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**THE DISARMAMENT OF LAND MINES POST CONFLICT WITH  
EMPHASIS ON WESTERN SAHARA**

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## LIST OF ABBREVIATIONS

<b>AOAV</b>	Action on Armed Forces
<b>GICHD</b>	Geneva International Centre for Humanitarian Demining
<b>ICRC</b>	International Committee of the Red Cross
<b>MINURSO</b>	United Nations Mission for the Referendum in Western Sahara
<b>SADR</b>	Sahrawi Arab Democratic Republic
<b>UN</b>	United Nations
<b>UNICEF</b>	United Nations Children's Fund
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNMAS</b>	United Nations Mine Action Services
<b>UNODA</b>	United Nations Office for Disarmament Affairs

## **PART I: INTRODUCTION**

### **1.1. Research Problem**

This minor dissertation is influenced and motivated by the current state of affairs within Western Sahara. A conflict arose in 1975 when Morocco claimed the territory of Western Sahara. This territory was divided into three parts whereby two thirds were designated to Morocco and the remaining third designated to the Polisario Front. In 1979 a peace agreement was entered into by the three parties to withdraw from the conflict, however Morocco continued to engage in these hostilities.

The United Nations intervened in 1988 through the drafting of a Peace Proposal. This Proposal enabled the Western Sahrawi refugees to elect to either remain independent under the Polisario Front Leadership or to revoke their sovereignty. By revoking their sovereignty this would declare the territory as an official part of Morocco. In order to sway the election in their favour, Morocco ensured that many of their citizens entered into the Western Saharan territory to cast their own votes in favour of Morocco. This stunt reignited the conflict between the parties.

In 1991 a cease fire agreement was entered into by the Polisario Front and Morocco. However, the conflict among the Moroccan Republic and the Western Sahrawi refugees is still underway.

Western Sahara is mainly occupied by Moroccan control while the inland portion of the territory is under the control of the “government in exile”. This “government in exile” is known as the Sahrawi Arab Democratic Republic as supported by the Polisario Front.<sup>1</sup> In addition to these hostilities within the Western Saharan territory, the Sahrawi refugees live in a state of constant fear as surrounding their camps is a vast span of land mines. These land mines restrict not only the movement of these

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<sup>1</sup>The Editors of Encyclopaedia Britannica “Western Sahara” 2019 *Encyclopaedia Britannica* retrievable at: <http://britannica.com/event/Rif-War> (last visited 15 September 2019).

refugees, but also their safety as well as reduce their standard of living as they are living in a constant state of fear and restriction.

As a result of these land mines, there are different organisations whom are assisting with the demining of these land mines. Such organisations include the Sahrawi Demining Team by MINURSO, the GICHD and the AOAV.<sup>2</sup> The issue of disarmament occurs worldwide, however for purposes of this minor dissertation, the focus is on Western Sahara.

To illustrate the global impact caused by the issue of disarmament, mention is made to Sri Lanka and Yemen. Sri Lanka was host to a civil war which lasted thirty years. The presence of land mines poses a risk and threat to present and future land use. Land mines were initially designed as a defence mechanism and have now evolved to be offense mechanisms. As a result of the increased use of land mines, vast areas of agricultural land are uninhabitable and abandoned. Land mines are toxic and hazardous to people, the soil and animals. Once the remnants of land mines are absorbed into the soil, it is consumed by animals and people which results in various health implications of which death may arise. The detonation of such land mines causes soil erosion which renders the soil and any crops exposed and results in the depletion of agricultural land.<sup>3</sup>

In Yemen the attacks were repetitive and caused great destruction. As a result of the attacks various essential deliveries of services such as medical treatment and food supplies were disrupted. In the instance of medical treatment, the health care system depleted, and a cholera epidemic broke out despite this epidemic being preventable as it was predictable.<sup>4</sup> In Yemen, untrained soldiers disarm land mines within the minefields, many of which are injured and lose limbs as a result of their lack of disarmament training. As a result, the clinics have an influx of amputees

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<sup>2</sup> Mine Ban Treaty; Ruth Simpson "Mine Ban Treaty at Fifteen: Call to Commit to Clearing Deadly Land Mines from Western Sahara" 2014 AOAV retrievable at: <http://aoav.org.uk/2014/mine-ban-treaty-fifteen-call-commit-clearing-deadly-landmines-western-sahara/> (last visited 15 September 2019).

<sup>3</sup> Harshi Gunawardana, Dammika A. Tantrigoda & U. Anura Kumara 'Humanitarian demining and sustainable land management in post-conflict settings in Sri Lanka: Literature Review' *Journal of Management and Sustainability* (2016) 79 to 82.

<sup>4</sup> Robert Mardini 'Current state of affairs in the field of disarmament and arms control' *ICRC* (2018).

awaiting to be fitted for prosthetic limbs. In the case of children, these casualties are refitted for new prosthetics every six months to cater for the child's growth.<sup>5</sup>

## **1.2. Research Question**

The research question in this minor dissertation is three-fold and addresses the issue of legal reform of land mine disarmament post conflict. Are the current treaties and legal positions being enforced accordingly and effectively to satisfy international legal obligations in relation to post conflict disarmament? The research question asks whether the current disarmament procedures are effective within areas that were previously involved in armed conflict which made use of land mines? Whether land mines are being disarmed once the armed conflict has ceased? Whether the current disarmament procedures are conclusive?

## **1.3. Research Aim**

The objective is to identify the gaps which exist within the current legal framework on disarmament with a specific focus on land mines. The aim is to uncover recommendations to possibly reform the current law and provide more enforceable obligations upon State Parties. Such obligations would include disarmament post conflict and to identify the urgency of disarming such land mines. This is to ensure the protection and safety of the civilians within these territories where the conflicts exist. Disarmament of land mines is a global issue which affects most of the world. Many countries, as a result of inadequate, insufficient or non-existent disarmament procedures, struggle to rehabilitate, bring about a sense of safety to civilians and enable its citizens to conduct a normal life post conflict. Due to the constraints of this minor dissertation and due to length requirements, this minor dissertation shall focus on Western Sahara. This is the focus as the conflict officially ceased in 1979 and the disarmament procedures have still not been completed. The Sahrawi people are still victims to these violent demonstrations of land mine placement. As a result, their right to freedom of movement and the right to security of their person is infringed upon daily. This is a grave human rights violation which occurs on an

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<sup>5</sup> David D Kirkpatrick 'Hidden calamity in Yemen's civil war: a million land mines' *New York Times* (2019).

international scale and on an international scale it needs to be amended and reformed.

#### **1.4. Research Methodology**

This minor dissertation evaluates the current law and opinion on land mines and provides for legal reform proposals of the disarmament procedures. Therefore, the research methodology applied to this minor dissertation is both doctrinal in nature and contains legal reform elements. In order to satisfy the legal reform elements, the methodology of treaty interpretation is applied as well as the testing and challenge of customary rules.

#### **1.5. Literature Review**

According to international humanitarian law there are four fundamental principles which include: necessity (to limit military action); distinction (between civilians and combatants as well as between military objectives and civilians); proportionality (which includes the equality of arms); and the prohibition of superfluous injury and unnecessary suffering (which refers to the methods and weapons of warfare and the means by which they are utilised).<sup>6</sup> Furthermore, according to the Martens Clause, in the event where a treaty does not exist, civilians are to be protected under custom. Customary international law provides for the protection of civilians.<sup>7</sup>

All States are bound by the international responsibility to protect. This responsibility includes the protection of the people of that State. Such protection is afforded to the people by means of the responsibility to prevent, the responsibility to react and the responsibility to rebuild.<sup>8</sup> This responsibility to protect vests upon the Security Council of the UN in order to achieve and maintain international peace and security.<sup>9</sup>

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<sup>6</sup> Marco Sassioli, Antione A. Bouvier and Anne Quintin *How Does Law Protect in War?* (3d ed) I chapter 4.

<sup>7</sup> Sassioli see n 6 above.

<sup>8</sup> The Responsibility to Protect, *Report of the International Commission on Intervention and State Sovereignty*, December 2001, retrievable at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf> (last visited 28 October 2019).

<sup>9</sup> Article 24 Charter of the United Nations ('UN Charter'),



According to the Fourth Geneva Convention, the common article 3 states that any violence against the life of a person not taking part in the hostilities (civilians) is prohibited. Such violence includes any cruel treatment, murder, mutilation and torture of such persons. This may be referenced in light of the impact which land mines have on civilians.<sup>10</sup> Protocol One, article 51 provides for the protection of civilians from any military operations causing danger. Civilians are not to be the objects of attacks and are prohibited. Civilians may not be victims of indiscriminate attacks which includes attacks that do not have a specific military objective; any attack effected by means which may not be directed at a specific military objective; and such an attack may not be limited.<sup>11</sup> Therefore, land mines placed within civilian territory and villages is prohibited as it is anticipated that such will result in the indiscriminate loss of life of civilians. According to article 13 of Protocol Two, civilians are to enjoy a general protection against military objectives which cause danger. Furthermore, civilians are not to be the objects of such attacks.<sup>12</sup> This prohibition is further infringed as such land mines, as is the case within Western Sahara, are distributed with a concentration around civilian territories.

### **1.6. Demarcation of Issues**

A mine is defined as a military weapon designed to be placed underground or below the surface and which detonates upon the presence or contact of a person or object. Anti-personnel mines are defined as a mine which detonates upon the presence or contact of a person and results in the injuries or death of one or more persons.<sup>13</sup>

According to the General Assembly disarmament is the “limitation or reduction of conventional arms”.<sup>14</sup>

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<sup>10</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

<sup>11</sup> 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.

<sup>12</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

<sup>13</sup> The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997 ('Mine Ban Treaty').

