related to clearance of cluster munitions, as well as lists of experts, expert agencies or national points of contact on clearance and destruction of cluster munition remnants and related activities.
5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions, and shall also provide assistance to identify, assess and prioritise needs and practical measures in terms of marking, risk reduction education, protection of civilians and clearance and destruction as provided in Article 4 of this Convention.
6. Where, after entry into force of this Convention, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a State Party, each State Party in a position to do so shall urgently provide emergency assistance to the affected State Party.
7. Each State Party in a position to do so shall provide assistance for the implementation of the obligations referred to in Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims. Such assistance may be provided, *inter alia*, through the United Nations system, international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International Federation, non-governmental organisations or on a bilateral basis.
8. Each State Party in a position to do so shall provide assistance to contribute to the economic and social recovery needed as a result of cluster munition use in affected States Parties.
9. Each State Party in a position to do so may contribute to relevant trust funds in order to facilitate the provision of assistance under this Article.
10. Each State Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Convention, including facilitation of the entry and exit of personnel, materiel and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.
11. Each State Party may, with the purpose of developing a national action plan, request the United Nations system, regional organisations, other States Parties or other competent intergovernmental or non-governmental institutions to assist its authorities to determine, *inter alia*:
 - (a) The nature and extent of cluster munition remnants located in areas under its jurisdiction or control;
 - (b) The financial, technological and human resources required for the implementation of the plan;

- (c) The time estimated as necessary to clear and destroy all cluster munition remnants located in areas under its jurisdiction or control;
- (d) Risk reduction education programmes and awareness activities to reduce the incidence of injuries or deaths caused by cluster munition remnants;
- (e) Assistance to cluster munition victims; and
- (f) The coordination relationship between the government of the State Party concerned and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the plan.

12. States Parties giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

Article 7

Transparency measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on:

- (a) The national implementation measures referred to in Article 9 of this Convention;
- (b) The total of all cluster munitions, including explosive submunitions, referred to in paragraph 1 of Article 3 of this Convention, to include a breakdown of their type, quantity and, if possible, lot numbers of each type;
- (c) The technical characteristics of each type of cluster munition produced by that State Party prior to entry into force of this Convention for it, to the extent known, and those currently owned or possessed by it, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of cluster munitions; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information that may facilitate the clearance of cluster munition remnants;
- (d) The status and progress of programmes for the conversion or decommissioning of production facilities for cluster munitions;
- (e) The status and progress of programmes for the destruction, in accordance with Article 3 of this Convention, of cluster munitions, including explosive submunitions, with details of the methods that will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- (f) The types and quantities of cluster munitions, including explosive submunitions, destroyed in accordance with Article 3 of this Convention, including details of the methods of destruction used, the location of the destruction sites and the applicable safety and environmental standards observed;
- (g) Stockpiles of cluster munitions, including explosive submunitions, discovered after reported completion of the programme referred to in sub-paragraph (e) of this paragraph, and plans for their destruction in accordance with Article 3 of this Convention;
- (h) To the extent possible, the size and location of all cluster munition contaminated areas under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of cluster munition remnant in each such area and when they were used;
- (i) The status and progress of programmes for the clearance and destruction of all types and quantities of cluster munition remnants cleared and destroyed in accordance with Article 4 of this Convention, to include the size and location of the cluster munition contaminated area cleared and a breakdown of the quantity of each type of cluster munition remnant cleared and destroyed;
- (j) The measures taken to provide risk reduction education and, in particular, an immediate and effective warning to civilians living in cluster munition contaminated areas under its jurisdiction or control;
- (k) The status and progress of implementation of its obligations under Article 5 of this Convention to adequately provide age- and gendersensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims;
- (l) The name and contact details of the institutions mandated to provide information and to carry out the measures described in this paragraph;

- (m) The amount of national resources, including financial, material or in kind, allocated to the implementation of Articles 3, 4 and 5 of this Convention; and
- (n) The amounts, types and destinations of international cooperation and assistance provided under Article 6 of this Convention.
2. The information provided in accordance with paragraph 1 of this Article shall be updated by the States Parties annually, covering the previous calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.
3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8

Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.
2. If one or more States Parties wish to clarify and seek to resolve questions relating to a matter of compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information that would assist in clarifying the matter.
3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.
4. Pending the convening of any Meeting of States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.
5. Where a matter has been submitted to it pursuant to paragraph 3 of this Article, the Meeting of States Parties shall first determine whether to consider that matter further, taking into account all information submitted by the States Parties concerned. If it does so determine, the Meeting of States Parties may suggest to the States Parties concerned ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6 of this Convention.
6. In addition to the procedures provided for in paragraphs 2 to 5 of this Article, the Meeting of States Parties may decide to adopt such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate.

