

The challenge of victim assistance: understanding its context

Notes for a presentation by...

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...to...

Assisting Landmine Survivors: A Decade of Efforts

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Excellencies, ladies and gentlemen: I would like to thank the Austrian Ministry of Foreign Affairs for convening this symposium and the Austrian Defence Academy for hosting it.

Ten years ago an event of great significance took place in this city related to the pursuit of a truly comprehensive approach to an end to the suffering and casualties caused by anti-personnel mines. Some of the leading individuals of that era are here with us today, including activists and experts like Susan Walker and Ken Rutherford, and diplomats such as Bennie Lombard of South Africa, and our panel's moderator, Thomas Hajnoczi of Austria. The commitment of these individuals, the fathers and mothers of the Ottawa Process, back in the 1990s, and their ongoing dedication, continue to inspire those like me, the children of the Ottawa Process.

While our forefathers and foremothers produced a comprehensive response to the problems caused by anti-personnel mines, they left us all with the challenging task of applying this response. It is important, therefore, that we take stock, 10 years after, of what has been accomplished and what remains to be done, particularly in the realm of care, rehabilitation and reintegration of those who have fallen victim to anti-personnel mines.

Interestingly, ten years ago here in Vienna, when the international community assembled to discuss a first draft text of a Convention banning anti-personnel mines, the text in question did not propose obligations related to landmine victim assistance. Neither did the second or third draft texts. The history books on the Ottawa Process, though, tell us that folks like Ken Rutherford and other landmine survivors persisted as did states like South Africa, thus assuring us of a truly comprehensive approach.

The fathers and mothers of the Ottawa Process left us with the 1997 Convention on Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines – or Ottawa Convention – the English version of which weighs in at just over 5,200 words. Within this text, we find 25 simple words of particular significance. They are 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....*” Twenty-five simple words amongst many, but significant nonetheless as they resulted in the Convention becoming the first multilateral arms control agreement to address the humanitarian needs of the victims of a particular weapon system.

Moreover, by incorporating these words into the text of the Convention adopted in Oslo on September 18, 1997, the matter we call *landmine victim assistance* found itself – along with universal acceptance and compliance with prohibitions, the destruction of stockpiled mines and the clearance of mined areas – as one of four core areas of activity necessary to achieve the Convention's ultimate intended impact of an end to the suffering and casualties caused by anti-personnel mines. Again, though, while it was the task of our forefathers and foremothers to assemble words of significance, it is the subsequent task of all others to convert these words into action – to implement the Convention.

When it comes to taking stock of an implementation process, it is important ask four key questions:

- Who is responsible?
- Each actor is responsible specifically for what?
- How will this be measured?
- By when must what be achieved?

The drafters of the Convention made it quite easy for us to answer these questions with respect to compliance with the Convention's prohibitions and its obligations to destroy stockpiled and emplaced anti-personnel mines. For example, with respect to destroying stockpiled anti-personnel mines...

- Who is responsible? – Each State Party reporting stockpiled anti-personnel mines under its control or jurisdiction.
- Each actor is responsible specifically for what? – Each is responsible for destroying all stockpiled anti-personnel mines under its control or jurisdiction.
- How will this be measured? – It will be measured according to the number of mines destroyed relative to the number reported.
- And by when must this be achieved? – Compliance with this specific, measurable and universally applicable obligation is required within four years.

When it comes to victim assistance, though, the answers to these questions were unclear. This has resulted in something of a dilemma. Even without empirical evidence, we all would feel confident, as the ICBL has, in saying that “in many mine affected countries the assistance available to address the needs of survivors is inadequate.” However, the dilemma exists, because again as articulated by the ICBL, “the extent to which landmine survivors’ needs are not being met is generally still unknown.” If you’re not clear on who is ultimately responsible for meeting needs, in understanding specifically what those needs are, and clarifying the extent to which these needs are not being met, you’ll be unable to act strategically to meet these needs and you’ll never know when needs will have been met. And by not knowing what needs to be done by certain key milestone dates, the Convention’s States Parties have found themselves in a situation in which they setting themselves up for failure because there has been no measuring stick regarding what it means to have fulfilled their promises to mine victims.

Five years of intersessional work between the Convention’s entry into force in 1999 and its First Review Conference in 2004 sought to clarify matters informally. At the First Review Conference – the Nairobi Summit on a Mine Free World – the Conference’s President, our friend Wolfgang Petritsch of Austria, consolidated the outcomes of this work into a set of understandings that were formally agreed to by the States Parties. These understandings included clarity regarding what was meant by *landmine victim*, with landmine victims understood to be “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.” That is, a broad approach to what is considered a landmine victim was accepted, although with it clearly understood that, the majority of attention must be focused on providing assistance to those individuals directly impacted by mines.

