

A DIALOGUE ON THE FACILITATION AND CLARIFICATION OF COMPLIANCE

January 2002

“Non paper”

Introduction

The 2001 Third Meeting of the States Parties' President's Action Programme noted that further discussions should take place surrounding the issues relating to the facilitation and clarification of compliance. The purpose of this non-paper is to set out a few questions that State Parties and others may wish to consider in light of this and to support open discussions of the next steps to be taken.

Background

Following open discussions in 1999 and further to an agreement made at the May 2000 meeting of the Standing Committee on the General Status and Operation of the Convention, Canada accepted the task in 2000-2001 of facilitating discussions on better understanding the Convention's compliance clarification provisions. Between May 2000 and May 2001 important efforts were made at Standing Committee Meetings to discuss considerations related to any possible operationalization of Article 8 and the broader means available to States Parties to clarify matters related to compliance.

At the May 11, 2001 meeting of the Standing Committee, appreciation was expressed for the work that had been undertaken and Canada was encouraged to continue further dialogue. In both May and September 2001, many parties placed a particular emphasis on the need for further discussions on the commitment made by States Parties in Article 8.1 of the Convention. This article calls on State Parties to consult and cooperate with each other regarding the implementation of the Convention, and to work together in a “spirit of cooperation” to facilitate compliance.

A Possible Way Forward

As a result of recent informal consultations facilitated by Canada, States Parties and relevant organizations have identified a number of topics that may merit further discussion between January 2002 and the Fourth Meeting of the States Parties. If it is the desire of States Parties that open discussions proceed on these topics, Canada would be pleased to both facilitate these at the call of the co-chairs, and to provide the opportunity for others to lead or initiate discussions. The following raises some questions that may be addressed in the context of these discussions:

1. Compliance, implementation and cooperation:

Both the letter and spirit of the Convention point to a relationship amongst cooperation, compliance and implementation. This is especially the case when one considers both the obligations under Article 4 and Article 5 to destroy stocks of and clear mines, and the obligations under Article 6 to assist others in doing so.

What are ways that cooperation could be enhanced to assist States Parties in fulfilling their obligations? What role(s) should the relevant Standing Committees play in this regard? Are additional mechanisms desirable/needed?

At one level of compliance there are the gravest concerns – those related to the willful use of anti-personnel mines. Several parties have suggested that addressing these concerns within Standing Committee meetings may not be beneficial. However, other levels of compliance – such as those related to complying with the Article 7 reporting provisions, obtaining further clarity from reports submitted, and obtaining clarity on technical aspects of implementation – relate more to the successful implementation of the Convention, and could be, and often are, well-served by the work of the Standing Committees.

How can the work of the Standing Committees be enhanced to take full advantage of identifying means to help facilitate compliance with provisions like these?

Article 7 reports contain valuable information that could serve as a basis for better identifying how States Parties could cooperate with each other to facilitate compliance and implementation. However, States Parties currently have no systematic and ongoing review and analysis of these reports. More effort may be useful in this regard.

Should an overview be developed of the information contained in these reports in such a way to better assist the work of States Parties? If so, who should do it, and under what sort of timetable?

2. Cooperation in addressing accusations of the use of AP mines:

Allegations made regarding possible violations in respect of the deployment of AP mines by State Parties are difficult to assess and deal with given the very nature of these allegations. Yet for the sake of the Convention as well as for those countries accused – perhaps wrongly – of non-compliance, cooperative means should be found to deal with such accusations.

What are ways that States Parties can work together in response to the gravest compliance concerns? If Article 8.1 essentially implies voluntary efforts be undertaken to facilitate compliance, how do States Parties actually get on with the task at hand? What are the complications? Is there a role for regional approaches?

What kinds of approaches can be taken to ensure beneficial outcomes for all concerned, including the accused State, potential victims, and other interested parties so that real or alleged non-compliance does not lead to abandonment of the Convention, but rather a greater commitment and support for its implementation? What considerations should be given to confidentiality?

3. Lessons learned from other fields:

The clarification of matters pertaining to compliance is something dealt with in other fields.

Are there lessons to be learned from other areas such as environment, human rights, or other disarmament fields?

4. Article 8 and the role of the United Nations Secretary General:

If an accusation does lead to use of Article 8, the United Nations Secretary General has a prominent role.

Could the United Nations be asked to share with States Parties an explanation of the Secretary General's understanding of how his role would be put into effect?

Conclusion

The questions raised above are intended to assist in broad-based discussions of the next steps in the consideration of the facilitation and clarification of compliance issues. As a facilitator of this process, Canada would be pleased to receive further input on useful areas of discussion and to facilitate open discussions at the call of the co-chairs. In addition, if it is the wish of the Co-Chairs, Canada would be pleased to report to the May meeting of the Standing Committee on the discussions.