he is not particularly interested in the trial being conducted speedily. On the contrary, Karadžić wants the trial to go on for as long as possible, which is only natural, since his trial is probably the last time in his life that he will be in the spotlight. In any event, all is not done with the matter of Karadžić's self-representation, and the impact it might have on the conduct of a dignified and efficient trial.

E. Conclusion

The arrest of Karadžić indicates willingness on the part of the new Serbian coalition government (including, bizarrely enough, Milošević's own former party) to complete its cooperation with the ICTY and arrest the two remaining fugitives. The Government suffered less political fallout due to the arrest than could have been expected, possibly in no small part due to the rather inglorious circumstances in which the would-be national hero of the Serbian people was apprehended. Indeed, the main nationalist opposition party, led by Šešelj, recently split in half. Therefore, some degree of optimism that Ratko Mladić, the alleged architect of Srebrenica, will soon find himself in the dock, would not be unwarranted. As for Karadžić, the ICTY Prosecutor and judges certainly have an enormous task ahead of them. It can only be hoped that they have learned from the mistakes of the Milošević[20] and Šešelj[21] trials and that these will not be repeated.

MARKO MILANOVIĆ*

III. THE 2008 CLUSTER MUNITIONS CONVENTION: STEPPING OUTSIDE THE CCW FRAMEWORK (AGAIN)

A. Introduction

On 30 May 2008 some 107 States meeting in Dublin adopted the final treaty text of the latest addition to the family of humanitarian laws: the Cluster Munitions Convention (CCM). The Convention has been hailed as 'the most important weapons treaty for more than a decade'[1] that, according to a number of British former military commanders, will 'strengthen our [British forces] ability to use force effectively in the modern world'.[2] Not everyone attended the Dublin negotiations though, and key user States are

[20] See generally G Boas, *The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge, CUP, 2007); D McGoldrick, 'The Trial of Slobodan Milosevic: A Twenty-First Century Trial?' in R Melikan (ed) *Trials in History: International and Domestic Trials* (Manchester University Press, 2003) 179–94.

[21] See (n 12).

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[1] Simon Conway, Director of Landmine Action.

[2] Letter to the UK Secretary of State for Defence published in The Times, 'Cluster bombs don't work and must be banned', *The Times*, 19 May 2008, signed by General Sir Hugh Beach, Field Marshal Lord Bramall, Major-General Patrick Cordingley, Lieutenant-General Sir Roderick Cordy-Simpson, Lieutenant-General Sir Jack Deverell, Major-General the Rev Morgan Llewellyn, General Lord Ramsbotham, General Sir Michael Rose and General Sir Rupert Smith.

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continuing parallel discussions on a cluster munitions instrument within the framework of the 1980 Conventional Weapons Convention (CCW).[3] The road to Dublin has been a lengthy one, and in adopting a comprehensive cluster munitions ban States have achieved something undreamed of just three years ago. A ground-breaking instrument for sure, but what does its future hold and what does it mean for humanitarian law more broadly?

B. A Lesson In Failure

Cluster munitions usually entail a large canister filled with many smaller submunitions. The canister/dispenser is air-delivered or rocket-fired above the target area at which point the many smaller submunitions are released. Canisters may contain hundreds of submunitions which scatter over a wide area and are designed to explode on impact with a hard or soft target, being of utility against dispersed or moving targets. Cluster munitions, however, have gained a reputation over their thirty years of use for having an extraordinarily high failure-rate. Consequently, while an area may be carpeted with millions of such submuntions up to 30% will fail to detonate at the point of use. More up-to-date cluster munition technology tends to incorporate increased reliability, based on individual remote-sensor targeting, and extra safety features to reduce the dud-rate, such as self-destruct and self-deactivation mechanisms.

C. Lessons Learnt

With only 13 sponsoring States in 1974/76 a proposal to ban cluster munitions was easily defeated by the main user and stockpiling States, who downplayed the cluster weapons' deadly effects.[4] Proponents of a ban focussed on the wide area coverage of cluster munitions, which could affect combatants and civilians indiscriminately.[5] Even an accurately targeted military strike could not escape the fact of failed munitions, and with a proven, unacceptably high failure-rate leading inevitably to post-conflict harm caused by explosive remnants of war, many more have since come to question the legality of the use of cluster munitions in light of established humanitarian law principles. Encouraged by the successful negotiation of the 1997 Ottawa Treaty[6] banning anti-personnel mines (APMs), and frustrated at the stalled discussion at the CCW Review Conferences, many welcomed Norway's lead in sponsoring the 'Oslo Process'. And so it was that in February 2007 forty-six States signed the Oslo Declaration establishing a timetable of just under two years (end of 2008) by which to conclude a treaty to ban the use of cluster munitions that 'cause unacceptable harm to civilians'.[7]

[3] 1980 United Nations 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, (1980) 19 I.L.M. 1523–36.

