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 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,” 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 “victim assistance has become a key priority with the number of mine victims within a particular State Party.” The logic of this position is grounded in the fact that “it is the basic responsibility of each State to ensure that assistance rests with each State Party within which there are landmine survivors.” The Convention’s Second Review Conference, the Nairobi Action Plan, which defines the number of survivors to take responsibility for conducting victim assistance activities, the Convention’s States Parties themselves have by their own recognition and implementation of the policies and programs articulated by States Parties in need.”

The responsibility to support mine victims is “most profound in 24 States Parties in which the number of survivors indicated there likely are hundreds, thousands or tens of thousands of landmine survivors.” These countries are Afghanistan, Albania, Angola, Bosnia and Herzegovina, Burundi, Cambodia, Chad, Colombia, Croatia, the Democratic Republic of the Congo, El Salvador, Ethiopia, Guatemala, Mozambique, Nicaragua, Peru, Senegal, Serbia and Montenegro, Sudan, Tajikistan, Thailand, Uganda and Yemen.

This sense of responsibility was underscored in the Nairobi Action Plan, which noted the Convention’s victim assistance obligations constitute “a virtual promise for hundreds of thousands of mine victims around the world, as well as for their families and communities” and that “keeping this promise is a crucial responsibility of all States Parties, with it being "especially the case for those [24] States Parties where there are vast numbers of victims.” Moreover, the States Parties recorded 11 commitments to this “virtual promise.” These commitments include that States Parties, “particularly those [24 nations] with the greatest numbers of mine victims,” will do their utmost to proceed with specific action points related to all six defined areas of victim assistance.

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 portion of the Convention.

Following the development of fundamental understandings on victim assistance, it became much clearer to see what the victim assistance obligation entails for whom it is most pertinent. However, while a wound was based to provide 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 maritime victims, consistent with the aim of assisting landmine victims. However, advocates were arguing 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. This suggests it is important for the 24 States Parties with the largest significant numbers 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 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 delays in enacting the mea-
sures of effectiveness, the Co-chairs turned the matter over 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, burdens, needs, 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 de-
define what can and should be achieved as concrete and measurable, as well as how to achieve such ends. Others may have the expertise and capacity to assist in understanding problems, in developing plans to deal with these problems and in monitoring implementation of plans. Real and sustainable prog-

ess, though, cannot be made without the affected States Parties themselves “owning” the challenge and the authority for devising solutions to it.

**News Brief**

**MASS Establishes Online Information Clearinghouse**

In an effort to make information more readily available to the mine-action community, announcements and resources from the Mine Action Support Group are now available online. The Web site is an electronic clearinghouse for MASS newsletters and events, as well as quarterly reports prepared for MASS by the United Nations Mine Action Service, United Nations Development Programme, UNICEF and other organizations.

The United States currently heads the MASS, a group of 26 major donor countries providing resources for mine action around the globe. The U.S. Department of State has appointed the task of chairing the MASS to its Office of Mine Action and Abatement.

To learn more about MASS and view the new Web site, visit www.state.gov/g/fpra/wra/c17179.htm.

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MAGS, continued from page 87 and efficiently plan their MRE program through data analysis, thereby reducing subjectivity and accelerating program imple-
mentation. This project will also help move the surveillance system forward. Results of this pilot project will be available in May 2006 when UNICEF, with the Geneva International Centre for Humanitarian Demining, facilitates data analysis and ef-
crative planning for the government partners and ROACs.

See Endnotes, page 113

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