Article 9

National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10

Settlement of disputes

1. When a dispute arises between two or more States Parties relating to the interpretation or application of this Convention, the States Parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to the Meeting of States Parties and referral to the International Court of Justice in conformity with the Statute of the Court.
2. The Meeting of States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

Article 11

Meetings of States Parties

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention, including:
 - (a) The operation and status of this Convention;
 - (b) Matters arising from the reports submitted under the provisions of this Convention;
 - (c) International cooperation and assistance in accordance with Article 6 of this Convention;
 - (d) The development of technologies to clear cluster munition remnants;
 - (e) Submissions of States Parties under Articles 8 and 10 of this Convention; and
 - (f) Submissions of States Parties as provided for in Articles 3 and 4 of this Convention.
2. The first Meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.
3. States not party to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organisations may be invited to attend these meetings as observers in accordance with the agreed rules of procedure.

Article 12

Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.
2. The purpose of the Review Conference shall be:
 - (a) To review the operation and status of this Convention;
 - (b) To consider the need for and the interval between further Meetings of States Parties referred to in paragraph 2 of Article 11 of this Convention; and
 - (c) To take decisions on submissions of States Parties as provided for in Articles 3 and 4 of this Convention.
3. States not party to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organisations may be invited to attend each Review Conference as observers in accordance with the agreed rules of procedure.

Article 13

Amendments

1. At any time after its entry into force any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the Secretary-General of the United Nations shall convene an Amendment Conference to which all States Parties shall be invited.
2. States not party to this Convention, as well as the United Nations, other relevant international organisations or institutions, regional organisations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organisations may be invited to attend each Amendment Conference as observers in accordance with the agreed rules of procedure.
3. The Amendment Conference shall be held immediately following a Meeting of States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to all States.
5. An amendment to this Convention shall enter into force for States Parties that have accepted the amendment on the date of deposit of acceptances by a majority of the States which were Parties at the date of adoption of the amendment. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14

Costs and administrative tasks

1. The costs of the Meetings of States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not party to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.
2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.
3. The performance by the Secretary-General of the United Nations of administrative tasks assigned to him or her under this Convention is subject to an appropriate United Nations mandate.

Article 15

Signature

This Convention, done at Dublin on 30 May 2008, shall be open for signature at Oslo by all States on 3 December 2008 and thereafter at United Nations Headquarters in New York until its entry into force.

Article 16

Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval by the Signatories.
2. It shall be open for accession by any State that has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17

Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the thirtieth instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, this

Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18

Provisional application

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally Article 1 of this Convention pending its entry into force for that State.

Article 19

Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20

Duration and withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

Article 21

Relations with States not party to this Convention

1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.
2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.
3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.
4. Nothing in paragraph 3 of this Article shall authorise a State Party:
 - (a) To develop, produce or otherwise acquire cluster munitions;
 - (b) To itself stockpile or transfer cluster munitions;
 - (c) To itself use cluster munitions; or
 - (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

Article 22

Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 23

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention shall be equally authentic.