[4] International Committee of the Red Cross, *Conference of Government Experts on the Use of Certain Conventional Weapons*, Official Statement (Lucerne, 1975) at 54.

[5] Virgil Wiebe, 'Footprints of Death' (2000) 22 Mich. J Int'l L. 85, at 154–6.

[6] 1997 Ottawa Treaty on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, (1997) 36 I.L.M. 1507 [Ottawa Treaty]. States refused to discuss cluster weapons during the Ottawa process.

[7] Available online at http://www.regjeringen.no/upload/UD/Vedlegg/Oslo%20Declaration%20(final)%2023%20February%202007.pdf

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Four Diplomatic Conferences later in May 2008 the Dublin text was adopted, allowing States to sign up to a comprehensive prohibition on cluster munitions from December 2008.

While setting a timetable clearly helped to keep the negotiations on track, reports of civilian deaths in Lebanon following Israeli and Hezbollah use of cluster bombs in 2006 in civilian areas helped States to maintain perspective.[8] By 2006 a number of States had already instituted national moratoria on the use of cluster weapons[9], while others had outlawed certain variants, particularly older varieties, recognising their unacceptable civilian risk. For example, in 2004 Canada began destruction of its Rockeyes[10], in 2007 the UK gave up its M26 MLRS Rockets and BL-755/RBL-755 because they lacked self-destruct mechanisms[11], and in 2001 the US imposed a 99% reliability requirement on all future sub-munitions production from 2005, albeit maintaining older versions for use and transfer to other user States.[12] Yet, the CCM is not just about such 'inaccurate and unreliable'[13] or so-called 'dumb' cluster munitions, its prohibition is drawn much more broadly.

D. Advancing International Humanitarian Law

Central to the new Convention is the notion of preventing more cluster munition casualties. The Convention recognises that due to their wide area effects the use of certain cluster munitions can have indiscriminate effects and risks causing an unbearable humanitarian toll.[14] In addressing this, the Convention works both to prevent harm at the point of use as well as long-term harm from failed munitions—most importantly, *whenever* they were used. Yet the Convention is more than a humanitarian instrument—it is also an arms control treaty. Consequently, using the Ottawa APM Treaty as a template, and building on the framework of the 2003 Protocol on Explosive Remnants of War[15], the CCM adopts a comprehensive prohibition on the use, development,

[8] See Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities, Handicap International, May 2007.

[9] Including Belgium, Austria, Norway, Hungary, Bosnia-Herzegovina, the Holy See, Ireland, Mexico, New Zealand; see Human Rights Watch, Survey of Cluster Munition Policy and Practice, February 2007, available online at http://hrw.org/backgrounder/arms/cluster0207/cluster0207web.pdf

[10] Canadian Department of National Defence, Backgrounder, 'Disposal of Rockeye Cluster Bombs at CFAD Dundurn' (27 July 2004), available online at http://www.forces.gc.ca/site/newsroom/view_news_e.asp?id=1439

[11] Adam Ingram, 'Answer to Parliamentary Question on Cluster Munitions', Hansard, Column 504W, February 1, 2007.

[12] See the Human Rights Watch Briefing Paper, 'Cluster Munitions a Foreseeable Hazard in Iraq', March 2003, and Secretary of Defense William Cohen, 'Memorandum for the Secretaries of the Military Departments, Subject: Department of Defense Policy on Submunition Reliability (U),' January 10, 2001.

[13] The wording refers to the 2006 ICRC call for a moratorium on use of cluster munitions.

