

# Strategic Insight

## The Convention on Certain Conventional Weapons

### Or, How to Reduce Human Suffering by Prohibiting or Restricting the Use of Certain Conventional Weapons

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#### Introduction

*"Each year a large number of civilians are killed or injured by contact with unexploded munitions which no longer serve a military purpose. The presence of unexploded ordnance drains scarce medical resources in war-torn societies, prevents the delivery of food and medical supplies to vulnerable populations and hinders reconstruction and development."* [\[1\]](#)

In recent years, the negative humanitarian impact of some types of conventional weapons—landmines, for instance—has been well publicized and comprehensively regulated within several international treaties while other types of unexploded munitions, such as submunitions, have had a considerably lower profile. However, casualty data from international organizations involved in Kosovo indicate that unexploded sub-munitions cause more injuries or death than any other unexploded ordnance.[\[2\]](#) Since 1980, the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW) has given arms control negotiators a comprehensive tool to reduce human suffering by prohibiting or restricting the use of certain conventional weapons.[\[3\]](#) Entered into force in 1983, the CCW includes three initial protocols, one amended and one additional protocol.[\[4\]](#) In addition, at the last Review Conference in 2001, States Parties to the Convention adopted an amendment to Article 1 of the Convention, which extended the Convention's scope to non-international conflicts.[\[5\]](#) By facing humanitarian threats caused by certain conventional weapons, the CCW has become an important part of international humanitarian law.

#### Historical Background

With every armed conflict, be it a tribal conflict, a royal battle between two provinces or just a simple demand of a powerful leader to become more powerful, rules of engagements were established not just to protect life but also to show a certain respect towards the enemy. During the European medieval times, for example, the knighthood contained within it several basic rules, which covered the protection of their own lives as well as the lives of others. This is why we still refer to the so-called "principle of chivalry."[\[6\]](#)

Jean-Jacques Rousseau emphasized in his work, *The Social Contract*, that a war is not something between individuals, but between states, and one's status as an enemy is based just on a coincidence. The goal of these humanitarian rules of engagement was and still is the reduction of human suffering in an armed conflict. Rousseau's perspective provides the fundamental basis of today's international humanitarian law, that the physical destruction of an enemy may never be the goal of a military action.[\[7\]](#)

International humanitarian law and the Convention on Certain Conventional Weapons has to be understood against the backdrop of these basic principles.

After the Second World War, most interests regarding arms control were focused on weapons of mass destruction. But increasing concerns about the use of certain conventional weapons that caused excessive injuries or had indiscriminate effects,<sup>[8]</sup> especially during the Korean War and Vietnam War, led to the understanding that the use of these kinds of weapons should be regulated.<sup>[9]</sup> During that time, the International Committee of the Red Cross (ICRC) initiated activities regarding further developments of international humanitarian law.<sup>[10]</sup> In 1974, the first session of the International Conference on Reaffirmation and Development of International Humanitarian Law in Armed Conflict (CDDH) established an ad hoc Committee on Conventional Weapons, which convened two important Conferences of Governmental Experts in the following years to consider the prohibition or restriction of the use of certain conventional weapons, which may cause unnecessary suffering or may have indiscriminate effects.<sup>[11]</sup> As a result, the UN General Assembly decided in 1977 to convene a UN Conference on certain conventional weapons, which resulted in 1980 in the adoption of the framework convention, the CCW and its three Protocols.<sup>[12]</sup>

### Main Achievements of the CCW

The CCW led to a practical implementation of several main principles of international humanitarian law. The convention specifies the basic rule that it is "prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."<sup>[13]</sup> This principle has often been misunderstood, or was viewed as being cynical, because of the fact that all war-related suffering per se is unnecessary. But this rule states something else: some weapons or types of ammunitions may not be used because they cause suffering which is not necessary to achieve a certain military goal. That is to say, the goal can be achieved by using less cruel weapons. The death of a soldier is often not necessary to achieve the partial or complete submission of the enemy.<sup>[14]</sup>

Another keystone is the attempt to balance humanitarian concerns and military necessities, the practical implementation of the so called rule of proportionality.<sup>[15]</sup> It often has been said that the CCW was a convention without teeth. Indeed, the final result of the 1980 UN Conference was sobering, and some observers felt that military considerations had carried more weight than humanitarian considerations.<sup>[16]</sup> In fact, there is a gap between the provisions and reality, especially where basic security interests are concerned. However, the CCW gives the international community a forum where all interested states can raise their relevant humanitarian and/or security concerns. In addition, the results are often practical and widely acceptable also to major military states.