ANNEX III

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997

STATES PARTIES	SIGNATURE	RATIFICATION / ACCESSION	RESERVATION / DECLARATION
Afghanistan		11.09.2002	
Albania	08.09.1998	29.02.2000	
Algeria	03.12.1997	09.10.2001	
Andorra	03.12.1997	29.06.1998	
Angola	04.12.1997	05.07.2002	
Antigua and Barbuda	03.12.1997	03.05.1999	
Argentina	04.12.1997	14.09.1999	14.09.1999
Australia	03.12.1997	14.01.1999	14.01.1999
Austria	03.12.1997	29.06.1998	29.06.1998
Bahamas	03.12.1997	31.07.1998	
Bangladesh	07.05.1998	06.09.2000	
Barbados	03.12.1997	26.01.1999	
Belarus		03.09.2003	
Belgium	03.12.1997	04.09.1998	
Belize	27.02.1998	23.04.1998	
Benin	03.12.1997	25.09.1998	
Bhutan		18.08.2005	
Bolivia	03.12.1997	09.06.1998	
Bosnia and Herzegovina	03.12.1997	08.09.1998	
Botswana	03.12.1997	01.03.2000	
Brazil	03.12.1997	30.04.1999	
Brunei Darussalam	04.12.1997	24.04.2006	
Bulgaria	03.12.1997	04.09.1998	
Burkina Faso	03.12.1997	16.09.1998	
Burundi	03.12.1997	22.10.2003	
Cabo Verde	04.12.1997	14.05.2001	
Cambodia	03.12.1997	28.07.1999	
Cameroon	03.12.1997	19.09.2002	
Canada	03.12.1997	03.12.1997	03.12.1997
Central African Republic		08.11.2002	
Chad	06.07.1998	06.05.1999	
Chile	03.12.1997	10.09.2001	10.09.2001
Colombia	03.12.1997	06.09.2000	
Comoros		19.08.2002	
Congo		04.05.2001	
Cook Islands	03.12.1997	15.03.2006	
Costa Rica	03.12.1997	17.03.1999	
Côte d'Ivoire	03.12.1997	30.06.2000	
Croatia	4.12.1997	20.05.1998	
Cyprus	04.12.1997	17.01.2003	
Czech Republic	03.12.1997	26.10.1999	26.10.1999
Democratic Republic of the Congo		02.05.2002	
Denmark	04.12.1997	08.06.1998	
Djibouti	03.12.1997	18.05.1998	
Dominica	03.12.1997	26.03.1999	
Dominican Republic	03.12.1997	30.06.2000	
Ecuador	04.12.1997	29.04.1999	
El Salvador	04.12.1997	27.01.1999	
Equatorial Guinea		16.09.1998	
Eritrea		27.08.2001	
Estonia		12.05.2004	
Ethiopia	03.12.1997	17.12.2004	

Fiji	03.12.1997	10.06.1998	
Finland		09.01.2012	
France	03.12.1997	23.07.1998	
Gabon	03.12.1997	08.09.2000	
Gambia	04.12.1997	23.09.2002	
Germany	03.12.1997	23.07.1998	
Ghana	04.12.1997	30.06.2000	
Greece	03.12.1997	25.09.2003	03.12.1997
Grenada	03.12.1997	19.08.1998	
Guatemala	03.12.1997	26.03.1999	
Guinea	04.12.1997	08.10.1998	
Guinea-Bissau	03.12.1997	22.05.2001	
Guyana	04.12.1997	05.08.2003	
Haiti	03.12.1997	15.02.2006	
Holy See	04.12.1997	17.02.1998	
Honduras	03.12.1997	24.09.1998	
Hungary	03.12.1997	06.04.1998	
Iceland	04.12.1997	05.05.1999	
Indonesia	04.12.1997	16.02.2007	
Iraq		15.08.2007	
Ireland	03.12.1997	03.12.1997	
Italy	03.12.1997	23.04.1999	
Jamaica	03.12.1997	17.07.1998	
Japan	03.12.1997	30.09.1998	
Jordan	11.08.1998	13.11.1998	
Kenya	05.12.1997	23.01.2001	
Kiribati		07.09.2000	
Kuwait		30.07.2007	
Latvia		01.07.2005	
Lesotho	04.12.1997	02.12.1998	
Liberia		23.12.1999	
Liechtenstein	03.12.1997	05.10.1999	
Lithuania	26.02.1999	12.05.2003	26.02.1999
Luxembourg	04.12.1997	14.06.1999	
Madagascar	04.12.1997	16.09.1999	
Malawi	04.12.1997	13.08.1998	
Malaysia	03.12.1997	22.04.1999	
Maldives	01.10.1998	07.09.2000	
Mali	03.12.1997	02.06.1998	
Malta	04.12.1997	07.05.2001	
Mauritania	03.12.1997	21.07.2000	
Mauritius	03.12.1997	03.12.1997	03.12.1997
Mexico	03.12.1997	09.06.1998	
Monaco	04.12.1997	17.11.1998	
Montenegro		23.10.2006	
Mozambique	03.12.1997	25.08.1998	
Namibia	03.12.1997	21.09.1998	
Nauru		07.08.2000	
Netherlands	03.12.1997	12.04.1999	21.02.2014
New Zealand	03.12.1997	27.01.1999	
Nicaragua	04.12.1997	30.11.1998	
Niger	04.12.1997	23.03.1999	
Nigeria		27.09.2001	
Niue	03.12.1997	15.04.1998	
Norway	03.12.1997	09.07.1998	
Oman		20.08.2014	
Palau		19.11.2007	
Panama	04.12.1997	07.10.1998	
Papua New Guinea		28.06.2004	

