

CCW Protocol V and the Convention on Cluster Munitions (CCM): Note on coherence

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The recently adopted Convention on Cluster Munitions (CCM) and Protocol V to the Convention on Conventional Weapons serve different purposes. The CCM has been agreed in order to “end” the consistent pattern of humanitarian harm caused specifically by cluster munitions. This pattern has included excessive civilian harm *both during and after* attacks. Protocol V, by contrast, is established to “minimise the risk and effects” from unexploded and abandoned ordnance of all types in the post-conflict period. Protocol V makes no mention of cluster munitions or their submunitions and is not specifically concerned with these weapons.

The CCM is the appropriate solution to the longstanding problems caused by cluster munitions: their indiscriminate area effects during attacks and the severe and lasting post-conflict harm from unexploded ordnance. It stands as a treaty in its own right, and will function as such. However, despite differences of purpose and focus, these two instruments do overlap in a number of important areas – most notably in their provisions for post-conflict clearance of unexploded items and for international cooperation and assistance in this work.

This paper briefly examines the provisions of the CCM from the perspective of a state that has already consented to be bound by CCW Protocol V. Coherence in this context is understood to mean that the various obligations from different legal instruments are complementary not contradictory and do not lead to duplication of effort. Landmine Action believes that the new CCM is straightforwardly coherent with the broader obligations of CCW Protocol V.

Furthermore, the voluntary provisions in Protocol V, if implemented in good faith, will complement and enhance the more rigorous obligations in the CCM. As most States Parties to Protocol V will also choose to be bound by the CCM, the higher standards enshrined in the CCM on victim assistance and reporting for example will raise the bar for state practice in the context of Protocol V. This will strengthen implementation of Protocol V both in terms of practical action and in terms of the levels transparency and quality of reporting.

Analysis of interaction between CCM and Protocol V by CCM Article

In general terms, the CCM is more narrowly focused and more specific and detailed in its obligations than Protocol V.

Article 1 of the CCM, contains prohibitions on the use, production, stockpiling and transfer of cluster munitions. This clearly goes beyond Protocol V which provides only for post-conflict remedial measures relating to UXO and AXO in general.

For High Contracting Parties to CCW Protocol V, acceptance of these obligations (through signature and ratification of the CCM) should be considered to be actions in line with CCW Protocol V Article 9, *Generic preventive measures*, and should be reported on as such under the reporting practices of CCW Protocol V. These measures are “generic” in the sense that they represent, *inter alia*, efforts by states to reduce the likely ERW impact of their overall ordnance stockpile.

Article 3 of the CCM provides time-bound obligations on States Parties to destroy cluster munition stockpiles as soon as possible and within eight years. Again, progress in implementing these measures should be reported on in the CCW context as actions in fulfilment of Article 9, *Generic preventive measures*, of CCW Protocol V.

Article 4 of the CCM provides detailed, time bound, obligations with respect to the clearance of unexploded cluster munition remnants. Whilst the obligations of the CCM relate *only* to cluster munition remnants (as opposed to ERW more broadly as in Protocol V Article 3) the obligations are very similar across the two instruments.

Importantly, CCM Article 4 (3b) obliges states to:

Assess and prioritise needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilise resources and develop a national plan to carry out these activities, building, where appropriate, upon existing structures, experiences and methodologies;

So, although in the CCM there are clear time-bound obligations to complete the clearance of cluster munition remnants located in cluster munition contaminated areas, these obligations should be approached on a prioritised basis and in relation to existing structures, experiences and methodologies.

On this basis, states are not obligated to direct all ERW eradication resources to address cluster munition remnants first *if* they conclude on the basis of appropriate analysis that other forms of ERW contamination are presenting a more immediate threat.

This prioritisation capacity does not, however, remove the time bound obligation to complete clearance of cluster munition remnants under the CCM as soon as possible and not later than ten years after entry into force for that state. However, this clearance deadline can be extended and the extension request procedure allows for reporting on how other ERW priorities have influenced the prioritisation and application of resources within the initial deadline period.

Article 5 of the CCM relates to victim assistance and goes beyond the obligations of Protocol V. Whilst Protocol V provides obligations on High Contracting Parties in a position to do so to provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war, there are no specific obligations on affected countries regarding their implementation of this assistance. However, there are no issues of coherence arising from this article and it could be envisaged that the higher standard enshrined in the CCM will be followed by High Contracting Parties to Protocol V in relation to all victims of ERW.

Article 6 of the CCM provides for International Cooperation and Assistance between states. Although focused specifically on assistance for clearance of cluster munitions remnants, assistance for cluster munition victims and destruction of cluster munition stockpiles, these obligations are written in terms very similar to the more generic obligations of CCW Protocol V. With the possible exception of assistance to “stockpile destruction”, in substantive and reporting terms any actions undertaken in fulfilment of CCM obligations would likely also be actions in fulfilment of Article 8 of CCW Protocol V and should be reported as such under Protocol V reporting. Given the practicalities of assistance to humanitarian clearance operations, the prioritisation of clearance activities required under the CCM and the practical intent of the regular donors to such activities, the CCM will not create a diversion of humanitarian assistance streams to focus *only* on cluster munitions but is likely to strengthen the level of support provided to ERW affected countries in general.

Under **Article 7**, *Transparency Measures* of the CCM, states accept reporting obligations relevant to the other articles of the Convention. These reporting requirements are more specific and detailed than the legal obligations under Protocol V or the current reporting practice of states under Protocol V. However, as noted above in relation to the substantive provisions almost all actions in fulfilment of CCM obligations can be reported in full within the framework of Protocol V. Both the reporting obligations of the CCM and the reporting practice of Protocol V function on the basis of calendar

years. On this basis there is no need to duplicate work but simply to include the CCM reporting also within the relevant sections of the Protocol V reports.

Conclusions

From this overview we consider that there should be no practical problems of coherence between the two instruments. Rather, the more detailed, time-bound obligations of the CCM should serve to raise the standards expected for rapid removal of all ERW so as to make the post-conflict environment safe for civilians and to promote the most effective and measurable progress on victim assistance.

Coherence of reporting should also be easy to achieve. The demands of the CCM are more detailed and more specific than those contained in Protocol V, but this is due to its specific purpose and contributes to the relative strength of this instrument. Given that many national reports submitted under CCW Protocol V have so far been so vague as to be of very limited value, it is hoped the more detailed and specific obligations of the CCM will raise the standard of reporting under Protocol V.

Building on the success of the Mine Ban Treaty, together, the CMC and Protocol V will serve to further strengthen the global norm against weapons with post-conflict effects which keep on killing civilians long after conflicts have ended.