### Facing New Challenges

Bearing in mind that the CCW has been negotiated to be a dynamic treaty within which it would be possible to face new humanitarian challenges, very limited attention was given to the treaty during the 1980s because of the absence of a compliance mechanism and its non-applicability to internal conflicts.<sup>[17]</sup> However, the last decade has shown some important developments. A new protocol on blinding lasers was adopted <sup>[18]</sup>, Protocol II was amended <sup>[19]</sup>, the process of universalization has been significantly revived <sup>[20]</sup> and the recent discussions about widely recognized humanitarian threats such as the issue of Explosive Remnants of War, have led to a new momentum.<sup>[21]</sup> In addition, with the amendment of Article 1 of the framework convention which extended its scope to non-international conflicts <sup>[22]</sup>, the CCW community decided to face new challenges and to act in a responsible manner.

However, more has to be done to promote the value and the importance of this convention. There are three main focus points which could lead the convention to a more successful future:

- Universalization of the convention
- Facing new humanitarian concerns

- Strengthening the convention by implementing a practical compliance mechanism

### **Universalization of the Convention**

To date, 91 countries have joined the CCW.<sup>[23]</sup> Many countries do not see the necessity of joining the CCW because of already being a States Party to the Mine Ban Treaty. However, the CCW covers a wide range of conventional weapons and provides a framework for regulating other types of weapons. Mines are not the only humanitarian challenge and the Mine Ban Treaty is a negotiated treaty which does not give scope for extending its goals. Accordingly, with the CCW, the international community has a tool to face new challenges and humanitarian concerns. In addition, the CCW is the only modern treaty that deals with conventional weapons and incorporates major military powers.<sup>[24]</sup> Therefore, it would be important that other countries adhere to the convention to strengthen this regime and further promote the value of the CCW.

### **Facing new humanitarian concerns**

In recent years, a number of other conventional weapons and weapon systems have been considered as possible new elements for future protocols to the CCW. The main focus was Explosive Remnants of War, which resulted in a negotiating mandate for a new protocol at the 2002 Conference of States Parties.<sup>[25]</sup> But other proposals have also been considered; for example, mines other than anti-personnel landmines and small caliber ammunition have been on the agenda for several years. There is and always will be a gap between military technological developments and corresponding rules of international humanitarian law.<sup>[26]</sup> However by facing new humanitarian concerns without delay, the Convention remains a relevant part of the development of international humanitarian law.

### **Strengthening the convention by implementing a practical compliance mechanism**

Recent proposals showed that there could be a way to strengthen the convention by adding a practical compliance mechanism either to the main convention or to each of the protocols.<sup>[27]</sup> It would not just increase the appeal of the CCW to countries still outside of the convention, it would encourage all current States Parties to fully comply with all provisions.

### **Excursus: Explosive Remnants of War**

The problem of Explosive Remnants of War (ERW) has become more and more alarming in recent years.<sup>[28]</sup> In particular, the rapidly expanding use of mass-produced cluster munitions, the increased reliance on highly sensitive micro-electronics in munitions and fuses, and quality-control problems in the highly competitive international arms market as well as budget pressures in the defense industry, have increased the likelihood that munitions malfunction during a conflict and continue to pose a serious threat to the civilian population and military personnel long after a conflict has ended.<sup>[29]</sup> According to recent statistics from the 1991 Gulf War and the 2000 Kosovo conflict, ERW killed and injured more military personnel after the end of the conflict than during the conflict.<sup>[30]</sup> Equally, ERW killed and injured more civilians in Kosovo than anti-personnel mines.<sup>[31]</sup> Such figures have raised public concern about the occurrence and rapid clearance of ERW in the context of post-conflict situations. ERW not only endanger the life of the civilian population but also impede post-conflict reconstruction efforts, including the repatriation of displaced civilians and refugees.<sup>[32]</sup>

While the impact of landmines has been well publicized for many years, the enduring threat from ERW has had a considerably lower profile. Munitions clearance programs in dozens of countries now have to address the ERW issue, yet relatively little detailed technical information is available to assist them.<sup>[33]</sup> In recent years, concerns related to ERW have given rise to various international initiatives aimed at substantially reducing the occurrence of ERW after a conflict either by prohibiting certain types of munitions or by regulating their production, design and use. Such questions are currently being discussed in the wake of the CCW.