[14] The US is not convinced that a ban is necessary; suggesting that the 289 recorded global cluster munition casualties in the 2007 edition of the 'Landmine Monitor' does not warrant such a prohibition, see White Paper: Putting the Impact of Cluster Munitions in Context with the Effects of all Explosive Remnants of War, 15 February 2008, available online at http://www.state.gov/t/pm/rls/fs/100751.htm

[15] Protocol V to the to the 1980 Conventional Weapons Convention, available at http://untreaty.un.org

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production, acquisition, stockpiling, retention or transfer (directly or indirectly) of cluster munitions.[16] The prohibition thus goes far beyond any simple limitation on use within urban areas or the vicinity of civilians, which precautionary measures had already been instituted and proven to be insufficient in reducing civilian casualties in Iraq.[17]

E. The Prohibition

Mirroring the Ottawa Treaty, the 1993 Chemical Weapons Convention[18] and the 1972 Biological Weapons Convention[19], the CCM bans use in all circumstances (thus including all classifications of conflict) and extends the prohibition, inter alia, of transfer and assistance to 'anyone'. Having recognised the risk of indiscriminate effects, the CCM imposes an immediate ban with no transition period. As the Ottawa Treaty, the CCM also addresses the issue of interoperability by forbidding parties to 'assist, encourage or induce anyone to engage in any activity prohibited to a State Party' under the Convention. It was this issue which gained much US interest from the sidelines. Under the Ottawa Treaty, State parties have needed to address this issue with regard to how they interpret the notion of 'assistance'.[20] Does it prohibit only 'active' assistance in operations where the non-party is planning to use APMs, does it prohibit the planning itself, are foreign stockpiles on a party's territory within its 'jurisdiction or control', and is foreign 'transit' of APMs across a party's territory prohibited? Consequently, non-party States are familiar with the necessary 'workarounds'[21] demanded when planning operations with parties to the Ottawa Treaty. However, while some small issues remain, since non-party States have largely abandoned the *use* of mines interoperability is rarely problematic in practice. The same could not be said of future interoperability issues regarding cluster munitions.[22] Hence, the fervent US behind-the-scenes manoeuvring. The CCM avoided being weakened on this aspect, but what is most interesting is the new provision in Article 21 which requires State parties to inform non-parties of their CCM obligations, to 'encourage' them to ratify and to make their 'best efforts to discourage' non-parties from using cluster munitions. It will be interesting to see how this obligation is observed in practice.

Pivotal to the negotiations was the definition of 'cluster munitions'. The refusal for a generally-drafted exclusion for smart cluster munitions was a major factor in keeping the US delegation away from the negotiations. Right to the last minute it seemed that

[16] Article 1.

[17] Human Rights Watch, *Off Target: The Conduct of the War and Civilian Casualties in Iraq* (New York: Human Rights Watch, 2003), at 94.

[18] Article I, 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, (1993) 32 ILM 800.

[19] Articles I to III, 1972 Convention on the Prohibition and Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, (1972) 11 ILM 309.

[20] Available at http://www.icbl.org/treaty

[21] *Forged in the Fire: Legal Lessons Learned During Military Operations, 1994–2006*, US Centre for Law and Military Operations, September 2006, available online http://www.loc.gov/rr/frd/Military_Law/CLAMO.html at 70, and 151–5.

[22] There are other indications that interoperability would not be such a problem, noting the policy of ISAF in Afghanistan not to use cluster weapons and the non-use by the US in Iraq since 2003, see Human Rights Watch, Statement to the Vienna Conference on Cluster Munitions, 6 December 2007, available online at http://hrw.org/english/docs/2007/12/06/global17637.htm

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the UK also sought to weaken the scope of the ban to retain its stockpiles of the CRV-7 rocket and M85 submunition, the latter of which includes a self-destruct mechanism. As with the US, the UK's arguments for retention of such varieties as the M85—based on smarter performance and fewer civilian casualties—was dealt a severe blow with evidence emerging from the Lebanon/Israeli conflict of the combat dud rate of 5–10 per cent, compared to that of 2.3 per cent as stated by the British Government.[23] Was this realisation the reason for the British Prime Minister's timely statement[24] during the Dublin negotiations, throwing his full backing behind a comprehensive prohibition?

Ultimately, while comprehensive the adopted prohibition is not absolute. First, the definition of 'cluster munition' at Article 2(2) refers only to those with submunitions of below 20 kilograms in weight, and excludes, without controversy, those designed to dispense flares, smoke, pyrotechnics or chaff, or to produce electrical or electronic effects. Second, the door was not completely shut to smart cluster weapons, albeit only legitimising those that fulfil five cumulative attributes, and so it is to these requirements that designers of new multiple munition weapons need look. Consequently, to avoid 'indiscriminate area effects and the risks posed by unexploded submunitions' a cluster munition will remain lawful where it contains fewer than ten 'explosive submunitions', each weighing more than four kilograms, which are individually designed to detect and engage a single target object and are equipped with an electronic 'self-destruction mechanism' as well as an electronic 'self-deactivating' feature.[25] In November 2007 the UK, among others, contracted to acquire the 155mm SMArt Ballistic Sensor Fused Munitions, each weapon containing two SWF submunitions. Whether this weapon will fall foul of the five-fold requirements will be an issue for the Review Conference.

