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CD/09/8.1
Original: English
For information

COUNCIL OF DELEGATES
OF THE INTERNATIONAL RED CROSS
AND RED CRESCENT
MOVEMENT

Nairobi, Kenya
23-25 November 2009

International humanitarian law and cluster munitions
(Follow-up to resolution 8/2007)
(Item 8 of the Draft Provisional Annotated Agenda)

Report

Document prepared by

The International Committee of the Red Cross in consultation with
the International Federation of Red Cross and Red Crescent Societies

Geneva, october 2009

Report on the implementation of Resolution 8 of the 2007 Council of Delegates

Summary

In Resolution 8, the 2007 Council of Delegates expressed its deep concern about "the severe consequences of cluster munitions for civilian populations and humanitarian action during and after conflicts." In light of these consequences, the Council of Delegates committed the International Red Cross and Red Crescent Movement to dealing with issues involving cluster munitions and other explosive remnants of war (ERW) and to promoting national measures to address the humanitarian concerns arising from the use of these weapons. The present report summarizes key developments and activities since 2007 and highlights future opportunities in this area.

The "Oslo Process" launched by Norway in February 2007 was concluded on 30 May 2008 with the adoption of the **Convention on Cluster Munitions (CCM)**. This new international treaty prohibits the use, development, production, stockpiling and transfer of cluster munitions. It also requires countries that possess these weapons to destroy their stockpiles. The treaty obliges countries with unexploded submunitions on their territory to clear them, and other countries to help them to do so. It also contains new and dynamic provisions for assisting individual victims, their families and affected communities.

Since 2007, the ICRC and many National Red Cross and Red Crescent Societies have raised public awareness of the serious humanitarian concern arising from cluster munitions and encouraged their governments to examine national cluster-munition policies and to support the prohibition of inaccurate and unreliable cluster munitions. The Movement has worked in affected communities to reduce the effects of these weapons and helped people injured by them. The ICRC, with support from the International Federation, has continued to assist victims of cluster munitions and other ERW through its support for first-aid services (often run by National Societies), surgery, physical rehabilitation, and measures to promote social and economic inclusion.

States party to the **Convention on Certain Conventional Weapons (CCW)** have also been continuing their work on cluster munitions. The annual meeting of States Parties in November 2007 decided that the CCW's Group of Governmental Experts would negotiate in 2008 a "proposal to address urgently the humanitarian impact of cluster munitions". Unfortunately, the States party to the CCW ended their work on cluster munitions for 2008 without reaching agreement. The 2008 meeting of States party to the CCW mandated the Group to continue its work on cluster munitions in 2009, but so far it appears that substantial differences on a wide range of key issues remain. Doubts have also arisen as to whether the current draft protocol would effectively address the problems of humanitarian concern caused by cluster munitions.

In 2008, States party to Protocol V of the CCW on **Explosive Remnants of War** worked on methods to assist States in their efforts to implement the Protocol. For example, formats were developed for affected countries seeking assistance with ERW clearance, for the filing of national reports on Protocol V implementation and for sharing information on explosive ordnance and ERW. The 2008 meeting of States party to Protocol V also adopted a politically binding action plan to help ERW victims. In addition to these administrative tools, it is hoped that States Parties will use the annual meetings on Protocol V to more specifically address the ERW problems currently found in affected countries. In June 2009, the ICRC and the Norwegian Red Cross held a meeting of experts from countries around the world affected by mines and ERW to discuss how to improve quality of life for victims of landmines, cluster munitions and other ERW in their countries. This meeting identified how best to put these commitments into practice.

Introduction

Resolution 8 of the 2007 Council of Delegates expressed its deep concern about "the severe consequences of cluster munitions for civilian populations and humanitarian action during and after conflicts". The resolution highlighted specific challenges and opportunities for the Movement in promoting its humanitarian agenda in this area during the period from 2007 to 2009.

