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Post-Conflict Confidence-Building and Arms Control

The Case of Armenia and Azerbaijan

Stuart Maslen

The armed conflict between Azerbaijan and Armenia known as the Second Karabakh War that took place over a 44-day period in fall 2020 resulted inter alia in two consequences. First, significant contamination from explosive remnants of war, including cluster munition remnants; second, it laid bare a huge threat from anti-personnel and anti-vehicle mines, particularly along the former Line of Contact that stretched for 280 km characterized by earthworks, barbed wire, and landmines forming defenses of between 3 and 7 km in depth.

The widespread use of mines and cluster munitions since the late 1980s has occurred amidst a lack of accession to key conventional arms controls treaties by neither Armenia nor Azerbaijan. Neither is a State Party to the Convention on Certain Conventional Weapons (1980), the Anti-Personnel Mine Ban Convention (1997), or the Convention on Cluster Munitions (2008). In the aftermath of the Second Karabakh War, this essay considers whether there are now opportunities to build confidence in the region and contribute to a broader peace and reconciliation agenda through

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accession by both countries to one or more of these conventional weapons treaties.

The impact of explosive ordnance contamination on reconstruction and resettlement activities in Karabakh and other liberated areas of Azerbaijan is considerable and will remain so for many years to come. Indeed, the prolonged human suffering and myriad constraints on development will continue to present a compelling case for universalization in the South Caucasus of the conventional arms treaties. Over

the past 30 years, mines and explosive remnants of war have inflicted 2,800 casualties. Just since the end of the hostilities in November 2020 and through to early June 2021, a total of 142 Azerbaijani casualties were recorded (including 49 civilians), as well as four Russian peacekeepers, six Armenians involved in the recovery of human remains, and one Armenian casualty reported on Armenian soil. These incidents have mostly taken place within territory regained by Azerbaijan but where civilian populations are not currently resident or circulating.

When resettlement and wider land use occurs in these districts, the casualty figures are likely to be raised further—perhaps dramatically so.

Victim-activated protective systems such as landmines are increasingly seen as outdated, with other advanced military powers moving towards more sophisticated means of border security. Turkey is just one example of this. Perhaps there is now an opportunity to reflect on the regional context in the South Caucasus and to explore the possibility of adherence to global treaties that would achieve

three important objectives. First, help address the current situation through greater international support for clearance efforts in the liberated areas; second, limit (or better still prohibit) future mine-laying activities by both countries; and third, offer a valuable platform for confidence-building between the governments of Armenia and Azerbaijan.

Three treaties will be examined in chronological order of adoption. First, the Convention on Prohibitions or Restrictions on

The prolonged human suffering and myriad constraints on development will continue to present a compelling case for universalization in the South Caucasus of the conventional arms treaties.

the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects that was adopted in Geneva in 1980 and entered into force in 1983—commonly known as the Convention on Certain Conventional Weapons, or the CCW. Second, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction that was adopted in Oslo in 1997 and entered into force in 1999—colloquially called the Anti-Personnel Mine Ban Convention, or APMBC. Third, the Convention on Cluster Munitions that was adopted in Dublin in 2008 and entered into force in 2010.

The 1980 Convention

The Convention on Certain Conventional Weapons (CCW) was the indirect result of the failure of negotiating states to agree upon prohibitions and restrictions on specific conventional weapons when drafting the 1977 Additional Protocol I to the Geneva Conventions on the protection of the victims of international armed conflicts. From the negotiating arena of international humanitarian law (IHL) that took place under the aegis of the government

of Switzerland, states moved within the auspices of the United Nations to conclude the CCW, which they achieved in October 1980. Today, all five permanent members of the UN Security Council are party to the CCW, along with major military powers like India, Israel, Pakistan, and Turkey. Georgia, too, is a State Party, although Iran is not. As of early September 2021, 125 UN member states are parties to the CCW and an additional four are signatories. Both Azerbaijan and Armenia, however, remain outside.

