



Ministry of Foreign Affairs

# IOB Evaluation

## Preparing the ground for a safer world

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*Evaluation of the Dutch efforts to control landmines and explosive remnants of war 1996-2006*





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## Preface

The Dutch government aims to adopt an integrated approach to international issues, by combining policy instruments effectively and efficiently. The evaluation of the Dutch efforts to control landmines and explosive remnants of war (ERW) by the Policy and Operations Evaluation Department (IOB) looks into this integrated approach.

The evaluation examined both the political and financial policy instruments and initiatives: the diplomatic efforts undertaken in the various arenas on conventional arms control to expand, tighten and enforce existing international legal instruments. This report is about Dutch diplomatic interventions in the conventional arms control arena from 1996 to 2006, in particular the United Nations Convention on Certain Conventional Weapons (CCW) and the Ottawa Convention. The final chapter deals with conclusions and lessons learned.

A separate set of studies focuses on financial assistance, i.e. funds for mine clearance activities in countries with a mine problem, seen from the broad perspective of socio-economic reconstruction. These studies, commissioned by IOB and undertaken by The Hague Centre for Strategic Studies, are available on the IOB website: [www.minbuza.nl/iob](http://www.minbuza.nl/iob).<sup>1</sup> A short overview and appreciation of the financial assistance, based on these studies, can be found in chapter 8 of this report: 'Humanitarian demining 1996-2006: three field studies'.

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Many people have contributed to this report. Dozens shared their knowledge and experience with the researchers and shed light on the complexities of arms control negotiations and demining operations in the field. In IOB Dr. Yvonne Kleistra, in close cooperation with Dr. Niels van Willigen of Leiden University, was responsible for the evaluation. IOB research assistant Michiel van Bokhorst was the third member of the evaluation team. IOB colleagues Hans Slot and Ted Kliet were available for advice. As members of the reference group Professor Dr. J.J.C. Voorhoeve, Professor Dr. J.H. de Wilde, Maarten Lak (strategic adviser Ministry of Foreign Affairs) and Vincent van Zeijst (Security Policy Department of the same Ministry), provided valuable comments and advice. In the Hague Centre for Strategic Studies, Christa Meindersma was responsible for the evaluation of the financial assistance.

It goes without saying that IOB bears the final responsibility for the report.

Bram van Ojik  
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<sup>1</sup> Evaluation of the Netherlands' financial assistance for humanitarian demining activities in 1996-2006: Synthesis Report; Case studies: Republic of Angola, Bosnia & Herzegovina and Cambodia.



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# Acronyms and abbreviations

APMs	Anti-Personnel Mines
ARIS	Action for Research and Information Support
ATMs	Anti-Tank Mines
AVMs	Anti-Vehicle Mines
BHMAC	Bosnia and Herzegovina Mine Action Centre
CCMAT	Canadian Centre for Mine Action Technologies
CCW	Convention on Certain Conventional Weapons
CD	Conference on Disarmament
CDDH	Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts
CFE	Conventional Forces in Europe
CMAA	Cambodian Mine Action and Victim Assistance Authority
CMAC	Cambodian Mine Action Centre
CODUN	EU's working group on disarmament
COREU	CORespondance Européenne (European Union Communication Network)
CSBM	Confidence and Security Building Measures
DAC	Development Assistance Committee
DTIF	Demining Technology Information Forum
DVB	Security Policy Department of the Ministry of Foreign Affairs
EAPC	Euro-Atlantic Partnership Council
EP	European Parliament
ERW	Explosive Remnants of War
EU	European Union
FoC	Friends of the Chair
GGE	Group of Governmental Experts
GICHD	Geneva International Centre for Humanitarian Demining
GIS	Geographic Information System
HALO Trust	Hazardous Area Life-Support Organisation
HOM 2000	project Humanitair Ontmijnen 2000
HRW	Human Rights Watch
HSN	Human Security Network
ICBL	International Campaign to Ban Landmines
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
IFRC	International Federation of Red Cross and Red Crescent Societies
IHL	international humanitarian law
INF	Intermediate Range Nuclear Forces
IMAS	International Mine Action Standards
IMSMA	Information Management System for Mine Action
ITEP	International Test and Evaluation Programme

LDCs	Less Developed Countries
LLDC's	Land-Locked Developing Countries
MAG	Mines Advisory Group
MAPU	Mine Action Planning Unit
MASG	Mine Action Support Group
MASP	Mine Action Strategic Plan
MBFR	Mutual and Balanced Force Reduction
MBT	Mine Ban Treaty
MC	Mine Clearance
MCTC	Mine Clearance Technical Cooperation
MDG	Millennium Development Goals
MOTAPM	Mines Other Than Anti-Personnel Mines
MPLA	Movimento Popular de Libertacao de Angola (Volksbeweging voor de Bevrijding van Angola)
MSP	Meeting of States Parties
NAMSA	NATO Maintenance and Supply Agency
NATO	North Atlantic Treaty Organisation
NDRF	Nordic Demining Research Forum
NGO	Non-governmental organization
NMMA	National Mine Action Authorities
ODA	Official Development Aid
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Cooperation in Europe
PMAC	Provincial Mine Action Committee
POBB	Policy Support Programme
SALW	Small Arms and Light Weapons
SC	Standing Committee
SCE	Standing Committee of Experts
SCE MC	Standing Committee of Experts on Mine Clearance
SC GSO	Standing Committee on General Status and Operation of the Conventions
SC MCRT	Standing Committee on Mine Clearance and Related Technologies
SCE MCRT	Standing Committee of Experts on Mine Clearance and Related Technologies
SDA	Self Deactivation Devices
SD	Self Destruction Devices
SMART	Specific Measurable Acceptable Realistic Time
SNF	Short Range Nuclear Forces
UCG	Universalisation Contact Group
UN	United Nations
UNAMIC	United Nations Advance Mission in Cambodia
UNAVEM	United Nations Angola Verification Mission
UNDAF	United Nations Development Assistance Framework
UNDC	United Nations Disarmament Committee

UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNICEF	United Nations International Children's Emergency Fund
UNITA	National Union for the Total Independence of Angola
UNMAS	United Nations Mine Action Service
UNOCHA	United Nations Office of the Coordination of Human Affairs
UNOMOZ	United Nations Operation in Mozambique
UNTAC	United Nations Transitional Authority in Cambodia
UXO	unexploded ordnance
VBTB	Van Beleidsbegroting tot Beleidsverantwoording/From Policy Budgeting to Policy Accountability
VERTIC	Verification, Research Training and Information Centre

# 1 Introduction



## 1.1 Introduction

The Dutch efforts to control landmines and explosives remnants of war (ERW) are part of the broader Dutch conventional arms control policy. Several arms control agreements and treaties have been concluded in recent decades. International decision-making in arms control negotiations is characterised by co-existing regional and international decision-making arenas within which measures to control various types of arms are discussed. Although it is possible to speak of some specialisation, there is no strict division of labour between the different arms control arenas and as such it is possible for one type of weapon to be discussed in different arenas.

The six most important decision-making arenas on conventional arms control are:

### The Convention on Certain Conventional Weapons

The full title is *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* (CCW). The convention, signed in 1980, is a framework convention with several protocols. The convention text includes general provisions, such as on the scope and structure of the treaty, whereas the protocols put restrictions on or prohibit specific conventional weapons.

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### The Ottawa Convention

The full title is *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction*. It was signed in 1997.

### The Organisation for Security and Cooperation in Europe

The focal point for negotiations on conventional arms control within this arena is the *Conventional Forces Europe (CFE) Treaty*, which limits the numerical strength and deployment of conventional forces in Europe. The treaty was signed in 1990 by the member states of the North Atlantic Treaty Organisation (NATO) and the former members of the Warsaw Pact. It entered into force in July 1992.<sup>2</sup>

### United Nations

Within the United Nations (UN) system the most important disarmament and arms control forums are the First Commission of the UN General Assembly, the UNDC (UN Disarmament Committee) and the Conference on Disarmament (CD).

### European Union

Within the context of the Common Foreign and Security Policy (CFSP) the European Union (EU) attempts to reach common positions on the issue of conventional arms control.

<sup>2</sup> AIV, 1998:16.

### North Atlantic Treaty Organisation

NATO forms a consultative and decision-making forum on all aspects of arms control and disarmament. Through the Partnership for Peace Trust Fund Mechanism (established in 2000) several million stockpiled landmines and munitions have been destroyed.

The Netherlands participates in all these multilateral decision-making arenas. The input may vary between the following types of interventions:

- participation in consultative bodies, meetings, commissions and conferences;
- informal consultations in the margins of formal meetings;
- drafting working documents or position papers;
- executing presidencies and chairing positions;
- co-sponsoring or supporting resolutions;
- organising workshops, seminars and/or expert meetings;
- promoting compliance with international codes of conduct or treaties through démarches or informal diplomatic contacts.

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## 1.2 Purpose and research questions

The main purpose of the evaluation is to gain insight into the way the Netherlands has intervened in the conventional arms control arena and to assess the effectiveness of these interventions. In order to reach these objectives, two arenas for international multilateral decision-making on landmines and ERW have been studied: the Convention on Certain Conventional Weapons (CCW) and the Ottawa Convention. For each of these arenas, the following research questions were posed:

- 1) What was the course of events in the international decision-making processes for this particular arms control arena?
- 2) What objectives did the Dutch government aim to achieve in various phases of the international decision-making process?
- 3) Which types of interventions were made by the actors involved in the various phases of the decision-making process?
- 4) Which obstacles were present in the decision-making processes and how did the Netherlands respond to them?
- 5) Which of the Dutch objectives were achieved and which were not? How can this be explained?
- 6) Which intervention type was preferred and implemented by the Netherlands?
- 7) Which criteria for success and failure were used in the various phases of the decision-making process?

IOB has some experience in evaluating the Dutch interventions in international decision-making arenas. In 2003 it published a report evaluating the performance of

the Dutch government in the negotiations on the EU Financial Perspectives 2000-2006 (*Agenda 2000*) and in 2008 an evaluation study was published on the Dutch EU Presidency in the second half of 2004.

### 1.3 Research approach

The present evaluation covers the Dutch interventions regarding landmines and ERW. These interventions include among others: agenda-setting efforts, the formulation of specific policies, decision-making, and the translation of policies into concrete actions. The most important purpose of the evaluation is to understand Dutch interventions. It is not a process evaluation in which the execution of the intervention is followed closely in real time, but a retrospective analysis of a policy process. Typical for this type of evaluation is that the interventions – including the context in which they are carried out – are scrutinised, interpreted and evaluated with hindsight.

In general, decision-making in multilateral consultative structures as studied in this evaluation is characterised by the following:

- *Slow decision-making processes*: Decision-making processes in multilateral arenas often involve time-absorbing activities; it might take many years before decision-making processes result in actual outcomes or commitments.
- *Incremental policymaking*. Results are achieved by means of small steps and decisions that do not deviate radically from the status quo.
- *Rigid decision-making procedures*. In addition, these arenas are often characterised by routines, norms, habits and procedures that are difficult to change and that often hamper swift and successful negotiation.

More specifically differences between the arenas can be identified. Each circuit has its own institutional structure: its own decision-making procedures, routines and other institutional characteristics. For example, in the CCW, decisions are taken by consensus. This limits the margins of decision-making to the lowest common denominator. In contrast, decision-making in the Ottawa Convention is based on the rule of majority. Thus, decisions are easier to make. Moreover, majority decision-making stimulates states to form coalitions in order to achieve the critical majority for a particular decision.

The difference in the institutional structure between the CCW and the Ottawa Convention lead to different dynamics in the negotiations. Within the institutional structure, the following factors may be of influence:

- 1) characteristics of the participating parties;
- 2) characteristics of the consultative structure (meetings, commissions, working groups etc.);

- 3) characteristics of the rules of procedure (decision-making);
- 4) characteristics of the issue (humanitarian dimension, military dimension, etc.).

These characteristics regarding the institutional structure of both arms control arenas are elaborated upon in chapter 2.

It was decided to use the barrier model as a framework for analysis in this evaluation because policies on the control of landmines and ERW are formulated within multilateral negotiation arenas that are in general characterised by fixed patterns and procedures.

### The barrier model

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The barrier model is based on the assumption that actors aim to achieve specific objectives in a given decision-making setting (in this case the international conventional arms control arena). When doing so, they meet resistance from other actors involved. Each actor has its own interests and objectives, as well as different opinions on the urgency of problems and valuable solutions to these problems. This may result in some actors preferring the status quo and obstructing any attempt to formulate, decide on and implement new policy initiatives, while other actors might support change in certain directions. Those who are able to overcome the obstructers or convince others win the obstacle race.

An actor who decides to strive for a specific goal needs to be prepared and able to overcome a large set of barriers (impediments) throughout the decision-making process – not only during the activity of putting an item on the agenda, but also when developing alternative solutions, gaining support for these solutions and monitoring the actual implementation of decisions already taken. Hence, any actor committed to achieving certain objectives participates in an obstacle race by definition.

The barrier model offers an appropriate framework to assess the Dutch interventions concerning landmines and ERW in the international arms control arena because it focuses all our attention on the course of the policy process, i.e. the various phases of decision-making. In addition, the model pays attention to the role of power and influence in policy processes: together these form an important variable in international decision-making arenas. Actors involved in negotiation processes – such as the representatives of governments, international organisations or non-governmental organisations (NGOs) – will be confronted with at least the following barriers in their attempts to achieve their objectives:

- 1) they have to turn wishes into demands;
- 2) they have to turn demands into formal negotiation proposals;
- 3) they have to turn formal negotiation proposals into international agreements;
- 4) they have to make sure that international agreements are put into effect.

Ultimately, the pace and progress of decision-making in the international negotiation arenas depends on the nature and persistence of the barriers and the skills of the demanding party to overcome them effectively.

### Analysis of the Dutch landmine policies

Taking the barrier model as a framework for analysis, the Dutch interventions in the various phases of decision-making for the different issues under discussion have been structured into four sections:

At the heart of the barrier model is the acknowledgement that objectives shift and evolve over time. So, first, the ‘objectives’ – or input – of the Dutch government in the CCW and Ottawa Convention regarding issue-specific policy objectives are analysed. What objectives did the Dutch government aim to achieve regarding the issue in question? Similarly, particular attention is given to the occurrence of policy adjustments in the different phases of the policy process.

Secondly, the ‘results’ – or output – of the Dutch interventions are presented. Which Dutch objectives have been achieved and which have been achieved not at all, or only partially? The achievement of Dutch objectives will be compared with the overall results achieved in the policy arena. For example, the Ottawa Convention established a complete ban on the production and stockpiling of and trade in antipersonnel landmines. Such had also been the objective of the Dutch government, but the additional Dutch objective to ensure EU consensus on a total ban and of making the EU an active and stimulating actor during the Dutch EU Council Presidency was not achieved.

Thirdly, the concrete Dutch ‘interventions’ are analysed. The Dutch government can apply several types of interventions in its attempt to overcome impediments. Among others, the Dutch government can undertake démarches, draft papers, participate in informal group initiatives and offer to chair meetings and/or commissions. Whether these interventions are effective depends on the strength of the impediments.

The fourth and last section deals with the ‘impediments’. All sorts of impediments can manifest themselves during the transition from wishes to demands, to negotiation proposals, to international agreements, to implementation. The spectrum varies from geo-political motives following from strained relations with neighbour countries, to national institutional features (for example time-consuming national ratification procedures).

In order to provide context for the Dutch objectives, results, interventions and impediments, it is necessary to look at the general progress of the different issues. Therefore the analysis of Dutch interventions is preceded by a short overview of the general course of events.

## 1.4 Evaluation criteria

After using the barrier model as an analytical framework to reconstruct the course of Dutch interventions regarding landmines and ERW, the next step is to assess the effectiveness of the Dutch interventions in the arenas of the CCW and the Ottawa Convention.

Traditionally, only the development aspects of foreign policy making were subject to evaluation research. In 1991, the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD/DAC) set out evaluation principles that were refined into five criteria; effectiveness, efficiency, impact, relevance and sustainability. These criteria have since been widely used by the DAC members (among which the Netherlands) in the evaluation of development initiatives. The DAC defines effectiveness as follows: 'Effectiveness measures the extent to which an activity achieves its purposes, or whether this can be expected to happen on the basis of outputs'. Thus, the effectiveness of development initiatives is assessed by comparing the results, or output, with the initial objectives, or input.

18 The input–output analysis was deemed unfit for the purpose of assessing the effectiveness of Dutch interventions in the arms control arenas, for two reasons:

- 1) Policy objectives in the field of arms control are long-term objectives by definition. Though many objectives are achieved not at all or only partially, the input that does succeed often has a positive influence on the lives of many persons.
- 2) The Netherlands is just one of 100 to 150 states in the arms control arenas. All these states are considered to have equal status. Thus the Dutch contribution is only one among many.

This means that Dutch representatives who participate in multilateral decision-making arenas are constantly put under pressure to formulate ambitious policy objectives, although in realising these objectives they are dependent on other actors.

The above-mentioned problem of dependence on other actors became especially pressing after the introduction of results-based management in the national policy cycle. In 1999 the Dutch Parliament adopted the policy paper *Van Beleidsbegroting tot Beleidsverantwoording* (VBTB) (From Policy Budgeting to Policy Accountability). The paper gave the green light to large-scale budgetary reforms within the central government. Since then, departments have been obliged to produce performance-based 'policy budgets' with 'policy articles' in which objectives, performance schemes and means are recorded. For the Ministry of Foreign Affairs this has meant that objectives in the field of diplomacy have to be formulated. The Security Policy Department pointed out the limitations of this approach in its explanatory memorandum to the budget for 2001: 'There are limits to the further development of operational goals and performance data in the area of peace, security and conflict. The Netherlands is after all only one of the many international parties. For that reason, any assessment of the Dutch



contribution to the realization of goals in this area is also a difficult task.<sup>3</sup> This was reiterated in the explanatory memorandum to the budget for 2003: 'The criteria for assessing the effectiveness of security policy are often related to the advancement of long-term processes. Thus, the effectiveness of security policy can only be monitored per case on the basis of progress that is made.'<sup>4</sup>

As such, the Security Policy Department formulated concrete limits of foreign policy making, which are also recognised in the explanatory memorandum to the budget for 2005. That document recalls that the Netherlands is active in promoting international law, human rights and peace. It also points to the fact that Dutch policy in these fields is part of an ongoing process and is dependent on external factors and uncertainties. It is stated that Dutch influence is limited and that it would be too ambitious to link Dutch policy objectives (input) directly to internationally achieved results (output).<sup>5</sup> Instead, it is argued that results have to be assessed bearing in mind 'the context in which the result was achieved, the policy strategy and the extent to which the result is still acceptable as compared with the policy objective'.<sup>6</sup>

Given the limits to making foreign policy, this evaluation focuses on the question of whether the Netherlands did the utmost – given the context in which it operates – to achieve its objectives. As such, it evaluates interventions on their own merits using indicators based on four *a priori* formulated requirements – connectedness, responsiveness, timeliness and scope – which have to be fulfilled if an intervention is to be classified as an effort with maximum potential effect.

First, the intervention should support the objectives formulated at the national political level. The evaluation criterion 'connectedness' refers to the degree to which the interventions are in line with the policy objectives as formulated in Dutch foreign policy and the degree to which the interventions echo the level of ambition expressed in the policy objectives. Following this logic, an intervention may be connected, partly connected or not connected to national policy objectives.

Secondly, the intervention should be conducive to, or stimulate the achieving of consensus of opinion in the international decision-making community, i.e. the joint States Parties in the CCW and the Ottawa Convention. The evaluation criterion 'responsiveness' looks at the degree to which interventions are conducive to the international decision-making process. An intervention may be in line with the already prevailing views or ideas of the international community on the matter.

3 TK, 27400 V, nr. 2:37.

4 TK, 28600 V, nr. 2:66-67.

5 Literally it is stated: 'Uiteindelijk is Nederland slechts een rader in het grotere krachtenveld. Het zou daarom pretentieus zijn een direct verband te leggen tussen de Nederlandse inzet en behaalde resultaten (TK, 29800 V, nr. 2:26)'.

6 TK, 29800 V, nr. 2:26.

An intervention may be aimed at overcoming the differences between two extreme positions, or it may be aimed at adopting a specific position. Such a position may also be very innovative or likely to be controversial, but nevertheless effective by offering a breakthrough in a deadlock. Following this line of thought, an intervention may be responsive, partially responsive or not responsive to the international decision-making process.

Thirdly, the intervention should be executed at a convenient moment. Most interventions are not usable in every phase of the decision-making process. When does one undertake what intervention? The evaluation criterion 'timeliness' is concerned with assessing the usefulness and effects of different interventions in different phases of the decision-making process. Depending on the circumstances, an intervention may be too early, timely, or too late.

Fourthly, in order to be influential the intervention should have a reasonable 'scope'. The scope of interventions may differ in three dimensions. The first and second dimensions are the action radius and the directness of the used instrument, respectively. When an intervention is direct and when it has a large action radius, the scope is considered to be greater than when the intervention is indirect and has a small action radius. For example, supporting, sponsoring or initiating a resolution evidently has a wider reach than a *démarche* and thus has a large action radius. At the same time, a resolution is a highly indirect intervention in comparison to a *démarche*. The third dimension is the level of involvement of the actor executing the intervention. A state proactively involved by chairing an international meeting or an international commission is likely to be more influential in the international decision-making process than a state supporting a discussion paper or merely participating in a meeting. As such, a continuum of involvement can be created, which ranges from passive involvement to proactive involvement. The relationship between the three dimensions of scope and the most widely used intervention instruments is summarised in table 1.1.

**Table 1.1** The three dimensions of scope related to intervention instrument

Instrument	Action radius	Directness	Involvement
Participation in meetings	Large	Indirect	Passive
Undertaking a <i>démarche</i>	Small	Direct	Active
Support proposal/resolution/paper	Large	Indirect	Active
Sponsor proposal/resolution/paper	Large	Indirect	Active
Initiate proposal/resolution/paper	Large	Indirect	Proactive
Chairing meetings	Large	Direct	Proactive
Organising meetings	Small	Direct	Proactive

All three dimensions together form the scope of the particular intervention. Scope is qualified as being small, moderate or large.

If the assessment of Dutch interventions scores poorly for connectedness, responsiveness, timeliness and/or scope, it is assessed whether the low scores are justified given the context in which the intervention took place. For example, a policy issue on which the Netherlands claims to fulfil a proactive pioneer role, but which at the same time is characterised by interventions of a small scope in a particular phase of the decision-making process may be justified by the fact that another issue was deemed to be more important at the time. It may be necessary to opt for one issue rather than another because of the scarcity of time and resources.

Criterion	Definition	Scale
Connectedness	Criterion refers to the degree to which the interventions are in line with the policy objectives as formulated in Dutch foreign policy and the degree to which the interventions follow the ambition expressed in the policy objectives.	Connected Partly connected Not connected
Responsiveness	Criterion looks at the degree to which interventions are conducive to the international decision-making process.	Responsive Partly responsive Not responsive
Timeliness	Criterion looks at the degree to which the intervention took place at an appropriate moment.	Too early Timely Too late
Scope	Criterion refers to the action radius and directness of the intervention in combination with the level of involvement of the actor carrying out the intervention.	Large Moderate Small

## 1.5 Research method and scope of the research

This study draws upon data collection, interviews and participant observation. The data collection process was divided into two phases. In the first phase, all relevant files in the Dutch Ministry of Foreign Affairs and in the Dutch Permanent Representation to the Conference of Disarmament of the United Nations in Geneva, as well as parliamentary reports and academic literature related to landmines and ERW were studied. About 250 files were scrutinised to reconstruct the Dutch objectives, results, interventions and impediments. Based on the documents analysed, interview questions were formulated in order to ask for further clarification and as a means to check the reliability of the archival records. Interviews were conducted with

stakeholders at the Ministry of Foreign Affairs (representatives of the Security Policy Department, the Dutch delegation to the Conference of Disarmament in Geneva and the Permanent Mission of the Netherlands to the United Nations in New York), with representatives of external bodies (International Campaign to Ban Landmines, United Nations Mine Action Service, International Committee of the Red Cross, Human Rights Watch, Geneva International Centre for Humanitarian Demining) and with representatives of delegations from other countries to the meetings of the CCW and the Ottawa Convention. Finally, on two occasions intersessional meetings of the States Parties to the Ottawa Convention were attended in Geneva, in order to meet respondents and to get some first-hand insight into this particular international negotiation arena.

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A ten-year perspective was employed for the benefit of the evaluation of Dutch policy-making on landmines and ERW. As already mentioned above, arms control negotiations are long-term activities. Therefore, in order to arrive at valid conclusions, it is necessary to analyse Dutch interventions over a considerable period of time. The period chosen was from 1996 until 2006. It was decided to start in 1996 because it was only in the mid-1990s that arms control policy in general, and Dutch policy in particular, shifted from a Cold War approach (focusing on the proliferation of weapons of mass destruction and on imbalances in heavy conventional weapons in Europe) to a post Cold War approach which included landmines and ERW.<sup>7</sup> As far as Dutch policy is concerned, in 1996 a milestone was achieved, because in that year it was decided to nationally prohibit the use of anti-personnel mines. Moreover, in that year, the Dutch government initiated a proactive landmine policy. The decision to end the evaluation in 2006 was motivated by the ‘conclusion’ of several long-standing issues in the negotiation arenas at that time.

## 1.6 A reader’s guide to this report

This report consists of nine chapters. Chapters 2 to 7 and 9 present a full picture of the response to the research questions that were posed in this chapter:

- Chapter 2 provides an overview of the main characteristics of the CCW and the Ottawa Convention. First, a brief outline is given of the background, content, and relevance of the CCW and the Ottawa Convention respectively. In addition to this, a general overview is presented of the participants, the consultative structure, the rules of procedure, and the issues on the agenda of the two conventions.
- Chapter 3 outlines the Dutch policies on landmines and ERW since the mid-1990s at a general level. Section 3.2 concentrates on the changing international perspectives in the early 1990s and the transformation of the Dutch position. Section 3.3 discusses

<sup>7</sup> Examples of such Cold War treaties are the treaty on Intermediate Range Nuclear Forces (INF), the treaty on Short Range Nuclear Forces (SNF) and the treaty on the Conventional Forces in Europe (CFE).

the main policy objectives, principles, and instruments that have underlain Dutch initiatives since 1996. The section concludes by noting the existence of a dual-track approach in which a political instrument (diplomacy) and a financial instrument (the funding of mine action) are combined. These instruments are discussed in sections 3.4 and 3.5, respectively. Finally, in section 3.6 the departmental organisation of these policies is highlighted.

- Chapters 4 to 7 deal with the Dutch policies on landmines and ERW at the level of the issues that were on the agenda of the two conventions. The four chapters focus on the Dutch interventions with respect to up to thirteen issues. For each of these thirteen issues research questions 1 to 5 are addressed. The results of the analyses are structured into corresponding sections (course of events, objectives, results, interventions and impediments). In the final sections of each of the four chapters, the effectiveness of the Dutch efforts on these issues are assessed in relation to the evaluation criteria (connectedness, responsiveness, timeliness and scope).
- Chapter 8 presents an overview of the main findings of the three country studies and the synthesis study on the Dutch efforts with regard to humanitarian demining.
- In chapter 9 the focus is once again on the Dutch policies at a general level. First, the findings regarding the general approach of the Netherlands towards the landmine problem, and its general performance in relation to the two conventions are presented (sections 9.2 and 9.3). Subsequently, the two final research questions on intervention types and criteria for failure and success are addressed (sections 9.4 and 9.5). Finally, in the last section of this chapter some general conclusions and lessons learned are drawn (sections 9.6 and 9.7). The analyses of the Dutch interventions with regard to the thirteen issues are at the basis of the overall findings of the evaluation.

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The structure of the report also allows for selective reading:

- Readers who are unfamiliar with international decision-making within the CCW and the Ottawa Convention are recommended to read chapter 2. Those who are familiar with the two decision-making arenas can directly proceed to chapter 3.
- For readers who are interested in the results of the evaluation of the Dutch policies on landmines and ERW on a general level, the chapters 3 and 9 are most relevant to read.
- For readers who are interested in a brief description of the results of the analyses of the Dutch interventions at the level of the various issues, the objectives, results, interventions and impediments are schematically presented in policy overviews.
- For readers who are interested in a brief description of the results of the evaluation of Dutch financial assistance for humanitarian demining activities in 1996-2006 a short overview is presented in chapter 8.

2

# Landmines and explosive remnants of war



## 2.1 Introduction

When the Cold War ended, the world became more fragmented in some respects. New countries entered the international stage, new (intrastate) conflicts developed and new issues emerged on the international political agenda. Conflict in the 1990s was characterised by fierce intrastate wars, guerrilla tactics, the flouting of the conventions on warfare, and human rights abuses. It was in this context that the use of landmines and explosives remnants of war (ERW) emerged on the international political agenda.

The humanitarian problems related to the existence of landmines and ERW are addressed by the international community in two decision-making arenas: the Convention on Certain Conventional Weapons (CCW) and the Ottawa Convention. Created in 1980 as a result of negotiations among 51 states, the CCW was set up as a framework convention initially containing three protocols regulating the use of mines, booby traps and other devices (Protocol II) and prohibiting the use of fragmentary weapons (Protocol I) and incendiary weapons (Protocol III).<sup>8</sup> The Ottawa Convention was created in 1997, when it was signed by the States Parties in Oslo, Norway. The Ottawa Convention provides an instrument for solving the anti-personnel mine problem in all its aspects, and thus prohibits the use, transfer and stockpiling of landmines. The Netherlands is a State Party to both conventions.

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In this chapter, the main characteristics of the two conventions are analysed. First, a brief outline is given of the background, content, and relevance of the CCW and the Ottawa Convention respectively (sections 2.2 and 2.4). In addition to this, a general overview is presented of the participants, the consultative structure, the rules of procedure, and the issues on the agenda of the two conventions (sections 2.3 and 2.5). Finally the main characteristics of both arenas are presented schematically (section 2.6).

## 2.2 The United Nations Convention on Certain Conventional Weapons (CCW)

Known formally as 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’, the CCW is also sometimes referred to as the ‘Inhumane Weapons Convention’.<sup>9</sup> It seeks to regulate the use of certain conventional weapons in armed conflict in order to prevent unnecessary suffering to combatants and indiscriminate harm to civilians. The treaty itself does not focus on specific weapon types but provides general arrangements. At the moment (2006), the treaty includes five Protocols that focus on specific types of weapons: fragmentation weapons

8 Boese, 2004.

9 Boese, 2004.

(Protocol I); mines, booby traps and other devices (Protocol II); incendiary weapons (Protocol III); laser weapons (Protocol IV); and explosive remnants of war (Protocol V).

## Background

The CCW grew out of the 1974-1977 'Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts', usually referred to as 'Diplomatic Conference' or, according to its French acronym, CDDH (*Conférence Diplomatique sur la Réaffirmation et le Développement du Droit International Humanitaire Applicable dans les Conflits Armés*). That conference resulted in the adoption of the 1977 Additional Protocols to the Geneva Conventions of 1949; the establishment of the CCW was a spin-off.

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From the mid-1960s onwards concern grew about weapons that may cause excessive injury or have indiscriminate effects. This was, at least in part, a reaction to the well-publicised use of tear gases and herbicides in the Vietnam War. Concerns about these and other weapons considered to be excessively injurious or to have indiscriminate effects, including napalm and other incendiary weapons, anti-personnel landmines and other delayed-action weapons, small calibre bullets and fragmentation weapons (including cluster bombs), led to UN General Assembly resolutions and studies of the effects of various types of weapon. A number of states proposed regulating or even prohibiting these weapons. These weapon-related concerns coincided with activities initiated by the International Committee of the Red Cross (ICRC) to reaffirm and further develop international humanitarian law applicable in armed conflict.<sup>10</sup>

The Diplomatic Conference was convened in 1974 by the Swiss government in its capacity as the depositary for the Geneva Conventions, in order to negotiate the Additional Protocols on the basis of the draft documents that had been prepared by the ICRC in consultation with a number of states. The Diplomatic Conference met in Geneva in four sessions between 1974 and 1977. At the last session it became clear that no agreement could be reached on major weapon-related issues. There was widespread disagreement over which weapons should be included, what the nature of prohibitions or restrictions would have to be, whether there should be operational restrictions on the use of certain weapons on the battlefield and whether prohibitions on the use of certain weapons against civilians would be necessary. Notwithstanding these issues, it was agreed to take further action within the framework of the UN; the result was the creation of the CCW.

At the first meeting of the CCW in September 1979, 82 states attended; the second meeting, held in September 1980 in Geneva, was attended by 76 states. The participating states discussed draft texts developed in the ad hoc Committee on Conventional Weapons of the Diplomatic Conference. Although landmines were discussed at length, the most controversial issue proved to be the regulation of

<sup>10</sup> Mathews, 2001:992-993.

incendiary weapons, in particular, napalm.<sup>11</sup> During the second meeting, consensus could be reached on a limited number of weapon types for inclusion in a future treaty. It was subsequently agreed that the CCW should become a ‘chapeau’ or ‘framework’ convention, i.e. that the convention would consist solely of a general agreement. Provisions on the prohibition or restrictions on the use of particular weapons would be the object of a number of protocols annexed to the convention. This construction made it possible for the convention to become a dynamic instrument of humanitarian law, because it allowed for new protocols for other types of weapons to be added at a later date, in response to future developments. At the end of the second meeting the conference adopted the text of the CCW and three Protocols. The CCW came into force on 2 December 1983, six months after the ratifications had been deposited with the Secretary-General of the United Nations.

## Content

The main purpose of the CCW is to regulate the use in armed conflict of certain conventional arms deemed to cause excessive suffering to combatants or indiscriminate harm to civilian populations. It applies two generally recognised principles of international humanitarian law applying to specific weapons: 1) the prohibition of the use of weapons that are indiscriminate and 2) the prohibition of the use of weapons of a nature to cause unnecessary suffering or superfluous injury.<sup>12</sup>

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The three protocols of the CCW as concluded in 1980 were the following:

*Protocol I:* The first protocol, on non-detectable fragments, prohibits the ‘use of any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-ray’.<sup>13</sup>

*Protocol II:* The second protocol, on prohibitions or restrictions on the use of mines, booby-traps, and other devices, was negotiated on the basis of a working paper prepared by France, the Netherlands and the UK. At the time the agreement was not particularly contentious, because most of the negotiations concentrated on incendiary weapons, especially napalm, following the experiences in the Vietnam War.<sup>14</sup> It restricts the use of landmines (both anti-personnel and anti-vehicle), booby-traps and other devices. Article 3 of the protocol contains the general rule that it is prohibited in all circumstances to direct weapons to which the protocol applies, either in offence, defence or by way of reprisal, against the civilian populations as such or against individual civilians. It states that the indiscriminate use of these weapons is prohibited and that all precautions shall be taken to protect civilians from the effects of these weapons. Furthermore, it contains specific restrictions: on the use of mines other than

<sup>11</sup> GICHD, 2004:32-33.

<sup>12</sup> ICRC/AS, 2004.

<sup>13</sup> Protocol I to the CCW treaty.

<sup>14</sup> GICHD, 2004:57.

remotely delivered mines, booby-traps and other devices in populated areas; on the use of remotely delivered mines. It also prohibits the use of certain booby-traps (for example booby-traps in the form of a harmless object such as children's toys and booby-traps attached to objects of a religious nature). The protocol also specifies the obligations of States Parties concerning the recording and publication of the location of minefields, mines and booby-traps, the protection of UN forces and missions from their effects, and international cooperation in their removal after the cessation of hostilities.<sup>15</sup>

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*Protocol III:* The third and last protocol agreed upon in 1980 was on prohibitions of or restrictions on the use of incendiary weapons. It regulates the use of these weapons, which are described in Article 1 as 'any weapon or munition which is primarily designed to set fire to objects to cause burn injury to persons through the action of flame or heat, or combination thereof, produced by a chemical reaction or a substance delivered on the target' (Article 1). Examples mentioned are flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances such as napalm. As well as prohibiting their use against civilians under any circumstances, it also prohibits any military objective located within a concentration of civilians being made the object of attack by air-delivered incendiary weapons. Furthermore, it states that no military objective located within a concentration of civilians may be the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objects (Article 2).<sup>16</sup>

In 1995, during the First Review Conference of the CCW, a new Protocol – Protocol IV – was adopted and annexed.

*Protocol IV:* Protocol IV on blinding laser weapons stipulates that 'it is prohibited to employ laser weapons specially designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision' (Article 1). Further, it stipulates that when using laser weapons, States Parties shall take all feasible precautions (including training of armed forces and other practical measures) to avoid the incidence of permanent blindness to unenhanced vision (Article 2). The protocol does not cover blinding as an incidental or collateral effect of the legitimate military employment of laser systems (Article 3).<sup>17</sup>

*Protocol II as amended:* In 1996, during the last session of the conference, the States Parties also agreed to amend Protocol II. The amendments concerned the extension of the scope of application of the protocol (which was initially limited to international

<sup>15</sup> Protocol II to the CCW treaty.

<sup>16</sup> Protocol III to the CCW treaty.

<sup>17</sup> Protocol IV to the CCW treaty.

conflicts) to intrastate armed conflicts; the strengthening of the general humanitarian restrictions on the use of anti-personnel mines (by adding provisions on detectability, self-destruction and self-deactivation); bans on non-detectable anti-personnel mines and anti-sensing devices on such mines; the enhancement of the rules on mine-laying and stronger restrictions on the use of remotely-delivered anti-personnel mines (these mines must be equipped, to the extent feasible, with an effective self-destruction or self-neutralisation mechanism and a back-up self-deactivation feature) and, finally, the transfer restrictions (mines prohibited by this Protocol cannot be transferred).<sup>18</sup>

During the Second Review Conference in December 2001, the States Parties decided to amend article 1 of the CCW treaty, in order to extend the scope of application of the entire treaty, including all protocols. Thus, from December 2001 on, all Protocols also apply to intrastate armed conflicts, as defined by the Geneva Conventions.<sup>19</sup>

*Protocol V:* On 28 November 2003, the States Parties to the CCW approved a fifth protocol. Protocol V deals exclusively with explosive remnants of war; the wide range of unexploded and abandoned ordnance that regularly threaten the lives and health of civilians, peacekeepers and humanitarian aid workers after the end of an armed conflict. ERW are defined in Protocol V as ‘unexploded ordnance (explosive ordnance that has been primed, fused, armed, or otherwise prepared for use and used in an armed conflict and may have been fired, dropped, launched or projected and should have exploded but failed to do so) and abandoned explosive ordnance (explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict and which is no longer under control of that party’ (Article 2).<sup>20</sup> The protocol requires each State Party and party to an armed conflict to mark and clear, remove or destroy ERW in the affected territory under its control after a conflict; to provide, where feasible, financial, material or human resources assistance to facilitate the marking and clearance, removal or destruction of ERW in areas it does not control; and to take all feasible precautions in the territory under its control to protect civilians from the risks and effects of ERW (Article 3). Protocol V also requires that to the maximum extent possible and as far as practicable, the parties involved retain information on the use or abandonment of ERW and without delay make that information available to the parties in control of the affected area (Article 4).

As customary in international law, the provisions of Protocol V apply solely to conflicts that occur after the protocol has come into force. States Parties in a position to do so are obliged to provide assistance to help ERW-affected States Parties reduce the threats posed by the weapons. Finally, the protocol contains some voluntary best practices.

18 Protocol II as amended to the CCW treaty.

19 Amendment Article 1 to the CCW treaty.

20 The new Protocol does not apply to weapons covered by Protocol II or Protocol II as Amended: Article 2 states that explosive ordnance are conventional munitions containing explosives, with the exception of mines, booby-traps and other devices as defined in Protocol II of the Convention.

It encourages States Parties to take generic preventive measures aimed at minimising the occurrence of ERW and at achieving the exchange of information related to efforts to promote and establish best practices with regard to this (Article 9). The protocol entered into force on 8 November 2006, six months after the required number of twenty States Parties had acceded to it (Article 5).<sup>21</sup>

### Relevance

Appreciation of the CCW has varied over the years. In the 1980s it was generally considered to be a modest achievement. Advocates of a total ban on a range of fragmentation weapons (not just on fragments which are not detectable by X-rays, as in Protocol I), a total ban on anti-personnel landmines and booby-traps (rather than the very detailed regulations in Protocol II on using these weapons), a total ban on incendiary weapons (rather than the prohibition of the use of these weapons against civilians, as contained in Protocol III), and of provisions to prohibit or regulate the use of other weapons including fuel-air explosives and small calibre bullets (which are not included in the CCW at all) saw it as a half-hearted attempt to combine elements of humanitarian law and arms control. Additional disappointments included the absence of provisions for compliance and monitoring, the applicability of the CCW to international armed conflict only, and the minimal implementation-related obligations for States Parties.<sup>22</sup>

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As a consequence, very limited attention was given to the CCW in this period, as evidenced by the relatively low number of adherents to the treaty: by the late 1980s only 29 countries had become States Parties by ratifying two of its annexed protocols. It also became evident that the norms established under Protocol II were having little or no effect on the actual use of anti-personnel mines in practice. Conflicts in the 1980s included widespread and indiscriminate use of anti-personnel mines. In most cases these were intrastate conflicts, which were not covered by Protocol II until 1996 and the CCW until 2001.<sup>23</sup>

By the late 1990s, observers regarded the CCW as a superfluous convention: this negative image was enhanced by the outcome of the First Review Conference. As mentioned above, the agenda had included the development of restrictions on the use of laser weapons, which resulted in Protocol IV. However, the immediate reason for convening the conference had been the issue of anti-personnel mines. In 1993, France had taken the initiative to convene the review conference in order to address the

<sup>21</sup> Protocol V to the CCW treaty.

<sup>22</sup> Mathews, 2001:996-997. NB: The CCW requires the States Parties 'to undertake, in time of peace as in time of armed conflict, to disseminate this Convention and those of its annexed Protocols by which they are bound as widely as possible in their respective countries, and in particular to include the study thereof in their programmes of military instruction, so that those instruments may become known to their armed forces (Article 6)'. The convention does not provide for penal sanctions against individuals who violate one or more of its provisions.

<sup>23</sup> GICHD, 2004:33.



landmine problem and the concomitant weaknesses in Protocol II. Though that protocol was successfully amended, the improvements failed to live up to the expectations of a large group of States Parties and NGOs. These dissatisfied actors welcomed Canada's launching of negotiations to prepare a comprehensive treaty banning landmines: this treaty became a reality in September 1997. The Ottawa Convention surpassed the CCW in scope (a total ban on anti-personnel mines) and in number of signatories: over one hundred countries became signatories at the signing ceremony on 3 and 4 December 1997 in Ottawa.

However, the preparations for the Second Review Conference of the CCW in 2001 seem to have given a new lease of life to the convention, particularly as a result of the inclusion of ERW on the agenda. The ERW Protocol (Protocol V) is generally considered as a watershed. It has put new life in the status and operation of the CCW. Protocol V was followed by serious discussions on possible weapon-specific preventive measures, including cluster munitions, in order to minimise the risk of these munitions becoming ERW. Furthermore, discussions were started on the question of whether existing humanitarian law was adequate to address the problem of ERW. Finally, extensive discussions were held to reanimate the issue of further restrictions to the use of anti-vehicle mines.

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## 2.3 Decision-making within the framework of the CCW

### Participants

Accession to the CCW and its annexed protocols is optional to states only (CCW Treaty, Article 4). Any state may accede to it as long as it is willing to be bound by at least two protocols. Countries that are formally and legally bound by the provisions of the CCW are referred to as 'States Parties or High Contracting Parties'. As stated above, 51 states negotiated the CCW in 1980. But when France initiated the First Review Conference (almost ten years after the convention came into force) only 36 states were registered as States Parties.<sup>24</sup> At the time of the Second Review Conference in December 2001, the number of States Parties amounted to 88; by the end of 2005 this number had risen to 100. Most of the militarily significant states that are not bound by the Ottawa Convention are States Parties to the CCW, including China, the Russian Federation, the United States (US), India, Pakistan and Israel. These powers are all party to the 1996 Amended Protocol II (The Russian Federation was the most recent to join the list, in 2005). Currently, small developing states are particularly underrepresented.

Only States Parties are authorised to decide on amendments, new Protocols and rules of procedure. Article 8 of the CCW stipulates that states that are not parties can be invited to (review) conferences as observers (Article 8). In practice, the CCW has allowed non-state actors to take part as observers too. So, registrants to the First

<sup>24</sup> Peters, 1996.

Review Conference in 1995 comprised 44 States Parties, 40 states not parties to the convention, 66 NGOs, nine UN departments and various intergovernmental organisations and observer agencies.<sup>25</sup> In 2001, 65 States Parties, four signatory states, 18 states not parties to the convention, and representatives of the ICRC and UNICEF participated in the work of the conference, while representatives of 16 NGOs attended public meetings.<sup>26</sup> Moreover, the sessions of the Group of Governmental Experts (see below) were opened to non-state actors. In short, from the outset of the conference, representatives of NGOs attended in the negotiating sessions and in meetings of military experts, bringing their expertise and experience to bear on the discussions.<sup>27</sup>

Since at least 1996, it has been possible to distinguish three coalitions of States Parties within the framework of the CCW. In the run-up to the First Review Conference a dividing line emerged between a group of states proposing a total ban on anti-personnel mines be incorporated in the CCW and a group of states (including several militarily significant states) which opposed such measures. A third group of states supported a prohibition in principle, but recognised that the first group would not achieve the required consensus and on that basis advocated strengthening Protocol II as much as possible. The establishment of the Ottawa Convention clearly revealed the division between the first and second groups: they became the Ottawa signatories and the non-signatories, respectively.<sup>28</sup>

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### Rules of procedure

The CCW is a framework instrument containing rules on specific kinds of weapons (with the exception of Protocol V, which is a more generic instrument). As explained above, these rules are embedded in five individual protocols. The CCW cannot be easily characterised solely as a comprehensive humanitarian regime. First, comprehensiveness is challenged by the fact that not all States Parties have ratified all five individual protocols. Additionally, some States Parties have ratified Amended Protocol II, whereas others continue to adhere to the earlier protocol. The same applies for Amended Article 1 of the CCW. Secondly, humanitarianism is challenged by the fact that the convention attempts to balance humanitarian concerns and military necessities. It seeks to protect civilians from the effects of weapons used in an armed conflict and to protect combatants from suffering in excess of that what is necessary to achieve a legitimate military objective.<sup>29</sup> Thus, the negotiated international restrictions serve humanitarian ends in a way that addresses reasonable military requirements. It is for this reason that the Preamble to the CCW specifically welcomes the adherence of

<sup>25</sup> Peters, 1996.

<sup>26</sup> Second Review Conference, Final Report, 2001:4.

<sup>27</sup> Maresca, 2004:834.

<sup>28</sup> Mathews, 2001.

<sup>29</sup> ICRC/AS, 2004.

militarily significant states and the input and deliberations of military experts are thought to be an essential component of the CCW's operation.<sup>30</sup>

The requirement of unanimity means that decision-making in the CCW is usually laborious and time-consuming. So far, the States Parties have proceeded on the basis of consensus and no decisions have been taken by vote in the deliberations and negotiations relating to the Convention and its annexed Protocols. In this regard, the rules of procedure of the two Review Conferences as well as the Meetings of States Parties to the Amended Protocol II and the Convention all refer to Article 8. The article in question stipulates that amendments to the convention and additional protocols can only be adopted in the same manner as the convention (i.e. on the basis of consensus). The principle of unanimity narrows the margins of decision-making to what is still acceptable to the least-yielding State Party. The principle of unanimity also applies to any proposal for an amendment or a new protocol that is yet to be listed on the agenda. In that way it leads to fixed pathways for decision-making: First, the States Parties to the convention have to gain consensus on the listing of an issue on the agenda. Next, complete agreement is needed on a consultation mandate. Subsequently, total agreement needs to be reached on a negotiation mandate. Thereafter, all States Parties need to adopt the negotiated draft text. Finally, at least twenty States Parties need to accede to the adopted amendment or protocol before it can enter into force.

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## Issues

Since the preparations for the First Review Conference 1996, deliberations have concentrated on:

- 1) strengthening the anti-personnel mine provisions;
- 2) establishing compliance and monitoring procedures;
- 3) expanding the number of States Parties to the Convention and its Protocols;
- 4) expanding the restrictions on Mines Other Than Anti-Personnel Mines;
- 5) extending the scope of the Convention;
- 6) establishing an instrument to deal with explosive remnants of war.

These issues – and the efforts made by the Netherlands in this regard – will be elaborated upon extensively in chapters 4 and 5.

## 2.4 The Ottawa Convention

The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* is also known as the 'Mine Ban Treaty', the 'Ottawa Treaty', or the 'Ottawa Convention'. The Ottawa Convention comprises a total ban on anti-personnel mines. It was agreed on at 18 September 1997 in Oslo and entered into force

<sup>30</sup> Matheson, 2001.

on 1 March 1999, making the Ottawa Convention ‘the quickest major international agreement ever to enter into force in history’.<sup>31</sup>

## Background

The Ottawa Convention originated in the disappointment of some countries, NGOs and the ICRC about the lack of progress made on the issue of anti-personnel mines in the CCW.<sup>32</sup> States Parties to the CCW failed to reach agreement on a total ban on antipersonnel mines in the First Review Conference in May 1996. Although the protocol was amended and more restrictions on the use of anti-personnel mines were established, a total ban was not negotiable. Canada announced that it would organise a meeting for ‘pro-ban states’ outside the CCW arena in order to explore how a total ban on anti-personnel mines could be achieved. This initiative was welcomed by the International Campaign to Ban Landmines (ICBL), a coalition of NGOs that had been striving for a ban since 1991.<sup>33</sup> From that moment on, NGOs and about fifty states cooperated and managed to achieve a historic moment with the signing of the Ottawa Convention in 1997, a mere eighteen months after the disappointing CCW Review Conference.

34 The negotiation process towards the ban was characterised by spontaneity and individual initiatives by governments supporting the ban. The disappointment with Amended Protocol II, coupled with Canada’s proposal to discuss the issue of a mine ban outside existing diplomatic negotiation arenas resulted in various meetings being organised and hosted by several states. Canada hosted the first meeting in October 1996 in Ottawa. At the closing session, Canada expressed its ambition to achieve a total ban by the end of 1997. In this aim it was supported by fifty states.

The Austrian government took over the initiative and by the end of 1996 had prepared a first draft of the treaty. Supported by a UN resolution calling for an international binding agreement on a ban on landmines, Austria hosted an expert meeting in Vienna in February 1997, which was attended by no less than 111 governments. The Austrians used the results of this meeting, as input for their revised draft of the treaty, which was issued in March 1997.

At the meeting it became clear that the issue of verification (i.e. the question of how compliance with the treaty could be guaranteed and controlled) would be a major issue of debate. Two perspectives on this issue emerged: one group of countries promoting a minimum level of verification and another group of countries supporting a strict verification system. The German government followed the Austrian example and

31 Rutherford, 2000:75.

32 Maslen & Herby, 1998.

33 The ICBL was found by six NGOs (Rutherford, 2000): Handicap International (France), Human Rights Watch (United States), Medico International (Germany), Mines Advisory Group (United Kingdom), Physicians for Human Rights (United States), and the Vietnam Veterans of America Foundation (United States).

hosted an expert meeting on verification measures in April 1997. The different perspectives on the verification issue could not be reconciled. In June, the Belgian government organised an international conference: the formal follow-up to the Ottawa Conference. The result of this conference was the signing of the 'Brussels declaration' by 97 of the 156 attending governments. In this declaration, the essential ingredients of a treaty were formulated: a total ban on the use, stockpiling, production and transfer of anti-personnel mines; the destruction of stockpiles and cleared anti-personnel mines; and international cooperation and assistance concerning mine clearance.

In September 1997, the Oslo Diplomatic Conference was held, with the aim of achieving the signing of a treaty. Only the signatories of the Brussels declaration were entitled to vote. The UN, ICRC, International Federation of the Red Cross and Red Crescent Societies, and the ICBL were present as observers to the negotiation process. Notable absentees among the states were China, India, Russia and Pakistan. On the one hand, many issues were still unresolved at the beginning of the conference: important issues were whether exceptions would be permitted to a total ban or whether transitional provisions would be added to the convention text. On the other hand, there was immediate agreement about the articles regarding the definitions, the use of anti-personnel mines for training purposes as well as the consultative structure of the convention. In the second week of the Oslo conference, agreement was reached on a deadline of four years for stockpile destruction. On September 12 the chair circulated a draft convention text, which was accepted by all participating delegations, except that of the United States. The United States was only willing to be party to the convention if granted exceptional status relating to Korea. A few days later, on 16 September, the US delegation requested the negotiations be adjourned, in order to be able to formulate some compromise proposals. However, this action came too late. On 17 September, the Plenary Meeting approved of the convention text and the Ottawa Convention was born. The US delegation decided to withhold its vote and did not become party to the Ottawa Convention which entered into force on March 1, 1999, six months after the date on which the fortieth country ratified the treaty.

35

## Content

The main objective of the treaty is 'to put an end to the suffering and casualties by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless people and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement'.<sup>34</sup> The convention aims at universalisation; it aspires to achieving that all nation states in the world eventually become signatories to it. The universalisation efforts of the convention in 1999-2004 resulted in a total of 143 countries becoming States Parties, while another nine countries signed but did not yet ratify, leaving 43 countries that did not sign the

34 Ottawa Convention, Preamble.

treaty. By the end of 2006, the total number of States Parties amounted to 152 (see also chapter 4).

The Ottawa Convention puts a total ban on anti-personnel mines. It prohibits the use of anti-personnel mines in all situations. It also forbids the development, production, stockpiling and transfer of these devices, and assisting, encouraging or inducing anyone in any way to engage in any activity prohibited under the convention. In addition, it requires the destruction of anti-personnel mines, whether held in stockpiles or already emplaced in the ground. The convention is an internationally and legally binding agreement. Each country adhering to it is obliged never, under any circumstances, to use anti-personnel mines. This includes all situations of an armed conflict, from international armed conflict to internal armed conflict, internal unrest and civil disturbances. The convention also stipulates that a country cannot deploy anti-personnel mines during peacetime, for instance as a means to protect its military installations or to protect its borders from unwanted trespassing.

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The convention only prohibits anti-personnel mines. For that reason a clear distinction is made in the treaty between anti-personnel mines and Mines Other Than Anti-Personnel Mines (MOTAPM); also referred to as Anti-Vehicle Mines or Anti-Tank Mines. An anti-personnel mine is defined as a mine 'designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons' (Article 2). Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, and that are equipped with anti-handling devices, are not classified as anti-personnel mines. Thus, the convention is not applicable to MOTAPM, even when these mines contain anti-handling devices that may explode when someone is trying to disable them. The definition of anti-personnel mine in the Ottawa Treaty is much stricter than that in Amended Protocol II of the CCW. In the CCW Protocol an anti-personnel mine is defined as 'a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons', the use of the word 'primarily' being one of the Protocol's significant weaknesses.<sup>35</sup>

The Ottawa Convention comprises far-reaching obligations for States Parties to address the anti-personnel mine problem. First, it obliges each State Party to clear all anti-personnel mines from mined areas (areas which are dangerous due to the actual or suspected presence of mines) under its jurisdiction or control within a period of ten years (Article 5). An area is deemed to be mined if it is thought to contain either anti-personnel mines or MOTAPM. There is no obligation in the convention to remove or destroy the MOTAPM. With respect to the MOTAPM, the convention refers to the relevant provisions of Amended Protocol II, which merely require that all mined areas be cleared, marked, fenced or monitored as soon as possible after active hostilities

35 ICBL, 1998:5.

have ceased, to ensure the effective exclusion of civilians. The convention makes no reference whatsoever to the presence of other unexploded ordnances or ERW.

For many States Parties the deadline for completing the clearance of all anti-personnel mines on their territory is in the year 2009. Recognising that some mine-affected countries will not be in a position to meet this obligation, the convention provides for such countries to submit a request for the deadline to be extended by up to ten years. The States Parties then vote on whether to allow the extension. The extension may also be renewed if deemed necessary (Article 5). Second, there is an obligation to destroy all stockpiled anti-personnel landmines on the States Parties' territories within four years after the convention has come into force for the State Party in question (Article 4). The provisions in articles 4, 5, and 6 incorporate the principle of 'sole responsibility of the mine-affected country for its anti-personnel mine problem'. In addition, the convention obliges States Parties in a position to do so to provide assistance for mine clearance, provide victim assistance, and also to exchange equipment, material and scientific and technological information, by means of funding and supporting activities. Such assistance may be provided, through the ICRC, the United Nations system, international or regional organisations and institutions, non-governmental organisations and institutions, on a unilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining (Article 6).

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The Ottawa Convention also contains a number of provisions ensuring transparency, compliance and the settling of disputes. These include the requirement for each State Party to report annually on implementation. The annual report must include information on the total number and types of anti-personnel mines that the State Party in question has stockpiled, the progress of its mine-destruction programmes and the total number of mines kept for training purposes, the technical characteristics of each type of mine it has produced in the past, the location of all mined areas under its jurisdiction or control, the types and quantities of all anti-personnel mines destroyed after the entry into force of the convention, and measures taken to provide an immediate and effective warning of the population (Article 7). Article 6 calls upon States Parties to provide information to the database on mine clearance established within the UN system.<sup>36</sup> The convention further requires the States Parties to take all appropriate measures, including the imposition of penal sanctions, to prevent and suppress any activity the convention prohibits that is undertaken by persons or on territory under its jurisdiction or control (Article 9). In Article 10, the States Parties are

36 The Information Management System for Mine Action (IMSMA) was released in summer 1999. It is a software-based data management tool for use in national and local mine action centres. Combining a relational database with a geographic information system (GIS), it has been developed to provide the facility to collect, collate and distribute relevant information at field and headquarters levels in a timely manner and is currently in use in over ninety per cent of the mine action programmes around the world (GICHD, 2004:139).

encouraged to consult and cooperate with each other to settle any disputes that may arise with regard to the application or interpretation of the convention. In case of any questions or doubts on compliance, an enquiry process can be initiated. Such a process starts with one or more States Parties making a 'Request for Clarification', which is passed on to the country under suspicion through the Secretary-General of the UN. In case of a failing or unsatisfactory response, a fact-finding mission consisting of up to nine experts can be sent to collect additional information directly related to the allegation (Article 8).<sup>37</sup> However, it is generally believed that the unofficial verification system in place (i.e. the widespread distribution of the ICBL Landmine Monitor reports, and the presentations, papers and fact sheets of the ICRC, ICBL, Human Rights Watch (HRW) and other NGOs in the Intersessional Working Programme) offers greater assurance of State Party compliance.<sup>38</sup>

### Relevance

The Mine Ban Treaty is generally considered as being highly important. Immediate confirmation of its historic nature and political success came when the ICBL, the driving force behind the Ottawa process, and Jody Williams, its coordinator, were awarded the 1997 Nobel Peace Prize.<sup>39</sup> The convention's relevance has also been reflected in the reports of the Landmine Monitor since 1999. The Landmine Monitor report is set up by the ICBL to assess the community's response to the landmines.<sup>40</sup> It is an attempt by civil society to hold governments accountable to the obligations they have taken on with respect to anti-personnel mines and it is designed to complement the States Parties' transparency reporting required under Article 7 of the treaty. The Landmine Monitor reports contain annual information on every country with respect to their policy on banning landmines, their use, production, transfer and stockpiling of mines, and their mine action funding, mine clearance, mine risk education, landmine casualties, and survivor assistance.<sup>41</sup> It not only reports on States Parties and

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37 Ottawa Convention. NB: The request should be supported by appropriate information. The State Party accused is obliged to provide the requested information within 28 days. If this deadline is not met, or if the information provided is not satisfactory, the requesting State Party may request the Secretary-General to disseminate this information to all States Parties so that it may be discussed at the next Meeting of the States Parties. The requesting State Party may even propose convening a Special Meeting of the States Parties to discuss the matter further. If within 14 days at least one-third of the States Parties agree to such a meeting, the Secretary-General will convene such a meeting in another 14 days. The (Special) Meeting of the States Parties has the authority to decide on further action by consensus or, if consensus cannot be reached, by majority vote.

38 Woodward, 2001.

39 Kongstad, 1999.

40 The Landmine Monitor initiative of ICBL is sponsored by a number of countries (including the Netherlands), the European Commission and UNICEF (see annual reports).

41 The term mine action was formally endorsed by the UN in 1998. It comprises five complementary groups of activities: 1) mine risk education, 2) humanitarian demining, 3) victim assistance, 4) stockpile destruction and 5) advocacy against the use of anti-personnel mines. The International Mine Action Standards (IMAS) provide that humanitarian demining refers to activities which lead to the removal of mine and UXO hazards, including technical survey, mapping, clearance, marking, post-clearance documentation, community mine action liaison and the handover of cleared land (GICHD, 2004:19-20, 64).



their treaty obligations, but also looks at signatory states and non-signatories as well, and includes information from key players in mine action.

In October 2004 a Special Five Year Review Report was published with an eye to the Nairobi Summit, the First Review Conference of the Ottawa Convention, held in December 2004. The report presented the major findings on the impact of the Ottawa Convention on the global landmine problem (see box 2.1).

**Box 2.1** *Major findings from the Landmine Monitor reports 1999-2004*

- 152 countries have agreed to ban anti-personnel mines.
- 62 million stockpiled anti-personnel mines have been destroyed, including 37.3 million by States Parties to the Ottawa Convention.
- More than 1,100 square kilometres of land have been cleared since 1999, destroying more than four million anti-personnel mines, nearly one million anti-vehicle mines, and many more millions of pieces of unexploded ordnance (UXO).
- Donors provided more than USD 1.35 billion to mine action from 1999-2003, and about USD 2.1 billion since 1992.
- About 22.9 million people attended mine risk education sessions between 1999 and 2003.
- From 1999 to September 2004, Landmine Monitor recorded more than 42,500 new landmine and UXO casualties from incidents in at least 75 countries. Because many casualties go unreported, the true number of casualties is certainly much higher, probably in the range of 15,000 to 20,000 new casualties a year.
- The only governments that have used mines continuously in the 1999-2004 period are Russia and Myanmar (Burma).
- There has been no publicly acknowledged, legal trade in anti-personnel mines.

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Source: Landmine Monitor, *Five Year Review Report 2004*:3.

A country that accepts the Ottawa Convention accepts that anti-personnel mines are no longer legitimate weapons. The Landmine Monitor considers the marked drop of the use of anti-personnel mines since the early 1990s as one of the great achievements of the convention and the mine-ban movement more generally. It reported in 2004 that since 1999 only two non-States Parties had used mines continuously, namely Russia and Myanmar (Burma). In 2004 it identified the confirmed or likely use of anti-personnel mines by four governments, compared with fifteen governments in 1999. Thirty-six of the over fifty states known to have produced anti-personnel mines had formally renounced and ceased production. Furthermore, trade in anti-personnel mines had dwindled to a very low level of illicit trafficking and unacknowledged trade; a de facto global ban on the transfer or export of anti-personnel mines has been in effect since 1996. At the time the Ottawa Convention was negotiated and entered into force a staggering number of 131 countries possessed stockpiles containing an estimated more than 260 million anti-personnel mines. As box 2.1 shows, up to 2004 some 62 million

stockpiled anti-personnel mines had been destroyed, including 37.3 million by States Parties. At that time the majority of the current stockpiles belonged to just three states: China (estimated 110 million), Russia (estimated 50 million), and the United States (10.4 million).