These challenges and opportunities included the "Oslo Process" launched by Norway in 2007 to create an international treaty prohibiting cluster munitions. They also included meetings of States party to the CCW aimed at continuing efforts to develop legally binding rules on cluster munitions. The resolution encouraged work already under way to alleviate the suffering of victims of cluster munitions and to clear submunitions and other ERW in affected countries. In addition, it urged all components of the Movement to promote adherence to and full implementation of Protocol V of the CCW on explosive remnants of war, promote effective measures by States to address the humanitarian concerns resulting from the use of cluster munitions, raise awareness of the severe human costs of the use of cluster munitions, and build national support for an effective new treaty prohibiting inaccurate and unreliable cluster munitions.

The present report summarizes the action that the ICRC and other Movement components have taken to implement these commitments. It also highlights the most important – and principally legal – developments since 2007 regarding the themes highlighted in Resolution 8. It includes a section on cluster munitions and another on ERW, which also covers unexploded cluster munitions.

1. Cluster munitions

Key developments

Convention on Cluster Munitions

In view of the suffering endured by civilians for decades each time cluster munitions have been used, and the lack of an adequate response to this in other fora, Norway launched the "Oslo Process" in February 2007. The process was aimed at creating an international treaty to prohibit cluster munitions that cause civilians unacceptable suffering. The process was open to all States committed to urgently adopting such a treaty. After follow-up conferences in Lima, Vienna and Wellington, and regional meetings in Africa, Asia, Europe and Latin America, the Convention on Cluster Munitions was negotiated at a diplomatic conference in Dublin and adopted on 30 May 2008. More than 100 States, the ICRC, the International Federation and five National Societies that it accredited, the United Nations and many non-governmental organizations participated.

The adoption of the CCM is recognition that cluster munitions have terrible and unacceptable consequences for civilian populations. The treaty prohibits the use, production, stockpiling and transfer of all the types of cluster munitions that have caused the extensive civilian casualties associated with these weapons over the last 50 years, and establishes deadlines for States Parties to destroy their stockpiles (eight years) and to clear their affected territory (ten years). As a result of active efforts by the ICRC, many States and the Cluster Munition Coalition, the treaty does not permit a State party to defer its core prohibition on use, which many States had requested, as this would have allowed continued use of cluster munitions during a transition period. A specific article addresses the issue of "military interoperability".

In addition, the CCM contains new and dynamic provisions for assistance to individual victims, their families and affected communities. States Parties with cluster-munition victims on their territory are required to furnish them with medical care, rehabilitation and psychological support, and to provide for their social and economic inclusion on a non-discriminatory basis. States Parties must develop and implement any necessary plans and policies to provide such assistance, and take steps to mobilize the needed resources. These provisions, and the understanding that "victims" include individuals, their families and their communities, have resulted in the most far-reaching obligations in terms of victim assistance ever included in a treaty of international humanitarian law.

The Convention's robust obligations in the fields of cluster-munition clearance and victim assistance make its provisions on international cooperation especially important. International aid and other resources will clearly be necessary if the Convention is to achieve its goals. The Convention requires States Parties in a position to do so to provide technical, material and financial assistance for cluster-munition clearance, destruction of stockpiles and victim assistance. This assistance may be provided through the UN system, by components of the Movement, by international, regional, national or non-governmental organizations, or directly by the States themselves.

The CCM can play a major role in ending the death, injury and other suffering caused by cluster munitions. It will prevent future harm by ensuring that tens of millions of cluster submunitions currently stockpiled are never used and are, instead, destroyed. When widely adhered to and implemented, it will provide direct benefits for communities affected by these weapons through greater efforts to clear areas contaminated by unexploded submunitions, thus saving lives and returning land to agriculture and other productive use. It will also benefit victims of cluster munitions by means of increased commitment to medical care, physical rehabilitation, socio-economic inclusion and other support.

Convention on Certain Conventional Weapons

Parties to the CCW have also been continuing work on cluster munitions. The annual meeting of States party to the CCW in November 2007 decided that the CCW's Group of Governmental Experts would in 2008 negotiate a "proposal to address urgently the humanitarian impact of cluster munitions".

Much of the work in the Group's 2008 meetings focused on developing a definition of cluster munition and identifying the existing rules of international humanitarian law relevant to these weapons. The meetings included a marked involvement by States having large stocks of cluster munitions and presentations on the military value of those weapons, how targets are selected and the development of new sensor-fused cluster munitions. The meetings considered proposals for prohibitions and restrictions on cluster munitions as well as possible technical solutions to improve their reliability. Discussions exposed a stark division among States on how best to address the problems caused by these weapons.