<sup>14</sup> Angela Kaine *The United Nations and Disarmament in an Age of Globalization* 2013 UNODA retrievable at: [http://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/HomePage/HR/docs/2013/2013-03-05\\_YIRA\\_remarks.pdf](http://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/HomePage/HR/docs/2013/2013-03-05_YIRA_remarks.pdf) (last visited 22 November 2019).

The UN Charter provides for disarmament in article 11 and article 47 and briefly refers to disarmament as the regulation of armaments.<sup>15</sup>

Disarmament is further defined as the process of gathering, recording, monitoring and disposing of ammunition, explosives, small arms and weapons of combatants and often of civilians. Disarmament further includes the advancing of responsible arms management programmes.<sup>16</sup>

Disarmament falls within customary international law obligations and as a result needs to be adhered to.

Customary international law provides it is unacceptable that there are countries which still remain in distress while its citizens remain within conflict hostilities and turmoil as a result of active land mines. These land mines need to be disarmed in order to render these civilians able to exercise their freedom of movement and security of their persons so to effect post conflict environments. Once the conflict has ceased, there is no longer a reason for civilians to remain in refugee camps, as is the case with the Sahrawi people. There is an obligation upon States to protect people and thus disarm post conflict. This is an obligation which has failed on a global scale as disarmament remains an issue which is yet to be realised and achieved.

The focus of this minor dissertation is to raise awareness as to the poor and inadequate living conditions of the Sahrawi people whom remain in refugee camps over forty years post conflict and to shed a light on the insufficient disarmament procedures. By raising awareness to the current human rights violations on an international scale, this minor dissertation seeks to encourage discussions into implementing disarmament procedures in a more sufficient and speedy manner so to create some justice for these civilians whom have faced grave injustices.

### **1.7. Brief Overview**

This minor dissertation is comprised of six parts:

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<sup>15</sup> See n 9 above UN Charter.

<sup>16</sup> Operational guide to the integrated disarmament, demobilization and reintegration standards *UN* 2014 ('UN Operational Guide').

Part I, the current part which introduces the research problem, research question and research aim. Furthermore, Part I describes the research methodology, lists the literature to be referred to and discusses the topic of disarmament, why disarmament is important to address and what the international obligations for disarmament are in general;

Part II addresses the current law regulating land mines;

Part III identifies the negative impact of land mines;

Part IV identifies the disarmament procedure of land mines; and

Part V provides suggestions on the proposed legal reform;

Part VI concludes this minor dissertation with a summary of what was stated and answers the research question on disarmament and addresses the proposed legal reform.

## **PART II: THE CURRENT LAW REGULATING LAND MINES**

### **2.1. Customary International Law**

Rule 81 to 83 of customary international humanitarian law discuss the restrictions on the use of land mines; the recording of the placement of land mines; and the removal or neutralization of land mines, respectively.

Rule 81 states, “when land mines are used, particular care must be taken to minimize their indiscriminate effects.”<sup>17</sup> In accordance with non-international armed conflicts there exists a “strong case” for this customary rule to not utilise land mines in ways which amount to indiscriminate attacks. The use of anti-personnel land mines is yet to be prohibited under customary international law as many states have not ratified the Ottawa Convention on Anti-Personnel Mines. These states are working towards the “eventual elimination” of land mines.<sup>18</sup> The Practice relating to Rule 81 states that according to Protocol Two, article 2(1),<sup>19</sup> a mine is defined as any munition that is placed under or near the ground or a surface and which is designed to detonate or explode as a result of contact by a person or vehicle. It is prohibited to direct such a weapon against any individual civilians or render any risk

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<sup>17</sup> ICRC IHL Database, *Customary International Humanitarian Law*, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rul81](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rul81) (last visited 29 August 2020).

<sup>18</sup> See n 17 above.

<sup>19</sup> See n 12 above.

of danger or incidental loss of life. It is rendered “indiscriminate use” to place such weapons near or within civilian territory as they may only be used against enemy militaries. Therefore, it is evident that placement of the land mines directly relates to the fundamental principles of distinction between civilian and combatants.

Such articles are relevant and valid, however, in practice and application these provisions are often overlooked and not implemented. Within the case of Western Sahara, the Sahrawi people are confined to the borders of the refugee camps of which are surrounded by enemy combatants’ land mines. The Sahrawi people were moved from the battlefield and are still targeted within their refugee camps. Compliance with custom is not abided by for distinction between civilian and combatant in this instance.

Rule 82 states, “a party to the conflict using land mines must record their placement, as far as possible.”<sup>20</sup> Mine fields must be pre-planned and recorded in all circumstances in order to enable disarmament procedures post-conflict. This rule used to only apply to international armed conflict but now also applies to non-international armed conflict.<sup>21</sup> Article 3(2) of Protocol Two emphasises the importance of recording the placement of land mines as the contracting parties have the duty and responsibility to remove such land mines which were utilised during the conflict.<sup>22</sup>

Stricter compliance is required to ensure Contracting Parties are held responsible to remove such land mines. Many land mines go unnoticed for years after a conflict has ceased, only to be detected by a civilian or child who steps on the mine and detonates it, resulting in their injury and often death.

Rule 83 states “at the end of active hostilities, a party to the conflict which has used land mines must remove or otherwise render them harmless to civilians, or facilitate their removals”<sup>23</sup> Article 5 of the Mine Ban Treaty states that all parties are to ensure the removal and destruction of any and all mines within their jurisdiction within ten

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<sup>20</sup> ICRC IHL Datatbase, *Customary International Humanitarian Law*, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rul82](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rul82) (last visited 29 August 2020).

<sup>21</sup> See n 20 above.

<sup>22</sup> See n 20 above.

<sup>23</sup> ICRC IHL Datatbase, *Customary International Humanitarian Law*, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rul83](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rul83) (last visited 29 August 2020).

years of the Treaty entering into force.<sup>24</sup> Despite this Convention being effected in 1999 there are still active land mines within the Western Sahara territory and many other territories across the globe. This is as a result, of there being a lack of penalty for non-compliance. The obligation exists however, non-compliance is not addressed and rectified at the detriment of many innocent and voiceless civilians.

The four fundamental principles of international humanitarian law are: necessity (to limit military action); distinction (between civilians and combatants as well as between military objectives and civilians); proportionality (which includes the equality of arms); and the prohibition of superfluous injury and unnecessary suffering (which refers to the methods and weapons of warfare and the means by which they are utilised).<sup>25</sup> Land mines are unable to distinguish between civilians and combatants, as a result of the injuries and death resulting from land mines (primarily of civilians) their use is not proportionate and do not prevent superfluous injury or unnecessary suffering. Therefore, the use of such destructive weapons is not necessary in order to adhere to the fundamental principles. Furthermore, according to the Martens Clause, in the event where a treaty does not exist, civilians are to be protected under custom.

Customary international law provides for the protection of civilians.<sup>26</sup> The principle of distinction between civilians and combatants, Rule 1, states how parties to a conflict must at all times distinguish between civilians and combatants; and that attacks may only be directed against combatants.<sup>27</sup> Attacks must not be directed against civilians. The Practice views this Rule as a customary international law norm which is applicable to all armed conflicts. According to the St Petersburg Declaration, the objective of war is identified as being to weaken the enemy military forces and therefore, not to harm the civilian population or territory.<sup>28</sup>

Customary international law further provides for the prohibition of the use of means and methods of warfare which cause superfluous injury and/or unnecessary

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<sup>24</sup> See n 13 above.

<sup>25</sup> International Humanitarian Law Rule 70; Sassióli see n 6 above.

<sup>26</sup> Sassióli see n 6 above.

<sup>27</sup> See n 13 above.

<sup>28</sup> Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, 1968 ('St Petersburg Declaration').

suffering, Rule 70.<sup>29</sup> This rule is applicable to all types of armed conflict, both national and international. According to the Military Manuals of Germany and the Netherlands, anti-personnel land mines have been cited as causing unnecessary suffering. Therefore, land mines are not only incapable of distinction between civilians and combatants, but is also incapable of preventing superfluous injury and/or unnecessary harm. This is but another reason, based on the foundational principles of customary international law on how land mines should not be in existence as they contravene these principles but also how they are not being utilised for military intent but rather are causing superfluous injury to civilians.

Therefore, the customary law needs to be developed and interpreted so to close the gap for disarmament of land mines specifically. According to the Kassem case, civilian immunity from direct attacks was recognised by the Military Court as a basic international humanitarian law rule.<sup>30</sup> Thus both the civilian population and civilian territory need be adequately protected and made immune from any and all direct military and armed conflict attacks. In theory, this is a desirable rule, however it is not practiced effectively in order to give rise to such obligations.<sup>31</sup>

The responsibility includes the protection of the people of that State. Such protection is afforded to the people by means of the responsibility to prevent, the responsibility to react and the responsibility to rebuild.<sup>32</sup> This responsibility to protect vests upon the Security Council of the UN in order to achieve and maintain international peace and security.<sup>33</sup> These responsibilities to protect civilians and to prevent cruel treatment and indiscriminate attacks are enshrined within the Fourth Geneva Convention as well as within Additional Protocol I and II.<sup>34</sup>

## 2.2. Vienna Convention on the Law of Treaties (VCLT)<sup>35</sup>

Article 31 to 33 of the VCLT are the interpretation clauses for treaties.

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<sup>29</sup> ICRC IHL Database, *Customary International Humanitarian Law*, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter20\\_rule70](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter20_rule70) (last visited 29 August 2020).

<sup>30</sup> Israel Military Court at Ramallah: *Military Prosecutor v Kassem and Others* 13 April 1969 (Kassem case).

<sup>31</sup> ICRC IHL Database, *Customary International Humanitarian Law*, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter1\\_rule1](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter1_rule1) (last visited 29 August 2020).

