

Lessons from the implementation of the anti-personnel Mine Ban Convention

The First Review Conference of the Anti-Personnel Mine Ban Convention¹ closed in the Kenyan capital, Nairobi, on 3 December 2004 with recognition from more than 1,200 delegates—governmental and non-governmental alike—of the many achievements of the convention and a resounding call for continued efforts to end the scourge of landmines. In the five-year Action Plan adopted by the Review Conference, states parties noted their “unqualified commitment to the full and effective promotion and implementation of the Convention”, and recorded their determination, “in full cooperation with all concerned partners ... to spare no effort to meet our challenges in universalizing the Convention, destroying stockpiled anti-personnel mines, clearing mined areas and assisting victims.”²

Although it is only seven years since the convention was opened for signature in Ottawa in December 1997, the result of a bold initiative by Canada, already more than three-quarters of the world’s states have adhered to the convention, formally binding themselves to ending the development, production, stockpiling, transfer and use of anti-personnel mines; to clearing emplaced anti-personnel mines; and pledging to assist the rehabilitation and reintegration of the victims of these indiscriminate weapons.

Since its entry into force on 1 March 1999, the convention has contributed directly to the destruction of tens of millions of stockpiled mines, and hundreds of thousands of buried mines across dozens of blighted countries have already been cleared. Although the number of new victims is still far too high, fewer civilians are being killed or injured by landmines than a decade ago, as the worst of the world’s contamination is systematically addressed.

In seeking to benefit from these successes, many of the lessons of the negotiation and adoption of the convention have already been identified by experts. However, to date, far less attention has been paid to reviewing the innovative approaches to the implementation of its provisions. How have the states parties sought to maintain commitment and progress towards their common goals, and what more must be done to ensure that the world has brought the mine problem under control once and for all? This article discusses some of the possible responses to these questions by looking in turn at three key interconnected principles underpinning the implementation of the convention: promotion, participation and partnership.

The promotion of the convention

PROMOTING ADHERENCE

Universalizing the convention was a clear and obvious objective from the outset. Effective ratification campaigns were organized by the International Campaign to Ban Landmines (ICBL), the International Committee of the Red Cross (ICRC), and the United Nations, especially the UN Children's Fund (UNICEF), seamlessly transitioning from campaigning in favour of the adoption of a total ban treaty, to promotion of adherence to one. Key states, especially those that had formed the "core group" of governments driving forward negotiations, engaged their diplomatic services to encourage states to join the convention sooner rather than later. Thus, in only fifteen months after its signature, not only had the requisite forty ratifications been secured but the convention was also already in force as binding international law.

To sustain momentum, states parties subsequently decided to create an informal "contact group" of concerned actors to promote universalization. Meeting regularly, this contact group, as is the case with other, similar groups discussed below, has helped to ensure that the efforts of a disparate range of actors, within and outside governments, have been pooled, coordinated and ever more effectively targeted.

Furthermore, the Review Conference itself has proved to be the occasion for a further push towards adherence to the convention, with Estonia and Papua New Guinea joining in 2004, and Latvia, Poland and Sri Lanka moving towards full adherence. In addition, Ethiopia, a signatory to the convention since December 1997, finally handed over its instrument of ratification at the Review Conference itself. The result is that Sub-Saharan Africa, the Americas (with one significant exception), and Western and Central Europe are almost universal in their formal rejection of anti-personnel mines as a weapon. As the Review Conference acknowledged,³ continued efforts need to be made over the coming years to make these regions unanimous in foreswearing forever this indiscriminate means of warfare. If greater adherence in Eastern Europe, Asia and the Middle East and North Africa can also be secured, the day in which a truly worldwide prohibition of anti-personnel mines exists will draw ever nearer.

PROMOTING COMPLIANCE

But universal acceptance of any treaty does not necessarily translate into universal respect. Indeed, a number of states were concerned during the negotiation of the Anti-Personnel Mine Ban Convention that its provisions would not be sufficiently vigorously monitored, nor any transgressions effectively punished. For this reason, Article 8 of the convention allows for clarification of compliance, including compulsory fact-finding missions in certain, specific circumstances. To date, no state party has deemed it necessary to formally invoke such procedures.

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In fact, although since entry into force of the convention the ICBL has alleged violations by a small number of signatories and states parties, the record of its implementation has been remarkable for its consistency of respect. On no occasion has there been any state party engaged in significant production, stockpiling, transfer or use of anti-personnel mines. Quite the contrary, for a great many states have already adopted the necessary domestic measures referred to in Article 9 of the convention—legal, administrative and other—to ensure that this does not occur.

