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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

A rticle 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 international law. However, given that these terms are not defined specifically in the Convention and “arguably the Convention does not impose an absolute legal obligation upon States Parties to assist mine victims,”1 the Convention’s membership was challenged with figuring out exactly what to do.

Understanding the Convention’s Obligations

The Convention’s First Review Conference in 2004 concluded that “victims include those who either individually or collectively have suffered physical or psychological injury, economic loss or substantial impairment of their fundamental rights through acts or omissions related to mine utilization.” States Parties acknowledged that such a broad construction in the definition of a landmine victim would help draw attention to the entire spectrum of landmine victimization. Yet the attention continues to focus on those physically injured by mines. It was also noted that “those individuals directly impacted by mines are a sub-group of larger communities of persons with injuries and disabilities.” This important point helped the States Parties to understand the need for a more comprehensive and holistic approach to what the United Nations has defined as mine action.

The United Nations defines mine action as encompassing five core elements, one being victim assistance. However, there are important tactical, logistical, technical and medical differences between humanitarian demining and activities related to assisting in the care, rehabilitation and reintegration of landmine victims.

Humanitarian demining, developed as an area of expertise dealing with locating and neutralizing of ordnance, is distinct from other humanitarian or development challenges and has developed as a relatively new and specialized discipline. In contrast, the matter of victim assistance does not require the development of new fields or disciplines but calls for ensuring that existing medical systems, social programs, and legislative and policy frameworks are adequate to meet the needs of all citizens—including landmine victims.

The problems faced by landmine victims are often identical to those faced by other persons with injuries or disabilities. Assistance to landmine victims should be viewed as part of a country’s overall public-health and social-services systems and human-rights frameworks.

The Convention’s victim-assistance obligation must also be addressed within the broader context of development. While a political commitment is required to advance 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 is generally understood to comprise six elements:

1. Understanding the extent of the challenges faced
2. Emergency and continuing medical care
3. Physical rehabilitation, including prosthesis and assistive devices
4. Psychological support and social inclusion
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 reached a consensus that victim assistance is generally understood to comprise six elements:

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

Goal

What must each State Party do?

Reception of the Convention:

The responsibility to support mine victims is “a vital promise for all States Parties within a particular State Party.” However, “the ultimate responsibility for victim assistance rests with each State Party within which there are landmine survivors.” The legal position for this provision is grounded in the fact that “it is the basic responsibility of each State to ensure the respect of this non-derogable fundamental human right.”

States Parties have recognized this point and that “keeping this promise is a crucial responsibility of all States Parties,” with it being “especially the case for those [34] States Parties where there are vast numbers of victims.” Moreover, the States Parties recorded 11 commitments to this “vital promise.” These commitments include that States Parties “particularly those [24 nations] with the greatest numbers of mine victims,” will do their utmost to promote and ensure that specific action points related to all six defined areas of victim assistance were included in the Ottawa Convention.

The States Parties’ understandings provided a solid basis to consider that victim assistance obligations of the Convention could be parallel to the more concrete obligations found elsewhere in the Convention. For example, with respect to the destruction of stockpiled anti-personnel mines, the Convention’s obligations are very clear.

What must each State Party do? It must destroy stockpiled anti-personnel mines under its jurisdiction or control. For whom is this obligation relevant? Every State Party that reports stockpiled anti-personnel mines under its jurisdiction or control must apply this provision of the Convention.

Following the development of fundamental understandings on victim assistance, it became much clearer to see what the victim assistance obligation entails and for whom it is most pertinent. However, while a sound basis was provided to treat victim assistance like other obligations, complications still existed.

Selecting the Opportunity

Presented by Understandings on Victim Assistance

What States Parties still lacked following their First Review Conference was a clear understanding of what milestones could or should be achieved by a certain time. Millions of dollars had been generated between 1997 and 2004 for mine clearance and victim assistance. But in terms of the deadlines, perhaps both arbitrarily and logically, the Co-chairs noted that not enough was being done or being done well.