Unfortunately, the States party to the CCW ended their work on cluster munitions for 2008 without reaching agreement either on the contents of a new CCW protocol to limit the use of cluster munitions or on whether a protocol, rather than a non-binding document, was required. Nevertheless, States party to the CCW were determined to continue exploring ways to achieve progress.

The 2008 meeting of States party to the CCW mandated the Group of Governmental Experts to continue its work on cluster munitions in 2009. Despite the distribution by the Group's chairman of a new draft protocol, it appears that disagreements remain on a wide range of key issues such as definitions, the technical requirements for cluster munitions whose use would be permitted, transition periods, whether or not transfers of some or all cluster

munitions will be allowed, and the deadlines for destroying certain cluster munitions currently held in stockpiles.

In addition, many States and organizations, including the ICRC, expressed reservations about the potential of the draft protocol to address problems caused by cluster munitions. There are concerns that the approach taken in the CCW could, for many years to come, allow the continued use of cluster munitions that are known to cause the specific humanitarian problem.

Movement action in 2007-2009

Convention on Cluster Munitions

A number of National Societies, with ICRC support, raised public awareness of the humanitarian concerns arising from cluster munitions and encouraged their governments to prohibit inaccurate and unreliable cluster munitions, as called for in Resolution 8. The Norwegian Red Cross played a prominent role within the Movement.

To reduce the harm inflicted by cluster munitions, the Movement promoted new norms, worked in affected communities to reduce the effects of these weapons, and helped people who had been injured by them. The ICRC was actively engaged in all multilateral discussions on cluster munitions and had a prominent role in the Dublin negotiations. This allowed it to significantly influence the course of negotiations on key issues.

The ICRC and National Societies also undertook a range of activities to reduce the impact on civilians of weapon contamination, including unexploded cluster munitions. Their work included incident-data gathering, risk education, and facilitating safe access to food, water and fuel in contaminated areas.

The ICRC continued to help cluster-munition victims through its support for first-aid services (often run by National Societies and with support from the International Federation), surgery, rehabilitation, and activities to foster socio-economic inclusion. The International Federation has also used all available opportunities to draw attention to the adverse impact of cluster munitions on development in affected countries. In addition, it has sought to integrate concerns for victims into other programs supporting persons with disabilities, in particular through reference to the provisions of the Convention on the Rights of Persons with Disabilities (CRPD), which entered into force in May 2008 and includes a wide range of provisions relevant to the situation of victims of cluster munitions and other ERW.

In order to promote understanding of the human costs of cluster munitions, the ICRC distributed communication materials including a brochure, fact sheets and a DVD. It also organized an international media visit to Laos, the country most severely affected by these weapons. Following adoption of the CCM, the ICRC quickly updated its communication materials and produced a booklet containing the full text of the Convention, a fact sheet summarizing the CCM's provisions, a ratification kit, and model legislation for common law States to help facilitate ratification and implementation at the national level. These materials were made available publicly and to all National Societies in English, French, Arabic, Chinese, Russian and Spanish. In addition, the ICRC hosted webcast briefings on the CCM for the media and National Societies and released a media newsreel. It has participated in dozens of regional and national seminars and workshops to promote and explain the CCM to key government officials.

Convention on Certain Conventional Weapons

The ICRC has continued to participate in the meetings of States party to the CCW to discuss proposals to urgently address the humanitarian concerns prompted by cluster munitions. On a number of occasions it has expressed its views on the contents and implications of various proposals. In particular, it has stressed that any protocol within the CCW framework should adequately address the problems caused by cluster munitions and complement the provisions of the recently adopted CCM.

Future opportunities and challenges

Convention on Cluster Munitions

International efforts to promote the Convention are continuing in earnest. A number of meetings are planned for 2010 to promote the CCM and to facilitate understanding of its obligations.

The first goal on the cluster munitions issue will be to ensure that the CCM enters into force and becomes binding international humanitarian law by achieving the necessary 30 ratifications as soon as possible. The next objective will be to work toward universalization and its full implementation.

