



## UN REGIONAL SEMINAR FOR CENTRAL ASIA ON PROMOTING THE UNIVERSALITY OF CCW AND ITS PROTOCOLS

### REPORT

#### I. Summary of the Proceedings of the Seminar

##### *Introduction*

The fourth regional seminar financed by the European Union through Council Joint Action 2007/528/CFSP of 23 July 2007 in order to support the CCW Plan of Action on Promoting the Universality of CCW and its annexed Protocols, was held in Almaty, Kazakhstan, on 24-25 September 2008. The seminar was hosted by the Republic of Kazakhstan and organized by the UN Office for Disarmament Affairs (UNODA). Twenty-five participants from all invited Central Asian States, the Russian Federation, Lithuania and France (EU Presidency), as well as from EU, ICRC, UNIDIR, UNMAS, UNODA and the OSCE participated in the seminar (a list of participants is attached).

The main goal of the seminar was to promote the accession to the CCW by States in Central Asia through providing a forum for relevant government officials representing both Foreign Service and the military to be informed on the content of the Convention and its Protocols, recent CCW-related developments and trends. The seminar had the following objectives:

- (i) to encourage States not parties in the region to accede to the CCW by explaining the Convention and its Protocols, and to outline the importance and benefits of adherence and implementation;
- (ii) to provide information and clarify the aims and functioning of the CCW process;
- (iii) to identify the obstacles/difficulties facing States in their accession as well as the areas of assistance needed;
- (iv) to establish a network of national points of contact for CCW follow-up in the countries from the region, as well as UN-RCPD and OSCE;
- (v) to identify potential beneficiaries for the CCW Sponsorship programme; and
- (vi) to identify concrete steps that the Central Asian States could take towards accession to CCW and its annexed Protocols.

The seminar was opened by Mr. Xiaoyu Wang, Senior Political Affairs Officer, UNODA. He stressed that the CCW is a major International Humanitarian Law (IHL) and disarmament treaty based upon the IHL principle that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited. He underlined, in particular, the constantly growing significance of the CCW process, but emphasized that with 107 States parties, the CCW is well

short of universal membership and its weakness is in the absence among its members of a number of ERW and mine-affected countries to bring together their experience, expertise and interest. Mr. Wang expressed his deep appreciation to the Government of Kazakhstan for its hospitality and the generous support for the seminar from the European Union.

In his welcoming remarks, Mr. Bagyt Abylgazin, Adviser to the Foreign Minister of Kazakhstan, made an overview of Kazakhstan's activities in the domain of conventional arms. Of special significance is his announcement that Kazakhstan has initiated its interagency coordination process of acceding to CCW and its Protocols I on Non-detectable fragments, III on Incendiary weapons and IV on Blinding laser weapons.

In his opening remarks, Mr. Tomas Reyes Ortega, Office of the Personal Representative of the High Representative for the Common Foreign and Security Policy on non-proliferation, stressed the importance that the European Union is attaching to the universality and implementation of the CCW and gave an overview of the EU activities, in particular the EU Joint Action in support of the CCW. He underscored that the seminar was aimed at explaining the benefits and significance of acceding to the CCW; identifying particular areas of difficulty for States not parties to the Convention; understanding their needs and preparing the national implementation of the Convention and its Protocols.

In the name of the French Presidency of the EU, Mr. Gregoire Chilovsky, Chargé d'affaires, Embassy of France to Kazakhstan and Kyrgyzstan, also made a statement at the opening. He stressed that CCW has the potential to respond to advancements in weapons technologies and developments with a special emphasis on humanitarian considerations. He emphasized, in particular, the example of CCW Protocol V and pointed out that accession and implementation is the result of political will, but also legal and technical expertise which this seminar is entitled to make available.

### ***Sessions on an overview of the CCW and its Protocols***

*Moderated by: Ms. Christiane Agboton-Johnson (Part I)*

*Mr. Tomás Reyes Ortega (Part II)*

Mr. Peter Kolarov, Secretary of the CCW meetings, UNODA, provided a detailed presentation on the Convention and its Protocols, its historic background and evolution, humanitarian objectives, military perspective, and clarified the structure of the CCW process and its current status.