From 1999 to 2003, donors provided more than USD 1.35 billion for mine action; when the amounts provided since 1992 are included, the total is about USD 2.1 billion. The funding has enabled tremendous progress to be made in humanitarian mine action, notably in mine clearance and mine-risk education. The Landmine Monitor Special Five Year Review noted that it had been difficult to arrive at reliable statistics on the area of land cleared in the previous five years, due to inconsistent and incomplete reporting of clearance from many countries. With these caveats it reported that more than 1,100 square kilometres of land had been cleared from 1999 to 2003, destroying more than four million anti-personnel mines, nearly one million anti-vehicle mines, and many more millions of pieces of unexploded ordnance (UXO). In addition to this, about 22.9 million people attended mine risk education sessions in that five-year period. However, the ICBL believes that the only real measure of the convention's success will be the concrete impact it has on the global antipersonnel mine problem. Since the Ottawa treaty entered into force, the number of reported new mine casualties had dropped significantly in some heavily mine-affected countries, notably in Afghanistan, Cambodia, Colombia, Sri Lanka and Bosnia-Herzegovina. There is probably significant underreporting of casualties. Nevertheless, though estimates of the annual number of new landmine casualties dropped from 26,000 in 1999 to about 20,000 in 2004.<sup>42</sup> In 2006 when the ICBL compared the casualty rates of 2004 with those of 2005 it found an increase of 11 percent.<sup>43</sup>

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## 2.5 Decision-making within the framework of the Ottawa Convention

### Participants

The Ottawa Convention is open for accession by any state which has not yet signed it. Article 19 stipulates that the articles of the convention shall not be subject to reservations. So, any acceding state effectively consents to be bound unconditionally to the treaty. States that have ratified or acceded to the treaty are referred to as States Parties. Unfortunately, three of the five permanent members of the Security Council (China, the Russian Federation and the United States) are not States Parties, and neither are most of the countries of the Middle East and all the former Soviet Republics and many Asian countries. The group of states who are not parties to the convention also includes the three major mine-producing countries (China, India, and Pakistan).

42 ICBL, *Special Review Report Landmine Monitor*, 2004:48-52.

43 ICBL, *Landmine Report 2006*.

States not parties to the convention can attend the meetings of States Parties as observers at the invitation of the meeting (Article 11), as can the United Nations, other relevant international organisations or institutions, regional organisations, the ICRC and relevant NGOs. The first meeting of States Parties (1MSP) was attended by 43 States Parties, 18 States which had ratified the convention, but for which the convention had not yet entered into force; and a further 47 states not parties to the convention. In addition, 16 international organisations and institutions, regional organisations, entities and NGOs participated as observers.<sup>44</sup> An unprecedented number of over 1,300 people attended the convention's First Review Conference, the Nairobi Summit on a Mine-Free World.<sup>45</sup> These participants represented 109 States Parties, one state that had acceded to the convention, but for which the convention had not yet entered into force, a further 20 states not party to the convention and 28 international organisations, regional organisations, entities, NGOs and 12 other organisations.<sup>46</sup>

From the outset, the Ottawa Convention has been driven by a fairly small group of countries – the so-called 'Core Group'. The Core Group was initiated by Canada in 1996. In an early stage of the Ottawa process the group developed the concepts, objectives and standards of the convention in close cooperation with ICBL and other relevant NGOs and international organisations. Since September 1997 the group has particularly focussed on the universalisation and implementation of the convention. Core Group countries from the very beginning include Austria, Belgium, Canada, Ireland, the Philippines, Mexico, the Netherlands, New Zealand, South Africa, Sweden and Switzerland.<sup>47</sup>

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The States Parties have always been careful not to create dividing lines between the donor countries and the mine-affected countries. For that reason the annual meeting of States Parties is held in mine-affected countries. In addition, a Sponsorship Programme was created in 2000 to support the widespread participation of States Parties, by covering the costs of travel and accommodation of representatives of States Parties and of states demonstrating a strong interest in becoming States Parties but who might otherwise not be able to participate in the intersessional meetings and meetings of States Parties.

### Consultative structure

The text of the Ottawa Convention mentions three formal meetings of States Parties, i.e. the Meeting of States Parties (Article 11), Review Conferences (Article 12) and an Amendment Conference (Article 13).

44 APLC/MSP/1/1999/1.

45 ICBL, Special Review Report Landmine Monitor 2004.

46 APLC/CONF/2004/5:7.

47 Kongstad, 1999; Interviews.

Meetings of States Parties are organised annually in order to discuss the application and implementation of the convention. All relevant international and non-governmental organisations as well as states not party to the convention are invited as observers to the meeting. Up to 2006, seven meetings of the States Parties had taken place. A First Review Conference of the Mine Ban Treaty was convened in 2004 by the Secretary-General of the UN, five years after the convention came into force. The 'Nairobi Summit on a Mine-Free World' reviewed the status and operation of the convention. States Parties called for continuation of the annual Meetings of States Parties and decided to hold a second Review Conference in 2009. An Amendment Conference to consider proposals for amendments to the convention has never been requested or convened.

Since the First Meeting of States Parties in Maputo, Mozambique, in 1999, several additional arrangements have been decided on in order to facilitate the operation and implementation of the convention.<sup>48</sup> During the First Meeting of States Parties it was recognised that the implementation of the convention would be facilitated by intersessional meetings of experts on issues regarding the operation of the convention (Final report 1MSP). The Meeting of States Parties agreed on an Intersessional Work Programme of informal, open-ended meetings that can be attended by States Parties, states not parties to the convention, international organisations and non-governmental organisations. Within the framework of the Intersessional Work Programme, four Standing Committees are operating:

- 1) the Standing Committee of Experts on Mine Clearance and related technology;
- 2) the Standing Committee of Experts on Victim Assistance, Socio-Economic Reintegration and Mine Awareness;
- 3) the Standing Committee of Experts on Stockpile Destruction;
- 4) the Standing Committee of Experts on the General Status and Operation of the convention.

The primary function of the Intersessional Work Programme is to ensure in-depth consideration of relevant questions for improving mine action, and to facilitate and support the effective functioning of the convention, with a particular emphasis on international cooperation.<sup>49</sup> In this way a continuous and open consultation process is promoted, which allows for high-level practical work in mine action.

<sup>48</sup> During a first consultation in March 1999, participants discussed issues concerning the organisation of the first Meeting of States Parties, such as a draft provisional agenda, a draft programme of work, draft rules of procedures and provisional estimated costs. During a second consultation in April 1999 participants discussed a draft political declaration, possibilities for intersessional work, practical ways to circulate reports, as well as the format of future Meetings of States Parties.

<sup>49</sup> MSP1, Final Report Annexe IV.

In addition to these formal arrangements, several informal consultation mechanisms have been created over time to focus on particular issues. These include the Universalisation Contact Group, the Resource Mobilisation Group, the Article 7 Contact Group, the Survey Contact Group and the Sponsorship Programme.

### Rules of procedure

The Rules of Procedure of the convention prescribe that a majority is required for decisions. A quorum made up of representatives of thirty of the participating States Parties is required for any decision to be taken. Decisions of the meeting of States Parties on all matters of substance are taken by a two-thirds majority of the representatives of States Parties present and voting. Decisions on matters of procedure are taken by a majority of the representatives of States Parties present and voting. Each State Party participating at the meeting of States Parties has one vote. Observers cannot participate in the decision-making, nor can they make any procedural motion or request, raise points of appeal against a ruling of the President. States Parties and observers can address the meeting of the States Parties, but only after obtaining the permission of the President.<sup>50</sup>

The States Parties are authorised to decide on the extension of mine clearance deadlines, special meetings of States Parties, fact-finding missions, and disputes, as well as on amendments to the convention. However, the convention provides for a total ban, so its main purpose and objective is not to consider amendments to the convention nor to negotiate new articles. Above all the consultative bodies of the convention are intended to provide a forum for the States Parties to cooperate on a common goal, i.e. to keep the issue of the landmines on the international agenda, to promote universalisation and to address practical and technical implementation issues in order to tackle the large-scale landmine crisis.

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## 2.6 Summary of findings

In this study the Convention of Certain Conventional Weapons and the Ottawa Convention are conceived of as two frameworks for decision-making on international humanitarian law (IHL). To this end, a description was given in this chapter of the background, content, relevance and main features of the participants, the consultative structures, the rules of procedure, and issues on the agendas of the two conventions.

<sup>50</sup> APLC/MSP.1/1999/L.3:7.

3

# Dutch policies on landmines and ERW

### 3.1 Introduction

In the Netherlands a distinct landmine policy evolved after the early 1990s, in response to international awareness of the scale of the human suffering caused by these weapons. Early 1992, after a visit to Cambodia, the French president François Mitterrand had urged his government to take action, with the result that in 1993 the French requested the Secretary-General of the UN to convene a Review Conference of the CCW – at that time the principal instrument for limiting unnecessary suffering caused by conventional weapons. The ICBL had been created in October 1992 by a coalition of six non-governmental organisations. Its campaign rapidly galvanised public opinion, and spurred politicians to make efforts to prohibit the use of these weapons. In the US, Senator Patrick Leahy’s proposed law to prohibit the export of anti-personnel mines was enacted in 1992. Leahy’s initiative encouraged similar efforts in other countries: in September 1993 the Dutch government banned the export of anti-personnel mines to countries that were not States Parties to the CCW.<sup>51</sup> In March 1996 the Netherlands declared its support for a total ban of anti-personnel mines. This gave the green light for drafting an active Dutch policy on this issue.

The Dutch accounts on landmine policies can be derived from two documents published in the mid-1990s:

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- August 1995: Policy memorandum on the Landmine Problem (*Beleidsnotitie landmijnenproblematiek*).
- January 1997: Government Account on anti-personnel mines in 1996 (*Uiteenzetting van het regeringsbeleid inzake anti-personeelsmijnen in 1996*).

These two documents evolved into the policy intentions, objectives and initiatives expressed in letters from the Ministers of Foreign Affairs, Development Cooperation and Defence to Parliament, Parliamentary consultations on Dutch policy initiatives and implementation, speeches, and – since 1999 – the successive ‘Policy Frameworks on Humanitarian Demining’ (*Beleidskaders Humanitair Ontmijnen*) and the Stability Fund framework.

This chapter provides a general overview of the Dutch policies on landmines and ERW since the mid-1990s. Section 3.2 concentrates on the changing international perspectives in the early 1990s and the transformation of the Dutch position. Section 3.3 discusses the main policy objectives, principles, and instruments that have underlain Dutch initiatives since 1996. The section concludes by noting the existence of a dual-track approach in which a political instrument (diplomacy) and a financial instrument (the funding of mine action) are combined. These instruments are discussed in sections 3.4 and 3.5, respectively. Finally, in section 3.6 the departmental

<sup>51</sup> TK, 24292, nr. 1:5.

organisation of these policies is highlighted. Conclusions are presented in the final section 3.7.

### 3.2 International pressures and changing perspectives

Dutch endeavours with regard to landmines arise from the general objective in Dutch security policy to promote conventional arms control.<sup>52</sup> The Netherlands has been active in developing instruments for conventional arms control for some thirty years. During the 1970s and 1980s, attention focussed on the negotiations on Mutual and Balanced Force Reduction (MBFR) because of the perceived imbalance between the national armed forces in Europe. Since the end of the Cold War and the creation of the CFE (Conventional Forces in Europe) Treaty in November 1990, other issues have emerged on the conventional arms control agenda, such as negotiations on Confidence and Security Building Measures (CSBM), the proliferation of Small Arms and Light Weapons (SALW) and landmines.

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During the Cold War, governments were used to discussing landmines primarily in terms of military necessity. The human suffering caused by landmines was not denied, but was generally dealt with in terms of technical defaults and military (mis)use by inadequately trained soldiers and undisciplined militias. In the 1980s, the Netherlands was one of many countries to see the further development of international humanitarian law within the CCW as a significant means of combating malpractices. During the first half of the 1990s, however, the global mine ban movement led by the ICBL succeeded in reframing the landmine issue as a humanitarian problem rather than a military issue. Essentially, the ICBL stated that under current international humanitarian law the use of landmines was illegal, because it was causing disproportionate casualties among non-combatants and unnecessary suffering to combatants and civilians. This legal argument, in combination with the promotion of shocking statistics and hundreds of landmine victim stories, diverted state attention and action away from the military and security aspects of the landmine issue and refocused it on the plight of victims.

#### Dutch policies prior to 1996

The successful transformation of the landmine debate in the mid-1990s is reflected in Dutch policies. In May 1995 the Dutch government used the preparations for the First Review Conference of the CCW to prepare a document on the landmine problem. This first 'Policy Document on the Landmine Problem' was published in August 1995. It contained the Dutch government's statement that the landmine problem was caused by a widespread use of landmines contrary to the basic principles of the international humanitarian law. In particular, the deployment of landmines against civilians as an act of terror in intrastate armed conflicts was mentioned as being a major cause of

<sup>52</sup> TK, 27400 V, nr. 2.



human suffering and huge socio-economic problems. In addition, the government noted that post-conflict reconstruction in the afflicted areas was impeded by the explosion hazard after cessation of hostilities. Furthermore it was noted that the landmine problem was still increasing; every year between two and five million landmines were being laid, whereas no more than 80,000 mines could be cleared per year. It was therefore concluded that a set of coherent activities was needed to deal with the landmine problem, ranging from mine clearance to the strengthening of existing legal instruments.<sup>53</sup>

In the document the Dutch government emphasised that it considered mine clearance to be the most important instrument to meet the short-term needs of the civilian population in mine-affected areas. Since 1992 the Netherlands had been supporting multinational demining programmes in Afghanistan, Angola, Cambodia, Laos (mainly for clearing ERW) and training, education and awareness-raising activities in Mozambique and North Iraq. It pledged to continue supporting demining programmes in developing countries in the following years, earmarking 5 million Dutch guilders for this purpose.

However, most important in the context of the rapid mobilisation of the international mine ban movement were the parts of the document that referred to the strengthening of existing legal instruments. Here, the Dutch government underlined the long-term goal of a total ban of certain types of landmines, notably anti-personnel landmines. In the preparatory meetings to the CCW's First Review Conference it had also stated its staunch support of a total ban on the production, storage and use of anti-personnel mines. At the same time, the government indicated that a total ban was a long-term goal, which could not be achieved as long as there was a lack of 1) full-fledged, humane alternatives for the use of anti-personnel mines by the Dutch armed forces, and 2) the international support needed for the approval of a ban. Landmines were considered to be legitimate defensive weapons, on the condition that their use was legitimate under international law. Thus, for the time being, Dutch efforts would aim at combating the misuse of landmines. Because the CCW had failed to end malpractices, the Dutch government deemed it urgent to adapt and strengthen the CCW during the First Review Conference.<sup>54</sup>

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### 1996: Changing Dutch perspectives

Shortly after the publication of its first document on landmines, the Dutch government decided on a fundamental policy change. In December 1995, responding to growing pressure from Parliament and Dutch public opinion which had been strongly influenced by the Netherlands Campaign to Ban Landmines,<sup>55</sup> the Dutch

53 TK, 23900, V, nr. 44; 24292, nr. 1.

54 TK, 24292, nr. 1.

55 A coalition of national NGOs, including Pax Christi Netherlands, Dutch Interchurch Aid and Novib (LMR, 1999).

Minister of Defence, Joris Voorhoeve, ordered a review of the Dutch army's needs for anti-personnel mines.<sup>56</sup> On 11 March 1996, Voorhoeve announced that the main conclusion of the inquiry was that the traditional functions of anti-personnel mines could be taken over by other landmine systems, i.e. anti-vehicle mines and horizontal effect weapons.<sup>57</sup> The results of the review gave the final impetus to the government's decision to stop using anti-personnel mines and to dispose of stocks.

The decision to ban the use and possession of anti-personnel mines can be considered as a turning point in Dutch landmine policy.<sup>58</sup> The Netherlands had stopped producing anti-personnel mines in the 1970s. In September 1993 it instituted a moratorium on the export of landmines to states that were not States Parties to the CCW.<sup>59</sup> Its renouncement of the use of anti-personnel mines received broad parliamentary approval. The Netherlands was not among the first countries to relinquish the anti-personnel mine. It was preceded by about twenty other countries, including NATO partners Belgium, Canada and Norway, and mine-affected countries such as Cambodia, Mozambique and Nicaragua. Nevertheless, it became one of the first countries to opt for a fast-track procedure to ban anti-personnel mines within the CCW. As a result, it took a leading role in the global mine-ban movement. But most important was that the decision of 1996 entailed that from thenceforth the landmine problem would be perceived first and foremost as a humanitarian problem.<sup>60</sup>

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### 3.3 Objectives, principles and instruments

#### Proactive landmine policies

On 19 December 2000 the Dutch Minister of Defence stated that the most substantial policy change in Dutch landmine policies had been the decision to abolish anti-personnel mines in 1996. That decision cleared the way for the Netherlands to take a proactive role on the issue.<sup>61</sup> It is indeed striking that the official publications and statements that have appeared since March 1996 universally advocate a proactive course of action. In its document of 1996 the Dutch government proudly announced that the Netherlands had opted for an unambiguous and proactive profile during the First Review Conference of the CCW, that the Netherlands was one of the first countries to support a total ban of anti-personnel mines, and that a proactive approach towards the landmine problem would be a basic principle for Dutch contributions in relevant

56 TK, 24292, nr. 3:2.

57 TK, 24292, nr. 5:5.

58 TK, 24292, nr. 4.

59 This moratorium corresponded to the moratorium of the European Union which entered into force in May 1995 (LMR, 1999).

60 See for instance the unambiguous statement by the Minister of Foreign Affairs on 4 December 1998 in the Parliamentary Committee for Foreign Affairs that the objective of the Ottawa Convention is humanitarian, not the advancement of security and stability (TK, 26137, nr. 5).

61 TK, 24292, nr. 21.

arenas.<sup>62</sup> On 19 February 1997, in a meeting of the Parliamentary Committee for Foreign Affairs, the Minister of Foreign Affairs, Hans van Mierlo, characterised the Netherlands as a leading nation on the landmine issue.<sup>63</sup>

Since then, the leading role of the Netherlands has constantly been emphasised in the annual reporting on Dutch landmine activities in the Landmine Monitor Report.<sup>64</sup> Likewise, the role of the Netherlands as a pioneer recurs in policy documents and parliamentary debates and committee reports. Here the active course of action and/or pioneer role is related to:

- 1) Uninterrupted membership of the Core Group of the Ottawa Convention. In the course of 1996, the Canadian government invited a small group of countries, among which the Netherlands, to a series of meetings to tackle the landmine problem. The Netherlands accepted the request, joined the Core Group in October 1996 and has been a member ever since.
- 2) Continuous participation in the consultative bodies of the Ottawa Convention and the CCW. Since 1999 the Netherlands has participated in annual and intersessional Standing Committee meetings of the Ottawa Convention, as well as the First Review Conference in 2004. It took part in the Mine Ban Treaty's Universalisation Contact Group, the Article 7 Contact Group and the Resource Mobilisation Contact Group. Furthermore, it participated in 1) annual meetings of States Parties to the CCW, 2) annual meetings of States Parties to Amended Protocol II, 3) the Second and Third Review Conferences in 2001 and 2006 respectively, and their Preparatory Committee meetings, 4) the meetings of the Governmental Groups of Experts on ERW and anti-vehicle mines.
- 3) Pursuit of and frequent holding of the chairmanship of the consultative bodies of the Ottawa Convention and the CCW. The Netherlands served as co-rapporteur and then as co-chair in the Ottawa Convention's Standing Committee of Experts on Mine Clearance and the Standing Committee on Mine Clearance and Related Technologies, respectively (from May 1999 to September 2001). It was also co-rapporteur and then co-chair of the Ottawa Convention's Standing Committee on the General Status and Operation of the Convention from September 2002 to December 2004. Finally, it was coordinator for CCW's Governmental Group of Experts on Explosive Remnants of War.
- 4) Maintenance of a high-ranking position as a mine action donor. Table 3.1 shows the position of the Netherlands in individual years. The Netherlands increased funding in 2006 by 38 percent, to USD 26.9 million. This was its highest total reported to date.<sup>65</sup> In addition to this, the Netherlands chaired the (informal) Mine Action Support Group in 2000-2001, which brings together major donor countries in order

62 TK, 24292, nr. 15.

63 TK, 25000 V, nr. 72:6.

64 LMR, 1999-2004.

65 Landmine Monitor Report, 2007.

to coordinate mine action funding. Furthermore, in June 2000 a 'demining fund' was established in the annual explanatory memorandums to the budget of the Ministry of Foreign Affairs in order to underline the importance and the scope of Netherlands funding policies.<sup>66</sup>

Year	Total budget major donors (million USD)	Dutch budget (million USD)	Percentage of total budget major donors	Ranking in world
1993-1998	640 (17)	30.2*	4.7	10
1999	211 (17)	8.9	4.2	8
2000	224 (17)	14.2	6.3	5
2001	237 (20)	13.9	5.9	7
2002	309 (23)	16.0	5.2	6
2003	339 (24)	12.1	3.6	9
2004	399 (23)	19.3	4.8	6
2005	376 (27)	19.3	5.1	8
2006	475 (27)	26.9	5.7	5

Source: *Landmine Monitor Report, 1999-2007*.

\* This funding is for 1996-1998 (1996 10.7 million; 1997 10.2 million; 1998 9.3 million).

### Integrated approach

Dutch pro-activeness also manifests itself in the adoption of an integrated policy approach. Dutch landmine policy emanates from the overall Dutch foreign policy objectives of increasing international security and providing humanitarian assistance. In practice that means that the Dutch government opts for the effective and efficient combination of two policy instruments to tackle the landmine problem. Firstly, it uses a political (or diplomatic) instrument by actively participating in arms control negotiations in the CCW and the Ottawa Convention, thus promoting international humanitarian law with regard to landmines. Secondly, it utilises a financial (or funding) instrument by contributing considerable resources to mine action programmes in countries with a substantial landmine problem. Accordingly, the analysis of Dutch landmine policies that follows below has been structured according to these two policy instruments.

### 3.4 Diplomacy

The notion that anti-personnel mines were causing large-scale human suffering has been a guiding principle in Dutch landmine policies since 1996. In the explanatory memorandum to the budget for 1997 the government explicitly mentioned the distressing consequences of landmines for the civilian population in areas of active or former conflict in developing countries (for instance Angola, Afghanistan, Cambodia and Mozambique) and the Western Balkans (such as Bosnia & Herzegovina and Croatia). The document stressed the need for a broad international approach to tackle the problem. On that basis the government announced that, where deemed possible, the Netherlands would support activities aiming at total ban of anti-personnel mines.<sup>67</sup> In the course of 1997, achieving a total ban on anti-personnel mines even became a Dutch policy priority. In the explanatory memorandum to the budget for 1998 the government reported its aim to play a proactive role in negotiating a treaty text within the framework of the Ottawa process, while remaining ‘collaborative’ within the broader framework of the CCW.<sup>68</sup>

After the signing of the Ottawa Convention in November 1997, the Netherlands focused on the CCW. In November 1998, the Dutch Minister of Foreign Affairs, Jozias van Aartsen explained that the Netherlands would be a proactive player both with respect to the Ottawa Convention and the CCW. The Netherlands would commit bilaterally and multilaterally – in particular with its EU partners – to promote the universality of Amended Protocol II and Protocol IV of the CCW and the Ottawa Convention. To this end it would actively contribute to future conferences of States Parties. The Netherlands had played a pioneer role in the preceding years on the issue of MOTAPM in general and anti-tank mines in particular. It would continue its plea for further limitations to the use and transfer of anti-tank mines.<sup>69</sup>

The proactive course remained a salient policy characteristic after 1997. Under the new budget arrangement that was introduced in 2000, the Dutch government indicated its commitment to strive for ‘the security of the Netherlands and allied territories and the advancement of international peace, security and stability, as well as in Europe as worldwide’ (policy objective 2). For that purpose, it set itself as an operational objective ‘the advancement of conventional arms control’. And in the further details it emphasised the active role of the Netherlands in developing binding agreements on the use of conventional arms. To this end, it would preside over one of the Standing Committees of Experts in the Ottawa Convention and over the Mine Action Support Group (MASG).<sup>70</sup>

67 TK, 25000 V, nr. 2:77.

68 TK, 25600, V, nr. 2:39-40.

69 Parliamentary proceedings, 12 November 1998:1565-1574.

70 TK, 27400 V, nr. 2:31-36.

The most important development in Dutch policies since 1996 has been the expansion of the landmine issue to include the issue of ERW. The Dutch government embraced the ERW issue by the end of 2000. Of overriding importance was the ICRC's study 'Explosive Remnants of War; Cluster bombs and Landmines in Kosovo'.<sup>71</sup> The study revealed that most of the landmine victims in Kosovo were actually victims of ERW. Subsequently, in September 2000, the ICRC organised a meeting in Nyon, Switzerland, to draw attention to the humanitarian consequences of ERW. It called for a new legal instrument that would constrain or even prohibit the use of cluster munitions, arguing that given the high amount of cluster munitions that fail to explode when deployed, the effects of the use of cluster bombs were inhumane, disproportional and indiscriminate. The meeting prompted the Netherlands to take up the ERW issue. On 17 November 2000, the Ministers of Defence and Foreign Affairs set forth the government's position on ERW in areas of ongoing or former conflict.<sup>72</sup> The explanatory memorandum to the budget for 2002 reported that the government had taken up a pioneer role in looking for a solution for the ERW problem. To that end it had put the subject on the agenda of the PrepComs of the Second Review Conference of the CCW.<sup>73</sup>

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With the introduction of the performance-based policy budgets the main features of Dutch policy with respect to the CCW and Ottawa Convention became more detailed.<sup>74</sup> From 2001 on, in the CCW, the Netherlands aimed at playing a pioneer role on the subject of ERW. As to this general aim, it was explicitly indicated that consultations under Dutch chairmanship would take place with a view to establishing a new Protocol to the CCW dealing with ERW. Next to continuing its pioneer role with respect to ERW, the Netherlands aspired to make an active contribution to other initiatives to strengthen the CCW, such as strengthening compliance, promoting universalisation, and devising specific stipulations on Anti-Vehicle Mines (AVMs).<sup>75</sup>

With regard to the Ottawa Convention, in 2002 the government announced its undiminished intent to achieve success in the as yet uncompleted fight against landmines. It hoped to maintain the prominent role of the Netherlands in the Ottawa Convention. Special attention would be given to compliance with the Ottawa Convention, mine clearance and the destruction of stockpiles. The Dutch government also aspired to promote universalisation by stimulating the accession of new countries to the convention.<sup>76</sup>

In its policy outlines for 2004, the Dutch government again expressed its readiness to continue its pioneer role in the CCW and the Ottawa Convention. With respect to the

71 ICRC, August 2000.

72 Buzao00632.

73 TK, 28000 V, nr. 2.

74 See for example the Dutch policy outlines for 2003 in annexe 3.1.

75 TK, 28600 V, nr. 2:64.

76 TK, 28600 V, nr. 2:65.

ERW Protocol that had come into existence on 28 November 2003, the Dutch government stated in February 2004 that in the preceding three years the Netherlands had played a leading role, in terms of both the content and the steering of the process. It was emphasised that the government was pleased with the results achieved. Almost all elements that it had wished to see in the protocol had indeed been incorporated into it. At the same time, however, the government stressed that several stipulations of the protocol fell short of earlier national ambitions.<sup>77</sup>

In the same document, the government emphasised the success of the Ottawa Convention in bringing about a striking worldwide decrease in the number of victims of anti-personnel mines. The outcome of the Ottawa Convention, as well as the establishment of the ERW protocol (Protocol V) and the general process of revitalisation of the CCW, inspired the Dutch government to continue its earlier proactive policies. Firstly, the government intended to actively promote Protocol V internationally. Secondly, it aspired to continue its active participation in the various committees supervising the compliance with the Ottawa Convention. To this end, in the course of 2003 it had already taken up responsibility for the preparations of the First Review Conference of the Ottawa Convention in 2004.<sup>78</sup>

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In the explanatory memorandum to the budget for 2005 the Dutch government stated its intention to promote the acceptance and implementation of CCW Protocol V, including its aim that the Netherlands should play a coordinating role. Further it aimed at the strengthening of the CCW in general and the universalisation of and compliance with the Ottawa Convention. It also announced its intention to remain active within the several Standing Committees of the Ottawa Convention.<sup>79</sup>

Similar intentions were voiced in the explanatory memorandum to the budget for 2006, in which it was reiterated that the government would promote the acceptance and implementation of CCW Protocol V (and to that extent adopt a coordinating role) and the universalisation of and compliance with the Ottawa Convention. It would also promote the establishment of a new CCW protocol on AVMs and support an improved compliance mechanism for the CCW.<sup>80</sup>

### 3.5 Funding

The first international funding of mine disposal took place in October 1988, when the UN called for funds for 'humanitarian demining' in Afghanistan. Until then, mine clearance had largely been regarded as the area of expertise of national military

77 TK, 29200 V, nr. 61.

78 TK, 29800 V, nr. 2:31-32.

79 TK, 29800 V, nr 2.

80 TK, 30300 V, nr 2.

establishments. Afghanistan however, lacked a functioning army, and the departing Soviet troops were either unwilling or unable to clear mines. At first, the UN (assisted by military contingents from donor countries) only provided for mine clearance training, but soon its response to landmines was complemented by a number of Afghan NGOs that assisted in surveying, mapping, marking, and clearing landmines and ERW. Another important activity was to raise mine awareness among the civilian population. The first international mine action NGO (HALO Trust) was set up, and mine action was soon extended to other mine-affected countries, such as Cambodia, Northern Iraq, Kuwait, Mozambique and Angola.<sup>81</sup>

From 1992 to 1996, the Netherlands supported multilateral mine clearance operations in Afghanistan, Laos, Mozambique and Northern Iraq on an ad hoc basis. The Dutch contribution included giving financial support, and providing instructors and support staff (see table 3.2).

Country	Type of support	Year
Afghanistan	Funding of the humanitarian mission of the UN (NLG 3.5 million/ UNOCHA)	Since 1993
Angola	Provision of some instructors and support staff within the framework of the third UN peace operation UNAVEM III Funding of mine clearance NGOs (NLG 2.3 million)	1995 -
Cambodia	Provision of NLG 2 million and 27 explosives experts within the framework of the UN peace operations UNAMIC (1991-1992) and UNTAC (1992-1993)	1992-1993
Laos	Clearance of explosives within the framework of UNDP (NLG 350,000)	-
Mozambique	Provision of NLG 5 million and eleven instructors to the Mine Clearance Training Centre (MCTC) within the framework of the UN peace operation UNOMOZ (1992-1994)	1994-1995
Northern Iraq	Funding of training- and awareness-raising activities of the Mines Advisory Group (MAG)	-

Source: Dutch House of Representatives, 1994-1995, 24292, no 1:17.

In 1996, as a consequence of the policy change mentioned above, the Dutch government substantially increased its funding of (UN) Mine Action Centres and NGO programmes. This put the Netherlands in the group of largest donors, where it has remained ever since (see table 3.1). At the same time, a pool of demining instructors was established under the responsibility of the Dutch Minister of Defence. The military



personnel in the pool - a staff of eighty - were trained to be posted abroad.<sup>82</sup> The first ten instructors, accompanied by two members of the Dutch Explosives Clearance Service (EOD) and two supervisors to monitor the activities of the instructors, were sent to the Bosnia and Herzegovina Mine Action Centre (BHMACE) in 1998.<sup>83</sup>

Not until the late 1990s did a distinct demining policy emerge. The explanatory memorandum to the budget for 1997 was the first to include humanitarian demining as a component of the Dutch humanitarian aid policies. It stated briefly that within the framework of 'emergency relief on behalf of developing countries' the clearance of mines qualified for funding.<sup>84</sup> Also in 1997 a long-term interdepartmental project was started in order to develop new demining techniques. The project was contracted out to the technical research organisation TNO (see box 3.1 for the HOM 2000 project).

### Box 3.1 *The HOM 2000 project*

In 1997 a Dutch research project was started to develop new demining techniques. Called 'HOM 2000' (*project Humanitair Ontmijnen 2000*), it aimed at presenting new demining techniques for the detection and clearance of mines around the turn of the century. The project, which was developed by the TNO technical research organisation, received funding of NLG 20.8 million from the Ministers of Defence and Development Cooperation.<sup>85</sup> After a promising start in 1998, the hopes and aspirations associated with the project were soft-pedalled. In March 2000, instead of developing several prototypes, TNO decided to develop only one single 'demonstration model'. In the course of that year it became clear that the project would not achieve its goal. After TNO had explained that it would take at least three or four more years to develop a prototype, the Dutch Ministers decided to end the project.<sup>86</sup> The project was terminated in 2001, leaving approximately NLG 6 million of the project budget. The money was used to fund humanitarian demining projects. Since the termination of HOM 2000, no grants have been forthcoming for the development of new detection and clearance techniques.

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On 12 April 1999 the Netherlands ratified the Ottawa Convention, becoming a State Party on 1 October 1999. That event was of great significance to Dutch policy, because the Netherlands became subject to the obligation to provide financial or other assistance for the worldwide clearance of mines and related activities (see box 3.2 for the relevant stipulations in the Ottawa Convention).

82 Parliament passed a motion (Van den Doel/Hoekema) on this point on 9 November 1995.

83 TK, 22181, nr. 197.

84 TK, 25000 V, nr. 2:233.

85 Landmine Monitor Report, 1999.

86 TK, 24292, nr. 20.

**Box 3.2** *Stipulations in the Ottawa Convention referring to the destruction of stockpiled anti-personnel mines and the provision of assistance for mine action*

Article 4

Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

Article 6.3

Each party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided by, inter alia, through the United Nations system, international regional or national organisations or institutions, the ICRC, national Red Cross and Red Crescent societies and their International Federation, NGOs, or on a bilateral basis.

Article 6.4

Each party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided through the United Nations system, international regional or national organisations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.

Article 6.5

Each party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.

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Since 1999 the Dutch criteria for funding mine action have been listed in several policy frameworks for Humanitarian Demining and the Stability Fund framework. In August 1999 the Dutch Minister for Development Cooperation, Eveline Herfkens, announced the changeover to short- and long-term strategies for specific countries and areas underlying Dutch humanitarian aid policies. These Crisis Policy Frameworks were intended to put on paper and to make public the Dutch humanitarian aid policies in specific crisis situations. Crisis Policy Frameworks for nine countries were subsequently drawn up, plus a first Policy Framework for Humanitarian Demining. Issued in 1999, the latter provides guidance for NGOs wishing to apply for Dutch funding. First, under the heading 'strategy' it indicates that the Netherlands subsidises demining programmes that comply with the criteria listed in the *Mine Action Guidelines* of the United Nations Mine Action Service (UNMAS). These guidelines state that in each individual country a coordinated strategy with the following components should be pursued:

- promoting awareness of the presence of mines and unexploded ordnances (UXO) and reducing the risks to the inhabitants and users of the area concerned;

- research into the location and size of minefields and their marking and clearance;
- assistance to victims of accidents involving mines and UXO and their rehabilitation and reintegration;
- stigmatisation of the use of landmines;
- support for a total ban on landmines;
- local capacity building through education and training so that mine clearance can be transferred to a national agency;
- quality control on the above-mentioned activities.

Second, the document stipulates that in principle only countries that have signed and ratified the Ottawa Convention are eligible for Dutch assistance. Furthermore, the recipient government should provide a constructive environment for mine clearance. Only in exceptional cases can Dutch grants be allocated to demining programmes in countries that do not satisfy the requirement of being a signatory to the Ottawa Convention. This applies, for example, to activities in countries where there is no recognised central government, but where demining programmes are needed urgently and the local authorities have a positive attitude towards the assistance.

Third, the activities need to be in harmony with the other necessary components of mine action and the integral planning of socio-economic rehabilitation of the post-conflict community.<sup>87</sup>

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The document also gives insight into the criteria considered when allocating grants. Dutch priorities for funding relate to all components of mine action, with the exception of activities relating to research and development and the organisation of conferences, which are not eligible for grants. Highest priority is given to actual mine clearance projects and in order to make optimum use of previous investments, projects that have already received grants will be given priority over new activities. Finally, it is noted that organisations that perform mine-clearance activities on a commercial basis, or are or used to be involved in the illegal trade in mines or arms or the production thereof, are not eligible for grants.<sup>88</sup>

In August 2000 Herfkens added further details to the Dutch policy. In a letter to Parliament it was announced that assistance to humanitarian demining must dovetail with the other aspects of humanitarian assistance. Humanitarian demining (or mine action) was referred to as being a portmanteau concept for the following range of activities that had much in common with other social sectors:

- identification and inventory missions
- marking of minefields
- awareness raising and training campaigns on behalf of the local population

87 For example health care, education and the return of refugees and internally displaced persons (IDPs).

88 TK, 26200 V, nr. 89.

- data management
- mine clearance
- training of deminers
- technological research for better detection and clearance techniques
- victim assistance and social rehabilitation.<sup>89</sup>

It was reasoned that in many instances, humanitarian demining could only be perceived as an absolute precondition for other categories of humanitarian assistance such as food distribution or the repatriation of internally displaced persons (IDPs). This meant that there was a need for integrated policymaking, in which humanitarian assistance, both during and after a conflict, and rehabilitation were supported by humanitarian demining.<sup>90</sup>

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The following *Policy Framework for Humanitarian Demining*, which appeared in 2000, expressed the Dutch perception of the mine problem clearly. In this document it was stated that at a rough estimate, approximately two thousand mine-related accidents involving fatalities or injuries occurred in the world every month. Since most mine-affected countries are also developing countries, the ever-expanding group of disabled mine victims constitutes an additional obstacle to their economic development. In addition to the permanent loss of labour, the authorities in question are confronted with the social distress that results from accidents and with increased pressure on health services. When areas where mines and ERW are present are closed off, they become unusable for economic development. The opening up of previously inhabited areas is as an absolute prerequisite for the swift economic and social recovery of a post-conflict country. It were these considerations that drove the objective of Dutch funding policy: to establish effective mine-clearing operations that are as cost-effective as possible, mobilise local workers and can be taken over by national agencies as quickly as possible.

The criteria for funding were expanded in the new framework which, in addition to the earlier list now gave priority to allocating grants to countries with which the Netherlands maintained a bilateral aid relation, or in which it contributed to activities relating to human rights, peace building and good governance. Furthermore, preferences were formulated on mine clearance procedures and techniques.<sup>91</sup> These included:

- a preference for mine clearance in areas where landmines present the greatest risk to the population;
- a preference for manual detection (metal detectors and probes) supported by mechanical means;

<sup>89</sup> The definition deviates from the one that is used by the UN.

<sup>90</sup> TK, 27162, nr. 8:1-2.

<sup>91</sup> TK, 27162, nr. 8.

- (in connection with the desired participation of the local population and the promotion of employment e.g. of demobilised soldiers) a preference for the deployment of large – in terms of personnel – mine-clearing teams rather than the subsidising of heavy machinery.

In the late 1990s, the experience of mine action in Kosovo, together with the lessons learnt from the more mature mine action programmes, such as those in Afghanistan, Cambodia and Mozambique, gave further impetus to ongoing efforts to professionalise mine action procedures, practices and norms.<sup>92</sup> In 2001 the first edition of the International Mine Action Standards (IMAS) was published by UNMAS. The IMAS originated from the UNMAS guidelines, but their scope had been expanded to include the other components of mine action (in particular those of mine risk education and victim assistance) and to reflect changes to operational procedures, practices and norms. The IMAS, which are formally reviewed every three years to reflect developing mine action norms and practices, assist National Mine Action Authorities (NMAA) in establishing national standards and standard national operating procedures by establishing a frame of reference that can be used, or adapted for use, as a national standard.<sup>93</sup> Thus, IMAS are not themselves standard operating procedures. They do not define the way in which mine action requirements are to be achieved in the field.

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The Netherlands endorsed the IMAS promptly. In the Note on the Budget for 2003 it indicated it was striving for worldwide application of the IMAS.<sup>94</sup> And in the *Policy Framework for Humanitarian Demining 2004*, which appeared in February 2003, it added compliance with these standards as a further condition for Dutch assistance.

Another topic that has received much attention since the late 1990s is the relationship between mine action and socio-economic development. In particular, the notion that mine clearance could be justified on economic grounds alone, gave rise to the appeal to incorporate mine action with the broader framework of socio-economic development activities. Three strands are central in this process: the linking of mine action priorities to national development strategies and plans, working closely with other development actors, and strengthening the development of indigenous capacity to manage mine action.<sup>95</sup>

The consecutive policy frameworks for humanitarian demining mainly reflect the governments' subsidy policy on humanitarian mine action. They give little strategic consideration or vision with respect to the incorporation of humanitarian mine action in broader development schemes. The Dutch notion of incorporating humanitarian mine action into foreign policy is reflected in the introduction of the Stability Fund in

92 GICHD, 2004:26.

93 IMAS 2003; GICHD, 2004:26.

94 TK, 28600 V, nr.2:69-70.

95 GICHD, 2004:26-27.

2004. The Stability Fund was set up for the express purpose of supporting activities promoting peace and security, which are relevant to development. This covers mine clearance activities as well as the support for peace processes, the assignment of observers and experts in crisis management, disarmament, demobilisation and reintegration, security sector reform, the prevention and reduction of the proliferation of small arms, and the promotion of peace-enforcement activities by developing countries.<sup>96</sup> The cornerstone of the initiative is the *Memorandum on Post-conflict Reconstruction*. Its main argument is that sustainable reconstruction requires an integrated approach in the areas of 1) security and stability, 2) governance, and 3) socio-economic development. Non-ODA<sup>97</sup> activities that fall into the scope of the first category can be financed through the Stability Fund.

### 3.6 Organisation

Various divisions of the Ministry of Foreign Affairs are involved with making policy on landmines and ERW:

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- The Arms Export and Arms Control Division of the Security Policy Department is responsible for the development of Dutch policy on the control of conventional weapons and for the coordination of Dutch contributions in regional and international decision-making arenas. These contributions include policy-making within the context of the CCW, the Ottawa Convention, the First Committee of the UN General Assembly and the UNDC. It also includes the coordination of the Netherlands Permanent Representation to the Conference on Disarmament (see below).
- The Humanitarian Aid Division of the Human Rights and Peace building Department is responsible for the implementation of Dutch mine action programmes.
- The Permanent Representation of the Netherlands to the Conference on Disarmament in Geneva plays a structural part in the policy-making of the CCW, Ottawa Convention, First Committee of the UN General Assembly and the UNDC through its participation in intersessional meetings, annual meetings, review conferences, and other forms of multilateral meetings. It is also part of the management of the Geneva International Centre for Humanitarian Demining (GICHD).
- The Permanent Representation of the Netherlands to the UN in New York is responsible for the implementation of Dutch policy-making in the relevant UN bodies that deal with landmines and ERW.
- Embassies of the Netherlands in mine-affected countries. The Dutch embassies in landmine and ERW affected countries participate actively in Dutch policy-making,

<sup>96</sup> *Memorandum on Post-conflict Reconstruction*, September 2005.

<sup>97</sup> The term ODA (Official Development Aid) refers to the definition used by the members of Development Assistance Committee of the OECD.

among others by taking part in the consultations on the implementation of concrete mine action projects, and by executing démarches in these countries.

# 4

## Negotiating the CCW and its Protocols



## 4.1 Introduction

At the time of the Dutch policy change in March 1996 the following five issues were on the agenda of the First Review Conference of the CCW:

- strengthening of the provisions for anti-personnel mines;
- establishment of compliance and monitoring procedures;
- expansion of the number of States Parties to the convention and its protocols (universalisation);
- expansion of the anti-vehicle mine restrictions;
- extension of the scope of the convention.<sup>98</sup>

On all of these issues, the Netherlands intervened in the international decision-making process. This chapter focuses on the Dutch interventions with respect to the last four issues. The Dutch interventions with respect to ‘anti-personnel mines’ will be dealt with separately in chapter 6, where the Dutch interventions in the negotiations leading to the Ottawa Convention are discussed.<sup>99</sup> During 2000 a sixth issue appeared on the CCW agenda: reducing the humanitarian consequences of ERW. This issue will be considered in chapter 5.

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Each section of this chapter deals with a different issue. All sections start by outlining the general course of events regarding the issue. Next, the results of the analyses of the Dutch interventions (in terms of: objectives, results, interventions and impediments) are schematically presented in policy overviews. Subsequently, the four sections of the framework of analysis are further elaborated upon, by addressing the following research questions:

- 1) What objectives did the Dutch government aim to achieve in the various phases of the international decision-making process?
- 2) Which Dutch objectives were achieved and which were not?
- 3) What interventions did the Netherlands make to achieve its objectives?
- 4) What were the obstacles in the decision-making processes and how did the Netherlands respond to them?

Finally, the effectiveness of the Dutch efforts on these issues will be assessed in relation to the evaluation criteria connectedness, responsiveness, timeliness and scope (see table 1.2).

<sup>98</sup> Intermittently, Switzerland has broached the establishment of a protocol incorporating certain design standards for small calibre bullets to minimise the extent of wounding. The issue will not be discussed in this report, because, to date, there has been virtually no support for putting it on the agenda of the convention.

<sup>99</sup> Although the CCW and Ottawa are two separate arenas, the issue of strengthening the anti-personnel mine regime is best assessed by combining them. The Ottawa process was started by a group of countries who were disappointed by the failure of the First Review Conference of the CCW to produce any significant results.

## 4.2 Establishing a compliance mechanism within the framework of the CCW

### General course of events

The CCW makes no reference whatsoever to the issue of compliance,<sup>100</sup> except for some limited provisions in Protocol II as Amended.<sup>101</sup> In this respect the CCW differs from many other international regimes, such as the Ottawa Convention and Additional Protocol I of 1977 to the 1949 Geneva Conventions.<sup>102</sup> Nonetheless, the establishment of a compliance mechanism had been on the international agenda leading to the creation of the CCW in 1980. Several states had argued that the CCW should include a compliance mechanism. Belgium, Canada, the Federal Republic of Germany, France, Ireland, Italy, Japan and the Netherlands had put forward a proposal consisting of a draft article on establishing an advisory/consultative committee of experts, based on Article 90 of Additional Protocol I of the Geneva Conventions. Taking Additional Protocol I as example implied the creation of a simple and flexible compliance mechanism.<sup>103</sup> However, no consensus on a compliance mechanism could be achieved then.

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There were two phases in the decision-making on the establishment of a compliance mechanism: informal deliberations on the desirability of a compliance mechanism (1995/1995-2001) and formal consultations on the possibilities of such a mechanism (2001-2006). Deliberations on whether the establishment of compliance mechanism should be a formal discussion topic in the CCW were resumed in the lead-up to the 1995/1996 Review Conference. During the 2001 Review Conference it was agreed to start formal consultations (rather than negotiations) on such a mechanism. The formal consultation process ended with the decision to create a modest mechanism during the Third Review Conference in November 2006.

<sup>100</sup> Compliance as has been discussed in the context of the CCW involves both 'consultations' and 'fact finding' or 'verification'. See for example the Belgian working paper on compliance (File 736920, 26 September 2001 and CCW/CONF.II/PC.3/WP.8).

<sup>101</sup> Viz. Article 13 on consultations and Article 14 on compliance.

<sup>102</sup> CCW/CONF.II/PC.3/1:43.

<sup>103</sup> The option had the advantage of being flexible, as the compliance procedure envisaged was simple. It did not settle everything down to the last detail but called upon the good will of states to ensure its effectiveness (CCW/CONF.II/PC.3/1:44-45).

<b>Table 4.1</b> Dutch policies on compliance 1995/1996-2001: Putting the establishment of a compliance mechanism on the CCW agenda	
Objectives	To strive for a simple and flexible compliance mechanism for the CCW as a whole that takes into account consultations and dialogue between the States Parties and that offers room for fact-finding in cases of scepticism about compliance. Such a mechanism should be effective but not require an expensive verification system.
Results	Except for a compliance mechanism in the amended Protocol II, no significant results were achieved for the CCW as a whole. In 2001 the only consensus was on holding consultations (during the intersessional meetings) on possible options to promote compliance.
Interventions	Participation in GGE meetings, PrepComs and plenary meetings of the First and Second Review Conferences of the CCW. Submission of a working paper on compliance on behalf of the EU in September 2001. Explicit support in December 2001 for any proposal on compliance with all Protocols.
Impediments	Disagreement between a group of declared proponents of a compliance mechanism and two other groups: a group of hard-line opponents and a group of countries that considered it too early to make any decisions on the issue.

## Objectives

The Netherlands had been a proponent of the establishment of a simple and flexible compliance mechanism since the preparations leading to establishment of the CCW in 1980. After 1980, when the convention had failed to achieve consensus on the issue, the Dutch government maintained this position. In the run-up to the First Review Conference, the Ministers of Foreign Affairs and Defence informed Parliament on 22 May 1995 that the Netherlands would aim to add stipulations on verification to Protocol II.<sup>104</sup> On 6 September 1995 the Minister of Foreign Affairs stated that the Netherlands advocated the insertion of short-term procedures to verify possible violations of the CCW on the spot. It was suggested that the procedures of the ‘*Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*’ (1993) could perhaps be taken as an example.<sup>105</sup> However, the First Review Conference resulted in a compliance mechanism for Amended Protocol II only. On the eve of the Second Review Conference, the Ministers of Foreign Affairs and Defence reported that the Netherlands would support a compliance mechanism within the CCW that:

- 1) would take into account consultations and dialogue between the States Parties;
- 2) would offer room for fact finding in cases of scepticism on compliance; and
- 3) would be effective without an expensive verification system.<sup>106</sup>

<sup>104</sup> TK, 23900, V, nr. 44:3.

<sup>105</sup> TK, 24292, nr.2:8.

<sup>106</sup> 7 December 2001 (TK, 28000, V, nr. 37).

As such, the Netherlands clearly aimed for a compliance mechanism that would apply to the CCW as a whole.

## Results

In the period 1995/1996-2001 hardly any results were achieved on the issue of compliance.<sup>107</sup> During the 1995/1996 Conference, a compliance mechanism was included in Amended Protocol II only. The mechanism focused mainly on the prevention and punishment of violations, the proper instruction of armed forces, and consultations. It lacked the strong verification regime the Netherlands was hoping for. Moreover, the Review Conference had not resulted in a compliance mechanism for the CCW as a whole. During the 2001 Review Conference it was decided merely to undertake further consultations on compliance during the intersessionals.<sup>108</sup>

## Interventions

Several interventions were made by the Netherlands in the period 1995/1995-2001 to achieve its objectives on compliance. During the preparation of the First Review Conference, the Netherlands supported proposals on verification and compliance from other States Parties.<sup>109</sup> In the run-up to the Review Conference it emphasised the importance of close collaboration in the EU and with likeminded NATO countries.<sup>110</sup> During the Review Conference, Dutch efforts on compliance concentrated on adding verification and fact-finding procedures to the CCW. Working Group II (on 'verification and fact-finding') of the Group of Governmental Experts (GGE) held two meetings during which discussions were held on all aspects relating to the question of a possible verification system and fact-finding missions. In the course of the deliberations a number of proposals were put forward, among others by Finland, France and Germany.<sup>111</sup> However, no consensus could be achieved on establishing a verification system, either for the purpose of Protocol II or for the entire CCW.

In the context of the 2001 Review Conference new proposals on compliance were put forward by the US, France, the EU and South Africa:

107 Protocol II as Amended contains stipulations regarding annual meetings of States Parties, annual reports, transparency measures and adjustments in national legislation.

108 The next opportunity for decision-making would occur in December 2002. During the Review Conference the States Parties had also decided to commission follow-up work on decisions arising from the Review Conference under the oversight of the Chairman-designate of the 2002 Meeting of the States Parties to the Convention. This meeting would be held in December 2002 in conjunction with the Fourth Annual Conference of States parties to Amended Protocol II (Report of the Report of the Second Review Conference, 2001, Final Declaration).

109 Almost thirty States Parties participated in the work of the GGE (CCW/CONF.I/GE/23).

110 TK, 24292, nr. 2:8. On 10 and 11 April the EU countries had decided to take joint action in the Review Conference and its preparations (TK, 23900, V, nr. 44:6).

111 CCW/CONF.I/GE/23.

- The US proposed adding a Compliance Annex to Protocol II as amended to deal with legitimate complaints related to the misuse of mines, booby-traps and other devices. It described the proposal as limited, non-intrusive and included procedural protections to accommodate national security and constitutional concerns and to counter abuse.<sup>112</sup>
- A French non-paper entitled ‘compliance’ was presented at the second PrepCom, in which instead of a single annex to Amended Protocol II a new compliance regime was advocated that would apply to the CCW as a whole.<sup>113</sup>
- During the Belgian EU presidency, the French approach (a compliance regime for the entire treaty) was specified in an EU proposal during the third PrepCom. The EU proposal advocated a two-tier compliance mechanism for all existing and future protocols of the convention. The first tier would comprise ‘consultation and dialogue’, whereas the second would provide for ‘verification and fact finding’.
- South Africa proposed introducing additional articles on consultations and compliance in the CCW by way of copying Articles 13 (on consultations) and 14 (on compliance) of Protocol II as Amended to the CCW as a whole.

During the 2001 Review Conference the Dutch delegation was instructed to support any proposal that would aim for a compliance mechanism for the CCW as a whole – i.e. the proposals of the EU and South Africa were considered to best meet the Dutch objective of establishing a flexible, but effective mechanism without a costly verification regime.

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### Impediments

During the 1995/1996 Review Conference it proved impossible to establish a compliance mechanism for the CCW because of deadlock on the issue between the group of (Western) States Parties that attached considerable importance to an intrusive verification regime and a second group of States Parties (among others China and some non-aligned countries) that would go no further than confidence-building measures. This deadlock was inextricably bound up with the divergent standpoints on the overall strengthening of Protocol II.<sup>114</sup>

The deadlock could not be resolved during the 2001 Review Conference. The insertion of compliance procedures in the convention was now impeded by two groups of States Parties. Decision-making on the issue was effectively blocked by a first group of countries (including the Russian Federation and China) which was sceptical about the principle itself and, as a consequence, about further discussions on the issue.<sup>115</sup> China foresaw big problems in cases where different combating forces were operating in the same territory. They argued that it would be very difficult to determine which forces had not complied with the CCW in the case of landmine deployment. Furthermore, the

112 Opening Statement US Delegation, Second PrepCom, 3 April 2001.

113 CCW/CONF.II/PC.1/WP.7.

114 TK, 23900, V, nr. 44.

115 TK, 28000, V, nr. 50:4.

opposing countries stressed that differences in technological development among different States Parties would make judgements on non-compliance too difficult. This first reluctant group tried to remove the issue from the CCW agenda by opposing further discussions in the GGE. As such, China stated that the universal acceptance of the CCW and its protocols was far more important and deserved priority above further accentuating of the stipulations of the convention.<sup>116</sup>

Over and above this group of declared adversaries, a second group of reluctant States Parties had emerged. These States Parties supported the basic principles of the proposals of the EU and South Africa, but considered it too early to voice their preferences for either of the two approaches or to take any decisions on this issue.<sup>117</sup>

<b>Table 4.2</b> Dutch policies on compliance 2001-2006: Consultations on a compliance mechanism	
Objectives	Strengthening compliance with the CCW in order to strengthen its operation. 'Horizontal approach': the same basic principles on compliance apply to different areas. The overall aim of the Netherlands on compliance: 1) a small compliance committee, 2) a carrot and stick approach, in which the committee is able to draw from a multitude of measures and recommendations, and 3) a compliance mechanism that is forward-looking, achieves overall improvement of the implementation of the treaty and allows as many actors as possible to report on a case.
Results	States Parties agree on the establishment of a weak compliance mechanism during the Third Review Conference in November 2006. The mechanism includes a Meeting of States Parties to be held in 2007 and the establishment of a pool of experts. It is politically binding and aimed at consultation and bilateral cooperation.
Interventions	Interventions on compliance within the framework of the EU: 1) efforts to achieve a joint EU position on compliance within the EU's working group on disarmament (CODUN), 2) statement on the EU position as EU President, 3) initiating an EU draft proposal on compliance in 2004, and 4) the co-drafting of a compromise proposal on compliance in 2005.
Impediments	Uncompromising position of a substantial group of States Parties including the Russian Federation, China, Pakistan and India on the principle of the establishment of a compliance mechanism.

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## Objectives

After December 2001 the Netherlands continued its efforts to achieve legally binding stipulations on compliance. In September 2002 it stated that it planned to make an active contribution to the strengthening of the CCW by strengthening compliance with

<sup>116</sup> TK, 28000, V, nrs. 37 and 50.

<sup>117</sup> Many countries rejected the US proposal in order to avoid amending an amended Protocol (File 736993, 10 October 2001).

the treaty.<sup>118</sup> One year later, in response to the Dutch approbation of the revised Article 1 of the CCW, the government expounded its views on compliance. It would strive to achieve the strongest possible compliance mechanism within the framework of the CCW. In this respect the Dutch policies were now aiming for a so-called 'horizontal approach' in which the Netherlands would follow (as much as possible) the same basic principles for different issues on compliance, whether these involved compliance with an arms control treaty or compliance with a maritime law treaty. This meant that in each case the Netherlands would promote:

- 1) a small compliance committee;
- 2) a carrot and stick approach, for which the committee is able to draw from a multitude of measures and recommendations;
- 3) a compliance mechanism (that is not the same as an arbitration board), that is forward-looking, achieves overall improvement of the implementation of the treaty and allows as many actors as possible to report on a case.<sup>119</sup>

## Results

During the Third Review Conference in November 2006 a (politically binding) compliance mechanism was agreed upon. The mechanism consisted of a Meeting of the States Parties – the first to be held in 2007. During the meeting the following topics regarding compliance would be addressed:

- 1) review of the operation and status of the convention;
- 2) the consideration of matters arising from the information provided by the States Parties;
- 3) preparation of the next Review Conference;
- 4) consideration of international cooperation and assistance to facilitate the implementation of the convention and its annexed protocols; and
- 5) consideration and undertaking of any additional actions that may be required for the achievement of objectives of the convention and its annexed protocols.

For the purpose of the meeting, the States Parties were expected to provide information regarding:

- 1) dissemination of information on the convention and its annexed protocols to their armed forces and to the civilian population;
- 2) steps taken to meet the relevant technical requirements of the convention and its annexed protocols and any other relevant technical requirements of the convention pertaining thereto;
- 3) legislation related to the convention and its annexed protocols;

<sup>118</sup> TK, 28600, V, nr. 2.

<sup>119</sup> TK, 29024, R1 740, nr. 5.

- 4) measures taken on technical cooperation and assistance; and
- 5) other relevant matters.<sup>120</sup>

Next to the Meeting of the States Parties, the mechanism provides for: 1) appropriate steps, including legislative and other measures, to suppress violations of the CCW and its protocols, 2) the issuance of relevant military instructions, 3) and the creation of a pool of experts. With respect to the pools of experts: any State Party is entitled to seek advice from the pool 'regarding any concerns which relate to the fulfilment of its own legal obligations under the provisions of the Convention and any of its annexed Protocols by which it is bound'.<sup>121</sup>

From the perspective of the Dutch objectives mentioned above, the mechanism on compliance is rather limited. It is politically binding, rather than legally binding, and is mainly aimed at establishing consultation and bilateral cooperation; a verification regime was not established. The mechanism should mainly be seen as an assistance mechanism, based on the voluntary use of the pool of experts.

### Interventions

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In the run-up to the 2002 Meeting of States Parties, it became clear that there would be little room for achieving consensus on compliance based on any of the proposals discussed in the context of the Second Review Conference. Nonetheless, the proponents of compliance procedures continued their efforts to break the deadlock.

In this period, the Netherlands mainly acted within the framework of the EU, i.e. it participated in the Council Working Party on Global Disarmament and Arms Control (CODUN) and in its capacity as EU Council President strove to arrive at a joint EU position on compliance.<sup>122</sup>

During the fourth GGE meeting in March 2003, South Africa proposed that the EU draw up the options for a joint proposal on compliance, based on the earlier proposals. Subsequently Belgium took the initiative to prepare a draft proposal on compliance together with the most committed EU States Parties (Sweden, Germany, Austria and the EU Presidency). The initiative resulted in the presentation of an EU working paper on compliance drawn up by Greece on behalf of the EU during the 5<sup>th</sup> GGE in June 2003. In the working paper the second level of the two-tier mechanism in the 2001 EU proposal was combined with elements of the South African proposal. The approach advocated using a Consultative Committee of Experts to establish matters of fact.<sup>123</sup>

120 Final Declaration Third Review Conference of the CCW, Annexe B, Part 1.

121 Final Declaration Third Review Conference of the CCW, Annexe B, Part 2.

122 TK, 29200. V, nr. 61.

123 In this context a number of questions were raised that needed to be addressed in order to set up such a mechanism (CCW/GGE/V.2; File 736920, 27 August 2003).



The Netherlands supported the two-tier approach. On 5 November 2003 it provided reactions to a Swedish EU draft which included several views on a compliance mechanism. In its reactions, the Netherlands stressed the importance of creating a mechanism that would not prejudice procedures to settle conflicts. Moreover, it emphasised that the mechanism should be non-adversarial and non-political, and should be guided by simplicity, clarity and cost effectiveness. The objective of the mechanism – to facilitate, promote and secure the implementation of and compliance with the treaty – should be reached by 1) an analysis of compliance difficulties, 2) the identification of the root causes of such difficulties, and 3) the adoption of the most appropriate and effective solution. Moreover, the Netherlands argued in favour of clear and sufficient procedural safeguards and wished the submission of alleged non-compliance to be permitted in two cases: 1) any State Party that concludes that it is unable to fully comply with the convention's provisions, and 2) any State Party that has reservations about another State Party's compliance with the CCW provisions. In the case of the States Parties agreeing on allowing individuals and organisations to initiate submissions of alleged non-compliance, the Netherlands proposed giving consideration to introducing a diplomatic filter to protect the compliance mechanism against manifestly ill-founded cases and *de minimis* cases. The compliance body should submit a report to each ordinary Meeting of the States Parties and the latter should have the option of reviewing the effectiveness of the mechanism. Finally, the Netherlands stated that the compliance body should be of limited size and have rotating membership.

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On 8 March 2004, at the seventh meeting of the GGE, the EU highlighted its position on compliance through a statement by the Irish EU Presidency. In July 2004, the Dutch EU Presidency issued a similar statement during the eighth meeting of the GGE in which the EU made clear that it still supported the two-tier structure. On 9 August, this statement was followed by the Dutch initiative to draft an EU proposal on compliance.<sup>124</sup> In this draft the following adjustments had been made compared to the 2001 EU proposal:

- 1) No direct link was made between the compliance mechanism and verification operations.
- 2) More attention was given to assisting states in their efforts to reach compliance.
- 3) The idea of forming a pool of experts, from which experts could be drawn for a Consultative Committee of Experts, was abandoned in favour of an established group of experts that could work as a fixed team. The remit of the latter group to assess cases of possible non-compliance was not linked to fact-finding missions.
- 4) The Conference of High Contracting Parties retained overall responsibility for matters of compliance. However, pending consideration by the Conference, it was advocated that the Committee be given the possibility to provide advice and guidance to the State Party concerned. Parties should also have the option of

<sup>124</sup> In an instruction to the Dutch delegation to the first PrepCom of the Third Review Conference it was reiterated that the Netherlands had taken the initiative for this draft proposal (File 736920, 13 March 2006).

- bringing cases directly to the Compliance Committee, without having to wait for a referral by the Conference.
- 5) The EU was in favour of the option of adopting the compliance mechanism as a decision of the Conference of High Contracting Parties, instead of a separate protocol or an amended CCW.

After discussing this proposal in the CODUN on 2 September, the Dutch EU Presidency presented a revised EU proposal on 15 September 2004. This draft was discussed again in the CODUN (13 October), and after a new revision the EU proposal was presented as a non-paper during the ninth GGE meeting in November 2004.

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As an observer to the EU Presidency of Luxembourg, the Netherlands drafted a paper listing the most important concerns prior to the tenth meeting of the GGE (March 2005). However, it proved to be difficult to achieve consensus on the EU proposal among non-EU members of the CCW. There was no consensus on the South African proposal either. Therefore, in the second half of 2005, the Netherlands worked on a compromise proposal together with the UK. In this context, the Netherlands reacted to a draft response from the British EU Presidency regarding a paper on compliance from the CCW Chairman Designate in September 2005. In the reaction the Dutch government stated that the role of the compliance committee should not be too limited and the committee should not serve solely as a tool for bilateral consultations. The Netherlands also wanted the committee to be entitled to serve as an advisory body for the Meeting of States Parties if mediation did not produce results or if the outcome of mediation could be beneficial for all States Parties. Based on the informal British and Dutch work, in November 2005, the Chairman Designate made a compromise proposal, taking the South African proposal as point of departure.