Both the CCW's structure and the scope of its application is somewhat unusual. It comprises a framework treaty with a series of annexed protocols that regulate specific categories of conventional weapons: non-detectable fragments, landmines, incendiary weapons, blinding laser weapons, and explosive remnants of war. The CCW's structure allows for additional protocols to be added if and when the State Parties decide to do so; three have been added since the CCW's adoption, along with its three original protocols. By tradition, decisions among the states parties are taken by consensus.

The annexed Protocols contain detailed rules for the use in armed conflict of specific weapons that raise humanitarian concerns.

The CCW is primarily an IHL treaty, although it also comprises limited arms control elements that preclude the transfer of those weapons whose use is comprehensively prohibited. To join the Convention, a state must adhere to the framework Convention and at least two of the six annexed Protocols.

For the first two decades after coming into force, the CCW and its Protocols applied only in international armed conflicts—i.e., those between two or more sovereign states. This includes the 1980 Protocol II on landmines. In 2001, however, the scope of application of every protocol was expanded to also cover non-international armed conflicts—i.e., those between a state and a non-state armed group. This is known formally as the Amendment to Article I of the Convention on Prohibitions or Restrictions on the Use of Certain

Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, entering into force in 2004. A State Party to the CCW must ratify this amendment of scope for it to apply (86 had done so as of early

September 2021). The 1996 Amended Protocol II, however, which substantively tightened restrictions on landmines, explicitly applies in all armed conflicts.

Next, we can discuss the two Protocols on landmines. The first is the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (adopted in 1980 and entered into force in 1983), commonly termed the 1980 Protocol II. It prohibits the targeting of civilians using anti-personnel or anti-vehicle mines as well as the indiscriminate use of any landmines (denoting instances where mines are emplaced or dispersed by aircraft, but are not directed against a lawful military objective).

This prohibition is fully in line with the customary international legal rules on the conduct of hostilities that already bind both Armenia and Azerbaijan (and all other UN member states). Indeed, the 1980 Protocol II adds little to those longstanding IHL rules, as exemplified in the International Committee of the Red Cross's (ICRC) Customary IHL Rule 1

The reintegration of Karabakh into the rest of Azerbaijan requires a multi-layer, sequential policy approach characterized by a high tolerance for contingent and adaptive alternatives.

(“The Principle of Distinction between Civilians and Combatants”) and Customary IHL Rule 11 (“Indiscriminate Attacks”).

There is no obligation under the Protocol to destroy any landmines nor any prohibition on production, import, or export. Their use is not comprehensively prohibited, either.

Rightly so, the ICRC refers to an “epidemic” of landmine injuries that resulted from the widespread indiscriminate use of anti-personnel mines, especially in the 1980s, in countries like Afghanistan, Angola, and Cambodia. This led to widespread clamor for the imposition of greater legal restrictions in armed conflicts. In 1993, France called formally for the revision of CCW Protocol II, which in turn led UN Secretary-General Boutros Boutros-Ghali to convene the First Review Conference of the CCW in October 1995. The following May, an Amended Protocol II was adopted by the CCW States Parties.

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended in 1996 (Amended Protocol II) requires that all anti-personnel mines be detectable to a certain standard and that remotely delivered anti-personnel mines

self-destruct and self-deactivate within 120 days to a very high combined standard of inoperability. Manually emplaced anti-personnel mines must be marked and fenced wherever it is possible to do so. The Amended Protocol II also prohibited the transfer to anyone of non-detectable anti-personnel mines. Few restrictions, though, are imposed on anti-vehicle mines.

The two CCW Protocols on mines have been widely ratified. As of early September 2021, 95 UN member states are party to the 1980 Protocol II while 106 UN member states are party to the 1996 Amended Protocol II. All five permanent members of the UN Security Council are party to both the 1980 Protocol II and the 1996 Amended Protocol II.

