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THE ROLE OF CONFIDENCE BUILDING IN THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS

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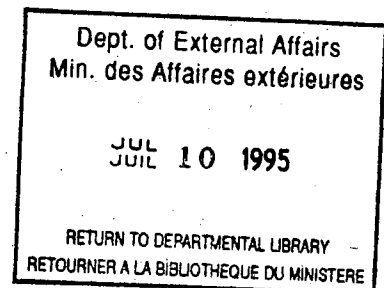
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THE ROLE OF CONFIDENCE BUILDING IN THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS¹

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Introduction

The 1981 *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)* deals with three classes of weapons. The Convention's Protocol I prohibits the use of weapons that employ wounding fragments that cannot be detected in a human body by X-rays. Protocol II restricts the use of anti-personnel and anti-tank mines, booby-traps, and remote-controlled or delayed-explosive devices. Protocol III deals with limits on the use of incendiary weapons. The possible amendment of the Convention presently is being examined by a Group of Experts and a Review Conference is scheduled for 1995.

The focus of the Expert Group's considerations — and related discussions — thus far has been limited primarily to potential revisions and additions to Protocol II, with a major emphasis on anti-personnel land-mines. As a result, it is likely that the Review Conference will concentrate on three main topics:

1. Further restrictions on land-mine use, particularly obligations committing signatories to increased restraints on the use of anti-personnel mines that do not employ reliable *self-destruction and/or self-deactivation* devices and/or are not readily detectable;
2. The expansion of Protocol II to embrace, in some reasonable form, *non-international* conflicts; and
3. The inclusion of a *verification regime*, most likely only for Protocol II.

This paper concentrates primarily on the last issue, discussing the ways in which the confidence building approach can play a constructive role in enhancing the effectiveness and scope of the Convention. Specifically, the paper explores the value of employing confidence building measures (CBMs) that either:

1. require the submission, organization (in data bases), and dissemination of *information and knowledge* about land-mines, mining, and the removal of land-mines (generally as part of the verification regime); or
2. facilitate the broader development of *shared views and values* about the professional and humanitarian use of land-mines.

The first type — information- and knowledge-oriented CBMs — can play an important role by providing an information framework to assist in CCW verification efforts. Mine type and mine field registries, for instance, can be helpful in establishing baselines for compliance assessments. These measures can also make a strong practical contribution to the humanitarian goals of the CCW by facilitating the distribution of land-mine removal knowledge. The second type — norm-oriented CBMs — can also contribute to the CCW's main humanitarian goals by encouraging the development of more professional land-mine use standards.

Main Points

The main points developed in the paper are these:

1. The confidence building approach, although primarily used in the management of international security problems, has much to offer in the development of an effective humanitarian regime for land-mine use.
2. In particular, the confidence building approach offers a comprehensive menu of information- and knowledge-oriented measures for use in the CCW. Information-oriented confidence building measures — sometimes called transparency measures — can play a useful role in a CCW verification regime, providing a framework for the collection and circulation of important information and knowledge about land-mines, their use, and their removal.

3. However, information-oriented confidence building measures alone *cannot* provide the basis for a successful CCW verification regime. Such a regime must also have core investigation and decision making functions or it will fail to provide adequate assurance of compliance.
4. In addition to providing an information framework, confidence building can contribute to the development of enhanced professional and humanitarian norms. These measures can help develop:
 - (a) commonly-held standards of professional and humanitarian behaviour in the use of land-mines;
 - (b) more cooperative approaches both to limiting the inappropriate use of land-mines and to removing land-mines employed in a non-compliant manner; and
 - (c) a transnational community of mine experts that can further develop professional and humanitarian standards for the use and removal of land-mines.

These three developments are less-obvious consequences of using confidence building ideas and can be very important to the successful longer-term evolution of the CCW process.

Basic Assumptions

The conclusions developed in this paper flow directly from a number of working assumptions, some dealing with the CCW review process and some with the nature of the confidence building process and the verification process. The basic assumptions include the following:

1. The use of anti-personnel and anti-tank land-mines (as well as booby traps and "other devices") likely will continue into the foreseeable future due to the perceived military value of such use. Thus, the further development of professional and humanitarian standards for land-mine use is the most effective course to pursue;

2. In order for restrictions on land-mine use to be meaningful, a credible *verification regime* will have to be added to or associated with the Convention. Without such a regime, States and their peoples will have diminished confidence in the intentions and behaviour of signatories. The nature of this regime also will be a central issue in the review process;
3. A successful verification regime likely will contain elements drawn *both* from traditional verification approaches (as employed in both arms control agreements and humanitarian law) as well as from the confidence building approach; and
4. It is likely that a CCW verification regime will revolve around the use of some form of fact-finding mission approach and rely upon the development of a decision making body where compliance assessments can be made.²

These assumptions set the stage for a closer look at confidence building, including its relationship with verification. The next section of the paper presents a brief overview of the confidence building approach as a necessary first step in understanding how confidence building can strengthen the evolving CCW in two basic ways: the provision of an information framework and the further development of shared professional standards. Growing out of this overview is a brief discussion of the relationship between confidence building and verification. One of the important points made in this discussion is the fact that confidence building and verification, while not interchangeable in any meaningful way, interact with each other constructively. If we agree that the next phase of the CCW process will require the addition of an effective verification regime, then it will need to draw on both processes. Even in the absence of a robust verification regime, the use of the appropriate confidence building measures will significantly enhance the effectiveness of the CCW.