Paraguay	03.12.1997	13.11.1998	
Peru	03.12.1997	17.06.1998	
Philippines	03.12.1997	15.02.2000	
Poland	04.12.1997	27.12.2012	
Portugal	03.12.1997	19.02.1999	
Qatar	04.12.1997	13.10.1998	
Republic of Moldova	03.12.1997	08.09.2000	
Romania	03.12.1997	30.11.2000	
Rwanda	03.12.1997	08.06.2000	
Saint Kitts and Nevis	03.12.1997	02.12.1998	
Saint Lucia	03.12.1997	13.04.1999	
Saint Vincent and the Grenadines	03.12.1997	01.08.2001	
Samoa	03.12.1997	23.07.1998	
San Marino	03.12.1997	18.03.1998	
Sao Tome and Principe	30.04.1998	31.03.2003	
Senegal	03.12.1997	24.09.1998	
Serbia		18.09.2003	18.09.2003
Seychelles	04.12.1997	02.06.2000	
Sierra Leone	29.07.1998	25.04.2001	
Slovakia	03.12.1997	25.02.1999	
Slovenia	03.12.1997	27.10.1998	
Solomon Islands	03.12.1997	26.01.1999	
Somalia		16.04.2012	
South Africa	03.12.1997	26.06.1998	26.06.1998
South Sudan		11.11.2011	
Spain	03.12.1997	19.01.1999	
Sudan	04.12.1997	13.10.2003	
Suriname	04.12.1997	23.05.2002	
Swaziland	04.12.1997	22.12.1998	
Sweden	04.12.1997	30.11.1998	30.11.1998
Switzerland	03.12.1997	24.03.1998	24.03.1998
Tajikistan		12.10.1999	
Thailand	03.12.1997	27.11.1998	
The former Yugoslav Republic of Macedonia		09.09.1998	
Timor-Leste		07.05.2003	
Togo	04.12.1997	09.03.2000	
Trinidad and Tobago	04.12.1997	27.04.1998	
Tunisia	04.12.1997	09.07.1999	
Turkey		25.09.2003	
Turkmenistan	03.12.1997	19.01.1998	
Tuvalu		13.09.2011	
Uganda	03.12.1997	25.02.1999	
Ukraine	24.02.1999	27.12.2005	
United Kingdom of Great Britain and Northern Ireland	03.12.1997	31.07.1998	31.07.1998
United Republic of Tanzania	03.12.1997	13.11.2000	
Uruguay	03.12.1997	07.06.2001	
Vanuatu	04.12.1997	16.09.2005	
Venezuela	03.12.1997	14.04.1999	
Yemen	04.12.1997	01.09.1998	
Zambia	12.12.1997	23.02.2001	
Zimbabwe	03.12.1997	18.06.1998	