One other CCW Protocol is particularly relevant to the post-conflict situation in Armenia and Azerbaijan: the Protocol on Explosive Remnants of War that was adopted in 2003 and entered into force in 2006 (Protocol V). As of early September 2021, 96 UN member states are party to it. Protocol V requires parties to a conflict to take measures to reduce the dangers posed by explosive remnants of war. These “ERW” are defined as unexploded ordnance and abandoned explosive ordnance

linked to an armed conflict. To facilitate clearance, Protocol V requires the exchange of information on use of munitions (subject to legitimate national security interests). Protocol V neither prohibits any weapon nor affects their production or transfer; it just concerns the post-conflict clear-up, especially for the benefit of the civilian population.

Both Armenia and Azerbaijan should be in a position to adhere to the CCW along with its 1980 Protocol II, its 1996 Amended Protocol II, and the 2003 Protocol V on explosive remnants of war. Indeed, it is surprising that neither has yet done so. In moving towards accession, each would in effect reinforce their respective existing obligations under IHL to safeguard civilians from the effects of weapons.

The 1997 Convention

Notwithstanding the successful adoption of the Amended Protocol II by CCW States Parties in 1996, many UN member states were persuaded that nothing less than a total prohibition of anti-personnel mines would be sufficient to protect civilians from harm—both during armed conflicts and for years and decades afterwards. As well as the

direct humanitarian costs, the negative social and economic impacts are also very significant. Land cannot safely be used for agriculture or grazing livestock, physical infrastructure cannot be reconstructed, and refugees and the internally displaced are impeded from safe return. Clearance of mined areas is slow, dangerous, and expensive. In a 1994 *Foreign Affairs* article, Boutros-Ghali even called for anti-personnel mines to be considered “in the same legal and ethical category as biological and chemical weapons.”

At the closing of the First Review Conference of the CCW in May 1996, the Canadian delegation invited other interested states to come to that country later in the year in order to discuss a path toward a total global prohibition on anti-personnel mines. At the resulting conference, held in Ottawa in October 1996, Lloyd Axworthy, Canada’s foreign minister at the time, called on interested states to return to the Canadian capital before the end of 1997 to sign a treaty comprehensively outlawing anti-personnel mines. The collective efforts of pro-ban UN member states and various civil society groups—the process took place outside the UN framework—would result in the adoption, in Oslo in September 1997, of the

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction by more than 120 UN member states. It entered into force in March 1999 and, as of early September 2021, 164 UN member states are party to the Convention, including, among many others, Afghanistan, France, Iraq, Tajikistan, Turkey, Turkmenistan, Ukraine, and the United Kingdom.

The core of the 1997 Anti-Personnel Mine Ban Convention lies in its Article 1(1), according to which each State Party “undertakes never under any circumstances” to develop, produce, stockpile, transfer, or use anti-personnel mines. As the Convention is worded in the form of a disarmament treaty, and not an IHL treaty like the CCW (which is primarily limited to situations of armed conflict), the prohibition on use applies also in peacetime. In addition, the prohibition on use includes all and any use, including along an international border. No reservation to any of the provisions of the Convention is possible.

Central to any disarmament treaty is the duty to destroy stockpiles. Stockpiling of anti-personnel mines was explicitly prohibited in the 1997 Convention,

with a deadline set of four years from the date on which a state becomes party for completion of destruction. This four-year deadline is strict and cannot be extended. Both Armenia and Azerbaijan are believed to still possess Soviet-era mines. When the Soviet army left Azerbaijan in 1992, it had left landmines and other weapons behind. Armenia, too, secured stockpiles of Soviet anti-personnel mines, possibly as a result of the May 1992 Tashkent agreement under which Russia transferred weapons to several former Soviet republics, including Armenia and Azerbaijan.

The Anti-Personnel Mine Ban Convention set an important precedent by also requiring the survey and clearance of mined areas, and within a set period of time. These are by far the most expensive and demanding obligations under the 1997 Convention. A range of deadlines were discussed during the negotiation of the Convention, but recognizing the varying nature of the challenge, states settled on an initial ten-year deadline with the possibility of securing additional deadlines of up to ten years at a time.