The vast majority of cluster munitions currently stockpiled by States will fall squarely within the prohibition.[26] And so the CCM ban certainly represents a humanitarian milestone, particularly in light of the non-binding 'generic' measures found in the ERW Protocol.[27]

F. A Focus On Victims

While a comprehensive ban is an achievement, the CCM is much more than a disarmament treaty. The Preamble as well as operative clauses put the civilian victims—and their rights—at the heart of the treaty. Post-conflict rehabilitation and reconstruction is a key aim of the Convention, and it achieves this in two pivotal ways: first, extending State obligations for clearance of remnants-affected areas to cover not only new incidents of use but also existing remnants (those that pre-date the treaty obligations for a State party), and second, mandatory State assistance to victims.

[23] HL Deb 17 May 2007, cols 320–1, and House of Commons Foreign Affairs Committee, Global Security: The Middle East, Eighth Report of Session 2006–07, HC 363, p. 48. Estimates of duds from 'dumb' cluster munitions are now approaching 30%, see p. 48.

[24] 'Gordon Brown: Britain will Scrap Cluster Bombs', *The Telegraph*, 28 May 2008. The Prime Minister also stated his intention to work to 'bring in' other countries such as the US, see HC Deb, 4 June 2008, col 769.

[25] The quoted terms are further defined at Article 2(3)(9)(10).

[26] Note the CCM does not allow reservations, Article 19.

[27] Technical Annex, ERW Protocol V.

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Defined first within Article 2 is the broad notion of 'cluster munition victims', which includes those suffering physical as well as psychological injury, those killed, those suffering economic loss, social marginalisation or substantial impairment of their rights caused by the use of cluster munitions, as well as affected families and communities. This is strongly emotional language, not altogether absent from the earlier Ottawa Treaty, but there is a greater emphasis in the language of the CCM on rights, such as rights of persons with disabilities (referencing the new 2006 UN Convention[28]), and on age and gender sensitivity. In linking the notions of economic and social development to clearance is the reality that cluster duds (like mines) will hamper reconstruction efforts over a wide area and will delay the return of refugees and displaced persons. Consequently, the CCM provision on 'victim assistance' at Article 5 requires mandatory State action for cluster munitions victims within its jurisdiction or control. The provision starts from the premise that the State already has national disability, development and human rights frameworks within which to incorporate the mandated national plan and budget required for victim assistance. Victims and victim groups are to be consulted and actively involved in the national process, and their needs are to be assessed, and policies developed based on those needs. The State must designate a focal point within government for the coordination of implementation matters, and most importantly, States are to 'adequately' provide medical care, rehabilitation and psychological support, as well as for their social and economic inclusion. This ground-breaking CCM provision expands and cements provisions found in the earlier ERW Protocol and Ottawa Treaty, which merely refer to 'assistance for the care and rehabilitation and social and economic reintegration' of ERW/mine victims (respectively) but only for those parties 'in a position to do so'.[29] The CCM recognises, however, that there should be no discrimination between weapons victims, otherwise an odd disparity of treatment might result for victims dependent only on the type of weapon causing the harm.

Further ground-breaking obligations were included in the CCM to deal with the *existing* problem of cluster munition remnants for many States. Having been modelled closely on the Ottawa Treaty here, the CCM provides for the clearance of unexploded cluster munitions within a State party's own jurisdiction or control 'as soon as possible', but ultimately allowing for up to ten years where needed (albeit this period can be extended).[30] Where time extensions are requested for clearance within a State party, the State must provide detailed reasons as to what work has already been carried out and what is still necessitated.[31] The real gains were made with regard to imposing obligations on past 'user' States, building on the extraterritorial obligations first addressed to user States in the ERW Protocol. A past user State under the ERW Protocol 'shall provide where feasible' technical and financial assistance, inter alia, to the affected State.[32] Yet, while this obligation is limited to new uses under the ERW Protocol, the CCM expands it to prior uses of cluster munitions—uses that pre-date the

[28] Text available at http://www.un.org

[29] Article 8(2), ERW Protocol and Article 6(3), Ottawa Treaty.