Of course, implementation has been facilitated by the unambiguous obligations inserted in the convention by its drafters. "No exceptions, no reservations, no loopholes!" was the clarion call of the ICBL, and the world can justly be proud that the instrument that emerged from the Oslo Diplomatic Conference was in some ways even stronger than the one that was presented to it as the basis for negotiation. In particular, the undertaking in Article 1, paragraph 1 of the convention "never under any circumstances" to use, develop, produce, stockpile or transfer anti-personnel mines is a sound basis for promoting compliance.

Moreover, states parties have been alert to any developments that might undermine those obligations—rejecting suggestions that a signatory might somehow be allowed to use anti-personnel mines without frustrating the convention's object and purpose, and declining a request by a state party to delay implementation of the requirement to destroy anti-personnel mine stockpiles beyond the allotted four years. The sanctity of the legal instrument—and its intent—has been preserved as a consequence.

Similarly, the ICBL and the ICRC have moved to ensure that the possibility to retain a small quantity of anti-personnel mines for the humanitarian purposes of training in mine detection and clearance and testing of equipment does not serve as a subterfuge for other, unwelcome intent. As a consequence, prevailing legal opinion among states overwhelmingly reflects the understanding of the drafters at the Diplomatic Conference that parties may retain hundreds or thousands of anti-personnel mines in accordance with Article 3 of the convention, but not tens of thousands.

Monitoring of adherence to the convention has largely been achieved through two mechanisms: formal annual reporting by states parties in accordance with Article 7, and civil-society-based oversight through the *Landmine Monitor*, the annual report presented to states parties by the ICBL. Admittedly, in the case of the former, annual reporting is not uncommon in the case of international treaties. But the admirable decision by states parties, through the auspices of the UN Department for Disarmament Affairs, to make every single report publicly available in its entirety (absent certain technical information that might be misused by non-state actors) has built confidence in the process through such transparency.

UN agencies and bodies, among others, have provided assistance to states parties requesting it to prepare these annual reports—with the process of preparation itself supporting interministerial coordination and cooperation in national implementation. Although some reports have been submitted late, overall the level of respect for the reporting provision has been exceptionally high—a recognition of the significance attached to this by all concerned, and to the work of the contact group on Article 7 reporting—comparing more than favourably with other disarmament treaties.

As ever, the legal excellence and commitment of the ICRC has proved invaluable to states parties in promoting the implementation of the convention. In particular, during and prior to the Review Conference, the ICRC worked energetically to try to persuade states to accept appropriate understandings of Articles 1, 2 and 3 of the convention. As Austrian Ambassador Wolfgang Petritsch, the President of the Review Conference, declared in his statement to the opening press conference: "Undoubtedly organizations like the ICBL and the ICRC will tell you how we can do better. ... This is precisely what should happen."⁴

It is also difficult, however, to overestimate the importance of the *Landmine Monitor* in verifying compliance by states parties. This remarkable annual publication has helped to ensure that all states parties are both fully aware of their obligations and conscious that any lowering of the high standards set by the convention will be exposed in the *Landmine Monitor*.

The thoroughness of the research, and the detail with which every state's policy and action are reported, whether party to the convention or not, has made the *Landmine Monitor* the essential reference tool for anyone interested in following progress towards a world free of the hideous effects

of landmines. Although states may not always like, or agree with, what the *Landmine Monitor* writes about them, there is almost unwavering respect for the commitment and professionalism the organizations, coordinated by Human Rights Watch, have shown in this publication. The *Landmine Monitor* stands as a landmark in NGO efforts to promote treaty implementation, and the standard by which other, necessary attempts will be judged.

Participation and partnership in the implementation of the convention

Although the detailed procedure for facilitation and clarification of compliance laid down in Article 8 has never been used, arguably paragraph 1 of the provision whereby “The states parties agree to consult and cooperate with each other regarding the implementation of the provisions of this convention, and to work together in a spirit of cooperation to facilitate compliance by states parties with their obligations under this Convention” has been employed successfully ever since its adoption. Regular discussions have been entertained, among others, within the context of an informal contact group on compliance. Indeed, the spirit of cooperation that has been propagated throughout the life of the convention has been one of the hallmarks of its success.

Certainly there have been disagreements—over the interpretation of certain paragraphs contained in the first three articles of the convention in particular. Their significance should not be played down. But what unites all states parties in their interpretation of what is prohibited by the convention far outweighs the issues that divide them. And unanimity of understanding inevitably fuels unanimity of purpose.

