

# Disarmament and the Fight Against Landmines

by Marco Kalbusch

## I. INTRODUCTION

In 1988, the United Nations' Office for the Coordination of Humanitarian Assistance to Afghanistan (UNOCHA) initiated on the ground the first UN Programme for humanitarian mine action in the world, the Mine Action Programme for Afghanistan (MAPA). The programme, which actively involves the local population, has evolved into a partnership with local and international non-governmental organizations ("NGOs"). It reflects the growing United Nations response to the global threat posed by anti-personnel landmines. There are currently twelve UN departments and agencies engaged in mine action. The United Nations Department for Disarmament Affairs ("DDA"), which was been re-established in 1998 to respond effectively to the priorities of Member States in the field of disarmament, is one of them. Its responsibilities comprise the monitoring and analysis of developments in the field of disarmament, to ensure the support to relevant inter-governmental deliberative, negotiating and decision making bodies, and to provide support to review and implementation of disarmament agreements.

Notwithstanding, however, the efforts of the United Nations, Member States and NGOs to remove landmines on the ground, to reduce their threat through mine awareness and risk education programs, and to respond to the needs of landmine victims for physical, social and psychological assistance, more mines continue to be laid in many parts of the world affected by armed conflicts.

Anti-personnel landmines are weapons designed to maim rather than to kill. They do not differentiate between friend or foe, combatant or civilian, adult or child, man or woman. They are classified as excessively injurious, with indiscriminate effect<sup>1</sup>. Since landmines remain silently buried in the ground, they kill and injure millions of people years after hostilities have ended. The mere fear of the presence of a single mine can prevent the cultivation of an entire field, rob a village of its livelihood, block children's access to schools and families' access to fresh water. Landmines threaten the ability of the United Nations and other aid agencies to provide humanitarian assistance where it is most needed, and place a major obstacle in a country's path towards reconstruction and development<sup>2</sup>.

This article will introduce the reader to the main legal instruments dealing with

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the issue of landmines, their objectives, mechanisms, implementation and promotion. It will highlight the role and responsibilities of the United Nations, in general, and the Department for Disarmament Affairs, in particular, in the implementation and promotion of these instruments.

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## II. EXISTING LEGAL INSTRUMENTS

To date, the problem of landmines has known three consecutive responses by the international community: Protocol II<sup>3</sup> to the Convention on the Prohibition or Restriction on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects,<sup>4</sup> adopted on 10 October 1980, and entered into force on 2 December 1983 ("Protocol II to the CCW-Convention"); Amended Protocol II<sup>5</sup> to the CCW-Convention, adopted at the first review conference on 3 May 1996, entered into force on 3 December 1998; and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, adopted in Oslo on 18 September 1987, signed in Ottawa and entered into force on 1 March 1999 ("The Mine Ban Convention").<sup>6</sup>

The Secretary-General is the depositary<sup>7</sup> of both the CCW-Convention and the Mine Ban Convention, and as such, is responsible for ensuring the proper execution of all actions relating to these treaties. A depositary's duties are international in character and he is under an obligation to act impartially in the performance of those duties. He receives instruments of ratifications, deposits, notifications of consent to be bound by an annexed protocol and notifications of denunciation. He also informs the States Parties about such ratifications and notifications.

In addition to his duties as depositary, the Secretary-General is also responsible for convening the annual meeting or conferences of States Parties and reviewing conferences. He receives reports, proposals for amendments and is involved in the facilitation and clarification of compliance procedures.

### 1. *Protocol II to the CCW-Convention ("Protocol II")*

Protocol II to the CCW-Convention restricts the use of mines, booby-traps and other devices in an international armed conflict. It prohibits the use of these weapons against the civilian population or in an indiscriminate manner, restricts their use in populated areas and contains specific restrictions for remotely delivered mines<sup>8</sup>. It also prohibits certain types of booby-traps—those that would, because of their use or type, especially affect civilians and non-combatants, and those that are designed

to cause superfluous injury or unnecessary suffering.<sup>9</sup> States Parties have a duty to record and publicize the location of minefields, mines and booby-traps and to protect United Nations forces and missions from their effects. Protocol II is binding for all 90 States Parties to the CCW, although 65 of them have notified their consent to be bound by its amendments agreed upon under Article 8 of the CCW.

### 2. *Amended Protocol II to the CCW – Convention (“Amended Protocol II”)*

Amended Protocol II reinforces the prohibition or restriction of the use of landmines, booby traps and other devices and extends the application of the protocol to armed conflicts not of an international character.<sup>10</sup> It has currently 65 States Parties. In regard to landmines, this instrument addresses three major issues: the prohibition of certain categories of mines, the restriction in the use of mines, and the responsibilities of States and non-state actors in the protection of civilians, peacekeepers and humanitarian workers. States Parties to Amended Protocol II have agreed not to use mines, booby traps and other devices which will cause superfluous injury or unnecessary suffering, are designed to detonate in proximity of a commonly available mine detector, or are self-deactivating but have anti-handling devices. They have also agreed not to use remotely delivered mines that do not have an additional back-up self-deactivation feature.