<sup>32</sup> The Responsibility to Protect see n 8 above.

<sup>33</sup> Article 24 UN Charter.

<sup>34</sup> Convention (IV), Protocol I and Protocol II see n 10, 11 and 12 above.

<sup>35</sup> The Vienna Convention on the Law of Treaties ('VCLT').

Article 31 provides the general rule of interpretation which requires the interpretation to be the one of good faith, ordinary meaning, deduced from the text as a whole, within the context of any subsequent agreement, application and rules of international law to ensure conformity.

Article 32 provides for the supplementary means of interpretation which includes both the preparatory work of the treaty as well as the circumstances surrounding the conclusion of the treaty.

Article 33 addresses the interpretation of treaties which are authenticated in two or more languages. These texts are presumed to have the same meaning. However, where a dispute arises out of a conflict of translations in accordance with article 31, then one text will prevail accordingly.

### **2.3. Mine Ban Treaty**

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction was entered into force on 1 March 1999 after being adopted in Oslo and opened for signatures in Ottawa in 1997. This Convention is known as the “Mine Ban Treaty”.<sup>36</sup> The Mine Ban Treaty currently has one hundred and thirty-three signatory States and one hundred and sixty-four State Parties,<sup>37</sup> of which Angola, Botswana, Ethiopia, Germany, Mozambique and South Africa are signatories and Algeria and Mauritania, the surrounding countries of Western Sahara are signatories as well.<sup>38</sup> The main objectives within the Mine Ban Treaty include the clearance of mines within 10 years from the land mined areas, to provide for land mine risk education in land mine risk areas and to offer assistance to other countries for the land mining clearance programmes. Presently Western Sahara has a land mine contamination rate of over 100 square kilometres.<sup>39</sup>

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<sup>36</sup> See n 13 above Mine Ban Treaty.

<sup>37</sup> Mine Ban Treaty; “Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction” 2017 *UNODA* retrievable at: [http://disarmament.un.org/treaties/t/mine\\_ban](http://disarmament.un.org/treaties/t/mine_ban) (last visited 16 September 2019).

<sup>38</sup> Mine Ban Treaty; Land Mine and Cluster Munition Monitor and ongoing public updates “Treaty Status” 2019 *International Campaign to Ban Land Mines* (<http://www.icbl.org/en-gb/the-treaty/treaty-status.aspx> (last visited 16 September 2019).

<sup>39</sup> See n 38 above.

While this treaty is required and addresses relevant duties, penalties need be implemented to encourage compliance from Contracting Parties. As is evident in the case of Western Sahara, the surrounding countries are bound to the obligations of disarmament, however action has not been taken to assist the Sahrawi people.

The use of land mines violates the laws of war, which states the military may not “indiscriminately kill civilians”. Land mines kill and maim thousands of civilians, years and decades, after the conflict has ceased. This is as a result of the land mines being out of sight due to their underground placement. Although the number of countries producing land mines has, since the Mine Ban Treaty, dropped to 14 from 54 countries. However, this is not a proportionate relationship to the decrease of casualties. Disarmament is required to further reduce civilian casualties. The casualty rates have only decreased to 15 000 – 20 000 per year from 26 000. Land mines make it impossible for cease fires and peace agreements to be effected. In light of the above indiscriminate injury and killing of civilians, a total ban on land mines is deemed an appropriate remedy. In contrast, South Korea utilises land mines to protect their borders, reduce costs of increasing military personnel and ultimately deterring war while protecting civilians. However, the issue of utilising land mines is ensuring and monitoring that such use is in accordance with the Geneva Conventions. This is currently not how land mines are approached in majority of the instances.<sup>40</sup>

There are a number of weapons which military personnel can utilise, and enemy military can diffuse such land mines as they approach them. Therefore, land mines are not essential. However, land mines remain affordable as they are cheap and are still the preferred means to deter enemy militaries. As stated by General Alfred Gray Jr. of the U.S Marines: “We kill more Americans with our mines than we do anybody else... what the hell is the use of sowing all of this if you’re going to move through it?”<sup>41</sup> If all countries sign and ratify the Mine Ban Treaty, an equality of protection is afforded to all. This is the only way to effectively apply the Mine Ban Treaty. However, others believe a complete ban is the answer. This is because it

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<sup>40</sup> Debatepedia “Debate: Mine Ban Treaty (Ottawa Treaty)” 2010 retrievable at: [http://debatepedia.idebate.org/en/index.php/Debate:\\_Mine\\_Ban\\_Treaty\\_%28Ottawa\\_Treaty%29](http://debatepedia.idebate.org/en/index.php/Debate:_Mine_Ban_Treaty_%28Ottawa_Treaty%29) (last visited 31 August 2020).

<sup>41</sup> Red Cross, Philip C Winslow “The case against landmines” retrievable at: [http://www.redcross.int/EN/mag/magazine1997\\_2/10-11.html](http://www.redcross.int/EN/mag/magazine1997_2/10-11.html) (last visited on September 2020).



renders the option to use eliminated. On the contrary, such a ban endangers peacekeepers.

The Mine Ban Treaty only prevents those countries which are law abiding from utilising land mines while those who don't interpret the Mine Ban Treaty accordingly, continue to interpret it in such a way that renders their use permissible and not prohibited.<sup>42</sup>

The amended Protocol Two "strikes a balance" of the land mine crisis by ensuring civilians are protected and that the military's needs are met.<sup>43</sup>

However, the interpretation of the provisions in the Mine Ban Treaty are done *contra bone mores* and therefore, render permissible the conduct which is actually prohibited. Therefore, according to the VCLT, where an interpretation is not made in good faith, it is in violation of article 31.<sup>44</sup>

#### **2.4. UN MISSION FOR THE REFERENDUM IN WESTERN SAHARA ("MINURSO")**

The UN established a mission in 1985 in order to initiate settlement proposals and such mission resulted in the establishment of MINURSO in April 1991 by the Security Council. MINURSO was established to give effect to an implementation plan whereby Western Sahara was to decide to either remain sovereign or to integrate with Morocco. MINURSO is made up of civilians of the UN, military and the UN police whom conduct the tasks to achieve the referendum's objectives. Initially MINURSO had the function to ensure that the cease fire agreement was adhered to, reduce the number of Moroccan combatants, ensuring combatants are present only within designated areas, release Sahrawi refugees, register Sahrawi voters, ensure a free and fair referendum and reduce the threat of land mines. Since then the functions include the monitoring of the cease fire, reducing land mine threats and providing logistic support.<sup>45</sup> UNMAS has cleared over 147 000 000

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<sup>42</sup> See n 40 above.

<sup>43</sup> Captain Andrew C.S. Efav, "The United States Refusal to Ban Land Landmines: The Intersection Between Tactics, Strategy, Policy, and International Law" *The United States Military Journal* (1999) 159 at 87.

<sup>44</sup> VCLT see n 35 above.

<sup>45</sup> "MINURSO" 2019 *UNITED NATIONS MISSION FOR THE REFERENDUM IN WESTERN SAHARA* retrievable at: <https://minurso.unmissions.org> (last visited 16 September 2019).

square meters of land of which over seven thousand land mines have been removed and destroyed, provided mine risk education to over seventy thousand Sahrawis and more than one thousand mine victims have been assisted and accounted for.<sup>46</sup> UNMAS is one of the organisations which assist in demining and disarmament of land mines. In addition to demining, UNMAS provides crucial education and assistance to civilians within land mine areas and to land mine victims.

## **2.5. UN SECURITY COUNCIL**

A report was drafted and published by the Security Council regarding Western Sahara on 1 April 2019.<sup>47</sup> This report evaluates the situation in Western Sahara between 3 October 2018 and 1 April 2019. It is reported that the ceasefire is currently upheld with minor violations of which both parties are unwilling to settle. However, the MINURSO mandate is still being implemented of which UNMAS has cleared over two million square meters of land of which was contaminated by land mines. The explosives were destroyed and the Polisario's final stockpile of land mines were also destroyed.

This report indicates that the current resolutions and mandates are being adhered to and implemented.

## **2.6. INTERNATIONAL COMMITTEE OF THE RED CROSS (“ICRC”)**

The Mine Ban Treaty is based on the customary rules of international humanitarian law which prohibits the use of land mines as they do not differentiate between military combatants and civilians and land mines cause both unnecessary suffering and superfluous injury as regulated by the fundamental principles of international humanitarian law.<sup>48</sup>

## **2.7. ACTION ON ARMED FORCES (“AOAV”)**

AOAV effects monitoring and impact reduction of “weapon-based violence” with special reference to explosives such as land mines. Over thirty thousand victims of

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<sup>46</sup> MINURSO see n 45 above.

<sup>47</sup> Report of the Secretary-General Pursuant to Security Council Resolution 2440 (2018), Situation Concerning Western Sahara S/2019/282, 01 April 2019.