In March 2006, the Netherlands elaborated its position in an instruction to the Dutch delegation to the first PrepCom of the Third Review Conference. In the instruction it was reiterated that neither the EU proposal, nor the South African proposal had sufficient support. The November 2005 compromise was acceptable to the Netherlands if necessary, but could be improved with respect to certain minor points.<sup>125</sup>

### Impediments

The deadlock on compliance could not be overcome until November 2006, because of the uncompromising stance taken by a substantial group of States Parties. For these countries, even the idea of adopting the relatively weak stipulations of Protocol II as Amended in the convention framework was seen as carrying the issue of compliance too far.<sup>126</sup> Without specifying any countries, on 19 December 2003 the Dutch government reported that there were specific reasons why international treaties and arrangements lacked a compliance mechanism:

<sup>125</sup> These points concerned Article 7 of the draft mechanism (file 736920, 13 March 2006).

<sup>126</sup> TK, 29024, R 1740, nr. 5.

- 1) The perception that the security threat posed by conventional weapons was minor by comparison to the threat posed by nuclear weapons.
- 2) The costs involved. Supervision of compliance would be very difficult and costly because conventional weapons are relatively cheap, fast to produce and easy to hide.<sup>127</sup>

A third reason, the occurrence of violations of international treaties by States Parties, was only mentioned in the internal deliberations of the Ministry of Foreign Affairs. With respect to the CCW this involved the generally known practice of infringements of Protocol II by several States Parties to the CCW.<sup>128</sup>

In December 2006 the States Parties opposing a compliance mechanism including verification were finally persuaded to agree to the weak mechanism as embedded in the Final Declaration of the Third Review Conference. The mechanism focused on consultations and came closest to the South African proposal of 2001. The Russian Federation had rejected any verification regime, but had earlier declared the South African proposal to be the most realistic. During the third PrepCom the United States had made clear it was not in favour of a legally binding instrument. Pakistan finally abandoned its insistence that consultations should take place prior to any report by the panel of experts being made available to other States Parties.

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### 4.3 Universalising the CCW and its protocols

#### General course of events

From the outset, the CCW has been dogged by low membership. The number of States Parties to the convention and its annexed protocols has remained less by comparison with the Ottawa Convention. It has occasionally been pointed out that the main impediment to an effective implementation of the CCW's provisions is the lack of respect for and adherence to the convention.<sup>129</sup> It was in this context that the CCW gradually focused more on increasing the number of States Parties. Thus, after the First Review Conference, the High Contracting Parties explicitly declared their determination to promote universal adherence to the convention and its annexed protocols.<sup>130</sup> And in

<sup>127</sup> TK, 29200, V, nr. 61.

<sup>128</sup> Human Rights Watch reported in December 2002 that four States Parties to the original Protocol II had used anti-personnel mines since 1998: Georgia, Israel (which also became a State Party to the amended Protocol II in this period), Russia (in Chechnya and Tajikistan), and Uzbekistan (HRW, Memorandum to Delegates of the fourth annual meeting of States Parties, 11 December 2002).

<sup>129</sup> Mathews, 2001:1011; HRW, 2002.

<sup>130</sup> CCW/CONF.I/16:35; Report of the Second Review Conference 2001.

2006, during the Third Review Conference, it was decided to adopt a plan of action regarding universalisation.<sup>131</sup>

Table 4.3 Promoting universality of the Convention	
Objectives	Promoting universality in order to strengthen the convention and its annexed protocols. To make an active contribution (unilaterally and in cooperation with other countries) to the enlargement of the number of CCW States Parties.
Results	The number of states that have joined the convention and its annexed protocols has grown considerably since 1996. But the increase in States Parties remains modest in comparison to the number of countries that have joined the Ottawa Convention. In November 2006 the Third Review Conference adopted a Plan of Action to promote the universality of the convention.
Interventions	Dutch support (unilaterally and within the framework of the EU) of annual UN resolutions on adherence to the convention and its annexed protocols. Démarches to promote adherence to the convention and its annexed protocols within the framework of the EU.
Impediments	Countries proved reluctant to join the convention, supposedly because of its western bias, its emphasis on military considerations over humanitarian concerns, or simply because of its provisions. The most important obstacle since 1997 has been the existence of the Ottawa Convention; countries that are members of that convention often do not see the necessity of joining the CCW.

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## Objectives

Since the mid-1990s the Netherlands has profiled itself as a proponent of universalisation of the CCW.<sup>132</sup> On 7 April 1995, in the run-up to the First Review Conference, the Ministers of Foreign Affairs and Defence informed Parliament that the enlargement of the number of States Parties was one of the main policy objectives of the Dutch government, next to the strengthening of regulations on landmines and the establishment of a protocol on blinding laser weapons.<sup>133</sup> On 6 September 1995 the Minister of Foreign Affairs mentioned in a parliamentary committee meeting that only 49 countries were States Parties and that the convention would gain in significance by achieving universality.<sup>134</sup> During the First Review Conference the Dutch government voiced its active support to this appeal. On 26 September 1995, in the presence of the

<sup>131</sup> In resolution 36/93 (9 December 1981) the first appeal was made to urge those states which had not yet done so to exert their best endeavours to sign and ratify the Convention and the Protocols annexed thereto as early as possible so as to obtain the entry into force of the Convention, and ultimately its universal adherence (UN Resolutions database, 36<sup>th</sup> Session General Assembly).

<sup>132</sup> In the memorandum of 25 August 1995 the low number of States Parties to the treaty (in particular to Protocol II) was mentioned as an important cause of its 'ineffectiveness' (TK 24292, nr.1).

<sup>133</sup> TK, 23900, V, nr. 44:2.

<sup>134</sup> TK, 24292, nr.2:8.

assembled States Parties, Minister of Defence Voorhoeve expressed his hope that more states would become parties to the convention and thus bring it closer to its goal of universality.<sup>135</sup>

In the autumn of 1998 this position was reconfirmed during the parliamentary approbation debate on the amended Protocol II and Protocol IV. On that occasion, the Minister of Foreign Affairs, Van Aartsen, clearly articulated the government's intention to dedicate itself to achieving the universality of both protocols, as well as that of the Ottawa treaty in the years to come. When striving for universal membership of the CCW, the Netherlands would act unilaterally and in cooperation with other countries, in particular its EU partners.<sup>136</sup> In September 2002, a further increase in the number of parties to the CCW was listed as one of the priorities of the Dutch government.<sup>137</sup> Furthermore, in the autumn of 2003 the Dutch government particularly emphasised its intention to strive to achieve the participation of as many countries as possible in the new ERW protocol.<sup>138</sup> Most recently, on 28 February 2005 Minister of Foreign Affairs Bot noted the government's intention to continue its active contribution to the enlargement of the number of States Parties to the CCW.<sup>139</sup>

## Results

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By December 2006, 100 countries had acceded to Protocol I, 89 countries had acceded to Protocol II, 87 countries had acceded to Protocol II as Amended, 95 countries had acceded to Protocol III and 84 countries had acceded to Protocol IV. Twenty-eight countries had acceded to Protocol V. The number of states that had acceded to the convention grew appreciably after 1995. The numbers of countries acceding to Protocols I, II and III almost doubled, while more than eighty countries acceded to Amended Protocol II and Protocol IV. Nevertheless, the increase in the number of member states to the CCW protocols is modest when compared to the explosive growth in this period of the number of States Parties to the Ottawa Convention (152 in 2006). Moreover, only 24 out of the total of 102 CCW member states were party to all five protocols in December 2006.<sup>140</sup>

Given the objective of universalisation, the States Parties agreed upon a 'plan of action to promote the universality' of the CCW during the Third Review Conference (see box 4.1). The plan focuses in particular on affected states, among which the rate of

<sup>135</sup> CCW/CONF/I/SR.3:9.

<sup>136</sup> Parliamentary proceedings, 12 November 1998, p. 1572. See for example the Joint Declaration of the People's Republic of China and the European Union on Non-proliferation and Arms Control. Here the signatories state that they will promote the universalisation, entry into force, implementation and strengthening of the treaties, conventions and norms in the area of disarmament and non-proliferation, such as the CCW (9 December 2004).

<sup>137</sup> TK, 28600, V, nr. 2.

<sup>138</sup> TK, 29200, V, nrs. 2 and 61.

<sup>139</sup> TK, 29848, R 1775.

<sup>140</sup> ICRC, [www.ICRC.org/ihl](http://www.ICRC.org/ihl).

adherence has remained relatively low. Half of the states that were not yet parties to the CCW in November 2006 were mine- and ERW-affected states.<sup>141</sup> The implementation of the plan of action was to be reviewed during the 4<sup>th</sup> Review Conference.

**Box 4.1** *2006 Plan of Action to Promote the Universality of the CCW*

Action 1: Review thoroughly their participation in the Convention and its annexed Protocols with the view to consider acceptance, at their earliest convenience, of those Protocols and of the Amendment of Article 1 of the Convention, which they have not yet ratified or otherwise acceded to.

Action 2: Accord particular importance to encouraging the States signatories of the Convention, to ratify it as soon as possible. These include: Afghanistan, Egypt, Iceland, Nigeria, Sudan and Viet Nam.

Action 3: Strengthen their efforts in promoting the universality of the Convention and its annexed Protocols, by actively pursuing this objective, in their contacts with States not parties, and seeking the cooperation of relevant international and regional organisations.

Action 4: Accord priority attention to encouraging adherence to the Convention and its annexed Protocols by States in regions of conflict which could serve as a significant confidence-building measure thus promoting reestablishment of understanding and trust among Parties to an active conflict.

Action 5: Direct specific efforts towards promoting adherence to the Convention and its annexed Protocols in regions where the level of acceptance of the Convention remains low.

Action 6: Undertake all appropriate steps to prevent and suppress violations of the Convention and its annexed Protocols, by persons or on territory under their jurisdiction or control.

Action 7: Encourage and support involvement and active cooperation in these universalisation efforts by all relevant partners, including the United Nations, other international institutions and regional organizations, the International Committee of the Red Cross (ICRC), as well as, in their respective fields of action, parliamentarians and nongovernmental organizations.

Source: *Third Review Conference of the CCW, Final Report, Annexe C.*

## Interventions

The Netherlands participated in two types of instruments used by the CCW parties to increase the number of States Parties to the CCW and its annexed protocols.

First, from 1981 onwards, a yearly resolution was submitted to the UN General Assembly's First Committee, in which states were urged to become parties as soon as possible. In 1997, Sweden took the initiative to explicitly call on states to adhere to Amended Protocol II and Protocol IV without delay. The Swedish draft was submitted as resolution 52/42 to the First Committee in December 1997. The Netherlands actively supported the Swedish initiative and subsequent yearly resolutions on the CCW.<sup>142</sup> First, it joined the large group of sponsors of the yearly resolution (since 2002 through co-sponsorship of the EU) and secondly it recurrently made supporting statements on the (drafts of the) resolution in the First Committee.<sup>143</sup> Since the adoption of Protocol V in 2003 the resolution has also called upon states to express their consent and be bound to this protocol.<sup>144</sup>

Second, in 2000 and 2001 several démarches were executed by the EU to persuade countries to join the CCW. In the autumn of 1998 a first EU plan was developed to urge countries that had not yet done so to ratify the convention and its protocols. The initiative failed because of differences of opinion among the EU member states. In November 2000, the Austrian EU Presidency launched a new plan to démarche in states that had failed to report in 1999 and in all States Parties that had not joined protocol II as Amended. The Netherlands supported the plan. It proposed to execute démarches in countries that were parties to the original Protocol II, but not yet to Amended Protocol II. The proposal was accepted and the démarches were executed by the Austrian Presidency on behalf of the EU countries following the Dutch plan.<sup>145</sup> On 24 August 2001 a second initiative was taken by the Belgian EU Presidency to urge all countries that were not parties to the Amended Protocol II or other Protocols to accede.<sup>146</sup> In October and November 2001 démarches were executed by the EU Troika and Germany,

142 A/RES/53/81; A/RES/54/58; A/RES/55/37; A/RES/56/28; A/RES/58/69; A/RES/59/107; A/RES/60/93.

143 The essence of the statement of the head of the Dutch delegation on behalf of the Swedish resolution at the 53<sup>rd</sup> UNGA can serve as an example for these interventions: 'It is our firm belief that military necessity in armed conflict has to be constantly put against the humanitarian objective to prevent unnecessary suffering. It is important that rules relating to this fundamental norm of law of armed conflict are codified in international legally binding instruments. At the same time the effectiveness of the instrument depends on the adherence to it by all states. My delegation therefore fully supports the call, in O.P. 5 of the draft resolution, on states that have not yet done so, to become parties to the Convention and its Protocols as soon as possible' (file 643253, 29 October 1998).

144 A/RES/59/107; A/RES/60/93.

145 Some countries that were nominated by the EU presidency but were not States Parties to the original Protocol (Armenia, Bolivia, Kuwait, and South-Korea) were scratched from the list (file 756995, 28 November 2000).

146 File 736920, 24 August 2001.

Italy or Denmark to persuade countries that had not done so, to accede to these protocols.<sup>147</sup>

### Impediments

The CCW covers a wide range of conventional weapons and incorporates major military powers. In spite of this, universalisation of the convention and its annexed protocols proceeded with difficulty. Countries proved hesitant to join the convention, supposedly because of its Western bias, its emphasis on military considerations over humanitarian concerns, or simply because of its provisions.<sup>148</sup>

Besides, the establishment of the Ottawa Convention turned out to be an important obstacle to the objective of universalisation. Many countries that are States Parties to the Ottawa Convention do not see the necessity of joining the CCW. In 2006, 59 countries that had ratified the Ottawa Convention were not party to the CCW Treaty. The disparity between the number of countries that have ratified the Ottawa Convention and Protocol II of the CCW is striking. To date, developing countries in particular have failed to join the protocols.

78 The effect of the existence of the Ottawa Convention is also reflected in the Dutch approach to the universalisation issue. The Netherlands manifested itself as supportive to initiatives to enlarge the number of States Parties to the CCW, but at the same time was cautious not to move too fast on the issue, thus taking care not to endanger the Ottawa Convention. The Dutch position may be illustrated by a conflict relating to the annual appeal of the States Parties to Amended Protocol II in 2001. On 6 December 2001, during the Fourth Annual Conference of the States Parties to Amended Protocol II, the Belgian EU Presidency presented a draft of the annual appeal of the States Parties to Amended Protocol II to the CCW in order to emphasise the importance of achieving the widest possible adherence and to urge all states that had not yet done so to take all measures to accede to it as soon as possible. The initiative met opposition from South Africa, which considered it expedient to abstain from the appeal in view of the political statement of the Review Conference that took place directly after the above-mentioned meeting of the States Parties to Amended Protocol II. Most EU countries (including the Netherlands) shared the views of South Africa. The Dutch delegation to the meeting was issued the instruction that in case of discord on the issue, abstention from an appeal could be supported on the grounds of the anticipated post-conference political statement. In this regard it was noted that, just like South Africa, the Netherlands saw the Ottawa Convention as being more important than the CCW as an instrument to prevent casualties. Ultimately, the opposing EU countries and other hesitant States

<sup>147</sup> TK, 28000 V, nr. 37.

<sup>148</sup> Mathews, 2001. Cuba and the Russian Federation ratified Protocol II. Due to its provisions, these mine-producing countries are not States Parties either to the Amended Protocol II or the Ottawa Convention (see annexe 4.1a).



Parties decided not to abstain from the appeal.<sup>149</sup> On 10 December 2001, the Fourth Annual Conference of the States Parties to Amended Protocol II concluded with the traditional appeal from the States Parties to promote wider adherence to the protocol in their respective regions and for all states that had not yet done so to accede to the protocol.

## 4.4 Expanding the restrictions on anti-vehicle mines

### General course of events

The CCW discussion on the humanitarian problem posed by anti-vehicle mines (AVMs) started in 1995, in the context of the First Review Conference. AVMs are designed to destroy or disable tanks and other armoured military vehicles. However, over the years, serious concerns have been raised with regard to the sensitivity of the fuses and activation mechanisms used in them.<sup>150</sup> First, these mechanisms do not distinguish between military vehicles and civilian transport. That means that AVMs also pose a threat to civilian vehicles (buses, cars, tractors) in the post-conflict stage. Secondly, there is a wide range of different mechanisms by which AVMs can be activated, and some are so sensitive that they also can be set off by lighter vehicles, or even by people. Third, a proportion of these mines are made to be virtually undetectable by current metal detectors, which makes it more difficult and dangerous for the enemy or humanitarian demining organisations and mine action centres to find and remove them. Such mines therefore hinder the post-conflict reconstruction process.

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In this context, a number of States Parties to the CCW – including the Netherlands – became convinced that the stipulations restricting the use of AVMs in Protocol II (and Amended Protocol II) did not go far enough.

The consultations on AVMs in the CCW can be subdivided into two phases: informal deliberations on the possibilities of getting the issue of further restrictions on AVMs onto the CCW agenda (1995/1996-2001) and further exploration of the issue in the GGE (2001-2006). Since 1995 there have been various proposals regarding the strengthening of the CCW's stipulations on AVMs. During the Second Review Conference, an open-ended GGE was established to address the issue of ERW and AVMs. Despite repeated calls for a 'negotiation mandate' by several States Parties, no consensus could be achieved on such a mandate. The work of the GGE on AVMs was ended during the Third Review Conference in November 2006. This marked the States Parties' recognition that ten years of preliminary talks on further AVM restrictions had failed to produce relevant results.<sup>151</sup>

149 Fear of permanent loss of the appeal won these States Parties over.

150 The humanitarian impact of AVMs is especially documented in the papers, reports and fact sheets of the ICRC (2002), Human Rights Watch (2002, 2005) and GICHD (2004).

151 For all that, in 2007 the States Parties decided to discuss further feasible precautions with respect to AVMs.

<b>Table 4.4</b> Dutch policies on AVMs 1995/1996–2001: Getting further restriction on AVMs onto the CCW agenda	
Objectives	Pursuing a pioneering role by pushing for a ban on non-detectable AVMs as well as on dispersible AVMs without self-neutralising and self-detecting mechanisms in the convention or any other forum. Preferably, these new stipulations on AVMs should be laid down in a new protocol. In case of insufficient support for such a new protocol: preference for further research on the issue by experts.
Results	In December 2001 States Parties achieve consensus on a limited mandate for further consultations on AVMs in an open-ended GGE.
Interventions	Active promotion of further restrictions on the use of AVMs during the First CCW Review Conference. Support for a US proposal to strengthen the AVM restrictions in Amended Protocol II, a US-Danish proposal for a new protocol specifically designed for a AVMs, and a revised version of this proposal. Participation in and adoption of the joint EU position to support a proposal for a distinctive AVM protocol, but to refrain from co-sponsorship.
Impediments	Although the 2001 Review Conference demonstrated considerable support for balanced restrictions on the use of AVMs, a large number of States Parties declared themselves publicly against the proposals at hand. The objections they raised were: <ul style="list-style-type: none"> <li>• Institutional: amending an amended protocol or the establishment of new landmine protocol might lead to legal confusion.</li> <li>• Financial: the proposed measures might lead to a situation in which only rich countries could afford AVMs.</li> <li>• Principled: outspoken opponents of further restrictions argued that the humanitarian impact of AVMs is to a large extent exaggerated.</li> </ul>

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## Objectives

To date, the Dutch government regards AVMs as serving a distinct military purpose. Consequently – and in contrast to its changing position on anti-personnel mines – it has never become a proponent of a comprehensive ban on all AVMs. Nevertheless, in an early stage the Netherlands manifested itself as a supporter of further restriction on the use of AVMs in order to reduce the threat these weapons might pose to civilians. Already in April 1995 the Ministers of Foreign Affairs and Defence informed Parliament that together with the US, the UN, the ICRC and other NGOs, at the First Review Conference the Netherlands would plead for provisions requiring all mines (APMs and AVMs) to be self-destructing and detectable.<sup>152</sup> In September 1995, Minister of Foreign Affairs Van Mierlo elaborated on the Dutch position. He indicated that aiming for qualitative restrictions on landmines was preferable to striving for quantitative restrictions, in view of the urgency of decision-making on the mine problem and the fact that non-detectable mines without a self-destruction mechanism were causing by far the most victims.<sup>153</sup>

<sup>152</sup> TK, 23900, V, nr. 44.

<sup>153</sup> TK, 24292, nr. 2:7.

Since the negotiations on Amended Protocol II failed to come to further restrictions on the use and transfer of AVMs, the Dutch government continued to hold to the position it had adopted earlier. It also voiced its intention to play an active role in the annual meetings of States Parties and the preparations to the Second Review Conference in order to strive for further control on the use and transfer of landmines.<sup>154</sup> The Netherlands thus became one of the few countries that manifested itself as a pronounced proponent of a ban on the use of non-detectable AVMs.<sup>155</sup>

In November 1998 Minister Van Aartsen reconfirmed to the Dutch Parliament that the Netherlands would pursue its pioneer role in the CCW, i.e. the government would push hard for a total ban on non-detectable AVMs as well as dispersible AVMs without self-neutralising and self-detecting mechanisms.<sup>156</sup> On 7 December 2001 the government specified its objectives. The Dutch government would support a US-Danish proposal for a new protocol on AVMs. It also pleaded for further research on the issue by experts, in the case of insufficient support for a new protocol. This group of experts would also have to be allowed to work on other proposals regarding AVMs.<sup>157</sup>

## Results

During the 2001 CCW Review Conference no consensus could be reached on further restrictions to AVMs. Although some States Parties immediately took a hard line against further restrictions, proponents of more restrictions made some progress with the establishment of a limited mandate for further deliberations on AVMs. It was decided to establish an open-ended GGE in order to further explore the issue of AVMs. It was agreed that the GGE's coordinator would submit a report, adopted by consensus, to the States Parties.<sup>158</sup>

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## Interventions

The Dutch commitment to strive for further restrictions on AVMs first manifested during the Protocol II negotiations in 1994-1996. At that time, the plea of the Dutch delegation for provisions requiring all mines to be self-destructing and detectable (for instance by the requirement of adding a small amount of metal) gained little support.<sup>159</sup> Only a small group of countries, among which were the US and Ireland, shared the Dutch position.<sup>160</sup>

Since 1996, the Dutch government has aimed to mobilise support for restricting the use of AVMs. At the request of the Netherlands, the Quakers' United Nations Office in Geneva organised an informal meeting during the First Conference of States Parties to

154 TK, 24400 V, nr. 76.

155 TK, 25925, R1614, nr. 6:5.

156 Parliamentary proceedings, 12 November 1998, p. 1573.

157 TK, 28000, V, nr. 37:4.

158 CCW, Report of the Second Review Conference, Final declaration.

159 Then, only the US and Ireland supported the Dutch position (file 736918, 12 March 2001).

160 File 638555, 21 July 1999.

Amended Protocol II of the CCW in 1999, at which representatives of several governments and NGOs discussed the need and possibilities for strengthening Amended Protocol II with regard to AVMs.<sup>161</sup>

Despite its commitment, the Netherlands did not draft any discussion paper or formal proposal on AVMs. Instead, several proposals on AVMs were put forward by the US and Denmark during the run-up to the 2001 Review Conference:

- In December 2000, the US submitted a proposal to strengthen Protocol II as Amended entailing the following requirements: 1) that all landmines be constructed or modified so as to be detectable by common means, 2) that all remotely-delivered AVMs be equipped with self-destruction capabilities with back-up self-deactivation features, and 3) that the technical specifications of the protocol be strengthened by increasing the dependability required of the self-destruction and self-deactivation features: to 95 percent (within 30 days) and 99.99 percent (within 120 days), respectively.<sup>162</sup>
- During the second PrepCom meeting (April 2001) of the Second Review Conference the US and Denmark jointly submitted a proposal for a new protocol specifically designed for AVMs and entailing the same requirements: 1) that all AVMs be detectable by commonly available means, 2) that all remotely delivered anti-vehicle mines be equipped with self-destruct capabilities backed up by self-deactivation features to reduce serious risks to the civilian population and 3) that the self-destruct feature operate within 30 days at a dependability rate of 95 percent, and that the self-deactivation feature ensures at a dependability of 99.9 percent that within 120 days the mine becomes inoperable.<sup>163</sup>
- In July 2001 a revised US-Danish proposal was presented, in which more provisions of the Amended Protocol II were incorporated and the proposed reliability requirements for AVMs were reduced to 90 percent, similar to the standards established in 1996 for APMs.<sup>164</sup>

The Netherlands expressed its support for the US proposal during the first PrepCom in December 2000. It also expressed its support for the US-Danish proposal for a new protocol on AVMs in April 2001, but at the same time expressed concern about the resulting situation of two protocols dealing with AVMs. In autumn 2001 the AVMs were brought up for discussion in the CODUN. Denmark asked the EU to co-sponsor the US-Danish proposal. Only the Netherlands, Austria and France were prepared to do so,

161 Landmine Monitor, 2000 and file 668235, 1 December 1999.

162 CCW, US Delegation Page, 12 December 2000, Introduction of proposals to strengthen the Amended Mines Protocol.

163 The US and Denmark also submitted proposals for rigorous restrictions on AVMs in 1995 CCW (US Delegation Homepage, 3 April 2001).

164 CCW, US Delegation Homepage, July 2001, US-Danish AV Mine Proposal.

although these countries did not consider it to be the ultimate solution.<sup>165</sup> The EU countries decided to support the proposal, but to abstain from EU sponsorship.

Following the EU line of argument, the Netherlands eventually opted to abstain from independent co-sponsorship in December 2001.<sup>166</sup> If decisions had to be made, the Netherlands would support the proposal for a protocol to introduce certain restrictions on AVMs that was eventually presented by twelve nations (12-nation proposal on AVMs). As expected, the States Parties did not find common ground for decision-making on the issue, whereupon, the Second Review Conference to the CCW decided to set up the open-ended GGE.

### Impediments

During the 1995-1996 CCW Review Conference there was considerable support for more stringent restrictions on AVMs. However, as highest priority was given to anti-personnel mines and because there was not enough time to achieve consensus on new AVM restrictions, additional limitations were not possible at the time.<sup>167</sup> Certain strong advocates for Ottawa, such as Canada and Austria, spoke out against further restrictions on the use of AVMs. Moreover, the few initiatives to restrict the use of these mines were doomed to fail because of the large number of states that totally opposed the idea. These states held the opinion that further restrictions on the use of AVMs would endanger their security.<sup>168</sup>

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In the course of 2001, new initiatives to address the humanitarian concerns of AVMs also failed to achieve consensus. First, disagreement about how the proposals related to AVMs should be achieved hindered noticeable progress on the issue of AVMs. The various proposals received only lukewarm support from other delegations because they feared institutional confusion might result from the achievement of an amended version of Protocol II as Amended, the attachment of an annexe to the amended protocol, or the establishment of a new AVM protocol.<sup>169</sup> Second, the cost of adjusting existing stocks of AVMs to the new stipulations was considered too high for many countries. The group of non-aligned countries opposed the proposal for a new protocol on AVMs on the grounds that it could lead to a situation in which only rich countries could afford AVMs in the future.<sup>170</sup> The third reason the initiatives failed to achieve

<sup>165</sup> In August 2001 Germany presented a non-paper in the EU/CODUN in which it welcomed the US-Danish proposal but emphasized the necessity of first putting the requirement of self-neutralisation in such a protocol, with a view to the devastating consequences of self-destruction (file 736918, 22 August 2001). The Netherlands supported the German non-paper (file 736993, 24 August 2001). In August 2001 the EU brought up a non-paper on self-neutralisation for discussion in the (informal) open-ended consultations of the States Parties.

<sup>166</sup> Germany and the United Kingdom joined the United States and Denmark as co-sponsors.

<sup>167</sup> ICRC, CCW/GGE/II/WP.9.

<sup>168</sup> TK, 25925 (R1614), nr. 6:7.

<sup>169</sup> TK, 28000, V, nr. 37:4.

<sup>170</sup> TK, 28000, V, nr. 37.

consensus was that it (again) proved impossible to win over a small group of countries that were outspoken opponents of any further restriction on AVMs: namely China, Cuba, Russia, India and Pakistan.<sup>171</sup> Only after intensive informal deliberations did these States Parties eventually agree on the limited mandate for further consultations on AVMs in GGE.<sup>172</sup>

<b>Table 4.5</b> Dutch policies on AVMs 2001-2006: Consultations on AVMs in the GGE	
Objectives	The adoption of further rules on AVMs in order to strengthen the CCW. The Netherlands was committed to an open discussion on all aspects of AVMs in the GGE. In the end, the objective was to reach agreement on a negotiating mandate for a legal instrument on AVMs.
Results	Deliberations in the GGE have made no progress on AVMs since its first session in May 2002. Although the issue of AVMs was one of the most important points on the agenda of the Third Review Conference, no significant result was achieved. Because no consensus could be achieved on a negotiation mandate, a group of twenty States Parties, including the Netherlands, declared that they would take further measures on AVMs unilaterally.
Interventions	Participation in a Food-for-Thought Paper on MOTAPM by the member states of the EU. Submission of this paper in the first session of the GGE. Low profile on AVMs in further sessions of the GGE.
Impediments	Effective blocking of an agreement on a negotiation mandate by a group of States Parties (notably the Russian Federation and China) that raises objections of principle against further restrictions on AVMs and/or that defends States Parties against unfair financial investments resulting from further measures on AVMs. Coordinating role on ERW hinders the Dutch aim to hold to an open discussion over all aspects of AVMs in the GGE.

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### Objectives

After the 2001 Review Conference the Dutch position on the AVM issue remained unchanged. In autumn 2002 the Dutch government stated that it aspired to make an active contribution to initiatives that aimed to strengthen the CCW in general, including further stipulations on AVMs.<sup>173</sup> It also emphasised its preference for an open debate on all aspects of the AVM issue: the establishment of a GGE to further explore the issue of AVMs would, therefore, be in line with Dutch policy objectives.

In September 2003 the Dutch government set its targets on AVMs for the further deliberations. In the explanatory memorandum to the budget for 2004 it indicated that

<sup>171</sup> TK, 28000 V, nr. 50.

<sup>172</sup> TK, 28000, V, nr. 50:4.

<sup>173</sup> TK, 28600, V, nr. 2:64.

it would aim to achieve an agreement on a negotiating mandate for a legal instrument on AVMs in 2004.<sup>174</sup> In February 2004 the disarmament section of the ministry's Security Policy Department formulated its instructions for the EU's Working Party on Global Disarmament and Arms Control (CODUN). Here it was pointed out that the Netherlands hoped for an actual negotiation mandate concerning AVM, but at the same time was rather pessimistic about the prospects of achieving such a mandate.

The objective of achieving a negotiation mandate for a legal instrument was maintained in 2005 and 2006. For the first, second and third PrepComs of the Third Review Conference, the Dutch delegation was instructed to support the 30-nation proposal which aimed at the prohibition or limitation of the use of non-detectable AVMs and remotely delivered AVMs without self-destruction or self-deactivation devices. In July 2006, however, with the small chance of reaching consensus on AVMs within the CCW, the Netherlands started to consider the possibility of striving for an international legal instrument outside the framework of the CCW. When the Third Review Conference failed to achieve a substantive result regarding AVMs, the Netherlands joined the group of 20 states that had decided to take unilateral (voluntary) measures regarding AVMs.

## Results

Between 2001 and 2006, strong efforts were made by a group of countries, mainly led by the US, to create an instrument on AVM. During the Third Review Conference, however, it was only agreed to discuss the issue of AVMs further during the Meeting of the States Parties in 2007. Thus, the proponents of an international instrument on AVMs had failed to achieve their objective. It had not even been possible to adopt a political declaration on AVMs, as the US had proposed in the second week of the Review Conference after it had become clear that the 30-nation proposal would not have sufficient support. The end result regarding AVM disappointed many delegations, and a group of 20 countries, among which 7 EU partners and the Netherlands, decided to undertake voluntary national action on AVMs unilaterally (outside the framework of the CCW).

## Interventions

Following the example of the Dutch coordinator on ERW, the Bulgarian coordinator on AVMs invited some actors to write discussion papers in anticipation of the first meeting of the GGE in May 2002. The Netherlands considered it important that all relevant questions related to AVMs be discussed. At the same time, it held the view that discussion on the content (and the need for) a possible protocol should be avoided as much as possible in the first half of 2002. First of all, a broad understanding of the need for and possibility of a legal instrument should be reached among the experts. In accordance with this view, the Netherlands only acted on AVMs through concerted EU action.

<sup>174</sup> TK, 29200, V, nr. 2.

During the first session of the GGE the EU submitted a 'Food-for-Thought Paper on Mines other than Anti-personnel Mines'. The purpose of the paper was to identify some questions around which a discussion could evolve on topics previously not discussed. These topics were: 1) humanitarian concerns, 2) definitions, 3) existing restrictions and provisions regarding mines other than anti-personnel mines and 4) technical and other measures.<sup>175</sup> In February 2002 the Spanish EU Presidency had distributed a first draft among the member states. Thereupon the Netherlands had proposed to add phrases concerning the military need of AVMs and military alternatives in appropriate circumstances. The first proposal was adopted in the final draft. However, the idea of a reference to military alternatives was rejected after fierce opposition from seven EU member states.<sup>176</sup>

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Otherwise, the Netherlands kept a rather low profile in the consultations on AVMs. During the 2002 Annual Meeting of States Parties (11 and 12 December), it was decided *inter alia* that the GGE should continue to explore the issue of AVMs and consider the most appropriate way to reduce the risks posed by the irresponsible use of these mines, including the possibility of concluding a negotiating mandate for a new instrument and other appropriate measures.<sup>177</sup> Based on this decision, the coordinator on AVMs submitted for the GGE's consideration a draft proposal for a negotiation mandate for 2004. In the draft, it was proposed 'to negotiate appropriate measures to reduce the humanitarian risks posed by the irresponsible use of mines other than anti-personnel mines, with the view of reaching an agreement on a new CCW instrument and other measures'.<sup>178</sup> Even though the coordinator had opted for a less ambitious approach (he had not proposed to start immediately with negotiations on a protocol) than some other countries wished for, the proposal was not adopted.

Thereupon, at its 2003 annual meeting, the States Parties decided that the GGE would continue to explore the issue on the basis of its 2002 mandate.<sup>179</sup> During the sixth session of the GGE (17-24 November 2003) a new proposal for a protocol on 'prohibitions or restrictions on the use and transfer of mines other than anti-personnel mines' was submitted, co-sponsored by eighteen States Parties (18-nation proposal).<sup>180</sup> In March 2004, during the seventh session of the GGE, the 18-nation proposal was

175 CCW/GGE/I/WP.1

176 Only Austria and Ireland openly supported the Dutch proposal on military alternatives (file 736918, 22 March 2002).

177 CCW/MSP/2002/2:5.

178 CCW/GGE/VI/WG.2/WP.1.

179 CCW/MSP/2003/3:17.

180 CCW/GGE/VI/WG.2/WP.9.



resubmitted, now co-sponsored by thirty States Parties (30-nation proposal).<sup>181</sup> Although the Netherlands supported both proposals, it abstained from co-sponsoring. In 2005 and 2006, the Netherlands supported the 30-nation proposal, but did not actively intervene in the process. Only in July 2006, when it became clear that the 30-nation proposal would probably have too little support during the Third Review Conference, did the Netherlands – in reply to a COREU of the Finish EU Presidency – propose considering the alternative option of creating an instrument on AVMs outside the CCW.

### Impediments

After December 2001, new initiatives on AVMs that went beyond the ‘exploratory approach’ of the GGE were effectively blocked. First, the group of outspoken opponents of further measures on AVMs stuck to their position.<sup>182</sup> Two major members of this group, the Russian Federation and China took the position that the inhumane character of AVMs (when used by the regular armed forces and as far as the civilian population was concerned) was both largely exaggerated, and already adequately covered by Protocol II.

According to the Russian Federation, the statistics showed that the number of victims from AVMs accounted for less than three per cent of the total number of civilian victims from landmines.<sup>183</sup> It further argued that the existing principles of international law reflected in Protocol II adequately protected civilians from damage from AVMs. Amended Protocol II contained a sufficient number of proposals which embraced all the humanitarian aspects related to restriction of the use of landmines. Existing practice in the development of such mines in various countries showed that 90-95 percent or more of them were equipped with self-destruction and self-deactivation mechanisms. Furthermore, any such scatterable mines that had been laid were easily seen on the ground. Thus all the technical requirements for such mines contained in Protocol II were satisfied in practice.<sup>184</sup> China also argued that if used properly according to Protocol II, non-detectable mines would not pose risks to civilians. In July 2002 it wrote: ‘The solution to the problem of anti-vehicle mines lies not in the negotiation of new protocols, but in the effective enforcement of all the existing legal instruments and efforts to ensure that they have their intended effect.’<sup>185</sup>

<sup>181</sup> The 18-nation proposal was co-sponsored by Australia, Canada, Denmark, Finland, Germany, Guatemala, Hungary, Japan, Lithuania, Macedonia, Norway, Poland, Romania, Slovakia, Slovenia, South Korea, United Kingdom, United States of America (CCW/GGE/VI/WG.2/WP.9). The 30-nation proposal was co-sponsored by Albania, Austria, Belgium, Bulgaria, Cambodia, Canada, Croatia, Denmark, Estonia, Finland, Germany, Greece, Guatemala, Hungary, Japan, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Republic of Korea, Romania, Slovakia, Slovenia, Spain, Switzerland, The Former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland and the United States of America (CCW/GGE/VII/WG.2/WP.6).

<sup>182</sup> TK, 28600 V, nr. 63.

<sup>183</sup> CCW/GGE/I/WP.12.

<sup>184</sup> CCW/GGE/VI/WG.2/WP.4.

<sup>185</sup> CCW/GGE/II/WP.17:3.

The two countries also brought the earlier financial objections to the fore once again. The Russian Federation argued: 'Raising the technical requirements for the detectability and safety devices for anti-vehicle mines by incorporating self-destruction (self-neutralisation) and self-deactivation mechanisms in their design will inevitably entail the retrofitting of such munitions and raise the question of stockpiles. Not every State is in a position to spend considerable amounts of money on retrofitting and developing new mines, particularly in conditions where many of the States Parties to the 1980 Convention are still faced with the problem of demining large areas removed from economic use because of great numbers of unexploded remnants of war.'<sup>186</sup> And China reasoned: 'Anti-vehicle mines are an important class of defensive weapons, which perform an irreplaceable function among conventional weapons. If developing countries are to accept the proposed protocol, they will need, in order to ensure their conventional weapon defence capability, to carry out a comprehensive programme of measures and to make substantial financial investment in producing and fitting out anti-vehicle systems of the new kind and their supporting facilities. The new anti-vehicle landmine systems are much more costly. Most of the AVMs owned by developing countries are remotely delivered mines of the old type with mechanical fuses. Developing countries would find it very difficult to afford expenditure on this large scale.'<sup>187</sup>

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At a later stage, the Dutch role in the ERW consultations acted as a further obstacle to the Netherlands pursuit of further rules on AVMs. After December 2001 it became clear that some States Parties saw the equal treatment and possible incorporation of the issue in the consultations on ERW as a natural way out of the deadlock. Being the coordinator on ERW, the Netherlands was highly aware of the risks involved in combining the two issues. For that reason the Dutch actions in the EU were explicitly targeted at keeping the AVM discussions isolated from the consultations on ERW, the first priority being the ERW. In May 2003 the Dutch Ministers of Foreign Affairs and Defence informed Parliament that the government hoped to gain consensus on a negotiating mandate in December 2004. The two Ministers also emphasised that the results on AVMs needed to be completely isolated from the results on ERW, because these were two completely different issues. In that way the government hoped to prevent those consultations on anti-vehicle mines from hindering the achieving of an ERW instrument.<sup>188</sup> However, at the same time this strategy hindered the Dutch aim to hold an open discussion about all aspects of AVMs in the GGE.

<sup>186</sup> CCW/GGE/II/WP.12.

<sup>187</sup> CCW/GGE/II/WP.17.

<sup>188</sup> TK, 28600, V, nr. 63.

## 4.5 Extending the scope of the Convention

### General course of events

Initially, the scope of the CCW's protocols (I-III) covered international armed conflicts only. In the run-up to the First Review Conference a growing number of States Parties (including the Netherlands) took the view that in order for the convention to remain a relevant instrument of international humanitarian law its scope should be extended to include intrastate conflicts.<sup>189</sup> Since the adoption of the convention, the nature of armed conflict had changed considerably. In particular, conflicts were taking place within state borders more frequently, causing as much – or even more – suffering and loss of life as international conflict. Under such conditions, it became increasingly difficult to make the combating parties adhere to the stipulations of CCW – the most important instrument of international humanitarian law dealing with conventional weapons. Extending the scope of application of the convention to non-international conflicts would send an unequivocal signal to the warring parties that its stipulations were part of the fundamental standards of behaviour that applied to all armed forces in all armed conflicts.<sup>190</sup>

In 1996, only Protocol II was amended to apply to intrastate conflicts. This meant that the rules and restrictions of Protocols I and III would not apply in civil wars and internal conflicts and that the character of the armed conflicts to which future protocols would apply would be determined on a case by case basis. Subsequently, in the preparatory meetings for the 2001 Review Conference five proposals were put forward to (further) extend the scope of application of the convention. In December 2001, the States Parties adopted an amendment to Article 1 of the CCW which extended the remaining Protocols in force to non-international conflicts.

<sup>189</sup> France went a step further: when it ratified the convention and Protocols I and II in 1988, it unilaterally expanded the scope of application for itself by declaring that the provisions of the 1980 convention would apply to situations covered by common Articles 2 and 3 of the 1949 Geneva Conventions (Peters, ISIS Briefing Paper No. 4, April 1996).

<sup>190</sup> Other important IHL treaties apply to both international and non-international armed conflict.

<b>Table 4.6</b> Dutch policies on scope 1995/1996–2001: continued negotiations on the scope of application of the CCW	
Objectives	Extension of the scope of application of all existing and future protocols of the CCW to non-international armed conflicts.
Results	On 21 December 2001 States Parties agreed to an amendment to Article 1 of the CCW which extended the scope of application of only the existing Protocols to non-international armed conflicts. For every new protocol a decision on scope will have to be taken.
Interventions	Co-sponsoring of the US proposal to amend Article 1 of the CCW to be applicable to all current and future annexed Protocols. Active seeking of other co-sponsors in the open-ended consultations of the States Parties and in the EU.
Impediments	States Parties demonstrate widespread support for an amendment to the CCW that would extend its scope to internal armed conflict. At the same time, opinions of the States Parties differ on the question of how to frame 'extended scope' in the convention. Countries like China and Pakistan were only willing to extend the scope of application of the convention to its annexed protocols.

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### Objectives

The Netherlands belonged to the first group of proponents of an agreement to extend the convention's scope of application to non-international armed conflicts. In 1995 the Dutch government had already voiced its support for bold steps to strengthen the 1980 convention. During the third meeting of the First Review Conference (26 September), Defence Minister Voorhoeve emphasised that the scope of the landmine protocol should be extended in particular to cover non-international armed conflicts and should also apply in times of peace.<sup>191</sup> After the adoption of the amended version of Protocol II, the Dutch delegation strove for the scope of all existing and future protocols to be extended to internal conflicts.

The Dutch position on scope was reiterated in an instruction to the Dutch delegation to the Second Review Conference. The Netherlands was a proponent of extending the scope of the convention to encompass internal conflicts. It preferred amending the CCW and all its protocols, but other options were not to be excluded. To meet the scepticism of several countries, the Dutch delegation could accept the supplement to the proposed amendment 'with respect to additional Protocols adopted after 1 January 2002, the provisions of this Article shall apply unless otherwise agreed'. However, on 7 December 2001 the Ministers of Foreign Affairs and Defence informed Parliament that any future departures from the principle should be exceptions. As to this, the Netherlands took the position that any constraints on the use of a weapon for

<sup>191</sup> CCW/CONF.I/SR.3:9.

humanitarian reasons imposed on a country ought also to apply to its indigenous population.<sup>192</sup>

## Results

During the 2001 Review Conference the States Parties adopted an amendment to Article 1 of the CCW which extended the convention's scope of application to non-international armed conflicts. It was decided that in the case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict would be bound to apply the prohibition and restrictions of the convention and its annexed Protocols. The provisions of the amendment of Article 1 of the convention would not prejudice additional protocols adopted after 1 January 2002. This implied that future protocols could apply, exclude or modify the scope of their application in relation to the amended article.<sup>193</sup> As such, the Dutch objective of extending the scope to future protocols too had failed. Nonetheless, the result was claimed to be a success for the Netherlands. In March 2002 the Dutch government informed Parliament that the US–Netherlands–Korea proposal had been accepted, but that the text had been modified to meet the wishes of sceptical countries like China and Pakistan.<sup>194</sup> The Netherlands ratified the amended Article 1 on 19 May 2004.

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## Interventions

In the run-up to the 2001 Review Conference the Netherlands made a visible effort to expand the scope of application of the CCW. During the first PrepCom (14 December 2000) two options for expanding the scope of application of the convention were submitted:

- The ICRC distributed a paper in which it suggested adopting a new protocol on scope applicable to all existing and future protocols.<sup>195</sup>
- At the same meeting the US issued a proposal to amend Article 1 of the CCW.<sup>196</sup>

The Netherlands considered the US proposal to be one of the highlights of the meeting. In contrast to the ICRC proposal, the US proposal would be consistent with the provision in Article 8 that additional protocols are meant to relate to categories of conventional weapons not covered by existing protocols. Moreover, it avoided the problem of having separate agreements for each protocol, because all parties would be bound by the same substantive rule once they had acceded to an amended

<sup>192</sup> TK, 28000, V, nr. 37:4.

<sup>193</sup> Report of the Second Review Conference, 2001:9.

<sup>194</sup> TK, 28000, V, nr. 50:1-2.

<sup>195</sup> Statement by Cummings, 14 December 2000. The ICRC sided with the US proposal shortly after (File 715655, 2 December 2001).

<sup>196</sup> Statement by Cummings, 14 December 2000.

convention.<sup>197</sup> In July 2001, the Netherlands decided to co-sponsor the US proposal, after the Dutch government had been invited to do so by the Americans.

During the open-ended consultations of the States Parties in August 2001 a third option won ground. It also contained an amendment of Article 1 of the convention, but confined itself to the existing protocols. The idea emanated from China and was supported by Pakistan. The Dutch delegation regarded the Chinese option as a Pyrrhic victory. First, Protocol II as Amended already applied to non-international conflicts, and secondly the other protocols concerned weapons that were practically non-existent. It persisted in co-sponsoring the US proposal by emphasising the traditional and historical role of The Hague in promoting international legal order. In September 2001 the Netherlands appealed to the EU to co-sponsor the US proposal. Although the EU had declared itself openly in favour of the proposal, it decided not to sponsor it.<sup>198</sup> However, South Korea put itself forward as the third co-sponsor of the proposal.

### Impediments

During the 1995/1996 Review Conference, a number of large states – such as China, India and Pakistan – opposed an expansion of the scope of Protocol II, arguing that it would lead to an undue intrusion into their sovereignty and that it would place their forces at a disadvantage in dealing with insurgent groups that might not comply with the new restrictions. Only after prolonged negotiations did these states agree to expand the scope of this particular protocol.

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During the 2001 Review Conference, an extension of the scope of the entire CCW, covering all protocols, was recognised by all States Parties as an important and necessary development in the CCW. There was broad consensus on the need for a new arrangement, and differences of opinion mainly involved the more technical question of how to frame ‘extended scope’ in the convention. Some countries held the position that in principle, extending the scope to non-international conflicts should apply to all existing and future protocols, while others were only willing to extend the scope of the protocols already annexed to the convention.<sup>199</sup> Finally consensus was reached with the following addition to the original text: ‘With respect to additional Protocols adopted after 1 January 2002, the provisions of this Article shall apply unless otherwise agreed’.<sup>200</sup>

<sup>197</sup> Statement by Cummings, 14 December 2000.

<sup>198</sup> The reason was that the EU hoped to avoid the proposal being labelled as a ‘western’ concern (file 736993, 14 September 2001).

<sup>199</sup> TK, 28000, V, nr. 37.

<sup>200</sup> TK, 28000, V, nr. 50.

## 4.6 Conclusions

In this final section the Netherlands interventions on the four issues are assessed on the basis of the four evaluation criteria. The overall conclusion, including the assessment on whether certain outcomes were justified given the impediments, is presented in chapter 9.

### Compliance

The Dutch interventions in the period 1995/1996-2001 with respect to the issue of compliance were *partially connected* to the national policy objectives. The Netherlands aimed at a compliance mechanism that would include a verification system and fact-finding missions. This objective only materialised in the Dutch support for the EU and South African proposals. As such, the policy objectives were more ambitious than the interventions. The Dutch interventions were *partially responsive* to the international policy objectives. Rather than labouring to achieve consensus, the Netherlands opted to lend support the position of the Western Group, which preferred a strong verification regime. Despite this coalition and as a result of the resistance from the group of States Parties that preferred to include confidence building measures only, the compliance mechanism for Amended Protocol II adopted during the First Review Conference did not include a verification system or fact-finding missions. The Dutch interventions were *timely*; in preparation for the First Review Conference the Netherlands actively supported proposals of other States Parties on verification and compliance. However, the intervention instrument the Netherlands used in this period (supporting proposals) was of a *moderate scope*: although the action radius of supporting proposals is large, it is an indirect instrument for communicating a position. Moreover, from the perspective of the actor using it, it is an active instrument rather than a proactive instrument.

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The Dutch interventions were also *partially connected* to the national policy objectives in the phase of consultations on the issue of compliance (2001-2006). That is, in this period too, the interventions were not as ambitious as the policy objectives would suggest. The Dutch government aimed to actively promote the establishment of a compliance mechanism, but it did so mainly by acting within the framework of the EU. As such, the Dutch interventions were *partially responsive* to the international decision-making process, because they supported only the policy objectives of the EU in particular and the Western Group more in general. Only in 2005 did a Dutch intervention aim at creating consensus beyond the Western Group. The Dutch interventions were *timely*; the Netherlands supported the EU approach from the outset. By and large, the Dutch interventions in this period were of a *moderate scope*. Initially, the interventions did not go further than giving support to the EU papers. During the Dutch EU Presidency (second half of 2004) the Netherlands drafted an EU position paper on the issue. By doing so, the Netherlands took on an active level of involvement, but the directness and action radius of the instrument in question

remained the same. The same applies to the joint initiative of the Netherlands and the UK to work on a compromise proposal in 2005.

### Universalisation

As far as the universalisation of the CCW and its protocols was concerned, the Dutch interventions were *connected* to national policy objectives. The Dutch government aimed at promoting the universality of the convention. It did so by sponsoring the resolutions in the First Committee of the UN General Assembly, which called on states to become members to the CCW and its Protocols. Further, it initiated a proposal for EU démarches. Since the universalisation of the CCW was a general objective of all States Parties, the Dutch interventions were *responsive* to the international decision-making process. The Dutch interventions were timely: they were put in annually immediately after the CCW had been established. The Dutch interventions on universalisation were of a *moderate scope*, since they did not go beyond supporting UN General Assembly resolutions and one (unanswered) initiative in the context of the EU.

### AVMs

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The Dutch interventions regarding AVMs in the first phase of agenda-setting (1995/1996-2001) were *partially connected* to the national policy objectives. The Netherlands aimed at a ban on the use of non-detectable AVMs and in 1998 the government promised Parliament that it would push hard for a total ban on non-detectable AVMs and AVMs without neutralising and self-detecting mechanisms. Although the interventions were indeed in line with the policy objectives, they were not as ambitious as the policy objectives. The interventions were *responsive* to the international decision-making process, because they took into account the existence of a clear group of proponents of further restrictions as well as a group of opposing States Parties. As such, the interventions were aimed at creating consensus within the CCW as a whole. The interventions were *timely*: as early as April 1995, in the early stages of the deliberations, the Netherlands pleaded for self-destruction and detectability devices for AVMs. The Dutch interventions on AVMs in this period were of a *moderate scope*. Together with like-minded actors it argued for measures on AVMs during the First Review Conference. Only during the First Conference of States Parties to Amended Protocol II of the CCW in 1999 did the Netherlands labour for further restrictions by organising an informal meeting on AVMs. Subsequently, it supported several proposals put forward by the US and Denmark in 2000 and 2001, and eventually the 12-nation proposal on AVMs in 2001.

In the second phase of consultations on AVMs (2001-2006), the Netherlands held to its original position on AVMs. In this phase too, the Dutch interventions were in line with the national policy objectives, though not as ambitious as these. The interventions were limited to supporting the proposals of other states and concerted EU action, and the Netherlands even opted not to co-sponsor the 18-nation and 30-nation proposals. As such, the interventions were *partially connected*. At the same time, the interventions were *partially responsive* to the international decision-making process. Instead of making



an effort to reach consensus, they were aimed at the creation of an instrument on AVMs with a preference for the 18-nation and 30-nation proposals). The interventions were also *timely* as the Netherlands participated in the consultations of the GGE from the outset. The Dutch interventions had a *moderate scope*, given the persistent focus on supporting other nations' proposals, together with the Netherlands decision not to co-sponsor the 18-nation and 30-nation proposals.

### Scope

The Dutch interventions during the phase of negotiations on the scope of application of the convention and its protocols (1995/1996-2001) were *connected* to the national policy objectives. The level of ambition of the intervention instruments corresponded with the level of ambition expressed in the national policy objectives. The Netherlands co-sponsored the US proposal prior to the Second Review Conference and tried to convince the EU to do the same. The interventions were *partly responsive* to international policy objectives, as they were aimed at adopting a specific position on the matter, rather than creating international consensus on the issue. The interventions were *timely*, as the Netherlands was involved in the consultations on the issue from the outset. The interventions had a *moderate scope* because they were limited to support and sponsorship. Both support and sponsorship are direct tools, but their action radius is moderate. Moreover, from the perspective of the State Party that is using these tools, they imply only an active level of involvement instead of a proactive role in the decision-making process.

5

# Negotiating on explosive remnants of war

## 5.1 Introduction

The issue of Explosive Remnants of War (ERW), or Unexploded Ordnance (UXO), was addressed by several NGOs during the 1990s. In 1994, for example, Human Rights Watch (HRW) expressed its opposition to the possible sale of cluster bombs (which are known to lead to ERW) by the US to Turkey. However, the issue became salient in the aftermath of NATO's air strikes (Allied Force) against Serbia in spring 1999. During the air campaign, cluster weapons had been used and had produced ERW. While the air strikes were still going on, HRW produced a report in which it condemned the use of cluster bombs by NATO. The report included the call for a worldwide moratorium.

### General course of events

This call was also made by the ICRC. In summer 2000, the ICRC sent out invitations to an expert meeting on ERW to be held in Nyon, Switzerland, on 18 and 19 September 2000. Subsequently, the meeting acted as an impetus for deliberations in the CCW on the issue. The deliberations consisted of five phases. First, in 1999 and 2000 the issue was defined as one to be addressed by the CCW. Secondly, in 2001 the issue was put on the agenda during the Second Review Conference. Thirdly, in 2002 consultations took place in the form of a Group of Governmental Experts. In 2003 the consultations were replaced by negotiations in the fourth phase, which resulted in the adoption of Protocol V in December 2003. In the final phase, from 2003 to 2006, efforts were made to implement Protocol V and to stimulate as many States Parties as possible to sign and ratify it.

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This chapter deals with the Dutch interventions on the issue from 2000 to 2006. The interventions are subdivided into the five phases identified above. The effectiveness of the Dutch interventions in the various phases will be assessed in relation to the evaluation criteria connectedness, responsiveness, timeliness and scope (see table 1.2).

## 5.2 Qualification of the ERW as a CCW issue

Table 5.1 Dutch policy on ERW September 2000 – December 2000: Qualification of the ERW as a CCW issue	
Objectives	The Dutch government's main aim was to get ERW on the agenda of the second CCW Review Conference. The Dutch objective during the ICRC expert meeting in Nyon was to assess the direction of the international debate on ERW. Although the Dutch government did not support the ICRC proposal for a moratorium on the use of cluster weapons, it did support international regulation in the CCW framework.
Results	The ERW issue was placed on the CCW agenda by a Dutch discussion document during the first PrepCom of the Second CCW Review Conference. It was agreed that ERW would be extensively discussed during the other two PrepComs and during the Review Conference.
Interventions	The Dutch government participated in the ICRC expert meeting in Nyon. The Dutch delegation organised an informal lunch in order to discuss ERW. The Dutch delegation delivered a discussion document on ERW during the first PrepCom.
Impediments	ICRC's initial focus on a possible moratorium on the use of cluster weapons in a densely populated territory. No clear definition of ERW. UK and US reservations on starting negotiations on a legally binding instrument concerning ERW.

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### Objectives

Dutch objectives with regard to the ERW issue were formulated in autumn 2000.<sup>201</sup> At first, the Dutch government was reluctant to support the ICRC proposal as a whole. At the beginning of September 2000 it was still considered to be premature to announce an official Dutch stance on a possible ERW Protocol to the CCW. The Dutch government merely regarded the ICRC meeting as an opportunity to assess which way the international debate was heading. However, when on 15 September 2000 the Committee of Foreign affairs of the Dutch Parliament demanded to know the Dutch position on the ICRC proposal, the Dutch government was forced to take a stance on the idea to prohibit cluster bombs in densely populated areas.<sup>202</sup>

The government responded on 17 November 2000. It informed Parliament that because of substantial military operational interests it did not support the ICRC proposal to ban

<sup>201</sup> The issue of cluster weapons causing ERW had been raised in Parliament; for example during the debate in March 1997 on the government budget for the year 1997 (TK, 25000 V, nr. 72), in April 1998 during the ratification process of amended Protocol II and Protocol IV (TK, 25925 (R1614), nr. 5:5) and in August 1999 in reaction to reports on civilian casualties resulting from NATO's use of cluster weapons during the air campaign against Serbia in 1999 (Parliamentary proceedings, 1998-1999, Annexe KVR10161). These questions, however, did not lead to concrete action on the issue of ERW.

<sup>202</sup> Buzaaoo0632. In addition, during the debate on the government budget for the year 2001, two parliamentary questions with respect to UXO in the Balkans were put forward (TK, 27400, V, nr. 8).

the use of cluster weapons. Neither did it support the ICRC proposal to hold responsible for clearance the parties that have caused ERW by using cluster munitions and other sub munitions. Instead, the Dutch government was in favour of responsibility being shared by the conflicting parties, on the grounds that this would be more effective.<sup>203</sup>

Despite these two reservations, the government expressed its support for international regulation, within the CCW framework, to meet the problems caused by unexploded explosives in conflict areas. The basic principle for further regulation would be the prohibition to subject civilians and civil objects unnecessarily to danger. That presupposed the legal framework would be modified concerning the means by which military targets may be attacked. The government assumed that such a framework could include the following elements:

- 1) a specific stipulation, in a future protocol, emphasising the application of the principles of discriminate use and proportionality for the deployment of cluster weapons;
- 2) measures to combat the coming into existence of UXO and to decrease the danger of unexploded explosives to civilians after the ending of a conflict. The latter could perhaps be achieved by creating a stipulation that would call on the conflicting parties to clear the UXO (this would only be possible if the conflicting party controls the territory concerned);
- 3) the provision of information about areas where cluster weapons and other munitions have been used, as well as about the type of munitions that have been used. The timing of providing this information should depend among other things on military operational interests; and
- 4) technical requirements for cluster weapons; for example, self-destruction devices could be installed. These requirements would only apply to cluster weapons produced in the future; it would not be achievable to modify existing stocks of cluster weapons.

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After preparing its national position on ERW, the Dutch government started lobbying to get ERW on the agenda of the CCW Review Conference in December 2001. This was its principal aim at that point in time, since it was too early to start lobbying for support for its national position on ERW.

## Results

The Dutch government succeeded in getting ERW on the agenda of the first PrepCom of the Second CCW Review Conference, held in December 2000. The Dutch delegation

<sup>203</sup> This position was made explicit in phase 2 of the process, as part of a response to parliamentary questions (TK, 27400, V and 27400, X, nr. 53). During the ICRC expert meeting in Nyon, the Dutch government seemed to have a different opinion, since during its proceedings its delegate remarked that the 'further strengthening of the clearing principle is interesting' (file 673408, 3 October 2000).

had prepared a discussion document on ERW for consideration by the delegates. During the PrepCom it was agreed that ERW would be discussed extensively during the next PrepComs and the Review Conference itself.<sup>204</sup>

### Interventions

The ICRC initiative gave impetus to the Dutch efforts relating to the CCW agenda. In this regard, three concrete Dutch interventions in the policy-making process can be distinguished. Two interventions were executed by the Dutch delegation during the ICRC expert meeting in Nyon; the third was during the first PrepCom of the CCW Review Conference.

First, the following constructive remarks were made by the Netherlands during the regular sessions of the Nyon meeting:

- The objectives of a new Protocol probably do not require the formulation of new principles; existing principles from other instruments may be used.
- ERW does not serve a military purpose.
- It is worth considering bundling the different types of munitions into a single protocol based on the common effects of these types.
- It is also worth considering further strengthening of the obligation to clear ERW.
- Technical information should be made available to clearers as early as possible.
- Weapons are currently much more accurate: there is less likelihood of collateral damage. But cluster weapons have a long range. The use of this weapon will always involve a problem.
- Cluster weapons are the weapon of choice; as long as the principle of proportionality is respected there is no problem in using these weapons.
- It is desirable to prescribe self-destruction mechanisms in cluster bombs.
- A prohibition (moratorium) of cluster weapons does not seem attainable.

Secondly, the Dutch delegation invited the so-called 'like-minded countries' (Sweden, Switzerland, Austria, New Zealand, Norway, and – as host of the conference – the ICRC) to an informal lunch, in order to take the results of the ICRC meeting a step further. Within the group, consensus was reached that the negotiations could be completed within two years and result in a CCW protocol on ERW that would ideally be concluded during a special Review Conference in 2003. It was noted, however, that success would be achieved only if the process were effectively coordinated.

<sup>204</sup> That success is partly attributable to the fact that the issue was reframed: from focusing on a possible, and for many countries unacceptable, moratorium on cluster weapons, to focussing on the effects of ERW for the civilian population. The Netherlands was one of the CCW States Parties that had been instrumental in the reframing, because of its opposition to a moratorium (other opposed countries were, among others: France, Germany, Austria and Spain (file 720865, 22 February 2001). It also helped that based on the feedback received during the Nyon expert meeting on 18 and 19 September 2000, the ICRC decided to drop its proposal for a moratorium on cluster weapons (TK, 27400, V and X, nr. 53).

Thirdly, as noted above, the delegation submitted a discussion paper on ERW to the first PrepCom of the Second Review Conference. The paper was sponsored by a considerable number of other States Parties to the CCW and met with widespread agreement during the discussions.<sup>205</sup> The Netherlands stated that ERW should be considered as an important issue and that the appropriate forum to tackle it was the CCW. The Dutch delegation proposed reserving some time for discussion on ERW during the PrepCom process. The objective of these discussions would be to provide the Review Conference in December 2001 with a general conceptual (political, technical, military and legal) approach on the scope of ERW. The Review Conference would have to decide whether to proceed and – if so – how.

### Impediments

A clear impediment to putting ERW on the CCW agenda was the initial focus of the ICRC on a possible moratorium on the use of cluster weapons in a densely populated territory. This was a complicating factor for many CCW States Parties, including the Netherlands, because cluster weapons were widely regarded as having military operational value.

The second impediment in this phase consisted of some reservations expressed by States Parties of the CCW. The US and the UK pointed out that it was premature to start negotiations on a legal binding instrument and emphasised the necessity of universalising the CCW and its protocols. They agreed that the CCW would be the right forum to address ERW, but emphasised that ERW should first be defined. Both countries stressed the necessity of more research on ERW. Neither country found it realistic to assume that it would be possible to conclude a protocol in December 2001. The US argued for submitting a draft protocol during the CCW Review Conference in 2006. The US also wished to discuss the issue of ERW in the context of NATO. Other countries that proved to be somewhat reluctant were China and Argentina.