When using mines not prohibited by the Protocol, commonly known as “smart” mines, States Parties must make a distinction between civilian and military objectives,<sup>11</sup> must ensure that the mines used are in compliance with the provisions of self-deactivation set out in the technical annex,<sup>12</sup> must sufficiently monitor the mined areas in order to ensure the effective exclusion of civilians from these areas, and must give effective advance warning to the civilian population before remotely delivering mines.<sup>13</sup> In addition, they must not use mines in towns, cities and other settlements where no combat between ground forces takes place. When using mines, it is the responsibility of States to identify, record, and mark mine fields and exclude civilians from them, and once the hostilities have ended, to clear the minefields.

Amended Protocol II, furthermore, provides for the protection of peacekeeping and humanitarian missions from the effect of landmines. This protection is enjoyed by missions under Chapter VII of the Charter of the United Nations, as well as, by regional missions pursuant to Chapter VIII of the Charter. Similarly, humanitarian fact-finding missions engaged in by United Nations departments and agencies, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent societies and NGOs are also afforded such protection. The personnel of such missions have to be protected from the effects of mines, booby-traps and other devices, as they are entitled to safe passage and may not be hindered in their activities.<sup>14</sup>

### 3. *The Mine Ban Convention*

The States Parties to the Mine Ban Convention have opted for a more radical approach—the total prohibition of anti-personnel landmines. Under this Convention,

States Parties have agreed to never use, develop, produce, stockpile or transfer anti-personnel landmines or to assist any other party to conduct such activities. They have engaged themselves to destroy all stockpiled anti-personnel landmines within four years of the Convention's entry into force and to clear all laid landmines within ten years from that date. Within their means they have agreed to provide assistance to mine clearance, mine awareness, stockpile destruction and to victims worldwide.<sup>15</sup>

### III. NEXUS BETWEEN HUMANITARIAN AND DISARMAMENT LAW

Both the Convention on Certain Conventional Weapons and its protocols, and the Mine Ban Convention are legal instruments that have their roots in international humanitarian law as well as in disarmament. Protocol II and Amended Protocol II are in the tradition of the Geneva Convention: humanitarian law, rules of warfare, and the protection of the civilian population. In its third preambular paragraph, the Convention refers to the "principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited", and to the "principle that prohibits the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering." But the Convention on Certain Conventional Weapons and its protocols are also a disarmament treaty in the more classical sense.<sup>16</sup> They also invoke the "importance of pursuing every effort which may contribute to progress towards general and complete disarmament under strict and effective international control," in the hope that positive results in the prohibition or restriction of use of certain conventional weapons will facilitate "main talks on disarmament with a view to putting an end to the production, stockpiling and proliferation of such weapons."<sup>17</sup>

The Mine Ban Convention is also based, according to its preambular paragraph 11, on the principle of humanitarian law that the right of the parties to an armed conflict to choose methods of warfare is not unlimited. As it outlaws not only certain forms of mines and some of their use, this instrument is also a disarmament treaty, aimed at total and universal disarmament in regard to anti-personnel landmines.<sup>18</sup>

### IV. TRANSPARENCY AND COMPLIANCE

An important feature of both the Amended Protocol II of the CCW and the Mine Ban Convention is their detailed reporting, compliance and verification procedure.<sup>19</sup> Amended Protocol II and the Mine Ban Convention require that States Parties convene annual conferences or meetings to consider any matter with regard to the application or implementation of the instruments,<sup>20</sup> a reporting mechanism,<sup>21</sup> and monitoring and verification procedures.<sup>22</sup>

#### 1. *Annual Meetings and Conferences*<sup>23</sup>

Through the Department for Disarmament Affairs Annual, the Secretary-General of the United Nations convenes the annual meetings under the Mine Ban Convention and the annual conferences under Amended Protocol II. DDA is also responsible for their organization and servicing. At these meetings issues such as, the operation and status of the legal instrument, reports received by States Parties, technological developments, and international cooperation and assistance are discussed among States Parties. Other States, international organizations and some members of civil society take part in the discussion as observers, if the rules of procedure provide for such an option. Non-States Parties and non-state actors may otherwise participate through several side events that accompany the formal sessions.

### 2. *Intersessional Work Programme under the Mine Ban Convention*<sup>24</sup>

In addition to the annual meetings, the States Parties to the Mine Ban Convention established the Intersessional Work Programme.<sup>25</sup> The program's objective is "to ensure the systematic, effective implementation of the Convention through a more regularized programme of work." It also envisioned that "informal, open-ended intersessional working groups" would be created to "engage a broad international community for the purpose of advancing the achievement of the humanitarian objectives of the Convention." These working groups are intended to "facilitate in-depth considerations of mine action issues by all interested parties at meetings which complement and build upon each other in a structured and systematic way," aimed at organizing "the work within the framework of the Convention in a way which promotes continuity, openness, transparency, inclusiveness and a cooperative spirit."<sup>26</sup>

### 3. *Reporting Mechanism*

States Parties are obliged to submit their reports under both legal instruments to the Secretary-General. Where appropriate, the Department for Disarmament Affairs disseminates these reports, mainly through the United Nations' web page, and makes them available for all States, International Organizations, civil society groups and individuals interested.