A Brief Overview of the Confidence Building Approach

In order to evaluate the contribution of confidence building in the CCW context — particularly the less-obvious positive implications of using the confidence building approach — it first is necessary to understand what confidence building really entails. The approach is somewhat more involved than may be appreciated. Although these ideas are derived from the international security context, they appear to be generally applicable in the humanitarian context of the CCW, as well.

Confidence building typically is understood to be an approach that involves the use of formal, cooperative measures designed to improve information, increase understanding, and reduce uncertainty about the military forces and activities of fellow participating states. These positive results are often thought of in terms of enhanced "transparency," hence the popularity of the term "transparency measure" as an alternative for CBM. This is the traditional view of confidence building.

However, the experience of the Conference on Security and Cooperation in Europe (the CSCE) — our most successful example of confidence building — suggests that confidence building also can accomplish something more than the provision of information. The CSCE example suggests that we should also think of confidence building as *a process that, by its very nature, can help change, in a positive direction, the way participants think about important issues associated with a negotiation, its resulting agreement, and its subject matter*. Initially, these issues can be quite specific and narrow — for instance, how best to develop professional standards for land-mine use and removal. However, they can expand in time to include additional concerns and broader understandings. This is an important lesson of the CSCE experience.

Thus, confidence building not only can lead to the production of useful information relevant to an international undertaking — including its verification — but it can help to develop constructive new ideas about how to make those undertakings more effective by encouraging the development of shared ideas, approaches, and norms.

The Confidence Building Approach and its Potential CCW Contribution

I — The Development of Shared Ideas and Common Perspectives

Based on our experience with the confidence building process in the CSCE, we know that the negotiation and use of modest CBMs can help states with diverse views and competing interests to develop shared conceptions about common problems and cooperative solutions. There is every reason to think that something similar can happen over time in the CCW process.

In the case of the CCW, the process of developing and the implementing modest, information-oriented CBMs focusing on land-mines, their use, and removal could, in the *short-term*, constitute a key initial step in the positive movement toward broader changes in

thinking about land-mine use and clearance. The important point is to avoid loading excessive expectations on this type of confidence building effort in its early stages. The use of these sorts of CBMs, combined with a modest but effective inspection measure such as the use of fact-finding missions, can initiate a process of change but it likely will take time to develop and will need sustained encouragement.

Just as important, the careful introduction *now* of several key norm-developing confidence building measures encouraging the development of professional standards can lay the ground-work in the CCW for the *longer-term* development of more comprehensive confidence building efforts. These, in turn, may be able to sustain broader changes in how states think about land-mine use. Although this focus does not approach the breadth seen in the CSCE case, it may be sufficient to trigger more comprehensive efforts. The movement toward developing commonly-held standards of professional behaviour in the use and removal of land-mines and the creation of a transnational community of experts in mine use and removal are good examples of how this goal can be pursued. We will return to this point shortly when we examine a package of CCW confidence building measures.

II — The Development of an Information Framework

The confidence building approach, of course, can also play a useful role by suggesting how a modest collection of CBMs can form the basis, along with the use of fact-finding missions and a verification commission, of a first-generation CCW verification regime. This is the more obvious short-term contribution of confidence building. We must understand the relationship between confidence building and verification, however, if we are to develop an effective verification regime. Understanding this relationship also helps us to appreciate why the use of CBMs alone is unlikely to replace verification in any meaningful way.

Confidence Building and Verification

The relationship between confidence building and verification is more complex than might be appreciated. Because they both involve the collection of information, there is a natural tendency to think that they are similar or even interchangeable processes. A brief look at the nature of "verification" will help us to understand some key differences.

The process of verification typically is understood to entail *the ongoing making of political and technical judgements about other participants' compliance with agreed*

undertakings. Ultimately, these judgements take place at the national level, although contributory assessments also may be made at the multilateral level. Some accounts also include, as an integral component of the verification process, the collection of information relevant to compliance assessments, both as a product of agreed cooperative provisions in an agreement and from broader (usually unilateral) sources outside the scope of an agreement. This is sometimes termed the *monitoring* function. Confidence building, to the extent that it contributes to the development of an information framework, can play a role here.

Typically, "verification" is operationalized in an international agreement by including specific provisions or measures that mandate or facilitate some form of inspection and/or observation activities that permit participating states to determine, within specified limits, certain facts relating to compliance with the terms of an agreement.