This matter called *victim assistance* was also clarified, with the States Parties agreeing that it was their understanding that it included work in the following areas:

- Understanding the extent of the challenges faced;
- Emergency and continuing medical care;
- Physical rehabilitation, including physiotherapy, prosthetics and assistive devices;
- Psychological support and social reintegration;
- Economic reintegration; and,
- The establishment, enforcement and implementation of relevant laws and public policies.

While it was certainly important for the States Parties to better understand the aim, it was equally important that at the Nairobi Summit the States Parties drew various conclusions regarding the place

of *landmine victim assistance* in broader contexts, such as a broader disability context. Landmine survivors are a sub-group of larger communities of persons with injuries and disabilities. The problems faced by them are similar to the challenges faced by other persons with injuries and disabilities. Logically, therefore, landmine victim assistance should not exclude any person injured or disabled in another manner.

Victim assistance also was wisely understood by the States Parties in the context of broader health care, social services, rehabilitation, reintegration, human rights efforts. This is important because it points to the need for a sophisticated approach to the United Nations' definition of "mine action." That is, to the United Nations, "mine action" encompasses five core elements, with one of these being "victim assistance." However, as the States Parties to the Convention noted at the Nairobi Summit, "there are important contextual differences between humanitarian demining and activities related to assisting in the care, rehabilitation and reintegration of landmine victims."¹ Humanitarian demining, while related to, is relatively distinct from other humanitarian, development or disarmament challenges and thus has developed as a relatively new and specialized discipline. In contrast, the victim assistance "does not require the development of new fields or disciplines but rather calls for ensuring that existing health care and social service systems, rehabilitation programmes and legislative and policy frameworks are adequate to meet the needs of all citizens — including landmine victims."

A final set of conclusions drawn by the States Parties at the Nairobi Summit which I'll mention concerns the matter of responsibility. First of all, those 25 significant words that I highlighted earlier were reiterated – that each State Party in a position to do so has a responsibility to support mine victims. However, flowing from some basic principles of the international system that has been in place for a few hundred years – such as the principles of sovereignty and individual state responsibility for domestic affairs, it is logical that it is a basic responsibility of a State to ensure the well-being of its population, including the well-being of landmine survivors and other persons with disabilities. In the context of the Ottawa Convention, this responsibility is most pertinent for – and hence the challenges faced in fulfilling it most profound for – those States which are responsible for significant numbers – hundreds or thousands – of landmine survivors. While not forgetting the responsibilities to landmine survivors wherever they may be, a greater emphasis must be placed on the fulfilment of the responsibilities to survivors by these States Parties. Of the Convention's 152 parties, 24 – including 4 in South Eastern Europe – have indicated that they hold ultimate responsibility for the care, rehabilitation and reintegration of significant numbers of landmine survivors.

This brings us back to the four key questions we must ask 10 years after:

- Who is responsible?
- Each actor is responsible specifically for what?
- How will this be measured?
- By when must this be achieved?

Through the work of the States Parties at the Nairobi Summit, in 2004 a much more solid basis for action was agreed to. We now understand the aim with greater clarity, particularly its place in broader contexts. Thanks to self-identification, we can point to 24 States Parties which understand this to be a matter of responsibility for them. And, notwithstanding the need to give due regard to the well being and the protection of the rights of one's population forever, in the context of this Convention we can use various milestones like the Convention's Second Review Conference in 2009 as instances when progress should be made and measured.

¹ *Review of the operation and status of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction 1999-2004.* (Part II of the Final Report of the First Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 9 February 2005), paragraph 65.

In essence, the conclusions of the Convention's First Review Conference provided a basis to begin treating responsibilities to landmine survivors with the same degree of seriousness and precision that the international community gives to the Convention's prohibitions or its obligations to destroy mines.

As the Conventions' President, Ambassador Caroline Millar of Australia, has stated, there is now a "strategic approach" available for the States Parties to apply. And applying this approach is exactly what Nicaragua and Norway did in 2005 in their capacity as Co-Chairs of the Convention's Standing Committee on Victim Assistance, a practice that has been followed by their successors, Afghanistan and Switzerland in 2006 and Austria and Sudan in 2007.