#### a. *Reporting Under the Mine Ban Convention*

Under Article 7 of the Mine Ban Convention, States Parties are required to submit an annual report on the location of all mined areas under their jurisdiction or their control. The information reported must include the following data:

- 1) the type, quantity and age of the mines laid there, as far as it is known;
- 2) the total number and the types of all stockpiled mines;
- 3) the number kept for training in mine detection, clearance and destruction techniques;
- 4) the progress of mine destruction programs, including the number and types of mines destroyed, the location of the destruction site and the environmental and safety standards and measures observed during the destruction; and

- 5) legislation and administrative regulations taken to prevent and suppress violations of the Convention.

This measure is aimed at building confidence in the Convention and at permitting a continuing assessment of the progress made in applying the Convention and meeting its objectives. The information obtained through the reporting highlights States' Parties requirements for international assistance and helps the mine action community at large to define and adapt its actions and activities in support of the implementation and the fight against landmines.

To facilitate this undertaking and to promote comparability and evaluation of data, in May 1999 the First Meeting of States Parties in Maputo adopted a standard reporting format.<sup>27</sup> The Second Meeting of States Parties of September 2000 in Geneva amended the reporting format to include an additional form ("Form J") for "other relevant matters."<sup>28</sup> The so-called Form J provides States Parties with the opportunity to report voluntarily on matters pertaining to the compliance and implementation that are not covered by the formal reporting requirements of Article 7. It gives the States Parties the possibility to report on activities undertaken with respect to Article 6 of the Convention on victim assistance, such as care and rehabilitation or social and economic reintegration of mine victims.

The Department for Disarmament Affairs supports and continuously updates a computerized database to collect, store, retrieve and disseminate data and information submitted by the States Parties under Article 7.<sup>29</sup> This database also contains links to the final reports of the Meetings of States Parties, a "guide to reporting under Article 7 of the Ottawa Convention", published by VERTIC, the reporting formats for Article 7, available in all six official languages of the United Nations, and the website on the Status of Multilateral Arms Regulations and Disarmament Agreements.<sup>30</sup> The database is publicly accessible through the internet.<sup>31</sup> As of January 31, 2003, 104 States Parties have submitted their reports under Article 7.<sup>32</sup>

#### *b. Reporting Under Amended Protocol II*

Under Article 13 of Amended Protocol II of the CCW, every State Party to the protocol provides annual reports on its implementation of the protocol. These reports, which are circulated to all States Parties in advance of the annual conference, contain information similar to that reported under Article 7 of the Mine Ban Convention. For example, they include information on mine clearance and rehabilitation programs and national legislation on the implementation of the protocol, as well as, information on measures taken on international technical information exchange, international cooperation on mine clearance, and technical cooperation and assistance. In addition, the States Parties are also required to report on the dissemination of information on the protocol to their armed forces and the civilian population.<sup>33</sup> Furthermore, since the protocol does not totally prohibit the use of anti-personnel landmines, State Parties must provide information on the fulfillment of technical requirements when it comes to the production, use and stockpiling of anti-personnel landmines and other weapons addressed by Amended Protocol II.

#### 4. *Compliance and Verification Mechanism*

The compliance and verification regimes provided by both Treaties are based on a spirit of cooperation among the States Parties rather than on coercive measures.

##### a. *Compliance and Verification under Amended Protocol II*

Article 14 of the Amended Protocol II provides that, problems related to the interpretation and application of the protocol are resolved either bilaterally through cooperation and consultation, through the Secretary-General of the United Nations,<sup>34</sup> or through other appropriate measures. The protocol hereby refers to the common norms of public international law, be it codified or customary. This could include the use of the good offices of the Secretary-General of the United Nations or any other international entity in the position to offer such offices, or the use of existing bi- or multilateral procedures among States. A State Party could also approach the International Court of Justice, if the conditions for the reception of a case are met under the Statute of the Court.<sup>35</sup>

##### b. *Facilitation and Clarification of Compliance under the Mine Ban Convention*

Article 8 the Mine Ban Convention has a very elaborate procedure, which is also based on consultation and cooperation among the States Parties, in order to ensure the compliance with the Convention.<sup>36</sup>