Mr. Patrick Zahnd, Regional Legal Adviser, International Committee of the Red Cross, made a presentation on CCW and the International Humanitarian Law. He introduced the international legal framework (treaty law and customary law) and referred to the general IHL rules of conduct of hostilities translated into CCW, such as the rules of distinction, proportionality in attack, prohibition of indiscriminate attacks, and prohibition of the use of weapons that cause unnecessary suffering or superfluous injury. He made an historic overview of the evolution of international law and emphasized, in particular, that political determination, universality and strict implementation are key factors that prevent treaty violations.

During the exchange of views which took place at these two sessions some participants highlighted that regional disputes and bilateral conflicts still prevent them from joining the CCW and some other disarmament treaties, as well. Continuing use of landmines was, in particular, one of the reasons emphasized. These remarks provoked additional clarifications on the unique structure and flexibility of the Convention which also permit accession to only some of the Protocols at a time. The value of Protocol V and the amendment to Article 1 of the Convention were accentuated as being of particular relevance to those States that had been recently or are still in armed conflict, being international or not international in character. Humanitarian considerations which inspired and led to the adoption of the CCW and its Protocols were underlined as well as the high political value of joining IHL treaty despite continuing bilateral tension and border disputes.

Difficulties in the ratification process were also reiterated as well as existing legislative priorities, which are such that bringing to the executive's attention the question of ratification or accession to the CCW and its Protocols is not easy. Moreover, as also underlined during the previous seminars, the CCW and its process are complicated, sometimes unclear and even arcane when viewed against day-to-day priorities. It is noteworthy that Afghanistan announced it has initiated its national ratification process despite the long list of other vital treaties, which require legal action.

Some participating States underlined the challenges they are facing in terms of clearing mines and ERW as a result of armed conflicts on their own territory or territory under their control. It was stressed, in particular, that for the deminers the exact user of mines or weapons which have resulted in ERW it is of no relevance and they are pursuing their humanitarian action notwithstanding whether these explosive ordnance are the result of the military activities of the friendly or enemy forces. In this respect it was emphasized that ratification of the relevant CCW Amended Protocol II and Protocol V is only the first important step. Dissemination of the CCW and its Protocols and their relevant education by the armed forces is of particular importance for the strict implementation and non-violation of the provisions of the Convention.

Several legal issues were also raised, in particular, how to assess the "military necessity" and how to minimize incidental loss of civilian life, the amendment to Article 1 of the Convention and the status of the Non-State Actors, and others.

### ***Sessions on CCW and Mine Action***

*Moderated by: Mr. Roman Hunger (Part I)*

*Mr. Raoul Forster (part II)*

Mr. Peter Kolarov provided a detailed overview of the historic background and the negotiations that led to the adoption of CCW Protocol V on Explosive Remnants of War (ERW). He highlighted the main provisions of the Protocol, the results of the first Conference of the States parties to the Protocol and its current status and structure. He focussed, in particular, on the implementation mechanism established under the Protocol and clarified the results of the first Meeting of experts and prospects for further work.

Mr. Gustavo Laurie, Liaison Officer at UNOG, UNMAS, made a detailed presentation on the pillars of mine action, the existing legal framework, referring in particular to the Mine Ban Convention, CCW Amended Protocol II (AP.II) and Protocol V, as well as the UN Convention on Rights of Persons of Disability. Part of the presentation was devoted to the UN Policy on mine action. He also provided a detailed explanation of the provisions of CCW Amended Protocol II.

During the discussion it was highlighted that Protocol V provides for three types of responsibilities: (i) for the State in control of the territory contaminated with ERW: to survey, assess the risk, prioritize the needs, mark, and clear, remove or destruct ERW, as well as to take all appropriate action to protect civilians from the effect of mines and ERW; (ii) for the user of the ammunitions that may become ERW – to record, retain and transmit relevant information for the weapons used, and to contribute to clearance in the cases it is not in control of the contaminated areas; and (iii) for the international community – to provide and promote international cooperation and assistance.