Because the confidence building process also develops measures that provide information on a cooperative basis, some of the specific measures typically associated with confidence building can play a role in the verification process, as well, to the extent that they make information available that can be used directly or indirectly for compliance assessments. Conceptually, this brings them within the scope of the verification process's monitoring function. While this is not the central purpose of confidence building, it can be a worthwhile product of some confidence building measures. It is easy to see, therefore, how confidence building measures and "verification measures" can work together in a verification regime. It must be remembered, however, that verification is a narrow process that is employed *in the service of agreements* and that it has little meaning when isolated from that context.

To put these observations in terms that have meaning for the CCW and how it may evolve constructively, we can say that including a package of information-oriented confidence building measures — whether called transparency measures or CBMs — in a revised version of the CCW will provide the opportunity to create a framework of information and knowledge about the use of land-mines. However, without at least a modest inspection measure of some type, there is little chance that limited information exchange measures will accomplish anything positive, either in the short-term or the long-term. Thus, CBMs without some form of meaningful verification, will not go far to allay substantial concerns about compliance.

Confidence Building and the CCW: A List of Possible CBMs

Drawing on the preceding discussion, it is apparent that a carefully crafted collection of measures, whether termed transparency measures or CBMs, could be included in the CCW as an important — if not central — component of a verification regime.³ Although a rigorous regime may be desirable, it is important to remember that more modest arrangements undertaken now can lead to significant expansion in the near-future, particularly if the initial package is seen by participants to be fair and successful.

What sorts of confidence building measures would contribute to the development of a more effective CCW? Bearing in mind that establishing a sound basis for further growth is at least as important as any immediate results, we should be careful in developing a CCW CBM package. We should also bear in mind that the use of confidence building measures should be seen to serve *two* basic purposes. While CBMs can provide a useful information framework to underpin a verification regime, their use also is important as a promoter of the confidence building process. It is the confidence building *process*, after all, that can help develop shared values and common perspectives with respect to humanitarian and professional land-mine use issues.

Indications thus far in the discussion of possible revisions to the CCW suggest that there is considerable sentiment for the creation of a Verification Commission composed of representatives from some or all of the participating states. This commission, if agreed to, would be able to dispatch on request a fact-finding mission of experts (probably drawn from a list of available experts) to ascertain the nature of an alleged instance of serious non-compliance. Thus, the most likely role for confidence building measures is as an adjunct, information-oriented element in a Verification Article to be added to Protocol II.

In the most "austere case," however, where CCW negotiators were unable to agree on the use of fact-finding missions and the creation of a verification commission, it is barely possible that a relatively robust collection of confidence building measures could provide some assurance that States parties were honouring existing and new commitments, including those flowing from information-oriented CBMs. In this case, however, it would be necessary to insist on, as an absolute bare minimum, the inclusion of a voluntary measure obliging participants to *consider* issuing invitations to "observers" (likely experts nominated by a central CCW consultative commission) in the event that concerns were registered about non-compliance. The willingness of States parties to undertake this clarifying step — to voluntar-

ily invite observer/inspectors to clarify uncertain situations — generally would be seen as a serious confidence building and compliance assuring step. The use of "voluntary invitations" also may prove to be a way of addressing the difficult issue of extending CCW coverage to "non-international conflicts."

The following is a list of potential confidence building measures from which to select components for a Protocol II confidence building package, including measures that focus on information framework development as well as norm development:

1. **Mine Type Data Registry**

Creation of a detailed central data base (registry) of individual land-mine types and characteristics, as detailed as possible, developed on the basis of an initial submission from each participating state and updated both annually and/or on an "as necessary" basis. Each signatory would be obligated to provide certain agreed information on the land-mines that it manufactures and/or acquires/deploys (but not numbers produced or acquired). The registry would also include information about "discovered" land-mines of no known origin, with signatories obliged to submit this information when such mines are discovered on their territory. The registry would make this information available to any signatory on request in order to facilitate mine identification and removal. Alternatively, a handbook could be distributed to signatories annually.

Failure to register a land-mine type or to provide accurate information about a land-mine type would be a violation of the terms of the revised CCW. It might be preferable to keep this registry entirely separate from the UN Arms Registry in order to provide an incentive for CCW membership, to facilitate the registry's easy administration, and to preserve its clear focus. Arguably, this land-mine registry (especially if amended to include the additional components noted below) would be the central CCW information-oriented CBM. Due to the potential volume of data, particularly if other registries noted below (for instance, "mine clearance procedures" and "mine field" registries) were added, it might make sense to set up regional registries to better manage the data. These regional registries might be associated with existing United Nations Regional Disarmament Centres.

No direct associated inspection or other verification measure seems feasible to support this registry idea at present due to the extraordinarily comprehensive and intrusive nature of verifying that a state had no land-mines it had failed to identify in the registry. "Spot checks" of land-mine inventories might be considered but this approach, too, seems disproportionate in the near-term.