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Both impediments were overcome. First, the idea of a moratorium on cluster weapons was dropped by the ICRC, and secondly, the reservations of some States Parties became groundless because their concerns could be addressed during the discussions in the PrepComs of the Second Review Conference.

<sup>205</sup> The Dutch discussion document was sponsored by the member states of the EU, Canada, Hungary, Norway, the US, Argentina, Bulgaria, Cambodia, Israel, New Zealand, Peru, Slovakia and Switzerland (27400, V and X, nr. 53, file 720865, 14 December 2000 and file 717619, 19 February 2001).

### 5.3 Putting ERW on the CCW agenda

Table 5.2 Dutch policy on ERW December 2000 – December 2001: Putting ERW on the CCW agenda	
Objectives	The principal objective of the Dutch government was to achieve international consensus on a broadly formulated negotiation mandate, by which a GGE would be formed to look at all relevant aspects of ERW and to make recommendations for a legal instrument. The mandate should include measures on preventing ERW from coming into existence and measures on the clearance of existing ERW. A related objective was to consolidate the role of the Netherlands as a front runner on the ERW issue.
Results	During the Review Conference it was decided to establish an open-ended GGE to discuss (instead of negotiate) 'ways and means to address the issue of ERW'. The Netherlands became Friend of the Chair (FoC) in April 2001 and was appointed as coordinator of the GGE in December 2001.
Interventions	From 28 to 30 March, the Netherlands hosted an informal expert meeting on ERW. As FoC, the Netherlands organised three meetings and drafted a mandate for negotiations on ERW.
Impediments	Many countries were still in the initial phase of thinking about ERW and not 'ready' for a negotiation mandate. There was a threat that the ERW issue would be linked to progress on the AVM issue. The military operational value of cluster weapons made it difficult to devise operational guidelines for diminishing the creation of ERW.

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#### Objectives

During the first PrepCom of the Second Review Conference the Dutch government had succeeded in guaranteeing that the issue of ERW would be put on the agenda for the second PrepCom (2-6 April 2001). The overall objective for 2001 was to proceed towards international consensus on a broadly formulated negotiation mandate, which entailed appointing a GGE to look at all relevant aspects of ERW and to make recommendations for a legal instrument. The government hoped that in December 2001 consensus would be reached on such a negotiation mandate.

With regard to the contents of the instrument, the Dutch government recognised two categories of measures to be taken: 1) measures on the prevention of the development of ERW and 2) measures on the clearance of existing ERW. As far as the Netherlands was concerned, a future protocol could comprise stipulations on specific munitions as well as general regulations addressing the problem of ERW.<sup>206</sup> To address these measures, the Dutch government preferred the creation of a legally binding instrument within the context of the CCW, which would consist of two parts. The first part would be general, not weapons-specific and would deal with the applicability of existing principles of international humanitarian law on the creation of ERW. More particularly,

<sup>206</sup> TK, 28000, V, nr. 37.



it could create a new criterion for assessing the operational necessity of using certain explosives against the humanitarian effects of these explosives. The focus could be on the long-term humanitarian effects of certain types of explosives. The second part of the instrument could contain weapons-specific considerations: for example, self-destruct devices for cluster weapons.<sup>207</sup>

Related to the overall objective to reach a negotiation mandate for devising a legally binding instrument on ERW was the Dutch objective to remain a front runner in the ERW process. The Netherlands' substantial role in the agenda-setting process led to increasing international recognition that it was a lead nation with respect to the ERW. When asked by a Member of Parliament whether it would be prepared to accept a leading role, the Dutch government responded that if the Second Review Conference were to adopt a negotiation mandate, it would make an effort to play a leading role that was consistent with the tradition of the Netherlands on humanitarian issues.<sup>208</sup> With respect to the content of the discussion, the Netherlands repeatedly tried to widen the scope of ERW. During the spring of 2001, for example, it attempted to include the issue of depleted uranium in the discussion.

## Results

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The ERW issue was actually discussed during the Second Review Conference. A first concrete proposal for an ERW mandate was discussed during the third PrepCom in September 2001. During the Review Conference (11-21 December 2001) a mandate was reached for a GGE on ERW, but instead of a negotiation mandate it became discussion mandate. It was decided that the GGE would be open-ended and that it would have a coordinator and discuss 'ways and means to address the issue of ERW'.

The Netherlands consolidated its role as front runner. In January 2001, the government had expressed to Parliament that it would dedicate itself to playing a leading role, even after a mandate had been adopted.<sup>209</sup> Only two months later, in March 2001, the Netherlands was asked by the Chair of the Review Conference (Australia) whether it would be willing to become Friend of the Chair (FoC) and as such to take the lead on the ERW issue. Dutch willingness to do so was communicated at the beginning of April. In December 2001, when the GGE was set up, the Netherlands was appointed as its coordinator.

The objective of remaining a front runner was also stimulated by the Dutch Parliament which proved to be very interested in the topic of ERW. In January 2001, no less than thirty six parliamentary questions on ERW were addressed to the government. Further, individual Members of Parliament occasionally tried to widen the scope of the ERW

<sup>207</sup> These objectives were expressed during a meeting of some States Parties in Charlottesville (US) from 20 to 21 February 2001 (file 71 7619, 28 February 2001).

<sup>208</sup> TK, 27400, V and X, nr. 53.

<sup>209</sup> TK, 27400, V and X, nr. 53.

process. In February 2001, for example, it was proposed to include the issue of depleted uranium in the ERW debate. And in the same month, the government was asked to discuss a moratorium on cluster weapons in the NATO Council.<sup>210</sup> Later in the year, questions were raised about the use of cluster bombs in Afghanistan by US forces. There proved to be no support for including the issue of depleted uranium in the ERW discussion. The British, French, American and Australian delegations and the ICRC reacted particularly negative to the Dutch proposal during the second PrepCom of the CCW.

### Interventions

The strategy chosen by the Dutch government to achieve the overall objective of a negotiation mandate on ERW was to increase knowledge on the issue.<sup>211</sup> To that end, the Netherlands organised two informal meetings of legal, military and diplomatic experts from a large number of CCW States Parties in The Hague in March 2001, in order to exchange ideas and reach a better understanding of the nature, source and scope of ERW.

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The first meeting took place on 28 March 2001, and was organised for the ‘like-minded countries’ (South Africa, New Zealand, Australia, Norway, Switzerland, Austria, Peru, Australia and Canada). During this meeting the Netherlands carefully assessed whether there would be support for a Dutch resolution on ERW in the UN General Assembly meeting. Although the Dutch government emphasised that it had not yet elaborated a concrete proposal, it argued that such a resolution would open up the possibility of creating measures on ERW outside the framework of CCW, in the event that a fifth CCW protocol were to fail. The reactions in the group were reserved and some countries expressed concern about the risk of politicising the issue.

The second informal meeting in The Hague subsequently took place on 29 and 30 March 2001 and was open to a larger number of countries (the like-minded group, Italy, France, UK, US, Denmark, Germany, China, Russia, Mexico, and India). In preparation for this meeting, the Dutch government assessed the national positions of the governments which were sending representatives to the meeting. Most reports on the positions conclude that many countries were still in the initial phase of thinking about ERW. However, it was clear that some were considered to be difficult countries. Nonetheless, the result of the meeting was a promise of support for adopting a negotiating mandate on ERW during the Second Review Conference. During the meeting all countries turned out to be particularly constructive.

The Chairman’s summary of the meeting contained general ideas that had been expressed during the discussions (although they were not national positions, because of the expert character of the meeting). It was emphasised that ERW is a humanitarian

<sup>210</sup> TK, 27400, V, nr. 52. The motion was not adopted.

<sup>211</sup> TK, 28000, V, nr. 37.

and a military problem. It was determined that there exist ERW in a large variety. With respect to the use of military weapons that cause ERW, it was emphasised that cluster weapons have an important military operational function. The following questions were posed with respect to the military use of weapons that cause ERW:

- With respect to humanitarian concerns; is it desirable to create rules on cluster weapons within the context of the CCW?
- With respect to scope: should only cluster weapons be included or other munitions too? Should rules on cluster weapons be applicable solely to international conflicts, or also to internal conflicts?
- With respect to definitions: should the categories be broad (fused munitions or sub-munitions for example) or effect-based (for example munitions capable of detonating on contact with a person or vehicle)? How to deal with munitions that have already been tackled in CCW?
- With respect to the legal aspects of ERW, it was stated that much had already been provided for in international humanitarian law (IHL). More reflection was needed on taking precautionary measures in operational military planning, in order to limit the humanitarian consequences of ERW. Should practical guidelines be established for field commanders?

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Suggested practical measures included legal ones (in what way to assess the risks and degree of collateral damage by weapons that result in ERW?), technical ones (should technical requirements be adopted and if so, what about older munitions?), and organisational ones (provision of information with respect to the location of ERW/ practical measures feasible for clearance?).

Participants at the meeting agreed that a legal instrument would be an option, but also mentioned the fact that some measures, such as 'best practices' in preventing, awareness-raising and clearance, could already be implemented by states in a position to do so. It was felt that in order to make substantial progress within the CCW, a mandate would be necessary. In order to be prepared in December, the participants felt it necessary to have future consultations, including expert level meetings. It was agreed that the second PrepCom in April would be a good opportunity to discuss that idea.

The Dutch government considered the meeting to be a great success.<sup>212</sup> Thus, in its capacity as FoC it continued on the same course, organising another three informal meetings between April and December 2001. The first FoC meeting was in Geneva on 4 May 2001. Its main purpose was to provide participants with an opportunity to

<sup>212</sup> It was claimed that taking the initiative for such a workshop had helped other countries to see the Netherlands as a front runner on ERW (file 617619, 12 April 2001). During the second PrepCom, many papers written on behalf of the workshop in The Hague were presented again. Participating countries expressed satisfaction with the workshop, because it had deepened understanding of the ERW issue (Geneva, file 8171, 13 April 2001).

exchange information with the FoC. With respect to the strategy, the FoC wrote that it would be wise to focus both on the effects of ERW (as desired by Canada, Australia and New Zealand) and on weapons-specific categories (as desired by non-aligned countries).

In preparation for the second FoC meeting on 5 July 2001, the FoC collected several draft mandates (one from France, supported by Germany, US, UK and Italy and one from Sweden) for an GGE on ERW. It also added its own draft mandate. After discussing and modifying the mandates, the following proposal was prepared:

‘The GGE shall consider all appropriate measures and proposals on the issue of ERW in all its aspects with a view to strengthening 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, in particular:

- 1) which factors and which types of munitions are most relevant to causing civilian casualties after a conflict, in particular sub-munitions;
- 2) provisions for relevant types of munitions on technical improvements and other provisions which would reduce the risk of such munitions from becoming ERW;
- 3) whether existing IHL poses sufficient operational restrictions on the use of munitions to minimise post-conflict risks of ERW for the civilian population, and, if appropriate, elaborate those restrictions further;
- 4) provisions or mechanisms on the rapid provision of information on the use of munitions and on their technical specifications, relevant to facilitating early and safe clearance of ERW;
- 5) provisions on responsibility for clearance of ERW;
- 6) provisions on warning for the civilian population in or close to ERW affected areas;
- 7) provisions on assistance and cooperation in ERW affected areas, i.e. taking into account the example of article 11 of Amended Protocol II;
- 8) examine whether a legally-binding instrument on ERW is an appropriate way to address the issue;
- 9) if so, additional provisions that may be relevant in the context of such an instrument.

Given the urgency of addressing the grave humanitarian concerns raised by ERW, the Group of Governmental Experts shall undertake its work in an expedient manner so as to prepare for an early decision by States Parties on whether to proceed with negotiating a legally-binding instrument on ERW.’

The three FoC-meetings proved to be useful for preparing a constructive discussion during the third PrepCom, which was held from 24 to 28 September 2001. The proposal for a GGE mandate was discussed, but it proved impossible to agree on a negotiation mandate. Instead, during the PrepCom it was agreed that a discussion mandate should

be drafted during the Review Conference. The discussion mandate should be open-ended and should not exclude any topic in advance. For a negotiation mandate, a separate decision of the States would be required, because the discussion mandate would merely result in recommendations.

After the third PrepCom, the FoC worked on a discussion mandate. The mandate was constantly improved on the basis of bilateral consultations between September and December. The FoC's final proposal was adopted during the Review Conference (see box 5.1). It was agreed that the GGE would be allocated five weeks for discussion throughout the year (one in May, two in July and two in December). The Netherlands was appointed as coordinator of the process.

**Box 5.1** *The ERW discussion mandate as submitted by the FoC during the 2001 Review Conference*

The Review Conference of the States Parties to 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 decides to establish an open-ended Group of Governmental Experts to discuss ways and means to address the issue of Explosive Remnants of War (ERW). In this context, and taking into account the example of Amended Protocol II or of other existing instruments as appropriate, the Group shall consider all factors, appropriate measures and proposals, in particular:

- factors and types of munitions that could cause humanitarian problems after a conflict;
- technical improvements and other measures for relevant types of munitions, including sub-munitions, which could reduce the risks of such munitions from becoming ERW;
- the adequacy of existing International Humanitarian Law in minimising post-conflict risks of ERW, both to civilians and to the military;
- warning to the civilian population in or close to ERW-affected areas, clearance of ERW, the rapid provision of information to facilitate early and safe clearance of ERW, assistance and cooperation, and associated issues and responsibilities;

The Group of Governmental Experts shall undertake its work in an efficient manner so as to submit its recommendations at an early date for consideration by the States Parties, including whether to proceed with negotiating a legally-binding instrument or instruments on ERW and/or other approaches.

Source: Report of the Second Review Conference of the CCW.

## Impediments

There was broad support for a negotiating mandate on ERW within the context of CCW, but in December 2001 it was considered to be too early to establish such a mandate.

Many countries were still in the initial phase of thinking about ERW and not ready for a negotiation mandate.

Another impediment was the possibility that the US would couple a decision on ERW to progress achieved on the AVM issue. As elaborated upon in chapter 4, the AVM issue was discussed analogous to the process of creating an ERW instrument. During a meeting of a few NATO members in Charlottesville, USA, on 28 February 2001, the Netherlands proposed including the AVM issue in the ERW discussion if it would prove to be impossible to get consensus on the AVMs in the context of Amended Protocol II of the CCW. On 23 May 2001, however, the Dutch delegation to the Conference on Disarmament (CD) advised the Dutch government not to include the AVM issue in the ERW discussion. At the same time, the CD delegation acknowledged the theoretical possibility that ERW and AVMs would become coupled anyway. Therefore, there was much communication between the FoC on ERW and the FoC on AVMs (Bulgaria). The FoC on ERW urged the US several times to be careful not to undermine the common willingness of CCW States Parties to discuss ERW as a result of their priority objective of dealing with the AVM issue.

108 The third impediment concerned military operational measures that could possibly be taken during a conflict phase. During the same Charlottesville meeting of NATO members, the Dutch delegation suggested that the operational necessity of using certain munitions should be weighed against the long-term humanitarian effects of these munitions. Some others argued, though, that a field commander could not be expected to consider the long-term humanitarian effects of the munitions he uses. However, on 23 May 2001, the Dutch government thought that there was sufficient support to include a criterion in the protocol that would oblige field commanders to take into account the possible long-term effects of using certain weapons. The issue of operational regulations was discussed again during the third PrepCom, when both the US and the UK made clear that they did not support such additional measures. However, operational measures were still discussed subsequently – during the later second meeting of the GGE, for instance.

Ultimately, three impediments during the negotiations in December 2001 made the coordinator change the GGE's discussion mandate. In the preamble to the mandate, the reference to Protocol II (and indirectly to the Ottawa Convention by referring to 'other existing instruments as appropriate') was deleted. Secondly, 'assistance and cooperation' was separated from warning, clearance and the provision of information, because according to several non-aligned countries this would give more focus to the issue. Thirdly, Cuba insisted that the last paragraph contain a provision explicitly determining that the recommendations to the States Parties should be achieved by consensus.

## 5.4 Towards a negotiating mandate

<b>Table 5.3</b> Dutch policies on ERW December 2001 – December 2002: Towards a negotiating mandate	
Objectives	The main objective of the Dutch government was to reach consensus on a negotiation mandate on ERW during the Meeting of States Parties in December 2002. In this respect, the focus remained on an instrument containing preventive measures and post-conflict measures. Having firmly established its international pioneer role, the Dutch government took a firm stand to continue this role as coordinator of the GGE.
Results	In December 2002 the States Parties decided to start negotiations on an international legal instrument regarding ERW. The mandate allowed negotiations to start on post-conflict measures and generic preventive measures only. Weapons-specific preventive measures could merely be discussed.
Interventions	As coordinator of the GGE, the Netherlands organised three meetings. It also organised an informal workshop in Garderen to increase knowledge about the different aspects of ERW. Also, several bilateral consultations were held with countries that had reservations about adopting a negotiation mandate on ERW. Within the EU, the Netherlands lobbied for a common position.
Impediments	There proved to be no support for including weapons-specific measures in the negotiation mandate. The main objections were the high costs of modifying weapons. Next to weapons-specific measures, the other impediments in the process towards a negotiations mandate proved to be issues of victim assistance, international humanitarian law, the nature of the instrument (should it be legally or politically binding?) and the time frame.

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### Objectives

After achieving a discussion mandate during the CCW Review Conference in December 2001, the main objective of the Dutch government for the year 2002 was to achieve consensus on a negotiation mandate. That was the principal aim, because the viewpoints of the States Parties had diverged considerably during the Review Conference. The government still recognised two main categories in the discussion: the adoption of measures in order to prevent ERW being created, and the adoption of measures to avert casualties once there are ERW.<sup>213</sup> Having firmly established its international pioneer role in the development of a legal instrument on the subject of ERW, the Netherlands now stood firm on continuing this role.

### Results

In December 2002 a negotiation mandate on ‘an international legal instrument on post-conflict measures to reduce the human sufferings caused by ERW’ was achieved.

<sup>213</sup> TK, 28000, V, nr. 50.

The mandate stipulated that post-conflict measures are to be founded on a broad definition encompassing most types of explosive munitions, with the exception of mines.<sup>214</sup> The mandate allowed negotiations to start for post-conflict measures only; generic preventive measures would be explored. As a consequence, the Dutch objective that the mandate would also include weapons-specific measures that would prevent ERW from coming into existence was not achieved. Weapons-specific preventive measures were merely to be discussed, not to be negotiated.

### Interventions

As coordinator, the Netherlands organised three GGE meetings. Before the first GGE meeting took place (21-24 May 2002), the Netherlands organised a workshop for a limited number of countries (mostly like-minded) and NGOs in Garderen, the Netherlands, from 7 to 9 February 2002. The aim was to work out a strategy for the discussion on ERW in the first GGE. In preparation for this informal meeting, the Dutch government was cautious not to make the impression that it would surround itself with a core group that would decide everything amongst themselves. That is why it neither elaborated on the draft agenda of the GGE, nor officially mentioned the occasion during the CODUN of 29 January 2002.

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During the Garderen workshop a substantial and operational strategy was elaborated upon. The objective was to achieve agreement on a negotiation mandate during the Meeting of States Parties to the CCW in December 2002. The five elements of the GGE mandate were extensively discussed. With respect to the operational aspects, it was decided that nine discussion papers were to be drafted for the first meeting of the GGE. The papers would be based on the five discussion topics of the mandate and they were divided among several countries present in Garderen. The objective would be to increase knowledge on the different topics.

In the end, twelve discussion papers were written by countries and NGOs and presented during the first meeting of the GGE (21-24 May).

The papers were submitted very late and could therefore not be discussed in depth. They were considered to be a basis for further reflection on the topic in the capitals concerned and for the identification of the crucial issues.

In Garderen it had also been decided to launch bilateral consultations. China would be addressed by the Netherlands; Pakistan by the UK; Cuba by Canada; the US by the Netherlands and the NGO community; and Russia would be approached by Canada and the Netherlands. During the meeting all proved to be very constructive. Not all of them expressed themselves warmly about technical solutions such as self-destruction devices, because of the related costs. But nonetheless all were interested in generic measures that would apply to all ERW after a conflict (i.e. clearance, provision of

<sup>214</sup> TK, 28600, V, nr. 63.



information, assistance). The two other ideas put forward at Garderen were enhancing the reliability of the munitions and an investigation of the necessity of an addition to existing IHL with respect to the use of munitions, in order to prevent ERW. On the latter point, the US and Canada were reluctant. The coordinator processed the three elements in a document, with the purpose of foregrounding the most crucial issues for the next GGE.

Thanks to the discussion papers of May and additional papers, the delegates of the States Parties were better prepared to the second GGE meeting than to the first meeting. It became clear that consensus was likely on starting negotiations in 2003 on a new protocol (or several protocols) on ERW. With respect to the substance of the instrument, there were still many different views – i.e. the meeting showed agreement on only a minimal package of mainly post-conflict measures of a general nature, such as clearance. The support for preventive measures was only for measures of a general nature. And the question of whether and how munitions-specific measures should be worked out remained unanswered.

Based on the above, the coordinator prepared a wrap-up paper which noted:

- 1) the widespread support for post-conflict remedial measures;
- 2) the moderate support for a voluntary approach regarding preventive generic measures;
- 3) the unclear situation with respect to preventive measures dealing with specific munitions. Retrofitting of munitions in existing stocks was not considered to be a feasible option;
- 4) the recognition that there is little or no existing IHL dealing specifically with ERW. The general feeling that CCW is not appropriate framework for developing IHL but that relevant existing principles could be recalled. The possibility of including certain additional restrictions on use of specific types of munitions in the CCW framework;
- 5) the six areas identified by the chairman of military experts in which further work on munitions would appear to be appropriate: threat assessments; fuses; standards; technical improvements; stockpile management; technical cooperation and assistance with the foregoing aspects;
- 6) the support for applying measures to conflict of non-international character;
- 7) the suggestion to continue existing practices for providing information;
- 8) the coordinator will prepare a paper for the GGE in December.

In September 2001, the coordinator sent out a 'note from the coordinator' to the GGE in which he outlined his vision of the way forward with ERW. He wrote: 'After consultations with a number of States Parties, it is my feeling that at our December meeting we might seek to reach agreement on a proposal along the following lines:

- 1) The GGE recommends to the States Parties that a legally binding instrument be negotiated on post-conflict remedial measures of a generic nature, which would reduce the risk of ERW. These measures would be based on a broad definition covering most types of ammunition, with the exception of mines. Abandoned munitions would have to be included. In these negotiations questions need to be considered regarding, inter alia, responsibility for clearance, past ERW, assistance & cooperation and a framework for regular consultations of High Contracting Parties. The scope of this instrument would include conflicts of a non-international nature.
- 2) The GGE further recommends also addressing in these negotiations preventive generic measures for improving the reliability of munitions that fall within the agreed broad definition, including voluntary best practices concerning their manufacturing, quality control, handling and storage. Exchange of information, assistance and cooperation would be important elements of such best practices.
- 3) Separate from the negotiations under 1), interested States Parties will continue further study, on an open-ended basis, on possible preventive measures aimed at improving the design of certain specific types of ammunition, in particular sub-munitions, with a view to minimising their risk of becoming ERW. Exchange of information, assistance and cooperation would be part of this work.
- 4) In the context of the activities described above, meetings of military experts can be conducted to provide advice in support of these activities.
- 5) It is recommended to the States Parties that 5 weeks of negotiating meetings will be reserved for the year 2003. At each of these 5 meetings approximately one day could be dedicated to the study described under 2) and half a day to a meeting of military experts.'

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The note invoked many reactions from the states involved in the process. Thanks to the early distribution of the draft mandate, and the subsequent reaction of the parties involved, no surprises occurred during the third GGE from 2 to 10 December 2002.

In addition to this, the Netherlands, together with Austria, pushed for a common EU position on ERW. During the CODUN meeting of 26 February 2002, the Netherlands suggested that the EU members' CD delegations in Geneva should start work on an internal EU paper on ERW, which would present the EU's long-term vision. Besides, the Dutch delegation proposed developing a short-term EU paper to be presented in May 2002. The latter paper was actually presented during the first GGE in May 2002. In it, the EU recognised the serious problem of ERW and opted for a legally binding instrument.<sup>215</sup>

### Impediments

The most salient impediment to reaching consensus on a negotiation mandate in December 2002 was the issue of weapons-specific preventive measures. Within the CCW, the Non-Aligned Movement, China, Russia and the US were not in favour of such

<sup>215</sup> CCW/GGE/I/WP.7.

measures, for financial reasons. China and Russia, for example, wrote in their joint paper for the GGE II: ‘When discussing these measures, the divergence in economic and technological capacity of different countries should be fully taken into consideration. [...] For the above-mentioned reasons, for a number of countries, it makes little sense to equip munitions with the SD (Self Destruction Devices) and SDA (Self Deactivation Devices), including munitions in stockpile.’<sup>216</sup> The EU and Switzerland, however, proved to support such measures. Although consultations on weapons-specific measures were not included in the negotiation mandate, consensus existed on exploring generic preventive measures.

Next to weapons-specific preventive measures, another topic that threatened consensus was assistance to victims. It proved to be a sensitive issue for the US, which feared legally binding obligations. Other countries – South Africa and Mexico for example – emphasised the importance of victim assistance. The issue seemed to stall negotiations during the last day of the Meeting of States Parties. In order to resolve the deadlock, the coordinator decided not to explicitly mention victim assistance in the mandate, but instead to refer to it in general terms under the heading of ‘assistance and cooperation’.

A third contentious topic was the relationship between ERW and IHL. During the first GGE in May, the ICRC, Norway, New Zealand and China proposed investigating whether existing IHL should be expanded with respect to the use of munitions, in order to diminish the risk of the creation of ERW. Among the countries reluctant to include this topic – which would imply operational restrictions to field commanders – in the negotiation mandate, were the US and Canada.<sup>217</sup> In December 2002, the US made clear that it would not object to mentioning IHL in a preamble, but that it would be difficult to do so within the context of the CCW, because none of the other protocols had such a preamble. The inclusion of IHL in the mandate was also problematic for Pakistan and Russia. In the end, no reference to the relationship between ERW and IHL was included in the negotiation mandate.

Fourthly, the nature of the instrument hindered complete agreement. The US objected to any reference in the mandate to negotiations on a protocol. To accommodate the US, it was decided to refer to an ‘instrument’, instead of ‘protocol’ or ‘legally binding instrument’.

A fifth impediment was the time frame. After the second GGE, it became clear that the only country not in support of starting negotiations in 2003 was Russia. In their paper for the first GGE (see below), they had already stated that ‘given the complexity and the multidimensional nature of the problem of explosive remnants of war, it is essential

<sup>216</sup> CCW/GGE/II/WP.20.

<sup>217</sup> During the second GGE it proved that most countries were of the opinion that the CCW would not be the right context for new IHR (file 76394, 14 August 2002).

that it be addressed in a stage-by-stage manner.’ Apparently, concluding a negotiating mandate in 2002 was considered to be too soon.

All these impediments were identified by the coordinator at an early stage. An important element of the strategy to create consensus on a negotiation instrument was to hold bilateral consultations, as agreed in Garderen in February 2002. To that end, a Dutch delegation visited Washington in March 2002, in order to get information on the US position. Washington was again visited by the coordinator on 6 April. During that visit the US government voiced its concerns about the achievability of a negotiation mandate by the end of the year. It saw more chances for a ‘best practices’ approach. However, the US also expressed that it was not against the creation of a legally binding instrument as such. The US was now less explicit on the linkage between ERW and AVM.

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Also with the objective of ascertaining the national position, a Dutch delegation visited Moscow in April 2002. The coordinator invited Russia to write a discussion paper for the first GGE. The paper should discuss the costs involved of possible technical improvements of munitions. The Russians responded positively to the request and wrote a paper in which they indeed elaborated on the financial consequences of technical improvements. In reaction to the Russian reservations about concluding a negotiation mandate in December 2002 (see above), the coordinator again held bilateral consultations with Russia in August 2002. The coordinator communicated to Russia that almost all States Parties were in favour of starting negotiations in 2003. In the coordinator’s letter of September 2002, he even made clear that by then Russia was the only country that was against adopting a negotiation mandate in December. A third round of bilateral consultations with Russia was organised in reaction to Russia’s proposal to adopt the principle that parties to a conflict that have caused the creation of ERW are responsible for its clearance, whether or not the ERW-contaminated area lies within the jurisdiction of the parties concerned. The logic behind the Russian proposal was that such a responsibility would encourage conflicting parties to take all necessary steps to minimise the quantity of ERW. Thus, user responsibility would *de facto* combine preventive and post-conflict measures.<sup>218</sup> By taking this position, Russia implicitly opposed the approach of the coordinator, who in the discussions separated preventive measures from post-conflict measures (the so-called cluster approach). In September 2001, the coordinator sent a letter to Moscow in which he argued in favour of his cluster approach, but Russia maintained its position on this issue until the third GGE in December. However, given its isolated position on the issue, Russia decided not to block the adoption of a negotiation mandate.

## 5.5 Towards Protocol V

Table 5.4 Dutch policies on ERW December 2002 – November 2003: Towards a Protocol	
Objectives	The main objective of the government was to reach consensus on a Fifth Protocol to the CCW Treaty, dealing with ERW. With respect to the contents of the instrument, the most important objective was to adopt a protocol in which civilians would be effectively protected against the risks and effects of ERW.
Results	On 28 November 2003, an agreement on a Protocol V to the CCW Treaty was achieved. Weapons-specific preventive measures and measures to be taken during a conflict were not included. During the Meeting of States Parties it was decided that the issues of weapons-specific preventive measures and the relationship between IHL and ERW would be the subject of future discussion. To that end, a working group on ERW was established.
Interventions	As coordinator of the GGE, the Netherlands continued its pioneer role and organised three GGE meetings prior to the negotiations. The Dutch government also organised an informal meeting in Garderen.
Impediments	The most important problem areas that hindered general agreement on a protocol were: definitions, responsibility for clearance of new ERW, responsibility for clearance of existing ERW, the inclusion of generic preventive measures, the status of the instrument, cooperation and weapons-specific preventive measures.

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### Objectives

The principal objectives of the Dutch government after December 2002 were to achieve consensus on a legally binding instrument in December 2003, preferably a protocol, and to continue its leading role on the ERW issue.<sup>219</sup> Next to these general objectives, the Dutch government formulated more specific ones with respect to the contents of the instrument:

- A legally binding instrument should be created (the obvious instrument being a Protocol under the CCW).
- The Protocol should also apply to conflicts within states.
- The successful conclusion of the negotiations on ERW should be the priority of the GGE.
- The negotiations should preferably be concluded during the meeting of States Parties in November 2003.
- The most important objective of the ERW Protocol should be the protection of the civil population against the effects and risks created by ERW.

<sup>219</sup> TK, 28600, V, nr. 63.

- Provisions for existing ERW should be included, because of the need to take into account that existing ERW in several countries around the world constitute a huge humanitarian problem for the daily lives of people.
- There should be a strong clearance obligation in the Protocol, including a time frame. Responsibility for clearance should also be determined. Based on Article 10 of Amended Protocol II, a realistic stipulation should be included to deal with the responsibility to clear ERW that come into existence after the Protocol has entered into force.
- Far-reaching provisions for protecting the population against ERW should be included.
- Generic preventive measures should be part of the Protocol.
- Provisions on victim assistance should also be included.
- Humanitarian activities (clearance, raising ERW-awareness, etc.) should not start only after the conflict has ended, but ‘without delay after the cessation of active hostilities’. Legally speaking, it should be realised that it is preferable to speak of ‘undue delay’, because otherwise in case of retardation, parties can be held liable. However, for obvious political reasons, the Netherlands refrains from suggesting such a change since this substitution could be considered as scaling down the text of Amended Protocol II.
- The Protocol should contain provisions on mandatory annual reports and an annual meeting. It should be attempted to cluster the several relevant meetings (for example in the context of CCW) as much as possible, in order to prevent proliferation of meetings.
- The Protocol should pay attention to compliance.
- The Protocol should contain far-reaching provisions on cooperation and assistance, taking into account the export provisions on strategic goods and other regulations.

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The government realised that it would be impossible to achieve consensus on all the points mentioned. Even achieving consensus within the EU would be difficult. Further, the negotiations would only be about post-conflict measures, since weapons-specific preventive measures and measures that could be taken during conflicts had been left out of the negotiation mandate. In that respect, the ERW protocol would differ from the other CCW protocols. Nonetheless, Amended Protocol II and the Ottawa Convention were important references for the ERW protocol. Whereas Ottawa provided the framework for Dutch policy on landmines, Amended Protocol II had its added value in including States Parties that are not members of the Ottawa Convention (such as the US, China, Russia, Pakistan and India).

## Results

During the Meeting of States Parties in December 2003, agreement was reached on a fifth protocol to the CCW treaty (see box 5.2). After the conference it was concluded that the objectives of the Netherlands had been achieved. Indeed, many elements the Dutch government had pursued since December 2002 were included in Protocol V. At the same time, the protocol did not go as far as the Dutch government had hoped.

The two major elements that were not included in the protocol were the issues of weapons-specific preventive measures and the relationship between IHL and ERW. During the Meeting of States Parties it was decided that these two issues would be the subject of future consultations by a working group of the GGE.

Next to weapons-specific measures and IHL, there were several minor objectives that were not achieved. First, the obligation of providing annual reports was not included in the protocol. As a compromise, it was agreed that the Meeting of States Parties could decide on the reporting. Secondly, the Dutch government would have preferred the stipulations on compliance to have been stronger.<sup>220</sup> The articles dealing with compliance were modelled on the compliance provisions in Amended Protocol II.

### Box 5.2 *Summary of Protocol V to the CCW Treaty*

Article 1: The Protocol is applicable to international and internal conflicts.  
Article 2: The states parties are obliged to minimise the risk and effects of ERW in post-conflict situations.  
Article 3: ERW on a certain territory fall under the responsibility of the party in control of the territory concerned.  
Article 4: Each party to the Protocol is obliged to retain information on the use of explosive ordnance, to facilitate (among others) the clearance of ERW.  
Article 5: The party in control of a territory is obliged to take all feasible precautions in order to protect the civilian population.  
Article 6: Humanitarian missions and organisations should be protected from the effects of ERW as much as possible  
Article 7: Each party has the right to seek assistance in dealing with problems caused by ERW.  
Article 8: Each party in a position to do so is obliged to give assistance with the objective to minimise the effects of ERW.  
Article 9: Each party is encouraged to take preventive generic measures aimed at minimising the occurrence of ERW.  
Article 10: The parties agree to consult and cooperate with each other  
Article 11: Each party is to require that its armed forces and relevant agencies and departments act in accordance with the Protocol.

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Source: CCW Annual Meeting of States Parties 2003, CCW/MSP/2002/3.

### Interventions

As coordinator of the GGE, the Netherlands was in a position to play a key role in bringing the negotiations to a favourable conclusion. Thus the coordinator immediately seized the opportunity to take control of the negotiation process. At the beginning of 2003, he distributed a framework document which was partly based on

220 TK, 29848 (R1775), nr. 3.

consultations with the ICRC. The coordinator emphasised that the document was an example of what a protocol might possibly look like, but was not in itself a draft treaty. This framework document was intended to function as a point of departure for discussions during the GGE IV in March 2003.

The framework document was discussed and modified during another informal meeting that was organised by the Netherlands in Garderen from 9 to 11 February 2003. Sixteen experts had been invited. The Dutch motive for holding the meeting was to devise a strategy for achieving its objective to create a protocol at the end of the year. The strategy for Garderen as developed by the Dutch government was as follows. It would be important to:

- prevent the US taking an inflexible negotiation position;
- prevent opposition from the Non-Aligned Movement;
- make sure that everything included in the ‘composite text’ could be traced back as originating in negotiations;
- devise a composite text as early as possible;
- be flexible as the chair of the meeting.

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Some contentious issues were discussed in Garderen, such as the responsibility for clearance, the provision of information to actors involved in clearance, the protection of civilians, definitions, existing ERW, and whether a mission statement should be added to Article 1 of the instrument.

The result was an amended framework paper, which the coordinator distributed among the CD delegations in Geneva. It was again expressed that the framework paper was meant to be a discussion paper for the fourth GGE meeting (10-14 March 2003), not a formal draft of the protocol. Its primary objective was to structure the negotiations. The aim was to come up with a draft version of an ERW protocol after the fourth GGE.

During the GGE sessions, the overall and primary instruction for the Dutch delegation to the CD was to conclude the negotiations successfully. Thus, the central aim was the achievement of consensus among all parties. However, at the same time it was emphasised that the Dutch national position could not be neglected. It was reasoned that from its neutral position as chair of the GGE, the Netherlands could influence the outcome of the negotiations.<sup>221</sup> In the instruction it was claimed that the Dutch coordinator had always respected his limited room to manoeuvre and that therefore the Dutch influence had never led to dissatisfaction among the States Parties or even attracted attention. Thus, during the GGE meetings, the Netherlands was as reserved as possible during the plenary sessions. Moreover, Dutch policy was coordinated as much as possible within the context of EU policy.

<sup>221</sup> Interview.



## Impediments

During the fourth phase of the ERW process, it was tried to overcome impediments step by step, but up to the very last day of negotiations in December 2003 it remained unclear whether a protocol could be agreed upon. The coordinator characterised the negotiations during the fourth GGE as ‘explorative’. Several papers were discussed and the difficult elements addressed were definitions, responsibility for clearance of new ERW, responsibility for clearance of existing ERW and the inclusion of generic preventive measures. The determination of the status of the instrument (legally binding or politically binding) had been postponed to a later occasion when there would be more certainty on the contents of the document. In addition, the lack of cooperation between States Parties threatened to block consensus in this crucial period.<sup>222</sup> A further impediment was the issue of weapons-specific measures. Despite the fact that negotiations on this issue were not included in the mandate, it was raised several times – among others, by the Netherlands.

The issue of definitions proved to be fairly easy to solve. In the end, ERW came to include both unexploded ordnance as well as abandoned explosive ordnance. Also, a distinction was made between existing ERW and ERW that had come into existence after the protocol entered into force.<sup>223</sup> As far as the issue of responsibility for clearance of new ERW was concerned, the Netherlands, like most countries, followed the approach of Amended Protocol II. This implied that the instrument would call for limited responsibility, i.e. only in the case of a state party being ‘in a position to do so’. Some countries wished to see a more comprehensive type of responsibility. As a result, responsibility proved to be one of the most contentious issues during the negotiations in December 2003. As a compromise, the issue was split into two types of responsibility. If the territory in question is under the direct control of a state party, it is obliged to mark and clear, or to move and destroy ERW. If the territory is not under the direct control of a state party, it is only obliged, where feasible, to give financial, technical, material or human resources assistance.<sup>224</sup>

With respect to the issue of clearing existing ERW, the Dutch government opted for the Ottawa position. That meant that the instrument would emphasise that each State Party has the right to seek assistance in clearing existing ERW and that countries ‘in a position to do so’ will assist with such clearance. In the end, this was the compromise that was accepted by all negotiation parties and which was embedded in the protocol.<sup>225</sup> It was a compromise between the position taken by countries that preferred full responsibility to be the onus of those who caused the coming into existence of ERW and the position of countries that feared claims because of past conflicts.<sup>226</sup>

222 TK, 28600, V, nr 63.

223 Protocol V to the CCW treaty, Article 2.

224 Protocol V to the CCW treaty, Article 3.

225 Protocol V to the CCW treaty, Article 7.

226 TK, 29848 (R1775), nr. 3.

On the issue of generic preventive measures there was opposition to including any reference to (non-binding) preventive generic measures in an instrument that would mainly focus on (binding) post-conflict measures. The coordinator proposed including a preamble in which it would be stated that only the post-conflict measures are legally binding. In this way, the opposition with respect to article 9 could be overcome, without having to modify the draft article.<sup>227</sup>

With respect to the status of the instrument, the US kept its options open until the very last day of the negotiations in December 2003. The US government was not in favour of a legally binding instrument and it was still coupling the ERW issue to progress achieved on the AVM issue. Until the very last moment, the US refused to make an unequivocal choice for a legally binding instrument, but in the end consensus could be reached.<sup>228</sup>

The deadlock on cooperation and assistance was resolved by letting every State Party decide by itself (i.e. when 'in a position to do so') whether it would provide assistance for the marking and clearance, removal and destruction of ERW and whether it would provide victim assistance. Some countries argued that victim assistance would have to be dealt with in a separate article, but there proved to be too little support for that proposal.<sup>229</sup>

In spite of the Netherlands' neutral role as coordinator, the Dutch government decided that in the sixth GGE (17-24 November 2003) it would address the issue of weapons-specific measures: 'Again, the Netherlands shall voice its preference for negotiations on weapons-specific measures. The chance of consensus is very small. China, Russia, the US, India and Pakistan are not enthusiastic about it. If consensus cannot be achieved, the Netherlands could play an active part in searching for alternative approaches. For example, the creation of a kind of code of conduct.' The code of conduct option had been put forward by the US and Switzerland. They proposed adopting a reliability rate of 99 percent for cluster munitions. In November 2003 it was clear that there was little chance of achieving consensus on weapons-specific measures. As a result, the Netherlands abandoned the idea.

227 TK, 29848 (R1775), nr. 3.

228 TK, 29848, R1775, nr. 3.

229 TK, 29848 (R1775), nr. 3.

## 5.6 Towards an effective Protocol V

<b>Table 5.5</b> Dutch policies on ERW November 2003 – December 2006: Towards an effective Protocol	
Objectives	After the establishment of Protocol V, the objectives of the Dutch government were to 1) actively promote the international acceptance of the instrument and the adherence of as many countries as possible, 2) to promote the operation of the protocol and 3) to promote the compliance of its stipulations. An additional objective 4) was to seek progress on the subjects mentioned in the mandate of the GGE's Working Group on ERW. These subjects included the implementation of existing IHL and the exploration of possible weapons-specific preventive measures.
Results	On 12 November 2006 Protocol V entered into force (the Netherlands ratified on 18 July 2005). In December 2006 28 states had ratified Protocol V. With respect to weapons-specific measures, the Third Review Conference decided to continue consultations on the matter. This modest result motivated Norway to start a parallel process to achieve a prohibition of certain types of cluster munitions outside the framework of the CCW.
Interventions	The Netherlands stimulated the ratification process of Protocol V by asking attention be paid to it in other disarmament arenas. With respect to weapons-specific measures, the Netherlands did not intervene.
Impediments	Impediments to the effective implementation of the protocol were 1) the focus on AVMs in the GGE, 2) slow ratification of Protocol V by militarily significant countries, 3) Dutch Presidency of the EU, 4) the ambitious programme of some countries regarding weapons-specific measures.

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### Objectives

After the establishment of Protocol V, the objectives of the Dutch government were to actively promote the international acceptance of the instrument and the adherence of as many countries as possible, to promote the operation of the protocol and to promote compliance with its stipulations.<sup>230</sup> Additionally, the Dutch government expressed its willingness to implement the mandate of the GGE Working Group on ERW. That implied discussions with its partners on the issues of IHL and weapons-specific preventive measures.<sup>231</sup> In the summer of 2006 both issues became prominent on the international political agenda, when it became clear that Israel had used cluster munitions during its armed intervention against Hezbollah in Lebanon. By that time, a policy shift had occurred in Dutch policy on the issues of IHL and weapons-specific measures. Initially, during the consultations and negotiations on Protocol V the Netherlands had aimed at including weapon-specific measures. After the protocol had been adopted, the Netherlands preference was for existing IHL to be implemented, rather than for new

<sup>230</sup> TK, 29200, V, nr. 61.

<sup>231</sup> TK, 29200, V, nr. 61 and opening statement by Ambassador Stephen Nellen, Director GICHD, at the occasion of the thirteenth session of the CCW GGE, 6 March 2006.

regulations to be made on specific weapons in general and cluster munitions in particular.

## Results

Within three years, the minimal number of 20 ratifications of Protocol V was achieved, enabling it to come into force. By November 2005 28 States had become States Parties to Protocol V. The Netherlands had ratified on 18 July 2005. Though long ratification procedures were common in the Netherlands, the government had attempted to ratify as soon as possible in order to have some influence on the operation of the protocol. By 12 November 2006, when the protocol entered into force, 27 states had expressed their consent to be bound. The entry into force was marked during a special meeting during the Third Review Conference. It was noted that only a few countries with a large ERW problem had become party to the protocol. During the Review Conference, this problem was addressed in the context of universalisation of the CCW as a whole.

As far as the implementation and operation of Protocol V was concerned, the Netherlands succeeded in obtaining the chairmanship of the First Conference of the High Contracting Parties to Protocol V on 6 November 2007 and its PrepCom on 18 June.<sup>232</sup>

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With respect to the weapons-specific measure, little progress was made. The issue proved to be too contentious and any hope for significant progress in the short term had diminished by the end of the conference. A mandate for further action drafted by the EU failed to be adopted, because of the lack of consensus among the EU members. Instead, a mandate drafted by the UK (based on informal consultations with the Permanent Members of the UN Security Council as well as Australia and Canada) proved to be the only realistic compromise. Based on the UK mandate, it was decided that further consultations would take place regarding ‘[...] the application and implementation of existing humanitarian law to specific munitions that may cause explosive remnants of war, with particular focus on cluster munitions [...]’.<sup>233</sup>

For some countries the result was deeply disappointing. Norway declared the Review Conference to have failed and announced the start of a preparatory conference in February 2007 in order to assess the possibilities for a prohibition of cluster weapons with excessive humanitarian consequences. Twenty like-minded countries joined the Norwegian initiative. This group did not include the Netherlands.

<sup>232</sup> This can be explained by the fact that the Netherlands was still regarded to be a front runner on ERW by 2006.

<sup>233</sup> CCW Third Review Conference, Final Declaration.

## Interventions

Early 2004, the Dutch government expressed its willingness to promote Protocol V by printing leaflets, making (bilateral) consultations and by organising seminars.<sup>234</sup> This shows its intention to continue with its leading role with respect to ERW. In addition to the methods mentioned, the Dutch government also intervened in the process by financing particular programmes and seminars organised by others and by raising the issue of ERW in other disarmament arenas.<sup>235</sup> In the CODUN and the GGE, for example, the Dutch delegation repeatedly addressed the importance of the ratification of Protocol V. It also communicated this within the context of the UN by supporting and sponsoring relevant resolutions.<sup>236</sup> Moreover, in 2004 and 2005, informal meetings were organised in Garderen at which the focus was on the operation of Protocol V, cluster munitions and IHL, AVMs, and the operation of the Ottawa Convention. During the meeting of 2004 it was suggested that the Netherlands could undertake démarches in its capacity as EU President from July to December 2004. The alternative of national démarches with a division of labour among like-minded countries was also proposed. However, none of these proposals were actually realised.

Furthermore, the Dutch delegation made an important intervention regarding Protocol V in the preliminary work to the Third Review Conference. When the US delegation tried to make the PrepCom for the First Conference of High Contracting Parties to Protocol V an informal meeting, the Dutch delegation responded by organising an informal (*en marge*) meeting of 22 countries to prevent this. This tactic was successful. Consensus was achieved to hold a formal PrepCom prior to the conference.

By then, the creation of weapons-specific measures and IHL had evidently become less prominent on the Dutch policy agenda. In May 2006, the Dutch CD delegation proposed that the Netherlands join a group of like-minded countries that were calling for a prohibition on cluster munitions. This group of countries, including Norway, Belgium, New Zealand, Ireland, Sweden, Slovenia and Switzerland, issued a political declaration in which they stated they were looking for agreement to 1) prohibit the use in populated areas of cluster munitions that are not precision-guided, 2) prohibit cluster munitions that pose a risk to civilians after use, and 3) further consider measures to address the humanitarian problems caused by cluster munitions. The memorandum of the CD delegation was, among other things, born out of the increasing international pressure on the Dutch government to join the group of front runners. The like-minded group wanted to include the Netherlands because of its humanitarian profile and the critical mass behind the Dutch position afforded by the operational abilities of the Dutch

<sup>234</sup> TK, 29200, V, nr. 61.

<sup>235</sup> The Dutch government co-funded the 2003-2004 global ERW survey of Landmine action (file 811584, no date), for example. It also funded the conference launching the cluster munitions coalition (file 840428, 29 September 2003).

<sup>236</sup> TK, 29848 (R 1775), nr. 6.

armed forces. However, in an official instruction of 8 June 2006 it was made clear that such a political declaration would not be in accordance with Dutch policy. As far as IHL and cluster weapons were concerned, the Netherlands focused on the implementation of existing IHL rather than on supporting the creation of new regulations. It was claimed that since the GGE meeting in November 2005, the Dutch focus on existing IHL had been explicitly mentioned in several instructions to the Dutch delegations.

On weapons-specific measures, the Netherlands took a position between the countries focusing mainly on the user aspects (military necessity) and the countries focusing mainly on the humanitarian aspects of the issue. The Netherlands aimed at the greatest possible reliability of cluster munitions. However, it did not commit itself to the specific 99 percent reliability rate proposed earlier by the US and Switzerland. Instead, the Dutch government concluded that the 99 percent rate initiative had only been relevant during the last phase of the ERW negotiations in 2003. At that time the Dutch chair had expected that the US would wish to have the initiative explicitly included in Annexe 3 of the ERW Protocol (under the heading of 'future production'). That had not been the case and in the following years the US proposal had not resulted in concrete US policy.

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The Third Review Conference was characterised by great political and public pressure (because of the use of cluster munitions in Lebanon) to achieve a significant result regarding cluster munitions. Prior to the conference there had been no consensus within the EU, but during the conference the pressure to achieve a common position increased. That stimulated the Netherlands (and other EU members) to adjust its position during the first few days of the Review Conference in the direction of the position of EU members and like-minded countries Austria, Sweden and Ireland. These countries preferred a legally binding instrument containing new user regulations on cluster munitions, for example, through prohibiting the use of cluster munitions in densely populated areas.

### Impediments

Having completed the successful negotiations on Protocol V, the Dutch government handed over the coordination of the GGE to Finland. The GGE continued to exist and now focused mainly on the AVM issue, which had been raised parallel to the ERW process, but which had not led to an instrument. After the ERW protocol had become a reality, attention focused almost entirely on AVMs, thus forming an impediment to progress on the ERW issues that had not been addressed by Protocol V. Not until 2006 did the attention for weapons-specific measures in general, and cluster weapons in particular, increase.

A second important impediment to the Dutch objectives was that large politically and militarily significant countries such as the US were in no rush to implement the Protocol. In December 2005, the US, Russia and China said they were about to ratify the

ERW Protocol.<sup>237</sup> However, in November 2006, at the entering into force of the Protocol, none of them had ratified. The fact that ratification is a process which needs time impeded the attainment of the Dutch objectives.

A third impediment was the chairing of the EU. In the first half of 2004 the Netherlands chaired the European Union. This impeded the Dutch objectives regarding ERW by diverting capacity and focus. This impediment persisted in the second half of 2004, when the Dutch government assisted Luxembourg to carry out its responsibilities as chair of the European Union.<sup>238</sup>

A fourth impediment was the ambitious objective taken by some countries of prohibiting cluster weapons through new regulations. The Netherlands had always taken an intermediate position between the countries focusing on the interests of the user (military necessity) and those focusing on the humanitarian consequences. As a result, the Netherlands did not join the group of countries which favoured a total ban on cluster weapons, as their initiative impeded the Dutch objective of focusing on the implementation of existing IHL.

## 5.7 Conclusions

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Assessment of the Dutch interventions on the ERW issue on the basis of the four evaluation criteria leads to the following conclusions:

First, the Dutch interventions were *connected* to the national policy objectives in all five phases of the international decision-making process. In November 2000 the Dutch government opted to strive for international regulation within the CCW framework in order to address the problems caused by unexploded explosives in conflict areas. The Netherlands subsequently aimed at getting ERW on the agenda of the CCW, achieving international consensus on a negotiation mandate, creating a legally binding protocol, and finally at implementing the protocol and looking for progress on issues not dealt with by the instrument. At the same time the instruments it used (taking up the positions of FoC on ERW during the Second CCW Review Conference and its PrepComs in 2001 and coordinator for ERW in the GGE in 2002 and 2003) corresponded to the level of ambition expressed in these policy objectives.

Second, the Dutch interventions were *responsive* to the international policy objectives in the entire period. Among the CCW States Parties there was general recognition that it would be necessary 'to do something' about ERW. In this regard, the strategy to enhance the general knowledge on ERW proved to be especially effective. As early as the very first ICRC expert meeting in Nyon, the Netherlands organised an informal

<sup>237</sup> Boese, January/February 2006.

<sup>238</sup> Interview.

lunch in order to discuss ERW. Subsequently, the Netherlands made full use of its position of FoC and Coordinator on ERW respectively in order to win over countries that proved hesitant or were unfavourably disposed towards the establishment of an ERW instrument. By acting as an impartial facilitator it tried to reconcile differing views on issues such as post-conflict and pre-conflict measures. Although not every conflict of opinion on every topic could be settled, in the end consensus could be reached on a protocol.

126 Thirdly, the interventions on ERW were *timely*. The Netherlands were involved with the issue of ERW from the outset. The ICRC expert meeting in the summer of 2000 was the impetus for the Netherlands to get the ERW issue on the CCW agenda. By doing so, the Netherlands established itself as a front runner. Subsequently, the Netherlands kept the initiative by coordinating the negotiations leading to the protocol. On all occasions it proved competent to use the right type of instrument at the right moment. In the first two phases of informal deliberations and consultations it opted to organise informal meetings to discuss the ins and outs of the issue. In a subsequent phase of consultations to gain consensus on a negotiation mandate it wrote discussion papers too. In the crucial phase of negotiations on a protocol it was at pains not to slow down or block the decision-making process. Thus, a final draft protocol was not formally presented to the States Parties until after the coordinator had ensured support from the 'difficult countries' during informal consultations.

Finally, the Dutch interventions had a *large scope*. As a FoC and coordinator, the Netherlands took on a proactive role in negotiating the protocol. Chairing is a highly direct tool for communicating policy objectives to the community of States Parties. At the same it is an instrument with a large action radius. By preparing drafts himself and allowing States Parties to comment on them, instead of working on the basis of concrete draft proposals made by States Parties, the coordinator was able to keep full control over decision-making on the text of the protocol. Only in the implementation phase of the protocol did the scope decrease to a moderate level.





# 6

## Negotiating on anti-personnel mines

## 6.1 Introduction

The issue of anti-personnel mines (APMs) was already on the international agenda prior to the creation of the CCW and its Protocol II in 1980. Protocol II restricts the use of landmines (both anti-personnel mines and anti-vehicle mines), booby-traps and other devices. At the time, the agreement was not particularly contentious, because most of the negotiations concentrated on incendiary weapons, especially napalm, in light of the experiences in the Vietnam War.<sup>239</sup> That changed in the early 1990s, when the scale of the human suffering caused by anti-personnel mines came to the attention of the international community. In October 1992 a coalition of six non-governmental organisations created the ICBL. The campaign rapidly galvanised public opinion, and spurred politicians to make efforts to prohibit the use of these weapons. In 1993 this led to the French request to the Secretary General of the UN to convene a First Review Conference of the CCW in order to address the landmine problem and the concomitant weaknesses in Protocol II.

### General course of events

The pro-ban countries were not able to make a change for the better on the issue within the framework of the CCW, because a total ban proved to be non-negotiable. In May 1996, during the prolonged session of the 1995/1996 Review Conference, agreement could only be reached on some additional restrictions on the use of anti-personnel mines. Thereupon Canada announced that it would organise a meeting for ‘pro-ban states’ outside the CCW arena, in order to explore how a total ban on anti-personnel mines could be achieved. From that moment on, NGOs and about fifty states (among them the Netherlands) cooperated and managed to achieve a historic decision with the signing of the Ottawa Convention. In December 1997, a mere 18 months after the disappointing CCW First Review Conference, 121 countries solemnly pledged their support for a total ban on anti-personnel mines. Ever since, the States Parties have closely cooperated to universalise and implement the convention.

Since May 1996, decision-making on APMs within the framework of Ottawa has consisted of two phases: a phase of informal consultations and negotiations on a total ban on APMs (May 1996–December 1997), and a phase of universalisation and implementation of the provisions of the Ottawa Convention (December 1997–December 2006).

Informal consultations and negotiations on a total ban on APMs started in May 1996, directly after the closing session of the disappointing First CCW Review Conference. In December 1997 the Ottawa Convention was established, resulting in the focus of interest of the States Parties shifting to the issues of universalisation and implementation. This chapter deals with the Dutch interventions in the first phase: the road to Ottawa. The Dutch interventions in the second phase of universalisation and implementation will be dealt with in chapter 7. In the final sections of the two chapters (section 6.4 and section 7.8) the effectiveness of the Dutch efforts on APMs will be assessed in relation

<sup>239</sup> GICHD, 2004:57.

to the evaluation criteria connectedness, responsiveness, timeliness and scope (see table 1.2).

## 6.2 Striving for a total ban on APMs

<b>Table 6.1</b> Dutch policy on APMs May 1996 – December 1997: Striving for a total ban	
Objectives	Swift realisation of a worldwide comprehensive ban on anti-personnel mines. Pursuit of EU consensus on a total ban and of making the EU an active and stimulating actor during the Dutch EU Presidency.
Results	Realisation of a treaty on the prohibition of the use, stockpiling, production and transfer of APMs within two years, without transitional provisions. At the same time, EU consensus failed to materialise on the issue of APMs, and important producers and consumers of APMs (US, Russia, Pakistan, India and China) refused to become signatories.
Interventions	<ul style="list-style-type: none"> <li>• Participation of Dutch delegates in the formal Ottawa meetings and the meetings of the informal Ottawa core group.</li> <li>• Chairing of special CODUN meetings aimed at bringing the EU countries into line on the issue of APMs.</li> <li>• Sponsoring of travel and accommodation costs for the delegations of three developing countries and a seminar on the banning of APMs in Yemen.</li> <li>• Public statements and efforts to win over the US to Ottawa.</li> <li>• Démarches to urge Chile and Japan to sign the Ottawa Convention.</li> <li>• Call for swift ratification in ministerial address at Signing Ceremony.</li> <li>• Chairing of a Round Table and presentation on mine destruction during the Second Ottawa Conference.</li> </ul>
Impediments	Protracted deadlock in the CCW on a total ban of APMs. Dutch efforts in Ottawa process were slowed down, because of a persistent lack of consensus on the issue of APMs in the EU. The international negotiations on a mine ban treaty coincided with the Dutch EU Presidency in the first half of 1997. The EU Presidency proved to be incompatible with the advancement of the national position.

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### Objectives

In March 1996, the Dutch government announced a national ban on the use and possession of anti-personnel mines. That decision opened the way to joining the group of countries proposing a total prohibition on APMs incorporated in the CCW framework. By the end of the CCW's First Review Conference, this group had increased to forty states.<sup>240</sup> However, during the final session of the Review Conference, consensus could only be achieved on strengthening Protocol II. In response to the disappointing results of the Review Conference, the Ministers of Foreign Affairs and Defence

<sup>240</sup> Mathews, 2001:1000 and TK, 24292, nr. 15:2.

announced in June 1996 that the Dutch government would support initiatives to come to a total ban on APMs in every possible institutional context. In this regard it would strive for the banning of APMs to become a common goal of EU action too, and to plea for this within NATO. Further, the Netherlands would take part in a meeting of pro-ban countries that was organised by Canada in September 1996 to discuss the possibilities of a total ban. Within this framework it would support any initiative that supported the creation of an APM treaty.<sup>241</sup>

Shortly afterwards, the Dutch position on APMs was further clarified.<sup>242</sup> In August 1996 the Dutch Minister of Defence pointed out that the Netherlands was striving for an international ban on APMs and supported initiatives of other countries in this direction. In addition to this, one of the Dutch priorities was to put the banning of APMs on the EU agenda.<sup>243</sup> In January 1997, during the first month of the Dutch EU Presidency, the government stated that it aimed to make the EU an active and stimulating actor in the realisation of a ban. It also took the opportunity to characterise the Netherlands as a country with a clear, active profile and belonging to the first group of countries that aspired for a speedy realisation of a worldwide comprehensive ban on APMs.<sup>244</sup> In March 1997, in response to the ongoing EU deliberations on the appropriate forum for negotiating APMs, Minister of Foreign Affairs Van Mierlo pointed out that on pragmatic grounds the Netherlands had opted for the fastest track. That meant that the Netherlands would give priority to the Ottawa process as long as the EU countries had failed to reach a decision on their common position.<sup>245</sup>

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## Results

The overall goal of the Netherlands, the realisation of a comprehensive ban on APMs, was achieved very rapidly. The failure of the First CCW Review Conference to establish a total prohibition on APMs cleared the way for the Ottawa process. As early as September 1997, the process resulted in a treaty for a comprehensive ban on the use, stockpiling, production and transfer of APMs. As for the Netherlands, the ban was achieved without the solid backing of the EU. The EU countries turned out to be deeply divided on the issue. The Netherlands were unable to achieve a common EU position and to make the EU an active and stimulating actor in the realisation of a ban during the Dutch EU Presidency.

In spite of this, the Dutch delegation proved to be far from satisfied with the treaty text. The delegation described the result as a victory for the ‘convention purists’, because the text did not include options for reservations or transitional provisions. The absence of

241 TK, V, 24400, nr. 76:5.

242 The Netherlands support of a total ban on anti-personnel mines was also expressed more visibly: the Ministry of Foreign Affairs openly supported the ‘Mega’ demonstration by the Dutch Red Cross against AP mines in June 1996.

243 TK, 24400, X, nr. 130:4.

244 TK, 24292, V, nr. 15:2.

245 TK, 25000, V, nr. 72.

any reservations or transitional measures was seen as a major shortcoming, because it would keep important producers and users of APMs from signing the treaty. As to this, the delegation expressed mild disappointment that the US had not been persuaded to agree to the Ottawa Convention. It also doubted the future effectiveness of the treaty, because it had been signed by 'willing parties' only and several important actors had refused to become signatories. Moreover, the delegation believed that the focus on the humanitarian aspect of APMs had scared off those countries that were concerned about military security. In addition to this, the delegation described the Ottawa process as messy. In the end, the Dutch delegation evaluated the conference results quite negatively, although it was also recognised that the conference had introduced a new international norm on the world stage.

### Interventions

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In March 1996 the Netherlands joined the group of CCW countries that were proposing a total prohibition on APMs at the CCW Review Conference. Since this group of countries only succeeded in gaining consensus on some further restrictions, the Netherlands decided to support initiatives for a total ban on APMs outside the CCW framework. At first, the Netherlands executed a two-track policy. After the failure of the CCW Review Conference, the Netherlands supported the attempts of some CCW countries to agree on a new negotiation mandate regarding a ban on APMs within the CCW, as well as the Canadian initiative to explore the possibilities of negotiating such a ban outside the CCW. It therefore accepted the Canadian invitation to participate in an International Strategy Conference (from 3 to 5 October 1996 in Ottawa) to discuss the possibilities of a ban. However, in the course of 1996, tensions appeared between the CCW and the Ottawa process and doubts arose about the appropriateness of the two-track policy. In August 1996, Dutch Foreign Affairs officials expressed their fears that new initiatives in the CCW would possibly lead to new delays because of 1) the lack of consensus on a new negotiation mandate among the CCW countries, and 2) the linkage of other negotiation issues and the APM issue within the CCW framework. At the same time, these policy advisors pointed out that negotiations in a separate forum, such as the Ottawa process, entailed the risk that only a limited group of countries would participate (i.e. only countries that agreed on a total ban), which would make such a document of little relevance. In the absence of clear-cut ideas on the proper forum to negotiate a total ban, the Netherlands pragmatically redefined its position. It decided that in due time it would opt for the forum that would have the best chance of success within a reasonable period of time.

