August 2006

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Understanding the Ottawa Convention’s Obligations to Landmine Victims

The Ottawa Convention is unique for a number of reasons, not the least of which being that the Convention has linked obligations concerning the use of a weapon with a requirement that Convention signatories assist a victim wounded by that weapon. When the Convention was adopted in September 1997, this aspect, while lauded by diplomats and activists, was certain to be a challenge to implement. The real work began once the Convention entered into force and states had to act on this responsibility. This article discusses, in particular the Convention’s victim-assistance obligations.

by Kerry Brinkert | Geneva International Centre for Humanitarian Demining |

Article 6.3 of the Convention states that “each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims.” This provision gave currency to terms like mine victims, survivors and assistance in the context of mine action and public-health and social-services systems and human-rights frameworks. The Convention’s victim-assistance obligations must also be addressed within the broader context of development. While a political commitment is required to address the quality of life for mine victims, ensuring a real difference will require addressing broader development concerns.

While addressing development concerns of a group (e.g., landmine survivors), we must always remember they are diverse individuals with equally diverse needs. The States Parties have recognized this point, declaring that victim assistance as well as being a matter of collective concern, “is also a human rights issue.”

Another major advance made by the States Parties was to record an understanding of what exactly is meant by victim assistance. At the Convention’s First Review Conference, the States Parties reached a consensus that victim assistance is generally understood to comprise six elements:

1. Understanding the context of the challenges faced
2. Emergency and continuing medical care
3. Physical rehabilitation, including physiotherapy, prosthetics and assistive devices
4. Psychological support and social services
5. Economic reintegration
6. Establishing, enforcing and implementing relevant laws and public policies

Responsibility

Who ultimately has responsibility for assistance to mine victims? The States Parties acknowledged that “all States Parties in a position to do so have a responsibility to support mine victims regardless of the number of landmine victims within a particular State Party.” However, “the ultimate responsibility for victim assistance rests with each State Party within which there are landmine survivors.” The implementation of this responsibility depends on the jurisdiction or control of the State Party. Following the First Review Conference, the Co-chairs of the Standing Committee on Victim Assistance and Social-Economic Reintegration took this as their point of departure, advancing victim-assistance provisions of the Convention as if they were other obligations.

Of course, victim assistance is generally unlike other obligations. It is not defined in the Convention, which means the conclusions recorded at the First Review Conference became extremely significant. The Convention has also not precisely identified with whom the greatest responsibilities for conducting victim assistance activities belong. This suggests it is important for the 24 States Parties with the largest significant number of survivors to take responsibility for their own victims. Following the First Review Conference, the task has been to assign deadlines for victim-assistance obligations paralleling the Convention’s milestones for mine clearance and stockpile destruction.

In the terms of the deadlines, perhaps both arbitrarily and logically, the Co-chairs...
called for concrete progress to be made by the time of the Convention’s Second Review Conference. In light of this, the human security measures, of effectiveness, the Co-chairs turned the attention of States Parties in question. Clearly, what can be expected from, or what should be achieved by, any one of the 24 relevant States Parties would be different from all others given divergences in numbers and characteristics of victims, burdened states and service delivery capacity, geography, etc. As the ultimate responsibility for meeting the needs of survivors rests with each state, it was understood they themselves must define what it will be their role to concretize and measure, as well as how those needs can be met. Others may have the expertise and capacity to assist in understanding problems, in developing plans to deal with these problems and in monitoring the implementation of plans. Real and sustainable progress, though, cannot be made without the affected States Parties themselves “owning” the challenge and the authority for devising solutions to it.

**Toward SMART Victim Assistance**

The Co-chairs’ approach to gauging and ensuring progress involved the distribution of a comprehensive questionnaire to the 24 relevant States Parties to help frame an understanding of concrete victim assistance objectives by 2009. Plans to achieve these objectives, and means to implement these plans, are the main aim of this questionnaire. This, in turn, is the basis, with as many of the relevant States Parties as possible. The aim, quite simply, is to see the following at the September 2006 Seventh Meeting of the States Parties:

- Those with good objectives will have developed good plans
- Those with vague objectives will have developed more concrete objectives
- Those that have not engaged or have engaged very little in the process of developing objectives and plans in 2005 will have become more engaged
- To achieve the Co-chairs’ aim, some level of support is being provided to all 24 relevant States Parties in the form of advice each may wish to consider in improving on 2005 efforts to establish SMART objectives.

The “process support” procedure involves country visits featuring the following:

- One-on-one meetings with relevant Ministries to raise awareness of the matter and to stimulate inter-ministerial coordination
- Outreach to relevant international organizations and others to ensure that their efforts in support of the States Party in question are both incorporated into and incorporate victim-assistance efforts
- Inter-ministerial workshops to bring together all relevant actors to discuss and consolidate improvements on objectives and the development of plans. It should be noted workshops are not considered as stand-alone activities or ends in themselves. Rather, workshops are part of a States Party’s overall process of objective-setting, planning and implementing efforts to overcome gaps by 2009. The ultimate aim is a true equalization of opportunities for landmine survivors and other persons with disabilities in their own countries’ broader populations.

**Conclusion**

It would be unrealistic to think of the world’s poorer countries with some of the greatest challenges regarding the care, rehabilitation and reintegration of landmine survivors would demonstrate perfection in the establishment of national victim-assistance objectives. Assistance exists to help countries at risk with these tasks, in accordance with the Ottawa Convention, those in a position to do so are obliged to provide it. However, others cannot do it all, nor should they.

With perfection unattainable, it should be acknowledged that any degree of meaningful progress made by relevant States Parties in taking charge of these matters will be a major advance. The Ottawa Convention, after all, was about expanding the traditional understanding of state responsibility, with states accepting they have important human-security responsibilities. Ensuring progress in victim assistance by key milestone dates, like the 2009 Second Review Conference, will help demonstrate the reality of this sense of responsibility.

The work undertaken to date by States Parties suggests they are on the right track. However, efforts— and processes—will have to continue with vigor in order to make a real and sustainable difference.

For additional references for this article, please see http://www.state.gov/j/t/ps/FACTS/029921.htm.

**Notes**

See Endnotes, page 113

**About the Authors**

Kerry Brinkert has served as the Manager of the GICHD’s Anti-personnel Mine Ban Convention Implementation Support Unit. Brinkert’s background in policy analysis, having received a Master of Arts in political science from Ottawa’s Norman Paterson School of International Affairs and a Bachelor of Arts in political science from the University of Calgary.

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