However, there are some complications to treating responsibilities to landmine survivors in a manner analogous to the Convention's prohibitions or its obligations to destroy mines. Whereas the obligation to destroy, and end-point with respect to destroying, stockpiled or emplaced anti-personnel mines is universally applicable and measurable for each State Party reporting such mines, and while the deadline for fulfilling obligations remains the same, what can be and / or should be achieved by each of the 24 States Parties reporting significant numbers of landmine survivors will be different. That is, the magnitude of the challenge faced by each of these States Parties is dramatically different – from hundreds of landmine survivors in Croatia to perhaps tens of thousands in Cambodia. And the capacity of each to act equally is dramatically diverse – from some of the world's poorest states recovering from recent conflict, like Afghanistan, to middle income states like Thailand which have been largely spared from conflict.

Again, in keeping with the basic characteristics of the international system which points to ultimate responsibility resting with each State Party, these 24 States themselves must define what can be / should be achieved. Others, like our friends from the WHO and ILO may have the expertise and capacity to assist in understanding problems, developing plans to deal with these problems, and, others like our friends from the ICBL may be well poised to monitor the efficacy and implementation of plans. However, real and sustainable progress cannot be made without the affected States Parties themselves "owning" the problem and the solutions to it. Moreover, until what is deemed by these States Parties to be a specific, achievable and relevant objective is measurable and time-bound, and, until there are plans in place, success / failure will constantly be an undefined and / or a changeable target.

And so where matters lie with respect to victim assistance in the context of the Ottawa Convention is that the space has to be provided to 24 States Parties to set the agenda and for others to assist them in doing so. They can do so by addressing the following five questions:

- What in concrete terms do you want to achieve by December 2009?
- Is what you want to achieve SMART? (Specific, Measurable, Achievable, Relevant, Time-Bound)
- Are all relevant ministries engaged in establishing SMART objectives and developing plans? That is, again, *landmine victim assistance* is not a matter for mine action people to ultimately deliver. It is up to State entities responsible for health care, rehabilitation, reintegration and human rights.
- What is your plan to achieve what it is you want to achieve?
- Do your plans take into account the place of landmine victim assistance in broader contexts? That is, again let's recall that place of this abstraction we call landmine victim assistance in broader disability, health care, rehabilitation, reintegration and human rights systems and frameworks.

Let me conclude by remarking again that while we should not discount achievements made during the Ottawa Process in developing a new higher standard of a response to a pressing humanitarian problem and in Nairobi in 2004 in the developing of understandings regarding how this response should be applied, both the Ottawa Convention and the conclusions drawn at the Nairobi Summit remain nice words on paper unless acted upon. And acting upon the sound basis that exists, that is, turning theory into reality, means overcoming some key challenges.

Let me leave you with some – some of which might seem somewhat obvious or somewhat provocative to some of you.

- First: Many of the states in question are at the lowest levels of national development and state capacity. In many respects, more profound issues must be addressed before there is going to be any meaningful response to the needs of landmine survivors within such states.
- Second: Regardless of the level of national development and state capacity, it remains a challenge that some relevant States are slow or perhaps reluctant to internalize that the care, rehabilitation and reintegration of survivors is their responsibility. That is, there is a sense that such matters are either relatively unimportant or are perceived to be matters that outsiders will address.
- Third: In the eight and a half years that I have worked on the matters concerning the Convention, I have observed a preponderance of some NGOs to exacerbate the notion that challenges related to the care of landmine survivors is something to be addressed by outsiders. In many instances, NGOs place a necessary focus on the role of donors but a focus that is disproportionate relative to a focus on those who are ultimately responsible.
- Fourth: Notwithstanding the clear understandings adopted by the Convention's States Parties in 2004, there is a lack of regard on the part of many actors for the place of victim assistance in broader health care, rehabilitation, reintegration and human rights contexts.
- Fifth, and related to the previous point: There continue to be instances when landmine victim assistance is perceived by mine action people – those whose tasks for the most part concern the identification, removal and destruction of landmines – as to be their domain. What can result and has resulted is the development or assistance efforts which must continue for years or decades being established and implemented by entities of states which are intended to complete finite tasks in the near term.
- And sixth: Civil society monitoring of the implementation of victim assistance responsibilities is uneven when compared to the systematic attention given to the Convention's core aims.

Let me close by again thanking Austria for taking the initiative to convene this symposium. I hope that this will be the first of many such Ottawa Process anniversary events to take place around the world in 2007.

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