If one or more States Parties wish to clarify and resolve issues related to another party's compliance (or non-compliance) with the convention's provisions, they can submit a request for clarification, through the Secretary-General of the United Nations to that State Party. The request has to be accompanied by the appropriate information on which the request for clarification is based. The State Party to which the request has been addressed then has the duty to reply to the party or parties that submitted the request, also through the Secretary-General, within 28 days. In case no reply or an unsatisfying reply has been given, the matter may be submitted again, through the Secretary-General, to the next Meeting of States Parties, or to a Special Meeting of States Parties, that would have to be convened by the Secretary-General at the proposal of the requesting State Party.<sup>37</sup>

In case the matter cannot be clarified at a meeting of the States Parties, the meeting can authorize a fact-finding mission to collect additional information at any place directly related to the compliance issue under the jurisdiction or the control of the requested State Party. The requested State Party has the duty to take certain measures, such as providing for the reception, transportation, accommodation, and security of the mission, and must give it access to the necessary information, to the extent it does not interfere with the country's sovereignty. Upon considering the information it has obtained, the meeting of States Parties may then request, if relevant, the requested State Party to take certain measures to address the compliance issue, and may also suggest to States Parties concerned ways to further clarify or resolve the matter under international law.

The requested State Party itself may, at any time, invite a fact-finding mission

to its territory, without having to await a decision or an authorization of such a mission by a special or ordinary meeting of States Parties.<sup>38</sup> It is up to the Secretary-General of the United Nations to appoint, on request of the meeting and after consultations with the requested State Party, the members of the mission, including its leader. The members will be chosen from an updated list of qualified experts proposed by States Parties.<sup>39</sup>

Other issues or disputes arising from the application or interpretation of Treaty provisions may be resolved through Article 10 of the Mine Ban Convention. Article 10 provides for a settlement of disputes through consultation and cooperation among the States Parties, or the possibility to bring a dispute before the annual Meeting of States Parties, which may itself contribute to the settlement of disputes by appropriate means, including good offices and the call for the application of a settlement procedure to be chosen by the parties to the dispute.<sup>40</sup>

## V. ADVOCACY

In order to implement the above-mentioned legal instruments, DDA is also actively involved in advocacy, in order to stigmatize the use of landmines and to support a ban on anti-personnel landmines. Advocacy is one of the five pillars of mine action through which the United Nations has been striving to protect civilians trapped by armed conflicts, and is an important part of the United Nations' Five Year Mine Action Strategy.<sup>41</sup>

The strategy is built around six broad, complementary rather than hierarchical, goals<sup>42</sup> that are relevant to all core components of mine action<sup>43</sup>. The goals, organized according to key themes, together form an integrated strategy. For each objective, the relevant United Nations agencies, identified by the Inter-Agency Coordination Group on Mine Action,<sup>44</sup> establishes action plans, consisting of time lines, progress indicators and supporting outputs.<sup>45</sup>

Advocacy entails promotion of mine awareness and risk reduction education, minefield survey, mapping, marking and clearance, victim assistance, including rehabilitation and reintegration, and destruction of stockpiles. The United Nations activities in the field of advocacy are driven by the humanitarian approach to protect civilians, non-combatants, humanitarian workers and peacekeepers from the threat caused by landmines.

### 1. *Promoting the Legal Instruments*

The focus of UN mine advocacy efforts is the promotion of these two legal instruments (the Mine Ban Convention and Amended Protocol II of the CCW<sup>46</sup>) in order to persuade States of the practical and legal necessity of compliance with them. To this end, advocacy efforts aim to assist States in their national efforts to ratify or adhere to these two instruments and to take the necessary measures in their national legislation, administrative procedures and other fields to implement these instruments within their jurisdiction. The advocacy efforts made by the Department



for Disarmament Affairs are embedded in the efforts of the other eleven United Nations departments and agencies that coordinate their mine action efforts with the Mine Action Service, the United Nations' focal point for mine action.

To be effective, those advocating the mine ban convention need the trust and the confidence of their interlocutors. The needs, fears, and obligations of those States approached to adhere to the conventions have to be understood, and an adequate response needs to be found. It is important the States understand that their commitment to the Mine Ban Convention or Amended Protocol II to the CCW does not infringe on their national sovereignty, and that the duties and obligations of both instruments are in line with the existing obligations of the States under current customary or codified international humanitarian law. Some issues are only the concretization of existing obligations; others are the further development of these obligations, to find the most effective global response to the threat anti-personnel landmines pose to the whole of humanity.

When advocating the Mine Ban Convention or Amended Protocol II, one encounters an apparently contradictory behavior of some States Parties: the fact that several States are States Parties to only one instrument. Of the 131 States Parties to the Mine Ban Convention only 54 countries are also bound by Amended Protocol II to the CCW. Some of the major contributors to mine action, especially mine clearance, mine risk education and victim assistance, are not bound by the Mine Ban Convention, but only by Amended Protocol II of the CCW.<sup>47</sup> Reasons for such decisions are manifold: some have declared their will to adhere as soon as their national situation permits it.<sup>48</sup> Others have concerns of national security<sup>49</sup> or other legal obligations, which they invoke as reason not to adhere to one or both legal instruments.