[30] Article 4, CCM and Article 5, Ottawa Treaty.

[31] Article 4(6), CCM. Similarly, as regards the destruction of stockpiles, States have a renewable period of eight years and stringent conditions are demanded in requests for extensions, Article 3(4), CCM.

[32] Article 3(1), ERW Protocol.

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entry into force of the CCM for a State party.[33] This again was a sticking point for many historic user States who feared clearance obligations extending back for thirty years or more. Yet, while these States did not manage to remove the provision they did manage to weaken it from the mandatory language in early drafts of 'shall provide' to 'strongly encouraged to provide' such assistance to facilitate the marking, clearance and destruction of said cluster munition remnants. Recognising that cluster munitions are remotely-delivered weapons, there is provision also for the transfer of information to the victim State of known strike locations, as well as number and type of cluster munitions used.[34] Again similar to the Ottawa Treaty, further common but differentiated obligations of international cooperation and assistance are required of those States in 'a position to do so', particularly by way of emergency assistance.[35]

Mandatory and immediate obligations arise for detailed surveying, recording and marking of cluster munition contaminated areas within a State party's jurisdiction and control. Again building on the wealth of experience within the de-mining sphere, the CCM requires the prioritising of clearance needs, a national plan, mobilisation of resources, risk-education and very clear perimeter marking, fencing and monitoring of areas contaminated with unexploded cluster munitions.[36] Again this obligation is detailed, specific, and prioritises the needs of civilians. Furthermore, being contained in Article 4, this obligation is binding—unlike that found in the non-binding Technical Annex of the ERW Protocol.

G. *Ensuring compliance*

Modern weapons limitation treaties have tended to include strong mechanisms for monitoring and ensuring compliance by State parties. While the CCM has many compliance mechanisms, modelled specifically on the Ottawa Treaty, it does not go so far as many would have hoped. While the CCM does contain the new provision in Article 21 requiring State parties to encourage non-parties to adhere to the Convention, as well as many detailed and specific reporting requirements, it does not contain a general and mandatory fact-finding mechanism or verification inspections.[37] The reporting requirements established by the Convention (particularly Article 7 on transparency measures) are, however, particularly thorough; State parties need to submit an annual report to the UN Secretary-General on cluster munitions cleared and to be cleared[38], destroyed and to be destroyed[39], those retained for training purposes[40] and those transferred for destruction[41], as well as the types, lot numbers, location and technical characteristics of all cluster munitions previously used by them.[42] State parties must also report on the size and location of all contamination areas[43], methods of destruction of stockpiles and remnants to be used[44] as well as siting of destruction facilities[45] and the safety and environmental standards employed.[46] Reliable data

[33] Article 4(4), CCM.
[34] Article 4(4)(b), CCM.
[35] Article 6, CCM.
[36] Article 4(2) CCM, building on Technical Annex paragraph 4, Amended Protocol II to the CCW; Technical Annex to the ERW Protocol, and Article 5(2), Ottawa Treaty.
[37] Article 8(8), Ottawa Treaty.
[38] Article 4(1)(c), CCM.
[39] Article 1(1)(b), CCM.
[40] Articles 3(6)(8), CCM.
[41] Article 3(8), CCM.
[42] Article 7(1)(c), CCM.
[43] Article 7(1)(h), CCM.
[44] Article 7(1)(e)(f)(i), CCM.
[45] Article 7(1)(e)(f), CCM.
[46] Article 7(1)(e)(f), CCM.

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needs to be collected on victims[47], and information provided on risk education adopted[48], resources allocated[49], international assistance provided[50], the national plan adopted and the budget for victim assistance provision.[51]