<sup>48</sup> Mine Ban Treaty; ICRC “1997 Anti-Personnel Mine Ban Convention Advisory Service” (2018).

explosive weapons, of which civilians accounted for seventy percent of such victims, were recorded in 2018. One of AOAV's objectives is to reduce the production of and access to such weapons as well as raise awareness and increase education on such risks.<sup>49</sup> Accordingly, it is held that within the territory of Western Sahara, there are more than seven million land mines. The Polisario Front has destroyed more than ten thousand stockpiles of land mines.<sup>50</sup> Since then Polisario has destroyed its final stockpile in order to achieve MINURSO and UNMAS' demining objectives.<sup>51</sup>

### **PART III: THE NEGATIVE IMPACT OF LAND MINES**

The main form of negative impacts as a result of land mines, other than death and/or injuries, includes damage to the environment, economy and security.<sup>52</sup> This portion of the minor dissertation will address pollution, social and economic impact, agriculture decline and suffering of civilians in relation to civilians and children. As stated by Redmond, until these land mines are disarmed, the safety of civilians and the stability of the economy are at risk. As the prospects of achieving any form of stable development, after such land mines have taken their toll, are slim.<sup>53</sup> Further negative impacts include the health care and education systems. Health care systems are exhausted as land mine care victims are usually admitted within hospital for twenty days, they require a minimum of two surgical operations and require over one unit of blood to be transfused per victim. This is a clear illustration of how quickly and easily medical supplies and assistance may be consumed. This further detracts medical care and treatment of other victims suffering from malnutrition as a result of land mines as immediate care is required for those with physical injuries. Furthermore, such victims of land mines suffer from weakened

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<sup>49</sup> Mine Ban Treaty; Action on Armed Violence "What do we do to address the impact of weapons" 2019 AOAV -retrievable at: <https://aoav.org.uk/acting-on-weapons/key-work/> (last visited 17 September 2019).

<sup>50</sup> Mine Ban Treaty; Action on Armed Violence 'National C-IED Initiatives: North Africa – Western Sahara' 2017 AOAV retrievable at: <https://aoav.org.uk/2017/national-c-ied-initiatives-north-africa-western-sahara/> (last visited 17 September 2019).

<sup>51</sup> MINURSO see n 45 above.

<sup>52</sup> Theresa Oby Ilegbune 'Wartime environmental pollution and endangerment: the land mine scourge and the global effort to eliminate it' 2016 *Annual Survey on International and Comparative Law*, 21 177 at 180.

<sup>53</sup> Mine Ban Treaty; Robert S Redmond 'Clearing land mines' *Contemporary Review* (2001) 133 at 134.

immune systems as a result of the indirect health implications which arise.<sup>54</sup> As a result of land mine placement, often the education system is affected either in the form that the school premises is destroyed by the detonation of the land mines or the premises is deemed unsafe. Often where the premise is deemed unsafe, school attendance decreases in an effort of survival and safety precautions.<sup>55</sup>

### **3.1. Pollution**

Land mines are created from foreign and artificial materials which are not biodegradable nor organic. Therefore, the existence of such objects within the ground, of which they are placed, is unwanted and further poses a risk to the environment. The presence of such land mines within our environment deem the land unusable and thus useless. The detonation of land mines causes soil erosion, and thus from all the remnants, the people of the land may no longer farm and cultivate the land as their crops have now been destroyed. The uncleared landmines are extremely toxic, and the explosive remnants contribute to environmental issues such as pollution.<sup>56</sup> Land mines are cheap to acquire as they are made from plastic, a substance which is unfavourable to the environment.<sup>57</sup> This leads to the destabilization of the community as without usable crops to harvest, famine, malnutrition and poverty arise.<sup>58</sup>

### **3.2. Social and economic impact**

Land mines result in the loss of parents which renders children orphaned. Maimed persons as a result of land mines become burdens on their families both physically and financially as they require assistance and in many instances are unable to find work consequently.<sup>59</sup> Apart from being maimed and/or injured as a result of becoming a victim of the detonation of a land mine, land mines are linked to poverty. As victims are rendered unable to work, they are no longer capable of being the breadwinners or providers for their families. This results in an increase in poverty

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<sup>54</sup> Jean-Louis Arcand, Aude-Sophie Rodella-Boitreau and Matthias Rieger 'The impact of land mines on child health: evidence from Angola' *Economic Development and Cultural Change* (2014) 249 at 255.

<sup>55</sup> Arcand see n 54 above at 254.

<sup>56</sup> Ken Rutherford "Humanitarian consequences of land mines" 1997 *Update on Law Related Education* 21.1 30.

<sup>57</sup> Mine Ban Treaty; Anita Parlow 'Banning land mines' in *Human Rights Quarterly* (1994) 715 at 732.

<sup>58</sup> Illegbune see n 52 above at 182.

<sup>59</sup> Illegbune see n 52 at 182.

which in turn lends itself to children dropping out of school in search of finding employment. Where land mines are placed surrounding schooling premises, children and other persons are denied the opportunity to attend school and receive an education. In Angola, a school was closed for months due to a single land mine incident. This resulted in the school attendance of four hundred scholars decreasing to only thirty percent. Therefore, only one hundred and thirty scholars attended subsequent to the incident.<sup>60</sup> This further provides a decline to the community and renders these children deprived of their childhood as well as the ability to better their prospects of life by finding basic and minimum wage employment. This is all as a result of the domino effect of which renders victims desperate for survival.<sup>61</sup> Furthermore, such land mines cause devastating effects to the infrastructure and emergency services of the areas. Power lines or water supplies may be affected and render the civilians without power and water which in turn will have devastating effects. Ambulances or hospitals which are affected, deem it near impossible to provide emergency and medical assistance to casualties which in turn may lead to an increased mortality rate.<sup>62</sup>

### **3.3. Agriculture decline**

Upon the detonation of a land mine, soil erosion occurs. This is as a result of the placement of land mines. Land mines are placed beneath the surface of the ground, so to not be visible by the enemy. However as most land mines are placed within civilian territory and villages, farmlands are often impacted. As a result of these explosives, the land is destroyed and is unable to bear crops, livestock are killed, and devastation occurs as food sources become scarce.<sup>63</sup> With soil erosion, the crops are left exposed to the harsh climate conditions as well as to other animals whom will eat the crops and/or seeds which are to be harvested at a later stage. With remnants of the land mines which are made from artificial materials which are not biodegradable, animals ingest such remnants and get ill and potentially die. People consume these animals and as a result of the increase in animal deaths,

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<sup>60</sup> Arcand see n 54 above at 254.

<sup>61</sup> Ilegbune see n 52 above at 182.

<sup>62</sup> International humanitarian law and the challenges of contemporary armed conflicts, *Report of the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent*, December 2015, 32IC/15/11, retrievable at: <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts> (last visited 28 October 2019).

<sup>63</sup> AOAV see n 50 above.

the quantity of livestock will decline. Thus, resulting in the land being unable to be maintained as part of the ecosystem with the animals' assistance and as a result of the soil exposure and pollution.<sup>64</sup>

Sustainable land management for both present and future generations is at risk as a result of land mine placement. Agricultural lands are often left vacant as a result of the presence and placement of land mines. The process of disarmament of land mines is an important process which is required in order to achieve land management which is sustainable.<sup>65</sup> Within Angola, land mines affected farm lands to the extent that the lands have been left infertile as a result of the unfavourable state in which the land mines rendered the land. This not only reduces the quantity of produce but more importantly reduces the quality of produce which lends itself to malnutrition.<sup>66</sup>

### **3.4. Suffering of victims**

#### **3.4.1. Civilians**

Since 1975 over one million people have died as a result of land mines, of which an estimate of eight hundred people per month are killed of such explosions.<sup>67</sup> The victims are maimed and often killed as a result and more victims are killed and or injured by land mines than are killed by chemical or nuclear weapons combined.<sup>68</sup> Within Angola, in 2007, it was reported that approximately eighty thousand people were maimed by detonated land mines.<sup>69</sup> Civilians suffer physical injuries caused by land mines which renders them unable to work. The inability to work results in a loss of income for themselves and their families whom are dependant on them for financial support. In many instances such physical injuries result in amputations which results in many victims requiring prosthetic limbs as well as rehabilitative assistance.<sup>70</sup> This illustrates how land mines have a domino effect on civilians as not only does it impact their physical mobility and capabilities but in many instances affects their livelihood and ability to earn an income.

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<sup>64</sup> Gunawardana see n 3 above at 79.

<sup>65</sup> Gunawardana see n 3 above at 79.

<sup>66</sup> Arcand see n 54 above at 254.

<sup>67</sup> AOAV see n 50 above.

<sup>68</sup> Rutherford see n 56 above.

<sup>69</sup> Arcand see n 54 above at 255.

<sup>70</sup> Arcand see n 54 above at 252.

### 3.4.2. Children <sup>71</sup>

More children are maimed and killed by land mines than soldiers.<sup>72</sup> This is as a result of children mistaking land mines for toys. These children in conflict ridden areas find land mines and proceed to play with them. Unbeknown to them is the serious risk that exists and may result in them being maimed or killed. This was the situation in the case of *Behrami v France*,<sup>73</sup> in 2000 two brothers, the Behrami brothers, were playing with six other children and found undetonated cluster bombs. They proceeded to play with the bomb, believing that it would be safe as they have not detonated. The bomb was thrown into the air by one of the children and resulted in the one brother being killed and the other was seriously injured and required eye surgery. As a result of two subsequent eye surgeries, this son is now blind. The standard of life for this child is consequently reduced as his vision is impaired, he faces visual challenges which will affect his day to day activities, future career opportunities and ultimately provide him with daily challenges. It was held that the application was inadmissible as the Court did not have the competent *ratione personae*. This was evident as the individual respondents were to be treated as part of the international security force and such a force was exercising their power lawfully as conferred upon them under chapter seven of the UN Charter by the UN Security Council. Furthermore, the actions of the respondents were directly accredited to the UN as they were deemed to be an organisation within the universal jurisdiction of whom were fulfilling their objective in line with collective security. The Convention may not be interpreted in a manner which subjects actions and omissions of the contracting parties, which are protected by the UN Security Council Resolutions, to scrutiny of the Court. Such scrutiny would result in the interference of the UN's key mission to secure and fulfil international peace and security. A further negative impact of land mines on children is that it has been linked to children being smaller and there existing a higher rate of mortality as a result of birth defects.<sup>74</sup> According to a study conducted between 2000 and 2001 a linear estimate provided the results that the children are shorter for their age and weigh less for

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<sup>71</sup> Arcand see n 54 above.