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STATES PARTIES	SIGNATURE	RATIFICATION / ACCESSION	RESERVATION / DECLARATION
Afghanistan	03.12.2008	08.09.2011	
Albania	03.12.2008	16.06.2009	
Andorra		09.04.2013	
Antigua and Barbuda	16.07.2010	23.08.2010	
Australia	03.12.2008	08.10.2012	
Austria	03.12.2008	02.04.2009	
Belgium	03.12.2008	22.12.2009	
Belize		02.09.2014	02.09.2014
Bolivia	03.12.2008	30.04.2013	
Bosnia and Herzegovina	03.12.2008	07.09.2010	
Botswana	03.12.2008	27.06.2011	
Bulgaria	03.12.2008	06.04.2011	
Burkina Faso	03.12.2008	16.02.2010	
Burundi	03.12.2008	25.09.2009	
Cabo Verde	03.12.2008	19.10.2010	
Cameroon	15.12.2009	12.07.2012	
Chad	03.12.2008	26.03.2013	
Chile	03.12.2008	16.12.2010	
Comoros	03.12.2008	28.07.2010	
Congo	03.12.2008	02.09.2014	
Cook Islands	03.12.2008	23.08.2011	
Costa Rica	03.12.2008	28.04.2011	
Côte d'Ivoire	04.12.2008	12.03.2012	
Croatia	03.12.2008	17.08.2009	
Czech Republic	03.12.2008	22.09.2011	
Denmark	03.12.2008	12.02.2010	12.02.2010
Dominican Republic	10.11.2009	20.12.2011	
Ecuador	03.12.2008	11.05.2010	
El Salvador	03.12.2008	10.01.2011	
Fiji	03.12.2008	28.05.2010	
France	03.12.2008	25.09.2009	
Germany	03.12.2008	08.07.2009	
Ghana	03.12.2008	03.02.2011	
Grenada		29.06.2011	
Guatemala	03.12.2008	03.11.2010	
Guinea	03.12.2008	21.10.2014	
Guinea-Bissau	04.12.2008	29.11.2010	
Guyana		31.10.2014	
Holy See	03.12.2008	03.12.2008	03.12.2008
Honduras	03.12.2008	21.03.2012	
Hungary	03.12.2008	03.07.2012	
Iraq	12.11.2009	14.05.2013	
Ireland	03.12.2008	03.12.2008	
Italy	03.12.2008	21.09.2011	
Japan	03.12.2008	14.07.2009	
Lao People's Democratic Republic	03.12.2008	18.03.2009	
Lebanon	03.12.2008	05.11.2010	
Lesotho	03.12.2008	28.05.2010	
Liechtenstein	03.12.2008	04.03.2013	
Lithuania	03.12.2008	24.03.2011	
Luxembourg	03.12.2008	10.07.2009	
Malawi	03.12.2008	07.10.2009	
Mali	03.12.2008	30.06.2010	
Malta	03.12.2008	24.09.2009	
Mauritania	19.04.2010	01.02.2012	

Mexico	03.12.2008	06.05.2009	
Monaco	03.12.2008	21.09.2010	
Montenegro	03.12.2008	25.01.2010	
Mozambique	03.12.2008	14.03.2011	
Nauru	03.12.2008	04.02.2013	
Netherlands	03.12.2008	23.02.2011	
New Zealand	03.12.2008	22.12.2009	
Nicaragua	03.12.2008	02.11.2009	
Niger	03.12.2008	02.06.2009	
Norway	03.12.2008	03.12.2008	03.12.2008
Palestine		02.01.2015	
Panama	03.12.2008	29.11.2010	
Peru	03.12.2008	26.09.2012	
Portugal	03.12.2008	09.03.2011	
Republic of Moldova	03.12.2008	16.02.2010	
Saint Kitts and Nevis		13.09.2013	
Saint Vincent and the Grenadines	23.09.2009	29.10.2010	
Samoa	03.12.2008	28.04.2010	
San Marino	03.12.2008	10.07.2009	
Senegal	03.12.2008	03.08.2011	
Seychelles	13.04.2010	20.05.2010	
Sierra Leone	03.12.2008	03.12.2008	
Slovenia	03.12.2008	19.08.2009	
Spain	03.12.2008	17.06.2009	
Swaziland		13.09.2011	
Sweden	03.12.2008	23.04.2012	
Switzerland	03.12.2008	17.07.2012	17.07.2012
The former Yugoslav Republic of Macedonia	03.12.2008	08.10.2009	
Togo	03.12.2008	22.06.2012	
Trinidad and Tobago		21.09.2011	
Tunisia	12.01.2009	28.09.2010	
United Kingdom of Great Britain and Northern Ireland	03.12.2008	04.05.2010	21.02.2014
Uruguay	03.12.2008	24.09.2009	
Zambia	03.12.2008	12.08.2009	