While these monitoring and compliance mechanisms build on the Ottawa Treaty, unlike Ottawa and the Chemical Weapons Convention, the CCM mechanisms do not specifically envisage verification inspections.[52] There is the same 'request for clarification' provision, under which State parties can monitor the compliance of other parties to the Convention and 'request' information regarding compliance from the party. Parties so requested are afforded 28 days within which to submit 'all information that would assist in clarifying the matter'[53], and further provision is made for the Meeting of the Parties to be seized of the matter if the requesting State party is not satisfied with the response or there is no response.[54] The Meeting of the Parties may then examine the request and any response, and may recommend international assistance to aid the State party in its compliance or possibly adopt a fact-finding mechanism, but the details of this latter option remain obscure.[55] Overall, it is envisaged that State parties will cooperate to ensure compliance and clearly with regard to clearance obligations it is in a State party's interest to report and seek assistance if it is having difficulty clearing areas of its own territory. Furthermore, although now recognized as having the potential to cause 'indiscriminate' effects, cluster munitions do not share the same mass destruction characteristics of their brethren under the Chemical and Biological Weapons treaties where verification and inspection regimes, as well as recourse to the Security Council, have proved a necessity for global security.[56]

H. Concluding Comments

Participants and observers have hailed the CCM, and the Oslo Process, as a humanitarian victory. Rightly so, with regard to the ground-breaking advances in victim assistance and past user-State responsibility. Although the latter obligation was watered down somewhat, the final instrument is certainly very well drafted and managed to resist many other efforts aimed at weakening its rigour. It is an holistic instrument, covering victims, clearance, stockpile destruction and prohibition, as well as including strong obligations of transparency and annual review, and so will remain a living instrument. Yet, while it might be relatively easy to obtain the thirty required ratifications[57], the key to the success of the CCM, like many instruments of this nature, will be in securing the acceptance of the main user and transferring States. Unlike anti-personnel landmines, cluster munitions have not generally found their way into the hands of non-State actors and so that threat, at least for now, remains latent. It is, however, the main user States such as the US, UK, Russia, China and Israel that need to feel the heat from the stigma that will attach to cluster munitions once the Convention

[47] Article 7(1)(k), CCM.
[48] Article 7(1)(j), CCM.
[49] Article 7(1)(m), CCM.
[50] Article 7(1)(n), CCM.
[51] Article 7(1)(m), CCM.
[52] Article IX and Verification Annex to the Chemical Weapons Convention.
[53] Article 8(2), CCM.
[54] Article 8(3), CCM.
[55] Article 8(5)(6), CCM.
[56] Article XII, Chemical Weapons Convention and Article VI, Biological Weapons Convention.
[57] Article 17, CCM.

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enters into force.[58] If the UK does ratify the CCM (and it may take many years before ratification), not being party to the ERW Protocol, it will face renewed pressure to aid in the clearance of territories affected by its past uses.[59] Furthermore, with negotiating States having recognized the risk of indiscriminate effects with cluster munitions will the stigma surrounding their use now evolve a new customary prohibition?[60] Looking to the CCM's effect on humanitarian law more broadly, does the CCM signal the end of area effects weapons?[61]

Meanwhile, the CCW process continues in Geneva, and the Group of Governmental Experts there have tasked themselves with the negotiation of a potential sixth protocol to the 1980 Treaty specifically on cluster munitions. As proposals currently stand the protocol would function similar to Amended Protocol II on mines, legitimizing cluster munitions with under 10 submunitions and re-iterating basic principles of humanitarian law.[62] With key provisions on 'general prohibitions and restrictions' not yet drafted, it will be interesting to see how the negotiations unfold once the CCM enters into force. It cannot be disputed that some limitations are better than none when it comes to die hard opponent States of the CCM, but similarly it cannot be disputed that the CCW process has again been found wanting. Damaged by its slow progress to limit the effects of such an inhumane weapon, the CCW process has again been cast aside for a more effective, albeit ad hoc, negotiating forum.

KAREN HULME*

[58] See the US Secretary of Defense statement of 19 June 2008, available online at http://www.defenselink.mil/news/d20080709cmpolicy.pdf

[59] Both Britain and the US have undertaken extensive mine clearance in Afghanistan, Iraq, and Kosovo and other affected countries, see US White Paper, *supra* note 14.

[60] Note the UK's human rights obligations under the 1998 Human Rights Act, although there may be problems with jurisdiction issues—note R (on the application of Al-Skeini and others) v. Secretary of State for Defence [2007] All ER 106, and R (on the application of Al-Jedda and others) v. Secretary of State for Defence [2007] All ER 185; and Article 91 of the *1977 Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, (1977) 16 ILM 1391–1441.

[61] Richard Moyes, 'Implications of the Convention on Cluster Munitions for developing a norm against area-effect use of explosive weapons', Landmine Action, 23 July 2008, available at http://www.landmineaction.org/

[62] Current drafts are available online at http://www.unog.ch/

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