While the CCM represents momentous progress, much more time, energy and resources will be needed to implement its new rules. ICRC delegations around the world and National Societies must strive to ensure that the CCM's promise becomes reality on the ground in the shortest possible time.

The CCM is only one step in putting a comprehensive stop to weapons that "keep on killing" when an armed conflict ends. Civilians in far too many countries remain threatened by anti-personnel landmines and a range of unexploded and abandoned ordnance. National Societies, the ICRC and many other organizations are working in affected countries to clear contaminated areas, provide risk education, assist victims and promote international humanitarian law (in particular adherence to the CCM, Protocol V of the CCW on explosive remnants of war and the Convention on the Prohibition of Anti-personnel Mines). However, these efforts remain modest compared with continuing needs. A steady increase in political commitment and in available resources is needed to effectively address the growing burden worldwide of ERW and the lethal legacy of cluster-munition and landmine use.

Convention on Certain Conventional Weapons

The CCW can potentially establish effective rules and standards for those States not yet ready to sign or accede to the CCM. Nevertheless, current negotiations in the CCW framework will need to be closely followed to ensure that they produce new rules that protect civilians in the short term and complement the norms contained in the CCM.

Convention on the Rights of Persons with Disabilities

States party to the CRPD must report to the newly established Committee on the Rights of Persons with Disabilities on measures they have taken to implement the Convention. The Federation will provide advice to National Societies on the way in which victim assistance needs and programs might be integrated into government reporting under this treaty.

2. Explosive Remnants of War

Key developments

In 2008, States party to Protocol V on explosive remnants of war devised ways to assist States in their efforts to implement that instrument. For example, formats were developed for ERW-affected countries seeking assistance with ERW clearance, for the filing of national reports on Protocol V implementation and for sharing information on explosive ordnance and ERW. The 2008 meeting of States party to Protocol V also adopted a politically binding action plan to assist ERW victims. In addition to these administrative tools, it is hoped that States Parties will use the annual meetings on Protocol V to address more specifically the problems currently caused by ERW in affected countries. These matters will be considered for further work in 2010.

Movement action in 2007-2009

Experts from countries around the world affected by mines and ERW met in Oslo from 23 to 25 June 2009 to discuss how to improve the quality of life of victims of landmines, cluster munitions and other ERW in their countries. The meeting was organized by the ICRC and hosted by the Norwegian Red Cross. Participants included professionals involved in providing medical care, physical rehabilitation and socio-economic support for victims, representatives of international organizations involved in standard-setting in these fields and individual survivors of incidents involving such weapons.

The Oslo meeting identified how best to put these commitments into practice. It produced an Appeal to States party to the Convention on the Prohibition of Anti-personnel Mines and practical recommendations for States and relevant organizations aimed at ensuring that the survivors of these weapons, their families and communities see substantial improvements to their lives in the years ahead. Participants agreed that improving the lives of survivors of weapon accidents and others with disabilities will require States to give far greater priority to helping weapon victims and persons with disabilities generally. The States' commitments need to be included in national development plans and will entail providing adequate resources for improving health and social services and ensuring equal access to education and employment.

Future opportunities and challenges

In 2010 and beyond, it is hoped that States will use the annual meetings on Protocol V to solve the problems currently occurring in ERW-affected countries and to find further ways to make Protocol V an effective instrument that promptly addresses the humanitarian concerns arising from ERW. The ICRC will pursue its efforts to help States in these endeavors and can support National Society work with the governments aimed at ensuring effective implementation of the Protocol.

Today civilians in most regions of the world remain threatened by anti-personnel landmines, cluster munitions and a range of other unexploded and abandoned ordnance. National Societies, the ICRC and the International Federation will have to continue working in affected countries to provide risk education, risk reduction and victim assistance, and to promote international humanitarian law, in particular adherence to the CCM, Protocol V on explosive remnants of war and the Convention on the Prohibition of Anti-personnel Mines. Continued engagement by the Movement, a steady increase in political commitment and more resources are needed to end the suffering caused by cluster munitions, landmines and other munitions.