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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 concerning the use of a weapon with a re-ber of reasons, not the least of which being 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 tricle 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 “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 contin-continued 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 manner 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 Ottawa Convention’s victim-assistance must also be addressed within the broader context of development. While a political commit-ment is required to advance the quality of life for mine victims, ensuring a real differ-ence in results will require addressing broader development considerations.

While addressing development concerns of a group (e.g., landmine survivors), we must always remember they are diverse in-dividuals 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 as-sistance. 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 extent of the chan-fels faced.
2. Emergency and continuing medical care.
3. Physical rehabilitation, including physiotherapy, prosthetics and asistive devices.
4. Psychological support and social welfare.
5. Economic reintegration.
6. Establishing, enforcing and imple-menting relevant laws and public policies.

Responsibility

Who ultimately has responsibility for assisting mine victims? The States Parties reached an understanding that “all States Parties in a posi-tion 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 lies with the State Party within which there are landmine sur-vivors.”

The logic for this position is grounded in the fact that “it is the basic responsibility of each State to ensure the protection of its population, notwithstanding the fundamental importance of the international donor community sup-porting the integration and implementation of the policies and programs articulated by States Parties in need.”

The responsibility to support mine vic-tims is “most profound in 24 States Parties in which the number of victims likely are such that it is not practicable for States Parties to act alone.”

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 gener-ated between 1997 and 2004 for matters con-cerned with the aim of assisting landmine victims. However, activists 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 fail-ure. 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 de-parture, advancing victim assistance provi-sions of the Convention as if they were other obligations.

Of course, victim assistance is gener-ally unlike other obligations. It is not de-fined in the Convention, which means the conventions recorded at the First Review Conference became extremely significant. The Convention has also not precisely iden-tified with whom the greatest responsibilities for conduction 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 obli-gations paralleling the Convention’s mile-stones 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 the realm of clearing the mea-
sures of effectiveness, the Co-chairs turned the mantra into a statement of 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 they themselves must define what needs to be done and how to achieve concrete and measurable, as well as how these needs can be met. Others may have the experience and capacity to assist in understanding problems, in developing plans to deal with these problems and in monitoring their implementation. 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.

**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 given the task of chairing the MASS to its Office of Weapons Removal and Abatement.

To learn more about MASS and view the new Web site, visit www.state.gov/g/ps/maic/jmu.edu/journal/10.1/news/brinkert.html#addlrefs. See Endnotes, page 113

The "process support" procedure involves country visits featuring the following:

- On-site meetings with relevant authorities to raise awareness of the matter and to stimu-

late 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 im-

corporated into and incorporate mine-assistance efforts.

- Inter-ministerial workshops to bring together all relevant actors to discuss and consolidate improvements on objec-

tives and the development of plans.

It should be noted workshops are not con-

sidered as stand-alone activities or ends in themselves. Rather, workshops are part of a State Party's overall process of objec-

tive-setting, planning and implementing efforts to enhance implementation of plans. The ultimate aim is a true equalization of oppor-

tunities for landmine survivors and other people with disabilities in war-affected 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 office. Assistance experts to help countries at risk with these tasks, and to work 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 mean-

ingful progress made by relevant at-risk states in taking charge of these matters will be a major advance. The Ottawa Convention, after all, was about expanding the traditional understanding of state re-

sponsibility, with states accepting they have important human-security responsibilities. Ensuring progress in victim assistance by key milestones dates, like the 2009 Second Review Conference, will help demonstrate the reality of this new 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 visit http://maic.jmu.edu/journal/10.1/notes/brinkert.html#addlrefs. See Endnotes, page 113

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