By not knowing what needs to be done by key dates or events, the Convention’s States Parties were setting themselves up for failure. Following the First Review Conference, the Co-chairs of the Standing Committee on Victim Assistance and Socio-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 to the States Parties. Following the First Review Conference, the task has been to assign deadlines for victim-assistance obligations parallel to the Convention’s milestones for mine clearance and stockpile destruction.

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1. "Victims" is typically defined as “those severely affected, physically or psychically, by the use, stockpiling, production, transfer, or threat of use of anti-personnel mines.” For an example of a given country’s victim-assistance obligations, see the annual report of the Burundi Mine Action Centre, waiting for medical attention. During Halloween they can play on the streets for their own victims. Following the First Review Conference, the Co-chairs of the Standing Committee on Victim Assistance and Socio-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 to the States Parties. Following the First Review Conference, the task has been to assign deadlines for victim-assistance obligations parallel to the Convention’s milestones for mine clearance and stockpile destruction.

The manner in which the Ottawa Convention’s obligations were addressed raised important questions about whether these obligations were too broad or too narrow. These questions were posed by the First Review Conference. The task has been to assign deadlines for victim-assistance obligations parallel to the Convention’s milestones for mine clearance and stockpile destruction.

In 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 developments in the measures of effectiveness, the Co-chairs turned the Secretariat’s attention to States Parties in question. Clearly, what could be expected from, or what should be achieved by, any one of the 24 relevant States Parties would be different from all others given diversities in numbers and characteristics of survivors, bureaucratic and service-delivery capacity, geography, etc.

As the ultimate responsibility for meeting the needs of survivors rests with each state, it was understood that they themselves must define what would have to be done in terms of concrete and measurable terms, as well as how these 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 and implementing the execution 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 2005, plans to achieve these objectives, and means to implement these plans. The main aim of this questionnaire was to encourage the 24 States Parties in question to establish so-called SMART objectives:

- **Specific** objectives that should specify what these States Parties want to achieve.
- **Measurable** objectives that would enable all to know whether objectives have been achieved.
- **Achievable** objectives that are truly attainable to the States Parties in question.
- **Realistic** objectives that could indeed be achieved with resources at the disposal of the State Party in question or within resources that could be realistically acquired externally.
- **Time-bound** objectives that would be achieved by the time of the Second Review Conference.

Initial responses to the questionnaire were presented at the June 2005 meeting of the Standing Committee on Victim Assistance and Socio-Economic Reintegration with all responses summarized in a lengthy annex to the Sixth Meeting of the States Parties’ Zagreb Progress Report. It provides the beginnings of a clearer road map regarding what needs to be done between 2005 and the Second Review Conference and how success pertaining to victim assistance will be measured in 2009.

**Overcoming Remaining Challenges**

While the effort undertaken in 2005 by relevant States Parties was impressive, the usefulness of the responses is in doubt. Few States Parties actually responded with SMART objectives. Some States Parties detailed at length their status. However, even the idea that “providing adequate assistance to landmine survivors must be seen in a broader context of development helped under development.” Many States Parties have prepared poverty-reduction strategy papers, or national development plans to overcome broader development challenges, with such development being characterized, to use the advanced care, rehabilitation and reintegration of landmine survivors. Clearly, what could be expected from, or what should be achieved by, any one of these 24 relevant States Parties would be different from all others given diversities in numbers and characteristics of survivors, bureaucratic and service-delivery capacity, geography, etc.

The process support programme involves country visits featuring the following:

- On-site meetings with officials from 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 State Party in question are both incorporated into and incorporate mine-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 State Party’s overall process of objective-setting, planning and implementing efforts to ensure implementation of plans. The ultimate aim is a true equalization of opportunities for landmine survivors and other persons with disabilities in their countries’ broader populations.

**Conclusion**

It would be unrealistic to think of some of the world’s poorest 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, different countries do it in different ways.

With perfect 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 responsibilities, 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 vigil in order to make a real and sustainable difference.