Military participants in the seminar pointed out potential difficulties in implementing the recording obligations under Protocol V mostly due to the dynamics of the armed conflict, but it was underlined that this instrument was made for the combatants (not for the politicians), and one of its main aims it to create new culture of acting in a responsible manner by keeping records of the ammunitions used. In this respect the representatives of one State emphasized the challenge they are facing at home in clearing old mines and ERW from previous occupation and newly emplaced landmines by rebel forces, as well.

The existing regulations on Anti-Vehicle Mines also provoked particular interest. It was clarified that only the general obligations in Amended Protocol II apply to these weapons and no specific prohibitions have been agreed upon yet thus leaving this issue for future negotiations. The need of such specific regulations due to the considerable humanitarian impact (mostly post-conflict) of these mines was emphasized.

### ***Session on the implementation of the Convention and its Protocols***

*Moderated by: Ms. Zhanat Zakiyeva*

Mr. Peter Kolarov made a detailed presentation on the issue of the establishment of a CCW compliance mechanism, tracing the historic evolution of the different proposals for compliance with and/or monitoring of the Convention and its Amended Protocol II and Protocol V. He also analysed the relevant compliance decisions taken by the Third CCW Review Conference and the 2007 Meeting of the CCW States parties, its current legal framework, and status of implementation.

Mr. Rustam Atadjanov, Legal and Educational Programmes Officer, ICRC Regional Delegation in Central Asia, delivered a very detailed presentation on the implementation requirements of the Convention, the implementation challenges which differ greatly between the Protocols, as well as the environment that made implementation efforts more practical, realistic and achievable. In this regard and as a part of the discussion on the issue of national implementation, he also touched upon the obligation (Article 36 of Amended Protocol I to the Geneva Conventions) and

the existing national practices in assessing the legality of new weapons. On this last issue one participant underlined that there is no universally recognized methodology to assess the legality of new weapons which remains subject to the national practice.

Ms. Elli Kytomaki, FSC Support officer, Conflict Prevention Centre, OSCE, outlined that 6 of the 56 members of the organizations are not yet parties to the convention. She gave a general idea of OSCE's involvement in the implementation of the CCW, including national reporting on the implementation of Amended Protocol II and Protocol V and assistance to the OSCE member states to meet their obligations under the Convention.

The representative of the Russian Federation, one of the two States parties present at the seminar, shared Russia's national experience in joining the Convention and its Protocols and their national implementation, including the development of national legislation. In particular it was underscored that national implementation of CCW and its Protocols does not require considerable efforts or funding at the national level and often falls within State's general obligations under international humanitarian law.

The structure and various activities of the national commissions on the implementation of IHL were also considered and explained. It was underlined that some States have active Red Cross national societies, national commissions and Geneva Convention dissemination committees that could promote and be very useful in assisting the process of accession to the CCW.

### ***Session on an overview of the current CCW Agenda***

*Moderated by: Mr. Gustavo Laurie*

Mr. Peter Kolarov made a detailed overview of the current agendas of the Tenth Annual Conference of the States parties to Amended protocol II and the Second Conference of the States parties to Protocol V and analysed the trends and prospects for further activities under these two regimes. He also referred to the establishment of a standing agenda item on the status of and compliance with the Convention in the annual meetings of the States parties to the Convention and made a detailed presentation on the issue of mines other than anti-personnel mines (MOTAPM) clarifying the humanitarian impact associated with their use, the proposed solutions, the negotiations which took place within the CCW Group of Governmental Experts, as well as the current status of the issue.

Ms. Christiane Agboton-Johnson, Deputy Director of UNIDIR, provided a detailed presentation on cluster munitions, clarifying their structure and functioning; problems related to their reliability or accuracy, associated unacceptable humanitarian harm; and measures undertaken within the CCW as well as outside the process.

Once again, the necessity for additional restrictions and prohibitions on mines other than anti-personnel mines was in the focus of attention of the discussion. One delegate insisted that the use of these mines and not the introduction of expensive technical requirements is the way to address their alleged humanitarian impact. Additional clarifications were also given on the idea to consider within the Amended Protocol II the draft best practice on anti-vehicle mines with

sensitive fuzes – an outstanding issue from the past negotiations on MOTAPM and a grey zone between the APLC and CCW regimes.

