From Mines to Cluster Munitions: Mobilising to Stop Weapons which keep on Killing

- What was achieved in negotiating the Mine Ban Treaty here in Oslo ten years ago was truly astounding. Some hundred States adopted a treaty with no exceptions, no reservations and no loopholes. For the first time in history a weapon which had been in widespread use by virtually all countries of the world was being banned. This was being done not because the weapon was considered obsolete but because of the horrific impact it was having on civilian populations around the world.

- In retrospect, I think it can now be said that what was achieved went far beyond anti-personnel mines. The adoption of the Mine Ban Treaty was also the birth of a new “soft” norm that has become embedded in the “public conscience”. It is also slowly becoming embedded in law in the form not only of the Mine Ban Convention but also in the 2003 Protocol on Explosive Remnants of War (ERW) and the emerging 2008 Convention on Cluster Munitions. This norm says that weapons which can’t stop killing are abhorrent and unacceptable. This norm says that the terrible price civilians pay in today’s conflicts is bad enough but that using weapons which go on killing and maiming civilians for years or decades after conflicts end is truly “beyond the pale”.

- If we were to think of any domestic product which consistently and obviously has harmful side effects including injury, death and high social and economic costs we can be sure that such products would be rapidly prohibited and taken off the market. Why was it then that for so many decades it was considered “normal” for mines to be laid in the killing fields of Cambodia, Afghanistan, Angola and Central America and then left behind to take their toll on farmers and their children? Why was it considered alright to drop tens of millions of cluster munitions on communities where people live, despite knowing that a large portion would become lethal debris, and then leave the problems behind for these communities to deal with? And why were the thousands or even hundreds of thousands of tons of unexploded ordnance left following most major conflicts just considered someone else’s problem?

- Perhaps that was just the thinking of another era…the Cold War and the pre-Cold War eras. Thank goodness it’s over! Over, except of course for the lifelong struggle of the mothers without legs trying to raise their children, and the children without hands trying to learn a trade and the fields without seeds and the stomachs without enough food because the fields are without seed.

- Of course the legacy of this period will only truly be over when the Mine Ban Treaty has been universalised, the objectives of the Protocol on ERW have been completely fulfilled and the legacy of Cold War era cluster munitions has been completely eliminated. But in ten years we have truly come a long, long way.

- When we think of one of the key purposes of international humanitarian law – to spare civilians from the effects of hostilities it becomes clear that weapons which keep on killing do just the opposite. They spare no one and they can make the human
costs of the weapon disproportionate to the military benefits achieved. They also reflect poorly on the forces which use them and make achieving the political objectives of military operations more difficult.

- In the ten years since the MBT was adopted here in Oslo I believe it is fair to say that a norm now exists that States are expected to do all within their power to avoid the use of weapons which keep on killing and to take responsibility for their explosive remnants of war. Indeed with regard to landmines a decade-long ICRC study concluded that precautions to protect civilians, including marking, fencing and clearance have become part of customary international humanitarian law – binding on all parties to all conflicts.

- But the work is far from over. Implementing the norms, whether soft or hard, and preventing their erosion is at least as difficult and requires perhaps even more persistence than creating them in the first place. With ten years’ perspective we can also see the challenges as never before. Perhaps I could name just a few:

  - **Mine Ban Treaty** – we are about to enter one of the most challenging phases yet
    - managing clearance deadlines beginning on 2009 in a way which maintains the credibility of the treaty and creates maximum pressure for completion before the deadline or within a realistic and well planned extension period;
    - Addressing compliance issues: by ensuring that extensions do not permit the de facto “use” of AP mines (through failure to clear) and responding to, or better yet, preventing the violation by of one of the major stockpilers of its non-extendable deadline for destruction.

These issues can’t be passed on to the future as we continue to focus on our successes. They must be addressed in the next six to twelve months or lasting damage will be done to the treaty.

- **Explosive Remnants of War** – we now have only a framework for action in the Protocol on Explosive Remnants of War, but what is needed is a regime as ambitious and well structured as that of the Mine Ban Treaty has been.
  - we need a commitment at the First Meeting of States Parties to the Protocol in November to operationalising the Protocol;
  - every State needs to establish regime to record, retain and release information on all munitions used;
  - the Protocol must become a forum for addressing existing ERW

- **Cluster Munitions** – continue to increase the momentum through national moratoria, achieving a strong treaty prohibiting inaccurate and unreliable cluster munitions in 2008, while at the same time building maximum pressure on the major powers which have not yet decided if or how to address this problem.

- Another weapon which can’t stop killing is **Anti-vehicle Mines**. Unfortunately the lack of adequate controls on the use of anti-vehicle mines is the major gap in the web of law in this field. The failure of States Parties to the Convention on Certain Conventional Weapons to agree on any new restrictions after 4 years of discussions is the most notable failure in this field in the past ten years. It also raises questions about the practice of consensus used to adopt new norms in that forum. I would urge the 25 States which jointly committed themselves to enact new restrictions to report publicly on their progress in doing so, as a means of continuing pressure in this field.
Resources – The final and lasting challenge is the mobilisation of resources to clear mines and ERW already in place. Each new conflict, especially those which are highly mediatised, leads to a short outpouring of resources. But this is often short-lived and the pace of clearance from less visible or forgotten conflicts is often woefully inadequate. Even major established clearance programs such as Afghanistan must struggle each year to avoid laying off staff. In Latin America clearance staff trained by the OAS in one recent year were sent home after training due to the lack of funding to actually do their work.

Though we can be thankful that funding has remained steady over the past ten years we should also put this in perspective. This same steady level of funds is being used to clean up from a growing number of conflicts and the total available globally hardly compares to the cost of running a major city fire department or building one fighter aircraft. This means that many preventable accidents from current mine contamination will occur for lack of clearance resources. More funds, and more sustainable funding, is needed now and for the foreseeable future until the effects of our preventive efforts finally bear fruit.

In closing I would urge us all to see ourselves as custodians not only of the Mine Ban Treaty but also of the broader norm to which it gave birth: that weapons which keep on killing must be stopped. Stopped through prevention at the design stage and through destruction of existing stocks of problematic weapons. Stopped on the ground through clearance. And, for those such as anti-personnel mines and inaccurate and unreliable cluster munitions, through complete prohibitions on use.

When the 2008 treaty on cluster munitions is adopted we will have a broad normative framework to ensure that future conflicts do not brew a lethal mix of explosives which do what no fighter would be allowed to do: to go on killing for years or decades after the conflict has ended. The norms may be embedded in different legal instruments but are built on the same moral fabric. If we neglect any of the issues or legal regimes at hand – on mines, cluster munitions or ERW – we will compromise the security of prospective victims. Success in one field could easily be overshadowed by lack of momentum in another.

If we can build on the daring and ambitious vision of the mine ban movement we can hope to look back ten years from now at a period in which anti-personnel mines have been eliminated by all States, a strong cluster munition treaty is being implemented and the threat of ERW is either eliminated through prevention or quickly addressed through clearance.