In October 1996, the First Ottawa Conference was held. A Dutch delegation consisting of delegates from the Ministries of Foreign Affairs and Defence, as well as from the Dutch NGO Pax Christi attended the conference. Although all fifty participating countries solemnly pledged their support for a swift materialisation of a total ban, fundamental differences of opinion became manifest during the conference. A first group of countries, including EU partners France, Finland, Italy, Spain and the UK, considered a total ban desirable only if it were supported by all important producers, consumers and

owners of APMs. Such support could only be guaranteed if negotiations were to take place within the CCW – the only worldwide multilateral negotiation arena for disarmament matters. Many other countries feared that the requirement for consensus would postpone the materialisation of a ban indefinitely. These countries did not aim for the participation of all relevant countries but for a more speedy process and ongoing expansion. The Netherlands joined the latter group.<sup>246</sup> Although speed seemed to be of overriding importance to the Netherlands, the Dutch delegation was surprised to learn from Canada during the closing session, that this country aimed for a signing conference in the fall of 1997. Yet it voiced its sympathy for the ambitious Canadian plans and offered administrative support to the Belgian offer to host the preparatory conference in June 1997.

Once the Ottawa process had started, the Dutch participated in a series of four meetings in which the Ottawa treaty was negotiated. During a relatively short period of negotiations the Dutch delegation made several efforts to promote the Dutch position.

In January 1997, the Netherlands was invited to the Vienna Expert Meeting to discuss a first draft for a 'Convention to Ban Anti-personnel Mines'. During this meeting, it became clear that many countries (including the UK, US, France, Finland) were reluctant to adopt a total ban, in spite of the joint support for such a ban in October 1996 during the First Ottawa Conference. What is important here is that the opinions of the EU countries differed greatly. The Netherlands, Belgium, Austria, Germany, Sweden and Ireland presented themselves as proponents of total ban on APMs, while the UK, France, Italy, Spain and Finland declared themselves openly against it. It was for that reason the Netherlands opted to exercise restraint in the absence of EU consensus. At the same time it was also decided at the political level to strive to overcome the differences of interest in the EU, in order to make the EU an active and stimulating actor in the realisation of a ban. It was for this reason that on 7 February 1997 a special EU meeting was convened by the Dutch Presidency.<sup>247</sup>

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In April 1997, the Netherlands participated in a special International Expert Meeting in Bonn to exchange views on 'Possible Verification Measures to ban Anti-Personnel Landmines'. During this Bonn Expert Meeting, new dividing lines emerged between a group of countries that advocated a strict verification regime and many countries that thought verification unnecessary. Together with Sweden, the Dutch delegation took the view that verification was useful, but not necessary. At the invitation of Canada, Dutch representatives also attended an informal Ottawa Core Group Meeting preceding the Bonn Expert Meeting.

Two months later, in June 1997, the 'International Conference for a Global Ban on Anti-Personnel Mines' or Brussels Conference which served as the official follow-up to the

<sup>246</sup> TK, 24292, nr. 13:3.

<sup>247</sup> TK, 25000, V, nr. 72.

1996 Ottawa Conference took place in Brussels. The primary task of the Brussels Conference was to adopt a declaration forwarding the latest Austrian draft text for negotiation and adoption to the Diplomatic Conference being convened in Oslo in September 1997.<sup>248</sup> For this purpose Belgium had sent around a draft text of a joint declaration. Again the Dutch took pains not to present themselves as fervent supporters of Ottawa, in view of the neutral role the Netherlands was expected to play as EU President. Instead, officials from the Dutch Ministry of Foreign Affairs dissuaded their colleagues at the embassy in Trinidad and Tobago from joining in on a Canadian *démarche* to promote participation in the Brussels Conference. Furthermore, they rejected the Belgian proposal to present the draft text on behalf of the Netherlands.

134 During the Brussels Conference, Dutch policymakers once more made an effort to bring the EU countries into line on the issue of APMs. At the proposal of the Dutch chair, the EU abandoned the idea of a joint declaration on APMs, because of the huge differences of opinion. Instead, the joint action on 1 October 1996 and the EU support to mine clearance was brought forward by the head of the Dutch delegation in a panel discussion on regional activities. The Dutch representatives also participated in another core group meeting in Brussels to discuss further strategies. During this meeting too, differences of opinion on how to proceed in the Ottawa process came to the fore between the core group countries: Belgium, Norway and Brazil wanted a total ban without any reservations, while Canada, the Netherlands and Germany aimed to attract as many countries as possible, if necessary by means of transitional provisions.

The Brussels Conference culminated in the signing of the *Brussels Declaration* by 97 of the 155 governments attending. In this declaration the essential ingredients of a treaty were formulated: a total ban on the use, stockpiling, production and transfer of APMs, the destruction of stockpiles and removed APMs, and international cooperation and assistance in relation to mine clearance. Nevertheless the Dutch delegation reported that the opinions in the international community still differed greatly on the issue of APMs. Most observer countries rejected the establishment of a total ban through the Ottawa process. These countries remained opposed to negotiations outside the CCW framework and appeared to support the use of APMs for the time being. Furthermore, the proponents of the Ottawa process held different views on the issues of special provisions, the obligation to provide international assistance and the need and usefulness of verification measures. With respect to these issues the Netherlands adopted a pragmatic approach. It aimed at getting as many countries as possible to agree to a total ban. If concessions were needed to win over hesitant countries, such concessions were acceptable as long as this did not undermine the overall goal of a total ban. Accordingly, the Dutch embassy in Brussels again emphasised in communications to the Ministry the problems the US had with the Ottawa process. The US wanted special provisions concerning the presence of APMs in the northern border region of South Korea: without such provisions the Ottawa Convention would be of no

248 Maslen & Herby, 1998:2-3.



interest. The embassy responded by expressing willingness to support special provisions with respect to American APMs in South Korea.

In the run-up to the Oslo Diplomatic Conference the US turned directly to the Netherlands to secure its support in the negotiations. At the beginning of August 1997 US officials approached their Dutch counterparts to discuss the possibilities of exerting influence in the remaining part of the Ottawa process. At the end of the month, Secretary of State Madeleine Albright got in touch with Foreign Minister Van Mierlo on South Korea, announcing that the US had decided to participate in the Oslo Diplomatic Conference and also requesting Dutch support for the US standpoint concerning South Korea, transitional provisions and a strict verification regime. Van Mierlo informed Albright that the Netherlands sympathised with the American position and aimed for compromises on these issues, the bottom line being a total ban. Thereupon the Dutch delegation received the instruction to cooperate with the US in the Oslo negotiations.

The Oslo Diplomatic Conference started on 1 September 1997. Only the signatories of the *Brussels Declaration* were entitled to vote on the final text of the treaty.<sup>249</sup> Many issues appeared to be still contentious in the first week of the conference, including the question of whether reservations to a total ban could be expressed or whether transitional provisions would be added to the convention text. But yet again, there proved to be complete agreement on matters of definition, the use of APMs for training purposes, and the consultative structure of the convention. In the second week, agreement was reached about a four-year deadline for stockpile production. However, already in the run-up to the conference it had become evident that a core problem in the negotiations would be the requirements for special provisions for the US. On 12 September, the chair circulated a draft convention text, which was accepted by all participating delegations except the US. The American delegation once again indicated that the US was only willing to join the convention if they were granted special provisions in relation to South Korea. Four days later, on 16 September, the US delegation requested the negotiations be adjourned in order for the delegation to formulate some compromise proposals. This action came too late. On 17 September, the Plenary Meeting approved the convention text. The US delegation decided to withhold its vote and did not become party to the convention.

The Netherlands intervened in several ways during the conference. In the first few days, together with Austria, the US and Sweden, it successfully requested a reformulation of the amendment article. At the same time, the Dutch delegation urged the head of the US delegation to prepare compromises instead of awaiting further action on special or transitional provisions. In this context the Netherlands also expressed in plenary its readiness to negotiate specific and limited transition periods. Together with other delegations, the Dutch delegation exerted behind-the-scenes influence to bring about

<sup>249</sup> The UN, ICRC, International Federation of the Red Cross and Red Crescent Societies, and the ICBL were present as observers to the negotiation process. Important absentees were China, India, Russia and Pakistan.

a compromise on special provisions. Finally, on behalf of the Netherlands and other countries, a text on a fast-track procedure for countries that immediately accept a fact-finding mission was revised.

The formal Ottawa Signing Ceremony and Action Forum on Anti-Personnel Mines or Second Ottawa Conference took place on 3 and 4 December 1997 in Ottawa. In the run-up to the conference the Netherlands took several steps to effect its purposes. In October 1997 it was once again underlined by the Ministry of Foreign Affairs that a total ban of APMs was a priority in Dutch foreign policy. For this reason it was thought important that as many countries as possible would sign the Ottawa Convention. The Ministry authorised the sponsoring of travel and accommodation costs for 7 delegates or 2 or 3 delegations to Ottawa in order to remove financial impediments. Thereupon, at the request of Canada, the Ministry approved sponsorships for Ghana, Ivory Coast and Yemen. Furthermore, financial support was granted in November to a seminar in Yemen on the banning of APMs. On 20 October 1997 the Dutch government also emphasised the importance of winning over countries that had remained outside the Ottawa process. It was prepared to use any appropriate forum to achieve this end.

136 In the months after the Oslo Diplomatic Conference the proponents of the mine ban tried to engage as many countries as possible in the signing ceremony in December 1997. Thus, the Netherlands approached two countries to encourage them to sign the convention. On the advice of the embassy, the Dutch Minister of Foreign Affairs, Van Mierlo, wrote a letter to his Chilean counterpart in which he urged Chile to subscribe to the convention. Similarly a *démarche* was performed in Japan. Besides, as a core group member, the Netherlands was closely associated with the organisation of the Ottawa Conference. On 23 October the Netherlands was invited to a core group meeting to be held on 30 October during the 52<sup>nd</sup> UN General Assembly meeting in New York. The meeting was intended to provide further information on the Round Table Conference that would take place at the same time as the signing ceremony. At the request of Canada, the Netherlands accepted the chair of the round table on Cooperative Compliance, Building Capacities within Societies. Together with Belgium, the Netherlands also volunteered to give a presentation on mine destruction in Ottawa.

In December 1997 a total of 121 governments signed the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti Personnel Mines and their Destruction*. Important non-signatories were the US, China, Russia, Finland, India and Pakistan. High-level representatives of almost all of the signing countries issued statements on 3 and 4 December. In many of these statements considerable funds for mine clearance and international conferences and seminars on mine clearance were pledged. As a token of appreciation, the countries of the Ottawa Core Group were put at the top of the list of speakers. The Dutch Minister of Foreign Affairs spoke sixth and, among other things called for swift ratification.

## Impediments

The Dutch aim for a total ban was seriously hindered by a persistent lack of consensus on the issue of APMs in the EU. By and large, the Dutch efforts to promote a swift realisation of a mine ban treaty were slowed down because of the need for EU cohesion. The EU countries remained divided not only on the general aim of a worldwide and total ban on APMs but also on the proper forum to discuss the issue of APMs. Further, the international negotiations on a mine ban treaty largely coincided with the Dutch EU Presidency in the first half of 1997. As a consequence the Dutch delegation was double-hatted in this period. It was expected to act on behalf of the EU, while at the same time it had to promote Dutch interests. These two hats proved to be incompatible.

The awkward position of the Netherlands with regard to the EU became manifest for the first time in August 1996, when Canada approached the Netherlands with the request to support a Canadian démarche for participating in the First Ottawa Conference. The Netherlands responded that it would not openly support the Canadian démarche, because a common action on landmines was being prepared in the EU. Hence it would await the outcome of this process. However, in the following month the EU failed to formulate a common stance on the implementation of its general aim to strive for swift realisation of a total and worldwide ban on APMs. In particular the UK spoke out against a joint action of EU countries in the Ottawa context. Consequently the EU countries decided to abandon plans to send a formal EU delegation to the Conference.

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Since the First Ottawa Conference, the Netherlands has made various efforts to align the EU countries in the CODUN. However, these efforts have not produced the desired result. In February 1997, during the Dutch EU Presidency, a CODUN meeting entirely devoted to the landmine issue was organised. Here the differences of opinion between the member states were confirmed. The Netherlands only managed to obtain the undivided support of the EU countries for its compromise proposal to strive for a new negotiation mandate on APMs within the CCW until June 1997. In anticipation of such a mandate, the EU countries would exercise restraint in the discussion. In May 1997, at the urgent request of France, another special CODUN meeting was organised in order to come to a common strategy for action. Here, an attempt to formulate a common declaration in view of the Brussels Conference failed. After the special meeting the Dutch officials were forced to acknowledge that many delegations simply lacked the will to make any progress on the issue.

After the Brussels Conference, the EU maintained its position that Ottawa and the CCW were complementary routes to the general aim of a total ban on APMs. On the eve of the Second Ottawa Conference, Dutch officials had pointed out that such a position was illogical, but inevitable as well in the view of the need for EU cohesion. Subsequently, the EU position was adopted. In September 1997 the Dutch government stated that it aimed to have negotiated a total ban in the framework of the Ottawa process before the end of the year. At the same time it expressed willingness to

continue negotiating a ban on APMs in the CCW, even though the short-term prospects for any results were thought to be gloomy.<sup>250</sup>

In spite of the Dutch claim to give priority to the Ottawa process, this position remained troublesome. Early in October 1997 a group of countries had drawn up a text for a UN General Assembly resolution, which called on member states to sign the Ottawa Convention. In response, the French submitted an alternative text in which the CCW was defined as the leading negotiation arena. The Netherlands had been willing to keep the CCW option open as long as this did not damage the progress made in the Ottawa process. The French resolution, however, would lead to the risk of a double standard in relation to anti-personnel mines. The total ban achieved in Ottawa would be undermined by a less strict protocol negotiated in the CCW arena. The Dutch Permanent Delegation to the UN in New York was therefore instructed by the Minister of Foreign Affairs to prevent the French resolution from being accepted. The delegation attempted to win over the EU partners to its cause, but could rally little support during an EU meeting on the issue. In the course of November 1997 it became clear that most countries approved of what was considered to be a compromise text. Eventually, on 11 November 1997, the Dutch delegation voted reluctantly in favour of a resolution that largely corresponded to the French draft.<sup>251</sup>

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### 6.3 Conclusions

In this final section, an assessment is made of the Netherlands interventions in the phase of informal consultations and negotiations on a total ban on APMs (May 1996 – December 1997) on the basis of the four evaluation criteria. The overall conclusions on the Dutch efforts on the issue of APMs, including the assessment whether certain outcomes were justified given the impediments, are presented in chapter 7.

The interventions of the Netherlands in the phase of informal consultations and negotiations on a total ban on APMs were *partially connected* to the Dutch policy objectives. After June 1996 the Dutch government voiced its aim for a swift creation of a total ban on anti-personnel landmines. However, it soon became clear that in practise the Dutch delegation was pursuing a rather different scheme. The interventions targeted special or transitional provisions in order to keep the US within the process. The Netherlands participated in all meetings of the Ottawa process, undertook efforts to get EU countries singing from the same hymn sheet, sponsored the delegations of developing countries, called for swift ratification of the convention, tried to include

<sup>250</sup> TK, 25600, nr. 2:40.

<sup>251</sup> On 9 December 1997 by a vote of 147 to none, the General Assembly adopted Resolution 52/38 H 'Contributions towards banning anti-personnel mines', which invites the Conference on Disarmament to intensify its efforts on the issue of anti-personnel mines. In this resolution no reference is made to the Ottawa Convention (UNGA, A/RES/52/38 H).

the US in the Ottawa process, and tried to convince Chile and Japan to become signatories. To that extent, the Dutch interventions were in line with the level of ambition expressed in the policy objectives.

The Dutch interventions on the road to Ottawa were also *partially responsive* to the objectives of the Ottawa community. The interventions fit in with the ideas of the group of countries that opted for a speedy process leading to a comprehensive ban on anti-personnel mines. However, opting for speed implied the exclusion of the major producers and consumers, because their inclusion would have entailed more lengthy and difficult negotiations. In a core-group meeting during the Brussels conference (June 1997) the Netherlands declared that it was prepared to make some compromises in order to attract as many countries as possible. As such, the Dutch interventions regarding transitional provisions were contrary to the wishes of most core-group members. With that, the Netherlands departed from its earlier position and joined the group of countries that preferred to include the major producing and consuming countries. In the end, this intervention proved to be unsuccessful. This accounts for the initial Dutch disappointment with the treaty text.

Third, the interventions of the Netherlands were *not timely*. As early as the CCW Review Conference the Netherlands had joined the group of countries aiming to create a total ban on anti-personnel landmines. Nonetheless, it was only during the final negotiations in Oslo (September 1997) that the Netherlands actively intervened in support of the US. Since the process had almost been completed by that time, this was too late to be effective. The Netherlands had already decided during the Brussels conference that concessions to win over hesitant countries were acceptable as long as such concessions did not undermine the essence of the ban. As such, it could have undertaken an earlier intervention, but it waited until it had been approached by the US in the summer of 1997.

Finally, the interventions had a *large scope*. Being a member of the core group from the very start, the action radius of the Dutch interventions was large. The tools it used in this period were direct. Proactive Dutch involvement in the subsequent conferences and meetings of the Ottawa process manifests itself in the Dutch decision to go beyond merely supporting proposals made by other countries. During the conferences the Netherlands also intervened by initiating proposals itself. Finally, between the Oslo and Ottawa conferences, the Netherlands carried out *démarches* and decided to sponsor the travel and accommodation costs of several delegations.

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# Universalising and implementing the Ottawa Convention

## 7.1 Introduction

The establishment of a complete ban on anti-personnel mines by no means marked the end of the Ottawa process. At the Signing Ceremony in December 1997 it was widely recognised that the real challenge of Ottawa was implicit in implementing its stipulations. Thus, already in the preliminary operations of the 1997 Conference the first steps were taken by Canada and other members of the Ottawa core group to draw up an agenda for the implementation of the convention. At the top of the agenda were the issues of universalisation of the convention, high level attendance at key meetings, and compliance with the convention's stipulations. In addition, several other items arising directly from the humanitarian responsibilities of the convention were put on the agenda. These responsibilities concerned aspects of mine action: mine clearance, victim assistance, socio-economic reintegration, mine awareness or mine risk education, and stockpile destruction.

This chapter deals with the Dutch efforts with regard to the effective implementation of the Ottawa Convention from December 1997 until December 2006. The Netherlands did not constantly intervene in the international decision-making on all of these issues, due to the priorities it defined in its policy on funding mine action (see chapter 3). So, this chapter does not include the issues of victim assistance, socio-economic integration and mine awareness or mine risk education. In chapter 2 it was explained that at the first Meeting of States Parties in Maputo the States Parties agreed on an *Intersessional Work Programme* of informal open-ended meetings of Standing Committees whose primary function is to ensure in-depth consideration of relevant questions for improving mine action and to support the effective functioning of the convention.

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## 7.2 Promoting universalisation

### General course of events

In December 1997 the States Parties made the pursuit of universal adherence to the convention a core task of cooperation.<sup>252</sup> The underlying notion was that the only guarantee of a world free of anti-personnel mines would be the achievement of universal adherence to the Ottawa Convention, and the implementation of its comprehensive ban. In this respect the convention has made tremendous progress. Since it came into force in March 1999 the number of States Parties to the Ottawa Convention has increased to 152 countries. At the end of December 2006, the list of countries that had not acceded to the 1997 Mine Ban Treaty (see table 7.1) had shrunk to only forty countries.<sup>253</sup> These included states which according to the ICBL have used anti-personnel mines, as well as states that continue to produce anti-personnel mines,

252 In the preamble to the Ottawa Convention States Parties emphasise the desirability of attracting the adherence of all States and the determination to work strenuously towards the promotion of its universalisation in all relevant forums.

253 Two countries – the Marshall Islands and Poland – have signed but not ratified.

retain the capacity to produce anti-personnel mines, and/or hold vast stockpiles of anti-personnel mines.

1) Armenia	9) Georgia	17) Kuwait	25) Nepal	33) Sri Lanka
2) Azerbaijan	10) India	18) Kyrgyzstan	26) Oman	34) Syria
3) Bahrain	11) Iran	19) Lao PDR	27) Pakistan	35) Tonga
4) Myanmar (Burma)	12) Iraq	20) Lebanon	28) Palau	36) Tuvalu
5) China	13) Israel	21) Libya	29) Russian Federation	37) United Arab Emirates
6) Cuba	14) Kazakhstan	22) Micronesia	30) Saudi Arabia	38) United States
7) Egypt	15) Korea, North	23) Mongolia	31) Singapore	39) Uzbekistan
8) Finland	16) Korea, South	24) Morocco	32) Somalia	40) Vietnam

Source: ICBL website, 27-2-2007.

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At the First Review Conference of the Mine Ban Treaty (the Nairobi Summit 2004), the States Parties recommitted themselves to take action on universalisation. Through the *Nairobi Action Plan* they pledged to persevere until the convention has been universally applied and its aims are fully achieved. The plan spells out concrete actions to guide the efforts of the States Parties on the subject in the period 2005-2009. Action point 8 indicates that the States Parties will 'seize every appropriate opportunity to promote adherence to the Ottawa Convention in bilateral contacts, military-to-military dialogue, peace processes, national parliaments, and the media, including by encouraging states not parties to abide by its provisions pending their adherence to the Convention'.<sup>254</sup>

Objectives	The Netherlands strives to achieve universal adherence to the convention by promoting the accession of new countries (in particular, important mine producers and users such as China, India, Pakistan, Russia, Turkey and the US, which have not signed the Mine Ban Treaty) for security reasons.
Results	The Netherlands has contributed directly and indirectly to the accession of 22 states to the Ottawa Convention: 20 of the 43 countries that were object of Dutch bilateral and multilateral interventions eventually became States Parties, 21 countries did not accede despite the intervention, and the interventions in the two remaining (and acceding) two countries were superfluous. 61 countries were the object of EU démarches. Of these countries, 14 that were not an object of direct Dutch universalisation initiatives acceded.



Interventions	<p>The Netherlands has used various instruments to promote the universalisation of the treaty:</p> <p>Since 1998 it has approached 43 states not parties to the convention (through démarches and informal consultations) within the framework of the Universalisation Contact Group. Through concerted EU effort it appealed to 61 countries to ratify or accede to the convention.</p> <p>Since 1997 it has sponsored UN resolutions in which states are invited to sign, ratify or accede to the treaty.</p> <p>Together with other member states of the Human Security Network it made an urgent appeal to states not parties to ratify or accede to the Ottawa Convention prior to the Nairobi Summit 2004.</p>
Impediments	<p>Dutch efforts on universalisation in the Ottawa Convention were initially impeded by the slow ratification of the convention in the Netherlands. Later on, the dialectics of progress increasingly impeded the universalisation effort, leaving the UCG with a list of forty of the most recalcitrant countries.</p>

## Objectives

Once the Ottawa Convention had been established in December 1997, the Netherlands redefined its overall policy objective into the universalisation and effective implementation of the convention. To this end, the government would not only strive to achieve swift ratification of the convention by the Netherlands, but also continue to call on other countries to accede to the Mine Ban Treaty. In November 1998 the Dutch Minister of Foreign Affairs pointed out before Parliament that the Netherlands would strive for universalisation of the Ottawa Convention in the years to come, both bilaterally and in cooperation with other countries.<sup>255</sup> In March 1999 he further indicated that a larger part of the Dutch efforts should be aimed at persuading important countries that had not signed the Ottawa Convention for security reasons (including important mine producers and users like China, India, Pakistan, Russia, Turkey and the US).<sup>256</sup>

Over the years, the objective of universalisation has remained high on the Dutch agenda. In the explanatory memorandum to the budget for 2003 the government re-emphasised that it would make efforts to promote the accession of new countries to the convention.<sup>257</sup> The objective was repeatedly stressed in the instructions to the Dutch delegations at the annual Meetings of States Parties.<sup>258</sup> Furthermore it was stressed by the Secretary-General of the Ministry of Foreign Affairs, who spoke on behalf of the European Union at the Nairobi Summit 2004, and said that promoting and achieving universal acceptance of the Ottawa Convention remained a priority,

<sup>255</sup> Parliamentary proceedings, 12 November 1998, p. 1572.

<sup>256</sup> Parliamentary proceedings, 23 March 1999, pp. 1051-1052.

<sup>257</sup> TK, 28600, V, nr.2:65.

<sup>258</sup> See for example the instructions to the Dutch delegation to the annual meetings of States Parties in Maputo 2001 (file 627096, 15 January 1999), Managua 2001 (file 743164, 24 August 2001) and Bangkok 2003 (file 811535, 9 September 2003).

since states which were not parties to the convention still retained enormous stocks of anti-personnel mines.<sup>259</sup>

## Results

By means of the informal consultations at diplomatic level, informal meetings, co-sponsoring and/or co-organising of seminars, bilateral démarches or démarches jointly with one or several other States Parties, the Netherlands has contributed directly to the overall objective of universalisation of the Ottawa Convention. Since 1998 it has intervened in 43 countries to promote ratification or accession to the Ottawa Convention. In some of these countries the Netherlands has intervened more than once. Of the 43 cases, 20 countries eventually became States Parties to the Ottawa Convention, while 21 countries have not acceded. The Dutch interventions in 1999 in the remaining two countries were superfluous: during bilateral démarches in Niger and Slovakia in 1999 it appeared that these countries had already ratified the convention.

As part of EU initiatives the Netherlands has approached 61 countries to ratify or accede to the Ottawa Convention. In 26 of these cases, EU démarches were conducted in countries that were also object of direct Netherlands interventions; the remaining 35 countries were not an object of direct Netherlands universalisation initiatives. Of this latter group of 35 countries, a further 14 countries acceded to the Ottawa Convention.

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## Interventions

Dutch efforts to promote the accession of as many countries as possible to the Ottawa Convention has included bilateral or multilateral informal contacts, démarches, joint EU action and support of resolutions and declarations.<sup>260</sup> In addition, on two occasions the Netherlands has participated in the organisation of seminars to further the objective of universalisation.

First and foremost, the Netherlands has made use of bilateral contacts (bilateral démarches and informal consultations) and multilateral démarches to achieve the objective of universalisation. It has been particularly active in the Canadian-led Universalisation Contact Group (UCG), which was formed in 1999 and formally established during the Second Meeting of States Parties in 2001 in order to coordinate universalisation efforts within the framework of the Ottawa Convention.<sup>261</sup> Its members meet three times a year to agree on strategy, set priorities and plan action on states not yet parties to the convention. The Netherlands has participated in this contact group since the outset, together with some twenty other States Parties, the

259 Nairobi Summit on a Mine-Free World, Statement by Frank Majoor, Secretary-General of the Ministry of Foreign Affairs of the Kingdom of the Netherlands, on behalf of the European Union, 2 December 2004.

260 Parliamentary proceedings, 2 February 1999, pp. 639-642 and 10 February 1999, pp. 3331-3341.

261 Landmine Monitor, 2001 and Wareham, 2006:100. The Universalisation Contact Group is an informal information-sharing and strategy group consisting of more than twenty pro-ban governments, the ICRC, UNICEF and the ICBL (Landmine Monitor, 2002).

ICBL, ICRC and UNICEF. Between 1999 and 2006 the Netherlands approached scores of countries for the purpose of universalisation. Interventions were executed individually or in cooperation with other members of the Universalisation Contact Group.

In 2000 the group targeted 56 countries as part of the Action on Ottawa Convention Universalisation. Of these, 32 countries were listed as countries that could realistically be expected to ratify or accede to the convention before the 2MSP. The remaining 24 countries were expected to make some progress toward ratification or accession in the longer term.

Participants in the Universalisation Contact Group could volunteer to take responsibility to initiate activities they believed to be appropriate on a case-by-case basis to promote the objectives. These actions could, among other things, take the form of démarches, informal contacts between embassy and Ministry of Foreign Affairs, letters from one Foreign Minister to another, and joint action with other partners. The Netherlands took on special responsibilities to promote the objectives with regards to Chile, Surinam, Indonesia (ratification/accession) and Oman and Turkey (progress). In subsequent years it also took on special responsibilities regarding Greece, Lebanon, India, Vietnam, Ethiopia, Georgia, Guyana, Cyprus, Tadjikistan, Eritrea and Singapore.

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The special responsibilities of the Netherlands in these countries manifested itself, either in repeated requests for ratification or accession or, in the case of Surinam and Guyana, in the joint organisation with Canada of special seminars to promote swift accession to the Ottawa Convention.

In addition to the above, démarches were implemented as an EU-coordinated effort. In June 1999, the EU Presidency initiated a first round of EU démarches to promote the universalisation of the Ottawa Convention. In 2001, 2002, 2003 and 2006, new series of EU démarches were put into effect. By and large, EU démarches in 61 targeted countries were carried out by the EU Presidency. In most cases these démarches were carried out by representatives of the 'EU Troika'. In the event of absence of an embassy or other permanent representation of the EU Presidency, other EU states executed the démarches as local EU President. Thus, in its capacity as local EU president in Sri Lanka, the Netherlands carried out a démarche on universalisation in that country in May 2006.

Finally, the Netherlands has actively supported UN-resolutions on universalisation. In 1997 a first resolution with regard to the Ottawa Convention was submitted to the UN General Assembly's First Committee. Subsequently a resolution in support of the total ban on APMs was enacted on behalf of the States Parties every year. The Netherlands acted as a sponsor to these annual resolutions from the outset.<sup>262</sup> In addition to this,

<sup>262</sup> UNGA resolutions: 52/38A (1997), 53/77N (1998), 54/54B (1999), 55/33V (2000), 56/24M (2001), 57/74 (2002), 58/53 (2003), 59/84 (2004), 60/80 (2005) and 61/84 (2006).

letters were sent out in September 2002 and September 2004 to states not parties on behalf of the Ministers of Foreign Affairs of the Human Security Network, to encourage these states to ratify or accede to the convention. The Human Security Network is a cross-regional group of like-minded countries which are committed to strengthening human security with a view to creating a more humane world, i.e. a world in which people can live in security and dignity, free from fear and need, and with equal opportunities to fully develop their human potential. Besides the Netherlands the network consists of Austria, Chile, Greece, Ireland, Jordan, Mali, Norway, Slovenia, South Africa (observer), Switzerland, Thailand and Canada.

### Impediments

146 Dutch efforts on universalisation of the Ottawa Convention were initially impeded by the slow ratification of the treaty in the Netherlands. Already in October 1998, during the first preparatory meeting for the First Meeting of States Parties in May 1999, core group members had discussed the coordination of démarches to promote the universalisation and ratification of the treaty. The Dutch had to adopt a reserved attitude to the initiative at the time, because the Netherlands had not yet ratified the treaty. On 18 December 1997, Norway had approached the Netherlands and asked how fast the country would be able to ratify the convention. The Dutch had indicated they were hopeful of ratifying some time in the second half of 1998. However, in the course of 1998 it became clear that this objective would not be achieved. In September 1998, the ICBL responded critically after hearing that the Netherlands had not yet ratified the Convention.<sup>263</sup> In February 1999, the Dutch Parliament expressed its disappointment about the slow pace of the ratification process.<sup>264</sup>

An important reason for the slow pace of the ratification process was that the ratification procedure had become part of the preliminary work for the establishment of a legislative framework for arms control treaties. In February 1999, the 'legislative framework' project broke down after the Ministry of Justice had withdrawn its support.<sup>265</sup> The Dutch Parliament eventually ratified the Ottawa Convention on 23 March 1999, on 12 April 1999 the Netherlands submitted the ratification document to the Secretary-General of the UN. The Netherlands participated as an observer at the First Meeting of the States Parties to the convention because at that time the ratification had not yet entered into force.

Later, the dialectics of progress increasingly impeded the universalisation effort. In December 1997 the Ottawa Convention was signed by an exceptionally large number of

263 The ICBL was surprised, since the Netherlands always emphasised the significance of these kinds of conventions and presented The Hague as 'the judicial capital of the world' (file 609893, 18 September 1998).

264 Parliament responded to a Dutch newspaper article in which the Netherlands was said to be in the rear with ratification while being a front runner in the negotiations (file 609892, 10 February 1999).

265 On second thoughts Justice objected to a design by which the standard was laid down in an implementing order instead of in the law itself (file 609892, 11 February 1999).

countries. Thereafter, the countries that were sympathetic towards the convention but had not signed the convention at the time of the Signing Ceremony were easily persuaded to sign. But the further the process of universalisation of the Ottawa Convention advanced, the more difficult it became to move states not parties to become full-fledged members of the convention. The shrinking group of states that had not yet become a State Party consisted of a core group of countries that turned down the treaty on military and security grounds, and a second group of countries which were very unlikely ever to become a State Party. It could not realistically be expected that these 'tough nuts' and 'tougher nuts' would yield to the recurrent appeals from the Ottawa community. In August 2002 the Universalisation Contact Group (UCG) voiced the desirability of setting a target number for the Review Conference in 2004, the building of broad strategies in addition to specific country-approaches, and the need for longer-term strategies for targeting the 'difficult countries'. But few concrete ideas in this regard came up at the time.

In 2003 the Ottawa Convention General Support Team was established in an attempt to change minds in these countries through a military-to-military dialogue. However, the initiative could not really make a difference; from the First Review Conference of the convention in November/December 2004 until the end of 2006, only eight countries acceded to the convention, leaving a list of forty of the most reluctant cases.

### 7.3 Promoting participation

#### General course of events

In the run-up to the First Meeting of States Parties in Maputo, widespread participation in the work programme of the Ottawa Convention was identified as a vital instrument to keep the landmine issue on the international agenda, to maintain the spirit of cooperation and inclusiveness of the pre-Ottawa process, and to ensure the universalisation and effective implementation of the treaty. Over and above this, it was generally thought to be an important instrument to discourage the arising of dividing lines between donor countries and mine-affected countries.

In 1999 and 2004 series of démarches were organised by a small group of States Parties to push States Parties to participate in the 1MSP and non-States Parties to participate in the First Review Conference of the convention. Furthermore, the *Sponsorship Programme for the Anti-Personnel Mine Ban Convention* was established in advance of the 2MSP in 2000 to ensure more widespread participation from mine-affected and other countries in the annual meetings of the States Parties to the convention and in the intersessional working programme. The latter programme aims at covering the subsistence and travel costs of representatives of States Parties that have limited financial means and would normally have difficulty attending these meetings. It is currently driven by a group of 14 States Parties (including the Netherlands) which were either already involved in

sponsorship, or which wanted to become involved in order to promote the universalisation or implementation of the convention.<sup>266</sup>

The programme certainly helped to keep participation at a high level over the years.<sup>267</sup> The high level of participation is particularly striking given that by comparison with the CCW, a relatively high number of developing countries are represented in the Ottawa Convention.

Table 7.3 Dutch policies on participation December 1997 – December 2006	
Objectives	No distinct policy objective with respect to participation has been formulated since December 1997. Dutch pursuit of widespread participation materialises in due attention and concrete efforts with regard to the issue.
Results	By the performance of démarches, the Netherlands contributed directly to the participation of 35 countries in the First Meeting of States Parties. Through concerted EU action it contributed indirectly to the participation of 21, 26 and 16 countries in Third, Fourth and Fifth Meeting of States Parties respectively. By providing resources to the Sponsorship Programme the Netherlands contributed directly towards the participation of a total of 1054 participants in 17 meetings of the convention.
Interventions	As a member of the core group the Netherlands performed bilateral and multilateral démarches in 51 countries to urge countries to attend the First Meeting of States Parties and to be represented at as high a level as possible. As a member of the Human Security Network it encouraged states not parties to accede to the treaty prior to the First Review Conference of the Ottawa Convention in 2004 and at the same time urged these states to attend the summit. Since 2000 the Netherlands has sponsored travel and subsistence costs of delegates from other less wealthy States Parties via the Sponsorship Programme.
Impediments	The pursuit of high level attendance in 1999 and 2004 to the First Meeting of States Parties and the Nairobi Summit respectively was in both instances hindered by persistent uncertainty with regard to the Dutch level of attendance.

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## Objectives

Having participated in the Ottawa process from the outset, the Netherlands unhesitatingly adopted the aim of widespread participation. By contrast with the other

<sup>266</sup> GICHD, *Intervention to the GGE to the CCW by Stephan Nellen*, 7 March 2007.

<sup>267</sup> The success of the Sponsorship Programme has contributed to the adoption by the Third Review Conference of the CCW, on 15 November 2006, of the *Decision on the Establishment of a Sponsorship Programme within the Framework of the Convention* (Website UNOG, Conference on Disarmament, Sponsorship Programme).

issues on the Ottawa agenda, however, no distinct policy objective with respect to participation was formulated by the Dutch government. Instead, the Dutch pursuit of widespread participation materialised in the attention the issue received in the records and the concrete efforts made in this respect at the administrative level.

The issue was raised by the Dutch Minister of Foreign Affairs in Parliament only once. In March 1999 during the parliamentary debate on the approbation of the Ottawa Convention the Minister indicated that the issue of widespread participation was high on the agenda of the First Meeting of States Parties. The theme of the meeting would be the promotion of universality and the implementation of the objectives of the convention. In this respect it was decided that the meeting would take place at ministerial level, by which the States Parties hoped to emphasise the importance they attached to the convention.<sup>268</sup> As far as the Netherlands was concerned the initiative on high-level attendance was not without obligations. The Netherlands was among the first members of the core group to have played an active role in the preparations for the meeting. On 9 March 1999 the Minister had instructed the Dutch embassies to conduct *démarches* to advocate high-level participation in Maputo. The same held for the high-level attendance action plan of the core group in the run-up to the Nairobi Summit in 2004.

## Results

The Netherlands contributed directly to the participation of 35 countries in the First Meeting of States Parties in Maputo in May 1999. Of the 51 countries where *démarches* were conducted for the purpose of high-level participation in the First Meeting of States Parties, 16 countries opted not to attend. Of the 38 countries that were approached by the EU to attend the Third Meeting of States Parties in September 2001 in Managua, 21 countries eventually participated, while 17 countries decided not to attend. Of the 39 countries that were approached by the EU to attend the Fourth Meeting of States Parties in September 2002 in Geneva, 26 countries eventually participated, while 13 countries decided not to attend. And of the 34 countries that were approached by the EU to attend the Fifth Meeting of States Parties in September 2003 in Bangkok, 16 countries eventually participated, while 18 countries decided not to attend. In addition, by providing resources for the Sponsorship Programme, the Netherlands contributed to the participation of in total 1054 delegates and guest speakers from financially weak states in 17 meetings, i.e. an average of 62 additional participants per meeting.

In spite of its status as a member of the core group who took the initiative in 1999 and 2004 to press for participation at the highest possible level at the 1MSP and the First Review Conference of the Ottawa Convention respectively, the Netherlands was not represented by a Minister at these meetings. During the 1MSP the Netherlands Permanent Representative to the Conference on Disarmament acted as head of the

<sup>268</sup> Parliamentary proceedings, 23 March 1999, pp. 1049-1053.

Dutch delegation. From 30 November until 3 December 2004 135 states participated in the Nairobi Summit. Participants included 5 heads of states or heads of government, 6 vice presidents or deputy heads of government and 20 ministers. During this conference the Netherlands was represented by the Secretary-General of the Ministry of Foreign Affairs.

### Interventions

After the establishment of the Ottawa Convention the Netherlands took due action directly to foster the aim of widespread participation. From autumn 1998 the Netherlands (as other members of the inner core group) participated in the group of countries that took responsibility for the organisation of the First Meeting of States Parties. The 'Friends of Maputo' convened regularly to discuss the agenda and set-up of the meeting scheduled for May 1999 in Maputo. During these preparatory meetings it was decided that the group would perform a series of démarches to promote universalisation of the treaty and to invite States Parties and also non-States Parties to participate in the First Meeting of States Parties. The démarches were conducted in March and April 1999. At the time, the Netherlands performed bilateral and multilateral démarches in 51 countries to urge countries to attend the 1MSP and to be represented at as high a level as possible.

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In 2001, 2002 and 2003, démarches for the purpose of participation in the annual meetings of the convention have been conducted by the joint EU member states. In July and August 2001 the EU conducted a first series of démarches in 38 countries to promote the universalisation of the Ottawa Convention and active participation in the Third Meeting of States Parties in September 2001 in Managua. In the autumn of 2002, the EU Presidency initiated another series of démarches in 39 countries to promote the universalisation of the Ottawa Convention and active participation in the Fourth Meeting of States Parties in September 2002 in Geneva. And in the autumn of 2003 the EU conducted démarches on behalf of the member states in 34 countries to promote universalisation an active participation in the Fifth Meeting of States Parties in September 2003 in Bangkok.

In the course of 2004 a new campaign was set up by the core group to press for high level participation in the First Review Conference of the Ottawa Convention in Nairobi 2004. Among other things, a letter was sent out in September 2004 to some fifty states not parties to the convention on behalf of the Ministers of Foreign Affairs (including the Minister of Foreign Affairs of the Netherlands) of the Human Security Network (HSN). In the letter the HSN parties called upon all states that had not yet done so to join the convention prior to the Nairobi Summit, and to participate as observers at the summit so as to experience the universal humanitarian importance of the movement against anti-personnel mines.<sup>269</sup>

<sup>269</sup> Website Human Security Network, Statements, Human Security Network Declaration for the Nairobi Summit on a Mine-Free World, 2004.



Over and above this, the Netherlands sponsored the participation of delegates and guest speakers from financially weak states in the meetings of the convention.<sup>270</sup> In December 1997, at the request of Canada, the Netherlands sponsored the travel and accommodation costs for delegates from Ghana, Ivory Coast and Yemen to the Ottawa Signing Ceremony and Action Forum on Anti-Personnel Mines in December 1997. Since its establishment in 2000 the Netherlands has been a member of the permanent pool of countries participating in the Sponsorship Programme for the Anti-Personnel Mine Ban Convention.<sup>271</sup> In 2000 it provided EUR 172,744 to the voluntary trust fund of the programme. In 2003 it contributed EUR 109,312.

### Impediments

The Dutch pursuit of high level participation in the First Meeting of States Parties and the Nairobi Summit in respectively 1999 and 2004 was hindered by persistent uncertainty about the level of the Dutch delegation to these meetings.

In February 1999 the Security Policy Department of the Ministry of Foreign Affairs made a first proposal to the Minister of Foreign Affairs to attend the 1MSP in Maputo. The main argument at that time was that the core group had decided to promote attendance at ministerial level. Thus, as a core group member, the Netherlands was expected to set an example to other countries in that respect. Then, on 11 March, it was internally communicated that the Dutch Minister of Foreign Affairs would not attend the 1MSP in Maputo. The Netherlands nevertheless decided to hold to the performance of a series of démarches in which countries were urged to attend the 1MSP at ministerial level. On 17 March 1997 the Director-General of Political Affairs was informed that 27 ministers of the countries approached had announced their intention of attending the meeting.<sup>272</sup>

On 1 April the Dutch embassy in Maputo reported that the preparations for the 1MSP were being hampered by the late registration of delegation members. The Ministry of Foreign Affairs was urged to inform Mozambique about the composition of the Dutch delegation as soon as possible. Not until 6 April was a letter sent from Van Aartsen to his colleague Voorhoeve in which the latter or the State Secretary of Defence was invited to attend the Maputo meeting on behalf of the Netherlands. Both turned down the invitation, however, because of the outbreak of the Kosovo conflict. This response put the Netherlands in another awkward position, since the closing date for registration was 16 April. On 15 April the embassy was requested to register the delegation members as far as they were known, since the delegation leader had not yet been appointed. Four days later the Dutch ambassador in Mozambique was appointed

270 NB: Only participants from the OECD list of LLDCs (Land-Locked Developing Countries) and LDCs (Less Developed Countries) qualify for sponsoring.

271 The present States Parties participating in the Sponsorship Programme are: Australia, Austria, Belgium, Canada, Denmark, Germany, Ireland, Italy, France, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom (programme coordinator) (Final report 6MSP, APLC/MSP.6/2005/5, p. 44).

272 After he was further informed that the Minister for Development Cooperation was also unable to attend, he suggested a number of alternatives.

as head of the Dutch delegation to Maputo. Registration of the Dutch delegation only took place on 3 May 1999, the first day of the Maputo meeting.

The Netherlands ended up in a similar position in the run-up to the First Review Conference of the Ottawa Convention in December 2004. Preparations for the Nairobi Summit had started as early as autumn 2003. In September 2003 a note was sent to invite the Minister of Foreign Affairs and the Minister for Development Cooperation to attend. Representation at a ministerial level at the summit was thought to be of paramount importance, not only because the Netherlands had to set an example at as core group state, but also because it would co-chair the Standing Committee on the General Status and Operations of the Convention during the review conference. Moreover the summit would take place during the Dutch EU Presidency, which meant that the Netherlands would also attend the summit in its capacity as EU President. The note was returned, with the argument that the issue could wait for a while.

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In November 2003 ICBL Nobel laureate Joy Williams sent a letter inviting the Netherlands to attend the summit at the highest possible level. But the letter did not result in any progress on the issue. In February 2004, the Dutch representation in the CODUN received the instruction to ask the EU partners on what level they were planning to attend the review conference. It was indicated that the Dutch aim was to attend at ministerial level, but that no decision had yet been taken. In May the CD delegation in Geneva reported that a decision on the level of attendance of the Netherlands was becoming urgent, because the other EU countries were waiting for the decision before determining at what level they themselves would attend.

After five more months of internal agenda shifting finally in early November it became clear that the Netherlands would not attend the Nairobi Summit at a ministerial level. The Secretary-General of the Ministry of Foreign Affairs would head the delegation to the review conference.

## 7.4 Complying with the Ottawa Convention

### General course of events

Universal adherence to the convention does not necessarily guarantee universal respect of its stipulations. For this reason, the convention allows for the monitoring of compliance. Formally it has two mechanisms at its disposal:

First, the monitoring of compliance is achieved through the formal annual reporting by States Parties in accordance with Article 7 of the convention. In Article 7 it is stipulated that the information the States Parties have to provide in accordance with this article shall be updated annually, covering the last calendar year, and reported to

the Secretary-General of the UN no later than 30 April of each year.<sup>273</sup> At the First Meeting of States Parties in May 1999 in Maputo, the States Parties decided to make Article 7 reports publicly available, including on the internet. Also during this meeting, an Article 7 reporting format was adopted. Making the reports public was considered of great importance. This is in stark contrast to the decisions made with regard to transparent reporting at the CCW Protocol II annual conference in December 1999.<sup>274</sup>

In 2000 the 'Article 7 Contact Group' was established to encourage high quality and on-time reporting compliance with the Article 7 reporting requirements. The Article 7 Contact Group is an informal open-ended group of States Parties led by Belgium that meets on the margins of the annual and intersessional meetings of the convention. The group coordinates démarches to states which are late in reporting, offering them assistance (among others by the delivery of the *VERTIC Guide to Reporting under Article 7 of the Ottawa Convention*).<sup>275</sup> Member states often take the responsibility for contacting states which are late in reporting and with which they share a common language or historical association, or which are situated in the same region.<sup>276</sup>

In addition to the compulsory annual reporting, the convention has at its disposal a mechanism for verifying suspected cases of non-compliance with the prohibitions. Article 8 of the convention allows for clarification of compliance, including compulsory fact-finding missions in specific circumstances. To date, no State Party has deemed it necessary to formally invoke the Article 8 procedures, although the ICBL has alleged violations of a small number of signatories and States Parties. In these cases the States Parties preferred to seek out allegations of non-compliance by other means.

Apart from these two formal mechanisms, a civil-society-based compliance mechanism was established in 1999 through the *Landmine Monitor*. The annual reports of ICBL have helped ensure that all states are fully aware of their obligations and know that every step that falls below the high standards set by the convention will be exposed.<sup>277</sup>

<sup>273</sup> Article 7.2 of the Ottawa Convention.

<sup>274</sup> Human Rights Watch 2000.

<sup>275</sup> VERTIC 2001.

<sup>276</sup> Angela Woodward 2001.

<sup>277</sup> Stephen Nellen 2005.

Table 7.4 Dutch policies on compliance December 1997 – December 2006	
Objectives	The Netherlands strives to support all measures that are targeted at compliance with Article 7 reporting requirements and at effectively addressing alleged or declared cases of non-compliance with the Ottawa Convention.
Results	The Netherlands directly contributed to the annual increase of the rate of compliance with Article 7 of the Ottawa Convention (from 56 percent in 1999 to 96 percent in 2006).
Interventions	<p>Within the Ottawa framework the Netherlands participated in several series of démarches to promote high-quality and on-time Article 7 reporting. Démarches were carried out within the framework of the EU 1) with regard to Article 7 obligations and 2) to promote the Article 9 national implementation measures.</p> <p>The Netherlands worked within the framework of the EU to reach agreement on joint action with regard to the use of anti-personnel mines by the Angolan government and UNITA. Since no consensus on joint action could be reached, the Netherlands seized the opportunity to voice its concern unilaterally.</p> <p>At the 3MSP in 2001 the Netherlands expressed its concern about the alarming situation that a growing number of States Parties were falling under suspicion of using anti-personnel mines.</p>
Impediments	Dutch interventions in the case of non-compliance by Angola were hindered by the comprehensiveness of the Ottawa Convention, the emphasis on cooperation within the convention and the differences of opinion on joint action among the EU member states.

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### Objectives

The objective of compliance received due attention by the Netherlands from March/April 1999 onwards.<sup>278</sup> In December 1999 the Dutch Minister of Foreign Affairs Van Aartsen emphasised the importance of supervision of compliance with the stipulations of the convention. In this regard, he specifically pointed at the ban on the production and transfer of anti-personnel mines and at timely and full execution of the obligation of reporting.<sup>279</sup> Furthermore, supervision over compliance was mentioned as one of the three key objectives in Dutch policy – next to promotion of universal acceptance of the treaty and support to its implementation – in the instructions to the Dutch delegations to the annual meetings of States Parties in Managua (2001) and Bangkok (2003). Over and above this, continuance of the Netherlands support to countries on matters of compliance was listed as a policy target in the Notes on the Budget for 2003

<sup>278</sup> The treaty entered into force on 1 March 1999 and the Netherlands ratified on 12 April 1999.

<sup>279</sup> TK, 26137 (R 1620), nr. 7:2.

and 2004.<sup>280</sup> In the latter document the qualitative and quantitative improvement of the reports on landmines to the UN was explicitly added to the compliance target.<sup>281</sup>

## Results

Landmine Monitor reported in 2006 that the overall compliance rate of States Parties in submitting Article 7 reports was an impressive 96 percent. This compares to 96 percent in 2005, 91 percent in 2004, 88 percent in 2003 and 75 percent in 2002.<sup>282</sup> An update of the Implementation Support Unit in May 2003 demonstrated that the 2002 annual reporting rate was also considerably higher than in previous years (56 percent in 1999, 51 percent in 2000, and 59 percent in 2001). By its participation in joint démarches within the framework of the Ottawa Convention and through EU démarches, the Netherlands contributed directly to the annual increase of the rate of compliance with Article 7 of the Ottawa Convention.

## Interventions

The Dutch interventions on compliance comprised both actions targeted at States Parties to meet the Article 7 obligations of the convention and actions dealing with alleged cases of non-compliance with the convention.

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Within the Ottawa framework the Netherlands participated in several series of démarches to promote high-quality and on-time reporting compliance with the Article 7 reporting requirements. At the initiative of Canada, a first series of joint démarches was conducted by a small group of States Parties (with Belgium as leading country) in the autumn of 1999. The aim of the initiative was to approach countries whose reports were late or whose deadline was coming up in a few months. The Netherlands took responsibility for démarches in the Middle East/North Africa region – notably for Yemen (late report), Qatar and Tunisia (reports due at a future date). In October 1999 a démarche was carried out in Yemen to make inquiries about the reasons for late reporting. After consultations with the embassies in the countries concerned it was decided to abandon démarches in Qatar and Tunisia.<sup>283</sup> Over and above this, the Netherlands participated in démarches in eight countries in the European Union/Western Europe region.

Early 2001 Belgium initiated a second series of démarches in countries whose reports were late or due at a future date. The Netherlands was again approached to participate in the initiative, and carried out démarches in three countries whose reports were late (Mali, Uganda and Namibia). At the same time it decided to abandon démarches in countries whose reports were due at a future date. According to the Dutch, these

<sup>280</sup> TK, 28600, V, nr. 2.

<sup>281</sup> TK, 29200, V, nr. 2.

<sup>282</sup> Landmine Monitor, 2006.

<sup>283</sup> Carrying out a formal démarche in Tunisia was not thought fit because the country had just ratified the convention and its report was not yet late. Canada took over the démarche in Qatar.

countries had not yet done anything wrong and carrying out démarches could only be considered as patronising.

In 2002 and 2003 the Netherlands carried out démarches in Afghanistan, Eritrea, Qatar, Surinam, Tajikistan, and Uganda to encourage these countries to comply with the annual obligations in Article 7. In 2004 the Netherlands also volunteered to carry out démarches in countries that were late in submitting their reports. It became responsible for Eritrea and Guyana, but did not conduct démarches in these two countries. A démarche in Eritrea turned out to be unnecessary because this country had already submitted its report. A démarche in Guyana was thought to be inappropriate since the report of this country was only due at a future date.

156 At the same time démarches with regard to the Article 7 requirements were conducted by the joint EU states. Furthermore, EU démarches were conducted with regard to Article 9 national implementation measures of the Ottawa Convention. Article 9 obliges each State Party to take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity under its jurisdiction or control. Based on the analysis of the Article 7 reports it was noted that countries had not yet complied with the Article 9 national implementation measures. Consequently démarches were carried out in 2001 and 2006 to promote the implementation of national measures in accordance with the Article 9 of the Ottawa Convention.

In addition to the multiple interventions with regard to compliance with the Article 7 obligations of the convention, the Netherlands strove to deal with cases of non-compliance. Throughout the years, the eyes of the Ottawa community were particularly on the alleged use of anti-personnel mines in Angola and Uganda. In August 1998 it appeared from reliable sources that in the course of intensifying military activities the Angolan forces had again started to lay anti-personnel mines as well as anti-tank mines and had partially stopped the demining of identified minefields, while Angola being a signatory to the Ottawa Convention. In addition, the EU had been reliably informed that UNITA was also undertaking widespread activities of laying anti-personnel mines and anti-vehicle mines. Thereupon Germany, who was acting for the EU Presidency in Angola, proposed carrying out a troika démarche to urge the Angolan government to stop the laying of APMs on its soil forthwith and to resume demining activities.

The Netherlands agreed with Germany that it would be appropriate to undertake a démarche to the Angolan government to express its concern about the placement of anti-personnel mines. However, no consensus could be reached in the EU on a troika démarche. Only three countries (Germany, the UK and the Netherlands) seemed willing to support such a démarche, while one country (Portugal) indicated that it would reject any common EU declaration regarding Angola because of bilateral sensitivities. The majority of EU countries felt that it would be politically unwise to démarche the government of Angola, since this would be only rejected by the government, who

would point out that they were fighting an undeclared war that was not of their making. Thereupon the Netherlands proposed drafting an EU statement on the situation in Angola, which could replace the proposed EU démarche. However, no consensus could be reached on the Dutch proposal either. Finally it was agreed that the issue could best be addressed on a bilateral basis in the course of normal contacts at ministerial level. Subsequently the Netherlands seized the opportunity to voice its concern during the monthly meeting for humanitarian aid to Angola that was chaired by the Angolan Minister Malungo of Social Affairs and Reintegration. Minister Malungo responded to the initiative by declaring that the national security of the country naturally prevailed over the Ottawa Convention. Subsequently, on September 2000 at the Second Meeting of States Parties in Geneva, Angola publicly declared that it was using mines and that it would continue to use them.

Then, in 2000 and 2001, Landmine Monitor reported serious and credible allegations indicating a strong possibility of Ugandan use of anti-personnel mines in the Democratic Republic of Congo, particularly in the June 2000 battle for Kisangani. The government denied such use, but at the Third Meeting of States Parties in September 2001 said that it supported the ICBL's suggestion that a full investigation be carried out. At the same meeting the Dutch delegation expressed its concern about the alarming situation that a growing number of States Parties, among which Angola and Uganda, were falling under the suspicion of using anti-personnel mines. Since the convention did not have a strong verification mechanism at its disposal, and such a mechanism would be too expensive and rather ineffective, the Netherlands voiced its preference for dialogue and persuasion above disgracing these countries in public.

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Subsequently, Uganda informed the States Parties in February 2002 of its intentions to investigate the allegations of landmine use, in the spirit of openness and cooperation called for in the convention. However, no further public statements were forthcoming. At the Fifth Meeting of States Parties in September 2003, ICBL expressed disappointment that Uganda had made no further public statements regarding the allegations or the investigation. Invoking the right of reply, Uganda told the States Parties: 'You may appreciate the various initiatives that the involved countries have put in place to ease the tensions that had prevailed. In the interest of the established mechanisms to ease the tensions, it was deemed inopportune to continue with the process that would jeopardise the healing process. In the interest of both parties involved, the report of the commission has not been made public.'<sup>284</sup>

## Impediments

Interventions by the Dutch government in the case of signatory Angola's non-compliance with the convention were hindered in the first place by the comprehensiveness of the Ottawa Convention. The countries that had participated in the Ottawa process in 1997 had negotiated a total ban, with no exceptions or

<sup>284</sup> Landmine Monitor, 2004.

transitional provisions for individual or groups of countries and with no negotiation topics being left on the table. This means that it is not a purpose of the convention to consider amendments to the treaty or negotiate new articles. Thus in cases of non-compliance, all that the Ottawa community can fall back on to verify suspected cases of non-compliance with the prohibitions is the modest Article 8 mechanism. In addition, the particular emphasis of the convention on cooperation ensures that the Article 8 procedures are only to be perceived as a last resource for extracting compliance. All in all, this leaves little room for States Parties to deal firmly with States Parties suspected of breaking the convention's rules. From this perspective, the Dutch preference for dialogue and persuasion is the only pragmatic strategy available to the States Parties.

A further impediment to the Dutch policy was the disagreement among the EU member states on joint action. In the absence of consensus, the effect of the Dutch intervention with regard to the widespread laying of landmines by the government troops and UNITA in Angola could not be anything else but limited.

## 7.5 Interpreting and implementing the Articles 1, 2 and 3

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### General course of events

Closely connected to the issue of compliance are matters of appropriate interpretation and implementation regarding Articles 1, 2 and 3 of the Ottawa Convention. Since the conclusion of the Oslo negotiations in 1997, the ICBL and the ICRC repeatedly asked attention for the inconsistent and contradictory manner in which States Parties interpreted and implemented certain aspects of Article 1 (general obligations) Article 2 (definitions) and Article 3 (exceptions) of the convention. In particular these non-state actors expressed their concerns on the diverging interpretations or disagreement among States Parties on:

- The meaning of 'assist' in Article 1: What acts are banned under the prohibition on assistance? Since 1999 the ICBL and ICRC raised questions about possible prohibited assistance of States Parties.<sup>285</sup> The ICBL urged the States Parties to come to a common understanding of the term 'assist' (1c), especially in cases of joint military operations with non-States Parties and the stockpiling and transit of foreign anti-personnel mines.<sup>286</sup>
- The definition of 'anti-personnel mine' in Article 2: What landmines are banned under the convention? Since the coming about of the convention the ICBL and the ICRC disputed the narrow definition of anti-personnel mines adopted by some States

<sup>285</sup> Ottawa Convention, Intersessional Standing Committee on General Status and Operation of the Convention, Intervention by Stephen Goose, Head of Delegation, International Campaign to Ban Landmines (ICBL), On Article 1, 16 May 2003.

<sup>286</sup> Ottawa Convention, Intersessional Standing Committee on General Status and Operation of the Convention, Intervention of the ICRC, Article 1, 16 May 2003.



Parties. The ICBL urged States Parties to reconfirm that according to the definitions of Article 2 of the treaty, anti-vehicle mines equipped with anti-handling devices or sensitive fuses that function like anti-personnel mines are banned by the convention. As to this, it pushed for public statements on this matter during Standing Committee on General Status and Operation of the Conventions (SC GSO) intersessional meetings.<sup>287</sup> It is also the ICRC's firm belief that any mine that is likely to be detonated by the presence, proximity or contact of a person, was to be considered anti-personnel mine and therefore prohibited by the convention.<sup>288</sup> In order to develop understandings, it presented an information paper on the positions and practices of States Parties with respect to anti-vehicle mines with sensitive fuses at the SC GSO meeting in February 2004.<sup>289</sup>

- The implicit margins of 'minimum number absolutely necessary' in Article 3: What number of anti-personnel mines is still acceptable for the development of and training in mine detection, mine clearance, or mine destruction techniques? Since 1999 the ICBL expressed its concern about the retaining of excessive numbers of anti-personnel mines for the purpose of development and training by some States Parties. In February 2002 it stressed that the number of APMs retained in accordance with Article 3 should number in the hundreds or thousands, not in the tens of thousands. In this regard it pointed to the Oslo Conference of September 1997 where a large number of delegations had stated this was their understanding.<sup>290</sup> In February 2004 ICRC presented a discussion paper on elements for a common understanding on Article 3.<sup>291</sup>

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The States Parties recognized the need to promote further clarity on these matters. Consequently discussions on Articles 1, 2 and 3 occurred at every meeting of States Parties and during every intersessional week.<sup>292</sup> At the fifth meeting of States Parties in Bangkok in September 2003 the States Parties agreed to continue to share information and views, with a view to developing understandings on these matters by the First Review Conference (Nairobi Summit 2004). However, the States Parties proved unable to reaching understandings or conclusions on Articles 1, 2 and 3 before and during the review conference.

<sup>287</sup> Ottawa Convention, Intersessional Standing Committee on General Status and Operation of the Convention, Interventions by Stephen Goose, Head of Delegation, International Campaign to Ban Landmines (ICBL), On Article 2, 16 May 2003.

<sup>288</sup> Already in the first edition of *Landmine Monitor* (1999) the ICRC expressed its concern about the potential increased reliance of national armies on anti-vehicle mines with sensitive anti-handling devices and sensitive fusing mechanisms in response to the prohibited use of APMs.

<sup>289</sup> Ottawa Convention, Intersessional Standing Committee on General Status and Operation of the Convention, 'Anti-vehicle' mines with sensitive fuses: Positions and relevant practice of States Parties on Article 2 of the Ottawa Convention, Paper presented by the ICRC, 9 February 2004.

<sup>290</sup> Ottawa Convention, Intersessional Standing Committee on General Status and Operation of the Convention, ICBL intervention on Article 3, 1 February 2002.

<sup>291</sup> Ottawa Convention, Intersessional Standing Committee on General Status and Operation of the Convention, Elements for a common understanding on Article 3 ICRC discussion paper, 9 February 2004.

<sup>292</sup> *Landmine Monitor, Special Five Year Review, 2004*, p. 23.

<b>Table 7.5 Dutch policies on the Articles 1, 2 and 3 of the convention December 1997 – December 2006</b>	
Objectives	No distinct policy objectives on the interpretation and implementation of the Articles 1, 2 and 3 have been formulated since the entering into force of the convention. Dutch pursuit of consistent interpretation and implementation of Articles 1, 2 and 3 materialises in due attention and concrete efforts with regard to the issue.
Results	No results. The States Parties proved unable to develop substantial conclusions on Articles 1, 2 and 3 before and during the First Review Conference.
Interventions	The Netherlands used its co-chairmanship of the SC GSO in 2004 to promote convergence on the interpretation of the Articles 1, 2 and 3: It presented a non-paper on matters pertaining to Article 1 of the convention. Together with co-chair Mexico it introduced a non-paper with suggested texts on Articles 1, 2 and 3.
Impediments	A handful of States Parties effectively blocked all efforts of the Dutch co-chair in the SC GSO to reach common understandings on the Articles 1, 2 and 3.

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### Objectives

The issue of the consistent interpretation and implementation of the Articles 1, 2 and 3 was never raised by a Dutch Minister of Foreign Affairs in Parliament. Nor was a distinct policy objective with respect to Articles 1, 2 and 3 formulated by the Dutch government. In spite of this, the Dutch government's position regarding matters pertaining Articles 1, 2 and 3 and its pursuit of common understandings materialised since 2000 in the statements and actions of the Dutch delegation to the annual meetings of States Parties and the intersessional work programme.