***Session on promoting universal adherence of the CCW***

*Moderated by: Mr. Peter Kolarov*

Mr. Xiaoyu Wang, UNODA, provided detailed information on the CCW Plan of Action and CCW Sponsorship programme adopted by the Third CCW Review Conference at the initiative of the UN. He highlighted the process of negotiation and the understanding reached among the States parties, the main goals of the Plan of Action and the Sponsorship Programme, the available implementing tools, operational modalities and selection criteria.

Ms. Christiane Agboton-Johnson made detailed presentations on the benefits of joining CCW and its Protocols and referred to the available tools and the contribution that could be made by UNIDIR, in particular in the conduct of research on disarmament and security topics with the aim of assisting the international disarmament thinking, efforts and decision-making; promote creative thinking and dialogue through developing research projects, publications, meetings and expert networks; produce publications; etc.

Mr. Patrick Zahnd made a detailed presentation on the legal framework and procedure for accession to the CCW and the role of the existing national IHL structures. He introduced the CCW ratification kit developed jointly by ICRC and UN and emphasized the factors on which the success of this exercise will depend, namely political will, expertise, available processes or national structures and cooperation and assistance from the relevant international actors. He also made an overview of the existing IHL monitoring mechanisms and advised that IPU should also be involved in the CCW advocacy.

Ms. Elli Kytomaki, outlined the OSCE's presence in the region and its potential involvement in the implementation of the CCW.

Mr. Gustavo Laurie provided additional information on the involvement of and the assistance UNMAS and the other members of the UN Inter-Agency Coordination Group on Mine Action could provide.

Mr. Roman Hunger, Special Coordinator for Peace and Disarmament Programs, UN Regional Centre for Peace and Disarmament in Asia and the Pacific (UN-RCDP) presented the newly established Centre and emphasized that one of the practical measures the Centre will develop will aim at assisting the process of accession to the CCW through development of adequate knowledge and understanding about the Convention.

Mr. Peter Kolarov made available additional information on the assistance that the CCW Secretariat and ODA could provide in the process of adherence and implementation of the CCW. He also introduced the CCW official website which contains all relevant information on the accession to, compliance with or implementation of the CCW and its Protocols.

The participants advised on the steps taken towards ratification and/or accession to the Convention and the problems they encountered. Several participants expressed very promising degrees of support and commitment to becoming party to the Convention. The representatives of Azerbaijan and Armenia referred to their bilateral conflict as a reason for not being parties to the Convention, but both made it clear that they will recommend accession to the CCW. The participant from Kyrgyzstan underlined the country is not yet a party to the Ottawa treaty because it cannot meet the APLC deadline of for stockpiles destruction and announced that she will prepare a report suggesting the accession of Kyrgyzstan to CCW. Afghanistan highlighted that after decades of foreign aggression and internal conflicts they have a long list of treaties to examine with the view of possible accession and also announced that he will recommend accession to the CCW.

### ***Session on other related issues***

*Moderated by: Mr. Xiaoyu Wang*

This session focussed entirely on the relationship and complementarity of the CCW and the other relevant treaties, in particular APLC and CCM. During the discussion it was stated that landmines – a subject of Amended Protocol II – have also been dealt with under the more recently concluded treaty, the Anti-Personnel Landmines (or Mine Ban) Convention. The latter, however, - unlike APII - does not cover mines other than anti-personnel mines (MOTAPM), booby traps, or other explosive devices.

Cluster munitions may, likewise, ultimately be covered both by a CCW Protocol VI and the CCM resulting from the Oslo process. Essentially, the former option entails a balancing of elements of military utility and the humanitarian consequences of cluster munitions, while the latter option is focused primarily on the humanitarian considerations impacted by the use of cluster munitions.

The Ottawa and Oslo processes have taken place outside the CCW, but both have reflections within it. More importantly, even those States that have led the Oslo initiative have been careful to explain that they do not wish to diminish the existing body of IHL that the CCW and its Protocols represent, nor the principles that are embodied in the CCW. These principles are basically that methods or means of warfare are not unlimited and that weapons, projectiles and material and methods of warfare that cause superfluous injury or unnecessary suffering should be prohibited. In this regard, the responsive, flexible and forward-looking nature of the CCW was noted.