At the CCW Review Conference in December 2001, a decision was made to discuss a possible way forward regarding ERW. The established Governmental Group of Experts gathered three times through 2002 and at the Meeting of States Parties in December of the same year. It was decided that work should continue in the year 2003 with the following negotiating mandate<sup>[34]</sup>:

- To negotiate an instrument on post-conflict remedial measures of a generic nature which would reduce the risks of ERW
- To cover most types of explosive munitions, with the exception of mines
- To consider questions regarding responsibility for clearance, existing ERW, the provision of information to facilitate clearance and risk education, warnings to civilian populations, assistance & co-operation, and a framework for regular consultations of High Contracting Parties

This mandate allows States Parties to negotiate a new CCW protocol on ERW, which will be an important element of the fight against the immediate post-conflict threat posed by these unexploded ordnances.<sup>[35]</sup>

However, this negotiating mandate does not cover possible preventive measures nor does it contemplate regulating the use of certain types of weapons that cause this threat <sup>[36]</sup>—which could be seen as weaknesses of the potential new protocol. The CCW is a convention which restricts or prohibits the use of certain conventional weapons. Explosive Remnants of War are the result of the use of some types of conventional weapons and are not weapons themselves. In the spirit of the CCW, new regulations should mainly be focused on preventive general and specific technical measures to effectively reduce the amount of explosive remnants. Any post-conflict regulation will be just a reaction which, from an overall standpoint, will not be enough to comprehensively solve the threat caused by ERW.

In addition, the call for a total ban of certain types of conventional weapons that cause the ERW problem (e.g. submunitions) could be renewed if the protocol fails to provide a comprehensive solution. Attentive observers of how the Mine Ban Treaty became reality could see some comparable elements. After the first Review Conference of the CCW, no consensus was found for a total ban on anti-personnel mines. These fundamental frictions especially between military experts led to an independent process that resulted in the 1997 total ban of anti-personnel mines.<sup>[37]</sup>

States Parties to the CCW have set out the general direction they want to pursue on the ERW issue. However, negotiations and discussions will reveal whether States Parties will in fact comprehensively deal with the problem caused by Explosive Remnants of War, or if there will be just a regulation for regulation's sake.

For more topical analysis from the CCC, see our [Strategic Insights](#) section.

*For related links, see our [WMD Resources](#)*

## References

1. Abstract of the Chairman's Summary, Workshop on "Explosive Remnants of War," The Hague 29 to 30 March 2001
2. See ICRC, [International Review of the Red Cross, No. 841](#), p.195-205, Geneva 2001 and Landmine Action Report on [Explosive Remnants of War: Unexploded Ordnance and Post-conflict Communities](#), p.18 et sqq., March 2002
3. The Convention is an umbrella covering the Protocols and containing only general provisions. It contains no provisions explicitly prohibiting the use of specific weapons. Provisions on the prohibition or restrictions on the use of certain weapons are the object of the Protocols annexed to the Convention.
4. The Convention comprises of Protocol I on Non-Detectable Fragments, Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, the 1996 amended Protocol II, Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons and Protocol IV on Blinding

Laser Weapons.

5. See UN Doc CCW/CONF.II/2

6. See Hans-Peter Gasser, *Einfuehrung in das humanitaere Voelkerrecht*, p.67, Bern, Stuttgart, Wien, Haupt 1995

7. See [The Social Contract or Principles of Political Right](#) by Jean Jacques Rousseau 1762, translated by G. D. H. Cole

8. E.g. incendiary weapons, mines and fragmentation weapons

9. In 1972, the United Nations General Assembly requested the Secretary General in Resolution 3032 (XXVII) for a survey of existing rules on restrictions of certain conventional weapons.

10. The Swiss Government, as depositary for the 1949 Geneva Conventions, convened an International Conference on Reaffirmation and Development of International Humanitarian Law in Armed Conflict (CDDH) in order to negotiate the Additional Protocols to the 1949 Geneva Conventions on the basis of the draft texts prepared by the ICRC. The CDDH met in four sessions between 1974 and 1977, which led to the adoption of Additional Protocol I and II in 1977.

