



What Does it Take to Absorb the Convention on Cluster Munitions?



The case of Bosnia and Herzegovina

The cover page shows type BL 755 cluster bombs being prepared for destruction in Bosnia and Herzegovina in October 2011. The photograph is courtesy of the UNDP Country Office in Bosnia and Herzegovina; author Irfan Redzovic.

Lead Author: Ilaria Vianello

Project Manager: Jasmin Porobic

Researcher: Aldijana Pivasevic

Peer Review: Davide Denti; Mariolina Eliantonio, PhD;

Editorial Board: Amna Berbic, Armin Sirco, Dennis Besedic

Editor: Christopher Hughes

Concept, Design and Printing: Triptih Design Studio, Sarajevo

Photo Credits: Handicap International, Landmine Survivors Initiative, Norwegian Peoples Aid, United Nations Development Programme

The views expressed in this publication are those of the authors and do not necessarily represent those of the United Nations, including the UNDP, or its Member States. The designations used and boundaries shown do not imply official endorsement or acceptance by the United Nations or governmental institutions in Bosnia and Herzegovina.

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union.

Contents

Acknowledgments	2
Foreword.	3
Executive Summary	4
Introduction	5
CHAPTER I	
Stockpile Management and Destruction: Partnership Experience of Bosnia and Herzegovina with the United Nations System	7
CHAPTER II	
Managing the Impact of Cluster Munition Remnants: Re-adjusting Procedures to Create an Environment for Compliance with the CCM Obligations	15
CHAPTER III	
Non-discriminatory and Inclusive Disability Policies that Manage the Needs of Cluster Munition Victims: Recognition of Cluster Munition Victims as Individuals with disability.	25
CHAPTER IV	
Sanctions against Unlawful Acts, Managing the Future: Aligning National Legislation to International Obligations.	37
ANNEX I	
List of Interviewees	45

ACKNOWLEDGMENTS

This report is the result of a collaborative effort by a broad spectrum of participants, who all deserve a great deal of the credit for its completion.

The authors of this publication would like to thank the following individuals for their contribution to the development of this study (in alphabetical order): Aldijana Pivasevic, Intern UNDP; Almedina Musić, Head of Mission, Handicap International; Amir Mujanović, Executive Director of the Landmine Survivors Initiative; Amna Berbic, Human Security and Justice Sector Coordinator, UNDP; Anesa Kundurović, Minister-Counsellor, the Ministry of Foreign Affairs; Armin Sirčo, Assistant Resident Representative, UNDP; Dalibor Perić, Senior Advisor, the Ministry of Defence of Bosnia and Herzegovina; Darvin Lisica, Programme Manager, Norwegian People's Aid; Dennis Besedic, Peace and Development Advisor, United Nations; Denis Selimović, Senior Associate, the Ministry of Defence of Bosnia and Herzegovina; Esmā Palić, Expert Advisor, the Ministry of Labour and Social Policy of FBiH; Filip Filipović, President, "Pro Vita Mostar"; Goran Čerkez, Assistant Minister, Ministry of Health of the FBiH; Haris Hajrulahović, Head of Mission, World Health Organisation; Klelija Balta, Gender Advisor, UNDP; Milan Bajović, Udruženje "Svijet bez mina" Sarajevo; Mirsen Velagić, NVO "Motiv" Gradačac; Mirza Jašarević, Project Coordinator, NVO "Centar za razvoj i podršku" Tuzla; Mladen Latinovic, Assistant Minister, Ministry of Health RS; Radoslav Živković, President, Udruženje "Stop Mines" Pale; Tarik Šerak, Chief of Mine Action Management Department, BHMACH; Tenaida Čosić, Advisor, Cantonal Health Insurance Sarajevo; Vedad Kadirić, Project Coordinator, INTERSOS, and Željko Volaš, Executive Director, UDAS. The information they provided and their candid assessment of the progress achieved within their line of work have proven invaluable during the completion of this publication.

We would also like to offer our wholehearted thanks to the Peer Review Group Dr. Mariolina Eliantonio and Davide Denti for their prompt response and invaluable comments.

FOREWORD

Respecting its international obligations is one of the prerogatives of Bosnia and Herzegovina's foreign policy. By clearly demonstrating its dedication to its commitments the country enhances its reputation internationally and this in turn can have a positive impact on the country's economic development through increased foreign investment. The story of Bosnia and Herzegovina's efforts to comply with the requirements of the Convention on Cluster Munitions is an illuminating one and proves that Bosnia and Herzegovina can lead and act as an example to other countries.

This study represents a joint effort on the part of Bosnia and Herzegovina and the United Nations Development Programme in presenting the experiences of Bosnia and Herzegovina in implementation of the aforementioned Convention. The report forthrightly acknowledges shortcomings and recognises successes. It gauges how the system has reacted to the fact that there are new obligations to be fulfilled and how these obligations can be incorporated in existing systemic solutions in Bosnia and Herzegovina. Perhaps most importantly, the study can have a profound influence on policy makers in terms of their continued commitment to implement the obligations that stem from the Convention. Yet one crucial point is clear and the evidence compelling: the Convention does not exist merely to be implemented for the sake of implementation but for the sake and well-being of those people and communities affected by cluster munition remnants and to improve the quality of their lives. The destruction of stockpiles of cluster munitions, together with the clearance of areas contaminated by cluster munitions, invariably saves countless lives. The Convention highlights those people in need, who are victims of cluster munitions, and urges for the provision of life-long support both to them and to their families. This is the real power of the Convention and what Bosnia and Herzegovina has committed itself to with positive results, which it can now proudly present to others.

It is particularly welcomed that this study offers recommendations to Bosnia and Herzegovina and to all other State Parties to the Convention. It gives us a basis for further improvement of policy design and in this way allows us to make stronger strides forward towards the final success.

This study delves into the main aspects of the Convention and therefore I am confident that this publication will not only improve the understanding of the requirements of the Convention but also encourage other State Parties to use the experiences from Bosnia and Herzegovina to more effectively implement the Convention.



Yuri Afanasiev
*UN Resident Coordinator
UNDP Resident Representative*

EXECUTIVE SUMMARY

This study assesses the capacity of Bosnia and Herzegovina to absorb its commitments stemming from the Convention on Cluster Munitions (CCM). It addresses the different implementation modalities used by Bosnia and Herzegovina in order to comply with its international obligations by looking at how the state has been implementing the treaty obligations and addressing challenges therewith.

The study paints a rather divergent picture of those modalities in delivering the commitments out of which three stand out:

- Partnership modality;
- Procedural and legislative readjustments; and
- Absorption in pre-existing policy framework.

Those three modalities arise from our approach: the analysis of the systemic solutions in implementation of the CCM with an emphasis on mechanisms developed by Bosnia and Herzegovina in assuming the requirements of the Convention.

In order to achieve this aim the study describes how Bosnia and Herzegovina has been managing four important obligations contained in the CCM: the destruction of cluster munition stockpiles (Article 3), the clearance and destruction of cluster munition remnants as well as risk education (Article 4), victim assistance (Article 5) and the imposition of penal sanctions in order to prevent and suppress any activity prohibited under the Convention (Article 9).

By independently describing the *modus operandi* in Bosnia and Herzegovina this study assists the country in addressing the challenges ahead, identifies the support that Bosnia and Herzegovina can receive from non-governmental organisations, and provides a set of recommendations on the way forward. The State Parties to the CCM will also benefit from the findings of this study since they will be presented with a set of best practices on how to absorb the obligations that stem from the CCM (e.g. by partnering with international organisations) and with recommendations on how to avoid obstacles they may encounter.

INTRODUCTION

On 3 December 2008, the Convention on Cluster Munitions was signed in Oslo by ninety-four states. The Convention on Cluster Munitions (CCM) established the legal framework for eliminating the dreadful afflictions caused by cluster munitions. State signatories to the CCM undertake never, under any circumstances, to use, develop, produce or otherwise acquire cluster munitions. Separate articles in the Convention address among other things assistance to victims, clearance of contaminated areas and the destruction of stockpiles. The CCM entered into force on 1 August 2010 and thus became binding international law for all State Parties.

Yet the CCM is not the end result but the starting point for addressing the problems related to cluster munitions that affect people and states. In order for the CCM to become an effective tool each State Party must recognise and analyse the available international and national resources – both governmental and non-governmental – and coordinate them in order to achieve the final goal of compliance with the obligations stemming from the Convention.

Bosnia and Herzegovina¹ ratified the CCM on 7 September 2010. The CCM came into force in Bosnia and Herzegovina on 1 March 2011 and since then the country has been faced with new international legal obligations that require Bosnia and Herzegovina to meet important deadlines as well as to comply with specific measures.

At the end of the recent war, Bosnia and Herzegovina was faced with a legacy of landmines, cluster munition remnants and other explosive remnants of war as well as military ordnance. In order for Bosnia and Herzegovina to approach systematically the issues related to the presence of cluster munitions and cluster munition remnants within its territory an analysis of the capacities necessary for the country to absorb its obligations under the Convention is a fundamental requirement. It is essential for a state to be aware of its resources (i.e. financial, human and institutional) and how best to manage them in order to fulfil its commitments under the Convention. It is from this perspective that this paper aims to advise institutions and local NGOs in Bosnia and Herzegovina on how to finalise the implementation of the Convention. This study will look at how the system in Bosnia and Herzegovina (state institutions as well as NGOs) has managed the implementation of its obligations under the CCM, by analysing the modalities used by Bosnia and Herzegovina to implement its obligations, and will look to the future by providing a set of recommendations on the way forward. However, the paper will refrain from judging the level of implementation of the CCM in Bosnia and Herzegovina. The level of implementation of the CCM is a subject of the transparency reporting requirements as defined in the Article 7 of the CCM.

The assessment has been carried out on two levels: through field study and through a literature review. The field study consisted of a set of semi-structured interviews with representatives from state institutions (Ministries at the state, entity and cantonal level) and within the non-

1 Bosnia and Herzegovina is a decentralized state. It comprises of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska. While the Federation of Bosnia and Herzegovina is further divided in ten cantons, Republika Srpska is centralized. Apart from those administrative units there is a self-governing region – Brcko District. This administrative structure is important for the reader to understand the text.

governmental sector (both national and international). The field study was essential in order to map those state institutions and NGOs involved in the implementation of the CCM together with their capacities and to determine the level of implementation of policies in Bosnia and Herzegovina linked to the CCM. The authors made a systematic effort to cross-check all of the information they received through the interviews against other available sources.