<sup>72</sup> Rutherford see n 56 above.

<sup>73</sup> European Court of Human Rights: *Behrami and Behrami v France* Application number 2 May 2007 ECHR 71412/01.

<sup>74</sup> Arcand see n 54 above at 250.

their age than the norm as a result of the physical implications of land mines.<sup>75</sup> Children are further deprived of an education as a result of their schools being unsafe to attend due to mine placement, as was the case in Angola.<sup>76</sup> It can be argued that land mines not only deprive children of their childhood, in that they cannot play outdoors without fear, but their standard of life is decreased. This is as a result of land mine injuries; their mortality rates are increased, and their standard of living is decreased as a result of not being able to attend school and receive an education. Through the process of disarmament, the standard of life may improve for future generations within a social, economic, environmental and safety element.

#### **PART IV: THE DISARMAMENT PROCEDURE OF LAND MINES**

Disarmament defined is the disarming procedure which more specifically is the “reduction or abandonment of military capacity or readiness for conflict” or the “limitation or renunciation by a country or an organization of the use or possession of weapons”.<sup>77</sup> Another definition is the “reduction or withdrawal of military forces and weapons”.<sup>78</sup> According to the UN Operational Guide disarmament is defined as the process of gathering, recording, monitoring and disposing of ammunition, explosives, small arms and weapons of combatants and often of civilians.<sup>79</sup>

There are various methods of disarmament and scientists are researching new and more efficient means of detecting land mines. Such scientific advancements are to ensure the disarmament process is more predictable and controllable. This is desirable as the disarmament process is extremely dangerous. Rather than having people blindly detecting for land mines and facing a high risk of standing or walking on a land mine, technological developments have made it possible to predict and determine landmine placement. Various tools are used to locate landmines for disarmament and include metal detectors, trained service dogs and rats, ground penetrating radars, infrared, x-rays and other screening technology.

A debate currently exists on whom should be held responsible for the disarmament procedures. Should international organisations be responsible for disarmament or

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<sup>75</sup> Arcand see n 54 above at 270.

<sup>76</sup> Arcand see n 54 above.

<sup>77</sup> *Oxford English Dictionary* retrievable at:

<https://0-www-oed-com.ujlink.uj.ac.za/view/Entry/53531?redirectedFrom=disarmament&> (last visited 25 October 2019).

<sup>78</sup> *Oxford South African Pocket Dictionary* 3<sup>rd</sup> Edition at 249.

<sup>79</sup> UN Operational Guide see n 16 above.



should non-governmental organisations be responsible. In this light the international organisations include the national governments (the state), courts (the judiciary) and parliament (the legislature) which come together in line with international conventions to be responsible or are other organisations, such as peace societies, which are not governmental be responsible.

#### **4.1. The use of land mines**

Land mines are the popular weapons chosen as a result of land mines being readily and easily accessible, they are inexpensive and are highly effective to use. Around the time of 1996, an estimation of ten million land mines were found in Afghanistan, nine to fifteen million land mines in Angola, eight to ten million land mines in Cambodia, ten million land mines in Northern Iraq and two million land mines in Mozambique. The UN's involvement with mine clearance commenced in 1989, a period where many countries were involved in conflicts and wars both nationally and internationally.<sup>80</sup> Land mines not only kill and maim soldiers, but in most cases the casualties of land mines are civilians. These civilians are killed and/or maimed as these land mines are often within civilian territory. Land mines are placed in such a fashion so to affect civilians in order to achieve military objectives.<sup>81</sup> Therefore, land mines are utilised to disrupt the lives of civilians, to affect their standard of living, quality of life, access to food, mortality and injury rates as collateral damage to the military objectives. A further effect of such land mines results in the after effects of infections through the placement of dirt, bacteria, clothing and other materials being picked up with the detonation of the land mine and causes secondary infections to the casualties and often results in amputations.<sup>82</sup> It is stated that injuries caused by land mines are the direct result and cause of poverty. Land mines affect poorer communities and villages in a devastatingly drastic manner as the aftermath has a domino effect. A land mine detonates, ruining the land of which was used for farming and harvesting of crops and animals, reduces job creation and food supply and ultimately leads to poverty and possibly increased mortality as a result of loss of livelihood and malnutrition.<sup>83</sup> Post conflict, the land contaminated

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<sup>80</sup> Joerg Wimmers 'International law and land mines' in *ILSA Journal of International and Comparative Law* (1996) 615 at 619.

<sup>81</sup> Arcand see n 54 above at 254.

<sup>82</sup> Parlow see n 57 above at 719.

<sup>83</sup> Redmond see n 53 above at 134.

by land mines remains affected long after the conflict and poses threats to civilians daily. These threats include damage to the agriculture, trade and development processes and effects the humanitarian operations of day to day processes. Daily activities such as traveling, farming, working in fields, collecting water and firewood or crossing contact check points is a risk as these actions are conducted within land mine placed land. Land mines currently pose the greatest danger to civilians as they are easily and rapidly placed, however, the disarmament and clearance of such land mines is incredibly slow and expensive to carry out.<sup>84</sup>

#### **4.2. The process of disarmament**

The rules of disarmament are enshrined within customary law and are further inspired by the conscience of the public – to protect civilians from the indiscriminate effects of land mines and to protect combatants from unnecessary suffering.<sup>85</sup> There are mine removal programs within Somalia which make use of handheld metal probes and have removed over twenty thousand land mines. According to the Director of the UN Demining Program, the disarmament procedure requires development and more funds for more advanced technology in order to be effective. Another attempt of disarmament is for the international ban of the production of, sale of and use of land mines as all persons, civilians, soldiers and belligerents alike, have a mutual interest in such a ban.<sup>86</sup> A Belgian initiative was adopted in the forty-eighth session of the General Assembly, to provide financial assistance for mine clearance operations. This caused the Secretary General to review the problem of land mines and to consider the establishment of a trust fund to assist the disarmament of land mines and peace building developments.<sup>87</sup>

#### **4.3. Whom is responsible for disarmament?**

The ICRC and the Red Cross Movement have four humanitarian principles, namely: humanity; neutrality; impartiality and independence.<sup>88</sup> Over the past eight years, the ICRC has been requesting that the use of explosive weapons be avoided as these weapons are not designed for civilian towns but for battlefields and as a

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<sup>84</sup> Mardini see n 4 above; Parlow see n 38 at 737.

<sup>85</sup> Mardini see n 4 above.

<sup>86</sup> Parlow see n 57 above at 722 to 723.

<sup>87</sup> Parlow see n 57 above at 725.

<sup>88</sup> Mardini see n 4 above.

consequence have shocking effects on the lives and livelihoods of these civilians. These victims have been commonly found in vast numbers within Afghanistan, Gaza, Iraq, Libya, Sri Lanka, Syria, Ukraine and Yemen of which they are maimed or killed immediately on impact of the detonation of the land mines.

Other than serious injuries resulting often in amputations and/or death, the infrastructure of the land is damaged and/or destroyed which has a domino effect in the long term. Where the agricultural land is the host for such land mines, food sources and job opportunities are depleted. The ripple effect is that people lose an income source and become starved, which leads to mortality rising as a result of poverty.

In many instances, States have taken it upon themselves to educate and train civilians on how to disarm land mines in order to re-establish a sense of normality, stability and security. In Yemen, Saudi Arabia initiated a program providing such training which cost around forty million US Dollars and over seven months the teams had cleared roughly forty-one thousand land mines, of which it was estimated that there are over one million land mines placed in Yemen.<sup>89</sup>

As a result of the costly expense of disarmament and the fact that States are the dominant role players in disarmament, non-governmental organisations have a limited scope within the realm of disarmament. This is as a result of the international bodies being hesitant and unwelcoming and unaccepting of the non-governmental organisations for the discussions of disarmament issues. The establishment of the UN was the first time where non-governmental organisations had a platform to discuss issues at an international level.<sup>90</sup>

Therefore, in order to keep the peace, in addition to preventing any political unrest, it is suggested that the best starting point lies within local borders. These local borders refer to the local people within that area, whose assistance and involvement

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<sup>89</sup> Kirkpatrick see n 5 above.

<sup>90</sup> Mine Ban Treaty; Treasa Dunworth 'Accountability of international organisations: the potential role of NGOs in the work of disarmament bodies' *New Zealand Journal of Public and International Law (NZJIPL)* (2016) 47 at 56.

in disarming may render it possible to achieve disarmament.<sup>91</sup> It is stated that humanitarian disarmament is carried out by commercial corporations, international non-governmental organisations and militaries by means of government assistance and private and public financial contributions.<sup>92</sup>

#### **4.4. Pre-screening and wireless networks**

Minefields are placed in specific patterns which are often predictable. For instance, the patterns used in South Africa are similar to those used in Mozambique, Namibia and Zimbabwe whereby a centre row of mines placed five metres apart and then at the ten to two o'clock position a single land mine is placed enclosing the centre row. Other areas which have used predictable and structured patterns include Afghanistan, Cambodia, Iraq, Libya, Somalia, Sri Lanka and Vietnam.<sup>93</sup>

The use of trained service dogs and rats and other detection tools are focused on ground penetration techniques. There have been developments to use a wireless network which identifies different concentrations by means of sensors which are randomly scattered to locate multiple rather than single placed land mines.<sup>94</sup>

Another method involves a dual step of reference to the point of interest and region of interest of extraction whereby the scattered centres screening provide a return based on pixels. This provides an extraction centre for the region of interest. This approach is one that is described as bottom up and is more complex where land mines have been placed underground. This method is utilised to predict the amount of land mines that are distributed within a certain area before proceeding to physical disarmament procedures. The physical images enable one to analyse the ground placement and predict the location of possible land mines thus eliminating the blind process of walking with probes in search of finding a land mine.<sup>95</sup>

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<sup>91</sup> Redmond see n 53 above at 136.

