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## Assisting Cluster Munition Victims: A New International Standard

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## Assisting Cluster Munition Victims: A New International Standard

The *Convention on Cluster Munitions* adopted a number of innovative approaches to victim assistance which are, nonetheless, firmly rooted in long-standing experience in this field. By addressing human suffering in a disarmament treaty and linking its provisions to human rights and humanitarian law, the CCM truly constitutes a milestone in the efforts of the international community toward humanitarian disarmament. The CCM contains an entire package of provisions that aim to assist cluster munition victims and establish clear responsibilities for doing so. Now the crucial phase of implementing the legal text begins.

by Markus A. Reiterer [ Embassy of Austria ]

The entry into force of the *Convention on Cluster Munitions* marked a significant point in international endeavors toward humanitarian disarmament. The CCM banned cluster munitions, which some States Parties previously deemed a legitimate military tool despite humanitarian concerns. Additionally, this convention developed an international-cooperation system to ensure high compliance levels with the new treaty's provision, as well as established a set of stringent rules to guarantee that victims of cluster munitions receive necessary assistance. The CCM's victim-assistance provisions were hailed as "ground-breaking" and "historic" upon their adoption at the Diplomatic Conference in Dublin, Ireland.<sup>1</sup> Not only do the provisions reflect the outcome of intense, 18-month negotiations, but also the experience gained in the context of other international treaties, most notably the 1997 *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (also known as the Anti-personnel Mine Ban Convention or the APMBC) and the 2006 *Convention on the Rights of Persons with Disabilities*. At the same time, the new victim-assistance provision also provided considerable inspiration for the *Cartagena Action Plan 2010–2014* of the APMBC and the Action Plan on Victim Assistance adopted by the States Parties to Protocol V 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*.

### The CCM Victim-assistance Package

The CCM victim-assistance provisions are contained in various parts of the convention.<sup>2</sup> Incorporating victim assistance into the CCM ensures that it is not a mere humanitarian afterthought, but rather one of the CCM's core elements.

### Definition of Cluster Munition Victims

The CCM's Article 2(1) defines the term "cluster munition victims," as "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." The definition further clarifies that cluster munition victims include both "those persons directly impacted by cluster munitions as well as their affected families and communities."

### Parties Responsible for Victim Assistance

As compared to the APMBC's victim-assistance provision, the provision of Article 5 of the CCM represents a major step forward in clarifying who bears the responsibility of assisting cluster munition victims. The question repeatedly raised was, "Should responsibility lie with the state where the victim is located, or does the country that deployed the munitions bear the primary responsibility for victim assistance?" The APMBC glossed over this question by essentially making it a requirement for "each state in a position to do so" (emphasis added) to provide victim assistance. In practice, this



A member of the U.N. Special Commission inspects munitions in Iraq.  
Photo courtesy of the U.N./H. Arvidsson.

means the APMBC combines affected states' commitments and those of possible donor states to provide mine-awareness programs for citizens and assistance for the care and rehabilitation, as well as social and economic reintegration, for mine victims. The CCM's Article 5 provisions clearly identify who bears the responsibility for cluster munition victims: "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, provide the assistance required. However, note that this formulation does not grant rights to affected persons, but rather, it is an obligation of the state concerned to provide assistance.

Typically, states with cluster munition victims have experienced or are still experiencing considerable unrest, security threats, military action, etc., and therefore, often face severe economic, developmental and societal difficulties. Some of them, such as Lao People's Democratic Republic, are among the world's poorer nations. The CCM's Article 5 places a substantial burden on the affected states. To cushion this burden the CCM requires those states in a position to do so to help other states in fulfilling their victim-assistance obligation. During the 2007 Belgrade Conference of States Affected by Cluster Munitions, participating states unanimously accepted their responsibility for providing victim assistance in their territories. This was done primarily because of each state's general responsibility for the well-being of persons in its territory, and secondly, because of clear commitments on the side of possible donor states to support their victim-assistance efforts. These commitments have since been included in the CCM's Article 6(7).

### Human Rights and Humanitarian Law

As victim assistance is all about human beings, establishing a link between disarmament and human rights seems natural. Yet, this did not appear obvious during the initial CCM negotiations. The victim-assistance provision had very humble beginnings. The text presented for discussion at the Lima conference in May 2007 merely included a provision stating it would endeavor to carry out some victim assistance, but failed to mention human rights at all. Yet, the timely adoption in 2006 of the *Convention on the Rights of Persons with Disabilities* helped to develop this link in the CCM.

The CCM negotiations eventually brought forth overwhelming support for the establishment of the link between disarmament and human rights, and consequently, the CCM refers to human rights in three places: First, the preamble expresses determination of States Parties to ensure the full realization of the rights of all cluster munition victims and recognizes their inherent dignity; second, the preamble bears in mind the CRPD; third—and perhaps most important—Article 5 stipulates that victim assistance shall be provided "in accordance with applicable international humanitarian and human rights law." The CCM has thus chosen to uphold and promote survivors' and other victims' human rights.

### Article 5: Victim-assistance Provisions

Under Article 5, states are obliged to "adequately provide age- and gender-sensitive assistance," including medical care, rehabilitation and psychological support, as well as to include victims socially and economically. The various terms are important as they ensure a certain level of flexibility in the actual victim-assistance provision and set assistance in relation to prevailing circumstances, needs and capacities. The term "age- and gender-sensitive" sets an important marker, highlighting the need for assistance to consider these previously ignored factors. Finally, Article 5(1) lists the constituent elements of victim assistance: medical care (which encompasses emergency and ongoing medical care), rehabilitation, psychological support (the importance of and need for which is often underestimated), as well as the elements of reintegration or inclusion of a victim in social and economic life.