There are other important points addressed when advocating the two treaties. For example, it is necessary to show that anti-personnel landmines do not only threaten civilians and enemy combatants, but that they pose as much a threat to a State's own combatants. In addition, peacekeeping, medical, humanitarian and development personnel are also at risk. Finally, there are military alternatives to landmines with the same or even better effects and less humanitarian impact.<sup>50</sup>

## *2. Mainstreaming the Landmine Issue*

In addition to gaining the trust of States, it is also important to keep the issue of landmines on the public agenda, for the very reasons that led to the conclusion of both instruments. Since the entry into force of the Mine Ban Convention and Amended Protocol II of the CCW, it appears to some that the issue has found an adequate response and that the international attention should now turn to new issues.<sup>51</sup> Although the two instruments are in force and are implemented on a global scale, they still need to be complied with by an ever increasing number of States Parties to reach their final goal: the elimination of the threats caused by landmines.

The Secretary-General of the United Nations, the Under-Secretary-General for Disarmament Affairs and other United Nations officials take every opportunity to

raise the issue of landmines and constantly reaffirm the United Nations' support to mine affected countries, be it in bilateral talks with representatives of governments, at interventions before the Organs of the United Nations,<sup>52</sup> at public events, in the press, or when meeting representatives of civil society or individuals. While the public sometimes hears of the success of these efforts, most of the time, success only appears at a later stage, in decisions, actions or the current practice of States. Evidence of success may be reflected by the request of a Member State to the United Nations to address a mine problem in a country where the issue was previously not considered to be relevant. Success may also be evidenced by the request for assistance in the drafting of national legislation in order to effectively implement the Mine Ban Convention or Amended Protocol II to the CCW. Furthermore, success may be reflected by the request for an assessment mission by the United Nations to identify the issues that need to be addressed in order that a State can become a State Party to either instrument and fulfill its obligations.

This mainstreaming of the landmine issue is also aimed internally at the United Nations system itself. As much as anti-personnel landmines can affect all aspects of the daily life in a mine-affected country or society, they do also affect very different aspects of the work of the United Nations. In contingency planning, the risks and threats posed by landmines have to be taken into account when preparing for the transfer of refugees or internally displaced persons, when preparing for the evacuation of United Nations personnel, and when choosing sites for food-dropping, medical clinics, or the temporary resettlement of civilians. When brokering ceasefire accords or peace treaties, essential landmine-related issues, such as the exchange of technical information between former parties to a conflict, the marking of minefields and the eventual clearance of landmines, the use, production, transfer and stockpiling of mines, and international cooperation and assistance, need to be addressed.<sup>53</sup> In order to achieve the humanitarian goals when addressing the landmine issue during or after non-international armed conflicts, it might be necessary to involve non-State actors, who might also be users and producers of anti-personnel landmines, in the efforts. When operating in mine affected countries aid workers have to be prepared to give victim assistance. And, in peacekeeping operations in mine-affected countries, the local population, as well as, United Nations military and civilian personnel must be made aware of the risks. Furthermore, in development work, the impact of landmines on the society has to be taken into account when preparing and executing programs on the ground.<sup>54</sup>

### *3. Advocacy on the ground through DDA's Regional Centres*

In addition to its advocacy at United Nations Headquarters, the Department for Disarmament Affairs, through its regional centers, is also engaged in advocacy on the ground. For example, the United Nations Regional Centre for Peace and Disarmament in Africa, based in Lomé, Togo, is actively involved in the promotion of the Mine Ban Convention in Africa, and has prepared a strategy paper on Africa's role in the universalization and promotion of the Convention.<sup>55</sup> In the Democratic

Republic of the Congo, the Regional Centre started preparations for a 'sensibilization' campaign on Anti-personnel Landmines, financed by the Belgian government. The Centre conducted an assessment mission to determine the location of landmines in the conflict zones, and established contacts with civil society, the UN Mission on the ground (MONUC) and several UN agencies to prepare sensibilization approaches and mine clearance perspectives, and to develop partnerships for the execution of the campaign.

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) has organized several activities in the region related to landmines. These activities are geared towards assisting with the implementation of the Mine-Ban Convention in the region, providing a local platform for coordination and cooperation, and influencing the daily lives of people in the region.<sup>56</sup>

## VI. CONCLUSION

March 1, 2003 marks the fourth anniversary of the entry into force of the Mine Ban Convention. This date is also the deadline for the first 45 States Parties to the Mine Ban Convention, to have destroyed all their stockpiles of anti-personnel landmines in accordance with Article 4 of the Convention. At the time of writing, 44 of these States Parties<sup>57</sup> have reported that they have met their obligations, by the end of 2003, 37 more countries are expected to have fulfilled their obligations under Article 4 of the Mine Ban Convention. Since the entry into force of the Convention, 55 States have destroyed a total of some 30 million anti-personnel landmines, the numbers of casualties per year have been drastically reduced and technical cooperation and assistance has increased,<sup>58</sup> the current annual funding for mine action being around 200 million USD.<sup>59</sup> These statistics show the effectiveness of the convention as a disarmament treaty guided by humanitarian considerations and aimed at the elimination of an entire category of conventional weapons. In September 2003 the States Parties to the Mine Ban Convention will hold their 5<sup>th</sup> meeting in Bangkok, which will be of major importance for the first review conference of the convention, which will be held in 2004. The next major deadline of the Convention is March 1, 2009, when the first 45 countries are supposed to also have cleared the minefields under their jurisdiction.