The literature review covered both reports drafted by local and international NGOs as well as state legislation. The reports published by local and international NGOs dealt with the most salient issues related to cluster munitions, such as clearance and victim assistance, and outlined examples of good practices and lessons learned in Bosnia and Herzegovina. These reports served as a tool for looking at past implementation modalities and at action plans foreseen for tackling the implementation of the CCM. State legislation was analysed in order to determine what is already in place in terms of national implementation measures.

The paper is divided into four main chapters that describe the implementation modalities used by Bosnia and Herzegovina for implementing the CCM.

- I. Stockpile Management and Destruction: Partnership experience of Bosnia and Herzegovina with the UN System.
- II. Managing the Impact of Cluster Munition Remnants: Re-adjusting Procedures to Create an Environment for Compliance with CCM Obligations.
- III. Non-discriminatory and Inclusive Disability Policies that Manage the Needs of Cluster Munition Victims: Recognition of Cluster Munition Victims as Individuals with Disability.
- IV. Sanctions against Unlawful Acts, Managing the Future: Aligning National Legislation to International Obligations.

CHAPTER I

Stockpile Management and Destruction: Partnership Experience of Bosnia and Herzegovina with the United Nations System

The storage and destruction of cluster munitions is defined under Article 3 of the CCM. The Convention requires that each State Party separates cluster munitions from munitions retained for operational use and marks them appropriately for the purpose of destruction in order to ensure that all cluster munitions are destroyed within eight years following entry into force of the Convention for each State Party. The Convention calls specifically for adherence to international standards for demilitarisation and the environmentally benign destruction of these munitions.

Bosnia and Herzegovina has fulfilled its obligations related to Article 3 of the CCM by destroying all known and reported stocks of cluster munitions in 2011.² To achieve this goal Bosnia and Herzegovina partnered with the United Nations Development Programme (UNDP) and received funding support from the European Union (EU) via this United Nations (UN) agency. This chapter will therefore outline the experiences of Bosnia and Herzegovina when fulfilling this important international commitment as seen through the prism of the obligations and recommendations set forth in the Convention.

This chapter is structured into four main paragraphs: background, implementation modality, challenges and recommendations.

I. BACKGROUND

Upon ratification of the CCM Bosnia and Herzegovina was immediately faced with the challenge of how to absorb the Convention within its defence system.

2 Ministry of Defence Bulletin No. 07, April 2012, viewed on 04 July 2012. [http://www.mod.gov.ba/files/file/BILTEN%20OS%20i%20MO%20Bosnia and Herzegovina%207%209april12.pdf](http://www.mod.gov.ba/files/file/BILTEN%20OS%20i%20MO%20Bosnia%20and%20Herzegovina%207%209april12.pdf)

In addition to the complexities of the defence system – having different defence related competencies scattered around different institutions and administrative levels³ – Bosnia and Herzegovina had to ensure adequate funds and specific expertise related to certain types of cluster munitions. The budget of Bosnia and Herzegovina did not recognise these obligations and hence it seemed unlikely that Bosnia and Herzegovina would be able to allocate the necessary funds for this international commitment.

In spite of the fact that Bosnia and Herzegovina was a producer of cluster munitions its stockpiles also contained cluster munitions produced by western manufactures and the technological design of those munitions was not known in sufficient detail to national experts.

The cluster munitions produced in Bosnia and Herzegovina were located not only in military storage facilities but also in defence industry factories which are at the Entity level and therefore are outside of the competency of the Ministry of Defence. The mapping and identification of all cluster munitions locations required a coordinated effort by different institutions, including the Ministry of Defence of Bosnia and Herzegovina, the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina and the Ministry of Energy, Industry and Mining of the Federation of Bosnia and Herzegovina. However, there was no coordination mechanism as such and no order of supremacy existed amongst these institutions. It became evident that the implementation of this part of the Convention would not be an easy assignment for Bosnia and Herzegovina without first finding a systemic solution to deal with the task at hand.

The following paragraphs will therefore elaborate on the implementation challenges and will unveil the path to the final disposal of cluster munition stockpile in Bosnia and Herzegovina.

3 In Bosnia and Herzegovina the Ministry of Defence is at the state level while the defence industry remains at the level of entities.



II. IMPLEMENTATION MODALITY

Pursuant to the Convention assistance may be provided, *inter alia*, through the United Nations system. Bosnia and Herzegovina therefore sought assistance from the Small Arms Control and Reduction Programme of the United Nations Development Programme.⁴ This partnership, as an implementation modality, enabled Bosnia and Herzegovina to gain direct access to the required expertise as well as funding opportunities. A partnership of this scope also ensured a coherent and consistent approach to the issue by all interlocutors.

This chapter underlines the value of the partnership approach that has been adopted in Bosnia and Herzegovina for the disposal of cluster munitions and this review of the experience in Bosnia and Herzegovina offers an agenda for other State Parties to address similar issues. On the policy front we identified the need to advocate for the implementation of the Convention. In fact the commitment to implement the CCM was not present by default but achieved through a series of actions that resulted in the final decision to proceed with the full scale implementation of the Convention. On the implementation front we highlight the advantages of partnering with the United Nations system for implementation of the obligations that Bosnia and Herzegovina undertook when signing the CCM. We also looked into the need to adopt a multidimensional approach to overcoming the challenges that surround the issue, which are summarised in the table below.

4 For further information about the programme please see <http://www.undp.ba/index.aspx?PID=21&RID=68>. Viewed on 08 July 2012.

A. Partnership as an Evolving Idea

The partnership was in fact an evolving idea. Bosnia and Herzegovina had been partnering with the United Nations since 2005 in addressing issues related to small arms and explosive remnants of war. Yet for cluster munitions the partnership only started in 2010.

At that time the arrangement only included part of the existing cluster munitions. Under the auspices of the United Nations and motivated by its obligations under the CCM Bosnia and Herzegovina completed its disposal of all known and reported quantities of cluster munitions from its stockpiles⁵, yet not all sides of this story were positive. Looking into the partnership modality today it is noted that the first gap was a lack of awareness concerning the international obligations of Bosnia and Herzegovina regarding the Convention.

Raising awareness about these obligations helped immensely in securing a political consensus and firm political commitment to, *de facto*, look into the issue in a more structured manner. Overcoming the existing challenges required a new policy outlook, since the disposal of ammunition was a highly politicised issue with a number of different interests at stake. Advocacy and awareness raising were done through sets of formal meetings organised with government representatives; however, the non-governmental sector was not active in this field and there was no public pressure brought to bear on government because there were no civil society organisations to curb state policies in this field.

The advocacy on the requirements of the CCM was perceived as a driving force that sped up the process, not just for formal implementation of the obligations but more importantly because the cluster munitions were assessed as being unstable and therefore unsafe for further storage. These calls resonated around different decision makers and this led to a commitment that was unwavering. Bosnia and Herzegovina proved to be a vibrant paradigm of the partnership approach towards implementation of the Convention.

Many other challenges lay ahead because there was no straightforward pattern of how to deal with disposal of cluster munition. Those were linked to the lack of expertise, cluster munition identification and funding mobilization. In the next paragraphs those challenges will be further elaborated in more details.

5 Recently Bosnia and Herzegovina discovered an additional four 120mm cluster mortars. Currently, the unofficial decision is that they will retain them pursuant to the Article 3(6). Nevertheless, the official decision may be different.

B. The Strengths of Partnership with the United Nations System

Cluster munitions were not only stored in military storage depots but also in defence industry factories. The identification of munitions under the 'jurisdiction and control of Bosnia and Herzegovina required a multidimensional approach in terms of the administrative competencies of different institutions and the existing inventory and accounting systems. The defence industry factories not only had cluster munitions as complete weapons systems but also as components. If assembled those components could form deadly weapons with cluster munitions warheads. Therefore, all of them were mapped and looked into through physical identification and inspection in terms of how many completed weapons systems there were. These quantities were then added to the quantities of cluster munitions stored at military storage sites and in this way the final figure was obtained. This was a necessary element for budget plans and the allocation of funds.

While mapping the cluster munitions, a challenging part was identifying them because some of the ammunition types were not marked as cluster munitions (e.g. some 120mm cluster mortars were marked as 120mm mortars), hence additional control and technical inspection was conducted to determine the design of those munitions. Once all of the quantities had been identified⁶ there was a need to engage specific expertise for their disposal, especially for those types that were not produced in Bosnia and Herzegovina. In addition to its intrinsic value the partnership with the UN system modality proved to be justified in many ways; access to international experts through the United Nations went smoothly and experts were easily pinned down and outsourced. International expertise and extensive knowledge of those systems was soon deployed under the flag of the United Nations in the form of assistance to Bosnia and Herzegovina for dealing with those types of cluster munitions of a design the local experts had limited expertise with.

The UN system also offered the opportunity to mobilise funds through its network of donors. Cluster munitions in Bosnia and Herzegovina have been destroyed thanks to the generous financial support of the European Union funds implemented through the United Nations Development Programme. The financial support that was provided to Bosnia and Herzegovina through this partnership arrangement for the destruction of cluster munitions amounted to 725,259 Euros.⁷ Without those funds it would have been highly unlikely that Bosnia and Herzegovina would have been able to fulfil its obligations under the Article 3 of the CCM, despite its commitment to do so. Allocation of funds from the budget for this purpose would have been extremely difficult for a mid-level income country such as Bosnia and Herzegovina.

6 Information on quantities and types of cluster munitions provided by the Deputy Commander of the Armed Forces of Bosnia and Herzegovina General Major Slavko Puljic to the Ministry of Defense on 20 July 2011.

7 UNDP's Final Progress Report to the European Union on Small Arms Control Programme (2010-2012).

C. Local and International Expertise in the Disposal of Cluster Munitions

Once the systemic process had been defined and the aforementioned preconditions met it was relatively easy to complete the process of disposing the cluster munitions. The disposal process was conducted in accordance with the Convention's stipulations concerning respect for "international standards for protecting public health and the environment"⁸. The disposal methods used were industrial disassembly for those munitions types for which Bosnia and Herzegovina had the necessary tools and expertise, and open detonation for the remaining types of cluster munitions.

The methods used for disposing of cluster munitions merit their own exploration. Bosnia and Herzegovina possesses three distinct models of cluster munitions: Rockets with cluster warhead type Orkan, Cluster bomb type BL 755, and Cluster mortar 120mm. In addition to the above, there were also quantities of type KB-1 sub-munitions that were stored separately at military and defence industry storage facilities. These sub-munitions together with the Orkan type rockets were disposed of by industrial disassembly and partly through detonation, whilst the two other types were destroyed solely through open detonation. Industrial disassembly was conducted in two defence industry factories, both former producers of these types of munitions.