In the 20 years following the entry into force of the Convention, a total of at least 2,880 square kilometers of mined area was cleared worldwide,

along with the destruction of more than 4.6 million emplaced anti-personnel mines. In addition, approximately 53 million stockpiled anti-personnel mines were destroyed by the State Parties. What was in the 1990s a humanitarian crisis in many countries is now largely a social and developmental challenge. Over the same period, 32 States Parties to the Convention and one state not a party to the Convention (i.e., Nepal), as well as one other territory (Taiwan), completed mine clearance on their territory. Armenia and Azerbaijan are among 57 UN member states around the world that are still contaminated by anti-personnel mines and join a list of 31 other states that have still to accede to the Convention.

Although neither Armenia nor Azerbaijan supported the position of a total ban on anti-personnel mines during the negotiation of the Anti-Personnel Mine Ban Convention in 1997, both Yerevan and Baku have supported the humanitarian objectives of the Convention at various points and in various ways. For instance, both states attended several of the treaty negotiating meetings, and Armenia (but not Azerbaijan) came to the treaty signing conference in Ottawa in December 1997 as an observer. In a 2010 letter addressed to the civil-society research network The

Landmine Monitor, Armenia stated that it could not adhere to the Anti-Personnel Mine Ban Convention “at this moment” but said that it “supports the Treaty and values the idea of transparency and confidence-building measures.”

In the latest UN General Assembly resolution on the implementation of the Convention (A/RES/75/52)—adopted just days after the end of the Second Karabakh War—both Armenia and Azerbaijan voted in favor. Russia and the United States joined 15 other UN member states in abstaining from the resolution (there was no recorded vote against), which, interestingly, contained a clause “call[ing] upon all States that have not yet done so to become parties to the Convention without delay.”

Moreover, the two states have engaged in the Convention’s machinery to varying degrees. For instance, Azerbaijan submitted voluntary APMBC Article 7 transparency reports in 2008 and 2009, but has not done so since. Nonetheless, Azerbaijan has been by far the more active of the two in the context of the Convention in recent years. In a statement to the APMBC intersessional meetings which it attended (virtually) in June 2021, Azerbaijan called on all States Parties to the Convention to support its mine action efforts.

According to its statement: “despite the huge resources allocated by Azerbaijan, the [demining operation] still requires more resources given the size of the contaminated areas. Azerbaijan urgently seeks broad international donor support, also in terms of funds and provision of technical equipment required to continue its demining efforts.”

Key States Parties, such as the presidency of the annual meeting of States Parties or the five-yearly review conferences, can engage at a diplomatic level with both Armenia and Azerbaijan, discussing the long-term costs and impact of use. Of course, calls for financial assistance for demining are more likely to be met sympathetically by donors where there is confidence that new mines will not be laid. Thus, in the 1990s, for example, the World Bank required Croatia to support the ban on anti-personnel mines on its territory before financial assistance would be provided for mine clearance.

Early adherence to the APMBC by either Azerbaijan or Armenia on a unilateral basis may be unlikely at this stage. Signature

of the Convention has not been possible since its entry into force on 1 March 1999, so adherence would mean direct accession: a one-stop act resulting in a state becoming a full party, with all the associated obligations and prohibitions. Conversations involving Yerevan and Baku on taking simultaneous steps to engage with the treaty, however, may be more realistic and effective for regional stability.

There are important precedents of former adversaries joining the Anti-Personnel Mine Ban Convention in a coordinated or semi-coordinated fashion. Greece, a signatory state, ratified the APMBC in September 2003 while its long-term adversary, Turkey, acceded on the same day. Both were former users of anti-personnel mines, with mines planted along their various borders. Eritrea and Ethiopia fought a bitter war in 1998-2000, which saw widespread use of landmines by both parties. Eritrea acceded to the Convention in 2001, becoming a State Party the following year; Ethiopia, which had already signed the Convention in 1997, ratified in 2004. These were

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bold and progressive decisions by states that realized that any military utility of anti-personnel mines was limited and was, in any event, far outweighed by the humanitarian and developmental costs of the weapons.