At the SC GSO intersessional meeting in January 2000 the Netherlands made clear its position on mines with sensitive fuses or anti-handling devices regarding the interpretation of Article 2. The Dutch delegation stated that 'if these may be activated by the unintentional act of a person they are to be considered as anti-personnel mines and are banned by the treaty'. At the third meeting of States Parties in September 2001 in Managua (3MSP) Dutch representatives re-emphasized the Dutch position that any device that functions like an anti-personnel mine was considered to be an anti-personnel mine and therefore banned by the treaty. At the same time, the Netherlands urged States Parties to review their inventories of anti-vehicle mines to ascertain that they do not function as anti-personnel mines.<sup>293</sup> At the SC GSO meeting in March 2004 the Dutch co-chair stated that the Dutch government's position had remained unchanged on the issue.<sup>294</sup>

<sup>293</sup> Landmine Monitor, 2002:366.

<sup>294</sup> Landmine Monitor, 2004:605.

The Dutch position on the prohibition on ‘assistance’ in Article 1 was also explained at the SC GSO meeting in March 2004.<sup>295</sup> The Dutch co-chair introduced a non-paper on ‘assistance’ by which he expressed the Dutch government’s understanding, that the treaty prohibits involvement in any activity related to anti-personnel mines during joint military operations with non-signatory countries.<sup>296</sup>

Being among the first of the group of countries that negotiated the treaty, the Netherlands never questioned the understanding of the negotiators of the ICBL that the number of mines retained in accordance with the Article 3 should be in the hundreds or thousands, but not in the tens of thousands.

## Results

Despite the mandate of the fifth meeting of States Parties (2003) to reach understandings on these matters at the First Review Conference, the States Parties proved unable to develop substantial conclusions on Articles 1, 2 and 3 before or during the review conference. At the Nairobi Summit 2004 the States Parties only committed themselves to some minimum conclusions on Article 3. Action point 54 of the Nairobi action plan 2005-2009 indicates that ‘in situations where States Parties have retained mines in accordance with the exceptions in Article 3, provide information on the plans requiring the retention of mines for the development of and training in mine detection, mine clearance, or mine destruction techniques and report on the actual use of retained mines and the results of such use’.<sup>297</sup>

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## Interventions

Informal discussions pertaining to Articles 1, 2 and 3 of the convention had occurred since the first meeting of States Parties in Maputo in May 1999. At the fifth meeting of States Parties in Bangkok in September 2003 the States Parties agreed to try to reach understandings on Articles 1, 2 and 3 at the First Review Conference of the convention. With that, the mandate of the 5MSP capitalized on the convention’s stipulation that the States Parties may adopt in the final report of a Review Conference conclusions related to the implementation of the convention.<sup>298</sup>

In December 2003 the ICRC requested the Netherlands to take up the issue of interpretation and implementation of Articles 1, 2 and 3. As co-chair of the SC GSO (September 2003 – December 2004) the Netherlands immediately expressed willingness to promote convergence on the interpretation and implementation of Articles 1, 2 and 3 with an eye to the forthcoming review conference. In December 2003

<sup>295</sup> Landmine Monitor, 2004:605.

<sup>296</sup> Landmine Monitor, 2004:605.

<sup>297</sup> Nairobi action plan 2005-2009. Action #55 of the Nairobi Action Plan directs all States Parties to, ‘exchange views and share their experiences in a cooperative and informal manner on the practical implementation of the various provisions of the Convention, including Articles 1, 2 and 3, to continue to promote effective and consistent application of these provisions’.

<sup>298</sup> Ottawa Convention, Article 12.2d.

and January 2004, internal deliberations took place about how to deal with the issue, on the basis of which the Dutch made a first plan of action. Among others it was decided 1) to collect all relevant information (Landmine Monitor, data base of the ICRC and proceedings of meeting of the States Parties) on the positions and practices of the States Parties on the Articles 1 and 2, 2) to make an inventory of ideas on how to resolve the interpretation problems regarding Articles 1 and 2 at a workshop on ERW in Garderen (4-6 February 2004) that was organized by the Dutch within the framework of the CCW and 3) to search for common ground on these matters in the up-lead to the review conference. Because the Article 3 issue on the number of anti-personnel mines was considered to be the easiest to solve, the Dutch expected to reach agreement on this matter during the standing committee meetings in February 2004.

In November 2003, the Dutch had organized and chaired an informal seminar in Scheveningen, the Netherlands, regarding the coming review conference. The aim of the seminar was to develop a vision on the future of the Ottawa Convention. One of the topics that had been given due attention was how to solve the diverging interpretations of the States Parties of the Articles 1, 2 and 3. It was decided then to prepare papers on the interpretation of Articles 1 and 3 with an eye to the resumption of the deliberations on the matter in the SC GSO.

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In February 2004, discussions on Article 1, 2 and 3 continued in the SC GSO. At the first day of the intersessional week, the Dutch co-chair indicated that the Netherlands would suggest elements for common understandings on Articles 1, 2 and 3 which States Parties may wish to accept at the Review Conference. In this context he presented a non-paper on how to arrive at a common understanding on matters pertaining to Article 1 of the Convention, particularly with respect to States Parties' views on the word 'assist'. At the same time the ICRC presented papers and draft texts on Articles 2 and 3.<sup>299</sup> Following consultations, a non-paper with suggested texts on Articles 1, 2 and 3 was presented by the co-chairs of the SC GSO (Mexico and the Netherlands) in June 2004 (see box 7.1).<sup>300</sup> This non-paper was further discussed and a revised version was transmitted at the end of the intersessional week to the President of the review conference.

<sup>299</sup> Intersessional work programme 2003-2004, SC GSO, Meeting report 9 February 2004.

<sup>300</sup> Intersessional work programme 2003-2004, SC GSO, Meeting report 21 and 24 June 2004.

### Box 7.1

#### *Non-paper of the co-chairs of the SC GSO on suggested conclusions pertaining the interpretation and implementation of Articles 1, 2 and 3*

As noted in Article 12, paragraph 2(d) of the MBT, at a review conference the States Parties may 'adopt, if necessary, in its final report conclusions related to the implementation of [the] Convention'. What follows are suggested conclusions pertaining to some particular areas of implementation, which will be the subject of discussion in the SC on GSO this week. They might subsequently be transferred to the President-Designate to be taken into account in preparing for the Review Conference.

#### **Conclusions**

We reaffirm our commitment to effectively implement the provisions of the Convention with a view to fully achieving its goals, and conclude:

- that States Parties engaging in military operations with other states or groups of states should not participate in planning for use of anti-personnel mines; train others to use anti-personnel mines; participate in operations wherein direct military benefit is known to be derived from the use of anti-personnel mines in the area of those operations; implement rules of engagement permitting the use of anti-personnel mines; request others to use anti-personnel mines; provide protection, maintenance or transport for identified storage or use of anti-personnel mines;
- that States Parties should not consent to the transit of anti-personnel mines over territory under their jurisdiction or control;
- that mines fitted with breakwires, tripwires and tilt rods should not be used, and further that mines fitted with pressure fuses should not be used in circumstances where detonation by the presence, proximity or contact of a person is likely;
- that if a State Party chooses to retain a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques, it should be the minimum number absolutely necessary and be numbered in the hundreds or thousands, or less, and not in the tens of thousands;
- that States choosing to retain anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques should report voluntarily under Article 7 on the intended purposes of retaining such mines, and the actual uses of those mines.

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*Source: Standing Committee on the Status and Operation of the Convention, 21 & 25 June 2004, Summary and Statements, Non-paper presented by the co-chairs.*

### **Impediments**

In the up-lead to the First Review Conference in Nairobi it proved impossible to establish common understandings on the interpretation and implementation of certain aspects of Articles 1, 2 and 3 of the convention. Efforts of the ICBL, ICRC and the Netherlands in its capacity as co-chair of the SC GSO were effectively blocked by a small group of States Parties.

France, Germany, Japan and Sweden strongly opposed to the efforts to reach a common understandings on the issue of anti-vehicle mines with sensitive fuses and anti-handling devices that function as anti-personnel mines. Japan firmly believed that anti-vehicle mines with sensitive fuses or anti-handling devices should be dealt with in the CCW. For the same reason it had opposed a proposal of the ICRC to do expert work on anti-vehicle mines with sensitive fuses or anti-handling devices within the framework of the Ottawa Convention in 2003.<sup>301</sup> Sweden took the line that anti-vehicle mines with anti-handling devices and sensible fuses are not comparable to anti-personnel mines.

France, Germany and Japan also questioned the need to discuss the meaning of Articles 1, 2 and 3 of the treaty the SC GSO meeting in June 2004. The French delegation questioned the status of any conclusions on these issues that might be reached at the review conference, while the German delegation warned that such conclusions could amount to amend the treaty, which does not fall within the scope of a review conference as defined by Article 12.<sup>302</sup> The Japanese delegation argued that the proposed clarifications amount to new rules and requirements and would prevent some countries from acceding to the treaty in the future. In its view ‘the current provisions reflect a subtle balance and compromise arrived at through lengthy negotiations. Therefore a certain degree of abstraction is indispensable, as is always the case in multilateral treaties, so that many states facing different conditions can coexist in the same legal framework.’<sup>303</sup>

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The Belgian positions on Articles 1, 2 and 3 largely corresponded to those supported by the ICBL. Reacting to a non-paper circulated by the Mexican and Dutch co-chairs, the Belgian representative nonetheless expressed the view that time would be better spent dealing with the ‘core humanitarian aims’ as expressed in the President’s Action Plan.<sup>304</sup>

## 7.6 Supporting mine clearance

### General course of events

The Ottawa Convention aims at banning all anti-personnel mines. As such, mine clearance is the first and last priority of the Ottawa Convention. The objective is to continue mine clearance until the last mine has been destroyed. Every State Party, whether mine-affected or not, has the obligation to contribute to mine clearance. The obligation to do so is included in Article 6 of the Ottawa Convention (see box 3.2 ‘Stipulations on stockpiled anti-personnel mines and the provision for mine action in the Ottawa Convention’). The Landmine Monitor reports show that the number of

301 Landmine Monitor, 2004:513.

302 Landmine Monitor, 2004:440 and 451.

303 Landmine Monitor, 2004:512-513.

304 Landmine Monitor, 2004:177.

countries affected by anti-personnel landmines is falling slowly. In 2006 (as of July), 78 countries were identified as being affected, compared with 84 in 2005, 83 in 2004, 82 in 2003, 90 in 2002, 90 in 2001, 88 in 2000.<sup>305</sup> And within these countries the number of anti-personnel mines has fallen as the result of mine clearance programmes. In 2006, Landmine Monitor reported that with 740 square kilometres in 2005, more land had been cleared in a single year than at any time since the start of humanitarian demining in the late 1980s.<sup>306</sup> These results were at least partly stimulated by the establishment of the Standing Committee of Experts on Mine Clearance in 1999, which later merged into the Standing Committee on Mine Clearance and Related Technologies (SC MCRT) and the Standing Committee on Mine Clearance, Mine-Risk-Education and Mine-Action Technologies, respectively. Moreover, the informal Resource Mobilisation Contact Group, set up in September 2002 during the Fourth Meeting of States Parties of the Ottawa Convention (Geneva) at the initiative of Norway, has been important in gathering funds for mine clearance in an efficient manner.

<b>Table 7.6 Dutch policies on mine clearance December 1997 – December 2006</b>	
Objectives	Dutch policy aims at clearing landmines and unexploded ordnance (UXO) in order to reduce the number of mine accident victims and foster socio-economic development. The Netherlands seeks to establish cost-effective mine-clearing operations that mobilise local workers and can be taken over by national bodies as quickly as possible.
Results	The first meeting of the SCE MCRT (September 1999), at which the Netherlands acted as co-rapporteur, resulted in some concrete points of action. Under Dutch co-chairmanship of the SCE MCRT no significant results were achieved.
Interventions	<ul style="list-style-type: none"> <li>• From 1996 to 2003 the Netherlands sent humanitarian demining instructors to teach demining techniques.</li> <li>• From 1996 to 2006 the Netherlands dedicated more than EUR 148 million to mine action programmes (mostly mine clearance) in 24 countries and thus became one of the largest mine action donors.</li> <li>• From September 1999 to September 2000, the Netherlands was co-rapporteur of the SCE. From September 2000 to September 2001 the Netherlands was co-chair of the SC MCRT.</li> </ul>
Impediments	The most important impediment was the focus by the Dutch co-chair on research and development.

Chapter 8 presents an overview of the main findings of the analysis of the Dutch efforts with regard to humanitarian demining 1996-2006.

<sup>305</sup> Landmine Monitor, 2000–2006.

<sup>306</sup> Landmine Monitor, 2006.

## Objectives

Financial assistance to mine clearance operations has been part of Dutch government policy since 1992. At the time the Ottawa Convention was negotiated, the Dutch government decided that mine clearance was one of the most important issues to discuss and pursue when dealing with mine action.<sup>307</sup> On 12 April 1999, the Netherlands ratified the Ottawa Convention, becoming a State Party on 1 October 1999. The event was of great significance to Dutch policy, because it became subject to the obligation to provide financial and other assistance for the worldwide clearance of mines and related activities. At that time the Dutch government pointed to mine clearance (together with supporting the work of the Standing Committee on the General Status and Operation) as one of its policy priorities within the broader category of mine action. As such it aimed to be active in the Standing Committee of Experts on Mine Clearance (SCE MC), later the Standing Committee on Mine Clearance and Related Technologies (SC MCRT) from 1999 to 2001. The priority for mine clearance was also emphasised in the instructions to the Dutch delegation to the annual meetings of the Ottawa Convention in Managua (2001) and Bangkok (2003) and the national statement of the Netherlands at the First Review Conference of the convention in Nairobi (2004).

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Since 1999 the Dutch criteria for funding mine clearance programs have been listed in several Policy Frameworks for Humanitarian Demining and the Stability Fund framework (see chapter 3). In 2003 the government formulated the following policy objective for humanitarian demining: 'Dutch policy is primarily aimed at clearing landmines and unexploded ordnance (UXO) in order to reduce the number of mine accident victims and foster socio-economic development. [...]. Victim assistance and mine risk education may also be funded but have a lower priority. Research and development (such as the development of new demining techniques) do not qualify for being subsidised.'<sup>308</sup>

## Results

The Netherlands was appointed as co-rapporteur of the SCE MC during the First Meeting of States Parties in Maputo in May 1999. The first session of the SCE MC took place in September 1999 and resulted in some concrete points of action. The second meeting was from 27-31 March 2000, during which much attention was given to the Mine Action Support Group (MASG); despite the absence of an institutional relationship between the MASG and the Ottawa Convention. *En marge*, the Netherlands was complimented for the dynamic approach of its MASG chairmanship. The third meeting – the first during which the Netherlands acted as co-chair – was in December 2000. Under the Dutch co-chairmanship, no significant results were achieved. This was mainly due to the focus given to technology; that approach was not supported by co-chair Peru, nor by other important members of the SCE.

<sup>307</sup> Mine action includes several activities, such as mine clearance, victim assistance and mine awareness.

<sup>308</sup> TK, 27433, nr. 13.



## Interventions

Since 1992, the Dutch government has supported multilateral mine clearance operations in mine-affected countries by giving *ad hoc* financial support or by sending instructors and support staff. It did so in Mozambique, for example, where from 11 August 1993 to 16 January 1995 instructors were sent to teach demining techniques. In 1996 a pool of humanitarian demining instructors was established as part of Dutch assistance. The first time members of this pool were used was in 1998, when ten instructors were sent to Bosnia and Herzegovina. However, thereafter, the pool was not used very often. In 2004 a discussion was started on whether it would be better to close down the pool (the pool had already been downsized in 2003).

From 1996 on, the Netherlands was one of the largest donors to mine clearance. Between 1996 and 1999 the Dutch government earmarked some NLG 20 million annually for humanitarian demining.<sup>309</sup> Until the end of 2000, financial assistance for humanitarian demining activities came under the budget item for emergency aid. In November 2000 the Ministry of Foreign Affairs created a separate item in its budget for humanitarian demining, and increased its annual contribution to NLG 30 million, to emphasise ‘the importance of humanitarian demining to re-establishing a safe living environment in post-conflict countries and the Netherlands’ specific expertise in demining and the contribution it can make’.<sup>310</sup> In the autumn of 2003 the government decided to set up a Stability Fund in order to provide rapid, flexible support for activities at the interface between peace, security and development in countries and regions emerging from or at risk of sliding into armed conflict. The funds previously set aside for demining are now incorporated in this Fund.

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From 1996 to 2006 the Netherlands dedicated more than EUR 148 million to mine action programmes in 24 mine-affected countries. This put the Netherlands into the G7 of the largest mine action donor countries. In its national statement during the Nairobi Summit in 2004, the head of the Dutch delegation stated that the Netherlands would retain its level of assistance at about EUR 10.5 million a year. However, the budget was increased: in 2005 to about EUR 15.8 million and in 2006 to EUR 19.7 million.

Most of the Dutch funds were assigned to mine clearance.<sup>311</sup> By so doing, the Netherlands fits in with the overall trend in international funding. By way of illustration: in 2006 the Landmine Monitor reported that in 2005, activities labelled as ‘mine clearance’ received 76 percent of the total funding. The remaining money went to capacity building (18 percent), advocacy (2 percent), victim assistance (3 percent) and other activities (2 percent).<sup>312</sup>

<sup>309</sup> TK, 26137 (R1620), nr.5:1.

<sup>310</sup> TK, 27162, nr. 6.

<sup>311</sup> UNMAS Mine Action Investments Database 1996–2003.

<sup>312</sup> Landmine Monitor, 2006.

Next to giving support to mine clearance, the Netherlands played an active role in the Standing Committee of Experts on Mine Clearance (SCE MC) and later in the Standing Committee on Mine Clearance and Related Technologies (SC MCRT). During the Maputo conference in 1999 the Netherlands became co-rapporteur of the SCE MC. From September 2000 to September 2001 the Netherlands was co-chair of the SC MCRT. At the end of September 2000, the co-chairs met with the ICBL to further discuss the agenda of the SC MCRT. It was decided to dedicate as little time as possible to technological issues and instead to focus on mine clearance issues.<sup>313</sup> Moreover, as co-chair, the Netherlands preferred to see a shift in focus, from UN involvement in mine action towards NGO involvement in mine action.

168 In November 2000, the SC co-chairs (the Netherlands and Peru) were approached by the Coordinating Committee of the Ottawa Convention with the question whether they had items for the agenda or were preparing a draft declaration. That was not the case; the co-chairs only aimed to streamline the list of speakers. In December 2000, the first intersessional meeting under the chairmanship of Peru and the Netherlands took place. The meeting focused on how to prioritise donor activities in a more transparent manner. The Netherlands suggested using the Consolidated Appeal Process of the UN Office of Humanitarian Affairs (OCHA) as guideline. In addition, a first draft of the IMAS was presented. The document was not received very positively, because it had been drafted without consulting key stakeholders in the developing world. Supported by several countries (among others, Nicaragua) the Netherlands argued against the imposition of IMAS on the NGO community, since that would impede the achievement of the common goal to free the world from anti-personnel mines. Finally, the SC MCRT also discussed the role of technology. It was agreed that the SC meetings should contribute in order to improve the coordination between demand (in the field) and supply (from the industry).

The second SC MCRT intersessional meeting with the Netherlands as co-chair was held from 8 to 9 May 2001. During the meeting, attention was given to the relationship between mine clearers and the research and development field. Moreover, a possible better architecture for future meetings was discussed. During the intersessional meeting, an informal meeting took place in order to prepare the agenda for the 3MSP in Managua in September 2001. A second informal meeting for preparing the agenda was planned for the end of May 2001, but was cancelled because of the lack of participants. Instead, the informal meeting was held *en marge* of the 3MSP. By that time, Germany and Yemen had taken over the co-chairmanship of the Netherlands and Peru.

313 These objectives were reflected in the draft topics list for the first SC meetings (drafted by Peru): of the four topics suggested, only one was technological in nature. However, the special Dutch ambassador proposed adding a second item on this issue (file 703069, 4 October 2000). After the first meeting of the SC MCRT had taken place, the special Dutch ambassador commented that indeed little attention had been given to technology (file 703069, 21 February 2001).

After the Dutch co-chairmanship had ended, the Netherlands became less active in the SC. A further concrete initiative was taken during the intersessional meeting from 13 to 17 June 2005, when the Netherlands asked attention be given to the ratification of CCW Protocol V. The Dutch delegation stated that the operationalisation of Protocol V would require active association with the mechanisms of the Ottawa Convention, because in the field the problems of anti-personnel mines and ERW are closely related. No formal reactions were given, although Canada, the ICRC and some NGOs expressed support for the Dutch intervention.

During the intersessional meeting from 8 to 12 May 2006, the Dutch government was asked by the co-chairs of the SC MCRT Slovenia and Jordan to give a presentation on 1) Dutch assistance to mine clearance since the 2004 Nairobi Review Conference, 2) Dutch implementation of funds and the Dutch implementation regarding the integration of support for mine action in humanitarian programmes, development programmes and peace support programmes, and 3) Dutch plans for 2006-2009 regarding the continuity and sustainability of resource commitments. The delegation gave a presentation in which it answered these questions and explained the Dutch mine clearance strategy and its restrictions. The strategy involved support to those States Parties of the Ottawa Convention that in socio-economic and humanitarian terms have been affected most, integrated clearance of mines and ERW, assistance through a limited number of NGOs that have proven their quality (HALO, MAG, NPA, Handicap International Belgium) and through UNDP and UNMAS, a coordinated strategy in each country, local capacity-building and training, cost-effectiveness, support following IMAS and UNMAS guidelines and support only to priority areas of the Stability Fund.

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### Impediments

Dutch financial assistance to mine clearance programmes proved to be restricted in practice by the (accumulation of) funding criteria in the various policy frameworks for humanitarian demining and the Stability Fund.

In 2005, the Dutch delegation to the intersessional from 13 to 17 June declared that the Netherlands would be unable to contribute to the so-called Completion Initiative in Albania, Chad, Guinea-Bissau, Jordan, Lebanon, Mauritania, Senegal and Sri Lanka (which were countries with a minor problem or countries that had almost been cleared and needed a final financial boost). The reason was that the policy framework 'humanitarian demining' and the geographical priorities of the Stability Fund prevented participation.

In one case, Dutch mine clearance funding was impeded as a result of a specific criterion the Netherlands chose to apply Lebanon was repeatedly rejected funding for mine action, because it had not signed the Ottawa Convention. This led to a somewhat isolated position of the Netherlands in December 2001, as other large donors did not demand Lebanon's membership of the Ottawa Convention as a criterion for funding.

In contrast, Canada stressed the fact that Lebanon was acting in the spirit of Ottawa, even though it had not yet become a State Party.

The most important factor impeding the work of the Dutch representative in the SC MCRT, at least while the Netherlands was co-chair, was the emphasis that the Dutch delegation had given to research and development. Most other States Parties preferred to focus on political issues rather than technological ones. During the meeting of the SC MCRT in May 2001, some members of the Ottawa core group (Norway, Peru and the ICBL) criticised the emphasis given to technology research by the Dutch co-chair. Further, in preparation for the 3MSP in Managua, the ICBL suggested that it would be preferable not to repeat the SC MCRT of May by focusing on the development of new technologies, but instead to focus on policy and political aspects of mine clearance. Finally, during the discussion of the Dutch special ambassador's non-paper in Managua, the ICBL and former co-chair Peru distanced themselves from the Dutch approach.

## 7.7 Promoting mine action technologies

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### General course of events

The Ottawa Convention does not have a provision on research and development regarding mine action technologies, but States Parties and other donors to mine action have nonetheless developed several research and development programmes. These have included national programmes, such as the US Humanitarian Demining Research and Development Technology Program, the Nordic Demining Research Forum (NDRF) and the Canadian Centre for Mine Action Technologies (CCMAT), as well as several international research programmes, including the International Test and Evaluation Programme (ITEP), the Demining Technology Information Forum (DTIF) and the Action for Research and Information Support (ARIS).<sup>314</sup>

Continuing research and development for the sake of mine action was perceived as being necessary because the technology used for producing anti-personnel mines was continuing to evolve too. For example, plastic landmines could not be identified by metal detectors, as a result of which mine clearance started to use rods to identify anti-personnel mines manually. This was both dangerous and expensive and it was felt that new technologies would produce better results. Therefore, States Parties of the Ottawa Convention created a Standing Committee on Mine Action Technologies with a mandate to improve mine clearance.<sup>315</sup> However, after several years of its existence, it was realised that the best results were achieved with manual clearance, despite the drawbacks. It was the most reliable method and it involved the local population in mine action. Consequently, the development of new mine action technologies became less prominent on the Ottawa agenda.

<sup>314</sup> [www.mineaction.org](http://www.mineaction.org).

<sup>315</sup> APLC/MSP.1/199/1, Annexe IV, p. 27.

Table 7.7 Dutch policies on mine action technologies December 1997 – December 2006	
Objectives	Until 2001, the Netherlands aimed to be active in the field of mine clearance technologies. The policy objectives were to strive for improved mine clearance techniques and to intensify research on mine clearance technologies in an international setting. After the cancellation of the HOM 2000 project this objective was abandoned.
Results	The HOM 2000 project did not result in comprehensive new demining techniques. However, partial research results were achieved with respect to detection techniques, test and evaluation facilities and unmanned autonomous vehicles.
Interventions	In 1997, the Netherlands initiated a research and development programme concerning humanitarian demining: HOM 2000. Further, in 2000 and 2001 the Netherlands co-chaired the SC MCRT. The Dutch delegation attempted to set research and development of mine action more prominently on the agenda.
Impediments	<ol style="list-style-type: none"> <li>1) Technical limits: Friction between long-term research objectives and the short-term objectives of mine clearance (the Ottawa Convention requires States Parties to destroy their anti-personnel mines in the ground within ten years from the moment of accession). To date, no comprehensive mine clearance technique exists, despite long-term research programmes in several countries.</li> <li>2) Trend of decreasing interest in research or development in the mine-ban community. General consensus among the States Parties to emphasise political work rather than technical work in the Standing Committees.</li> </ol>

### Objectives

From 1997 until 2000 the Netherlands aimed to play an active role in the field of mine clearance technologies within the Ottawa framework. Even before the establishment of the Ottawa Convention, promoting technologies formed a priority in Dutch landmine policy. In mid-1995, as a result of its experience with peacekeeping operations, the Royal Netherlands Army had surveyed its need for improved mine action technology. The main conclusion of the survey was that a substantial international research programme on improved detection and clearance technologies did not yet exist. Moreover, it was noted that existing research focused on military mine action rather than on humanitarian mine action. Therefore, the Dutch government voiced its determination to intensify international research on humanitarian mine action technologies.<sup>316</sup> Subsequently, a specific assignment was attributed to the research organisation TNO. TNO started the project *Humanitair Ontmijnen 2000* (HOM 2000) in 1997.

HOM 2000 was intended to result in new mine clearance technologies within a very short time (less than three years).<sup>317</sup> In the autumn of 2000 the project was terminated without the ambitious plans having been completed. This was an important reason for abandoning the objective of promoting the development of new demining technologies.<sup>318</sup> A further explanation for the policy change was given in October 2000 by the Dutch government. In a letter to Parliament the Dutch Minister of Defence pointed out that other countries had by then surpassed the Netherlands in the field of research and development. A prototype had already been developed in the US and the European Commission was funding similar projects that would be finished by the end of the year and in the next two years. Although successful results of these projects were not guaranteed, the main reason for starting the HOM 2000 project (short-term results) was no longer justifiable from this perspective.<sup>319</sup> At the same time, it was increasingly recognised that using manual mine clearance methods would increase the commitment and ownership of the local population and would support the reintegration of members of armed forces into society.

## Results

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HOM 2000 did not result in new demining techniques. In March 2000 the project was terminated when the research organisation that was to develop the vehicle (TNO) announced that it would take another three to four years to develop a prototype. In addition, it was not very clear what the additional costs would be.<sup>320</sup> Despite the early termination of the programme, some results were achieved in detection techniques, test and evaluation facilities and unmanned autonomous vehicles. Nonetheless, reaching the ultimate objective of HOM 2000 had proved to be too optimistic. In order to ensure that the knowledge gained by TNO in the course of the project would be used well, the Dutch Ministries of Defence and Foreign Affairs made specific financial agreements with the organisation. TNO was thus able to organise an international workshop on research and development programmes in May 2000, during which research organisations from the Netherlands, Canada, Sweden and the UK coordinated their research and development programmes. TNO was also allowed to keep the test and evaluation facilities which had been developed for the HOM 2000 project.

TNO continued its research activities, building on the results obtained and benefiting from the financial arrangement with the Ministry of Defence. In 2004, the funds that had remained with TNO from the original project ran out. The organisation started a lobby in 2004 to request funding from the Ministry of Foreign Affairs for two HOM 2000 projects which were deemed to be viable. However, the Ministry rejected the

317 The objective of the HOM 2000 project was to realise mine detection and mine clearance methods in such a way that these would be of sufficient quality and operational in the year 2000 (TK, 24292, nr. 20:1-12).

318 It was agreed in the policy framework for humanitarian demining *Humanitair Ontmijnen 2001* that research would be excluded from funding.

319 TK, 24292, nr. 20:2.

320 TK, 24292, nrs. 20 and 22.

request on the grounds of the changed policy priorities and the fact that other actors (US, Japan and the EU) were able and willing to conduct research programmes on a much larger scale.

### Interventions

The Dutch policy objective of stimulating research and development regarding new mine action technologies materialised in funding for the HOM 2000 project and in a series of interventions as co-chair of the SC MCRT.

In 1997 the Netherlands initiated a research and development programme on humanitarian demining: HOM 2000. The objective was to develop better tools for humanitarian demining and it was to have produced concrete results around the turn of the century. The project was carried out by TNO and funded by the Ministry of Defence (which was also responsible for the general coordination) and the Ministry of Foreign Affairs. During the First Meeting of States Parties in Maputo (May 1999) Dutch representatives from the Ministry of Defence and TNO participated in the exchange of information on mine action technologies. Whereas some countries (Germany and mine-affected countries) expressed the need for the implementation of existing technologies, other countries (France) focused on the importance of developing new technologies. The Netherlands emphasised cooperation and the inclusion of the end users of technologies. To that extent, it made clear that the test and evaluation facility of HOM 2000 could be used for international research programmes.

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In 2001, after the suspension of the HOM 2000 project the Netherlands became co-chair of the SC MCRT. The Dutch delegation attempted to set research and development of mine action more prominently on the agenda. After the first meeting of the SC MCRT, co-chaired by the Dutch and Peruvian representatives, the objectives of the SC became part of lengthy discussions. The Dutch special ambassador aimed for a more technological focus in the SC. The Dutch delegation members at the Conference on Disarmament in Geneva and at the UN in New York questioned this decision. They did so not only because it was not in line with Dutch policy, their criticism was also based on the different approach towards the SC MCRT by important actors in the Ottawa process (including co-chair Peru, the ICBL and Norway).

In March 2001, the Dutch special ambassador communicated to various key actors that the Netherlands intended to organise a better relationship between mine clearance organisations and the industry. This led to negative responses from the Permanent Representation of the Netherlands to the UN in Geneva, the Dutch UN Representative in New York, and co-chair Peru. As a result, the special ambassador promised to discuss the technological issue more on the sidelines of the SC meeting in May 2001. Nonetheless, during this meeting, half a day was spent on the technology issue. There were suggestions to develop a 'business plan' regarding the development of usable mine clearing and detection equipment. By the end of May 2001, the United Kingdom proposed organising a network of national experts on mine technologies. This idea

was welcomed by the Dutch delegation, but was received more critically by other nations.<sup>321</sup>

At the end of June, the Dutch special ambassador circulated a proposal on the future agenda of the SC. In the proposal three future options for the SC were formulated:

- a) integrating mine awareness in the SC MCRT;
- b) following the Canadian idea to reorder most important agenda items;
- c) developing a business plan for improved cooperation between research & development and the field.

Only Canada, Sweden and co-rapporteur Germany responded to these ideas. In the meantime, the Dutch policy advisors in Geneva and The Hague advised the Dutch delegation not to take the SC MCRT into a new direction without communicating this to Ottawa's Coordinating Committee. The Coordinating Committee, chaired by Norway, decided to alter the objectives of the SC meetings from a less technical to a more political focus.

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## Impediments

Progress on the technology objective of the Netherlands (development of better technologies) was hindered in several ways. First, there were technical obstacles. It became clear that the high expectations about new technologies could not be realised. In the Netherlands, the failure of the HOM 2000 project was important in that respect. The international added value of HOM 2000 had been that it promised to deliver results in the short term. However, by 2000 the HOM 2000 project had not delivered its promises. At the same time, research and development initiatives had been more successful in other countries. The US had prototypes of new demining methods ready for testing and Canada had announced it would have such prototypes ready in the beginning of 2001.<sup>322</sup> However, completed projects were unable to deliver the ideal 'demining machine' that guaranteed a return of 99.6 percent clearance, and to date no technique exists that complies with this standard. Relatively new demining techniques, such as the Aardvark, are only used to complement manual techniques.

A second factor that impeded progress was the waning international interest in consultations on research and development in Ottawa's intersessional work programme. A growing number of States Parties were using the Standing Committees for discussing political problems rather than technical ones. Among these were the front runners of the Ottawa process: Norway and Canada. The ICBL also preferred political work above technical work. The trend resulted in the decision to extend the time reserved for the

<sup>321</sup> It was feared that such a network would stimulate the supply side of the technology issue too much, while the industry had not yet demonstrated that it had received positive returns on investments made (file 668235, 22 May 2001).

<sup>322</sup> TK, 24292, nr. 20.



Standing Committee on the General Status and Operation (SC GSO) during the intersessionals at the expense of the time available for the SC MCRT.<sup>323</sup>

## 7.8 Promoting stockpile destruction

### General course of events

In order to achieve its overall goal of a total ban, the Ottawa Convention obliges each State Party to dispose of its stockpiles of anti-personnel mines within four years after the treaty has entered into force for that State Party (Article 4). For 45 Ottawa states, including the Netherlands, the deadline for having destroyed their stockpiles was 1 March 2003.<sup>324</sup> To stimulate the process a Standing Committee on Stockpile Destruction was created in May 1999. In May 2001, the SC noted that 17 States Parties had not yet begun to destroy their stockpiles. By March 2003, 16 countries had still not fulfilled their obligation. This group included countries such as Turkmenistan that were apparently deliberately keeping amounts of anti-personnel mines for training purposes which exceeded the (unofficial) Ottawa norm of ‘several hundreds or thousands’ of training mines. Hence, there was growing concern that certain countries would not meet their stockpile destruction deadline. Against this background the SC on Stockpile Destruction decided to support countries in complying with the Ottawa stipulations and to consolidate the Ottawa standard.

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During the fourth Meeting of States Parties in September 2002, the co-chairs (Australia and Croatia) and co-rapporteurs (Romania and Switzerland) of the SC on Stockpile Destruction decided that a Contact Group on Stockpile Destruction should be established. The Contact Group would meet in the margins of future intersessionals and annual meetings of the States Parties and would discuss the situation of those States Parties who were having difficulty meeting their Article 4 obligations within close deadlines.<sup>325</sup> Since then, the number of States Parties that possess stockpiles has decreased steadily.

In the Landmine Monitor 2006 it was reported that as of July 2006, 138 of the then 151 States Parties did not have stockpiles of anti-personnel mines. Of these 138 States Parties, 74 had completed the destruction of stockpiles, whereas 64 States Parties had never had any anti-personnel mines. This left 13 States Parties with stockpiles to destroy. Their deadlines ranged from 1 January 2007 (Angola) to 1 June 2010 (Ukraine).

323 Moreover, critics of the SCE on Technologies for Mine Action had always stated that it was little more than a showcase for the industry. The Netherlands had also expressed its doubts on the added value of the SCE on Technologies for Mine Action, given its technical nature.

324 The deadline was determined by the provision that stockpiles should be destroyed no later than four years after the entry into force of the Ottawa Convention for the specific State Party (file 668235, 29 November 1999).

325 Final Report of the Fourth Meeting of States Parties, September 2002.

All in all, Ottawa states had destroyed 39.5 million stockpiled landmines since the creation of the convention.<sup>326</sup>

<b>Table 7.8 Dutch policies on stockpile destruction December 1997 – December 2006</b>	
Objectives	In accordance with the treaty obligation: destruction of Dutch stockpiles and the funding of stockpile destruction projects in States Parties of the Ottawa Convention when assistance is requested.
Results	In January 2003, the Netherlands formally announced it had destroyed its entire stockpile of anti-personnel mines. The Landmine Monitor 2006 reported that as of July 2006, 138 of the then 151 States Parties did not have stockpiles of anti-personnel mines. There were 13 States Parties left with stockpiles to destroy.
Interventions	Funding of several stockpile destruction projects. Sponsoring of a stockpile destruction project in Moldova.
Impediments	Slow destruction of Dutch stockpiles of anti-personnel mines. High number of anti-personnel mines (5,000) maintained by the Dutch government for training purposes.

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### Objectives

The Netherlands voiced its ambition to destroy all its stockpiles of anti-personnel mines in March 1996. That ambition followed from the unilateral decision to abolish the use of anti-personnel mines, after a review of the Dutch army's needs for anti-personnel mines had demonstrated that the territorial defence of the Netherlands would not need anti-personnel mines. The Netherlands had to meet the formal deadline of stockpile destruction within four years from the date it ratified the Ottawa Convention. This meant that all anti-personnel mines had to be destroyed before 1 October 2003.<sup>327</sup>

A second objective regarding stockpile destruction was to assist other States Parties to destroy their stockpiles. In November 1999, Dutch priorities regarding the assistance of stockpile destruction projects in other countries were set in the context of the SC on Stockpile Destruction established in May 1999. At that time the Ministry of Foreign Affairs argued that stockpile destruction was an important issue, because it involved one of the first serious deadlines of the Ottawa Convention. The Netherlands aimed to assist countries to meet this deadline. Hence, in a memorandum it was communicated that the active attendance and reporting of the Dutch delegation to the SC would be appreciated. In addition, it was suggested that given the Dutch experience as co-rapporteur in the SC on Mine Clearance and Related Technologies, the Dutch delegation could assist the co-chairs and co-rapporteurs of this Standing Committee.

<sup>326</sup> Landmine Monitor, 2006.

<sup>327</sup> [www.ICBL.org](http://www.ICBL.org).

## Results

The Netherlands commenced destroying its own stockpile of 264,500 anti-personnel mines in 1996. For that purpose, several thousands of mines were transported to Germany and France.<sup>328</sup> In January 2003, the Netherlands formally announced it had destroyed its entire stockpile of anti-personnel mines (apart from about 5,000 anti-personnel mines retained for education and training purposes under Article 3 of the Ottawa Convention). Furthermore, by giving financial assistance to stockpile destruction projects in other countries it supported six States Parties in meeting their stockpile destruction obligations on time.

## Interventions

Since May 1999 the Netherlands' initiatives on stockpile destruction have consisted mainly of giving assistance to stockpile destruction projects in States Parties. Until about 2002, these projects were primarily carried out and managed on a bilateral basis. As such, the Netherlands participated for example in a Canadian programme of stockpile destruction in Ukraine. However, internationally it was increasingly recognised that a regional approach would have concrete advantages. In reply to a Bulgarian request for assistance in stockpile destruction, the Dutch government stated that the Netherlands preferred to provide assistance through multilateral channels. In May 2006, in an official instruction to the Dutch delegation to the intersessional meeting it was stated that the Netherlands preferred funding stockpile destruction through specialised international organisations. To this end, a Euro-Atlantic Partnership Council (EAPC) Trust Fund was created in 2000 and managed by the NATO Maintenance and Supply Agency (NAMSA) and the United Nations Development Programme (UNDP). The Netherlands contributed to five of the six anti-personnel stockpile destruction programmes conducted between 2000 and 2006:

- 1) The Netherlands contributed to stockpile destruction in Albania. This was the first project to be funded by the EAPC Trust Fund Project. The Netherlands was the first country that publicly committed itself to financially supporting the project. The project was led by Albania and Canada. The 1.6 million anti-personnel mines had been destroyed by April 2002.
- 1) The Netherlands sponsored a stockpile destruction project (including the destruction of anti-personnel mines, rocket fuel and munitions) in Moldova. In contrast to the project in Albania, the Netherlands and Moldova were jointly the lead nations. Therefore, during the SC on Stockpile Destruction in May 2001, the Dutch government called for other EAPC states to join the programme. The project involved the destruction of 11,872 anti-personnel mines; it was completed in December 2002.
- 3) The Netherlands contributed to a NAMSA-led stockpile destruction project in Ukraine. This project was started in July 2002, led by Ukraine and Canada and managed by NAMSA. It led to the destruction of 400,000 anti-personnel mines and was completed in May 2003.

- 4) The Netherlands contributed a destruction project in Tajikistan. The lead nations were Tajikistan and Canada and the project was managed by the UNDP. By the time the project ended in March 2004, 1261 anti-personnel mines had been destroyed.
- 5) The Netherlands contributed to the destruction of 1,320,620 anti-personnel mines in Serbia and Montenegro. The project was started in April 2005 and was still running at the end of December 2006. By September 2006, 1,000,000 mines had been destroyed.

In addition to contributing to the EAPC Trust Fund, the Netherlands took some action regarding the stockpile destruction problems of Turkmenistan. There were international concerns that Turkmenistan would not meet its deadline. In February, the Dutch put the problem to the government of Turkmenistan, but no significant information regarding the stockpile was provided. The Dutch Ministry of Foreign Affairs requested its embassy to approach the government of Turkmenistan again. The Dutch representative was instructed to treat this issue as an implementation problem, and not as a compliance problem, in the spirit of the convention. Technical support could be offered, if needed. At the end of February, Turkmenistan reported it had completed the destruction of its stockpile. At the same time, however, it announced that it had retained about 69,200 anti-personnel mines for training. One year later, in reaction to pressure from other States Parties and the ICBL, Turkmenistan announced it would destroy all its anti-personnel mines. In April 2005, the country reported it had completed the destruction.<sup>329</sup>

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Also in addition to contribution to stockpile destruction projects, at the request of Canada the Netherlands gave a presentation in May 2000 in the SC on Stockpile Destruction about Dutch stockpiles used for training purposes. In May 2001 it gave a presentation on NATO's EAPC Trust Fund stockpile destruction project in Moldova.

### Impediments

The first impediment was the slow destruction of Dutch stockpiles of anti-personnel mines. The Dutch could officially confirm the destruction of all anti-personnel mines on 14 January 2003. Although the destruction was completed before the deadline of 1 March 2003, the pace of destruction was slow compared to other (Western) States Parties. The Netherlands ended up in the group of 22 States Parties that had destroyed their stockpiles in the year before the deadline; 40 States Parties had destroyed their stockpiles much earlier.<sup>330</sup>

The slow pace of destruction was mainly caused by the 272 so-called 'Gator cluster munitions' which contained a total of 5,984 BLU-92B anti-personnel mines. On 1 October 1999, the date the Ottawa Convention entered into force for the

<sup>329</sup> Landmine Monitor, 2005.

<sup>330</sup> Landmine Monitor, 2004:15.

Netherlands, these were the only mines left to be destroyed.<sup>331</sup> In August 2001, the Ministry of Foreign Affairs requested the Ministry of Defence to provide information on the state of affairs regarding the destruction of the Gator mines used by the Dutch Royal Air Force. The Netherlands had been approached by other States Parties who had made inquiries about the destruction process. Six months later, in February 2002, members of the SC on Stockpile Destruction asked the Netherlands why it had not yet destroyed its stockpile of Gator mines. Various countries were surprised that the Netherlands, considered a front runner in the Ottawa process, was taking so much time. In March 2002, the States Parties once again addressed the Netherlands about the matter. At the plenary session of the SC on Stockpile Destruction, the Netherlands was mentioned as one of the few Western countries that had not yet met its stockpile destruction obligation.

In reaction to this international pressure, the Ministry of Foreign Affairs suggested to the Ministry of Defence that the Gator mines be destroyed as soon as possible, pointing to the proactive role the Netherlands aimed to play in encouraging compliance with the convention. The Dutch wished to avert unnecessary censure. Once again, the Ministry of Defence was requested to inform the Ministry of Foreign Affairs about the Gator mine destruction. In July 2002, the Ministry of Defence reported that it had contracted a German firm to destroy the Gator mines. The destruction would be completed in the fourth quarter of 2002. In November 2002, the Dutch delegation in Geneva reported that the Netherlands had been approached once again about the slow stockpile destruction process. In the same month, the Ministries of Foreign Affairs and Defence had a meeting on the issue, during which it was reported that the Gator mines had been destroyed on 12 November 2002. In January 2003 the formal confirmation of the stockpile destruction was communicated to the depository of the Ottawa Convention.

The second impediment to the Dutch policy objective regarding stockpile destruction was the relatively large number of anti-personnel mines that the Netherlands had kept for training purposes. Article 3 of the Ottawa Convention allowed for the possession of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction, but did not specify the maximum permitted number of such mines. The article merely stated: 'The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.' In practice the norm of 'several hundreds or thousands' of anti-personnel mines was adopted by Ottawa's States Parties.

In 1997 the Netherlands had adopted the threshold of 5,000 anti-personnel mines for training purposes. This proved to be a high threshold, and after 1997 the Netherlands

was regularly questioned by other countries regarding the necessity of this.<sup>332</sup> Although the number of Dutch anti-personnel mines fell after 1997, it increased again to more than 4,000 in 2001, after the Netherlands bought anti-personnel mines from Denmark for training purposes.

This criticism hindered Dutch policy regarding stockpile destruction in other Ottawa states at least once. In 2002, together with Italy, the UK and the US, the Netherlands responded to a call from the SC on Stockpile Destruction to approach countries that had problems in meeting the stockpile destruction deadline. In that context, the Netherlands approached Macedonia and Turkmenistan. With respect to Macedonia, the government questioned whether the 4,000 anti-personnel mines that Macedonia wished to retain for training purposes was not too high. In a memorandum to the Dutch mission in Macedonia, the Dutch Ministry of Foreign Affairs communicated that if the Netherlands expressed doubts about the 4,000 anti-personnel mines of Macedonia, the Netherlands could expect questions regarding its own stockpile of training anti-personnel mines.

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As the Dutch stockpile of anti-personnel landmines dwindled, this impediment became less relevant over time. In 2006, the co-chairs (Belgium and Guatemala) of the SC GSO invited the Netherlands to give a presentation during the intersessional from 8 to 12 May 2006 on the Dutch stockpile of anti-personnel mines retained for training and education purposes. The Dutch delegation stated that in 2005 the Netherlands retained 2,878 anti-personnel mines – 298 mines less than in 2004. It was stated that the number of Dutch anti-personnel mines showed a structural decrease and that the Netherlands intended this trend to continue. The delegation also stated that it planned to replace some of the retained anti-personnel mines with ‘simulation mines’ that would take over the training and education functions of real anti-personnel mines. Nonetheless, it also recognised that it would remain necessary to use real anti-personnel landmines for training purposes.

## 7.9 Conclusions

Assessment of the effectiveness of the Dutch interventions within the framework of the Ottawa Convention on the basis of the four evaluation criteria leads to the following conclusions:

### Universalisation

The Dutch interventions with regard to universalisation were *connected* to the national policy objective on the issue. Since December 1997 national policies have aimed at

<sup>332</sup> The Landmine Monitor Report of 2006 mentioned that over 227,000 anti-personnel mines had been retained by 69 States Parties under Article 3 of the Ottawa Convention. Five parties accounted for nearly one third of all retained mines: Brazil, Turkey, Algeria, Bangladesh and Sweden (Landmine Monitor, 2006).

universal adherence to the convention, in order to achieve a mine-free world. The frequent approaches made to countries not yet parties to the convention (through démarches, informal consultations, UN resolutions and appeals of the Human Security Network) were a direct reflection of the ambitions expressed in the national policies on the issue. The interventions of the Netherlands were also *responsive* to the aims and purposes of the international community on the issue. In December 1997 the States Parties had made the pursuit of universal adherence to the convention a core task of cooperation. In general, the interventions were *timely*. With two notable exceptions, they were targeted at countries that had not yet acceded to the convention and were sympathetic towards its overall purpose, but had turned down the Ottawa treaty on military and security grounds. The Netherlands effort on the issue comprised a large number of démarches (direct, active tool with a small action radius) as well as annual resolutions (indirect, active tool with a large action radius). Altogether, these interventions had a *large scope*.

### Participation

The Netherlands formulated no distinct policy objective on participation in the key meetings of the Ottawa Convention. Instead, the Dutch pursuit of widespread participation materialised in due attention and concrete efforts with regard to this issue. This means that it is not possible to assess the Netherlands policies on the issue on the basis of the evaluation criteria ‘connectedness’. The Dutch interventions on the issue were *responsive* to the decision-making process in the international community. Ever since the First Meeting of States Parties, participation has been identified as a vital instrument to keep the landmine issue on the international agenda, to maintain the spirit of cooperation and inclusiveness of the pre-Ottawa process, and to ensure the universalisation and effective implementation of the treaty. The Dutch interventions were also *timely*. They were executed in the lead-up to the key meetings of the convention. Moreover the interventions had a *large scope*: They consisted of multiple series of démarches executed simultaneously in a large number of countries.

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### Compliance

Since 1999 the Netherlands has worked to support all measures targeted at compliance with the Article 7 reporting requirements and to effectively address alleged or declared cases of non-compliance with the treaty. The Dutch interventions with regard to compliance were *connected* to these policy targets. The Dutch interventions were also *responsive* to international decision-making process. That is, the joint States Parties considered it important that governments meet the obligations of the treaty, so as to build confidence in their intention and ability to meet other vital obligations. In that respect, timely Article 7 reporting is perceived as an important indicator of a government’s commitment to the eradication of anti-personnel mines. Over and above this, the use of anti-personnel mines is at all times condemned as a serious violation of Article 1 of the convention. The interventions of the Netherlands were *timely*: it participated in Article 7 reporting démarches to countries that missed the reporting deadline, while at the same time it renounced démarches in countries whose reports

were due at a future date, on the grounds that these countries had not yet contravened IHL and carrying out démarches could only be perceived as patronising. Moreover, the Netherlands only took action on the allegations of the use of anti-personnel mines by Angolan government troops on the basis of serious and reliable information. The interventions had a *large scope*. The Netherlands participated in a large number of Article 7 reporting démarches (direct, active tool with a small action radius). Furthermore it acted directly and actively on one case of non-compliance.

### Articles 1, 2 and 3

The Netherlands formulated no distinct policy objective on the interpretation and implementation of the Articles 1, 2 and 3 of the Ottawa Convention. However, as a co-chair of the Standing Committee on the General Status and Operation of the convention (September 2003 – December 2004) the Netherlands immediately expressed its willingness to promote convergence on the interpretation and implementation of the Articles 1, 2 and 3 with an eye to the forthcoming review conference. The Dutch interventions with regard to the Articles 1, 2, and 3 were *connected* to this declared policy target. The Dutch interventions during its co-chairmanship were *responsive* to the international decision-making process. At the time, the vast majority of States parties had similar interpretations of the Articles 1, 2 and 3 and had implemented them in a similar fashion. The non-paper of the Netherlands on ‘assistance’ and the subsequent non-paper with suggested conclusions on the Articles 1, 2 and 3 of the Dutch and Mexican co-chairs were in accordance with the dominant position and state practice. The interventions were *timely*. They were executed in the period leading up to the First Review Conference of the convention. Given the convention’s stipulation that the States Parties could adopt in the final report of a Review Conference conclusions related to the implementation of the convention, this was a crucial phase in the international decision-making process. The interventions had a *large scope* since they were executed from a chairing position.

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### Mine clearance

Dutch interventions regarding financial and personnel assistance to mine clearance were *connected* to the national policy objectives. The policy primarily aimed at clearing mines and unexploded ordnances (UXO) in order to reduce the number of mine accident victims and foster socio-economic development. In line with this, most funds were dedicated to mine clearance programmes and mine clearance related activities (notably the sending of mine clearance instructors). The interventions were *responsive* to the international decision-making process. The overall objective and priority of the States Parties to the Ottawa Convention is to strive for universal adherence and full implementation of the convention in order to establish a mine-free world. By giving financial assistance to mine clearance programmes the Netherlands directly contributed to that goal. The interventions had a *large scope*, since they directly addressed the needs of the civilian communities in 24 mine-affected countries.



Since the Netherlands opted to put emphasis on technologies, its interventions within the SC MCRT were *not connected* to the national policy objective on mine clearance and *not responsive* to the priorities of the Ottawa Community on the issue. No concrete interventions were made by the Netherlands within the SC MCRT to support or promote progress on mine clearance. In that respect the evaluation criteria ‘timeliness’ and ‘scope’ are not applicable.

### Mine action technologies

The interventions within the field of mine action technologies were initially connected to the national policy objectives. Even before the establishment of the Ottawa Convention, the Netherlands was striving for improved demining mine clearance techniques. The HOM 2000 project promised to deliver new demining techniques within a reasonably short period of time. In March 2000 the project was cancelled. From that time on the interventions were *not connected* to the national policy objectives. Within the SC MCRT the Dutch delegation continued to focus on research and development even though the national policy objectives had shifted away from that topic. As international interest for consultations on research and development was also waning, the interventions within the SC MCRT can be said to be *not responsive* to the international decision-making process. Research and development had been given a high priority until the end of the 1990s. As such, the interventions of the Netherlands as a co-chair within the SC MCRT (2001) were also *too late*. However, given that the interventions were executed from a chairing position, they had a *large scope*.

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### Stockpile destruction

Dutch interventions regarding stockpile destruction were *connected* to national policy objectives. The Netherlands aimed to destroy its stockpile of anti-personnel mines before the Ottawa deadline of October 2003; it also aimed to assist other States Parties with stockpile destruction. Its interventions corresponded with these objectives. The Netherlands participated in several stockpile destruction programmes in the context of the EAPC Trust Fund. The interventions were *responsive* to the international decision-making process, as stockpile destruction was a shared priority of most States Parties. Apart from the late destruction of the Gator mines, the interventions of the Netherlands were *timely*. However, the Dutch interventions had a *small scope*, as instead of providing structural funds for stockpile destruction, they were limited to financial support to a limited number of stockpile destruction projects through specialised international organisations.

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# Humanitarian demining 1996 - 2006: three field studies

## 8.1 Introduction

Angola, Bosnia and Herzegovina and Cambodia have in common that they all are post-conflict countries that keep sad records of landmine and ERW contamination in the region and received mine action funds from the Netherlands uninterruptedly. Field analysis of the Netherlands' supported programmes in three selected countries provides an illustrative example of Dutch humanitarian demining assistance: together these programmes cover 31.5 percent of reported Dutch expenditure on humanitarian demining in the period 1996-2006.<sup>333</sup>

The field research in Angola, Bosnia and Herzegovina and Cambodia was conducted by three separate field study teams between 15 June and 15 July 2007. Four sites at a minimum were visited per country.

- **Relevance:** The field study teams assessed how the Netherlands funded demining activities fit within the overall policy priorities of the Netherlands, the priorities of the national governments and the priorities, needs and wishes of the affected communities.
- **Effectiveness:** The field study teams examined if the Dutch supported humanitarian demining activities reached their objectives.
- **Efficiency:** The field study teams considered whether financial resources have been used in an adequate manner, and whether humanitarian demining activities achieved the envisaged objectives in time and within budget.
- **Sustainability:** The field study teams examined the sustainability of the outcomes of the Netherlands' supported humanitarian demining activities, as well as the sustainability of these activities through capacity-building.

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The full reports of the field studies as well as the synthesis study can be found on the IOB website: [www.minbuza.nl/iob](http://www.minbuza.nl/iob).

## 8.2 Findings of the field studies

### 8.2.1 Angola

Angola is generally regarded as the most mine-affected country in sub-Saharan Africa. Landmines were used in great numbers during the war of independence from Portuguese colonial rule (1961-1975) and during the civil war between MPLA and UNITA (1975-2002). Dutch funding of humanitarian mine action in Angola started in 1996 – after the signing of the Lusaka Peace Accord in November 1994 – as a component of the Dutch humanitarian aid policies. From 1996 to 2006, the Dutch government spent a total of

<sup>333</sup> The total recorded Dutch mine action investments by Landmine Monitor in the period 1996-2006 comprised 160,7 million USD (Landmine Monitor, 2007). Angola received 26,2 million USD; Bosnia and Herzegovina received 7,7 million USD, Cambodia received 17,1 million USD.

USD 26.3 million (or 11.7 percent of the total donor funding) on humanitarian mine action in Angola. From 2004 onwards, mine activities in Angola are financed through the Stability Fund. Mine action funding included grants for mine clearance, mine awareness, training of deminers, survey and road clearance in support of the return of internally displaced persons (IDPs) and the rehabilitation of rural infrastructure, physical rehabilitation and reintegration of mine victims, mechanical support to manual demining and the training and deployment of mine detection dogs.

### Relevance

The field study team concluded that Dutch-supported activities in the period 1996-2006 in Angola have largely been consistent with the overall priorities of Dutch policies, the Angolan objectives, and the community needs and concerns. Dutch financial assistance to humanitarian demining activities in Angola has been highly relevant to the priorities of the Dutch humanitarian aid policies. Dutch humanitarian assistance has provided the main policy framework to assess financial assistance to humanitarian mine action in Angola. This framework follows international standards and stresses relief aid to refugees, IDPs and staying-behind or neighbouring populations, as well as assistance in the first phase of rehabilitation until the situation prior to the conflict (or natural disaster) is re-established. In terms of target groups (refugees, IDPs, staying-behind population) the Netherlands' supported demining assistance fitted the criteria at all times. The field study team furthermore found that demining assistance was certain at various points in time expected to contribute to the first post-conflict rehabilitation phase – albeit that in two of the cases this expectation was not borne out. Demining assistance was also in line with the 'direct clearance' objective of the policy framework for humanitarian demining. Priority was given to actual mine-clearing projects in areas with the greatest risk to the population, training and capacity-building were emphasised, and previously funded projects were given priority over new ones.

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Until 2002 no national mine action strategy or planning mechanism was developed by the Angolan authorities. In the absence of a clear national policy, the demining organisations themselves together with the UN set the priorities. Post 2002, the Angolan Government put humanitarian mine action high on the national agenda. Consequently, in 2006 a five-year Mine Action Strategic Plan (2006-2011) was developed, which linked mine action to national reconstruction and development by addressing crosscutting themes from the United Nations Development Assistance Framework, the Angolan *Poverty Reduction Strategy Paper* and the Millennium Development Goals. The field study team concluded that the Dutch supported demining activities in Angola reflect the general reconstruction and development aims of the national government. At the same time, the team observed that the work of the international demining NGOs is insufficiently integrated into national policies. This means that NGO agendas and actual work plans are determined to a large extent by the needs and concerns of local communities and the demands of their international donors, instead of the Angolan authorities.

The field study team found that throughout the ten year period observed, the Netherlands' funded demining NGOs had prioritisation mechanisms in place to ensure that the needs of locals, refugees and IDPs were taken into account. In theory, this situation has changed since 2002. Currently, affected communities do have access to the demining planning and prioritisation process at provincial level. Tasks are then prioritised and allocated in consultation with the demining operators active in the province and other stakeholders, on the basis of urgency and operators' capacity. However, in practice, the procedure is sometimes the reverse, provided that the NGO brings its list of high priority tasks, which is then discussed with the provincial government, and adjusted if needed.

### Effectiveness

The field study team concluded that the main objectives of the Dutch financial assistance have been met. Assessing the effectiveness of Dutch-funded humanitarian mine action in Angola over the period 1996-2006 proved difficult, given the general nature of most objectives provided in project documents and funding proposals. The overall Dutch objectives evolved throughout the period 1996 to 2006, especially in response to the Ottawa process. Only the most recent policy framework (2004) broadly defines the primary objective of the Dutch government on humanitarian demining as 'mine clearance in order to reduce casualties and foster socio-economic development'. From this perspective, the field study team judged that humanitarian mine action activities in Angola managed to reach almost all given objectives for the various funding periods. Dutch supported demining by international NGOs facilitated the return and resettlement of hundreds of thousands of IDPs, refugees and demobilised soldiers at the various stages of the peace process, guaranteeing the safe movement of people and goods on the roads, access to land for housing and agriculture, to water, schools, hospitals and other essential infrastructure, and allowing relief and development agencies to deliver aid and start rehabilitation.

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In addition, considerable demining capacity has been built up, not only within the NGO operators themselves, but to a certain extent also in the wider Angolan demining community. These are considerable achievements in a country presenting a multitude of difficulties and challenges such as Angola in the period under consideration (security, size, scale and nature of the mine problem, infrastructure, capacity, bureaucracy, corruption).

There are two exceptions to this generally positive assessment: 1) Transfer of responsibilities to national authorities and phasing out of the need for international demining NGOs is still a long way off, and 2) NPA's mine dog project has, despite huge efforts and large investments over a number of years, not produced any positive, sustainable result and had to be abandoned.

### Efficiency

The field study team concluded that, overall, humanitarian demining in Angola, as conducted by the four supported international NGOs over the period 1996-2006, has been efficient. As far as the field study team could establish, the tasks undertaken by the demining NGOs were generally completed within the planned timeframe. Only in the early days or when unexpected difficulties were encountered, the clearance did take considerably longer than planned.

The cost efficiency of Dutch-supported organisations was difficult to measure because of the unstable security situation and the difficulties the NGOs encountered on the ground. In 1998-2002 the NGOs were faced with financial problems while the security situation decreased and the renewed outbreak of war caused several donors to reduce or discontinue funding. In addition, from 2004 on multi-year funding made it difficult to measure the cost efficiency, while funds were not earmarked and often used as core funding by the organisations. Moreover, given the complexities involved, the different operating environments and types of objectives, there are limits to the possibility of comparing efficiency between the various demining operators. Yet, the general conclusion of the team was that all four Netherlands' supported NGOs fully realise how costly mine action is and that they, each in their own way, are addressing these issues and put much effort in attempts to work as efficiently as possible.

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### Sustainability

The benefits of Netherlands supported demining activities were judged as sufficiently sustainable. Most of the benefits of mine clearance activities identified by the field study team during its field visits proved durable. Outputs match the given objectives of the various operations and a substantial part of contaminated land plots have been put to use again after mine clearance ended. Exceptions include cases of temporary reception areas that needed clearing at the time, but which have been abandoned since. It can be argued however, that even in those cases the benefits continue, as the clearance facilitated the smooth running of the process of demobilisation, return and resettlement. Otherwise, this could have resulted in bitterness, resentment and grievances on the part of the people involved, or even in chaos and violence – none of which did occur at any large scale.

The NGOs have by far been the most successful contributors to building national capacities in the area of humanitarian mine action in Angola, in particular clearance. In fact, there are currently very few expat-staff involved – as all middle-level and many higher positions within the NGOs themselves are filled by nationals. Many of the deminers and other technical and managerial staff trained and employed by the NGOs have passed to Angolan demining agencies, either public or private. In contrast, the full transfer of responsibilities to national bodies has not materialised until today and there is a problem of inter-agency 'brain drain': public Angolan demining operators pay almost double the salary that the NGOs can offer, which obviously limits the NGOs' capacity to recruit and retain deminers and in various cases has resulted in industrial action.

### 8.2.2 Bosnia and Herzegovina

Bosnia and Herzegovina still holds the record of being the most mine-affected country in Europe. The heavily contamination with landmines and ERW is primarily the result of the Bosnian War (1992-1995). The Dutch funding of humanitarian mine action in the country primary came from the humanitarian aid budget. These contributions were channelled through the multi-donor UN Consolidated Appeal for former Yugoslavia. This UN fund was focussed on supporting the return of IDPs. Further objectives were to support human rights and good governance. The funding was mainly used to support the mine action programme of UNDP. In deciding to work with other donors in supporting the UNDP plan the Netherlands did in fact – as the use of a specialised implementing partner is intended – hand over a significant part of the technical decision of what to fund and how to implement the programme to specialists with strong in-country experience and knowledge.

#### Relevance

The field study team concluded that the multilateral support to humanitarian mine action in Bosnia and Herzegovina did not fit within the overall policy priorities of the Netherlands, but scores well in terms of meeting the priorities of the national authorities mine action centre and the needs of the local communities.