The technological designs were known to these factories; however, due to the age and instability of those munitions the disassembly process posed a safety challenge. The latter was successfully overcome thanks to the proven expertise of the ammunition technologists and handlers.



8 Article 3 (2) of the Convention on Cluster Munitions, viewed on 12 July 2012. <http://www.clusterconvention.org/files/2010/12/CCM-Text1.pdf>

Open detonations were conducted by an international contractor respecting international standards for the destruction of ammunition using this method. Open detonations were conducted at a military demolition range. This method of destruction was not popular with the local population but after a number of town-hall meetings, where an explanation of the rigid measures imposed in respect of environmental standards were given, local concerns were overcome and the process of disposing of the bombs was successfully completed. Afterwards a soil sampling was conducted to reveal that no pollution had been caused to the land and surrounding environment.

Of particular importance is the fact that the former producers of the cluster munitions in Bosnia and Herzegovina converted their production machinery to the purpose of reverse engineering disassembly of these munitions. Two ultimate aims were thus achieved: (i) the cluster munitions were destroyed and (ii) the cluster munitions machinery was converted to be used for peaceful purposes.

D. Final Result of the Joint Efforts

Although the CCM allows a period of eight years for each State Party to implement its obligations under the Convention, through its partnership modality with the United Nations system Bosnia and Herzegovina destroyed over 500 pieces of cluster munitions and over 100,000 pieces of associated sub-munitions within 10 months from the date when the Convention came into force in the country. This was achieved by a committed group of progressive thinkers and practitioners who wanted to prove that Bosnia and Herzegovina is open to change and accepts the disposal of highly hazardous munitions as part of its development agenda. Using the language of the preamble to the Convention related to cluster munitions stockpiles, Bosnia and Herzegovina was indeed determined to ensure their rapid destruction”⁹

III. CHALLENGES AND GOOD PRACTICE

In summation of the above-mentioned, this paragraph identifies the challenges that Bosnia and Herzegovina faced and the examples of good practice that it generated. The final result of the efforts on the part of Bosnia and Herzegovina in the field of munitions disposal was the destruction of all known and reported quantities of cluster munitions in the country. This result justifies the main message of this chapter, namely that good results can be achieved by seeking firm commitments and a structured process and management modality. This story is both encouraging and cautionary: encouraging in the fact that progress is possible and cautionary because the route to success will vary and it is specific to each individual country’s institutional and political conditions.

9 Preamble of the Convention on Cluster Munitions, viewed on 12 July 2012. <http://www.clusterconvention.org/files/2010/12/CCM-Text1.pdf>

CHALLENGES	GOOD PRACTICES
Awareness concerning the obligations pertaining to the Convention	Partnership with the UN system
Identification of cluster munitions due to poor inventory	Use of former producers to demilitarise cluster munitions through a reverse engineering process
Lack of expertise concerning certain types of cluster munitions	Conversion of cluster munitions production machinery for the purpose of demilitarisation
Lack of funds	Use of international experts for the disposal of cluster munitions unknown to local experts
Absence of non-governmental sector in this field to advocate for cluster munitions related policies	Environmental assessment (e.g.; soil sampling) to ensure there is no pollution after disposal of cluster munitions through open detonation

IV. RECOMMENDATIONS

Since Bosnia and Herzegovina has fulfilled its obligations pertaining to Article 3 of the CCM, the following recommendations are predominately intended for those State Parties that have not yet destroyed their cluster munitions stored in military and defence industry stockpiles and which face difficulties in terms of available expertise, funds and the adoption of a systemic approach to this issue. The blanket recommendations below are offered to any State Party that may find them useful.

- Look into options and possibilities to partner with the UN system;
- Build the capacity of the non-governmental sector to advocate for implementation of the Convention;
- Contact those countries that were former producers of cluster munitions in order to instigate an exchange of technologies and disposal methods.

CHAPTER II

Managing the Impact of Cluster Munition Remnants: Re-adjusting Procedures to Create an Environment for Compliance with the CCM Obligations

The latest conflict in Bosnia and Herzegovina left behind a dreadful legacy of landmines, cluster munitions remnants and others explosive remnants of war. It is estimated that the total mine suspected area currently covers 1310 km², out of which 12.179 km² is suspected to be cluster munitions.¹⁰

Cluster munitions pose a specific post-conflict threat due to the large number of cluster munitions remnants that they release and to their wide area of dispersal.¹¹ The failure of a large number of sub-munitions to explode as designed (munitions released by cluster munitions) is an inherent and predictable consequence of the use of cluster munitions. Those sub-munitions that fail to explode upon impact become, *de facto*, antipersonnel mines that are capable of killing and maiming people long after a conflict has ended.¹²

Article 4 of the CCM requires that each State Party ensures the “clearance and destruction of cluster munition remnants located in cluster munition contaminated areas”. Cluster munition remnants include all failed cluster munitions, abandoned cluster munitions, unexploded sub-munitions and unexploded bomblets. In order to fulfil this obligation each State Party must in the shortest time possible conduct a survey to assess and record the threat posed by cluster munition remnants, assess and prioritise the needs in terms of marking, protection of civilians, and the clearance and destruction of cluster munition remnants.

10 Norwegian People's Aid: 'Cluster Munitions Remnants in Bosnia and Herzegovina, a general survey of contamination and impact', 2011, p. 26.

11 Human Rights Watch: 'Convention on Conventional Weapons (CCW): Cluster Munitions, Explosive Remnants of War and CCW Protocol V', September 2006, viewed on 1 July 2012. <http://www.hrw.org/news/2006/08/31/convention-conventional-weapons-ccw-cluster-munitions-explosive-remnants-war-and-ccw>

12 UN Electronic Mine Information Network: 'Cluster Munitions and Mine Action', viewed on 01 July 2012. <http://www.mineaction.org/overview.asp?o=1417>

With the aim of analysing the implementation modality in use in Bosnia and Herzegovina for addressing its obligations stemming from Article 4 of the CCM, this chapter proceeds as follows: section I provides the reader with a general background on the cluster munition remnants situation in Bosnia and Herzegovina; section II takes a closer look at how Bosnia and Herzegovina has absorbed its obligations under Article 4 of the CCM by accessing the relevant institutions and legal framework both prior to and after Bosnia and Herzegovina ratified the CCM and finally, Section III and IV provide a set of challenges, good practices as well as recommendations on how can Bosnia and Herzegovina best continue with the further implementation of the measures imposed under Article 4.

I. BACKGROUND

The international NGO Norwegian People's Aid Bosnia and Herzegovina (NPA) began the first phase of a general survey aimed at identifying those areas suspected of being contaminated by unexploded sub-munitions on 1 January 2011 and completed it by 30 June 2011. The NPA survey was the first comprehensive study to assess the hazard posed by cluster munition remnants and is therefore the main source of information used in this section.

The total suspected area contaminated by cluster munition remnants amounts to 12.179 km², of which 5.388 km² are assessed as being at a low-risk hazard, 3.562 km² at a moderate-risk hazard and 3.23 km² at a high-risk hazard. The suspect areas identified are located in 79 local communities across 39 municipalities and 13,020 residents are exposed to risk on a daily basis.



One of the most difficult challenges facing Bosnia and Herzegovina is the presence of both cluster munition remnants and landmines within the same contaminated area. It is roughly estimated that 5 to 6 km² of Bosnia and Herzegovina territory is contaminated by both cluster munition remnants and landmines. International standards for this type of area, which needs to be cleared of all types of threat, requires two different types of clearance procedures.¹³ According to the Bosnia and Herzegovina Mine Action Centre (BHMIC) and Norwegian People's Aid, due to the different deployment systems, cluster munition remnants could be found deeper in the soil. Areas contaminated by both landmines and cluster munition remnants require strategies that minimise the risk of accidents occurring during clearance operations and necessitates twice the amount of resources and time. Finally, another problem exists in those areas that have already been cleared of landmines but where cluster munition remnants were discovered during the demining process. This means that those areas previously cleared will have to be checked again using the international standards required for cluster munition remnants.

The next section further addresses the interrelation between landmines and cluster munition remnants in Bosnia and Herzegovina in relation to clearance.

II. IMPLEMENTATION MODALITY

The significant presence of landmines within the territory of Bosnia and Herzegovina at the end of the conflict, together with international pressure to ban the use of landmines and promote the clearance of contaminated territories,¹⁴ pushed Bosnia and Herzegovina to develop a legal framework and an institutional structure to deal with landmine clearance. Due to the, *de facto*, similar threat posed by cluster munition remnants and landmines, Bosnia and Herzegovina decided to adapt its legal framework and institutional structure for demining in order to face the new obligations stemming from Article 4 of the CCM. In order to analyse how Bosnia and Herzegovina is absorbing its obligations under Article 4, this section compares the legal framework and structure for mine action (A) before the entrance into force of the CCM and (B) how it has been adjusted after Bosnia and Herzegovina became party to the Convention.

A. Before the CCM: Legal Framework and Structure

The following sub-section outlines (i) the legal framework and (ii) the structure of the mine action system before Bosnia and Herzegovina became a State Party to the CCM.

¹³ IMAS: 'Technical notes', viewed on 2 July 2012. <http://www.mineactionstandards.org/technical-notes/list-of-tnma/>

¹⁴ Bosnia and Herzegovina is a State Party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and their Destruction, which entered into force 1 March 1999.

(i) Legal framework

The Demining Law of Bosnia and Herzegovina as of 17 March 2002 regulates the organisational structure for landmine clearance, survey and the removal of unexploded ordinances (UXO) in Bosnia and Herzegovina. It determines the bodies authorised for the conduct of demining operations, the rights and obligations of those persons carrying out demining as well as those authorised to monitor the implementation of this Law.¹⁵ The demining law, in order to monitor the implementation, established that the process of demining is implemented based on the Demining Plan for Bosnia and Herzegovina. The plan is proposed by the BHMAL in line with Demining Strategy and approved by the Demining Commission in cooperation with the Board of Donors and then adopted by the Council of Ministers.¹⁶



The latest Demining Plan is contained in the Mine Action Strategy 2009 - 2019. The strategy is intended to ensure the conditions for a continuous and efficient mine action programme that will guarantee the development of a safe environment for normal and prosperous living for all citizens in Bosnia and Herzegovina and the full integration of mine victims into society.¹⁷ In order to achieve this aim, the strategy sets broad goals together with a set of specific operational goals for each of them. The strategic and operational goals are followed by a rough operational plan and funding plan. The same strategy establishes that it has to be reviewed periodically to allow for updates of the general assessment, operational plan and mobilisation of resources. The first revision is envisaged for 2012.