<sup>92</sup> Gunawardana see n 3 above at 82.

<sup>93</sup> Gunawardana see n 3 above at 85.

<sup>94</sup> Mine Ban Treaty; Abdallah Fahed, Gning Amadou, Haj Chhadé Hiba, Julier Simon, Mihaylova Lyudmila & Mougharbel Imad 'Multiple land mines localization using a wireless sensor network' 17<sup>th</sup> *International Conference on Information Fusion (FUSION)* (2014).

<sup>95</sup> Mine Ban Treaty; Fulai Liang, Jun Lou, Tiaan Jin & Zhimin Zhou 'A novel prescreening method for land mine detection in UWB SAR based on feature point matching' *IEEE Transactions on Geoscience and Remote Sensing* (2013) 3706.

#### 4.5. Western Sahara

Western Sahara has remained in a state of humanitarian distress since the conflict arose in 1975. This conflict officially concluded in 1991, however, the Sahrawi people remain within a refugee camp as a result of the unsafe conditions outside of this camp due to the presence of land mines. Through the active participation and assistance by MINURSO, over two million square metres of land has been cleared of land mines and the Polisario Front destroyed their last stockpile of approximately two and a half thousand land mines.<sup>96</sup> The UNHCR has maintained that protection on an international scale be afforded to the Sahrawi refugees, including the assistance of food supplies to the camps. There are great numbers of refugees whom are suffering from malnutrition. This is as a result of the destruction, devastation and restricted movement caused by the presence and placement of the land mines. Presently only twelve percent of the refugees are secure with their access to food. This illustrates how the use of land mines does negatively impact food security and access to food resources. Furthermore, UNICEF is providing primary education to the children refugees. However, all this assistance is restricted due to a lack of funding. Hence the cause for reform within disarmament of land mines, to prevent further devastation.<sup>97</sup>

#### 4.6. Commentaries

Article 3 of the Geneva Convention (IV) was born of the ICRC and provides for the obligation to protect the wounded and sick within the military and later extend to Prisoners of War and civilians. Article 3 discusses the Government's duty of protection and how humane treatment of civilians (as individuals) is fundamental and prohibits any and all discriminatory treatment of civilians.<sup>98</sup> In light of this, it is evident that within the international law realm, the Saharawi people and all civilians within land mine battlefield territories are not afforded this obligation. Government's across the globe are turning a blind eye to the civilians whom are suffering from this

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<sup>96</sup> S/2019/282 see n 47 above at 8 and 9.

<sup>97</sup> S/2019/282 see n 47 above at 11.

<sup>98</sup> International Humanitarian Law Database, *Commentary of 1958, Convention (IV) relative to the protection of civilian persons in time of war, Geneva, 12 August 1949*, retrievable at <http://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=OpenDocument&documentId=BE12C9954AC2AEC212563CD0042A25C> (last visited 29 August 2020).

inhumane treatment as a result of the use and lack of disarmament procedures of land mines.<sup>99</sup>

Article 51 of Protocol (I) discusses one of the most important articles which states that innocent civilians must be kept outside of hostilities.<sup>100</sup> In order to achieve this, the civilian population must be removed from the vicinity of military objects. In the case of practical application, often civilians cannot be removed as the military has already commenced battle and the civilian population are victims to collateral damage. In the case of Western Sahara, the Sahrawi people were removed, and the Moroccan military closed in on the territory and surrounded the refugee camp with land mines.<sup>101</sup>

Article 13 of Protocol (II) states that the protection of civilians is recognised by laws of war as a whole.<sup>102</sup> It is limited to exclude protection of civilians where those civilians engage in hostilities.<sup>103</sup>

It is often that articles make or discuss recommendations based on ideas before the government gives effect to such ideas. Usually government effects them within the state once these recommendations have been integrated within the legal system through the judiciary by citing such ideas.<sup>104</sup> This is important to ensure that academic debate and discussions on current affairs are heard and applied at a higher level in order to effect change. Recommendations made by authors and publicists are important to note and cite in argument in order to reform the legal system and ensure attention is raised on issues such as land mines which are overlooked.

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<sup>99</sup> See n 19 above (Convention IV).

<sup>100</sup> See n 11 above (Protocol I).

<sup>101</sup> International Humanitarian Law Database, *Commentary of 1977, Protocol (I) relative to the protection of the civilian population*, retrievable at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=OpenDocument&documentId=5E5142B6BA102B45C12563CD00434741> (last visited 29 August 2020).

<sup>102</sup> See n 12 above (Protocol II).

<sup>103</sup> International Humanitarian Law Database, *Commentary of 1987 Protection of Civilian Population*, retrievable at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=OpenDocument&documentId=2C8494C2FC AF8B27C12563CD0043AA67> (last visited 29 August 2020).

<sup>104</sup> Sivakumaran Sandesh 'The Influence of Teachings of Publicists on the Development of International Law' *International and Comparative Law Quarterly* (2017) 15 at 28.

## **PART V: PROPOSED LEGAL REFORM**

Although there have been developments, both scientifically and by means of awareness, complete disarmament is an ideal within the distant future, if at all. Redmond explains how despite the mine clearance that has occurred over large areas, the task of disarmament of land mines is a “huge task” which lies ahead.<sup>105</sup> A crucial element for the disarmament procedure, and more particularly the accountability of such persons and/or organisations, is transparency. The State and those organisations claiming to be involved in disarmament procedures, need to include the people in these processes. There needs to be an open line of communication whereby the people are informed as to what steps and measures are being taken in order to achieve disarmament.<sup>106</sup>

Correction, in the form of redressing the current issues to ensure the action does not reoccur. This step is a future preventive proposition to hold all those responsible for attempting to utilise land mines.<sup>107</sup> This step and opinion lends itself towards a total ban of land mines. The Secretary General at the Vienna Convention supported a total ban of land mines as he declared this is the only means to prevent such destruction and devastation. The Secretary General suggested that the ban be applied not only on the use of land mines but also on the production and stockpiling of land mines.<sup>108</sup> Parlow is in favour of a global ban of land mines as it affords hope to those whom have been victims. This affords the State an opportunity to redress the harm and destruction caused and enables the State to develop and stabilize once again.<sup>109</sup>

According to Evans and Sahnoun, the International Commission on Intervention and State Sovereignty made a recommendation to the UN’s General Assembly. A recommendation to adopt a resolution whereby the primary ideologies of the responsibility to protect and the basic elements of which are adopted. This includes confirmation and application of the principle of sovereignty; application of the

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<sup>105</sup> Redmond see n 53 above at 135.

<sup>106</sup> Dunworth see n 90 above at 59 and 62.

<sup>107</sup> Dunworth see n 90 above at 65.

<sup>108</sup> Wimmers see n 80 above at 618.

<sup>109</sup> Parlow see n 57 above at 739.

threefold responsibility to prevent, react and rebuild as state responsibility of international states; the meaning attached to “threshold” which is the loss of life or ethnic cleansing at a great volume, which require protection claims to be met in order to balance the application of military intervention; and the application of the precautionary principles namely, with a right intention, as a last resort, by proportional means, and of reasonable prospects, to be observed in order for military forces to effect such protection.<sup>110</sup> The primary ideologies, or basic principles, of the responsibility to protect includes State sovereignty which refers to responsibility of which protection of the people of that State vests within the State; and the principle to not intervene falls away whereby the international responsibility to protect arises from a State which refuses to prevent or protect its people from serious harm. The threefold responsibility to protect includes prevention, reaction and rebuilding. The disarmament of land mines (demining process) is an integral part of creating peace. However, this process is “lagging behind” after the conflict has ceased.<sup>111</sup> Within Cambodia, the UN was held responsible for the disarmament of land mines. However, in Angola, the government is responsible for disarmament and have utilised a slow demining process which is not recognising the urgency of this process.<sup>112</sup> Originally the Land Mines Protocol was only applicable to international armed conflicts, however, this has developed to include non-international armed conflicts as a result of the large number of civilian casualties.<sup>113</sup> Prevention as the primary goal to protect its people by means of effecting measures whereby severe suffering and harm are avoided. This would require effective legislative measures and strict compliance with the international treaties whereby land mines are prohibited.

Therefore, disarmament would be complied with and the people would enjoy protection and security by the State in fulfilling their responsibility to protect. Reaction includes the steps taken in response to the harm causing events against the people in an attempt to intervene and put an end to such events. In certain instances, military intervention is a suitable step as such harm requires such use

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<sup>110</sup> The Responsibility to Protect see n 8 above at 74.

<sup>111</sup> Rae McGrath “Land Mines in Angola” An Africa Watch Report – Human Rights Watch (1993) at 47.

<sup>112</sup> McGrath see n 111 above at 48.

<sup>113</sup> McGrath see n 111 above at 58.



and application of force. Rebuilding includes steps to recover, reconstruct and to reconcile after the military intervention to repair the damages caused as a result of the harm created.