The 2008 Convention

Concern about cluster munitions is also longstanding, resulting especially from their extensive use by the United States in Cambodia, Laos, and Vietnam during the Vietnam War. Hundreds of millions of submunitions were dropped by the U.S. Air Force, a significant percentage of which did not detonate on impact with the ground. Laos, the world’s most heavily contaminated state from these cluster munition remnants, has decades of clearance still ahead of it. These “bombies,” as they are known locally, are especially hazardous to children.

In 1974, a group of countries led by Sweden called for the prohibition of a number of anti-personnel weapons, including “cluster warheads,” and these proposals were subsequently discussed in the diplomatic conferences that resulted in the coming into being of the two 1977 Additional Protocols and then the CCW. When the CCW

was adopted in 1980, however, it contained no measures on cluster munitions. The renewed use of these weapons by the United States in Afghanistan, starting in 2001, and then in Iraq, starting in 2003, underlined problems associated with the accuracy and reliability of a weapon intended to saturate areas with explosive force whilst increasing disquiet among national policymakers in a number of States Parties to the CCW. But it was Israel’s heavy use in southern Lebanon in 2006 that proved to be a tipping point in the decisions of many states to move forward, whereby only a total prohibition would suffice to prevent future humanitarian harm.

In a negotiating process led by Norway, the Convention on Cluster Munitions was adopted in Dublin in May 2008 and entered into force in August 2010. As was the case with the 1997 Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions was negotiated at an ad hoc diplomatic conference convened outside UN auspices, as agreement to prohibit those weapons within the global organization’s consensus-based framework proved impossible. As of early September 2021, 110 states were party to the 2008 Convention on Cluster Munitions, but neither Armenia nor Azerbaijan.

Similar to the core provisions of the 1997 Anti-Personnel Mine Ban Convention, UN member states adhering to the Convention on Cluster Munitions must never under any circumstances use, develop, produce, acquire, stockpile, retain, or transfer cluster munitions. The Convention defines a cluster munition as “a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kg, and includes those explosive submunitions.” All mines are explicitly excluded from the scope of the Convention on Cluster Munitions, as are munitions or submunitions designed to dispense flares, smoke, pyrotechnics, or chaff, as well as munitions or submunitions designed to produce electrical or electronic effects.

The Convention requires each State Party to destroy all stockpiles of cluster munitions within eight years of becoming party to it. But, uniquely for a disarmament treaty, a potentially unlimited number of extensions may be granted to that obligation, where destruction takes longer. Each extension may be accorded for a maximum period

of four years. According to the terms of the document, a meeting of States Parties or a review conference assesses the request by a State Party and decides by a majority of votes of States Parties present and voting whether to grant the request for an extension.

As is the case with the 1997 Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions requires that clearance and destruction of unexploded submunitions and any abandoned cluster munitions be completed within ten years of its entry into force for an affected state. It is, however, possible to request extensions to the deadline from the other States Parties, of up to five years at a time.

The most detailed obligations on victim assistance of any disarmament treaty are set out in the Convention on Cluster Munitions. The Convention allocates clear responsibility to each State Party to “adequately” provide age- and gender-sensitive assistance to cluster munition victims in areas under its jurisdiction or control. The required assistance includes medical

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care, rehabilitation, and psychological support, as well as provision for their social and economic inclusion. The provision also sets out in detail how a State Party is to implement these obligations.

Armenia participated as an observer in several of the early meetings of States Parties of the Convention on Cluster Munitions but has not done so since 2014. In 2013, Armenia declared that it considered the Convention “one of the principal instruments of the International Humanitarian Law to achieve the goal of elimination of an entire category of excessively injurious conventional weapons.” It further declared its belief that “the simultaneous accession of the South Caucasus countries to the Convention will ensure its effectiveness and reciprocally reduce the security threat perception.” Azerbaijan participated, for the first time, as an observer in the Ninth Meeting of States Parties to the Convention on Cluster Munitions in September 2019.