¹⁵ Article 1 of the Demining Law of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina number 05/02.

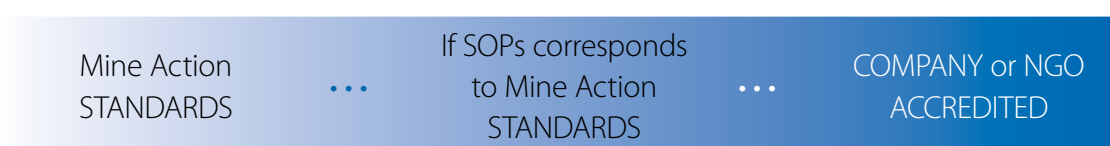
¹⁶ All the named institutions are described in Section II (A) (ii).

¹⁷ 24 April 2008, Bosnia and Herzegovina Mine Action Strategy (2009-2019), Bosnia and Herzegovina, Council of Ministers of Bosnia and Herzegovina.

(ii) Structure

The Demining Commission, which is part of the State Ministry of Civil Affairs of Bosnia and Herzegovina, is responsible for the long-term management of mine action activities (e.g. marking, mine risk education, etc.) and for ensuring the removal of the threat posed by landmines and other remnants of war from Bosnia and Herzegovina. The technical body of the Demining Commission is the BHMAL, established in 2002 through a decision of the Council of Ministry. The BHMAL has a central office in Sarajevo, two entity offices located in Sarajevo and Banja Luka and eight regional offices established across the country, which allows operational activities to be carried out locally. The tasks of these offices are varied but cover the identification and assessment of suspect areas, the development of mine action projects and the marking of suspect areas as well as ensuring the provision of mine risk education workshops.

- a. **Location, assessment of suspected hazardous areas and clearance project design:** Since 2005 the NPA Programme in Bosnia and Herzegovina has supported the BHMAL through the secondment of General Survey Teams. These teams contribute significantly to the identification and assessment of suspect areas and to the creation of new projects for technical survey and mine clearance tasks.¹⁸ Once a territory is declared as a risk area, the BHMAL is then responsible for the development of a mine action project.
- b. **Demining action project:** Demining activities can only be carried out by Demining Commission accredited demining organisations. BHMAL proposes technical and safety standards for demining in Bosnia and Herzegovina as well as quality assurance standards (mine action standards). Once the Demining Commission approves the standards, the BHMAL is then responsible for evaluating the credentials and accreditation of international and national demining companies as well as demining NGOs, commercial companies or governmental organisations, all of which are required to develop standard operating procedures (SOPs) in line with the standards set by the BHMAL. Furthermore, the BHMAL proposes standards for training for approval by the Demining Commission and monitors and reports on their implementation.¹⁹



Most of the mine action projects go through a bidding process and accredited organisations apply for tenders for mine clearance activities.²⁰ Finally, the BHMAL is responsible for the technical inspection and certification of cleared areas.

- c. **Marking and Mine Risk Education:** BHMAL is responsible for the training of mine risk education managers and for the definition of standards for mine risk education. The

¹⁸ Norwegian People's Aid, Mine Action Programme, viewed on 1 July 2012. <http://npa-bosnia.org/>

¹⁹ Article 9 of the Demining Law of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina Year VI, 17 March 2002.

²⁰ INTERSOS (Italian NGO) and Norwegian People's Aid (Norwegian NGO) receive direct funding from Italy and Norway respectively for conducting demining activities.

implementation of mine risk education projects is carried out by NGOs and organisations whose projects are certified and approved by the BHMAL. Most of the NGOs accredited for demining activities are also accredited to conduct mine risk education in communities exposed to mine risk. Mine and UXO risk education has been introduced into the school curricula throughout Bosnia and Herzegovina.²¹ The United Nations International Children's Education Fund (UNICEF) is one of the organisations that offer technical and financial support for mine risk education activities in Bosnia and Herzegovina.²² BHMAL regional offices together with a limited number of NGOs are responsible for marking suspect areas.

B. After the CCM: Legal Framework and Structure

The following sub-section looks at how the legal framework and the demining structure reacted to the new obligations of Bosnia and Herzegovina to comply with the CCM. By managing its national and international resources Bosnia and Herzegovina is adjusting the demining system into one that can absorb the new obligations that stem from the CCM.

(i) Legal framework

As explained above, the organisational structure for landmine clearance, survey and the removal of UXO in Bosnia and Herzegovina is regulated by the Demining Law as of 17 March 2002. The latter is currently under review and its amendments are in the process of being discussed in the Bosnia and Herzegovina Parliament. One of the amendments envisages the introduction of cluster munition as a new separate category of UXO. In this way, Bosnia and Herzegovina will be able to legislate on the matter of cluster munition remnants clearance without the need of passing a new legislation that would cover mainly the same provisions spelled out in the Law on Demining. In fact, the bodies authorised for the conduct of cluster munition remnants clearance operations, the rights and obligations of those persons carrying out clearance as well as those authorised to monitor the implementation of this Law are the same for mines and cluster munition. Following the line of the Law on Demining, the 2012 revision of the Mine Action Strategy 2009 – 2019 envisages the introduction of a set of broad strategic goals, operational goals and funding plans for cluster munition remnants clearance.

In order to avoid unnecessary duplication, the Law on Demining and the Mine Action Strategy 2009 – 2019 are being amended in order to introduce in the already functioning demining legal framework the comparable with cluster munition remnants clearance procedure. Furthermore, with the aim of bypassing the time that Bosnia and Herzegovina will need in order to endorse the amendments in the Demining Law, the Demining Commission and BHMAL started working on cluster munition using as a legal base the term UXO present in the Demining Law.²³

21 Evaluation team Dr Russell Gasser and Ms Almedina Musić, 'Evaluation of the UNICEF Mine Risk Education Programme in Bosnia and Herzegovina' 2007.

22 Mine Risk Education in Schools, UNICEF Bosnia and Herzegovina, viewed on 23 July 2012. http://www.unicef.org/Bosnia_and_Herzegovina/mine_action_3314.html

23 Article 1 of the Demining Law of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina number 05/02.

(ii) Structure

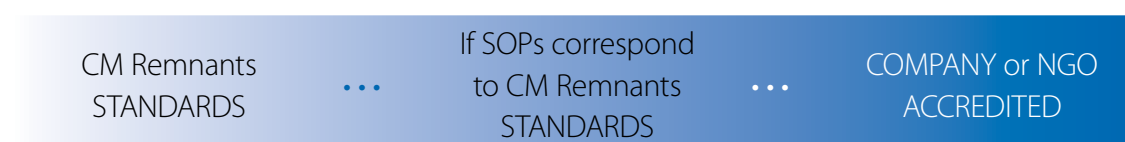
The structure responsible for demining in Bosnia and Herzegovina (as explained under sub-section A) is the Demining Commission which empowered itself to work on the implementation of the CCM and entrusted the same powers to the BHMAL. The BHMAL, with the approval of the Demining Commission, is in the process of transforming the same instruments in use for demining (a-c) to also act as tools for addressing cluster munition remnants clearance.

- a. Location and assessment of suspected areas:** The location and assessment of cluster munition remnants in suspected areas is performed by two survey teams from NPA. By accepting the NPA proposal to conduct a survey into the level of contamination and impact of cluster munition remnants the Demining Commission decided to extend its cooperation with NPA to these new types of explosive remnants of war.²⁴ In this way Bosnia and Herzegovina outsourced one of its obligations stemming from the application of Article 4 by adjusting its cooperation with NPA so that it would also include cluster munition remnants. The organisational as well as material preparation and management come under the responsibility of NPA, while external monitoring of the survey is carried out by the BHMAL.
- b. Clearance action project:** Once faced with the challenge of implementing Article 4 of the CCM, the BHMAL needed to find a system that could guarantee certified cluster munition remnants cleared areas. With the aim of achieving this obligation the BHMAL and the Demining Commission approved in January 2012 the SOPs of NPA for the clearance of areas



24 On 13 September 2010 the NPA Programme in Bosnia and Herzegovina sent a letter of intent to the BHMAL addressing the application of Article 4(2) of the CCM. On 5 October 2010 the BHMAL, with the full support of the Demining Commission, accepted NPA's proposal to conduct general survey of cluster-munition-contaminated areas. Norwegian People's Aid: 'Cluster Munition Remnants in Bosnia and Herzegovina, a General Survey of Contamination and Impact', 2011, p 4.

contaminated with cluster munition remnants. On the 1 March 2012 the NPA started the operational activities of the project “Land release of areas contaminated with cluster munition remnants in 10 affected communities in Bosnia and Herzegovina”.²⁵ Also for clearance Bosnia and Herzegovina outsourced its obligations under Article 4 to NPA. However, the BHMAL wants to extend the accreditation for cluster munition remnants clearance to NGOs and demining companies. The BHMAL is in the process of drafting technical and safety standards for NGOs and demining companies that reflect the necessary methodology and instruments required to conduct cluster munition remnants clearance in line with international standards. Once the Demining Commission has approved the aforementioned standards, the BHMAL will be responsible for the evaluation of the credentials and the competencies of international and national companies as well as NGOs to deal with cluster munition remnants clearance. As with mine clearance, only those companies and organisations – governmental and non – that have SOPs in line with the standards provided by the BHMAL will be accredited to carry out cluster munition remnants clearance. Finally, the BHMAL has expressed its willingness to propose standards for training and to monitor and report on their implementation.²⁶



BHMAL will also be responsible for the technical inspection and certification of cleared areas involving cluster munitions clearance. BHMAL and the Demining Commission have transferred the demining accreditation procedure to the cluster munitions clearance process.

- c. **Marking and Mine Risk Education:** Currently there are no projects aimed at cluster munition remnants risk education; however, BHMAL does envisage adding cluster munition remnants risk education to the curriculum of mine risk education managers. This addition to the curriculum is essential since the shape of cluster munition remnants seems to be more appealing to children. According to the BHMAL, the implementation of cluster munition remnants risk education projects will again be carried out only by NGOs and organisations whose projects are certified and approved by the BHMAL. Unfortunately, it is very unlikely that cluster munition remnants risk education will be added to the school *curricula* due to the cumbersome procedure required for this aim in Bosnia and Herzegovina.²⁷ NPA, together with the BHMAL, is responsible for marking areas suspected of cluster munition remnants contamination. A new warning sign has been designed to identify cluster munition remnants contaminated areas.