2. Mine Clearing Procedures Data Registry

As an integral component of the above registry *or* as a separate undertaking, the creation of a data base specifying information about and effective procedures for the locating, removal, and destruction of all registered land-mine types (and, possibly, other known land-mines). The submission of information would be on a voluntary basis. The focus of this submitted information would be on the identification and removal of land-mines for humanitarian purposes and would not necessarily include techniques used in combat for the speedy breaching of mined areas. The latter type of information is usually held closely making it unsuitable for general circulation. Typically, as well, these techniques often are inappropriate for the removal of land-mines for humanitarian purposes due to their excessively destructive character. The "procedures data base" would be available to any signatory on request in order to facilitate land-mine identification and removal.

3. Declared Mine Field Data Registry

Creation of a data base of declared mined areas and — possibly — suspected mined areas, developed on the basis of initial submissions, annual updates, notifications of changes, and independently-developed information (from fact-finding missions or competent NGOs). If the value of marked land-mine fields is primarily as a deterrent and states are willing to abide by existing CCW demarkation requirements, then there should be no compelling reason to oppose information submissions to a central data base. This measure would not apply to temporarily mined areas where self-destructing and/or self-neutralizing land-mines were the only type used although less rigorous reporting procedures might be envisioned for this case. This measure opens the door to the (eventual) independent collection and dissemination of information on mine fields, potentially by a monitoring body associated with the CCW or the

CCW's Verification Commission. Failure to register a mine field would be a violation of the terms of the revised CCW should this CBM be made a part of the CCW. This measure type could also include a requirement for a state to report, in a timely manner, basic details on *any* land-mined area discovered on its territory, regardless of origin or suspected origin.

4. Mine Production Data Registry

Creation of a data base (registry) detailing land-mine production information (numbers, types, destinations) (possibly a component of a comprehensive land-mine registry discussed above, potentially an independent registry).

5. Mine Transfer Data Registry

Creation of a data base (registry) detailing land-mine transfer information (numbers, types, origins, destinations) (possibly a component of a comprehensive land-mine registry discussed above, potentially an independent registry).

6. Reporting Forms

Development of common reporting forms for submission of registry information on land-mines and procedures, requests for inspection or observation, and fact-finding reports and submissions.

7. Mine Clearance School

As an integral component of a comprehensive land-mine registry, or as a component of a separate "procedures data base," or as an entirely separate undertaking, the creation of a CCW-affiliated "mine location, removal, and destruction training school." The school would be staffed by experts drawn from the participating states (provided on a voluntary basis) and would travel to requesting states to provide specialized training to cadres which would then train additional specialists. Alternatively, the school could be located at a central site and students would travel to the school. The school could also produce specialized training materials, including handbooks, posters, and videotapes. Funding for this could be derived from a "mine tax" (see below)

or from proportionate contributions from States parties based on commonly used international organization formulae. The main idea would be for those states that make and export land-mines to finance the clean-up.

8. Joint Mine Clearing Exercises

Voluntary or obligatory commitment to undertake joint land-mine clearing exercises, especially involving personnel of different skill levels from different participating states.

9. Personnel Exchanges

Voluntary or obligatory exchanges of military and civilian personnel from participating states with special competence in mine emplacement, mine location, and mine removal activities.

10. Observations

Invited or obligatory observations of land-mine clearing exercises and/or the destruction of land-mine stocks in participating states.

11. Experts Seminars

Annual "experts" seminars" to discuss developments in the design, use, locating, removal, and destruction of land-mines, including developments in training, the development of manuals, and military doctrine. The focus would be on bringing together experts from a variety of states on a regular basis in order to promote the development of progressively more professional and humanitarian standards for land-mine use. These seminars would also be helpful vehicles for circulating specialist knowledge and identifying technical problems and solutions.

12. Counter-Mine Procedures Experts Group

Creation of a CCW-associated specialist or expert group ("counter-mine procedures experts group") to explore, on an ongoing basis, the development

of appropriate new — and the refinement of existing — land-mine locating and removal technologies, especially cost-effective ones that would be of greatest value and relevance to those states with the least available resources and the most difficult land-mine location and removal problems.

13. **Consultative Commission**

Creation of a CCW consultative commission (most likely as an alternative to the creation of the proposed Verification Commission, rather than as an adjunct to it) composed of representatives from the participating states. It would meet on request as well as on a set schedule (perhaps twice annually) and would function as a forum for the discussion of compliance issues and concerns, either on a formal or an informal basis. It would also be used as a forum for clarifying existing CCW undertakings and for discussing issues pertaining to amendments to and extensions of the CCW.

14. **Implementation Review**

Annual implementation review with a useable mechanism for proposing amendments (possibly to be subsumed under CBM 13 above but a distinct measure in the absence of the creation of a consultative commission including this responsibility).

15. **Voluntary Invitations to Investigate**

This potential CCW confidence building measure is unique in that it appears to offer a form of verification substitute. *However, the objective of the measure is confidence building rather than verification, per se.*

The "voluntary invitations" measure requires States parties to consider, on a voluntary basis, inviting observers from other states and/or CCW experts to travel to the inviting state in order to investigate, in a timely and cooperative manner, legitimate "concerns" registered about compliance with CCW terms.