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The policy choice for multilateral support to humanitarian mine action in Bosnia and Herzegovina is valid and in line with Dutch humanitarian aid policy. However, the UNDP approach did not concur with the ‘mine clearance’ objective of the Netherlands. The UNDP programme in fact gave preference to institutional capacity-building activities. It supported the development of the Bosnia and Herzegovina Mine Action Centre (BHMIC) and worked towards the establishment of a single national level authority by 2002. As a result of the UNDP programme, the BHMIC currently has a national office, two sub offices and eight regional offices and is responsible for planning, prioritising, mapping, quality management and hand-over of cleared areas. It also maintains the national database. UNDP only started to clear – a very limited number of – mines in 2005, seven years after the programme’s initiation.

The field study team also found that both national authorities and locals benefited from the creation of the BHMIC. The prioritisation system was a key achievement in this. Its major limitations are 1) providing sufficient resources at the municipal level (rather than at the cantonal level only) to enable local people to register their need for clearance and 2) the lack of overall resources which causes long waiting lists for clearance. Despite these shortcomings the outcomes are acceptable for end beneficiaries.

#### Effectiveness

The Netherlands’ supported multi-donor programme proved to be effective overall in supporting capacity-building, though this was not a principal Dutch policy objective. The field study team concluded that, although joining a large multi-donor programme

reduced the effectiveness in achieving the original Dutch policy objectives, this was definitely a compromise which gave access to other significant benefits. The Netherlands gave crucial financial support to the building of a high-quality institution capable of organising and quality controlling mine clearance, and this support has had a multiplier effect. Good personnel selection led to the BHMACH having sufficient skills to develop and implement a high-quality prioritisation programme.

The effectiveness of the limited number of Netherlands' supported mine clearance activities varied. In half of the sites visited the strategic aim of clearance was not achieved. This was primarily due to the effective separation of the technical goal of clearing a piece of land from the overall developmental goal of using the land to improve the safety or living conditions of the local people. This clearance without the land being used appears to be a real problem as two of the four sites visited by the team were found to have been cleared but no, or very limited, land use change had occurred. A fifth site had apparently a successful land use change some eight years after clearance for houses for returnees.

### Efficiency

190 The main activity of capacity-building and institution building appears to have yielded results commensurate to the inputs, though given the lack of monitoring and evaluation there is little real evidence to support conclusions beyond the observations of the field study team. UNDP was generally timely in delivering what it had proposed to undertake with the Dutch funding. Whilst reporting was not detailed and could have been improved, it was provided as required. The field study team was not able to retrieve if the envisaged objectives were achieved within budget. The bulk of the Dutch money went through a UNDP multi-year multi-donor programme. Subsequently tracking the individual Dutch donations was not possible due to the consolidation of all contributions.

The efficiency of the Netherlands' supported clearance operations themselves is satisfactory. Clearance was well managed at a competitive price. However, the overall time-sequence for planning and implementing clearance of a specific hazardous area can be slow, due to the way that the prioritisation and implementation system is designed. The prioritisation system favoured (at least up to 2004) piecemeal clearance of small areas in response to urgent needs such as repairing a damaged local power line or village water supply. Such scattered small-area clearance is not efficient in the use of deminers, mechanical assets or mine detection dogs. At the level of overall efficiency of the system, the clearance of houses without sufficient land for the owners to have a livelihood proved to be also problematic.

### Sustainability

The field study team judged that support to the BHMACH in capacity-building and developing the prioritisation process has achieved sustainability in most aspects. The BHMACH is regarded as one of only three capable institutions that work in all regions of



the country. The existence of a single national system working across the whole national territory is in itself a remarkable achievement in a deeply divided society. This is a significant success. The prioritisation process itself is still under development and will require changes to make the linkage to development stronger, but these changes are within the scope of the BHMAL. The sites which have been cleared of mines and UXO with Dutch funding are much less successful in demonstrating sustainability through long term change of land use.

### 8.2.3 Cambodia

Cambodia is one of the worst mine-affected countries in Southeast Asia. The severe landmine and ERW problem stems from more than three decades of war.<sup>334</sup> Landmines were laid in Cambodia during the civil war (1967-1975), The Khmer Rouge Regime (1975-1979) and the Vietnamese Occupation (1979-1990). The Netherlands has supported humanitarian mine action in Cambodia since the early 1990s. From 1996 until 1999 the Netherlands funded the national mine operator CMAC through the UNDP Trust Fund. In 1999 all donors suspended funding in response to accusations about corruption, nepotism and poor financial management in many Cambodian organisations, including CMAC.<sup>335</sup> The corruption scandal prompted the Dutch government to stop its funding through UNDP in October 1999 and, since mine clearance by CMAC virtually came to a halt in 2000, to channel its contributions to CMAC's mine action programmes through NPA (2000-2006). The Netherlands' funded programmes primarily targeted at mine clearance for the local population. Since 2001 the Netherlands also funded programmes conducted by HALO trust, which primarily aimed at mine and UXO clearance.

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#### Relevance

The field study team concluded that the Netherlands' supported demining programmes fitted well into the overall Netherlands humanitarian demining and the policy priorities of the Cambodian government, and that Netherlands funded humanitarian mine action activities increasingly took place in accordance with the priorities, needs and wishes of the affected communities.

The Dutch support to humanitarian demining in Cambodia has generally focused on three key activities: mine clearance, mine awareness and training. Mine clearance is targeted both at casualty reduction and the promotion of socio-economic development, conducted by mine operators using national employees. This is in line with the overall priorities of the Dutch policy.

In the period 1996-2006 the Cambodian Government issued several policy documents, outlining strategies how to tackle the mine problem and to promote socio-economic development. Netherlands funded humanitarian demining activities fitted well with the policy priorities of the Cambodian Government as these were broadly defined,

<sup>334</sup> Landmine Monitor Report, 2006-2007.

<sup>335</sup> Landmine Monitor Report, 2000.

aiming to target the worst contaminated mined areas in order to reduce casualties, as well as to link mine clearance efforts with socio-economic development activities.

From 1993-1997, the main operators CMAC, HALO and MAG (which was not funded by the Netherlands) mainly responded to emergency requests of local authorities and development agencies. The clearance tasks were concentrated on resettlement of refugees and displaced persons. The planning process was top-down and beneficiaries and land allocation issues were not adequately addressed. The field study team found that since 1996, and especially since 2002, there have been major improvements in the process of priority setting and task selection for humanitarian demining in a decentralised, bottom-up manner through the Mine Action Planning Unit (MAPU) and the Provincial Mine Action Committee (PMAC) or MAPU/PMAC-process. Most stakeholders also credit the mechanism with enhancing the likelihood that land goes to the intended beneficiaries for the intended purposes after clearance.

### Effectiveness

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The field study team concluded that the Dutch-supported demining activities have contributed in a significant manner to the primary objective of the Dutch government on humanitarian demining (prevention and/or reduction of casualties) by supporting CMAC, HALO Trust and NPA. In the early years, the demining organisations in Cambodia primarily focused on mine clearance for resettlement purposes, while the fertility of the land took second place in the prioritisation of land. Mine clearance has played a key role in the resettlement process of over a half million Cambodians. In later years, socio-economic prospects of land received greater attention in the prioritisation process for mine clearance. This was the result of the fact that the bulk of people had been resettled and there was less immediate need for the provision of space for housing. Based on the observations made during 18 field visits, the team judged that the majority of the beneficiaries of humanitarian mine action are actually farming the cleared plots of land they have received.

With regard to a general sense of security among beneficiaries of humanitarian mine action, the decrease in casualties and the geographical concentration of casualties in the K5-belt, indicates that many Cambodian people can now feel more secure as they no longer have to be afraid to step on mines while farming their land. Nevertheless, many other people living on cleared lands bordering suspected minefields still fear for the safety of themselves and their children. As substantial plots of land remain uncleared, a large number of people still continue to live in minefields.

### Efficiency

While taking into account the practices of mismanagement at CMAC/UNDP, the field study team concluded that overall Netherlands' funded humanitarian demining over the period 1996-2006 in Cambodia has been cost-efficient. Both CMAC and HALO Trust provide value for money. A review of the program reports by the operators shows that generally speaking they were successful in achieving the envisaged objectives in time and

within budget. Mine clearance is conducted in a responsible manner following standard operating procedures. Both CMAC and HALO met the targets they set out in the project proposals. The speed of mine clearance efforts has increased considerably as a result of new techniques used by the operators, more extensive technical surveying being undertaken and the recognition of reclamation of land which is in use. Dutch funding has thus contributed both to the decrease in casualties and the acceleration of mine clearance. The MAPU/PMAC process is a big step forward in addressing the needs of the local population in a timelier manner than before.

Over the ten year-period under evaluation, the efficiency of demining operations has improved as increasingly land is cleared where the villagers most need it. The Netherlands' funded mine agencies operated within this evolving context. The field study team was not able to confirm the value added of NPA as an intermediary for the funding provided to CMAC.

### Sustainability

The field study team judged that there are continuing benefits of the Netherlands' funded humanitarian demining activities. Generally speaking, land that has been cleared is now put to agricultural use. The cleared areas that the team visited were intensively used for housing, gardens, agricultural crop production and for infrastructure. In most cases, the reclaimed lands have contributed to the socio-economic development of the affected communities. Villagers repeatedly reported that they feel safe and worry less after mine clearance had taken place. Mine risk education has led to mine risk awareness among the Cambodian people and school children still receive mine risk education twice a year. As regards casualty rates, Netherlands' funding contributed to the decrease in the casualty rate, from 2,293 in 1997 to 189 in 2006. Dutch funded demining activities played no significant role in national capacity building after direct funding to the CMAC was terminated in 1999 due to financial mismanagement. Afterwards very little Dutch funding has contributed to national capacity-building other than at the operational level. As a consequence, the Netherlands has not contributed to the creation of the MAPU/PMAC structure nor to the Cambodian Mine Action and Victim Assistance Authority (CMAA), both of which the evaluation team deemed critical to a sustainable humanitarian mine action effort in Cambodia.

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## 8.3 Overall findings

### Relevance

The primary policy objective of Dutch humanitarian demining policy was defined so broadly – mine clearance in order to reduce casualties and foster socio-economic development – that it would be hard to find any Dutch-funded demining activity that is entirely irrelevant from a donor's perspective. Demining objectives were also defined in the context of humanitarian assistance priorities, illustrating that demining was first and foremost seen as a humanitarian activity.

In all three countries, initial mine clearance was carried out as part of an emergency response. In the absence of (functioning) national demining authorities and policies, priorities were determined in response to pressing needs such as the provision of humanitarian aid and the return of refugees and IDPs. To what extent Netherlands' financed activities were relevant to the needs of the target community depended basically on the approach taken by the demining organisations it supported and how their activities were tailored to the needs and priorities of affected communities.

### Effectiveness

In general, intended direct outputs of programmes and projects were largely achieved. The Dutch decision to concentrate the bulk of resources on actual mine clearance has produced tangible results in terms of square km of land cleared and mines removed in Angola and Cambodia, and built considerable capacity at the operational level. Land cleared through Dutch financial assistance was, with some notable exceptions in Bosnia and Herzegovina, productively used for, among others, subsistence farming and housing. Supporting the multi-year UNDP programme in Bosnia and Herzegovina also proved highly effective.

194 Dutch policy consistently prioritised mine clearance, with a view to casualty reduction and socio-economic development. Capacity-building was a secondary policy objective. The evaluation merits the conclusion that even at the early stages of demining interventions, building national capacity to manage, direct and regulate demining is crucial to the sustainability of demining interventions and to overall recovery and development.

### Efficiency

The field study teams have been able to assess that organisations supported by the Netherlands have succeeded in improving, through trial and error, the cost and time-efficiency of their demining operations. In Angola as well as Bosnia and Herzegovina, demining organisations developed analytical approaches to reduce the amount of land identified as hazardous and requiring clearance. Over time, the efficient use of scarce demining resources was greatly enhanced through decentralised and bottom-up planning and task selection as compared to earlier top-down emergency-driven priority setting for humanitarian demining. In Cambodia, since the introduction of the MAPU mechanism, priorities for mine action have been directly influenced by the local population and authorities, resulting in greater efficiency in relation to addressing the needs of affected communities.

### Sustainability

Major factors contributing to the sustainability of the demining efforts proved to be the existence of national institutional capacity and a national prioritisation process, as well as the level of integration between demining and reconstruction, stabilisation and development. These were generally not addressed by Dutch funding.

The Netherlands contributed to building demining capacity at the operational level. While such operational capacity is key to sustaining demining efforts by humanitarian demining NGOs as well as commercial demining organisations, the evaluation shows that capacity-building on the national level (and its links with provincial and municipal levels) in general has been insufficient and needs to be continued, if not enhanced in order to make past efforts sustainable.

### Monitoring

Between 1996 and 2006, official monitoring of Dutch financed humanitarian demining activities notably decreased over time in all three countries under review, irrespective of obligations to do so. This appeared to be largely due to lack of human resources. The field research yielded various examples that underscore the importance of reliable information in order for donors to determine the best way forward. In order to optimise the use of scarce resources, regular reporting, monitoring and evaluation should therefore inform resource allocation decisions at policy level.

### Integrated approach to humanitarian demining

The evaluation shows that humanitarian mine action is not just a technical aspect of an emergency response but a prerequisite for reconstruction, stabilisation and development. Mine clearance has had an overall positive impact on stabilising conditions for refugees and IDPs to return in the immediate post-conflict phase. The acceptance by the population of a national prioritisation system in Bosnia and Herzegovina has contributed significantly to reducing concerns of giving unfair advantage to others, including formerly opposing groups. In Angola, ongoing demining efforts had a direct and positive effect on the process of democratisation, in particular on the elections scheduled for 2008-2009.

Despite policy statements and frameworks to the contrary, humanitarian demining remains a largely isolated activity, institutionally and in terms of budget allocation. The incorporation of demining in the Stability Fund has not changed this. A recent evaluation found that demining has remained a 'separate kingdom' within the Stability Fund.<sup>336</sup> This was mainly due to institutional divisions. If the Dutch government is to get the most out of the demining effort, it has to arrive at a truly comprehensive approach by tackling inter- and inner-departmental issues at the very beginning.

### Transfer of responsibilities

In order to sustain the results of humanitarian demining efforts, responsibility and ownership for clearing landmines needs to be transferred to the recipient countries at the earliest opportunity. In all three countries reviewed, national demining institutions have developed and are willing to take political and operational responsibility for demining. However, except for Bosnia and Herzegovina, they lack the managerial capacity and policy skills to do so. Exclusive donor support to international

336 Klem & Frerks 2007:36.

organisations to do mine clearance without strengthening, or at least supporting the national capacity impedes the transfer of responsibilities to the recipient state.



9

# Assessing the effectiveness of the Dutch policies



## 9.1 Introduction

The main purpose of this evaluation has been to gain insight in the way the Netherlands has intervened in the conventional arms control arena and to assess the effectiveness of these interventions. The following research questions were posed:

- 1) What was the course of events in the international decision-making processes for this particular arms control arena?
- 2) What objectives did the Dutch government aim to achieve in various phases of the international decision-making process?
- 3) Which types of interventions were made by the actors involved in the various phases of the decision-making process?
- 4) Which obstacles were present in the decision-making processes and how did the Netherlands respond to them?
- 5) Which of the Dutch objectives were achieved and which were not? How can this be explained?
- 6) Which intervention type was preferred and implemented by the Netherlands?
- 7) Which criteria for success and failure were used in the various phases of the decision-making process?

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As has been outlined in this report the Dutch government has intervened on thirteen issues that have been addressed within either the Convention on Certain Conventional Weapons (CCW) or the Ottawa Convention. In the Chapters 4 to 7 the questions 1 to 5 were addressed for each of these issues by analyzing the objectives, results, interventions and impediments of Dutch policies. Consequently the effectiveness of specific interventions has been assessed by linking the findings to the four evaluation criteria identified in chapter 1.

In this final chapter, the focus is once again on the Dutch policies on landmines and explosive remnants of war (ERW) at a general level. First, the findings regarding the general approach of the Netherlands towards the landmine problem, and its general performance in the two conventions are presented (sections 9.2 and 9.3). Subsequently, the two final research questions on intervention types and criteria for failure and success are addressed (sections 9.4 and 9.5). Finally, in the last section of this chapter some general conclusions and lessons learned are drawn (sections 9.6 and 9.7). The analyses of the Dutch interventions with regard to the thirteen issues are at the basis of the overall findings of the evaluation.

## 9.2 General approach towards the landmine problem

### The Netherlands: proactive on landmines?

In chapter 3 it was outlined that from 1996 a proactive approach towards the landmine problem would be a basic principle for the Dutch interventions in relevant international

decision-making circuits. The Dutch government aspired to play a pioneer role on the issue of landmines in the CCW and the Ottawa Convention. In policy documents on landmines and ERW it was emphasized that a proactive profile implied showing initiative, or taking the lead with regard to the international landmine agenda.

Did the Netherlands manage to play a pioneer role in the CCW and the Ottawa Convention? The analyses in the Chapters 4 to 7 indicate that despite the Dutch ambition to play a substantial role as pioneer with respect to the landmine issue, it did not always act accordingly.

200 On the one hand, the Netherlands proved itself to be a committed State Party in the CCW and the Ottawa Convention. First, in the CCW it was among the first States Parties that joined in with the group of countries that opted for a total ban on anti-personnel mines. Further, the Netherlands supported the yearly resolutions in the UN General Assembly in which states were urged to become CCW parties and it supported several initiatives to come to further restrictions on the use of Anti Vehicle Mines (AVMs). Moreover it co-sponsored the United States proposal to amend Article 1 of the CCW to be applicable to all current and future annexed protocols. Secondly, in the Ottawa Convention the Netherlands actively supported the treaty's universalisation and implementation objectives. Since 1997 it sponsored UN resolutions wherein states are invited to sign, ratify or accede to the Ottawa treaty, and it sponsored travel and accommodation costs of delegates of other less wealthy States Parties. As a member of the Canada-led Universalisation Contact Group, it participated in multiple series of démarches to promote universal adherence to the treaty or urge states to attend its key meetings. And as a member of the Belgium-led Article 7 Contact Group it participated in démarches to promote high-quality and on-time Article 7 reporting.

On the other hand, most interventions in the CCW and Ottawa arena did not go beyond lending active support. The Netherlands hardly ever made the first move (for example by submission of a proposal or establishment of an informal group of like-minded States Parties) to influence decision-making in an early phase. On a few issues within the CCW it even chose to fulfil a rather passive role. In this respect, the Dutch role with regard to international decision-making within the CCW and the Ottawa Convention was 'active' rather than 'proactive'.

Notable exception to this overall observation is the Dutch proactive involvement in the ERW issue. In 2000, in the early stage of the issue, the Netherlands acted to take control of future deliberations and decision-making within the CCW. After obtaining a key role in the decision-making process as coordinator on ERW, the Dutch coordinator deliberately chose a proactive approach. By organizing informal meetings, conducting bilateral consultations and writing draft versions of the protocol, he continuously kept the initiative. He allowed the States Parties to make comments on draft versions (after which he would adapt the text), but he did not allow them to write text proposals themselves. In order to make a text that would meet the maximum consensus, the coordinator

constantly assessed the different positions in advance to a meeting of the Group of Governmental Experts (GGE). With this approach, the coordinator was always ‘in control’ of the evolving text. In this manner he managed to get the most out of the international deliberations and negotiations within the CCW framework.

Acting as a chair or a coordinator by no means implies a proactive role automatically. This can be readily derived from the performance of the Netherlands in the Ottawa Convention as co-chair of respectively the Standing Committee on Mine Clearance and Related Technologies (SC MCRT, 2000-2001) and the Standing Committee on the General Status and Operation of the Convention (SC GSO, 2003-2004). In both cases it chose to perform its duties in a substantial manner. In its capacity of co-chair of the SC MCRT the Netherlands focused on progress in the field of technologies, while as a co-chair of the SC GSO it immediately got to work to reaching understandings on the interpretation of the Articles 1, 2 and 3 of the Ottawa Convention. But in either case, did not manage to use this key role in the Ottawa Convention to set new targets and/or future agenda’s.

### **Broadly formulated policy objectives, flexibility on details**

Dutch overall policy objectives on landmines and ERW were formulated in rather general terms in the annual Notes to the Budget. Both within the CCW and the Ottawa Convention the Dutch government aimed at promoting universalisation and the full implementation and operation of the treaties. The overall policy objectives were not changed during the period analyzed. Dutch representatives in the CCW and the Ottawa Convention remained committed to the broad outlines that were formulated at the political level. As evidenced by the high score on connectedness the Dutch interventions on specific issues were generally in line with the overall policy objectives and the interventions followed the ambitions expressed in these policy objectives.

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On the other hand, the issue-specific policy objectives were often adapted or reformulated due to the dynamics of the international decision-making process. In case of the CCW, the issue specific policy objectives regarding the issue of compliance had to be reformulated after the Review Conference of 2001. International decision-making on ERW made the Netherlands change its objectives up to four times (see below). As far as the Ottawa Convention is concerned, the fast conclusion of the treaty led to a change of objectives at the end of 1997.

The issue-specific policy objectives were also formulated in rather general terms. That means that they were not formulated in specific, measurable, acceptable, realistic and time based terms.<sup>337</sup> In the case of the ERW issue, the main objective between

<sup>337</sup> With this reference is made to the so-called SMART principle that became more important to the Ministry after the introduction of a results-based budgeting system in the Netherlands in 1999 (see also chapter 1). The acronym SMART stands for: Specific (the objective has to be univocal), Measurable (the objective has to specify under what observable conditions the goal will be achieved), Acceptable (the objective has to be agreed upon by the group aimed at), Realistic (the objective has to be feasible) and Time based (the objective has to specify at what moment in time the goal has to be achieved).

December 2000 and December 2002 was to reach a broadly formulated negotiation mandate that should include measures on the prevention of ERW coming into existence and measures on the clearance of existing ERW. In the following period the objective became somewhat more specific; to reach consensus on a fifth protocol to the CCW dealing with ERW. However, also this objective was still formulated in very general terms.

The above observation does not imply an argument in favour of more clearly defined issue specific objectives. Such reasoning would pass over the importance of flexibility in international decision-making. Flexibility is frequently pointed at as an important tool for negotiators to be effective.<sup>338</sup> Assessment of the effectiveness of the Dutch interventions in the chapters 4 to 7 only highlights the fact that a flexible position on arms control often is a necessary condition to make progress at the level of the specific treaty issues. The States Parties of the CCW and those party to the Ottawa Convention share some common goals. To the CCW States Parties that is the urgency to prohibit or restrict ‘the use of certain conventional arms which may be deemed to be excessively injurious or to have indiscriminate effects’.<sup>339</sup> The main objective of the Ottawa Convention is ‘to put an end to the suffering and casualties by anti-personnel mines that kill or maim hundreds of people every week, mostly innocent and defenceless people and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement’.<sup>340</sup> But at the same time it is evident that the States Parties in these decision-making arenas differ in opinion on how to move towards those goals. In this regard the discussion within the Ottawa Convention with regard to the question whether the ultimate aim of the convention should be an anti-personnel mine-‘free’ world or an anti-personnel mine-‘safe’ world is a striking case in point. These circumstances require a flexible position of the States Parties regarding specific treaty issues. In this respect the Dutch issue-specific policy objectives were always formulated loosely enough to be effective. In short, the margins left the Dutch representatives enough space to negotiate the ‘best’ results under the circumstances.

The negotiating of the ERW protocol can illustrate this. The impetus for deliberations on an ERW protocol was the call for a worldwide moratorium on cluster bombs by Human Rights Watch and the International Committee of the Red Cross (ICRC). The Dutch government did not support the ICRC proposal for a moratorium, but was fully committed to meet the problems caused by unexploded explosives in conflict areas. It set its aim for getting ERW on the agenda of the Second CCW Review Conference and to work for international regulation on ERW within the CCW framework. Then the Netherlands aimed subsequently at the creation of international consensus on a

338 See for instance A. Kremenyuk (ed), *International negotiation, Analysis, approaches, issues*, 2002.

339 CCW, Preamble.

340 Ottawa Convention, Preamble.

negotiation mandate, the creation of a legally binding protocol, and finally at the implementation of the protocol and at progress on issues not dealt with by the instrument. By constantly reformulating its issue-specific objectives in rather general terms it was able to proceed within the CCW without deviating from its overall position on ERW.

### Focus on political issues

Decision-making in the CCW and Ottawa Convention is by definition a political activity. The central idea of participating in these conventions is not only to expand international humanitarian law on landmines, but just as much to enforce existing international legal instruments by means of a political (diplomatic) effort. In other words, politics does not end with the decision-making phase of negotiating a treaty text, a protocol or an amendment, but also plays an important role in the implementation of treaty obligations. Concerning the implementation of the Ottawa Convention it should be noted that Dutch representatives were mainly interested in the work of the Standing Committee on the General Status and Operation of the Convention, which includes the highly political issues of universalisation, participation, compliance and the interpretation of the Articles 1, 2 and 3. The technical issues (mine clearance, mine risk education or mine awareness, victim assistance, socio-economic reintegration and stockpile destruction) were given less attention.

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Analysis of the effectiveness of the Dutch interventions on mine clearance (section 7.6) shows that the policy ambitions in Standing Committee on Mine Clearance always have been limited. Dutch representatives participated in the intersessionals and annual meetings of the Standing Committee on Mine Clearance and Related Technologies (SC MCRT), but made no significant effort to make the Dutch influence felt in the work of the committee. The same goes for operations regarding the other (technical) aspects of mine action, mine risk education or mine awareness, victim assistance, socio-economic reintegration and stockpile destruction. The input of the Netherlands on these issues did not go beyond regular attendance of the formal meetings of the Standing Committee on Victim Assistance, Socio-Economic Reintegration and Mine Awareness (later Standing Committee on Victim Assistance and Socio-Economic Reintegration), the Standing Committee on Mine Risk Education and Mine Action Technologies, and the Standing Committee on Stockpile Destruction.

The limited effort on the technical issues in the Ottawa Convention contrasts with the Dutch position as a large mine action donor. Since 1996 the Netherlands chose a two-track policy to tackle the landmine problem. Firstly, it participated actively in arms control negotiations in the CCW and the Ottawa Convention and thus promoted international regulation regarding landmines. Secondly, it contributed considerable financial resources to mine action programs in countries with a substantial landmine problem. For the Dutch funding mine action is an obligation that follows from the Ottawa Convention. The annual funds spent on mine action indicate that the Netherlands takes this obligation seriously.

### 9.3 General performance in the two conventions

What picture emerges when the Dutch issue-specific objectives are compared with the issue-specific achievements from 1996 to 2006? With respect to decision-making within the CCW, progress was made on all issues except for Anti-Vehicle Mines (AVMs). In general, progress was slow and uneven: Given the character of arms control policy, results are in line with what may be expected:

- 1) The States Parties agreed on the establishment of a weak compliance mechanism in November 2006. The establishment of a compliance mechanism was an achievement in itself, but the result was less ambitious than originally aimed for by the Netherlands.
- 2) Universalisation efforts contributed to a steady increase of the number of States Parties to the CCW. If one relates the ambition of the Netherlands to bring the CCW closer to its goal of universality to the explosive growth in this period of the number of States Parties to the Ottawa Convention the results on universalisation are modest.
- 3) The scope of application of the CCW was extended in December 2001. The final result of the negotiations only partially served the Dutch aims. Partial, because the amended first article of the CCW treaty only applies to the existing protocols, while the Netherlands had preferred the amendment to be applicable to future protocols too.
- 4) In December 2003 an agreement was reached on a protocol on ERW. Establishment of a new protocol was considered as an achievement in itself and for the Netherlands an unqualified success, even though the protocol did not include the weapons-specific preventive measures which had been a Dutch policy objective in the first three phases of the international decision making process.

The establishment of a complete ban on anti-personnel mines is generally considered as a great achievement. Nevertheless, the results of the negotiations leading to the Ottawa Convention were disappointing for the Netherlands, because it had aimed for the treaty to include exceptional transitional provisions in order to keep the US involved. In practice, however, the non-involvement of the US proved not to impede the relevance or operation of the treaty. As far as the universalisation and full implementation of the Ottawa Convention is concerned the States Parties made headway on all issues except for technologies:

- 1) The efforts of the States Parties on promoting universalisation resulted in a considerable increase in the number of States Parties to 152 countries by the end of 2006, proceeding from 60 ratifications by the end of 1998. The common goal of the States Parties corresponded fully with the aims of the Dutch government with regard to universalisation. The results are considerable compared to the modest growth in this period of the number of States Parties to the CCW.

- 2) The efforts to stimulate widespread participation in the meetings of the Ottawa Convention kept participation on a high level throughout the years. The pursuit of widespread participation was instantly adopted by the Dutch government and materialized in the attention the issue received and concrete efforts that were made in due course. The high level of participation interrelates with a relative high number of developing countries that are represented in the Ottawa Convention.
- 3) The efforts on universal adherence to the treaty obligations resulted in the annual increase of the rate of compliance with the Article 7 obligations of the convention to 96 percent in 2006. Since the beginning of 1999 supervision over compliance with the stipulations of the treaty was among the key objectives of the Dutch government. The scores for recent years are considerably higher than in previous years, proceeding from a compliance rate of 56 percent in 1999.
- 4) Mine clearance is a key priority of the Ottawa Convention. The objective is to continue mine clearance until the last mine has been destroyed. In this regard Dutch policy is somewhat less ambitious, since it aims at clearing landmines and unexploded ordnance in order to reduce the number of mine accident victims and foster socioeconomic development. Although States Parties made considerable progress in the field of mine clearance, the efforts can not yet be qualified as a success. On the one hand the Landmine Monitor reports show that the efforts of the States Parties on mine clearance resulted in a slow decrease of the number of countries that is affected by anti-personnel mines. With 740 square kilometres in 2005, more land had been cleared in a single year than at any time since the start of humanitarian demining in the late 1980s. But on the other hand, reported casualties increased to 7,328 in 2005 (11 percent more than in 2004) after a steadily decrease in previous years, proceeding from a casualties rate of approximately 8,000 identified landmine/unexploded ordinance (UXO) casualties in the year 2000.<sup>341</sup>
- 5) The Ottawa Convention demands from each State Party that it disposes of its stockpiles of Anti-Personnel Mines (APMs) within four years after the entry into force of the treaty for the particular State Party. The treaty proved definitely effective in this regard. All together, Ottawa States Parties have destroyed 39.5 million stockpiled landmines since the creation of the convention. The number of States Parties that possessed stockpiles of anti-personnel mines has decreased steadily since 1999. Mid-2006, 138 of the then 151 States Parties did not have stockpiles of anti-personnel mines. Out of these 138 States Parties, 74 had completed the destruction of stockpiles, whereas 64 States Parties never had any anti-personnel mines. There were only 13 States Parties left with stockpiles.

<sup>341</sup> These numbers are far from the actual total of new mine victims. The figures do not include the thousands of casualties that are believed to go unreported as victims are killed or injured in remote areas away from any form of assistance or means of communication. There is no reliable reporting in some heavily-affected countries; for example, the 8,000 figure does not include casualties in Burma which the Landmine Monitor 2000 report estimated could be some 1,500 per year.

### The Dutch effort: optimal performance under the circumstances?

Dutch policy-making in the CCW and the Ottawa Convention was an ongoing process which is dependent on external factors and uncertainties. Landmine policy is about long term objectives and the Netherlands are just one actor in a setting of 100 to 150 equal States Parties. Therefore, it would not have been realistic to link Dutch policy objectives (input) directly to internationally achieved results (output). Instead, the evaluation focussed on the question whether the Netherlands did the utmost to achieve the policy objectives, given the context in which it operated. As such the Dutch interventions were assessed on their own merits. This means that indicators were used that are based on four *a priori* established requirements which have to be fulfilled if an intervention is to be classified as an effort with maximum potential effect.

Did the Netherlands perform optimally in the CCW and the Ottawa Convention? Or could it have done more to achieve its objectives? The findings of the chapters 4 to 7 are summarized in table 9.1.

**Table 9.1** Overview of the effectiveness of the Dutch policy interventions within the CCW and the Ottawa Convention

Issue/Evaluation criterion	Connectedness	Responsiveness	Timeliness	Scope
<b>CCW</b>				
Compliance	Partially connected	Partially responsive	Timely	Moderate
Universalisation	Connected	Responsive	Timely	Moderate
AVM	Partially connected	Responsive	Timely	Moderate
Scope	Connected	Responsive	Timely	Moderate
ERW	Connected	Responsive	Timely	Large
<b>Ottawa</b>				
Negotiating the Ottawa Convention	Partially Connected	Partially responsive	Late	Large
Universalisation	Connected	Responsive	Timely	Large
Participation	-	Responsive	Timely	Large
Compliance	Connected	Responsive	Timely	Large
Articles 1, 2 and 3	Connected	Responsive	Timely	Large
Mine Clearance	Connected	Responsive	-	-
Mine Action Technologies	Not connected	Not responsive	Late	Large
Stockpile Destruction	Connected	Responsive	Timely	Small



Table 9.1 gives a first impression of the Dutch efforts. In many cases the interventions have led to medium and maximum scores, but there are also some minimum scores. In order to draw the right conclusions from the results as presented in the table, it is necessary to elaborate on the medium and minimum scores and answer the question whether these scores are to be looked upon as the highest scores that were attainable in these particular cases. In other words, were the Dutch interventions in these occasions the most appropriate under the circumstances?

### Connectedness

Did the Netherlands perform optimally on the criterion of connectedness? Table 9.1 shows that by and large Dutch interventions in the CCW and the Ottawa Convention were in line with the issue specific policy objectives and followed the ambitions expressed in those objectives. In four cases the maximum score has not been reached. Within the CCW these are the interventions on the issues of 1) compliance and 2) AVMs which are scored as 'partially connected'. Regarding the Ottawa Convention the interventions in negotiations leading to the conclusion of the treaty text 3) were partially connected and the interventions on the issue of mine action technology 4) were not connected at all. In one case the criterion could not be applied due to the lack of the formulation of an issue-specific policy objective.

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In two of the cases of partial connectedness the sub-optimal score was due to the level of ambition set by the Dutch representatives, while in one case the sub-optimal score was due to a matter of substance.

With respect to compliance, the Netherlands chose to act within the Western Group in general and the European Union (EU) more in particular. Doing so, the level of ambition was scaled down from the objective to be proactively involved to merely supporting the proposals of other states. The interventions regarding the AVM issue were also only partially connected because of a mismatch between the level of ambition expressed in the objectives and the level of ambition manifested in the interventions. The Netherlands had aimed for a proactive role on the issue of AVMs. The actual interventions however did not live up to the ambitions. The lack of ambition on the AVM issue is evident. The consultations regarding AVMs gathered momentum at the same time as the ERW issue. Given the Dutch focus on ERW, and given the scarce resources and necessary decoupling of both issues, it is certainly justifiable that the Netherlands decided not to be proactively involved in the AVM issue as long as the ERW process evolved. However, from 2004 on (after Protocol V had been realised) the Netherlands could have adopted a more proactive role on AVMs, which it did not.

The Dutch interventions during the negotiating phase of the Ottawa process were partially connected to the Dutch policy objectives. It was not because of the level of ambition. The Dutch interventions were often active or proactive and thus in line with the level of ambition expressed in the objectives. Here, in practice Dutch interventions centred on the establishment of transitional provisions in order to keep the US

committed to the process, whereas the official national policy objective was that the Netherlands would strive for a speedy realisation of a comprehensive ban on anti-personnel mines. With the pursuit of transitional provisions the Netherlands was certainly not on its own. At the Brussels Diplomatic Conference many issues appeared to be still disputable in the first week of the conference, including the question whether transitional provisions would be added to the convention text. At the same time it gradually became clear that an unprecedented number of countries would side with the proponents of a total ban. Being a proponent of a total ban from the very beginning, the Netherlands had a solid basis to hold its earlier position, but nonetheless chose to compromise.

The only issue that scored ‘not connected’ is the issue of mine action technology within the Ottawa Convention. Until 2000 the Dutch interventions on technologies were connected with the national policy objectives. But from then on the national policy objectives shifted away from technology whereas the interventions did not. That resulted in a chairmanship of the Standing Committee on Mine Clearance and Related Technologies which was not in line with national policy objectives.

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### Responsiveness

Was the Dutch performance optimal with respect to the criterion of responsiveness? As table 9.1 demonstrates, the responsiveness of the Dutch policy interventions also scored high, meaning that in general the interventions were in line with the international decision-making process. In only three occasions the findings show a less than optimal effort with regard to responsiveness: the interventions in the CCW on the issue of compliance 1) and the interventions in the negotiations leading to the Ottawa Convention 2) were partially responsive to the international decision-making process, whereas the interventions on mine action technologies 3) were not responsive.

On compliance the Dutch effort was labelled ‘partially responsive’, because the Netherlands decided to side with the Western Group and thus became opponent of those States Parties (including Russia and China) that were in favour of no compliance regime or a very weak one. This position was only natural since the objectives of the Western Group (consultation, dialogue, verification and fact finding) highly correlated with the Dutch national policy objectives. In the context of the formation of blocs responding to the policy objectives of the non-Western Group would only have meant compromising the Dutch national objectives.

This argument does not apply to the treaty negotiations leading to the Ottawa Convention. Partial responsiveness in this case originated from a deviation from the initial choice of establishing a comprehensive treaty, to acceptance of compromises in order to include major landmine producers and consumers within the framework of the treaty. This position was motivated by the conviction that the treaty could never be successful without participation of the US. Considering the fact that the Ottawa negotiations were started because of dissatisfying and compromise based results

within the CCW, this position was all but natural. The group of countries that had initiated the treaty negotiations aimed at reaching a comprehensive ban on anti-personnel mines and during the process an increasing number of countries endorsed that objective. Besides, bearing the clear focus on 'comprehensiveness' in mind, it was not very likely that a group of compromise seekers would have had its way at the end of the negotiation process.

With its focus on research and development of new technologies the Dutch interventions with respect to mine action technologies were not responsive to the international decision-making process. In addition to the observation that the intervention went against the national policy objectives, no evidence can be found that the non-responsive intervention contributed to international policy making within the Ottawa arena.

### Timeliness

Was the timing of the Dutch interventions optimal? Table 9.1 shows that Dutch interventions mostly took place at appropriate moments. Only on two occasions the effort came too late. Such was the case with respect to 1) the interventions in the negotiations leading to the Ottawa Convention and 2) the interventions regarding mine action technologies. In one case (mine clearance) the criterion could not be applied.

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The low score on timeliness with regard to the negotiations leading to the Ottawa Convention is caused by the bad timing with respect to the interventions made to keep the US on board. During the CCW Review Conference the Netherlands had joined the group of countries that aimed to create a total ban on anti-personnel landmines. It already decided during the Brussels Conference that transitional provisions were acceptable in order to include major producing and consuming countries. However, from the very start of the negotiations it was clear that the US did not have much faith in transitional provisions since this would not offer a permanent solution to the Korea problem. At the same time it was to be expected that the summer months would be decisive for the negotiations, since the deadline for the Ottawa process (autumn of 1997) was set at the final meeting of the First Ottawa Conference. There was nothing that prevented the Dutch from taking action as soon as possible. Nonetheless, it was only during the final negotiations in Oslo (September 1997) that the Netherlands actively intervened on behalf of the US. Since the process had almost been completed by that time, this was too late to be effective.

The bad timing of the Netherlands with respect to mine action technologies also cannot be defended by taking into account the wider context. With respect to mine action technologies, the interventions of the Netherlands were too late as the Dutch delegation to the SC MCRT focused on research and development after this approach had been abandoned by the Netherlands as well as most other like-minded countries.

## Scope

Was the scope of the Dutch interventions large enough to be influential? Table 9.1 shows that out of the four evaluation criteria the criterion 'scope' is the most volatile. This means that the assessment of the Dutch interventions on the three dimensions of scope – the action radius, the directness and the level of involvement of the actor executing the intervention – presents a mixed picture. In six occasions the Dutch interventions had a large scope. On four occasions, the interventions had a moderate scope. The issues on which the interventions scored moderate were 1) compliance, 2) universalisation, 3) AVMs, and 4) scope within the CCW. Furthermore, on one occasion the scope of the interventions was small. This was the case with the interventions on stockpile destruction within the Ottawa Convention. On one occasion the criterion could not be applied. This was the case with the promotion of mine clearance within the Ottawa Convention. No concrete Dutch interventions to support or promote progress on mine clearance within the SC MCRT were made. As such, Dutch policies on mine clearance in the Ottawa Convention had no scope at all.

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With the notable exception of the ERW issue, the interventions in the CCW arena were of a moderate scope. That is, on all four above-mentioned issues the indirect instruments used had a large action radius, but called for an active level of involvement rather than a proactive one. When placed within the context of the entire decision-making agenda of the CCW the use of this type of intervention instruments is only natural. The larger part of the efforts of the Netherlands within the CCW framework was aimed at the ERW issue. From the very start the Netherlands in its capacity of coordinator was the engine of the ERW process. Thus, given the problem of limited human resources it could not be reasonably expected that the Netherlands could also have adopted a proactive involvement regarding the other issues. This argument is even more convincing if the agenda of the Ottawa Convention is taken into account. The same officials that acted on behalf of the Netherlands in the CCW were also responsible for the Dutch interventions in the Ottawa Convention. Within that framework, limited personnel resources led to the recruitment of a temporary policy officer in order to perform the arduous task of co-chair of the SC MCRT. From this it follows that during the period that the ERW issue was high on the CCW agenda and the Netherlands acted as coordinator, the number of policy officials was not in line with the political ambitions pursued with regard to the other issues on the national landmine agenda.

Limited capacity also justifies the small scope of the interventions regarding stockpile destruction with the Ottawa Convention. Rather than limited human resources however, the explanation should be found in the limited financial resources. The interventions on stockpile destruction were limited to financial support to a limited number of stockpile destruction projects through specialized international organizations. This was due to the fact that funds for this particular purpose did not come from the Demining fund or Stability fund. Grants for stockpile destruction projects had to be funded out of the Foreign Policy Support Programme (POBB). The aim of the POBB is

to finance non-ODA activities that support Dutch foreign policy objectives. These activities should not only have a catalytic effect, but should also be carried out only once and have a maximum duration of one year. So the scope of the activities covered by the POBB is limited by definition.

### Overcoming impediments

The barriers the Dutch policymakers encountered with respect to the issues dealt with in this evaluation were often the same. Impediments can easily be subdivided into two categories: 'difficult countries' and national procedures and priorities.

Within the CCW 'difficult countries' are understood as countries being notorious for delaying progress in international decision-making. A distinctive feature of a 'difficult country' is a reluctant attitude towards joint action which manifests itself in either a repeated (that is more often than other countries) unwillingness to follow the position of the majority or a late implementation of the treaty obligations. The principle of unanimity narrows the margins of decision-making to what is still acceptable to these countries. In a different way 'difficult countries' are also an issue within the Ottawa Convention. The Rules of Procedure of the Ottawa Convention subscribe that a two-thirds majority of the representatives of States Parties is present and voting is required for decisions on all matters of substance. In practice however, acting in a spirit of cooperation is thought to be more important than formal decision-making procedures. A striking case in point in this respect is the small group of countries that effectively blocked the recurrent efforts of the States Parties to formulate 'conclusions' on the issue of the interpretation and implementation of the Articles 1, 2 and 3 in the lead-up to the Nairobi Summit 2004.

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By and large, three types of objections towards progress within the CCW and Ottawa were put up by the 'difficult countries': 1) objections of principle due to differing views on questions of national security and defence policies, 2) technical and financial objections, and 3) objections related to events or developments in other disarmament arenas. In general, these types of objections proved inextricably intertwined and hardly surmountable. In practise the presence of 'difficult countries' constitute a structural impediment that is only to be overcome by actions or events that are mostly outside the range of the States Parties. As the occasion arose the Netherlands reacted pragmatically to such obstacles and acquiesced to achieve the second best result. This was the case in the negotiations on the establishment of a compliance mechanism within the framework of the CCW. However, the impediments surrounding the AVM issue proved to be too strong to arrive at a new instrument.

At the same time the assessment of the Dutch interventions in the CCW shows that the list of 'difficult countries' is not fixed in advance. During the process some countries that were initially difficult, increasingly emerged as cooperative with respect to the achievement of the ERW protocol, whereas others became difficult only in the final phase.

The second category of impediments is formed by national procedures and priorities. The evaluation shows that national efforts on universalisation and full implementation of the Ottawa Convention were hindered up to three times by national procedures and priorities. First, the slow ratification procedures in the Netherlands impeded full participation in the first joint actions of the core group on universalisation and ratification of the treaty. Already in October 1998, during the first preparatory meeting for the First Meeting of States Parties in May 1999, core group members discussed the coordination of démarches to promote the universalisation and ratification of the treaty. The Dutch had to adopt a reserved attitude to the initiative at the time, because then the Netherlands had not yet ratified the treaty itself. Subsequently, in 1999 as well as in 2004 the Dutch efforts for (high level) participation in respectively the First Meeting of States Parties and the Nairobi Summit in 2004 was hindered by a persistent uncertainty with regard to the level at which the Netherlands itself would be attending these meetings. In both instances decision-making at the political level was not in line with the implementation of a proactive attitude towards the landmine issue.

#### 9.4 Selection and utilisation of intervention tools

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Was there a Dutch preference for certain intervention types? Assessment of the effectiveness of the Dutch interventions on thirteen issues addressed within the CCW and the Ottawa Convention shows that the Netherlands did not have a clear preference for a specific intervention instrument. Dutch policymakers used the whole toolbox available to policy-makers in international decision-making structures: They organized seminars, chaired and participated in meetings, wrote papers and supported proposals of other States Parties and UN resolutions. Furthermore, representatives of Dutch embassies also carried out bilateral and multilateral démarches within the framework of the Ottawa Convention.

At the same time, the evaluation shows that Dutch policymakers highly value acting in concert with other states. In 1996, during the second session of the First CCW Review Conference, the Netherlands joined the group of like-minded countries with the intention to enforce its position on APMs. Secondly, it gave expression to its commitment to the common goal of the Ottawa States Parties by participating actively in various informal groups that were established within the framework of the convention: The Universalisation Contact Group, the Sponsorship Programme and the Article 7 Contact Group. And thirdly, the Netherlands worked in the EU Working Party on Global Disarmament and Arms Control (CODUN) to align the EU member states with respect to the various issues in the CCW and the Ottawa Convention. Deliberations in this disarmament working group resulted in the drawing up of a Food-for-Thought paper on mines other than anti-personnel mines (MOTAPM) by the EU member states and series of joint démarches to promote adherence to the CCW and all its Protocols and the universalisation and full implementation of the Ottawa Convention. Over and

above, in its capacity as EU President (second half of 2004) it devoted itself to arrive at a joint EU-position on the issue of compliance.

In addition, the chapters 4 to 7 demonstrate that the Dutch efforts on landmines and ERW were most visible at times when the Netherlands had a formal role to play. Dutch efforts came most to the fore when it was acting as EU President in the first half of 1997, as co-chair of the Standing Committee on Mine Clearance and Related Technologies (SC MCRT) and of the Standing Committee on General Status and Operation of the Conventions (SC GSO) within the Ottawa Convention, and as a coordinator on ERW within the framework of the CCW. This does not mean that the Netherlands was automatically the most active country on the landmine issue when it adopted a formal role, or that Dutch policy-makers were less active at times when they did not hold such a position. It has to be emphasised that a substantial part of the Dutch efforts was directed at executing *démarches* regarding universalisation, active participation in the meetings of the States Parties and compliance to the Article 7 obligations of the Ottawa Convention. By definition, *démarches* are less visible than formal chairing positions. But on the other hand these types of interventions are of an active nature, and most certainly when they are executed in series, have a large action radius.

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The observation above highlights the fact that among the various policy instruments, chairmanship is without doubt the most interesting instrument in terms of potential influence on the policy-making process. This has been well realized by the Dutch policymakers. Within the CCW and the Ottawa Convention they have continuously aimed at holding key positions in the decision-making process or at attaining functions that would eventually lead to key positions. The Netherlands put forward its candidacy for the chair of the Second Review Conference of the CCW in 2001. Although it did not attain this position its candidacy without doubt contributed to the appointment of the Netherlands as coordinator on ERW during the conference. Likewise, within the framework of the Ottawa Convention Dutch policymakers made strenuous efforts to occupy the position of co-rapporteur of the SC GSO, because it would mean that they would be co-chair of the SC during the First Review Conference.

However, on one occasion in which the Netherlands acted as co-chair it risked its reputation (SC MCRT) and in one other case it did not make a deliberate choice to make its influence felt while holding this position (SC GSO). These two cases lead to the question whether the Netherlands uses the formal chairing positions effectively enough to influence international decision-making. In neither of the two cases the Netherlands had prepared a political strategy for fulfilling its role as co-chair. It was not clear what objectives would be pursued and how these objectives would be achieved. The number of formal positions within the CCW and Ottawa Convention is only limited. Another thing is that it is far from easy to obtain formal positions. Co-chairing a standing committee or coordinating an expert group is also by other States considered as a tool with a large scope, and thus perceived as very desirable.



Only after the request of the ICRC the Netherlands took up the issue of the interpretation and implementation of Articles 1, 2 and 3. As a co-chair of the SC GSO (September 2003 to December 2004) it made serious efforts to promote reaching convergence on the interpretation of the Articles 1, 2 and 3 issue, while otherwise the focus was on facilitation of the international decision-making process. The Netherlands was determined to obtain this position. The lobby started already in 2001 with the Dutch candidacy for co-rapporteur of the SC GSO. However, since then no ideas were raised or plans were developed on what the Netherlands hoped to achieve and how it would proceed during its term as co-chair. By steering on processes and procedures it let go the opportunity to leave a distinctive mark on the work in this highly political committee.

Another intervention instrument that asks for closer observation is the practise of initiating, supporting or sponsoring national position papers. As in many multilateral negotiation arenas, within the CCW papers are presented that elaborate on the national positions of one or more States Parties. Since 1996 the Netherlands frequently made use of this intervention instrument. Although the Netherlands did not initiate any national position paper by itself, it directly or indirectly lent its support to position papers of other countries frequently. In the run-up to the 2001 Review Conference the Dutch delegation was instructed to support any proposal on the issue of compliance concerning all protocols in December 2001 (at the time both an EU proposal and a South-African proposal met the Dutch objective). In its capacity as EU President it initiated a new EU proposal on compliance in 2004. It participated in and adopted a joint EU position to support a US-Danish proposal for a distinctive AVM protocol in 2001. Finally, it co-sponsored the US proposal to amend Article 1 of the CCW to be applicable to all current and future annexed protocols.

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Supporting or sponsoring position papers is a relatively 'easy' intervention instrument. By using it a country adopts an active national stance on an issue. But is it also a useful tool for a State Party, in this case the Netherlands, to further its national aims or to work towards a common goal? It seems that in the CCW position papers lead to polarisation rather than consensus or overall progress on the issues. Given the consensus based decision-making procedure, it is highly unlikely that opposing countries will ever lend their support to a proposal that deviates from their own national position. In case of the co-existence of several position papers – as was the case in the deliberations on AVMs – support for any of the proposals contributes to a deadlock rather than progress in the decision-making process. It is self-evident that once the negotiations are bogged down, it will be hard to overcome the deadlock. It will be difficult for any country, once it has expressed its approval for a possible alternative, either by submitting a proposal, or by co-sponsoring or lending their support to a proposal, to reconsider its position and to speak out for another alternative. This applies also to position papers that are particularly designed to arrive at a compromise, for under the circumstances these papers will be judged firstly on the basis of the contested aspects of the earlier stepping stones for compromise.



### **Making optimal use of the intervention toolbox**

The Netherlands deliberately chose not to use the position paper instrument in its capacity as coordinator on ERW. The coordinator aimed at preventing deadlocks that would slow down or even paralyse the decision-making process. Therefore he chose to discuss new proposals first in informal settings, bilateral consultations and expert meetings. Further, instead of concrete text proposals that had to be negotiated upon, the coordinator presented discussion papers and framework documents. Only after consensus had been found on these texts, a formal position paper was drafted by the coordinator. Doing so, the coordinator effectively made use of his position (see chapter 5).

## **9.5 Reflecting on failure and success**

Which criteria for success and failure were used in the various phases of the decision-making process? The evaluation shows that self-reflections on Dutch interventions in the CCW and the Ottawa Convention in terms of failure or success are scarce. On only two occasions policy-makers reflected on past actions. First, in case of the Dutch interventions in the negotiations leading to the Ottawa Convention, policy-makers expressed their disappointment with the final result of the international decision making process. They considered the treaty text to be a failure and presented a gloomy perspective of the future, because the countries participating in the negotiations (including the Netherlands) had not succeeded in getting the US on board. Secondly, the Dutch contribution to the achievement of a fifth protocol on ERW within the CCW was reflected upon. The establishment of Protocol V and the contribution of the Netherlands were presented as a case of successful diplomacy. Although it was acknowledged that not every Dutch ambition had materialised in the protocol, the progress achieved was considered to be substantial. In both instances however, there was no in-depth exploration of the decisive elements to the final negotiation results and/or the strengths and weaknesses of Dutch diplomacy. Still, such exercises are extremely useful in terms of gaining a better understanding of the nature of the international decision-making process and the determinants of effective national policy making in international decision-making arenas.

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In general, lessons learned from decision-making in the CCW were applied to decision-making in the Ottawa Convention. The text of the Ottawa Convention acted as a starting point and example for the final draft of the ERW protocol, as well as for the establishment of a compliance mechanism and the Sponsorship Programme within the framework of the CCW. At the same time it is clear that more lessons are to be learned from the origins and operation of the Ottawa Convention. To name a few examples, the explosive growth of the number of States Parties to the Ottawa Convention was largely the result of the activities of the Universalisation Contact Group. The establishment of such a group within the framework of the CCW will probably speed up the slow growth of the number of States Parties to Protocol V. Furthermore lessons are to be learned from the origins of the Ottawa Convention with

respect to the recent international deliberations on a total ban on cluster munitions. The Ottawa negotiations show that it pays off to be closely involved from the beginning on.

## 9.6 Conclusions

Assessment of the general findings regarding the effectiveness of Dutch policies with regard to the various issues and the different elements of the Dutch interventions leads to the following conclusions:

- 1) The Dutch profile in the CCW and the Ottawa Convention was active, rather than proactive. I.e., the Netherlands proved itself to be a committed State Party in the CCW and the Ottawa Convention, but most interventions did not go beyond lending active support. Notable exception to this overall observation is the Dutch pioneer role in the process leading to the ERW protocol. In 2000, in the early stage of the issue, the Netherlands acted to take control of future deliberations and decision-making within the CCW. As coordinator of the GGE on ERW it managed to get the most out of the international deliberations and negotiations within the CCW framework.
- 2) Policy objectives, overall as well as issue-specific, were formulated in rather general terms. As such they did not meet the standards of the performance-based national budget system that was introduced by the Dutch government in 1999. At the same time the evaluation shows that the States Parties in the CCW and the Ottawa Convention have very different perspectives on the way to move towards common goals. These circumstances required a flexible position of the Netherlands. In this respect the Dutch policy objectives were formulated loosely enough to negotiate the best conditions.
- 3) The Netherlands showed a clear preference for 'political' issues in the Ottawa Convention. The limited attention to the 'technical' issues contrasts with the effort the Netherlands has made as donor of mine action programmes. This observation may indicate that an integrated approach of policy instruments, diplomacy and funding has not fully materialised yet.
- 4) By and large Dutch interventions were connected to the national policy objectives, meaning that they followed the ambitions expressed in those objectives. In most cases the Dutch interventions were also responsive to international decision-making process. The requirement of responsiveness is based on the assumption that an intervention that does not stimulate the coming about of consensus of opinion in the international decision-making community is unlikely to be effective. However, it is not always desirable for a State Party to concentrate on compromises. It is evident that an intervention that is conducive to international decision-making but at the same time undermines the national policy objective will not benefit the national policy ambitions. The assessment of the interventions in the CCW and the Ottawa Convention shows that the Dutch policymakers complied with the principle of responsiveness and prioritised consensus.

- 5) Dutch interventions mostly took place at appropriate moments. Nonetheless, the evaluation shows that the timing of interventions needs to be a point of constant concern. Interventions that come too late are not only inconvenient in the sense of not producing the desired results, but can also counteract the international decision-making process and with that, at least temporary, cause damage to the reputation of the Netherlands abroad.
- 6) Results of the evaluation with regard to the evaluation criterion ‘scope’ present a mixed picture. This draws attention to the occasional imbalance between high political ambitions and limited human resources acting upon the Dutch policies. The CCW and the Ottawa Convention are both multiple issue arenas in the sense that they demand an effort of the States Parties on various aspects of the landmine problem at the same time. Particularly during the period the Netherlands played a pioneer role on ERW it proved difficult to adopt at the same time a proactive attitude on the other CCW issues and to live up to its front-ranking position in the Ottawa Convention. The same officials that acted on behalf of the Netherlands in the CCW were also responsible for the Dutch interventions in the Ottawa Convention. In this respect the evaluation shows that a proactive attitude in the field of landmines and ERW demanded choices leading to less priority given in other fields.
- 7) The Netherlands used the whole toolbox available to States Parties in the CCW and the Ottawa Convention. Two intervention instruments require closer observation:
  - Dutch policymakers were always highly aware of the potential influence the Netherlands could exercise when holding a chair or other formal position in the above-mentioned decision-making arenas. In spite of this, the Netherlands did not always succeed in using its formal position effectively enough to make its influence felt in the decision-making process. Within the framework of the Ottawa Convention the Netherlands held co-chairing positions but in neither of the two cases it was clear what objectives would be pursued and how these objectives would be achieved. In general the number of formal positions in international decision-making arenas like the CCW and Ottawa Convention is only limited. In order to get the most out of chairing a committee, it is vital to reflect beforehand on a working plan or strategy.
  - Within the framework of the CCW the Netherlands frequently lent its support to national position papers of other States Parties. Supporting or sponsoring position papers is a relatively ‘easy’ instrument to adopt an active national position on an issue. At the same time the evaluation shows that it is questionable whether supporting position papers is a useful tool for furthering national aims or working towards a common goal. I.e., it appears that the habit of working with position papers in the CCW leads to polarization rather than consensus or progress.
- 8) The barriers the Dutch encountered with respect to the issues dealt with in the CCW and the Ottawa Convention were often the same and can easily be subdivided into two categories: ‘difficult countries’ and national procedures and priorities. The first category constitutes a structural impediment – although policymakers should always be aware that a list of ‘difficult countries’ is not fixed in advance – that is only to be overcome by actions or events that are mostly outside the range of the States

Parties. The second category constitutes a problem. The evaluation shows that slow ratification procedures hindered full participation in joint actions, and that on two occasions national decision-making ran counter to the policy instructions that were given at the working level. This casts doubts on the declared national ambition to adopt a proactive attitude on the landmine issue.

- 9) Today an active foreign policy manifests itself in public transparency and up-to-date reports on decision-making highlights. For that reason several major countries on landmines keep official CCW/Ottawa websites with all formal convention reports, national statements, policy papers, interviews etc. In this respect, there is a lot to improve for the Netherlands Ministry of Foreign Affairs.

## 9.7 Lessons learned

The following lessons are to be drawn from the Dutch negotiating experiences on landmines and ERW in the CCW and the Ottawa Convention 1996-2006:

### 1) *Early involvement is an important stepping stone for effectiveness.*

218 Uncertainty is a distinctive feature of foreign policy. Foreign policymakers cannot predict with certainty the proceedings and outcomes of international decision-making processes. Consequently they have developed different tools for managing uncertainty. In particular they buy time and gather information. They deliberately stay aloof or keep a low profile in the first phases of the international decision-making process in order to be able to make better decisions. But at the same time it is questionable whether buying time and gathering information at an early stage is also an effective strategy for achieving national policy objectives. As far as this is concerned, the evaluation shows that it pays off to be among the first, even when it is not sure whether the issue will be settled successfully. The very fact that the Netherlands was considered to be leading in the process towards the ERW protocol was among others caused by its early involvement and corresponding feature of showing enterprise. I.e. taking initiative at an early stage certainly contributed to the effectiveness of Dutch policies on ERW.

### 2) *Balancing between political ambitions and human resources is vital in the area of international negotiations.*

Government interventions in the area of international negotiations for the most part take place on the basis of value judgements and political expediency. This means that the aims and ambitions at the political level largely determine the tasks and responsibilities at the working level. The evaluation shows that in order to be effective in international negotiations personnel resources need to be in line with political ideas and objectives. From 1996 the Dutch government aspired to play a pioneer role on the issue of landmines. Subsequently, Dutch representatives worked for a high profile on various issues related to the landmine problem in the CCW and the Ottawa Convention. But the periodical increases in workload that resulted from holding chairs or other formal positions in the two decision-making arenas were never accompanied

with corresponding adaptations in the numbers of qualified personnel. The number of civil servants working on landmines remained the same in the period 1996-2006. Consequently, choices had to be made as to which issues and which arena would be given priority. Over and above, it proved to be difficult to clearly distinguish between the issues at hand. It is evident in sectors such as development cooperation that the more funds there are available, the more a government can accomplish in such an area by including a corresponding level of staffing. It needs to be recognised that the same applies to the area of international negotiations; the higher the political ambitions are, the more hands there are needed to do the work.

3) *One size budget systems do not fit all: efficiency may be the enemy of effectiveness in the area of international negotiations.*

Efficiency is on top of the political agenda since the late 1990s. This is the main reason why the Dutch parliament agreed to the introduction of results-based management in the national policy cycle. In practice this means that from 2000 onwards all departments are obliged to produce performance-based policy budgets with policy articles in which objectives, performance schemes and means are explicitly formulated. The evaluation indicates that the requirements of the new national budget system may be at odds with the principles of flexibility and adaptability in the area of international negotiations. The Dutch overall policy objectives on landmines and ERW were formulated in rather general terms in the annual Notes on the Budget, while the issue-specific policy objectives were often adapted or reformulated due to the dynamics of the international decision-making process. In case of the ERW, the complex context of international decision-making on ERW made the Netherlands change its objectives up to four times. But only by adapting the national objectives to the complex political context was it able to achieve the utmost on the issue concerned. It needs to be recognised that the more the Netherlands participates in multilateral settings the more important flexibility and adaptability will be for effectiveness. In addition, it needs to be emphasised, that even though multilaterally achieved results for the most part do not match fully national ambitions, they have a positive influence on the lives of many human beings just the same and are better than no results at all.

4) *The achieving of a treaty is not only the end of an international negotiation process. It is also the start of a new process of multilateral diplomacy for enforcement.*

International negotiations do not end with the negotiating of a treaty text, a protocol or an amendment. They also play an important role in the effective implementation of treaty obligations. Accordingly, the central idea of participating in the CCW and the Ottawa Convention is not only to expand international humanitarian law on landmines, but just as much to enforce existing international legal instruments by means of a political (diplomatic) effort. In spite of this, the evaluation shows that after the achieving of the Protocol V of the CCW the Dutch representatives moved away from the ERW issue, while after the establishment of the Ottawa Convention only limited attention was given to implementation related to the different aspects of mine action. Limited capacity may justify the Dutch preference for the political issues. But moving

away from the international deliberations in the implementation phase is to deny the complexity of contemporary international relations. In order to get the most of the international work it is necessary for contemporary diplomats to start viewing decision-making on implementation matters as a necessary political activity as well.

5) *Effective policy-making in multilateral settings requires working with policy plans and strategies.*

The times are long gone that foreign policy-making was only about responding adequately to international events and developments. It is evident nowadays that as in other sectors, foreign policy needs to build on vision and strategy. The evaluation of the Dutch interventions in the CCW and the Ottawa Convention indicates that almost no strategic thinking occurred about what objectives would be pursued and how these objectives would be achieved, and that only seldom deliberate choices were made with regard to the use of intervention instruments. Notable exception to this observation is the way the Netherlands dealt with the ERW problem. From the moment the Dutch government had prepared a national position on ERW, the Dutch delegation to the CCW carried out purposeful actions to achieve the national policy objectives. It also deliberately chose not to use the position paper instrument in its capacity as coordinator on ERW. In order to avoid deadlocks, it presented discussion papers and framework documents, instead of concrete text proposals that would have to be negotiated upon. Doing so, the Netherlands effectively made use of its coordinating position. The case of the ERW shows that in order to be effective in international decision-making, it is vital for any state actor to prepare a policy plan or strategy and to make conscious use of the various intervention instruments at its disposal.