25 At the end of July 2012 two technical survey and clearance tasks in the municipality of Ljubiski were completed with 92 sub-munitions Mk-1 found. Other two tasks are in progress in the municipalities of Cazin and Bosanska Krupa.

26 Article 9 of the Demining Law of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina Year VI, March 17 2002.

27 Bosnia and Herzegovina has thirteen ministries of education at the state, entity, cantonal and Brcko District level.

LEGAL FRAMEWORK

Before the CCM	After the CCM
Demining Law	Amendments to the demining law to include obligations stemming from the CCM.
Strategy for Demining	Amendments to the demining strategy to include obligations stemming from the CCM.
Institutional powers (included in the Demining Law)	Decision empowering BHMACH to deal with Cluster Munition Remnants.

STRUCTURE

Before the CCM	After the CCM
Cooperation with NPA through the secondment of General Survey Teams to BHMACH.	Cooperation with NPA extended to include the conduct of general survey for cluster munition remnants.
Mine action accreditation procedure system.	Mine action accreditation procedure system adapted to include clearance of cluster munition remnants.
Mine risk education is conducted by mine risk education managers trained by BHMACH.	BHMACH will introduce cluster munition remnants risk education to the curriculum of mine risk education managers.

C. NGO Capacity

There are 12 local NGOs specialised in demining and mine risk education present in the territory of Bosnia and Herzegovina. Among these 12 NGOs, some have already acquired experience within the field of cluster munition remnants clearance in Serbia. A local NGO has also organised various trainings on cluster munition remnants clearance; the most recent was carried out in 2010. The NGOs accredited for conducting mine clearance are eager to extend their SOPs to include the conduct of cluster munition remnants clearance. The main problem encountered by NGOs is the lack of funding.

III. CHALLENGES AND GOOD PRACTICE

CHALLENGES	GOOD PRACTICE
Presence of landmine and cluster munition remnants on 5 to 6 km ² of the territory of Bosnia and Herzegovina. New techniques for clearance need to be developed and new resources need to be invested.	Realigning and adjusting the legal framework and mine structure for demining in order to tackle the new obligations under the CCM. Avoiding duplication of resources.
Funding and resources necessary in order to complete the obligations stemming from Article 4 of the CCM.	Cooperation with NPA in order to take full advantage of their expertise and resources in order to assess the problem of cluster munition remnants in Bosnia and Herzegovina.
Take full advantage of the NGO sector's capacities and resources.	A system of accreditation that can easily be adapted to cluster munition remnants clearance.
Collection of information related to bombing that included cluster munitions.	UXO included in the demining law provides a legal basis for working on cluster munition remnants.

IV. RECOMMENDATIONS

The BHMAL should, to the greatest extent possible, collaborate with the local NGOs that have acquired expertise in the field of cluster munition remnants clearance in other countries. This form of cooperation would support the BHMAL in the development of both proper technical and safety standards to conduct cluster munition remnants clearance as well as to develop comprehensive training for cluster munition remnants clearance.

The Demining Commission should seek to continue cooperation with NPA or other organizations involved in the demining process. It is advisable for the Demining Commission and the BHMAL to benefit to the fullest extent from training organised by NPA in order to acquire full ownership over the process of survey and the database of contaminated areas.

Civil society organisations and the BHMAL should engage themselves in raising awareness amongst potential donors on the difference between demining and cluster munition remnants clearance and on the difficulties presented by having territories contaminated by both of these two types of war remnants.

Finally, civil society should insist on introducing the obligations stemming from the CCM as an amendment to the demining law. This amendment is fundamental as it would guarantee a proper legal basis that would bind Bosnia and Herzegovina to its commitments.

CHAPTER III

Non-discriminatory and Inclusive Disability Policies that Manage the Needs of Cluster Munition Victims: Recognition of Cluster Munition Victims as Individuals with disability.

Cluster munition victims are defined by the CCM as all those persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights due to the use of cluster munitions. The definition includes those persons directly impacted by cluster munitions as well as their affected families and communities. According to preliminary data, in Bosnia and Herzegovina there are 225 cluster munition victims, out of whom 44 persons died and 181 were injured.²⁸

Under Article 5 of the CCM each State Party is required, in accordance with applicable international humanitarian and human rights law, to adequately provide age and gender sensitive assistance to such victims, including medical care, rehabilitation and psychological support as well as to provide for their social and economic inclusion. In order to achieve this goal the CCM contains a non-exhaustive list of elements that provide the modalities for victim-assistance implementation, including needs assessments, national planning and legal frameworks, resource mobilisation, consultation with victims and the designation of responsible focal points.²⁹

Article 5 (2) (e) prohibits discrimination against and amongst the victims of cluster munitions as well as between cluster munition victims and those who have suffered injury or disability from other causes. However, this broad clause should not be interpreted as an excuse for inactivity following the adage that as long as everyone is treated in the same insufficient manner no discrimination has occurred.³⁰ The second sentence in fact specifies that a difference in treatment is allowed as long as it relates only to the actual needs of the victims of cluster munitions.

28 Bosnia and Herzegovina, 'Convention on Cluster Munitions, Reporting Formats for Article 7 of the Convention on Cluster Munitions', 20 August 2011.

29 United Nations Institute for Disarmament Study, 'Implementing the Convention on Cluster Munitions', UN Geneva, 2010, p. 30.

30 Ibidem, p. 31.

Providing assistance to cluster munition victims in accordance with applicable international humanitarian and human rights law imposes significant obligations on Bosnia and Herzegovina, yet one important factor will be decisive for the successful implementation of its obligations: its capacity to absorb the commitments. With the aim of analysing the implementation modality in use in Bosnia and Herzegovina to address its obligations stemming from Article 5 of the CCM, this chapter is divided as follows: section I (A) looks at how Bosnia and Herzegovina is managing its resources in order to provide medical care as well as rehabilitation and psychological support to the victims and (B) analyse the policies of Bosnia and Herzegovina aimed at providing for the victims' social and economic inclusion. The role of NGOs in the implementation of Article 5 is also addressed. Section II and III provide a set of challenges, good practices as well as recommendations for Bosnia and Herzegovina on how best to proceed further in implementing the measures imposed under Article 5.

I. IMPLEMENTATION MODALITY

A. Medical care, Rehabilitation and Psychological Support

(i) Background

The victims of landmines as well as UXO and cluster munitions are part of the general disability population in Bosnia and Herzegovina and thus receive the same health support as other persons with disability. In Bosnia and Herzegovina health insurance falls within the competences of the entities and the Brcko District. In the Federation of Bosnia and Herzegovina (FBiH) the competence for healthcare is shared between the Federation of Bosnia and Herzegovina and its ten cantons. The Federal Ministry of Health is responsible for the development of policies and laws while the cantons are the implementers of the defined policies and laws. Therefore, it is possible that within the Federation the enjoyment of these rights varies, since each canton is responsible for determining the scope of the rights.³¹ In Republika Srpska (RS) and the Brcko District the competence for healthcare is centralised.

In Bosnia and Herzegovina there are twelve regionally based social health insurance funds: the ten cantons of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brcko District. Each competent authority has its own 'entitlements list' that establishes a set of guidelines regarding service provision. The guidelines include a list of prescription medicines that are funded by the canton's health insurance fund, a list of particular services available, a list of orthopaedic and prosthetic appliances financed through the insurance as well as the

31 Articles 32 and 33 of the Federal Law on Health insurance, Official Gazette of the Federation of Bosnia and Herzegovina 30/97 7/02 70/08 48/11.



amount that has to be paid by the patient.³² Therefore, depending on cantonal, RS and Brcko District annual revenue the respective health institutions have to effectively ration the available services in health institutions, patient entitlements and the allocation of available orthopaedic aids. At the Federal level solidarity funds offer the opportunity for all insured person in the FBiH to receive full coverage of their expenses for a specific list of operations and treatments.

There are different categories of insured persons (e.g. employees insured by their employer, agricultural workers, retired persons, health insurance registered unemployed persons, etc). War veterans with disabilities (former members of the military services) throughout Bosnia and Herzegovina receive permanent cash disability allowances and are entitled to healthcare insurance which is paid regularly. Civilian war victims and other persons with disability and a high level of disability (60% or above) enjoy - throughout Bosnia and Herzegovina - the same benefits as war veterans with disabilities. On the other hand, civilian war victims and persons with disability with a lower level of disability also receive a disability allowance but their health insurance contribution is not paid. Persons in this last category are usually unable to find a job, due to their health condition, and are insured on the basis of their unemployment benefits.³³

The Cluster munition victims enjoy the same rights as individuals with disability throughout the country; however, as explained above, the enjoyment of these rights differ in accordance with the cause and level of the disability (war veterans or 60% disability) and the place of residence of the victim (each of the twelve regionally based social health insurance funds have their own 'entitlements list').

³² UNDP, 'Social Inclusion in Bosnia and Herzegovina', National Human Development Report 2007, p. 113

³³ Ibidem, p. 115.

For example, if an individual becomes a victim of cluster munitions the steps listed below apply.

1. The level of disability of the individual is determined.
2. The victim is included in the appropriate health insurance scheme.
3. The type of prosthesis covered by his or her insurance scheme in his or her place of residence (canton, entity or Brcko District) is ascertained.
4. If the victim is not satisfied with the prosthesis offered under his or her health insurance scheme according to the 'entitlements list' of the competent authority then he or she can financially participate in covering the additional expense of a higher quality prosthesis.
5. He or she has access to the services provided by the Community Based Rehabilitation centres and to the available spas; however, the services provided by the spas are not covered by health insurance.
6. After three years the victim has the right to a new prosthesis, upon approval by a physician or a doctor specialised in orthopaedics.

Throughout Bosnia and Herzegovina it is possible to find urgent medical services present in the local healthcare centres of the larger communities and municipalities that offer both general and specialised services. In addition, throughout the country there are sixty Community Based Rehabilitation centres for mental and physical rehabilitation.³⁴ The services offered by these facilities are covered by health insurance throughout Bosnia and Herzegovina.

(ii) Implementation

When the CCM came into force in Bosnia and Herzegovina no changes were imposed at the health policy level in order to recognise cluster munition victims as a separate category of insured persons. Bosnia and Herzegovina did not recognise the need to create a separate group for cluster munition victims since they have always been included under the general Health Disability Policy.