In the framework of the CCW further developments are expected in the course of the year 2003. On the issue of explosive remnants of war (ERW)<sup>60</sup> the States Parties to the CCW reached an agreement in December 2002 to follow a dual track approach that follows the recommendations of the Group of Governmental Experts for the negotiation of a legally binding instrument.<sup>61</sup> The experts have received a negotiating mandate on post-conflict remedial measures and a mandate to further explore preventive measures.<sup>62</sup> These measures would address a broad type of munitions, with the exception of mines. Meanwhile on the issue of Mines Other

Than Anti-Personnel Mines (MOTAPM), the States Parties gave the Group of Governmental Experts the mandate to explore the issue further, including the possibility of a negotiating mandate.<sup>63</sup> Some delegations considered a negotiating mandate for a new protocol superfluous, as they see the issue sufficiently covered by Amended Protocol II.

These developments, both in regard to the Mine Ban Convention and the Convention on Certain Conventional Weapons are promising and motivating at the same time. When addressing the landmines issue, humanitarian concerns have led to disarmament treaties, and disarmament treaties have contributed to the promotion, codification and implementation of international humanitarian law. The negotiations on a protocol on ERW under the CCW-Convention are the next step on the same road. The fight against landmines and other inhumane weapons will nevertheless need further activities and discussions from all sides: States, International Organizations, civil society, and of course the victims and their families. We have come quite far and are approaching total and complete disarmament for at least this category of conventional weapons, but the road is still long.

### Notes

<sup>1</sup> International Committee of the Red Cross (ed.), "Anti-personnel Landmines —Friend or Foe?" Geneva 1996, p. 9.

<sup>2</sup> Message from Secretary-General Kofi Annan, on: <http://www.un.org/Depts/dpko/mine/sg.htm>.

<sup>3</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices

<sup>4</sup> Adopted by consensus by the United Nations Conference on the Prohibition or Restriction on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects, which was held in Geneva from 10 to 28 September 1979 and 15 September to 10 October 1980. Also called Convention on Certain Conventional Weapons, CCW or Inhumane Weapons Convention. UNTS, vol. 1342, p. 137.

<sup>5</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996. UN Doc. CCW/CONE.1/16 (Part II)

<sup>6</sup> UNTS, vol. 2056, p. 211.

<sup>7</sup> cf. Article 98 of the Charter of the United Nations and Article 77 of the Vienna Convention on the Law of Treaties. Further information on the role of the Secretary-General as a depositary can be found under: <http://untreaty.un.org/> Cf. also: Ian Brownlie, *Principles of Public International Law*, Oxford 1998, p. 616

<sup>8</sup> Articles 3, 4 and 5 of Protocol II.

<sup>9</sup> Article 6, which refers, inter alia, to "booby-traps which are in any way attached to or associated with internationally recognized protective emblems, signs or signals; sick, wounded, or dead persons; medical facilities, equipment, supplies or transportation; children's toys, objects or products designed for health, hygiene, clothing or education of children; food or drink; kitchen utensils and appliances that are not located in military establishments or supply depots; religious objects and places of worship; historic monuments and works of art which constitute the spiritual heritage of peoples. Cf. also Article 35 of the Additional Protocol I to the Geneva Convention, of June 8, 1977, UNTS 1125, p. 3.

<sup>10</sup> Article 1 par. 2 of Amended Protocol II. Internal armed conflicts are also called "civil wars", and are violent confrontations within a State that go beyond the realms of domestic law; cf. A.P.V. Rogers, *Civil War*, in: Roy Gutman and David Rieff (ed.), *Crimes of War*, New York 1999, p. 82, cf. also Steven R. Ratner, *International vs. Internal Armed Conflict*, p.206.

<sup>11</sup> cf. relevant Article in Geneva Protocol.

<sup>12</sup> They have to be designed in a way that no more than 10% of activated mines will fail to deactivate within 30 days after emplacement and in combination with a self-destruction mechanism not more than 1

in 1000 activated mines will function as a mine 120 days after emplacement; cf. par. 3 of the technical annex.

<sup>13</sup> Gives examples of remote delivery of landmines.

<sup>14</sup> Art. 12, par. 3 (b) (ii).

<sup>15</sup> Articles 1, 4, 5 and 6 of the Mine Ban Convention.