In the event that the CCW review process leads to the creation of an explicit verification regime including a verification commission and the use of fact-

finding missions, the voluntary invitations measure would be a helpful but marginal adjunct, offering states an option for the demonstration of their compliance behaviour. *However*, if the CCW review process fails to produce a genuine verification regime revolving around the use of obligatory fact-finding missions, the importance of a voluntary invitation measure would increase a great deal. Although such a measure would *not* replace a true verification regime, it would at least provide an option for those States parties that wished to demonstrate their good faith and their compliance with the terms of the CCW. The willingness of a state to invite, on a voluntary basis, a group of observers to explore a compliance concern would speak well of its commitment to the CCW. This would be a strong confidence building gesture. States that declined to invite observers or experts when requested to do so would risk appearing to be uncooperative (at best). Strong suspicions eventually might be created about non-compliance. Although this does not serve the same purpose as verification, it offers some prospect for encouraging compliance. Although the modalities would have to be worked out in the CCW review process, it would make sense to combine this voluntary invitations measure with a measure creating a consultative commission. A consultative commission could serve as a reasonable forum in which to present concerns about compliance.

16. Voluntary Reports

The "voluntary reports" measure requires States parties to consider, on a voluntary basis, issuing timely reports on the use of land-mines (or related Protocol II devices) in "non-international" or national security and police operations, specifying types and general circumstances of use (including the projected time frame for deployment and removal). In one version of this CBM, the reports would have to conform to a common agreed report format. The reports typically would be directed to a CCW consultative commission or to the CCW Verification Commission.

This CBM could be a central element in an essentially voluntary "supplementary" CBM package focusing only on the use of land-mines in non-international conflict situations or it could be added to either the "basic" or "comprehensive" CBM packages discussed below. For the purposes of this paper, it is

only included in the supplementary non-international conflict CBM package. An alternative form of this CBM would make the issuing of reports obligatory.

17. Incident Reports

The "incident reports" measure requires States parties to consider, on a voluntary basis, issuing timely reports on any incident involving the detonation of land-mines (or related Protocol II devices) on the States party's territory or involving the States party's military or paramilitary forces. In one version of this CBM, the reports would have to conform to a common agreed report format. The reports typically would be directed to a CCW consultative commission or the CCW Verification Commission. An alternative version of this CBM would make the issuing of reports obligatory. This measure is very similar to CBM 16 above but deliberately avoids any qualifiers associated with non-international armed conflict and, at least potentially, could employ very low thresholds to trigger a report requirement.

In addition, the CCW might eventually include the following programmes or undertakings. Although they are ambitious and may not count as examples of confidence building, they are interesting "food-for-thought."

18. Mine Exchange Arrangements

Coordination of "swap" arrangements where states with non-compliant land-mines (i.e., non-self-neutralizing mines) can exchange these mines, according to a ratio to be determined, for compliant mines, subject to participation in CCW and an additional, more rigorous, inspection regime. Exchanged non-compliant mines would be destroyed. (Works best with a freeze in production of non-detectable as well as non-self-neutralizing mines and a declaration of existing stocks).

19. Mine "Tax"

Coordination of "land-mine tax" measure where each mine produced and/or transferred incurs a small surcharge that funds land-mine location and removal

efforts directed by a CCW body at improperly or illegally placed land-mines.
(Works best with production and transfer registries.)

20. Preferential International Assistance

Arrangements with international aid funding agencies — and perhaps the national aid programmes of all CCW participants — to tie preferential financial development assistance to membership in the CCW.

While hardly an exhaustive set of potential measures, this list illustrates the sorts of confidence building measures that might be included in a revised CCW. Clearly, it is unlikely that all of them will find their way into the next iteration of the CCW. Nevertheless, they stand as a useful reference for what could be included at various stages in the progress of the CCW process.

CBM Packages for the CCW

Two "packages" of confidence building measures based on the above list are introduced below, one "basic" and the other "comprehensive." In addition, a possible supplementary package of measures relevant to the extension of the CCW to include "non-international conflict" cases is also included. These packages are offered as practical illustrations of the points made in this paper. (The numbers in parentheses refer to the CBM descriptions above. Measures bearing "*" are considered to be *essential* for the successful operation of a CCW confidence building package.)