Victim assistance is not a short-term engagement but a long-lasting and complex commitment for the well-being of fellow humans.

Article 5 also contains a non-exhaustive list of elements that provide the modalities for victim-assistance implementation, including needs assessments, national planning and legal framework, resource mobilization, consultation with victims and the designation of responsible focal points. One of the issues discussed intensively during the cluster-munition process concerned nondiscrimination. In drafting the overall victim-assistance provision, utmost importance was taken to provide the most fitting language to ensure the best possible assistance to cluster munition victims, but not at the expense of, for example, landmine or explosive-remnants-of-war victims. Article 5(2)(e) excludes the possibility of creating a new category of victims enjoying “preferential” treatment but prohibits discrimination against and among cluster munition victims, as well as between cluster munition victims and those who suffered injuries or disabilities from other causes. This seemed a rather broad clause, which could potentially have been interpreted as an excuse for inactivity following the idea that as long as everyone is treated in the same insufficient manner, no discrimination occurs. To avoid this, the second sentence specifies that differences in treatment should be related only to the cluster munition victim’s actual need.

#### **Fulfilling the Promise: Implementation**

Article 5 contains obligations incumbent on affected states. Hence, first and foremost, cluster munitions-affected states bear the responsibility for implementing the victim-assistance package. Two factors will be decisive for successfully implementing their obligations: their **will** and their **capacity** to comply with their obligations. Both elements are indispensable for proper implementation. Without the political will of the affected state to implement its international obligations, compliance is not possible. The same holds true for the capacity to comply: Without the capacity, an affected state will not be able to comply with its obligations.<sup>2</sup> The structure of the victim-assistance package already takes this dichotomy into account by defining states’ obligations to provide victim assistance and by pro-



Unexploded cluster munitions litter grazing land in Xieng Khouang province, Lao PDR, 1994. Photo courtesy of Titus Peachy.

viding for international cooperation and support for victim assistance. Moreover, the transparency measures contained in Article 7 function to keep the obligation on the forefront of decision-makers’ minds and, hence, foster the will to comply. Effective implementation of the victim-assistance package, hence, requires national ownership, international cooperation and assistance, and prudent use of limited resources.

**National ownership.** National ownership stands center stage in all implementation efforts: Without ownership by the affected states, implementation will not succeed. The affected state is best suited to shape the laws, plans, programs and budgets necessary for implementation and tailor them to the specific situations of its citizens. For instance, planning and programming will differ widely between a country like Albania, with an estimated 300 ERW survivors primarily concentrated in one specific region and a country like Lao PDR with tens of thousands of survivors scattered throughout the country.

The affected country can pinpoint the use for existing structures and frameworks (medical and social systems, human rights frameworks, etc.) or where the creation of a new approach is warranted. National ownership is also crucial for attracting support from the donor community. Bodies like the European Union have adopted country-specific approaches while moving away from thematic budget lines in their development support. Hence, it is generally the responsibility of individual countries to define and communicate their priorities to potential donors.

**International cooperation and assistance.** International cooperation and assistance have played a prominent role in the negotiation of the CCM’s victim-assistance package and have proven essential in the implementation of victim-assistance work undertaken thus far. The promise of cooperation and assistance by possible donor states to CCM-affected states has been an incentive for the latter to agree to the obligations contained in the CCM’s Article 5.

**Prudent use of scarce resources.** In most cases, victim-assistance efforts do not have to start from scratch because the basic framework for medical, psychological, social and economic services are in place, provided for by government entities, local communities or international humanitarian organizations. Most of the states do have at least some legal and policy frameworks for dealing with disability or human rights issues. For effective victim-assistance activities, using the existing infrastructures and services in providing victim assistance is paramount. The CCM victim-assistance package does not require the establishment of new laws or plans for assisting cluster munition victims separately from landmine/ERW victims or persons with other medical or psychological needs. The package requires that cluster munition victims are adequately provided with the necessary assistance but does not establish those victims as a group entitled to preferential treatment. Using existing mechanisms also holds true for international cooperation and assistance. Many donor countries, for example, support the establishment of medical infrastructure and services in developing countries, and as long as the support substantially benefits victims, it should be considered a victim-assistance project. Also, projects for poverty reduction in areas affected by cluster munitions, support for the creation of economic opportunities in rural areas and the provision of microcredit to victims can be considered victim-assistance projects. The decisive element here is the benefit to the victims.

Various actors, including governments, international institutions and nongovernmental organizations, make victim-assistance efforts possible. These entities need to effectively work together, so that resources are used as efficiently as possible in order to ensure that the money invested brings about the best possible improvements for victims.

#### **Concluding Remarks**

The CCM is a remarkable treaty in many respects. Its victim-assistance package makes it unique. It is an international agreement that not only tries to prevent human suffering through disarming and clearing but sets out to address this suffering comprehensively by attempting to improve victims’ lives and by enabling them to participate as full and productive members in the social and economic life of their communities.

The CCM now enters its most crucial phase—implementation. It establishes its real value not through the language, ideas and concepts it employs, but through the progress it induces. For victim assistance, the primary measurement of progress is the improvement of the victims’ lives. Through the CCM victim-assistance package, we have laid the groundwork for doing so. Now, we must live up to these promises—by keeping them. †

*see endnotes page 83*

*The observations made in this article are the author’s and do not necessarily coincide with those of the institution for which he works.*



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