The significant presence of landmines within the territory of Bosnia and Herzegovina together with its commitment to comply with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and their Destruction created the stimulus in Bosnia and Herzegovina to develop a Landmine Victim Assistance Sub-Strategy in August 2008. The Landmine Victim Assistance Sub-Strategy falls under the overarching Mine Action Strategy.³⁵ The sub-strategy envisaged a mine victim assistance coordination group comprised of governmental and non-governmental organisations to function as a *forum* to coordinate and implement its strategic and operational goals. It is within this framework that cluster munition victims have been addressed as a new separate group. The Mine Victim Assistance Coordination Group envisages the introduction of cluster munition victims into the Landmine Victim Assistance Sub-Strategy. The revision of the sub-strategy is foreseen for the year 2012 in line with the Mine Action Strategy.

³⁴ Bosnia and Herzegovina, Landmine Victim Assistance Sub-strategy (2009-2019).

³⁵ See Section II p. 33 for definition.

B. Disability (Social Welfare) Policy Outlook

This section delineates the readiness of the system in Bosnia and Herzegovina to provide for the economic and social inclusion of cluster munition victims. This includes a brief review of a non-comprehensive list of key policy documents adopted by government in Bosnia and Herzegovina: (i) the Disability Policy of Bosnia and Herzegovina, (ii) the Strategy for Advancing the Position of Persons with Disability in Republika Srpska, (iii) the Strategy for Equal Possibilities of Persons with Disability in the Federation of Bosnia and Herzegovina, (iv) the Law on the Professional Rehabilitation of Persons with Disability in Republika Srpska and (v) the Law on the Professional Rehabilitation of Persons with Disability in the Federation of Bosnia and Herzegovina.

(i) Background

As a country affected by war and its consequences, Bosnia and Herzegovina has been reforming its social welfare system to accommodate the needs of war victims and persons with disability resulting from the war or war-related incidents. On that path there have been a number of actions on the part of government in Bosnia and Herzegovina to improve respect of human rights for those persons with disability and to provide them with a non-discriminatory environment that will ensure their social and economic inclusion into society.

When the CCM entered into force in Bosnia and Herzegovina no changes were imposed at the policy level to recognise cluster munition victims as a separate category or to recognise their status. Yet “the victims assistance package does not require the reinvention of the wheel by establishing a raft of new mechanisms, it simply requires the work to be done”.³⁶ By virtue of the Convention cluster munition victims have been recognised as being the same as landmine/UXO victims by the institutions of Bosnia and Herzegovina. The latter can be distinguished under two categories, based on their status during the war or the time when their injuries were sustained, and therefore cluster munition victims can come under one of the two categories below.

- Civilian war victims (civilians injured during and/or after the war)
- War veteran victims (former members of the military services)

In this way Bosnia and Herzegovina did not give preferential status to cluster munition victims in comparison to the status of other war or war related victims. Cluster munition victims enjoy the same welfare rights as all other persons with disability in Bosnia and Herzegovina. Nevertheless, there is a discrepancy between the benefits that can vary according to the different categories of victim.

³⁶ United Nations Institute for Disarmament Study, ‘Implementing the Convention on Cluster Munition’, UN Geneva, 2010, p. 31

(ii) Implementation

Bosnia and Herzegovina has a decentralised system of support that serves persons with disability. The constitutional responsibility for the social and economic inclusion of persons with disability is divided between the entities (Republika Srpska and the Federation of Bosnia and Herzegovina) and the Brcko District. In the Federation certain competencies are further distributed at the cantonal level while the systems in Republika Srpska and Brcko District is centralised. It is therefore essential to look into the legal documents passed at different administrative levels in order to understand what social and economic inclusion possibilities the system in Bosnia and Herzegovina can offer to the victims of cluster munitions.

In 2008, Bosnia and Herzegovina passed a state level Disability Policy in which it declared its will to unconditionally mainstream disability into all of its policies. It also recognised the deficiencies of the system and the unequal treatment of persons with disability based on the cause of impairment, place of residence and disability criteria.

The Disability Policy acknowledged that a social inclusion system based solely on monetary compensation to victims and or their families did not suffice and nor did it offer a sustainable mechanism for the equal treatment of persons with disability. Therefore it called for the categorical respect of human rights, freedoms and human dignity for those persons with disability and suggested areas for improvement such as:

- integration of persons with disability into the development of economic and fiscal policies;
- equal conditions and access to education;
- development of a system that ensures the labour related rights of persons with disability;



- development of a system of multidisciplinary social services at the local community level;
- raising awareness about the rights, capabilities and abilities to contribute to society of persons with disability.

Recognising the guidelines from the Disability Policy in Bosnia and Herzegovina, the Federation developed the Strategy for Equal Possibilities of Persons with Disability in the Federation of Bosnia and Herzegovina. In essence the strategy further develops the disability policy guidelines defined in the Disability Policy document and sets out the vision of the Federation for accommodating the rights of persons with disability. The strategy also stipulates that the current system is not sustainable since it is based on social contributions to the victims and their families and that it needs to be upgraded to suitably provide for implementation of different international norms and standards to the fullest.

The current system in the Federation of Bosnia and Herzegovina provides distinct support to three categories of persons with disability: war veteran victims; civilian war victims; and persons with disability resulting from other causes.

The victims of cluster munitions are considered as civilian war victims unless their disability resulted from military service during the last war.

In general terms the entitlements for all three categories can be divided into the two categories: monetary compensations and services.

Monetary compensation is comprised of state subsidies provided to persons with disability on a monthly basis as a support for their economic stability, whereas services are related to the different programmes organised by the State (i.e. professional rehabilitation programmes) aimed at improving the status of persons with disability and helping to facilitate their social inclusion. However, monetary compensation varies for the different categories. For example, war veterans receive the highest rate of compensation 'for the sacrifice made by military personnel who became injured as a result of the war'. In this strategic document the Federation acknowledges the need to further upgrade its system to ensure its harmonisation with international rules and regulations, most notably with the United Nations Convention on the Rights of Persons with Disability and the International Classification of Functioning, Disability and Health (ICF) (WHO 2002). It does recall the Convention on Cluster Munitions.

The Strategy for Advancing the Position of Persons with Disability in Republika Srpska follows a similar path and recognises the fact that certain areas need further improvement in order to reach unconditionally equal treatment for all persons with disability. The strategy is developed to align the system in Republika Srpska with the requirements stemming from the UN conventions relevant to this area as well as to improve the application of the European Convention on Human Rights. The Strategy identifies a number of programmes that would improve the position of persons with disability. It suggests concrete activities that would need to be implemented by different institutions in Republika Srpska in order to enhance the possibilities of persons with disabilities to be included in the streams of society on the equal manner. In fact, this shows us that the social and welfare system for persons with disability is still developing. The rights and benefits of persons with disabilities are not addressed in



this Strategy; nevertheless it is worthwhile mentioning that Republika Srpska recognizes the same categories of persons with disabilities. The categorization of persons with disabilities is made based on the same patterns as in the Federation of Bosnia and Herzegovina. The rights are related to the monetary compensation and services that help further inclusion of those individuals into the society.

The entities do recognise the gaps and have suggested programmes targeted at their improvement, yet it remains to be seen how this will impact upon the position of cluster munition victims. The two entity laws on the professional rehabilitation and employment of persons with disability are an example of good practice in terms of the improvement of the position of persons with disability, regardless to the category of victims to which they belong. For the sake of brevity and taking into account the fact that these two laws are mutually harmonised, the following paragraph elaborates on them jointly.

The professional rehabilitation and employment of persons with disability and their entitlements are defined under the Law on the Professional Rehabilitation of Persons with Disability of Republika Srpska and the Law with the same title of the Federation of Bosnia and Herzegovina. These laws guarantee the rights to professional education and rehabilitation and impose the obligation upon employers to employ a certain quota of persons with disability in relation to the overall number of employees; for example, one person with disability per every 16 employees. These laws also define certain subsidies for employers that employ persons with disability, such as tax and customs subsidies.

This brief summary of the position of persons with disability in regard to the social welfare system in Bosnia and Herzegovina shows us that the system exists at the policy level and to a great extent offers a non-discriminatory approach to the issue. The victims of cluster munitions in Bosnia and Herzegovina enjoy rights and benefits that can ensure their social and economic

inclusion into society; however, this study also notes that the Disability Report of Bosnia and Herzegovina (2012) concludes that “the area of social welfare in Bosnia and Herzegovina is not resolved well, it does not even provide minimum security to citizens and does not define a social minimum for persons with disability either”.³⁷ The same report calls for urgent changes in terms of the adoption of a single law that would, “define the rights and support for persons with disabilities, regardless of the cause of disability”³⁸ and concludes that “the scope of rights and amounts of individual support allowances are established on the basis of the cause of disability, which brings those persons with the same type and degree of disability into different positions and this leads to discrimination”.

Conclusively, the systems of social inclusion of persons with disabilities in Bosnia and Herzegovina are still developing. They recognise the same rights for persons with disabilities; however the benefits are different, thus leading to unequal treatment. The victims of cluster munitions are directly recognized into the system and do not have any preferential status. Those victims are entitled to the same rights as civilian war victims.

The efforts of Bosnia and Herzegovina to provide assistance to victims are recognized at the international level. Bosnia and Herzegovina – together with Austria – is nominated as a coordinator of the victim assistance activities of the CCM. It serves as an acknowledgement of good work achieved in the area of victims’ assistance both domestically and abroad.

C. The Role of NGOs

In Bosnia and Herzegovina there are 14 registered non-governmental organisations (NGOs) that deal either directly or indirectly with landmine victim assistance, while it is estimated that 32 NGOs are involved in different ways in landmine victim assistance in the field.³⁹ The NGOs that deal with landmine victims do not make a difference between landmine and UXO survivors and cluster munition victims. In this respect it is important to underline that cluster munition victims are not always easy to identify in a country like Bosnia and Herzegovina, which is contaminated both by landmines, UXO and cluster munition remnants. Some of the NGOs involved in victim assistance include actual victims themselves.

The role of NGOs in supporting these victims in Bosnia and Herzegovina is fundamental and they carry out a range of different activities. NGOs organise home visits in order to support individuals suffering from disability and try to identify the needs of these victims. Once they have identified the victims’ needs the NGOs organise targeted workshops and seminars to address them. The workshops and seminars are aimed at empowering these individuals to advocate for their cause within their community. Furthermore, NGOs organise sports rehabilitation and art activities for victims. Besides their activities most strictly related to the needs of victims,

37 Disability Report of Bosnia and Herzegovina (2012), p. 13. Viewed on 15 July 2012, http://ic-lotos.org.ba/index.php?option=com_docman&task=cat_view&gid=35&Itemid=37

38 Disability Report of Bosnia and Herzegovina (2012), p. 17-19. Viewed on 15 July 2012, http://ic-lotos.org.ba/index.php?option=com_docman&task=cat_view&gid=35&Itemid=37

39 Bosnia and Herzegovina Landmine Victim Assistance Sub-strategy 2009 – 2019.

the NGOs work on building the capacity of the Council for Disability⁴⁰ and advocate for victims rights as well as for the implementation of the CCM at the cantonal, entity, Brcko District and state level. Those organizations have full understanding of the needs of victims as most of them are victims themselves. They are able to provide peer-to-peer support from which the victims greatly benefit.