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6) *The mobilisation of political will is vital for effective diplomacy.*

Ministers of Foreign Affairs have the power to contribute to the international agendas and play a substantial role in providing resources and speeding up developments. That is why their (visible) commitment is generally been thought of as of great importance in addressing international issues and problems. This applies also to the international decision-making on landmines. However, the evaluation shows that in 1999 and in 2004 Dutch Ministers of Foreign Affairs decided not to respond to the appeal for high-level attendance of respectively the first Meeting of States Parties (1MSP) and the First Review Conference (Nairobi Summit) of the Ottawa Convention, although for the Netherlands these appeals were based upon justified expectations. The Netherlands was among the first members of the core group to have played an active role in the preparations for the 1MSP. Early 1999 the Minister had instructed the Dutch embassies to conduct démarches to advocate high-level participation in Maputo. The same goes for the high-level attendance action plan of the core group in the run-up to the Nairobi Summit in 2004. In both instances, the Dutch pursuit of high level attendance by others was hindered by persistent uncertainty with regard to the level of Dutch attendance. And in both instances the decision not to attend ran counter to the political ambitions these Ministers had voiced in Parliament. Over and above, with pursuit of high level attendance at the working level and the non-attendance at the political level, the Netherlands gave contradictory signals to the Ottawa community, and, at least

temporary, harmed the Dutch reputation as loyal core group member. These cases show that it is vital for an effective foreign policy to bring political ambitions in line with expected political performance.

- 7) *In-depth exploration of the decisive elements to international negotiation results and the strengths and weaknesses of national performance is a key to better decision-making and improved outcomes.*

The evaluation shows that self-reflections on national interventions in the CCW and the Ottawa Convention in terms of failure or success are scarce. I.e., strategic thinking on the unexpected speedy realisation of the landmark 1997 Ottawa Convention or the disappointing negotiations on anti-vehicle mines in the CCW did not take place. On the few occasions Dutch policymakers reflected on past actions, in-depth exploration of the impact of the decisive elements on the final negotiation results and/or strength and weaknesses of Dutch diplomacy was absent. Such exercises are an important tool for further refining national negotiation standards. They also may help to change ingrained habits and stale modes of behaviour in international decision-making in a larger circle beyond one delegation.

- 8) *Challenging the prevailing problem approach is often the first step to progress on an issue.*

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The overall negotiating experiences on anti-personnel mines and ERW show that it pays off to challenge the prevailing problem approach. During the Cold War, governments were used to discussing landmines primarily in terms of military necessity. During the first half of the 1990s the global mine ban movement led by the International Campaign to Ban Landmines (ICBL) succeeded in reframing the landmine issue as a humanitarian problem rather than a military issue. Essentially, the ICBL stated that under current international humanitarian law the use of landmines was illegal, because it was causing disproportionate casualties among non-combatants and unnecessary suffering to combatants and civilians. This legal argument, in combination with the promotion of shocking statistics and hundreds of landmine victim stories, diverted state attention and action away from the military and security aspects of the landmine issue and refocused it on the plight of victims. By reframing the problem, an enabling environment was created for the Ottawa-process that resulted in the 1997 Mine Ban treaty. In a similar manner the terms of the debate on ERW were shifted from military security (are cluster weapons a military necessity or not?) to humanitarian security (unexploded cluster munitions can cause severe human suffering) in the course of 2000. This is not to say that in all cases reframing the problem will be a way out when negotiations are bogged down, but that it is worthwhile considering it as a potential tool for re-establishing progress.

- 9) *Civil society groups do make a difference in multilateral decision-making.*

Today, the international agenda is increasingly being set and moved forward by civil society groups (coalitions of Non Governmental Organisations and other non-state actors within or outside the state). The central role these groups played in achieving the Ottawa Convention is frequently pointed at as a striking case in point. Awarding

ICBL the 1997 Nobel Peace Prize led to a wide recognition that it provided an invaluable contribution to the Ottawa process. Also after the achievement of the Convention the ICBL has been the driving force in the effective implementation of the Mine Ban treaty. The same holds for the role the ICBL has played in the establishment of a ban on cluster munitions. In both cases it is evident that the International Landmine Coalition has had, and still has a great influence on the foreign policies of many state actors on landmines and ERW, including the Netherlands. These cases also show that the work of foreign policymakers has greatly changed. With the emergence of civil society groups on the international stage, the number of channels by which foreign policymakers have to advance foreign policy objectives has also expanded. This means that more time needs to be invested in identifying, enlisting and supporting non-state actors that are receptive or contribute to the state's foreign policy agenda, in order for its foreign policy actions to be effective. The role of civil society groups in promoting progress and achieving results in international relations appears to be under-valued at the political level, given the state-centric terms in which Dutch government still formulates its foreign policy objectives.





# Annexes

# Annexe 1 About IOB

## Objectives

The objective of the Policy and Operations Evaluation Department (IOB) is to increase insight into the implementation and effects of Dutch foreign policy. IOB meets the need for independent evaluation of policy and operations in all policy fields falling under the Homogenous Budget for International Cooperation (HGIS). IOB also advises on the planning and implementation of the evaluations for which policy departments and embassies are responsible. Its evaluations enable the Minister of Foreign Affairs and the Minister for Development Cooperation to account to parliament for policy and the allocation of resources. In addition, the evaluations aim to derive lessons for the future.

Efforts are accordingly made to incorporate the findings of evaluations into the Ministry of Foreign Affairs' policy cycle. Evaluation reports are used to provide targeted feedback, with a view to improving both policy intentions and implementation. Insight into the outcome of implemented policy allows policymakers to devise measures that are more effective and focused.

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## Approach and methodology

IOB has a staff of experienced evaluators and its own budget. When carrying out evaluations, it calls on the assistance of external experts with specialised knowledge of the topic under investigation. To monitor its own quality, it sets up a reference group for each evaluation, which includes not only external experts but also interested parties from within the Ministry.

## Programme

The evaluation programme of IOB is part of the programmed evaluations annexe of the explanatory memorandum to the budget of the Ministry of Foreign Affairs.

## An organisation in development

Since IOB's establishment in 1977, major shifts have taken place in its approach, areas of focus and responsibilities. In its early years, its activities took the form of separate project evaluations for the Minister for Development Cooperation. Around 1985, evaluations became more comprehensive, taking in sectors, themes and countries. Moreover, IOB's reports were submitted to parliament, thus entering the public domain.

1996 saw a review of foreign policy and a reorganisation of the Ministry of Foreign Affairs. As a result, IOB's mandate was extended to the Dutch government's entire foreign policy. In recent years, it has extended its partnerships with similar departments in other countries, for instance through joint evaluations.

Finally, IOB also aims to expand its methodological repertoire. This includes greater emphasis on statistical methods of impact evaluation. As of 2007 IOB undertakes policy reviews as a type of evaluation.

# Annexe 2 Terms of reference

## Study I: Evaluation of Dutch interventions in the conventional arms control arena

### 1 Introduction

The Dutch government's pursuit of an integrated approach to international issues, including the deployment of an effective and efficient combination of policy instrument, served as the starting point for the evaluation entitled 'The Netherlands and the Control of Landmines and ERW', by the Policy and Operations Evaluation Department (IOB). Since the evaluation examines the relationship between two policy instruments, the IOB is therefore conducting two case studies on the nature, functioning and impact of the individual instruments. The first case study concentrates on politics: the diplomatic efforts aimed at expanding, refining and ensuring compliance with existing international legal instruments within the various negotiating frameworks in the field of conventional arms control. The second case study deals with finance: the funding of demining activities in countries with a mine problem within the wider framework of humanitarian assistance. The findings of the two case studies will provide the basis for an integrated study focusing on the functioning and effectiveness of this particular blend of policy instruments.

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### 2 Background

Dutch efforts to control landmines and ERW are part of a broader effort towards conventional arms control. In recent decades, many agreements, regulations and treaties have been adopted in the field of conventional arms control. One characteristic of decision-making in this field is the parallel existence of various regional and international decision-making frameworks in which negotiations take place on the adoption of new arms control treaties or the refinement of existing ones. The negotiations in these frameworks always focus on specific types of weapons. The same weapon may therefore be the subject of negotiations in different decision-making frameworks. Although there are clear areas of concentration in this regards, there is as yet no definitive division of responsibilities between the various negotiating frameworks.

The main negotiating frameworks in the field of conventional arms control are:

### The CFE/OSCE framework

The Treaty on Conventional Armed Forces in Europe (or CFE Treaty) forms the basis for discussions in the field of conventional arms control within this framework. The CFE Treaty places limits on the numerical strength and deployment of armed forces in Europe. It was signed in 1990 by the member states of NATO and the former Warsaw Pact and entered into force in July 1992 (AIV 1998:16). At the beginning of 1997, the 30 contracting parties started negotiations in Vienna with a view to adapting the treaty to the new European security situation. This resulted in the adoption in March 1999 of a decision to amend the CFE Treaty. The contracting parties signed the revised CFE Treaty during the OSCE summit in Istanbul in November 1999. In December 2002, the revised treaty had not yet entered into force, because the NATO countries had decided in Istanbul that it could only be ratified if the Russian Federation respected its flank limits and complied with its commitments in respect of Moldova and Georgia, in particular to destroy large quantities of munitions at the time of its withdrawal (*Jaarboek Veiligheidsbeleid 2002: 46-47*).<sup>342</sup>

228 In November 2000, the OSCE countries adopted the politically binding *OSCE Document on Small Arms and Light Weapons*, which includes a series of principles but also encourages the adoption of specific measures on the manufacture, marking and registration of small arms, trade and export controls for small arms, the management of stockpiles and the destruction of surpluses.<sup>343</sup>

### The CCW framework

The 1980 Convention on Certain Conventional Weapons (CCW) forms the basis for negotiations within this framework. Its full title is 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. The Convention itself does not deal with specific restrictions on the use of certain weapons but is limited to general provision on such issues as the scope, entry into force and structure of the Convention. A number of protocols to the Convention place specific restrictions on various types of weapons. States become party to the Convention after ratifying at least two protocols.

At present, the Convention includes five protocols. Three of these were adopted in 1980: Protocol I on non-detectable fragments, Protocol II on landmines, booby-traps and other devices and Protocol III on incendiary weapons. Following the Convention's first review conference in Geneva in May 1996, the contracting parties adopted Protocol

342 The complete Russian withdrawal from Moldova is being funded by the OSCE's Voluntary Fund (*Jaarboek Veiligheidsbeleid 2002: 46-47*).

343 The obligations included in this document go much further than those in the UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (UNPOA).

IV on blinding laser weapons and an amended version of Protocol II (which devotes more attention to anti-personnel mines than the original version).

At the second review conference in December 2001, the contracting parties decided to extend the scope of all existing protocols from interstate to intrastate conflicts. In addition, they agreed on a mandate for further discussions on the issue of explosive remnants of war (ERW) in a Group of Governmental Experts established by the review conference. The term ERW covers all explosive remnants of war (unexploded grenades and mortars, unexploded parts of cluster bombs and abandoned ammunition stockpiles) except for unexploded anti-personnel and anti-tank mines which are covered by separate agreements. In November 2003, after two years of negotiations involving 90 countries, an agreement was reached on the clearance of ERW following the cessation of hostilities. The agreement was added to the 1980 CCW as protocol V. This was the first time that a disarmament treaty had been concluded in Geneva since 1996.

In 2001, the Group of Governmental Experts also received a mandate to discuss anti-tank mines (House of Representatives, 280000, no. 50: 1-2). Since then, several contracting parties have also focused their efforts on tightening up existing agreements regarding the use of anti-tank mines (reinforcing amended Protocol II) (House of Representatives, 28000, no. 37:4).

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### The Ottawa framework

The *Convention on the Prohibition of the Use, Stockpiling, production and Transfer of Anti-Personnel Mines and on their Destruction* was concluded in Oslo on 18 September 1997. It is commonly referred to as the Ottawa Convention, in recognition of the so-called Ottawa process preceding its conclusion. Following the first CCW review conference, which the Canadian delegation regarded as disappointing, the Canadian Minister of Foreign Affairs, Lloyd Axworthy, called on all delegations to participate in a conference in Ottawa to establish an international prohibition outside the CCW framework. The first Ottawa Conference, which took place in October 1996, is generally regarded as the official beginning of the process that resulted in the signing of the Convention by the representatives of 121 governments at the Treaty Signing Forum in Ottawa in December 1997. The Ottawa process is a special case within the totality of rules and agreements in the field of arms control due to the influential role of NGOs in the process (Maslen and Herby 1998).

In terms of its impact, the Ottawa Convention is regarded as a success, as it has led to a rapid decline in the number of victims of anti-personnel mines (House of Representatives, 28600, ch. V, no. 63). The first review conference – the Nairobi summit on a Mine-Free World – took place in December 2004. It focused, among other issues, on the Convention's achievements: a reduction in the annual number of victims from approximately 30,000 before the conclusion of the Ottawa Convention to 10,000-15,000 in 2004. In addition, trade in anti-personnel mines appears to have come to an

almost complete standstill, and the number of producers has declined sharply. In December 2004, 144 countries had signed the act of ratification. A key problem here is that several large countries/producers of landmines have not yet signed or ratified the Convention.

### The UN framework

The First Committee of the General Assembly of the United Nations is the organisation's main disarmament forum. In the past, discussions in this forum have frequently led to the adoption of resolutions on conventional arms control. Examples of this include resolutions on anti-personnel mines, including a call for a moratorium on the export of anti-personnel mines (49<sup>th</sup> session of the UN General Assembly, 1994), a call for the prompt conclusion of a treaty imposing a general prohibition on anti-personnel mines (51<sup>st</sup> session of the UN General Assembly, 1996) and a call on countries to accede to the Ottawa Convention (annually since the 56<sup>th</sup> session of the UN General Assembly, 2001).

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Since the end of the 1990s, the United Nations has also held consultations aimed at establishing legally binding agreements on the accumulation and distribution of small arms. On 15 December 1999, the UN General Assembly adopted resolution 54/54V on small arms, in which the member states agreed to convene the first international conference on this issue in 2001. At the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which took place from 9 to 20 July 2001 in New York, the participating countries reached agreement on a *UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects* (UNPoA). The UNPoA includes politically binding measures on various issues, including the adoption of adequate legislation on the production of and trade in small arms, markings, secure storage, managing transport and stockpiles, maintaining a good registration system and destroying surpluses. It also established that a second conference on combating the illicit trade in small arms and light weapons would be held in 2006 at the latest to examine progress in the implementation of the action points listed in the UNPoA. During this conference, the participating countries could renegotiate the contents of the UNPoA (House of Representatives, 27400, no. 8). In the so-called small arms or omnibus resolution of 9 January 2004, the member states decided to establish an Open-Ended Working Group to develop an international instrument for identifying and tracing small arms and light weapons. The last of the three planned negotiating rounds was to take place in June 2005. In addition, the member states decided in the omnibus resolution to establish a Group of Governmental Experts in 2006 to examine the options for more detailed international agreements on controlling illicit brokering in a small arms and light weapons (A/RES/58/241).

### The EU framework

Within the CFSP framework, the EU member states' aim is to adopt common positions on issues relating to conventional arms control. In the past, this has led to the



adoption of various instruments, including : Joint Action 96/588/CFSP of 1 October 1996 on anti-personnel landmines (House of Representatives, 21501-04, no. 56); Joint Action 97/817/CFSP of 28 November 1997 on anti-personnel landmines; the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms (26 June 1997)); the EU Code of Conduct on Arms Exports (8 June 1998); Joint Action 1999/34/CFSP of 17 December 1998 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons; Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP; Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering; and the European Parliament resolution on cluster munitions (28 October 2004). The joint action on small arms and light weapons also provides for the provision by the European Union of financial and technical assistance to relevant projects, for example in Albania, Cambodia and West Africa (ECOWAS).

The various negotiating frameworks have their own decision-making procedures for adopting agreements and rules. The contracting parties of the CCW, for example, meet annually in Geneva. Between these annual sessions, the CCW Group of Governmental Experts meets twice a year in Geneva. In addition, the contracting parties periodically attend review conferences. The second CCW review conference took place in December 2001, and the third will take place in 2006. The 2001 review conference was preceded by three official preparatory meetings (PrepComs). At that time, the procedure for setting the CCW agenda was as follows. First, at the proposal of one or more of their number, the contracting parties discussed whether or not a particular issue would be the subject of negotiations within the CCW framework. Then, if they were able to agree on this issue, they instructed a group of experts to prepare, on the basis of an official mandate, a draft text that would form the basis for the official negotiations. The Ottawa regime, in contrast, is much less institutionalised.

The parties to the Ottawa Convention also meet on an annual basis. Between these meetings, they attend intersessional meetings to exchange information and coordinate their global mine action activities. To satisfy the need for systematic coordination of the enforcement of and compliance with the obligations arising from the convention, the contracting parties decided at their first meeting in May 1999 to establish several standing committees of experts (SCEs) which meet once or several times a year in Geneva.

### **Dutch contribution**

Deploying the political instrument in the conventional arms control arena can take various forms, such as:

- participating in consultative bodies, meetings, committees and conferences,
- conducting informal consultations on the margins of official gatherings,
- drafting working document,

- making demarches,
- introducing or supporting resolutions,
- organising expert workshops and meetings and
- actively promoting compliance with international codes of conduct and treaties.

### 3 Structure

#### Objectives and research questions

The aim of Case Study I is 1) to gain an understanding of the ways in which the Netherlands has intervened in the conventional arms control arena, and 2) to assess the effectiveness of these interventions. Based on this objective, the evaluation will focus on the following research questions after deciding which interventions to examine:

- How did the decision-making process in the relevant conventional arms control framework unfold?
- What objectives did the Netherlands pursue during the various states of the decision-making process?
- Which option did the Netherlands prefer and what were its predicted effects?
- What obstacles did the Netherlands encounter and how did it negotiate them?
- Which objectives were achieved and which not? What factors contributed to this?
- What criteria for success or failure did the Netherlands employ during the various stages of the intervention process?

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The IOB already has some experience in evaluating Dutch interventions in international negotiating frameworks. In the recent past, for example, it evaluated the way in which the Netherlands negotiated with Europe on Agenda 2000. In addition, it is currently preparing a case study on the Netherlands' activities in the UN Commission on Human Rights between 1992 and 2004 in the framework of its evaluation of Dutch human rights policy.

#### Structure of the evaluation

The planned evaluation covers the entire range of Dutch interventions concerning landmines and ERW in the conventional arms control arena. Broadly speaking, this includes drawing attention to issues and putting them on the agenda, formulating recommendations for future policy, deciding on policy content and transforming policy into concrete actions. One of the key aims of the evaluation is to understand the functioning of Dutch interventions. However, this is not a process evaluation, which closely tracks the introduction of the intervention and if necessary proposes adjustments, but a retrospective process analysis. A key feature of this type of evaluation is that the various links in the chain and the conditions that determine the functioning of the interventions are recorded, interpreted and evaluated with hindsight.

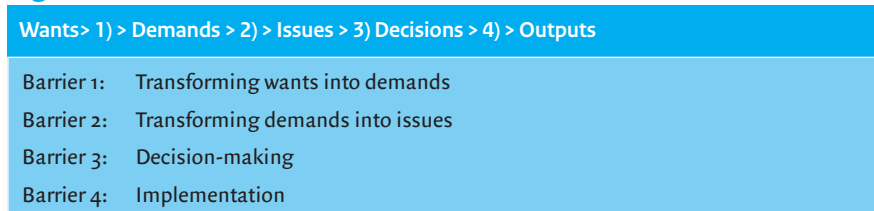
Decision-making in multilateral consultative frameworks, like the negotiating frameworks discussed in this study, is usually characterised by:

- *Slow decision-making*: Policymaking in multilateral frameworks is generally very time-consuming. It often takes several years to achieve concrete results.
- *Incremental policymaking*: Also typical of such consultative frameworks is that policy develops incrementally. In other words, policy is formulated one small step at a time, as the decisions that are adopted generally do not deviate too much from the status quo.
- *Rigid decision-making procedures*: In addition, decision-making in these consultative frameworks takes place according to fixed patterns and rigid procedures that are frequently regarded as an obstacle to achieving results.

It is precisely because of these characteristics – slow decision-making and incremental policy development according to fixed patterns and procedures – that the IOB has opted for an analysis based on the barrier model.

The barrier model is based on the assumption that a party that wishes to achieve something within a governance system (in this case the international governance system) encounters resistance because there are countless other parties that feel that something should be done about their problems or that are more or less satisfied with the status quo and do not want to see the development of new policy in a particular area. The party that wishes to achieve something will therefore have to overcome barriers throughout the policy process. It cannot rest after political decisions regarding the new policy have been adopted; it must ensure that the transition from policymaking to implementation actually takes place. From the perspective of the party that wants to get something done, the policy process is therefore like an obstacle course. Figure 1 shows the four barriers that this party must overcome (Bovens et al. 2001: 142-143).

**Figure 1** *The basic barrier model*

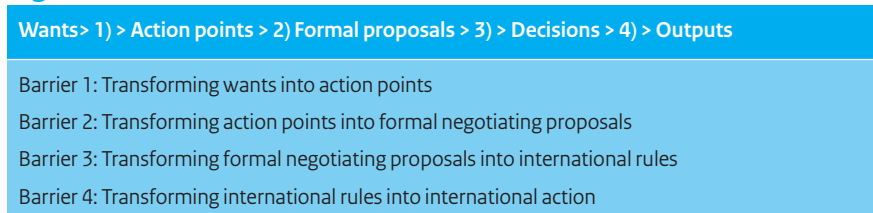


The model provides an appropriate framework for reconstructing the evolution of the international arms control processes and the Dutch interventions in the successive stages of international policy development, as it draws attention to the role of power

and influence in the decision-making process (see ToR Annexe 1 for a more detailed explanation of the barrier model).

When analysing the Dutch interventions regarding landmines and ERW in the conventional arms control arena, the following diagram thus comes to mind:

**Figure 2** *Potential barriers in the conventional arms control arena*



### Definition and scope of the study

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Since the 1960s, the Netherlands has been a pioneer in the field of arms control. For a long time, the efforts of successive Dutch governments focused on the ‘major’ arms control issues, namely the global proliferation of nuclear weapons and imbalances in the distribution of heavy conventional weapons in Europe. Since the collapse of the Eastern bloc and the conclusion of the Treaties on Intermediate Range Nuclear Forces (INF), Conventional Armed Forces in Europe (CFE) and short Range Nuclear Forces (SNF), attention has shifted to the control of landmines and ERW, which is regarded as an urgent humanitarian issue.<sup>344</sup>

On the basis of considerations arising from the structure of the main evaluation study, Case Study I will focus on the Dutch interventions in the international negotiations on landmines and ERW during the 1996-2004 period. In the framework of the evaluation of the political instrument, the IOB will examine the Dutch interventions in the Ottawa and CCW frameworks using the barrier model. The decision which interventions to examine takes account of the following factors:

- The relevance of the interventions that are to be examined in the light of Dutch negotiating practices.
- The different stages at which the decision-making processes on conventional arms control are located. Since 1997, for example, the Netherlands’ efforts within the Ottawa framework have been focused entirely on increasing the number of

344 In this context, reference is sometimes made to the change in thinking on the causes of armed conflicts and peace and security that took place during the 1990s. This involved a shift from a state-based approach, in which the emphasis is on international security issues, to a people-based approach. According to the first approach, the main cause of armed conflict is military threat or ‘fear’. According to the second approach, it is economic underdevelopment or ‘want’.

contracting parties, ensuring that all contracting parties comply with the Convention's provisions and improving cooperation between the contracting parties as they implement the Convention. In the case of ERW, however, compliance with legally binding agreements is currently the only prospect. In recent years, the Netherlands' efforts in the CCW framework have been focused entirely on putting ERW on the negotiating agenda, obtaining a negotiating mandate and achieving consensus on the text of the Fifth Protocol concluded in December 2003.

- The final factor is that the empirical data should be as rich as possible in order to better understand the negotiating processes in the arms control arena and the assessments made by the Netherlands during the various stages of the negotiations. In the Parliamentary Papers since 1996 it has been emphasised more than once that the Netherlands is a pioneer in the field of landmines and ERW. In practice, this manifests itself in taking initiatives and actively supporting the initiatives of like-minded states. The existence of a clear profile indicates the existence of sufficient points of departure (development of policy goals, strategies, instruments and reporting) for a systematic empirical study.

### Data collection

Data will be collected in two stages. First of all, the IOB will chart the international decision-making processes in the selected conventional arms control frameworks and the evolution of the Dutch interventions in these frameworks on the basis of the available dossiers, Parliamentary Papers and comparative studies. During the preliminary study, the IOB made a list of 101 files that merit examination. Next, based on the overviews thus obtained, the IOB will conduct interviews with the various stakeholders in the national and international decision-making processes. In this context, for example, IOB representatives will attend the next preparatory meeting or intersessional gathering of the Ottawa parties in Geneva.

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## ToR Annexe 1 Explanation of the barrier model

### Origins of the barrier model

The origins of the barrier model can be found in *Power and Poverty: Theory and Practice* by Peter Bachrach and Morton S. Baratz. In this classic work, Bachrach and Baratz strongly criticised existing theories of political decision-making. According to the authors, these theories illuminated only one face of power, while they believed that power has two faces.

Power is exercised not only when A participates in decisions affecting B but also when A ensures that the political agenda is limited to public consideration of issues that are relatively harmless to A. In *Power and Poverty: Theory and Practice*, Bachrach and Baratz highlighted the second face of power, which manifests itself in what they described as non-decision-making. By this they referred to the practice of limiting the scope of actual decision-making to safe issues by manipulating government values, myths, political institutions and procedures or, in other words, by preventing certain

grievances from developing into fully fledged issues that require decisions. Not deciding therefore often amounts to the same as deciding to maintain the status quo.

Bachrach and Baratz's study formed the basis for a lively debate in the field of political science regarding decisions and non-decisions. This debate focused not only on the ideological basis of the concepts introduced by the authors but also on the imperfections and inconsistencies in their model. The model that is commonly used in policy science literature was created by Professor C. van der Eijk and Dr J.P.W. Kok of the University of Amsterdam's Faculty of Social and Behavioural Sciences. Van der Eijk and Kok developed a new, more precise version of the barrier model by linking Bachrach and Baratz's insights to the agenda-setting process.

### Van der Eijk and Kok's barrier model

According to Van der Eijk and Kok, the political process is made up of a sequence of consecutive stages:

- Wants

In the beginning – even before the start of the actual political process – there are views, opinions, interests, attitudes and so forth. At the outset, it is unclear whether the political system should or needs to adopt decisions on the basis of these wants and, if so, what those decisions should be. For this purpose, the wants need to be formulated in political terms.

- Demands

Demands are wants that have been formulated in political terms. Then a person or a group expresses a particular want in this way, those responsible for taking binding decisions have no option but to consider it.

- Issues

If the want in question ends up on the political agenda, it is referred to as an issue. This implies that the political decision-makers have acknowledged it as a problem that requires a decision.

- Decisions

Decisions are wants that have become the subject of politically binding decisions which must then be transformed into the intended outputs.

- Outputs

Outputs are needs and wants that have been satisfied in practice.

A key aspect of the barrier model is the idea that needs and wants must pass various barriers before they are transformed, by means of political decision-making, into government acts. There are four barriers in Van der Eijk and Kok's model:

### *Barrier 1) Transforming wants into demands*

Not all wants are – or can be – formulated in political terms, in which case they do not pass the first barrier in the policy process. Bachrach and Baratz cite the dominant political value system as a reason for failing to pass this barrier (1970: 58). The political nature of certain wants is more easily recognisable in this value system than the political nature of others. Reasons cited by Van der Eijk and Kok in this context include lack of knowledge and actions of other actors preventing the transformation of wants into demands (1975: 28).

### *Barrier 2) Transforming demands into issues*

Political decision-makers who are confronted with a continuous stream of competing demands are often unwilling or unable to consider all of them. The second barrier consists of various procedures, customs and organisational tools that influence the ultimate choice between demands that are recognised as a matter of government concern by the decision-makers and demands that are rejected. A demand that does not achieve the status of an issue will eventually disappear, unless its supporters are able to raise its significance sufficiently to undertake a second attempt to obtain this status.

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In addition, there is the possibility of what Van der Eijk and Kok refer to as demand perversion. This occurs when political decision-makers accept only part of the demand in question or combine it with some other demands on the same subject (with the result that the demand loses its original character) or when the original demands are toned down.

### *Barrier 3) Decision-making (transforming issues into decisions)*

When a particular want or need has achieved the status of an issue, the political decision-makers are obliged to adopt a decision on it. This decision can – but does not have to – meet the original wants and needs. The decision-making process is thus the third barrier in the policy process. Simply stated, it can end in victory (if the decision fully meets the original wants and needs) or defeat (if the decision is at odds with the original wants and needs). However, similar to the demand perversion mentioned in relation to barrier 2), a form of issue perversion may also occur during the decision-making process.

### *Barrier 4) Implementation (transforming decisions into outputs)*

A decision that meets the original wants and needs does not automatically lead to outputs that actually satisfy those wants and needs in practice. Sometimes decisions are of a symbolic nature. In such cases, their purpose is to prevent the want or demand in question from being expressed any longer rather than actually meeting it. In most cases, however, there are many things that can happen during the implementation process to block the realisation of the desired outputs. Van der Eijk and Kok refer to this as output perversion.

According to Van der Eijk and Kok, every case in which one stage of the political process fails to transform into the next one (starting at wants and ending with outputs) can thus be identified as a barrier.

### Applications

The chief aim of Van der Eijk and Kok's model is to serve as a heuristic tool for describing a process. It can be used in two ways: from the perspective of the power of realisation (the ability to create policy) or from the perspective of the power of obstruction (the ability to block policy).

Seen from the perspective of the power of realisation, the barrier model is based on the assumption that a party that wishes to get something done within a governance system encounters resistance because there are countless other parties that feel that something should be done about their problems or that are more or less satisfied with the status quo and do not want to see the development of new policy in a particular area. The party that wishes to achieve something will therefore have to overcome barriers throughout the policy process. It cannot rest after the political decisions regarding a new policy have been adopted; it must ensure that the transition from policymaking to implementation actually takes place. From the perspective of the party that wants to get something done, the policy process is therefore like an obstacle course.

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The perspective of the power of obstruction is based on the opposite idea. In this case, the basic assumption is that a party that wants to block new policy has a series of opportunities to do so within the governance system. To start with, it can deny the existence of the problem raised by the other party, attack it with counterclaims or ignore it completely. If it nevertheless fails to keep the problem off the political agenda, it can form coalitions with other parties to vote against the proposed policy. In cases where decisions are nevertheless adopted, it can attempt to frustrate their implementation in many ways. From this perspective, in contrast to the previous one, the barrier model reads first and foremost as a guide to raising obstacles in the policy process.

The literature generally characterises the barrier model as a model for agenda-setting. The main reason for this is that Bachrach and Baratz's model and Van der Eijk and Kok's model both focus on the concept of non-decisions (and thus on the stages that come before decision-making). However, when the focus shifts from non-decisions to barriers, the model can serve as a heuristic tool for analysing power in all stages of the policy process. Building on the introduction of barriers in Bachrach and Baratz's process model, for example, Hoogerwerf identifies ten potential barriers (1. formulating the problem, transforming needs into individual demands; 2. transforming individual demands into a group agenda; 3. transforming a group agenda into the public agenda; 4. transforming the public agenda into the official agenda; 5. transforming the official agenda into policy preparation; 6. transforming policy



preparation into policy-setting; 7. transforming policy-setting into policy implementation; 8. transforming policy implementation into desired effects; 9. measuring effects; and 10. transforming evaluation into feedback) in a policy process consisting of eleven stages (1. needs; 2. demands; 3. group agenda; 4. public agenda; 5. official agenda; 6. policy preparation; 7. policy-setting; 8. policy implementation; 9. policy effects; 10. policy evaluation; and 11. feedback).

The model has already proved its value as a heuristic tool. It has been used, for example, in studies on the development of legislation and in research into certain aspects of the policy process. A key feature in this regard is that the model as described above is not treated as a given but is often reconstructed from the process itself. Thus, for example, for the purpose of her research on the development of abortion legislation in the Netherlands, Professor J. Outshoorn reconstructed a sequence comprising six stages (1. pre-political stage; 2. expressing wants; 3. formulating demands; 4. decision-making; 5. implementation; and 6. policy effects) and five barriers (1. breaking the silence; 2. want-demand conversation; 3. issue conversation; 4. adopting a decision; and 5. entry into force).

### **Place and role of the barrier model in the planned policy evaluation**

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The barrier model displays strong similarities to a stage model. It assumes that, in a policy process, a number of fairly distinct stages follow each other in a fixed order. Although reality is often less predictable, it was precisely this feature that influenced the decision to use the barrier model as the guiding principle for the evaluation of Dutch policy on the control of landmines and ERW. Policymaking in this field takes place in multilateral negotiating and consultative frameworks that operate according to fixed patterns and rigid procedures. Those concerned regard these frameworks as indispensable but also – and not infrequently – as an obstacle to achieving results.

The IOB will evaluate the Netherlands' efforts from the perspective of the power of realisation, given that the country is a pioneer in the field of landmines and ERW. In practice, this manifests itself in taking initiatives during the various stages of the international policymaking process. The existence of a clear profile will enable the IOB to gain an understanding of the way in which the Netherlands has intervened in the various policy stages and to form an opinion regarding the effectiveness of the Dutch approach to this policy area.

## Study II: Evaluation of financial assistance for humanitarian demining activities in 1996-2006

### 1 Introduction

The Dutch government seeks to adopt an integrated approach to international issues, using an effective and efficient combination of policy instruments. This is the reason for the IOB (Policy and Operations Evaluation Department) evaluation of Dutch efforts to control landmines and explosive remnants of war (ERW's). This evaluation will examine two types of policy instrument (political and financial) and how they interrelate. It will be made up of two distinct parts (study I and study II). Each of the two parts, which will be carried out separately, will focus on one of the policy instruments, including its nature, operation and effects. Study I will focus on political initiatives: the diplomatic efforts undertaken, in the various fora on conventional arms control, to expand, tighten and enforce existing international legal instruments. Study II will focus on the instrument of financial assistance, i.e. funds for mine clearance activities in countries with a mine problem, seen from the broad perspective of humanitarian aid and post-conflict reconstruction. These Terms of Reference relate to study II.

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### 2 Background

#### Scale and nature of the landmine problem

According to the latest (2005) edition of *Landmine Monitor Report*, in the world as a whole, there were 84 countries and 8 areas not internationally recognised as independent states that had a mine problem in 2005. The number of mines involved can only be estimated. Estimates in the literature range from 30 to 300 million. Yet what matters is not so much the precise number of mines, but the size of the contaminated area. The presence of just a single mine renders an area potentially hazardous, and even the mere suspicion that mines are present can severely disrupt local and/or regional ways of life. What ultimately matters, therefore, is the impact of mines on the socioeconomic situation. The actual number of mines is largely immaterial.

There are enormous differences from one country to the next. In some, the location of minefields is known and they cause the civilian population little trouble. The Falkland Islands are a case in point. During the 1982 conflict, thousands of mines were laid on the beaches and moorland. According to the national authorities, there are more than 100 minefields covering 20 square kilometres and containing some 16,000 mines. These minefields are all clearly marked and fenced off, and are checked regularly (*Landmine Monitor Report 2005*). In other countries, the problems are overwhelming. In Afghanistan, for example, various army units and factions have been using mines

for over twenty years, making it one of the worst affected countries in the world. Landmines and ERWs are scattered throughout the country. A Landmine Impact Survey conducted between November 2003 and November 2004 identified 4,514 risk areas (covering 715 square kilometres) in 2,368 populated areas. Some 4.2 million people live in these areas (15% of the total population), 1.6 million of whom in what the survey called 'high or medium-impacted communities'. The mines impede access to agricultural land and pastures, and hamper the reconstruction of roads, bridges, irrigation systems, schools and other public buildings. Every month, they claim between 150 and 300 victims.<sup>345</sup> In the 24 months preceding the survey, a total of 2,245 victims were recorded in 664 of the 2,368 populated areas identified.

The international community tends to see the mine issue as a humanitarian problem. Every year, an estimated 15,000 to 20,000 people are killed or injured in accidents involving mines, although exact figures are not available. Most casualties are civilians. The Landmine Monitor recorded 6,521 cases in 2005, including children (1,262 or 19%), women (239 or 4%) and military personnel (25%). Yet many mine-related accidents are not reported, because they take place in remote areas where no assistance or communication of any kind is available. Accidents occur in almost all regions of the world. In 2002 they claimed victims in 20 countries in sub-Saharan Africa, in 15 countries in Southeast Asia, in 10 countries in the Middle East and North Africa and in 5 countries in Latin and Central America (*Landmine Monitor Report 2003*: 39-41).

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The landmine issue can also be defined as a socioeconomic problem:

- Mines and ERWs disrupt traditional ways of life. Social ties between relatives, families or communities are severed because roads, pastures, markets, schools, wells, riverbeds and other communal facilities and meeting places can no longer be used or can only be accessed via a circuitous route.
- Mines and ERWs impede economic development. The isolation of land, roads, bridges and markets can cut off existing local or regional sources of income. At the same time, the affected communities are confronted by a growing number of disabled people who are unable to provide for themselves. This places an increasing strain on the resources available for medical care. Not only are the operations that have to be performed immediately after an accident difficult and expensive, but also in the longer term the rehabilitation of victims demands constant medical care and attention.

Mines and ERWs pose the additional problem of hampering peace building in post-conflict areas. After a conflict, refugees and displaced persons are unable or unwilling

<sup>345</sup> [Progress in implementing Article 5: An overview of the mine-affected States Parties' problems, plans, progress and priorities for assistance. Background information compiled by the Implementation Support Unit of the GICHD to assist the Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies, 11 February 2004, p.3.](#)

to return to their original homes because they know or suspect that the area is mined. This can slow down the process of reconciliation between the former warring parties.

### Mine clearance jargon

‘Humanitarian demining’ usually refers to the sum total of activities relating to the clearance of mines and ERWs. These include: 1) examination of the nature and size of a minefield; 2) preparation of a general plan of action; 3) clearance of mines and ERWs; 4) marking of minefields; 5) follow-up inspections; 6) involvement of the local population in mine clearance activities; and 7) transfer of demined land (GICHD, 2004:64). Humanitarian demining should not be confused with military demining. The aim of humanitarian demining is to remove *all* mines and ERWs, so that it is safe for the civilian population to start living and working again in the affected areas. Military demining is designed to create narrow corridors through minefields for troops and equipment. Since speed is crucial to the success of a military operation of this kind, no attempt is made to clear all the mines. The risk of remaining mines is factored into the equation (House of Representatives, 24292, no. 1:16).<sup>346</sup>

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Humanitarian demining is only one component of what is referred to in international land mine parlance as ‘mine action’. Mine action is an umbrella term that covers a range of activities designed to reduce or completely eliminate the effects of landmines and ERWs on civilians in their living environment. These include: 1) victim support and social rehabilitation; 2) mine risk education and mine awareness for the local population; 3) mine clearance; 4) data management; 5) training for mine clearers; 6) technical research into better detection and clearance techniques (House of Representatives, 27162, no. 8:1).<sup>347</sup>

### Development of the mine action sector

The international community’s activities in the field of mine action started out in Afghanistan. In October 1988, in view of the problems the country faced because of landmines, the UN called for funds for humanitarian mine clearance. Until then, mine clearance had been the exclusive preserve of national armed forces. In the case of Afghanistan, however, there was no functioning national army, and the retreating Soviet troops were unable or unwilling to clear the mines that had been laid. This prompted the UN to develop and promote activities of its own. Initially, the UN’s humanitarian mine clearance activities in Afghanistan were limited to providing demining training. Subsequently support was given by a number of mine-action NGOs

346 The UN norm for the accuracy of humanitarian demining is 99.6%. On the other hand, the Dutch military, for example, consider 80% accuracy to be adequate for military demining (House of Representatives, 27162, no. 8:6).

347 The UN defines mine action as ‘activities which aim to reduce the social, economic and environmental impact of mines and unexploded ordnance’. The Geneva International Centre for Humanitarian Demining (GICHD) identifies five clusters of activities: 1) awareness and education; 2) humanitarian demining; 3) victim assistance and rehabilitation; 4) stockpile destruction; 5) advocacy against the use of anti-personnel mines (GICHD, 2004:20).

specially set up for this purpose in Afghanistan. This initiative in turn triggered the establishment of the first international NGO for mine action (HALO Trust), and activities were extended to other countries with mine-related problems. These included Angola, Cambodia, Iraq, Kuwait and Mozambique.

Not all demining activities were entirely successful. In the mid-1990s there was a growing realisation that, in order to discover why previous programmes had succeeded or failed, a common basis for the development of new programmes was needed. In 1997, a study by the UN Department of Humanitarian Affairs (DHA) was published which examined the factors underlying the success or failure of the first demining programmes in four countries. The study concluded that demining operations suffered from a chronic lack of organisation, commitment and vision. These conclusions, combined with proposals put forward by a number of working groups that had been dealing with the question of standardisation since 1996, led to the establishment in 1997 of the United Nations Mine Action Service (UNMAS).

Since then, UNMAS has been the central contact point within the UN for all landmine-related activities and initiatives. In 1997 it published its first list of standards, the International Standards for Humanitarian Mine Clearance Operations. At the same time, UNICEF devised the first series of international guidelines on education and awareness programmes. Starting in the late 1990s, more attention was paid to: 1) changes and shifts in mine action procedures, practices and standards and how they are perceived; 2) streamlining of mine action in the wider context of sustainable development and capacity building. For example, the scope of the UNMAS standards published in 1997 was extended. In 2000 the first edition of the International Mine Action Standards (IMAS) was issued by UNMAS. IMAS contain more elements of mine action than the original standards, which dealt exclusively with mine clearance. Their aim is to make mine action more secure and efficient by defining a number of internationally accepted principles, procedures and minimum requirements for national authorities, international donors and organisations in this field. IMAS are reviewed every three years in order to incorporate developments in the field (GICHD, 2004:21-27; *Policy Framework for Humanitarian Mine Action*, 2004). Mainly because of its traditional isolation, the biggest challenge currently facing the mine action community is the streamlining of mine action (point 2 above). In the last few years, not only have initiatives been developed to incorporate mine action into specially devised national strategies, but there has also been more cooperation with actors operating in this area (GICHD, 2004:21-27; Danida, 2003:9).

### **International coordination of mine action activities**

The international mine action network is made up of national, international and nongovernmental actors. Mine action activities are coordinated by the following horizontal and vertical mechanisms:

- The Mine Action Support Group (MASG), which was set up in 1998, is the primary coordinating body for donors. It is an informal forum of 27 donors who meet three times a year in New York and Geneva to share information on mine action activities and humanitarian demining policy. In 2003 Norway initiated the establishment of the Resource Mobilisation Contact Group (RMCG) in the margins of the meeting of the parties to the Ottawa Convention. The RMCG provides an opportunity for international Annexe 1 Terms of Reference / Preparing the ground for a mine save world 6 consultations and the exchange of information between mine action donors and the principal stakeholders in the margins of the various meetings of the parties.
- UNMAS plays a pivotal role in UN mine action activities. A number of other UN bodies also operate in this area. These include UNICEF (mine risk education), UNHCR (mine risk education and safe food supplies), UNDP (socioeconomic consequences of the presence of mines), UNOPS (integrated mine action and capacity building programmes) and UNOCHA (humanitarian consequences of mines). The Inter-Agency Group on Mine Action is responsible for coordination between the various UN bodies. The Steering Committee on Mine Action coordinates the mine action activities of UN and non-UN bodies. NGOs (including the International Campaign to Ban Landmines (ICBL)), the ICRC and the GICHD, among others, are represented on these committees.
- The most important umbrella organisation for NGOs is the ICBL. The ICBL owes its origin to an initiative by six humanitarian NGOs (Handicap International, Human Rights Watch, Mines Advisory Group, Medico International, Vietnam Veterans of America Foundation and Physicians for Human Rights) who joined forces in the 1990s to work for an unconditional ban on the production, possession, trade in and sale of landmines and other remnants of war. Since the inception of the Ottawa Convention in 1996, the ICBL has worked to promote the universalisation of and compliance with this agreement. Over 1,400 NGOs in more than 90 countries are currently affiliated.
- The Geneva International Centre for Humanitarian Demining (GICHD) was established in 2000 to support the UN's work. The GICHD is an independent centre of expertise that provides a platform within the international mine action network for international consultation and information exchange. It was the driving force behind the development, distribution and maintenance of the Information Management System for Mine Action (IMSMA), which was introduced in mid-1999.

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### National organisation

In most mine-affected countries, demining activities are managed centrally by a national mine action authority. This is a national government body – a ministry, for example – that is responsible for the regulation, management and interministerial coordination of national mine action activities. In addition, there is generally a mine action centre (MAC) that acts as national operator. MACs have a number of tasks: managing the national database, adopting national mine action plans and priorities, accrediting non-governmental and commercial demining organisations, coordinating local mine action plans with the activities of demining NGOs and other outside bodies

and local deminers, drawing up national mine action standards and monitoring the quality of demining activities. In some countries, the national mine action centre is the equivalent of a national mine action authority (GICHD, 2004:118).<sup>348</sup> Immediately after the end of a conflict, before a government has been installed, the MACs are run by the UN. They are subsequently integrated into the national government structure (Danida, 2003:57).

### 3 Dutch policy

Financial assistance for mine clearance operations has been part of Dutch government policy since 1992. At first the Netherlands' stand on the issue was a cautious one. On 25 August 1995, as part of the preparations for the first review conference of the Convention on Certain Conventional Weapons (CCW), the first policy memorandum on the problem of landmines was published. In it the Minister of Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation acknowledged the gravity of the landmine problem and gave their backing to a total ban on anti-personnel mines in the long term, but argued that for the time being landmines were indispensable part of the Dutch army's arsenal. A general ban on the use of landmines would only be attainable, they wrote, once fully fledged, humane alternatives to landmines had been developed (House of Representatives, 24292, no. 1). In March 1996, however, defence minister Joris Voorhoeve announced that the existing stockpile of anti-personnel mines would be disposed of and that such weapons systems would not be used in the future (House of Representatives, 24292, no. 4:1). This decision cleared the way for the Netherlands to play a more active role in combating the problem of landmines in the framework of the CCW and the Ottawa process (House of Representatives, 24292, no. 15:2). On the basis of the decision, over a three-year period, almost 440,000 superfluous landmines (235,000 anti-personnel mines and 203,000 anti-tank mines) belonging to the Dutch armed forces were destroyed. The Netherlands retained up to 5,000 anti-personnel mines for the purpose of training mine clearers, studying better ways of detecting landmines and rendering them harmless, and testing equipment developed to do so (House of Representatives, 25000 V, no. 72:7). Although landmines had not been produced in the Netherlands for almost 20 years, the production of anti-personnel mines was prohibited by law at parliament's request in 1996.

348 The principal non-governmental demining organisations include: DanChurchAid (DCA), the Danish Demining Group (DDG), HALO Trust (HALO), the Mines Advisory Group (MAG), Norwegian Peoples Aid (NPA) and the Swiss Foundation for Mine Action (FSD) (LMR, 2003:25). Since the first Gulf War, various commercial organisations have also been active in the field of humanitarian demining. These include BACTEC, European Landmine Solutions, Mechem, Mine-Tech International, Royal Ordnance, Ronco and Dyncorp International (GICHD, 2004:22, Wikipedia, 2006). In some countries, demining is performed by a combination of NGOs and the national army or the police.

Since 1996, the Netherlands has been one of the ten biggest donors in the field of humanitarian demining.<sup>349</sup> Between 1996 and 2005, the number of countries to which the Netherlands donated funds varied between six and thirteen. Since signing (3 December 1997) and ratifying (12 April 1999) the Ottawa Convention, it has also been obliged to contribute to efforts to clear mines across the globe and provide assistance for the care, rehabilitation and social reintegration of mine victims. Between 1996 and 1999, the Dutch government earmarked some NLG 20 million annually for humanitarian demining (House of Representatives, 26137 (R1620), no. 5:1). Until the end of 2000, financial assistance for humanitarian demining activities came under the budget article for emergency aid. In November 2000 the Ministry of Foreign Affairs created a separate article in its budget for humanitarian demining, and increased its annual contribution to NLG 30 million, to emphasise ‘the importance of humanitarian demining to re-establishing a safe living environment in post-conflict countries and the Netherlands’ specific expertise in demining and the contribution it can make’ (House of Representatives, 27162, no. 6). In the autumn of 2003 the government decided to set up a Stability Fund in order to provide rapid, flexible support for activities at the interface between peace, security and development in countries and regions emerging from or at risk of sliding into armed conflict. The funds previously set aside for demining are now allocated to this Fund (DBV/CV-262/03).

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In 2003 the government formulated the following central aim for humanitarian demining: ‘Dutch policy focuses on clearing landmines and unexploded ordnance (UXO) in order to reduce the number of mine accident victims and foster socioeconomic development. The Netherlands seeks to establish cost-effective mine-clearing operations that mobilise local workers and can be taken over by national bodies as quickly as possible.’ *Policy Framework for Humanitarian Mine Action, Theme-based Cofinancing*, 15 February 2003. In principle, only countries that have signed and ratified the Ottawa Convention (and actually comply with it) are eligible for Dutch assistance. Financial assistance for demining activities is channelled through the UN (UNMAS and UNDP) and NGOs (in particular the Mines Advisory Group, Handicap International, HALO Trust and Norwegian Peoples Aid). Organisations that perform mine-clearing activities on a commercial basis are not eligible for assistance. The same applies to organisations that are – or used to be – involved in the illegal trade in antipersonnel mines or arms (House of Representatives, 27162, no. 8:6).

Demining programmes must comply with the following UNMAS mine action guidelines, which are to be coordinated at national level:

- promoting awareness of the presence of mines and UXO and reducing the risks to the inhabitants and users of the area concerned;
- carrying out surveys to determine the location and size of minefields and facilitate their marking and clearance;

349 During this period the Netherlands has fluctuated between sixth and tenth place.



- providing assistance to victims of accidents involving mines and UXO and fostering their rehabilitation and reintegration;
- stigmatising the use of landmines and supporting a total ban on landmines;
- building local capacity through education and training so that mine clearance can be transferred to a national agency;
- carrying out quality control checks on the above-mentioned activities.

In awarding grants, the Netherlands gives priority to: 1) actual mine-clearing projects in areas where landmines present the greatest risk to the population; 2) demining activities in countries with which it maintains bilateral aid relations, or in which it contributes to activities relating to human rights, peace-building and good governance; 3) the continuation of projects that have already received grants (as opposed to new activities); 4) capacity building and training so that mine-clearing operations can be taken over as quickly as possible by the national authorities in the countries affected (House of Representatives, no. 8:4-6). As far as techniques are concerned, manual detection is the preferred method. The Netherlands prefers the deployment of large mine-clearing teams to the funding of heavy machinery because of the resultant opportunities for engaging the local population and promoting employment. No grants will be made available for the development of new detection and clearance techniques (House of Representatives, 27162, no. 8:5-6).<sup>350</sup>

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Funding decisions are currently guided by whether an area has been accorded priority in the context of the Stability Fund (Stability Fund Assessment Framework). The priority areas are the Horn of Africa, the Western Balkans, the African Great Lakes region and Afghanistan.

## 4 The study: objective, evaluation criteria, questions and structure

### Objective

The objective of study II is threefold:

- 1) to understand how Dutch policy on humanitarian demining was formulated in the period 1996-2006;

<sup>350</sup> The Policy Framework for Theme-based Cofinancing became effective in 2003. Theme-based cofinancing is a system for awarding grants. Its aim is to use central funds to support initiatives pursued by specialised organisations (i.e. those specialising in a certain theme) that work together with local organisations. These initiatives should seek to build up civil society and achieve long-term reductions in poverty in several developing countries, while strengthening the local organisations with which the specialist organisations cooperate. Grant applications for demining programmes should be compatible with both the Policy Framework for Theme-based Cofinancing and the more specific Policy Framework for Humanitarian Mine Action (Ministry of Foreign Affairs 030067, 19 March 2003).

- 2) to assess the way in which mine-affected countries and humanitarian demining programmes eligible for financial assistance were selected;
- 3) to assess the effectiveness of Dutch financing efforts in this area.

### Evaluation criteria

The study can be seen as a combination of a policy review and a product evaluation. The applicable evaluation criteria are the relevance and effectiveness of the policy.

**Relevance:** Relevance is gauged by the degree to which the activities in question help achieve the aim in question. The main aim of humanitarian demining is to prevent new mine-related casualties. From this perspective, the humanitarian demining programmes supported by the Netherlands are by definition relevant and the question of relevance can be disregarded in the study. In the case at hand, however, it is important to scrutinise the policy relevance of the humanitarian demining programmes supported by the Netherlands. It is necessary to ascertain whether the activities are a logical corollary of Dutch policy and whether they tie in with the policy of the recipient country. Both aspects of this question are covered in the study (see the first and second cluster of questions addressed by the study).

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**Effectiveness:** IOB guidelines define the criterion of ‘effectiveness’ as follows: ‘Effectiveness concerns the degree to which the direct results of the activities carried out (i.e. the ‘output’) contribute to the sustainable achievement of the programme objectives (i.e. the ‘outcome’).’

Because of the nature of humanitarian demining, the effectiveness of humanitarian demining programmes supported by the Netherlands can be accurately measured in terms of outputs. Accurate data on the resources employed – both financial and manpower – (inputs) and on the number of landmines cleared, the number of hectares demined etc. (outputs) are recorded and published. Both the periodic progress reports of demining organisations and the annual reports by mine-affected countries mandated by the Ottawa Convention represent comprehensive, reliable and accessible sources of information. But less is known about the actual use of demined land and the extent to which humanitarian demining programmes benefit the communities involved (outcomes). For this reason, the evaluation method used here mirrors as closely as possible the one employed in previous evaluations incorporating land use.<sup>351</sup>

**Efficiency:** The IOB guidelines cite ‘efficiency’ as a third evaluation criterion after ‘relevance’ and ‘effectiveness’. Efficiency refers to the degree to which the results achieved (output) are in proportion to the cost of the resources used (input) and their application. This is a question that cannot be answered in the case of humanitarian demining (and indeed no attempt should be made to do so), since every mine that is

351 Of particular relevance in this regard are Danida’s evaluation ‘Danish Support to Mine Action’ (2003) and a GICHD evaluation of land use in Yemen which should be complete by the end of 2006.

cleared equals a human life saved. The evaluation will therefore only ask whether the humanitarian demining programmes supported by the Netherlands were completed on time and within budget. This is a narrow definition of 'efficiency', generally referred to in the literature as 'cost effectiveness' (see the third cluster of questions).

## Questions

Based on its threefold objective, the evaluation will focus on the following three clusters of questions:

### Dutch demining policy

Underlying principles

- On what principles was Dutch policy based?
- Was demining policy incorporated into general policy (e.g. development policy, humanitarian aid policy or post-conflict reconstruction policy)? If so, how?

Objectives

- What were the Netherlands' demining objectives in the period 1996-2006?

Strategies

- How did the Netherlands endeavour to achieve these objectives?

Activities

- Were the activities undertaken by the Netherlands a logical corollary of Dutch policy?

### Selection of countries and programmes

Consistency

- What criteria played a role in determining a mine-affected country's eligibility for financial assistance? What criteria played a role in the acceptance or rejection of grant applications?
- Was decision-making on this matter consistent?
- Was decision-making on this matter transparent?

Coordination

- Were the activities coordinated with other activities supported by the Netherlands?
- Were the activities coordinated with other donors and/or aid organisations?
- Did the demining programmes supported by the Netherlands meet national needs in the area of demining?

### Effectiveness

Nature and extent of the landmine problem

- How did the mine problem develop in the countries and regions assisted by the Netherlands between 1996 and 2006? In what respects has the problem lessened or deteriorated?

#### Effectiveness of the programmes

- To what extent did the programmes supported by the Netherlands achieve their objectives?
- Were the programmes carried out on time and within budget?
- How did the programmes contribute towards the Netherlands' aims as regards capacity building?
- Is land that has been cleared of mines being used again? If not, why not? If so, is it being used for the purpose envisaged?
- What is the opinion of the national, regional or local authorities and the affected local communities on the effectiveness of the demining programmes supported by the Netherlands?

#### Effectiveness of Dutch policy efforts

- Did the programmes supported by the Netherlands help reduce the annual number of victims of accidents involving landmines and UXO?
- Have the programmes supported by the Netherlands contributed as envisaged to socioeconomic development?

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### Structure of the study

The study comprises both desk-based and field components.

#### 1) Desk-based research

The first phase of the study will give an overview of Dutch humanitarian demining policy and establish how countries and programmes eligible for financial assistance were selected on the basis of this policy. This will involve studying the relevant literature, examining parliamentary papers (policy documents, theme-based policy frameworks, committee reports, etc.) and consulting recent evaluation reports on humanitarian demining by other donors. The first phase will also include interviews with various stakeholders both at the Ministry of Foreign Affairs (representatives of the Human Rights and Peacebuilding Department (DMV), the Security Policy Department (DVB) and the relevant regional departments) and external bodies (representatives from UNMAS, GICHD, donors represented in the Mine Action Support Group and others). The desk-based component of the study will be conducted by the IOB-evaluation team.

#### 2) Field research

An international consultant will be contracted to perform field research at locations in three countries where programmes supported by the Netherlands are being carried out. The field research will focus on gathering information on the use of demined land. The remit of the team of evaluators that will perform the field research is twofold.

First, they will collect information on the envisaged use of the land that has been cleared of mines with Dutch financial assistance. They will be instructed specifically to:

- Prepare an overview of the various assessments of the nature and extent of the landmine problem that served as a baseline for the demining programmes. These include at a minimum the Landmine Impact Surveys, the General Mine Action Assessments or Level One Surveys, and the Technical Surveys or Level Two Surveys.
- Examine how the competent demining authorities determined which countries were eligible for mine clearance. To this end they will have to identify the selection procedures that were followed, the stakeholders involved in the selection procedures, and the data that prompted the demining authorities to initiate mine clearance activities.

Second, they will provide an overview of how, once a mine clearance programme has been completed, the land in question is actually being used. They will be asked to:

- Investigate what demined land is being used for in practice and collect written and photographic evidence of their findings. Investigate, if relevant, how intensively the land in question is being used for the purpose designated.
- Gauge opinion on the actual land use among representatives of the population groups and communities involved. Previous evaluations have shown that focus groups drawn from community leaders, users of demined land, women, children and mine victims constitute an important instrument in gauging opinions.

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In the context of the field research, files will also be examined at the relevant embassies, and interviews will be conducted with representatives from 1) the Dutch missions in the countries concerned; 2) the demining organisations supported by the Dutch Ministry of Foreign Affairs; 3) public officials from the competent national ministries and regional and local authorities who are directly involved; 4) the national coordinating bodies in the area of humanitarian demining; 5) NGOs (e.g. ICBL and Human Rights Watch); 6) the ICRC; 7) UN bodies involved (including UNDP, UNOCHA and UNICEF); and 8) other donor countries.

### Parameters and scope of the study

The field research to be undertaken was selected with reference to the following factors:

- 1) the scale of Dutch commitments to the recipient country;
- 2) the duration of Dutch assistance (continuous or ad hoc);
- 3) the method by which the Netherlands delivers its aid (direct to the demining NGOs and/or via multilateral channels);
- 4) the nature of the activities supported by the Netherlands (mine clearance only, or other forms of mine action, or both);
- 5) the scale of the problem in the recipient country (geographical, number of victims, urgency);
- 6) the nature of the mine problem in the recipient country (landmines and/or ERWs);

- 7) the organisation of humanitarian demining in the recipient country (UN-run mine action centre or national demining authority);
- 8) the political situation in the recipient country (e.g. relatively stable political situation and constructive climate for humanitarian demining vs. political instability);
- 9) whether the country has signed/ratified the Ottawa Convention;
- 10) whether the Netherlands has bilateral development relations with the country.

Based on factors 1 and 2, concise country analyses have been performed for Afghanistan, Angola, Bosnia & Herzegovina, Cambodia, Eritrea, Laos and Mozambique. In consultation with DMV, Angola, Bosnia-Herzegovina and Cambodia have been selected for field research. The locations to be covered by the field research have to be selected by mutual agreement on the basis of an inventory of activities in Angola, Bosnia & Herzegovina and Cambodia.

## 5 Organisation

252 The study of how the Netherlands has employed the instrument of financial assistance is the second part of the IOB evaluation of the Dutch efforts to control landmines and ERWs. The evaluation is carried out under the responsibility of inspector Yvonne Kleistra. Michiel van Bokhorst, who worked on the preliminary study as an IOB trainee, will also work on study II, as a research assistant. A senior researcher is hired to conduct and supervise the evaluation in conjunction with the inspector.

An international team of highly qualified independent evaluators will be hired to perform the field research. The evaluation team should consist of a team leader and two team members. Given the nature of the subject, the team of evaluators will have to be multidisciplinary and should include personnel with professional background and extensive experience in humanitarian demining and humanitarian aid and/or reconstruction actions, the work of national and international agencies, gender expertise, and experience in the countries covered by the field research. The team leader should have extensive experience in conducting evaluations of the provision of humanitarian aid and socio-economic reconstruction activities.

The timetable for the evaluation work in the three countries selected for field research will require the creation of three separate field study teams. The team leader of the evaluation team and the two other members of the evaluation team each will direct a field study team. The field study teams should include local evaluation expertise. Part of the international consultant's remit will be to recruit local consultants for the field missions in the three countries selected.

It is estimated that the field research in the three countries selected may require nine personmonths work. The evaluation team should conduct the field missions at least in part analogously and preferably on the basis of tested methods.

During the course of the field research the following outputs will have to be produced: three field mission reports, a draft final synthesis report of the field research to be submitted within one month upon completion of the field work. The draft synthesis report will be finalised following review by IOB. The results of the field research will be incorporated into the final IOB-evaluation report of study II.

A sounding board group has been set up including representatives of the policy departments involved and three outside specialists. The group will hold three meetings to give its opinion on study I, study II and the synthesis study of the IOB evaluation.

## 6 Proposal

The proposal to undertake the field research for this evaluation should be fully responsive to the Terms of Reference outlined above. The proposal should indicate clearly the methodological approach to be used, along with the rationale for the overall evaluation strategy. The proposal should furthermore indicate how questions and issues will be dealt with, as well as which sources of information will be used. It should also indicate clearly the strategy for involving the agencies implementing the humanitarian demining activities, local institutions and beneficiaries in the evaluation.

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The review and assessment of proposals will be guided by four criteria: 1) quality of the evaluation team, 2) overall approach and evaluation strategy, 3) understanding of the assignment, and 4) the financial offer.

## 7 Reporting schedule field research

Submission of three field mission reports June- July 2007

Submission of draft synthesis report 31 July 2007

Review of draft synthesis report 15 August 2007

Submission of final synthesis report 31 August 2007

## 8 Products

The evaluation will produce reports on studies I and II (incorporating the results of the field research) and a synthesis report. Studies I and II will be published as IOB working documents. The results of these studies will be incorporated into a synthesis report, which is primarily intended for parliament.





## Annexe 3 Interviewed organisations

- Geneva International Centre for Humanitarian Demining (GICHD)
- Human Rights Watch (HRW)
- International Campaign to Ban Landmines (ICBL)
- International Committee of the Red Cross (ICRC)
- PaxChristi
- Representatives of the States Parties to the CCW and Ottawa Treaty
- United Nations Children’s Fund (UNICEF)
- United Nations Mine Action Service (UNMAS)
- United Nations Development Programme (UNDP)



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