Land mines are an ongoing issue in Afghanistan, Angola, Korea, Russia and the USA.<sup>114</sup>

The key properties of land mines are that they have a persistent and uncontrollable nature; they cannot be recalled post conflict as many militaries do not record and map the placement of land mines;<sup>115</sup> and land mines must be “disarmed, destroyed or claim a victim”.<sup>116</sup> As a result of this 100% of post conflict land mine victims are civilians and not military personnel.<sup>117</sup>

Land mines are the “most serious obstacle” faced in “returning countries to normality”.<sup>118</sup> Land mines are the cause of serious problems for the civilian population. The proposed solution to this obstacle is to eradicate (by means of surveys, training and clearance teams) existing land mines and to assist the victims. This is done by acting on the basis of the issue, to detect, to disarm and to destruct land mines in order to prevent their “indiscriminate use”. Ultimately the abolition of global trade is required. The international community as a whole must become accountable for and aware of the grave human tragedy associated with land mines. The international community must take effective action to rectify this grave injustice against civilians.<sup>119</sup>

The process of a land mine detonating is as follows: a person (combatant or civilian) stands on the mine; the mine detonates; the blast of the mine drives into the deep leg tissue where secondary fragments (particles from the ground, clothing, skin, tissue and/or bone) are driven up into the wound. Often this results in the amputation of a limb and due to the secondary fragments, amputation is required

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<sup>114</sup> Rae McGrath “Landmines: Legacy of Conflict. A Manual for Development Workers” (1998) at 3.

<sup>115</sup> See n 20 above.

<sup>116</sup> Mine Ban Treaty see n 13 above.

<sup>117</sup> McGrath see n 114 above at 2.

<sup>118</sup> McGrath see n 114 above at 65.

<sup>119</sup> McGrath see n 114 above at 65-71.

from further up. However, secondary injuries sustained include blindness, face, chest and stomach issues, loss of fingers and ultimately trauma due to the blast.<sup>120</sup>

The International Commission further made recommendations to the Security Council.<sup>121</sup> These recommendations were to create guidelines for military intervention in order to regulate their responses to the harm in order to achieve the responsibility to protect; and that the five permanent members agree to restrict their right to veto power in matters which impact military intervention for the responsibility to protect the people of the State. “The limited prohibitions and restrictions contained in the 1980 Protocol Two were disregarded”. During armed conflict, statistics demonstrate that more combatants than civilians are killed or wounded, however, post conflict the “civilian population bears the greatest burden” in both numbers of victims and the social and economic impact. “If Protocol Two is conscientiously applied by all sides in wars the Protocol may meaningfully expand the protection of the civilian population in armed conflict”.<sup>122</sup>

Therefore, such guidelines would need to regulate the proportionality of force used by the military for purposes of intervention. The Rule of Proportionality is a two-pronged test: 1- “concrete and definite military advantage it must be substantial and relatively close, the advantages which are hardly perceptible and those which would only appear in the long term should be disregarded”; and 2- there must be foreseeable injury to civilians which must not be “excessive” (in good faith) in relation to the expected military advantage.<sup>123</sup> Land mines are deemed indiscriminate as they are more often than not, placed unmarked and unrecorded in civilian travelled areas.<sup>124</sup>

Furthermore, the Security Council would need to offer assistance in determining which measures and procedures would be proportional to maintain consistency among the international community as a regulatory body. Whereby any breaches

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<sup>120</sup> McGrath see n 114 above at 26.

<sup>121</sup> The Responsibility to Protect see n 8 above at 75.

<sup>122</sup> Stuart Maslen “Anti-Personnel Mines under Humanitarian Law” Hart Publishing (2007) at 74.

<sup>123</sup> McGrath see n 111 above at 61.

<sup>124</sup> McGrath see n 111 above at 62.

of which disproportionate measures are taken, such violations and infringements may be addressed, and redress will accordingly occur based on the Security Council's findings. It is evident that the UN has failed to intervene in many instances of conflict which resulted in the great number of deaths of innocent civilians. An example of such includes the Bosnian Genocide and the Rwandan Genocide. In the case of Kosovo, the UN did intervene however it was questionable as to whether such intervention was justified.<sup>125</sup> This is where the Security Council needs to provide clarity and consistency on the application in order to assess the situations which arise on the same standards. Principles and regulatory guidelines need to be effected in order to provide such consistency and clarity.

The Western Sahara conflict occurred over forty years ago, yet the civilians still face the negative impacts.<sup>126</sup> There are still refugee camps which render the Sahrawi refugees unable to exercise free movement as they run the risk of harm from the surrounding land mines. The conditions under which the Sahrawi refugees live are poor in that their quality of life is low, their food resources are scarce, and their health care services are dependant on the assistance from international organisations such as the UN and ICRC whom offers these services.<sup>127</sup>

Land mines once placed are blind weapons that do not differentiate between civilian and combatant steps. Land mines continue to kill and maim innocent civilians and so far, the international community has been unsuccessful in preventing the use of land mines during conflict. However, the Mine Ban Treaty is a step in the right direction as it has reduced the use of land mines, but there exists a lot of loopholes within these principles.<sup>128</sup> If the international community as a whole continues to turn a blind eye to the issue of land mines which have yet to be disarmed, these land mines will remain in place permanently and awaiting its next casualty.<sup>129</sup>

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<sup>125</sup> The Responsibility to Protect see n 8 above at 1.

<sup>126</sup> Simpson see n 2 above.

<sup>127</sup> S/2019/282 see n 47 above.

<sup>128</sup> Joseph J.H Yoon "The Problem of Anti-Personnel Landmines and the Ottawa Treaty: Illusion or Reality?" *Revue generale de droit* (1997) 549 at 563.

<sup>129</sup> Yoon see n 128 above.

The current position on disarmament has developed since Wimmers opinion was shared in 1996. Presently the law has reformed to include Mine Ban Treaties, which prohibit the use of, production of and stockpiling of land mines, as Wimmers and the Secretary General suggested.<sup>130</sup> The existence of the Ottawa Treaty, the 'Mine Ban Treaty' formally known as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti- Personnel Mines and on their Destruction.<sup>131</sup> This Convention came into force on 1 March 1999 after being adopted in and opened for signatories in 1997 in Oslo and Ottawa respectively. This 'Mine Ban Treaty' has one hundred and thirty-three State signatories and one hundred- and sixty-four-Party States currently. Of these signatories, the surrounding areas of Western Sahara are included.<sup>132</sup> However, despite being signatory States, such surrounding countries feel no obligation nor humanitarian urgency to assist the Sahrawi people. This assistance need not be by force, mere sanctions which would create the effect of crippling these military forces by reducing their supplies and access to such would prevent the devastation.

There are various international organisations which seek to achieve a global ban of land mines. The organisations include MINURSO, the UN Security Council, the ICRC and the AOAV. These organisations are working on enabling people to engage in disarmament procedures. Such engagement includes raising awareness, generating financial assistance and providing education to people on how to conduct disarmament procedures.<sup>133</sup> MINURSO was established in 1991 by the Security Council, however, there are still refugee camps which exist in Western Sahara to date.<sup>134</sup> A report by the Security Council was recently drafted in April of 2019. This states that MINURSO's mandate is being implemented and UNMAS has cleared over two million square metres of land which was previously contaminated by land mines.<sup>135</sup> During the period of 1991 until 2019, land mines have been cleared, stockpiles in the Polisario Front have been destroyed, however, the destruction, devastation and insecurity of the Sahrawi people continues.

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<sup>130</sup> Wimmers see n 80 above.

<sup>131</sup> Mine Ban Treaty see n 13 above.

<sup>132</sup> See n 38 above.

<sup>133</sup> Mardini see n 4 above.

<sup>134</sup> MINURSO see n 40 above.

<sup>135</sup> S/2019/282 see n 42 above.

It is not sufficient to have organisations and treaties where there are still ongoing instances whereby State signatories and other States within the international community are not being held towards these obligations conferred upon them. A proposal in such an instance may involve the stricter compliance by means of reporting to the Security Council. This would affect and implement the responsibility to protect which is an exercise of the Security Council to step in and assist people from harm whereby military force is required. If this were to be implemented accordingly, States would be less inclined to conduct such hostilities as well as use such land mines as they would not want to risk the loss of their power. Non-compliance of States could result in fines being owed, of which such finances would be paid and transferred into a fund which the Secretary General holds access to and utilises in disarmament procedures. This would assist the present issue of limited resources and financial assistance for these organisations conducting disarmament procedures.<sup>136</sup>

The ICRC initiated a movement in 2013 to protect civilians from violations of the fundamental principles of international humanitarian law. Such infringements include weapons of which have uses and effects which are indiscriminate as they are unable to distinguish between civilians and military soldiers, and as such cause unnecessary suffering which in the case of civilians is disproportionate.<sup>137</sup> In light of which the UN Secretary General has consistently stated that protection of civilians need to be reinforced and upheld within areas which are contaminated by explosives such as land mines.<sup>138</sup>

It was stated that explosive weapons such as land mines, have a large radius of which destructions results, accuracy is not guaranteed as it cannot distinguish between civilian and soldier, and the weapon is designed to detonate within clusters according to the placement which results in multiple detonations spanning over large areas of land.<sup>139</sup> Thus, implementing a domino effect, whereby civilians are

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<sup>136</sup> Gunawardana see n 3 above at 82.

<sup>137</sup> See n 62 above at 48.

<sup>138</sup> See n 62 above at 48.

<sup>139</sup> See n 62 above at 49.

maimed or killed, the land is destroyed, infections are inevitable and so forth. Furthermore, the use of land mines provides indiscriminate and disproportionate attacks of which are direct infringements of international humanitarian law rules and of which in themselves should be taken to task and banned.

At present there are conflicting opinions on whether the current treaties and rules regulate the use of land mines and like weapons in an effective and suitable manner or whether new rules need to be formulated and implemented.<sup>140</sup> In order for there to be clarity and uniformity among the application of States, such rules and treaties need to be effected so to clearly regulate the ban of disarmament, the process and steps which need to be taken in order to effect such a global ban as well as to identify the manner in which disarmament is necessary and non-negotiable. Failure of which needs to be determined, however a constructive manner in the form of assisting with disarmament would be to pose financial fines whereby infringing and non-conforming States pay fines to be used in aid of disarmament procedures. This would assist in transforming the international community, holding the international community accountable and responsible as a whole, which in turn creates the domino effect of States holding one another accountable to adhere to the rules so to not implicate themselves.