<sup>16</sup> Knut Ipsen, *Völkerrecht*, München 1999, p. 986; cf. Fleck, *Current legal and policy issues*, in: Julie Dahlitz (ed.), *Future Legal Restraints on Arms Proliferation*, Geneva 1996, p. 21-46.

<sup>17</sup> Preambular paragraph 9 of the CCW-Convention

<sup>18</sup> cf. Report of the First Committee, "General and complete disarmament", A/57/510; Knut Ipsen, *Völkerrecht*, München 1999, p. 996.

<sup>19</sup> Protocol II of the CCW does not have any provisions installing a verification or compliance procedure.

<sup>20</sup> Article 11 of the Mine Ban Convention; Article 13 of Amended Protocol II reads "The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol."

<sup>21</sup> Article 7 of the Mine Ban Convention and Article 13, par. 4 of Amended Protocol II.

<sup>22</sup> Article 8 of the Mine Ban Convention and Article 14 of Amended Protocol II.

<sup>23</sup> Article 13 of Amended Protocol II and 11 of the Mine Ban Convention.

<sup>24</sup> The so-called "intersessionals" are neither convened, nor serviced by the United Nations. Nevertheless the United Nations is represented and participates actively in the intersessionals. For more information on the intersessional work programme: <http://www.gichd.ch/mbc/iwp/index.htm>.

<sup>25</sup> Par. 25 of the Final Report, and par. 16 of the Maputo Declaration (Part II of the Final Report), UN Doc. APLC/MSP.1/1999/1. The program was created at the First Meeting of the States Parties in Maputo, in May 1999. At this meeting, the States Parties "recognized the importance of having intersessional Standing Committees of Experts on issues related to the operation of the Convention." On the basis of the President's Paper the States Parties established the intersessional work programme, made up of the five committees each meeting twice between Meetings of the States Parties.

<sup>26</sup> President's paper of the First Meeting of States Parties: UN Doc. APLC/MSP.1/1999/INF.1. At the Second Meeting of the States Parties in Geneva, in September 2000, on the basis of the President's Paper on Revisions to the Intersessional Work Programme, the States Parties made some adjustments (Par. 28 of Part I and par. 11-13 of Part II of the Final Report, UN Doc. APLC/MSP.2/2000/1; cf. also President's paper of the Second Meeting of States Parties UN Doc. APLC/MSP.2/2000/L.5). Five standing committees became four (General Status and Operation of the Convention, Victim Assistance and Socio-Economic Reintegration, Mine Clearance, Mine Awareness and Mine Action Technologies, Stockpile Destruction) as "technologies for mine action" became a subject matter incorporated into the work of the Standing Committee responsible for mine clearance. As opposed to the first Intersessional Work Programme which involved six periods of meetings totaling six weeks in duration, it was agreed to two, one-week, periods of meetings be held. To further enhance active participation in the work of the Standing Committees, "it was recommended that those States in a position to do so consider making voluntary contributions to have additional languages made available for the intersessional meetings.

<sup>27</sup> Final Report, UN Doc. APLC/MSP.1/1999/1.

<sup>28</sup> Final Report, UN Doc. APLC/MSP.2/2000/2; States Parties have since been encouraged to use the optional "Form J", especially to report on such matters as victim assistance and funding of mine action, cf. Final Report of the 3rd meeting of States Parties in Managua from 18 to 21 September 2001, UN Doc. APLC/MSP.3/2001/1.

<sup>29</sup> cf. Report of the Secretary-General: Assistance in Mine Action, UN Doc. A/57/430, par. 53

<sup>30</sup> At the 3rd meeting of States Parties in Managua and the 4th meeting of States Parties in Geneva (September 2002).

<sup>31</sup> <http://disarmament.un.org/MineBan.nsf> or <http://www.mineaction.org>.

<sup>32</sup> For the 2001 reporting period, for which reports had to be submitted on April 30, 2002, 17 States Parties have not yet submitted their reports. 33 States Parties were late in their submissions. Reports for the calendar year 2002 will have to be submitted at the latest on April 30, 2003.

<sup>33</sup> cf. Article 144 of the 4th Geneva Convention of August 12, 1949.

<sup>34</sup> cf. also the SG's good offices under the UN Charter.

<sup>35</sup> cf. Article 36 of the ICJ Statute.

<sup>36</sup> Article 8, paragraph 1 of the MBC. The Verification Research, Training and Information Centre, and independent NGO has published a “Guide to fact-finding missions under the Ottawa Convention”, intended to assist states parties in preparing for fact-finding missions under Article 8 of the Mine Ban Convention: Angela Woodward, *Guide to fact-finding missions under the Ottawa Convention*, London 2003.

<sup>37</sup> Article 8, paragraph 4. One third of the States Parties have to be in favor of such a Special Meeting. During this procedure any of the States Parties concerned may also request the Secretary-General to exercise his or her good offices to facilitate the clarification

<sup>38</sup> Article 8, paragraph 8.