### ***Closing session***

*Chaired by: Mr. Xiaoyu Wang*

*Panellist: Ms. Christiane Agboton-Johnson*

The closing session provided an executive summary of the seminar. In particular it focused on the benefits of joining the CCW, as follows:

(i) CCW is about International Humanitarian Law and national security. It aims at enhancing protection of both civilians and combatants without compromising national defence capability.

Becoming party to the CCW helps reinforce the fundamental humanitarian principles, and strengthen the norm against ammunitions with non-detectable fragments, many categories of mines, booby traps and improvised explosive devices, incendiary weapons, and blinding lasers. Hence support for CCW also means support for IHL in general.

(ii) Many of the participating States are mine and ERW-affected hence the increase importance for the region of CCW Amended Protocol II, especially in light of the fact that some of the States announced that they are not yet in a position to join the Mine Ban Convention. Moreover, the international community has been developing and strengthening a norm – through Protocol V – on providing post-conflict measures to minimise the risk of explosive remnants of war, dealing with their clearance and destruction, offering assistance to do so, and thereby mitigating humanitarian suffering and economic deprivation that results from the aftermath of conflict. Protocol V is particularly relevant for Central Asia.

(iii) Central Asia is an area affected by a number of recent or on-going armed conflicts, both international and of non-international character. Accession to CCW will help strengthen this treaty but will also contribute to international, regional and national security and the rule of law. It will bolster the international standing and credibility of the countries from the region and may play a positive confidence building role in the management of the existing bilateral and regional disputes.

The following practical matters were also highlighted:

(i) *Treaty-making*: Article 4 sets out the formal requirements for becoming party to the CCW, in particular the requirement to become party to at least two or more Protocols. Hence States which consider that for national security, financial, technological or other reasons cannot join yet all the Protocols are free to adhere to the Convention by joining only a few of its Protocols.

(ii) *Legislation*: Accession procedures and legislation to implement the obligations under the CCW and such Protocols is a matter that can be determined by States on the basis of their respective constitutional processes. In addressing this question, and indeed in helping legislatures and executives grapple with becoming party to the CCW and its Protocols, the participants in the seminar were reminded that support is available should it be needed. They were also reminded that for the success of this endeavour several conditions will have to be met, namely political will (both at the level of the executive and the parliament); expertise; and – if possible - the existence of ad-hoc or standing process (such as the national committees for IHL).

(iii) *Support*: In terms of support for accession and implementation, the sources range from:

- UNODA through the CCW Secretariat and the UN Regional Centre for Peace and Disarmament in Asia and the Pacific, and the UN entities, including those represented in the seminar, UNMAS, UNIDIR, UNICEF;
- the European Union as demonstrated in the provision of financial resources to make this seminar a reality;
- the International Committee of the Red Cross (ICRC) and its Regional Legal Advisors;
- regional organisations such as OSCE;

- national Red Cross Societies and the national IHL committees/commissions, wherever they exist;
- other international structures, such as the IPU.

Mr. Gustavo Laurie emphasized that UNMAS in its capacity as the focal point for mine action within the United Nations system was very grateful that the regional seminars for the promotion of the universalization of the CCW have included a clear segment to highlight the value of the CCW and its protocols, notably Amended Protocol II and Protocol V, to global mine action efforts. This element has motivated UNMAS to support actively this important initiative by sending entirely on its own resources an official to each of the seminars to serve as panelist and chair for some of the sessions. UNMAS' commitment to continue to provide assistance throughout the duration of the joint action was also underlined.

## **II. EU visibility**

The EU contribution to the implementation of the Plan of Action for Promoting the Universalization of the CCW (the EU Joint Action), and in particular the EU financial support for the organization of the Almaty seminar were referred to in the invitation letters by the HR to all the participants; in the opening remarks by the UN representatives and the Host country; as well as in the background paper of the seminar. Many participants from the region expressed their gratitude to the EU for the financial support. A representative of the EU Presidency was present at the opening of the seminar, and EU representative chaired sessions and participated in the discussions. A press document on the holding of the seminar was released. Information on the Council Joint Action is contained in the official CCW website.