Basic CCW CBM Package

- **Mine Type Data Registry** (The creation of a registry listing mine types and characteristics with mandatory participation for all signatories); (1)*
- **Personnel Exchange** (Voluntary professional exchanges); (9)*
- **Experts Seminar** (The holding of annual experts seminars on mine technology, mining procedures, mine clearance, and mine doctrine); (11)*

- **Consultative Commission** (Creation of CCW Consultative Commission in the absence of a Verification Commission); (13)*
- **Voluntary Invitations to Investigate** (Obligation to consider, on a voluntary basis, inviting observers from other states and/or CCW experts to travel to the inviting state in order to investigate, in a timely and cooperative manner, legitimate "concerns" registered about compliance with CCW terms); (15)*
- **Reporting Forms** (Development and mandatory use of common data submission and reporting forms and conventions); (6)
- **Mine Clearance School** (Commitment to explore the creation of a CCW mine clearance school); (7)
- **Observations** (Voluntary invitations to observe mining and demining exercises); (10)
- **Counter-Mine Procedures Experts Group** (Commitment to explore the creation of a counter-mine procedures experts group); (12)

Comprehensive CCW CBM Package

- **Mine Type Data Registry** (The creation of a registry listing mine types and characteristics with mandatory participation for all signatories); (1)*
- **Mine Clearance Procedures Data Registry** (The creation of a registry containing comprehensive information on mine locating, deactivation, and clearance procedures); (2)*
- **Mine Clearance School** (The creation of a CCW mine clearance school); (7)*
- **Experts Seminar** (The holding of annual experts seminars on mine technology, mining procedures, mine clearance, and mine doctrine); (11)*
- **Personnel Exchange** (Obligatory professional exchanges); (9)*
- **Counter-Mine Procedures Experts Group** (The creation of a counter-mine procedures experts group); (12)*

- **Consultative Commission** (Creation of CCW Consultative Commission in the absence of a Verification Commission); (13)*
- **Voluntary Invitations to Investigate** (Obligation to consider, on a voluntary basis, inviting observers from other states and/or CCW experts to travel to the inviting state in order to investigate, in a timely and cooperative manner, legitimate "concerns" registered about compliance with CCW terms); (15)*
- **Incident Reports** (Obligation to consider issuing, on a voluntary basis, timely reports on any incident involving the use of land-mines (or related Protocol II devices); (17)*
- **Declared Mine Field Data Registry** (Commitment to explore the creation of a mine-field location registry) (3)
- **Production and Transfer Registry** (Commitment to explore the creation of a mine production and transfer registry; (4 and 5)
- **Reporting Forms** (Development and mandatory use of common data submission and reporting forms and conventions); (6)
- **Observations** (Obligatory invitations to observe mining and demining exercises); (10)
- **Observations** (Obligatory observations of mine stock destruction); (10)

Supplementary "Non-International Conflict" CCW CBM Package

- **Voluntary Reports** (Obligation to consider, on a voluntary basis, issuing timely reports on the use of mines (and related Protocol II devices) in "non-international" or national security and police operations, specifying types and general circumstances of use (including projected time frame for deployment and removal); (16)*
- **Voluntary Invitations to Investigate** (Obligation to consider, on a voluntary basis, inviting observers from other states and/or CCW experts to travel to the inviting state in order to investigate, in a timely and cooperative manner, legitimate "concerns" registered about compliance with CCW terms); (15)*

- **Supplementary Submissions to Data Registries** (This simply *reinforces* existing commitments to supply to existing CCW mine registries all relevant information about "discovered mines" and mine fields and related information resulting from "non-international conflict" experience or activities); (1,2,3)*
- **Voluntary Invitations to Observe** (Obligation to consider issuing voluntary invitations to observe the use, location, and removal of mines in "internal conflict" operations) (10).

The CBMs in these two main packages have been carefully developed to address a variety of needs, both real and anticipated, in the CCW process. These needs include especially the provision of information about land-mines, their use, and their clearance. This is very useful for the support of verification efforts as well as for the humanitarian clearance of mines. Some of the CBMs in these packages are also intended to promote the further development of common standards of professional and humanitarian land-mine use, with obvious humanitarian implications. This is an example of the norm-enhancing aspect of confidence building.

The inclusion in both packages of a "Voluntary Invitations" measure and a "Consultative Commission" CBM is precautionary. They are included to address a critical CCW requirement in the event that there is no agreement on the creation of a CCW verification commission with recourse to fact-finding missions. While it is no true substitute for a verification regime, the voluntary invitation approach at least offers a confidence building method for allaying some compliance concerns. In the event that the review process does lead to the adoption of the fact-finding approach, voluntary invitations can still perform an important confidence building function in helping to resolve compliance concerns.

The supplementary "non-international" package of CBMs is intended to address a special requirement in a broadened CCW. If the use of land-mines in non-international conflict is to be brought within the scope of the CCW, it may be necessary to employ a distinctly limited and voluntary compliance approach initially. This package encourages States parties to help allay concerns about mine use in non-international conflict contexts but does so in a way that will permit them to grow comfortable with the expanded scope of the CCW. It is a separate CBM package and typically would be adopted in addition to either the basic or comprehensive CBM package.

The CCW review process, of course, will determine how best to incorporate a CBM package of the sort discussed in this paper. However, it would appear to make sense to include these measures together as part of a new "verification and compliance" section at the end of Protocol II. Although less satisfactory, relevant CBMs also could be added individually throughout the protocol's text.