11. 1974 Lucerne Conference the 1976 Lugano Conference.

12. Because of the decision made by consensus and main divergences between a number of neutral European States and developing States and a number of major military States, just three Protocols obtained consensus. Many issues like fuel-air explosives, small caliber bullets, a complete ban on incendiary weapons and on a range of fragmentation weapons as well as a complete ban on anti-personnel landmines were not comprehensively addressed.

13. Additional Protocol I to the 1949 Geneva Conventions, Art. 35.2.

14. See Hans-Peter Gasser, *Einfuehrung in das humanitaere Voelkerrecht*, p. 69, Bern, Stuttgart, Wien, Haupt 1995.

15. See A. P. V. Rogers, *Law on the Battlefield*, p. 14 et sqq., Manchester University Press 1996.

16. See Footnote 12.

17. See Robert J. Mathews, [The 1980 Convention on Certain Conventional Weapons: A useful framework despite earlier disappointments](#), p. 996 et sqq., ICRC December 2001 Vol. 83 No 844.

18. At the first CCW Review Conference in 1995/96 a new protocol on the prohibition of blinding laser weapons was adopted. This new protocol is deemed to be a cornerstone in arms control history because it was adopted before the targeted weapon has been deployed in war.

19. As a result of the increasing problem of anti-personnel landmines, the 1995/96 Review Conference amended Protocol II by including internal war in its prohibitions, that all mines must be made detectable, that remotely delivered mines must be fitted with a self-destruction/self-neutralization mechanism and that there must be an indication of the precise location of these mines. However, some countries were in favor of a total ban on anti-personnel landmines. They started a humanitarian campaign which resulted in the adoption of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty).

20. In the lead-up to the first Review Conference in 1995/96 an increase of qualitative importance was noted as several major military powers, including the USA, joined the convention (from 29 States Parties in 1991 to 56 States Parties by 1996 and up to 91 today).

21. See excursus on Explosive Remnants of War on page 6 et seq.

22. On 21 December 2001, at the Second Review Conference, States Parties adopted an amendment to Article 1 of the Convention; see UN Doc CCW/CONF.II/2.

23. In comparison, as of 20 January 2003, 131 countries have ratified the so called Mine Ban Treaty (the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction), see also Footnote 19.

24. The United States, Russia, China, India and Pakistan among others are still outside of the Mine Ban Treaty, but are member states to the CCW.

25. See excursus on Explosive Remnants of War, page et seq.

26. E.g. even if the issue of Small Caliber Ammunition has been on the agenda since the beginning of the CCW negotiations in the late 1970s, there is still no political will to deal with this issue.

27. See UN Doc CCW/CONF.II/WP.3 and CCW/CONF.II/PC.3/WP.8.

28. See *Explosive Remnants of War - Fact Sheet*, written by Roman Hunger on behalf of the Swiss General Staff, Berne, November 2002.

29. According to an ICRC Study for Kosovo, between 10 to 15% of all Cluster Ammunition malfunctioned, see ICRC: *Explosive Remnants of War: The Impact of Cluster Bombs and Landmines in Kosovo*, page 10,

Geneva, August 2000.

30. See ICRC, *Explosive Remnants of War: The Impact of Cluster Bombs and Landmines in Kosovo*, Geneva, 2000.

31. See Landmine Action Report on [Explosive Remnants of War: Unexploded Ordnance and Post-conflict Communities](#), page 18 et sqq., March 2002.

32. See ICRC Executive Summary, *Explosive Remnants of War: The Impact of Cluster Bombs and Landmines in Kosovo*, Geneva, 2000.

33. See Landmine Action Report on [Explosive Remnants of War: Unexploded Ordnance and Post-conflict Communities](#), page 17 et sqq., March 2002, which describes in consideration of different case studies the social and economic impact of ERW.

34. For the whole report, see UN Doc CCW/MSP/2002/2.

35. The first session of the Governmental Group of Experts will meet in Geneva/Switzerland in March 2003.

36. Generic and specific preventive measures are not subject to the negotiating mandate. However, States Parties shall explore and determine whether the negotiations could successfully address generic preventive measures for improving the reliability of munitions.

37. See Stuart Maslen, *Anti-Personnel Mines under Humanitarian Law*, p. 77 et sqq., Antwerpen, Oxford, New York, Intersentia Transnational Publishers 2001.