Balance is key and needs to be determined in order to reach a proportional point between military action and civilian suffering. Currently civilians are enduring the negative impacts and destruction on a far larger scale than the military forces. More children are maimed and killed than soldiers, this illustrates how these weapons were designed for military use and are now being placed within civilian territory whereby civilians are victims to the catastrophic destruction and suffering.<sup>141</sup>

The AOAV currently effects the impact reduction and monitoring of weapon-based violence. As a result, the AOAV has been involved within the Western Sahara territory. The AOAV accounted for thirty thousand victims, of which seventy percent

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<sup>140</sup> See n 62 above at 51.

<sup>141</sup> Rutherford see n 56 above.

of such victims were civilians.<sup>142</sup> This further supports the need for legal reform and for intervention to protect future generations from such indiscriminate effects.

Another issue which is prevalent is climate change. The existence of land mines contributes to pollution, soil erosion and consequently negatively impacts sustainable land management. Complete disarmament of land mines and a complete global ban is crucial especially now to assist in decreasing the effect of climate change and the other negative effects on the environment.<sup>143</sup>

Therefore, as result of the conflicting opinions on the effectiveness and accuracy of the current law surrounding disarmament and the ban of certain weapons, including land mines, legal reform is necessary. To effect such reform a fund needs to be established by the Security Council whereby the Secretary General has access and control over the fund to ensure that such funds are distributed for disarmament procedures. These funds are to be paid by infringing States whom are not adhering to the ban and disarmament of land mines and whom are not conforming to their obligations as a State within the international community as a whole. Disarmament is a crucial process which is required in order to establish a safe and secure environment for the international community as a whole. For years there have been developments made on land mine regulations and disarmament. However, as important and crucial as it is to have effective means to locate such land mines for disarmament, it is equally as important to completely ban these land mines so to prevent having to conduct future disarmament procedures for newly contaminated areas.

## **PART VI: CONCLUSION**

In response to this minor dissertation's research questions, it is evident that disarmament procedures within areas which were previously involved in armed conflict are not effective. This is evident in the post conflict injuries and deaths which have resulted from present land mines in many countries globally. Examples of such include Western Sahara and as briefly discussed, Sri Lanka and Yemen, Cambodia, Angola, Afghanistan, Russia and the USA. Therefore, land mines are not being

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<sup>142</sup> AOVAV see n 50 above.

<sup>143</sup> Rutherford see n 56 above.

disarmed once armed conflict has ceased and at present, disarmament procedures are not conclusive. Disarmament is a global issue which requires legal reform so to render the land safe and accessible as well as provide civilians with the ability to utilise their freedom of movement safely. Western Sahara remains victim to land mines more than 40 years after the cease fire as the Moroccan troops are still engaging in conflict and military activities against the Sahrawi people.

Part I identified the research problem, research question, research aim and research methodology. Furthermore, it described the demarcation of issues as well as provided an overview of the minor dissertation. The research problem bore specific reference to the disarmament issue of land mines within Western Sahara as a State which has officially ceased fire and conflict was officially concluded in 1991. However, the Sahrawi people are still restricted to reside within a refugee camp as a result of the presence of land mines outside of these camps as well as the dangers of which such land mines pose. The research question included whether the current disarmament procedures are effective within areas that were previously involved in armed conflict which made use of land mines; whether land mines are being disarmed once the armed conflict has ceased; and whether the current disarmament procedures are conclusive? The objective and aim included identifying the gaps which exist within the current legal framework on disarmament with a specific focus on land mines and to uncover recommendations to reform the current law and provide more enforceable obligations upon State Parties. This minor dissertation sought to achieve this aim with reference to current law, customary international law, treaties and conventions, opinions of authors and academics as well as further legal reform propositions. Unfortunately, the issue of land mines and disarmament within jurisprudence is limited and as a result was not available to address comparatively.

Part II of this minor dissertation identified the current law on disarmament. This part indicated that the law for disarmament procedures and for the prevention of such land mines does exist, however, the application lacks the urgency for strict compliance. This enables States to apply the law in a manner of which they decide best suits their endeavours and political relations based upon their own interpretation. Furthermore, no such penalties or repercussions for non-compliance



presently exist which results in more than mere reporting procedures and mediations whereby political negotiations are discussed. This is evident in the case of Western Sahara, as stated the surrounding states are signatories to such treaties, yet have failed to comply with their obligations in aid of the Sahrawi refugees.

Part III addressed and identified the negative impact of land mines. Such negative impacts include pollution, social and economic impacts, agriculture decline and the suffering of victims with reference to civilians and children. Land mines not only maim and kill its victims, but majority of these victims include civilians, mainly children, and not soldiers. It was stated that more persons are killed by land mines than are killed by nuclear and chemical weapons combined. Within Western Sahara, it is evident that civilians have been at the forefront of the opposing military forces targets and hence are still restricted to refugee camps. Furthermore, such land mines affect the sustainable development of the land for present and future generations as a result of pollution, soil erosion and the agriculture decline. This affects the food resources, job opportunities and the nutrition of such people. Poverty has been linked to be caused and arise as a result of land mine injuries. Such injuries affect one's standard of life which in turn affects a State on a social and economic plane. As a result of land mine placement, children often are denied the opportunity to attend school, as the premises are surrounded by land mines and deemed unsafe. This in turn restricts job opportunities as well as the quality of life for future generations.

Part IV discussed the disarmament procedure of land mines. Reference was made to the use of land mines, the process of disarmament, whom is responsible for disarmament, the pre-screening and wireless networks, Sri Lanka, Western Sahara and finally Yemen. Land mines are both common and popular weapons in use of conflicts. This is as a result of them being easily accessible and inexpensive. However, it is an incredibly expensive activity to conduct such disarmament procedures. Once land mines are placed and after the conflict has seized, these land mines remain the issue of civilians of whom these territories are occupied by. Disarmament procedures are constantly developing with science. Disarmament has now progressed from using metal probes and wandering across stretches of land

hoping to not step on a land mine, to using service trained dogs and rats to locate land mines. Another development includes network technology to analyse images of the land as well as use x-rays by means of mathematic equations to locate land mines based on placement patterns and other variables. It is arguable whom is to be held responsible for disarmament, however, as all states form part of the international community, the primary argument should focus on the community as a whole. Therefore, all States, all persons, all governments, all organisations are to play their roles within the field and process of disarmament. Whether such a role includes raising awareness, providing education, financial assistance, medical assistance or potential reform on achieving the global ban of land mines. As illustrated in the instances of Sri Lanka, Western Sahara and Yemen, disarmament procedures take time and during such a time or leading up to such time various negative impacts occur on the land, socially and economically, injuries and deaths as well as the depletion of food resources and medical care services.

Part V provided for the proposed legal reform on disarmament. The common proposition has been to implement a global ban of land mines. Apart from the issue of consistent application and strict compliance, this does not assist the issue of disarmament for all the millions of land mines placed within civilian territory presently. For this purpose, it was mentioned to enforce stricter compliance by means of reports having to be made regularly by all State signatories to the land mine treaties, whereby non-compliance results in a fine being imposed. This fine will be utilised to effect and assist disarmament procedures in land mine contaminated areas. Therefore, a compliance fund is to be created, regulated and distributed by the Secretary General of whom the responsibility vests to ensure compliance occurs and implementation of such compliance is affected on a national scale as well as within the international community as a whole.

It is evident that this topic of disarmament and more specifically of land mines has been a long and ongoing debate with different opinions as to whether the current rules are adequate or whether they require amendment and reform. It is notable to state that such progress has been vital, however as the role of politics plays a greater and more dominant role within the international realm, further steps towards stricter compliance and greater consistency of application is required. The VCLT

interpretation clauses are not being applied appropriately as they were intended to be and customary law is not being applied either. The process of disarmament and more particularly the existence of land mines affects the international community as a whole. The boundaries between States do not create physical walls which prevent the implications and activities of one State from penetrating the area of another. The impact of pollution, suffering, social and economic impact have a domino effect which in turn will cross borders to other States. This is the case, in the event of failure to take action. The question of whom is responsible for such disarmament needs to come to an end. This process affects the international community as a whole and therefore, the international community needs to take responsibility and action towards disarmament jointly. Millions of lives have been taken as a result of this ongoing debate while such land mines are still active and awaiting to be detonated. Future generations are being deprived of a good quality of life, education and enjoyment of the environment as a result of such negative impacts.

Western Sahara is only one single territory which has been greatly affected by land mines, within a community where hundreds of territories are experiencing the same horrors to this day. Until such time as reform is effected in a manner which is stricter and in a compliant regulated manner, awareness needs to be made. With increased awareness, pressure may be placed upon States and the UN to commence such reform procedures.

State Parties especially need to be more proactive with conducting and carrying out their obligations and less reserved in order to appease political relationships within the political sphere. The current efforts of the UN, Security Council, MINURSO, ICRC, the AOV and the drafters of the current treaties and national legislation are to be commended as without such efforts, awareness would not have been made, many victims would not have received assistance and reform would not be possible. These efforts have carved the path for such reform to take effect and to hold everyone accountable as we are all citizens of earth.

Stricter compliance as well as a stricter and more thorough interpretation, in accordance with the VCLT, and application will assist this plateau. There currently exists a plateau within disarmament as the obligations exist, however, these need

be applied in practice now to give effect to such treaties. Through the proposal of effecting international accountability on the international community as a whole for the process of disarmament, failure of which imposes a fine to be utilised in disarmament procedures, may provide the momentum necessary to end the issue of disarmament and the burden of land mines once and for all.

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