Conclusion

This paper has examined the ways in which the confidence building approach can enhance the effectiveness and scope of the CCW in two key respects.

First, it has argued that a carefully assembled collection of confidence building measures can play an important role in a CCW verification regime, providing a relatively comprehensive framework for the collection and circulation of important information and knowledge about mines, their use, and their clearance. This can have a very beneficial humanitarian impact. These CBMs, combined with the associated use of fact-finding missions and a credible CCW Verification Commission, are seen in the paper to constitute the basis of an effective first-generation CCW verification regime. The ability to deploy fact-finding missions, in particular, is seen to be very important. Understanding the key differences between the confidence building process and the verification process, the paper argues, helps us to appreciate why the use of confidence building measures alone can *not* fully replace verification. Nevertheless, recourse to a serious "voluntary invitation" CBM may temporarily bridge the need to establish stronger commitments to true verification procedures.

The paper also has argued that the use of CCW CBMs can have a broader confidence building impact, both in the short-term and in the longer-term. In the short term, the development and use of modest, information-oriented confidence building measures focusing on land-mines could constitute a key initial step in the positive movement toward broader changes in thinking about land-mine use and clearance. Of at least equal importance, the careful introduction of several key norm-developing CBMs, encouraging (for instance) the development of professional standards and a transnational community of mine experts, could lay the ground-work in the CCW for the *longer-term* development of more comprehensive confidence building efforts. These, in turn, may be able to sustain broader, positive changes in thinking about land-mine use and mine clearance regimes.

The paper concludes with the presentation of a menu of potential CCW confidence building measures. These measures are assembled in two packages, one "basic" and the other "comprehensive." A supplementary package of transparency measures (to be added to either of the main packages) appropriate for use only in the special case of mine use in "non-international conflict" situations is also included. The "basic" package is seen to be the minimum necessary to address three important CCW requirements:

1. The provision of mine and mine-use information vital to the operation of an effective CCW verification regime and the pursuit of appropriate humanitarian objectives;
2. The provision of the absolute minimum mechanism for allowing CCW participants to pursue compliance concerns with some reliability; and
3. The provision of a means to initiate and facilitate positive changes in basic thinking about land-mine use and clearance, including the development of professional standards, shared ideas, and common perspectives.

Clearly, the adoption of a collection of confidence building measures corresponding to this paper's "basic package," combined with the development of a Verification Commission with recourse to mandatory fact-finding missions, is a desirable objective and one that ought to be pursued vigorously in the CCW review process. Its eventual expansion to include the measures contained in the "comprehensive package" would make the CCW an increasingly powerful agreement with the capacity to change in significant ways the manner in which land-mines (and related weapons) are used.

Annex One

**A Possible Confidence Building Arrangement for the CCW Convention
(For Insertion into the Chair's Rolling Text)**

The following text establishes a framework for a CCW Convention confidence building arrangement of the sort discussed earlier in the paper as the "Basic CBM Package." It is envisioned that this confidence building framework would form part of a larger article addressing verification and compliance issues.⁴ There are two principal components. One is general and applies to Protocol II in general. The second is more specific and is intended to apply only to non-international conflict situations.

GENERAL CONFIDENCE BUILDING ARRANGEMENT

The States parties undertake to provide/exchange information with the other Parties to promote transparency and credibility for wider adherence to Protocol II of this Convention.⁵ To this end:

Mine Information Registry

- A1 The States parties will submit annually information on the mines, [booby-traps], [and other devices], as defined in Article 3, that they produce, transfer, store, or deploy.

- A2 The information will be provided in an agreed format not later than 15 December of each year to the Verification Commission secretariat which will administer the information in the form of a data base Registry. The Registry information will be maintained in a computer-based form and organized with the aid of readily available data base software. The Registry information will be available to all States parties in the form of a handbook with periodic updates. The Registry information may also be made available to the States parties via electronic means.

- A3 The information will include: (i) type of device; (ii) dimensions and weight; (iii) description of construction; (iv) colour and markings; (v) method of functioning; (vi) method(s) of triggering; (vii) fuse type and description, (viii) weight and type of explosive material; (ix) destructive effects; and (x) lethal and hazardous radius. The information submission will also include an accurate colour photograph of good quality.
- A4 States parties will submit, in the agreed format to the Verification Commission secretariat, corrections and/or updates to previously supplied information on the mines, [booby-traps], [and other devices], as defined in Article 3, that they produce, transfer, store, or deploy, as soon as that information is available to them.

Personnel Exchange

- B1 To improve their mutual understanding of problems associated with the use, location, and clearance of mines, [booby-traps], [and other devices], as defined in Article 3, States parties will, as appropriate, promote and facilitate exchanges and visits between military and/or civilian experts with special competence in and/or responsibility for addressing these problems.