All this took place before the Second Karabakh War. During the conflict, both sides reportedly used cluster munitions. While the full extent of contamination from cluster munition remnants is not known, in December 2020 Human Rights Watch declared that Armenian

forces “repeatedly fired” cluster munitions in “attacks on populated areas in Azerbaijan during the six-week war over Nagorno-Karabakh” (the same group had previously accused Azerbaijan of repeatedly using cluster munitions in residential areas of the occupied territories). In addition, both Yerevan and Baku had accused each other of perpetrating cluster munition attacks outside the conflict zone, with Human Rights Watch documenting dozens of fatal casualties and injuries in attacks that took place “roughly 30 km from the then-front line” in Azerbaijan’s Barda, Goranboy, and Tartar districts. In retrospect, it is hard to see what military advantage in the Second Karabakh War was gained by the use of cluster munitions.

Both Armenia and Azerbaijan have said in the past that they cannot accede to the Convention until the resolution of the dispute over Karabakh is finalized. This position surely cannot reasonably be sustained any longer, particularly given the humanitarian impact of the use of these weapons in the 2020 conflict and the new situation on the ground that brought the occupation to an end. With sufficient political will, early adherence by both states should be possible. Accession to the Convention on Cluster Munitions—perhaps in a

coordinated fashion—would certainly constitute a confidence-building measure that also bolsters peace. It would also demonstrate the willingness of the relevant state authorities to do their utmost to protect their citizens and that of other states from the long-term harm of cluster munition remnants.

Outlook and Opportunities

While individual adherence by either Armenia or Azerbaijan to the 1997 Anti-Personnel Mine Ban Convention is perhaps unlikely just now, both could accede immediately to the Convention on Certain Conventional Weapons and its two annexed protocols on landmines. There is no military or security reason not to do so. There are also good reasons for both Armenia and Azerbaijan, in joining the CCW, to adhere to its Protocol V on explosive remnants of war. Post-conflict clearance is significantly facilitated by the recording of use of munitions and the exchange of relevant information with other parties to a conflict, whether directly, through the good offices of the UN

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Secretary-General, or through the mediation of, say, Russia or other mutually-acceptable state actors.

Adherence to the Anti-Personnel Mine Ban Convention by Armenia and Azerbaijan

would be a bold and impactful step forward in the region. On the path towards treaty adherence, voluntary confidence-building measures could readily be taken now: for example, annual submission of voluntary Article 7 reports, including disclosure of the number of anti-personnel mines still held, and systematic participation as observers at the Convention meetings. Engagement with States Parties and other key stakeholders, including through side events, could help to identify alternative, safer means of protection of long borders. A commitment not to use, procure, or transfer mines to any recipient would also build confidence. The annual presidency of the Convention and the Implementation Support Unit are always ready to engage in positive discussions with future contracting states.

In recent months, we have seen positive steps being taken by Armenia to provide limited

information about minefield locations in the former occupied lands. In June 2021, for example, Yerevan transferred the maps of 97,000 anti-tank and anti-personnel mines planted during its occupation in the Agdam district of Azerbaijan while 15 Armenian detainees in Azerbaijan's custody were returned to Yerevan. Both sides acknowledged their appreciation to Georgia, the United States, the EU, and the Swedish OSCE chairmanship-in-office for their respective contributions to this effort. Hopefully, this step will be followed by others in the time ahead.

Finally, both Armenia and Azerbaijan could and should also adhere to the Convention on Cluster Munitions, such as through the coordinated deposit of instruments of accession. The use of cluster munitions during the Second Karabakh War was rightly criticized by many. In a statement issued a week before the end of

the war that inter alia referred to the aforementioned rocket attack against Barda that was “allegedly fired by Armenian forces from Nagorno-Karabakh [and] reportedly carried cluster munitions,” UN High Commissioner for Human Rights Michelle Bachelet declared: “Amid deeply troubling reports that cluster munitions have been used by both parties, I call once again on Armenia and Azerbaijan to stop using them, and to join the more than 100 States that have ratified the Convention on Cluster Munitions which comprehensively bans their use.” Use in populated areas poses a significant threat to civilians even when women and children are not being targeted.

Particularly in this post-conflict environment, maintaining the status quo would actually represent a step backwards. Adhering to the conventional arms control agreements would constitute a major step forward. **BD**

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