Ten main non-governmental organisations that deal with victim assistance and demining established the Coalition for Linking Mine Action and Development (LMAD)⁴¹. This coalition works to identify the needs of victims and advocates for “joint action as the only way to improve the shortcomings”⁴² and focuses on the improvement of policies in Bosnia and Herzegovina related to demining, cluster munitions, support to survivors/victims and mine/cluster munitions affected communities. They are strong advocates for the expedited implementation of the CCM.

40 The Council for Disability is responsible for reporting on the level of implementation of the CCM.

41 More information on the Coalition may be found at www.lmad.ba

42 Coalition for Linking Mine Action and Development, About the LMAD Coalition, viewed on 15 July 2012. http://www.lmad.ba/index.php?option=com_content&view=article&id=78&Itemid=53&lang=en

II. CHALLENGES AND GOOD PRACTICE

CHALLENGES

Harmonise the enjoyment of the rights of cluster munition victims throughout Bosnia and Herzegovina.

Assess the needs of cluster munition victims, especially in light of the difficulties in identifying them from amongst landmine/UXO victims.

Offering all services related to rehabilitation, such as spas, for free due to a lack of resources.

Provide children and young individuals with prosthesis that follow their growth trends.

Lack of resources to implement policies.

Include within the social welfare support entitlements all of the victims encompassed by the broad definition of victims provided by the CCM.

Transform the Victim Assistance Coordination Group and the Landmine Victim Assistance Sub-strategy into a more operative and viable tool in order to achieve concrete targets.

NGO networks and activities in order to support victims to enjoy their health as well as social and economic rights.

GOOD PRACTICE

Cluster munitions are included in the health insurance schemes for individual with disability.

The health insurance scheme for persons with disability covers prosthesis devices and community rehabilitation centres.

Presence of sixty Community Rehabilitation Centres throughout Bosnia and Herzegovina.

The right to have a new prosthesis every three years.

Developing policies for equalising the possibilities of person with disability in line with international standards.

Cluster munition victims are entitled to receive social welfare support as individuals with disability.

Creation of a coordination group comprised of governmental and non-governmental organisations to function as fora to coordinate and implement its strategic and operational goals to fulfil the needs of cluster munition victims.

III. RECOMMENDATIONS

In order to effectively assess the needs of cluster munition victims as well as to include them in the Landmine Victim Assistance Sub-strategy it is vital to collect all reliable data with respect to the victims of cluster munitions. More specifically, a comprehensive database including all victims as defined by the CCM (persons directly impacted by cluster munitions as well as their affected families and communities) needs to be compiled. The resources necessary to compile the database are present on the ground (e.g. NGOs), but what is needed is effective coordination for them to achieve this goal.

The inclusion of cluster munition victims into the Landmine Victim Assistance Sub-strategy is an important step in addressing their needs through a suitable strategy paper. Nevertheless, the Landmine Victim Assistance Sub-strategy needs to be reviewed in order to transform it into a more viable and operative tool with clear targets, attainable goals and clearly defined responsibilities if it is to become an effective tool for addressing the needs of these victims.

The system for the social and economic inclusion of persons with disability in Bosnia and Herzegovina is predominately based on monetary support; however, the inclusion of these individuals will require a more active role on the part of the competent authorities in the development and implementation of programmes that can advance the status of persons with disability.

The system does not recognise sufficiently the need to provide social support to family members who are, according to the text of the Convention, also considered to be victims and therefore the provision of support for these persons is also advisable.

There is a strong need to keep gender desegregated data of the victims and to look into the specific needs of men and women. The support programmes implemented by governments or NGOs must be gender-sensitive.

There is a need to raise the level of awareness of the general population concerning persons with disability, and their equal position in society and their rights of social and economic inclusion. This would inevitably lead to an improvement in terms of respect for their human rights. It would also provide a better environment within their communities in terms of respect for their dignity and their participation in educational, cultural and sport activities.

The NGOs dealing with victim assistance need to further streamline their efforts in order to collectively address government through a comprehensive advocacy strategy.

CHAPTER IV

Sanctions against Unlawful Acts, Managing the Future: Aligning National Legislation to International Obligations.

Sanctioning against unlawful acts that are prohibited under the CCM is a requirement prescribed in Article 9 of the Convention, wherein it states that each State Party is responsible “to take all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions to prevent and suppress any activity prohibited to a State Party under this Convention”.

Whilst “the administrative and other measures to implement this Convention”⁴³ have been elaborated in Chapters II and III, this chapter looks into the legal framework that imposes penal sanctions on those persons acting against the provisions and spirit of the Convention. This chapter delineates which provisions of the existing criminal legislation, such as unlawful acts, are to be prosecuted and under which competencies and jurisdiction such acts come. In its structure this chapter adheres to the same structural idea as the previous chapters.

I. BACKGROUND

Bosnia and Herzegovina is a signatory to many international conventions and treaties that can be seen as interrelated to the Convention on Cluster Munitions. Most notable for the purposes of this study are the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and their Destruction (Ottawa Treaty)⁴⁴ and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons

43 Article 9 of the Convention on Cluster Munitions. Viewed on 07 July 2012, <http://www.clusterconvention.org/files/2010/12/CCM-Text1.pdf>

44 Information on the State Parties to this Convention. Viewed on 23 July 2012, <http://www.icbl.org/index.php/icbl/Universal/MBT/States-Parties>

and their Destruction (CWC).⁴⁵ Those conventions required Bosnia and Herzegovina to adjust its legislation in many aspects related to the prohibition and the possession of such deadly weapons.

The Convention on Cluster Munitions requires Bosnia and Herzegovina to impose sanctions against any persons who “use cluster munitions, develop, produce, otherwise acquire, stockpile, retain or transfer to anyone directly or indirectly cluster munitions, assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention”.⁴⁶ These obligations also relate to, “explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft”.⁴⁷

Despite the fact that the legislative framework in Bosnia and Herzegovina is dispersed amongst different administrative levels, the criminal legislation, which is most relevant for this chapter, is centralised at the state level. After the Convention was ratified and entered into force there were no changes to the relevant legislation therefore this chapter looks into the legislation *de lege lata* and the need of further alignment of the criminal legislation to the provisions of the Convention.

II. IMPLEMENTATION MODALITY

No specific implementation modality relevant to defining the punitive measures required by the Convention existed. The Convention was absorbed in pre-existing policy framework. The existing “national implementation measures”⁴⁸ were the result of the legislative reforms undertaken in order to align the criminal laws of Bosnia and Herzegovina to the requirements of the other two conventions mentioned in the previous paragraph.

A. Respect for International Law

The Criminal Code of Bosnia and Herzegovina, in its original text, tackled the issue of the illicit trafficking of arms and military equipment but without taking into account unconventional armaments and those armaments prohibited under international law. Article 193 of the Criminal Code initially stipulated:

45 Information on the State Parties to this Convention. Viewed on 23 July 2012, <http://www.armscontrol.org/factsheets/cwcsig>

46 Article 1 (1) a), b), c) of the Convention on Cluster Munitions. Viewed on 07 July 2012, <http://www.clusterconvention.org/files/2010/12/CCM-Text1.pdf>

47 Article 2 of the Convention on Cluster Munitions. Viewed on 07 July 2012, <http://www.clusterconvention.org/files/2010/12/CCM-Text1.pdf>

48 Article 9 of the Convention on Cluster Munitions. Viewed on 15 July 2012, <http://www.clusterconvention.org/files/2010/12/CCM-Text1.pdf>

“Whoever imports, exports, transits or mediates in trade of arms and military equipment without a license prescribed by the Law of Bosnia and Herzegovina, or whoever gives false statements or fails to provide material facts in the process of licensing under the Law of Bosnia and Herzegovina, or whoever fails to conduct the registration of the agreement regarding arms and military equipment pursuant to the Laws of Bosnia and Herzegovina, shall be punished by imprisonment for a term between one and ten years”.⁴⁹

Article 193 turned out to be the cornerstone that would be amended several times in order to gradually bring Bosnia and Herzegovina into compliance with its international obligations. By 2004 Bosnia and Herzegovina had already amended the Law to *inter alia* add its obligations as defined under international law. The Article was therefore amended to incorporate the words “or contrary to international law” after the words “the Laws of Bosnia and Herzegovina”. In relation to the Ottawa Treaty and the CWC additional changes were made to the Criminal Code. Those changes resulted in Article 193a of the Criminal Code, which is entitled ‘Forbidden Arms and Other Means of Combat’. The new article recognised the international obligations of Bosnia and Herzegovina in accordance with the Ottawa Treaty and the CWC and reads as follows:

“Whoever, contrary to the regulations of Bosnia and Herzegovina or rules of international law, makes or improves, produces, stockpiles or stores, offers for sale or buys, intermediates in a purchase or sale or in some other way directly or indirectly transfers to another, possesses or transports chemical or biological weapons, or some other means of combat prohibited by the rules of international law, shall be punished by imprisonment for a term between one and ten years.”⁵⁰

The use of weapons and or means of combat prohibited by the rules of international law are also sanctioned by imprisonment for a term of five years or a long-term of imprisonment.

Based on the opinion and interpretation of the Ministry of Justice of Bosnia and Herzegovina (see the list of interviewees from the Ministry of Justice in Annex I) the term “other means of combat” encompasses all other types of weapons and munitions and therefore includes cluster munitions. This term was meant to be general in its definition in order to cover a broad spectrum of weaponry and the conventions that apply to this field. This type of legislative approach is not unknown in comparative law; the Republic of Slovenia applies the same terminology for the same or similar purpose in its criminal code.⁵¹

49 Official Gazette of Bosnia and Herzegovina number 03/03.

50 Official Gazette of Bosnia and Herzegovina number 54/05, 61/04/ and 32/07.

51 Article 310 of the Criminal Code of Republic of Slovenia. Viewed on 20 July 2012, www.km.undp.sk/uploads/public/File/AC.../Slovenia_Criminal_Code.doc

B. Assisting, encouraging and inducing others to act contrary to the Convention

Assistance, encouragement or inducement is not recognised as such by the Criminal Code of Bosnia and Herzegovina; however, they are incorporated into the articles that deal with accomplices, incitement and accessory. These provisions of the Criminal Code did not require any specific changes in order to align them with the CCM. The Criminal Code prescribes the same sanctions for accomplices as for the perpetrator and for incitement and accessory the same punitive measures as for the individual who perpetrated such an offence himself/herself.