Experts Seminars

- C1 To improve their mutual understanding of problems associated with the use, location, and clearance of mines, [booby-traps], [and other devices], as defined in Article 3, and to discuss and promote more professional and humanitarian standards of mine, [booby-trap], [and other device] use, and to discuss and promote the development of new approaches to mine, [booby-trap], [and other device] location and clearance, States parties undertake to participate in experts seminars, to be organized by the Verification Commission secretariat, and to be held on an annual basis [at United Nations Regional Conflict Centres or other appropriate locations].

Explore Counter-Mine Procedures Experts Group

- D1 The States parties undertake to discuss, in the context of a Verification Commission special session, the modalities of creating and operating a "Counter-Mine Procedures Experts Group." The objective of the Counter-Mine Experts Group would be to discuss and develop, on an ongoing basis, appropriate technologies and approaches for the humanitarian and cost-effective location and clearance of mines, [booby traps], [and other devices]. The States parties will consider the recommendations of the special session at the earliest opportunity but no later than the first review session of the Convention. Procedures Experts Group proposals.

Explore Mine Clearance School

- E1 The States parties undertake to discuss, in the context of a Verification Commission special session, the modalities of creating and operating a "Mine Clearance School." The objective of the Mine Clearance School would be to provide specialized training in the location, clearance, and destruction of mines, [booby traps], [and other devices]. The Verification Commission special session would consider issues such as: funding, staffing, location, training approaches, and curriculum. States parties will consider the recommendations of the special session at the earliest opportunity but no later than the first review session of the Convention.

NON-INTERNATIONAL CONFLICT CONFIDENCE BUILDING ARRANGEMENT

The following text proposes confidence building measures focusing on concerns about the use of mines (booby-traps, and other devices) in non-international conflict situations.⁶

Voluntary Information

- F1 States parties will consider, on a voluntary basis, submitting information about "mines of an unknown type" discovered during or after military activities. The information should be submitted to the Mine

Information Registry (A1) under the category of "unknown type or origin."

Voluntary Report

- G1 States parties will consider, on a voluntary basis, submitting reports on the use, in non-international conflict situations, of mines, [booby-traps], [and other devices], as defined in Article 3. The report should specify the mine [and other device?] type(s) used and the general circumstances of use (including the projected time frame for deployment and removal). Additional information may be included at the discretion of the State party preparing the report. These reports should be submitted to the Verification Commission.

Voluntary Invitations to Investigate

[NOTE THAT THIS IS A CONFIDENCE BUILDING MEASURE, NOT AN INSPECTION MEASURE.]

- H1 States parties will consider, on a voluntary basis, inviting observers (to be determined by the inviting State but to include at least one Verification Commission expert) to travel to the inviting state in order to explore, in a timely and cooperative manner, legitimate concerns registered with the Verification Commission or the inviting State about activities or events in non-international conflict situations. The inviting State party and the invited State party(s) may each submit, on a voluntary basis, a report discussing the results of the visit. The report(s) should be submitted to the Verification Commission.

NOTES

1. The views expressed in this study are those of the author and do not necessarily reflect those of the Department of Foreign Affairs and International Trade or the Government of Canada. The author wishes to thank those who have offered observations and suggestions during the drafting of this paper, particularly those from the Department of National Defence and the Department of Foreign Affairs and International Trade.

2. For further discussion of compliance monitoring and evaluating approaches to the CCW, see Andrew Latham, "Toward An Effective Verification Regime For the Convention on Certain Conventional Weapons: The Outline of an Incremental Approach," Department of Foreign Affairs and International Trade (Canada), December 1994.

3. It should be noted that there is no compelling technical reason why a package of CCW confidence building measures could not *include* an inspection measure that would satisfy first-generation CCW verification requirements. After all, the Vienna Document, the pre-eminent example of a confidence building agreement, contains a workable if modest inspection measure.

Although this paper does not pursue this particular possibility, it should be kept in mind, particularly if there is a strong sentiment in CCW review discussions against the development of a separate inspection (fact-finding) and verification commission approach to verification.

4. It should be noted that the Chair's rolling text makes mention of what would normally be considered to be confidence building measures in its Article 7 (2 (a) and 2 (c)); Article 8 (1 (c)); and Article 9 (5 (a) and "Proposals Regarding Article 9" (especially 1 and 2)). The relevant portions of these proposed articles generally call for either information exchange or technology (mine location and clearance) exchange/transfer. There is, however, no single article (existing or proposed) that clearly focuses in any collective way on the use of classic confidence building measures (Article 9 comes closest). Instead, reference to CBM-like requirements is fragmentary.

5. The following CBM Arrangement text can fit directly into paragraph 8 (a) of "Possible Verification Arrangement for the CCW Convention" (Annex 1) prepared by Andrew Latham in his companion paper, "Toward an Effective Verification Regime for the Convention on Certain Conventional Weapons: The Outlines of an Incremental Approach." The CBM Arrangement in the current paper is consistent with the general outline in the Latham paper's paragraph 8.

6. The following Non-International Conflict Confidence Building Arrangement text could be added to after paragraph 7 (biii) of Latham's "Possible Verification Arrangement for the CCW Convention" (Annex 1).

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