<sup>39</sup> Article 8, paragraphs 9 and 10.

<sup>40</sup> cf. as a reference to this issue in public international law: Ian Brownlie, *Principles of Public International Law*, Oxford 1998, p. 703.

<sup>41</sup> Report of the Secretary-General, *United Nations Mine Action: A Strategy for 2001-2005*, UN Doc. A/56/448/Add.1. The strategy builds upon the United Nations policy on mine action (cf. UN Doc. A/53/496, annex II).

<sup>42</sup> Information, emergency response, assistance to national and local authorities, quality management, coordination and resource mobilization, advocacy.

<sup>43</sup> Mine awareness and risk reduction education; mine clearance, including survey, mapping, and marking; victim assistance; destruction of stockpiled anti-personnel landmines; advocacy.

<sup>44</sup> The IACG is chaired by the United Nations Mine Action Service (Department for Peacekeeping Operations), which is the Organization’s focal point for mine action.

<sup>45</sup> cf. UN Doc. A/53/496, annex II, par. 44.

<sup>46</sup> cf. Report of the Secretary-General: *Assistance in Mine Action*, UN Doc. A/57/430 par. 7: “The United Nations calls for the universalization of all international legal instruments dealing with landmines.”

<sup>47</sup> e.g. the United States announced at the Plenary Session of the 57th General Assembly that it would provide approximately US\$ 100 Million in 2003 for humanitarian mine action and underlined that it is a “strong supporter” of Amended Protocol II and a proponent of expanding its scope of application to Anti-Vehicle mines, cf. Press Release #198 (02).

<sup>48</sup> e.g. Finland, cf. *International Campaign to Ban Landmines (ed.), Landmine Monitor Report 2002*, New York 2002, p. 650.

<sup>49</sup> Russia declared in the 57th General Assembly on agenda item 28 *Assistance in mine action* on 15 November 2002: “The prohibition, use, stockpiling and transfer of antipersonnel mines should become the ultimate goal of the international community”. It further expressed its confidence that “this goal should be pursued gradually, step by step, while ensuring the largest participation of states in Protocol II of the 1980 CCW”, which it considers to be a “thoroughly balanced instrument” that “addresses States’ security and self-defense interests” (unofficial translation of the speech of the Deputy Permanent Representative of Russia to the United Nations, distributed by the Permanent Mission of Russia to the United Nations).

<sup>50</sup> *International Committee of the Red Cross (ed.), Anti-personnel Landmines—friend or foe?*, Geneva 1996, p. 65.

<sup>51</sup> A student of the John F. Kennedy School for Public Affairs raised this question during a series of lectures organized by Assistant Secretary-General Sorensen, which his class attended at the United Nations Headquarters on January 7, 2003.

<sup>52</sup> Report of the Secretary-General: *Assistance in Mine Action*, UN Doc. A/57/430, par. 51.

<sup>53</sup> The United Nations are currently developing mine action guidelines for ceasefire and peace agreements.

<sup>54</sup> cf. *Human Development Report 2002*.

<sup>55</sup> Ivor R. Fung, *L’universalité et le renforcement de la convention d’Ottawa: le rôle de l’Afrique*, Bamako 2001. The text can be obtained at <http://www.unrec.org/eng/Contact.htm>

<sup>56</sup> Past activities of UN-LiREC in this area have included: 1) the monitoring of the destruction of stockpiled anti-personnel mines in Peru and Chile; 2) the organizing of a regional workshop on the International Mine Action Standards (IMAS); and 3) the rendering of assistance in the organization of the Third Meeting of the States Parties to the Mine-Ban Convention.

<sup>57</sup> Andorra, Austria, Bahamas, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria,

Burkina Faso, Canada, Croatia, Denmark, Djibouti, Equatorial Guinea, Fiji, France, Germany, Grenada, Holy See, Honduras, Hungary, Ireland, Jamaica, Japan, FYR of Macedonia, Malawi, Mali, Mauritius, Mexico, Mozambique, Namibia, Niue, Norway, Peru, Samoa, San Marino, Senegal, South Africa, Switzerland, Trinidad and Tobago, United Kingdom, Yemen, Zimbabwe. Turkmenistan has not yet reported.

<sup>58</sup> Under-Secretary-General Jayantha Dhanapala at the noon press briefing at United Nations Headquarters on February 27, 2003.

<sup>59</sup> [http://www.mineaction.org/misc/dynamic\\_overview.cfm?did=93](http://www.mineaction.org/misc/dynamic_overview.cfm?did=93).

<sup>60</sup> Some prefer the term Unexploded Ordnances (UXO).

<sup>61</sup> UN Doc. CCW/GGE/III/1, Annex II.

<sup>62</sup> UN Doc. CCW/MSP/2002/2, par. 21.

<sup>63</sup> UN Doc. CCW/MSP/2002/2, par. 22.