## **III. Analysis of needs of the States not Parties. Potential difficulties or problems encountered. Recommendations**

- States not parties to the CCW from Central Asia are affected by the weapons prohibited or regulated under the CCW and its Protocols, in particular landmines and ERW. Some of them have very limited resources and refer to this argument in order to explain the reasons for not being able to join APLC and CCW APII (lack of funds for marking and fencing minefields and ERW-contaminated areas, in particular when the user is another country, and their clearance). Therefore, focus in future advocacy efforts should be on the benefits of joining Protocol V (very relevant) and the possibility to adhere at the first stage only to a few of the protocols, leaving APII for a later stage.
- Armenia and Azerbaijan both emphasized their bilateral conflict as the main reason for not being able to accede to the CCW. In bilateral consultations with the representatives of these countries efforts were made to convince them in the benefits of acceding to CCW APII and Protocol V, in particular for States in a conflict. A possible avenue to explore is the idea which came during the bilateral consultations with them on the possible synchronization of the accession of the two States to the CCW (and APLC as well) the way this was done by Greece and Turkey when acceding to the Ottawa treaty.
- Afghanistan expressed clear interest in joining CCW, but emphasized that after decades of armed conflicts they have to review a very long list of potential conventions to accede to. CCW is part of the list, but – because of the large number of treaties – this process

will take time. Further work will be needed with this country to assist them in this process.

- For some of the States accession to the Convention is not among their immediate legislative priorities. Therefore, in future advocacy initiatives special emphasis should be placed on general support for IHL, solidarity and non-proliferation. Like in other regions of the world, some States have active Red Cross national societies and national commissions/committees for IHL that could assist with the process and to help raise public awareness and the awareness of military. Future collaboration with these organizations may be useful and should be encouraged.
- The overall knowledge of IHL and disarmament was good and most of the participants were active in expressing their views. They all stressed how useful the seminar was to help them understand the structure of the Convention and its process which is quite complicated and confusing. Further efforts to explain the Convention and its protocols as well as the process are needed. For this purpose establishing a network of focal points and inclusion of the participants in a CCW mailing list should be envisaged.
- It is noteworthy that this was the first of the series of EU sponsored CCW seminars to which two participants per country were invited in an attempt to cover both the Foreign Service and the military. The overall assessment is that this approach is much more successful and useful as the message was brought immediately to the two key players on which the accession depends. Moreover, the seminar helped to establish effective links not only between the organizers and the representatives of the two national institutions but also between themselves as in most of the cases the two respective national representatives were interacting very efficiently in presenting their national case;
- Some of the States do not have missions in Geneva, the others have limited staff and cannot cover CCW meetings effectively. Sponsorship under the CCW Sponsorship programme provides a solution to increase immediate knowledge of the Convention and its process for the purposes of accession. It remains, however, a limited tool due to the modest financing for such an extremely busy year like 2008. Moreover, most of the resources come from the EU joint action and are limited to 18 months hence the need to elaborate another funding strategy that would contribute to the implementation of the programme in a continuing basis.

#### **IV. Follow up**

- Actively involve the regional ICRC legal advisers in the CCW advocacy.
- Establish direct contact with OSCE on its possible active involvement in promoting accession by the States from the region to CCW and its Protocols.
- Active involvement of UN-RCDP in following up the outcome of the seminar especially through monitoring steps towards accession.
- Identification of focal points to be included in a network of national points of contact for CCW follow-up in the countries from the region.
- Send yearly list of CCW activities as well as relevant information on the treaty event to all participants.
- Incorporate new information on CCW status from discussions and presentations made at the seminar in the CCW status database.

- Identify proper follow-up activities, like focused one-two day country specific briefings for the executives and parliamentarians on CCW and accession procedures.
  - Participate in the ICRC organized regional IHL activities with parliamentarians, diplomats and experts and use them to further clarify the Convention and its process.
  - Post the CCW ratification kit in all UN languages on the CCW website.
-