III. CHALLENGES AND GOOD PRACTICE

This chapter has sketched some of the key characteristics of the criminal legislation in Bosnia and Herzegovina in relation to the requirements of the CCM to define national implementation measures for the imposition of sanctions for unlawful acts pertaining to the Convention. Drawing upon the developments linked to the implementation of the Ottawa Treaty and the CWC this chapter has shown that Bosnia and Herzegovina instigated no structural changes due to the fact that the criminal legislation already welcomed the provision of the CCM.

Therefore, there were no specific challenges or good practice in this respect. The challenges and good practice relate to previous efforts to amend the legislation to meet the purposes of the Ottawa Treaty and the CWC. In this chapter we have cast new light on some of the perennial challenges and outlined the system’s readiness to absorb the ‘national implementation measures’ as per the requirements of the CCM.

CHALLENGES	GOOD PRACTICE
There is no official interpretation of the Criminal Code of Bosnia and Herzegovina in respect to its applicability to the CCM and this may lead to certain legal uncertainty	Alignment of the Criminal Code with the Ottawa Treaty and the CWC established an appropriate legal framework for the absorption of the CCM into the criminal legislation in Bosnia and Herzegovina
There is no official consolidated version of the Criminal Code and therefore it was difficult to trace the amendments related to the CCM	Respect for international law within the Criminal Code ensured the automatic alignment of legislation with the CCM
The lack of specific legal expertise to cover the military provisions of the Criminal Code	The general provision “other means of combat” proved to be broad enough to incorporate cluster munitions

IV. RECOMMENDATIONS

Although the legal argumentation on the provisions of the Criminal Code seems to be straightforward it is recommended that Bosnia and Herzegovina's legal experts look into Article 193a of the Criminal Code and request official interpretation of the provisions in relation to the Convention on Cluster Munitions. This will unveil any dubiety.



CONCLUSION

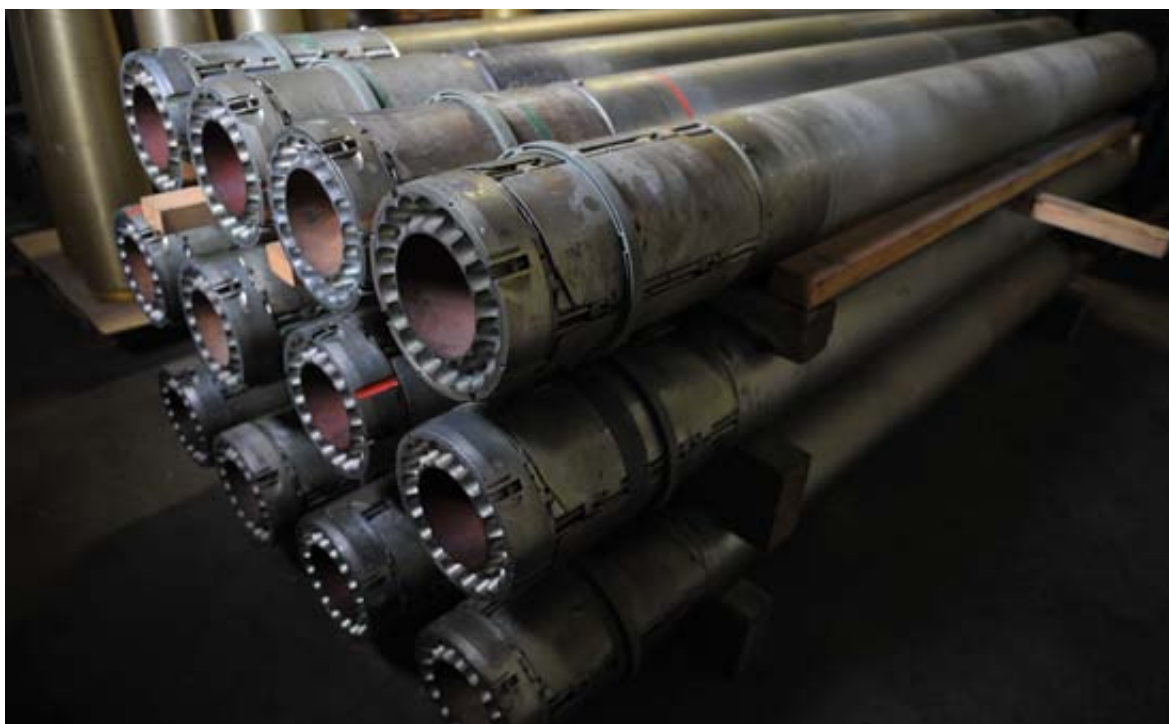
This study sets out to examine what it takes to absorb the obligations from the Convention on Cluster Munitions by Bosnia and Herzegovina. As a result of the analysis we have been able to produce a detailed depiction of different implementation modalities related to four main articles of the Convention: a) destruction of cluster munitions stockpiles, b) cluster munitions clearance and risk education, c) victims assistance and d) national implementation measures. The study paints a rather divergent picture of those modalities in delivering the commitments out of which three stand out:

- Partnership modality;
- Procedural and legislative readjustments; and
- Absorption in pre-existing policy framework.

Those three modalities arise from our approach: the analysis of the systemic solutions in implementation of the CCM with an emphasis on mechanisms developed by Bosnia and Herzegovina in assuming the requirements of the Convention. As we saw in Chapter I and II Bosnia and Herzegovina relied on partnership with the UN system and international non-governmental organization (such as NPA) present in the country. Through those partnerships, Bosnia and Herzegovina destroyed its cluster munition stockpiles and commenced cluster munition clearance and risk education activities. Moreover, Chapter II also shows how administrative procedures were readjusted with the aim of assuming the CCM requirements regarding the clearance of cluster munition. Finally, in Chapter III, by describing the general characteristics of the health and social protection system in Bosnia and Herzegovina the authors presented the readiness of Bosnia and Herzegovina to ensure health and social inclusion support to cluster munition victims and its systemic ability to provide them with a non-discriminatory status. The ensuing chapter – Chapter IV – complements the part of the

study on procedural readjustments by providing a legal analysis on how national criminal legislation on punitive measures to sanction actions in breach of the Convention were aligned with international standards.

By looking into the capacities of the non-governmental sector, the paper concludes that the non-governmental organizations in Bosnia and Herzegovina possess the capacities to support the governments in Bosnia and Herzegovina in fulfilling the obligations of the Convention and have the capacities to advocate for specific policies. Nevertheless, the scarcity of resources prevents them from a more active engagement.



Scarce resources and lack of coordination very often characterise post conflict countries which are severely affected by remnants of war and war victims. Therefore, the efficient and targeted management of international and national resources – financial, human and institutional – is key in order for a country to absorb the obligations stemming from international obligations as well as to support its own development. It is in light of this belief that this study concluded each chapter by setting out a list of recommendations on how Bosnia and Herzegovina and other states parties can effectively manage their resources. Efficient management can significantly prevent the occurrence of challenging factors and can better support states to identify successful policies aimed at the implementation of the CCM in the territories under their jurisdiction.

The study shows that overcoming pervasive systemic imperfections that hinder the implementation of the CCM require joint efforts of many different stakeholders. It elaborates ways to attain those synergies and calls for bold approaches in order to define the most appropriate models to assume the Convention. Taking up this challenge is not easy but it will guide states in their path to improve the quality of life of people affected by cluster munitions.

ANNEX I

List of Interviewees

Institutions in Bosnia and Herzegovina	
Ministry of Foreign Affairs of Bosnia and Herzegovina, Sector for Multilateral Relations	Anesa Kundurović, Minister-Counsellor
Ministry of Defence of BiH	Dalibor Perić, Senior Advisor
Ministry of Defence of BiH	Denis Selimović, Senior Associate
Ministry of Labour and Social Policy of FBiH	Esma Palić, Expert Advisor for Protection of Persons with Disabilities
Ministry of Health of the FBiH	Goran Čerkez, Assistant Minister for International Cooperation and Coordination of Development Strategies
BH MAC, Sarajevo	Tarik Šerak, Chief of Mine Action Management Department
Cantonal Health Insurance Sarajevo	Tenaida Čosić, Advisor
Ministry of Health of RS	Ljubo Lepir, Assistant Minister
Ministry of Labour, War Veterans and Disabled Persons RS	Duško Milutinović, Assistant Minister
Cantonal Ministry of Labour, Social Welfare, Displaced Persons and Refugees Sarajevo	Azra Mulaomerović, Senior Associate
Cantonal Ministry of Health, Labour and Social Welfare Posavina	Zvonko Marković, Officer
Cantonal Health Ministry Tuzla	Nedžad Djedović, Assistant Minister
Cantonal Ministry of Social Welfare, Health, Displaced Persons and Refugees of the Bosna – Podrinje Canton	Branka Šekarić, Minister
Ministry of Health, Labour and Social Welfare of the Herzegovina-Neretva Canton	Salko Čolaković, Expert Advisor
Ministry of Health, Labour and Social Welfare of the West-Herzegovina Canton	Marija Pandžić, Chief of Accounting Department
Ministry of Health and Social Welfare of the Una-Sana Canton	Azra Jusić, Chief of Sector for Social Welfare

ANNEX I

List of Interviewees

Non-governmental sector	
NGO Landmine Survivors Initiative Tuzla	Amir Mujanović, Executive Director
NPA, Sarajevo	Darvin Lisica, Programme Manager
Humanitarian Organisation Pro Vita, Mostar	Filip Filipović, President
Association "Svijet bez mina", Sarajevo	Milan Bajović
NVO "Motiv", Gradačac	Mirsan Velagić
NGO "Centar za razvoj i podršku", Tuzla	Mirza Jašarević, Project Coordinator
Association "Stop Mines", Pale	Radoslav Živković, Executive Director
Intersos, Sarajevo	Vedad Kadirić, Project Coordinator
UDAS, Banja Luka	Željko Volaš, Executive Director
Other institutions	
World Health Organisation in BiH	Haris Hajrulahović, Head of Mission
Handicap International, Sarajevo	Almedina Musić, Head of Mission





Project funded by the European Union.