That purpose has been established in both formal and informal mechanisms devised to support the implementation of the convention. The Meeting of the states parties has met annually in accordance with Article 11 to review, *inter alia*, the convention’s operation and status; matters arising from annual reports submitted in accordance with Article 7; and international cooperation and assistance in accordance with Article 6. These meetings enabled states parties to reach important, binding decisions regarding the future of the convention.

But a number of states recognized from the outset that annual meetings would not be sufficient *per se* to maintain momentum towards successful implementation of the convention. For this reason, the First Meeting of States Parties decided to hold a series of “intersessional Standing Committee” meetings to look at key issues involved in the application and implementation of the convention. These meetings, held twice-yearly, and which the Geneva International Centre for Humanitarian Demining (GICHD) hosts, have brought together states parties with UN agencies, international and regional organizations, and NGOs from around the world. This partnership between the diplomats, campaigners and, of enormous significance, organizations working in the field, has proved to be a touchstone for the convention, as discussions have been pragmatic and have involved all interested states and other actors.

To support the intersessional process, states parties volunteered to serve as co-chairs and co-rapporteurs for the various Standing Committees, ensuring that both donor and affected states are fully engaged in the implementation of the convention. The Second Meeting of the States Parties in 2000 recognized that the work of the Standing Committees would require a high degree of coordination between the co-chairs to ensure that their work would facilitate the successful implementation of the convention. In this context the states parties established a Coordinating Committee, which meets on an ad hoc basis under the chairmanship of the President of the Meeting of the States Parties for the year.

Genuine participation has been further supported by the Sponsorship Programme, which, to date, has received voluntary contributions of more than US \$2 million from over a dozen states parties.

This programme has enabled representatives of states parties needing financial assistance (and, under certain circumstances, other states, such as those designated a priority for universalization efforts) to attend and participate actively⁵ in decisions and discussions that affect them at the intersessional meetings and meetings of states parties.

Partnership and participation has been further facilitated by the creation of the Implementation Support Unit (ISU), set up following a decision by the Third Meeting of the States Parties in Nicaragua in 2001, and which the GICHD also hosts. We believe that the ISU has proved a valuable resource for all states parties, helping them to focus on the core aims of the convention.

The ISU has operated through a number of different avenues. First, by working directly with the co-chairs and co-rapporteurs of the Intersessional Standing Committees as well as the Coordinating Committee as a whole, the ISU has facilitated detailed preparation for the Meetings of the States Parties and other fora for dialogue and discussion. Second, the ISU has responded to states parties with suggestions on ways to make best use of the machinery—formal and informal—set up under the auspices of the convention to promote its implementation. In particular, the ISU has given advice on the so-called “4P” approach to implementation. In this, affected states parties are called on to expound the *problems* they are facing, their *plans* for addressing them, the *progress* they have made, and the *priorities* they have identified for urgent action. This enables states parties in a position to do so, to allocate resources and assistance more effectively, on the basis of need. Third, and of no less importance, the ISU has helped to raise the voices of affected states parties in exchanging views on the implementation of the convention.

For the future, states parties at the First Review Conference agreed that they would continue to hold meetings of states parties annually until the Second Review Conference, due in 2009, but that they would reduce the number of weeks of intersessional meetings each year from two to one⁶—ample recognition of the maturity of the process of education and sharing of information among all concerned actors.

Of course, participation and partnership would not be enough to ensure effective implementation, without the requisite mobilization of resources. States parties have taken extremely seriously their obligations under Article 6 to provide adequate resources to support implementation—more than US \$250 million is provided each year for mine action, the majority by states parties to the convention.

Sustaining this level of resources in the future, or at least ensuring that needs can be effectively met, was the subject of considerable discussion in the lead-up to the First Review Conference. At the Conference itself, states parties recognized that fulfilling their obligations during the period 2005–2009, including the implementation of the agreed-upon Action Plan, would demand substantial political, financial and material commitments. To this end, states parties in a position to do so pledged to “fulfill their obligations under Article 6 by promptly responding to calls from those States Parties in need”, and all states parties agreed “to encourage the international development community ... to play a significantly expanded role in mine action ...”.⁷ Undoubtedly, mainstreaming mine action into development activities, for example by incorporating mine action explicitly into a national development plan or a poverty reduction plan in support of the Millennium Development Goals, will be a major challenge for all in mine action over the coming five years.

The future implementation of the convention

As the First Review Conference has closed, so the states parties to the Anti-Personnel Mine Ban Convention have already begun looking forward to the second, due to be held five years from now. By

then, some fifty states parties will have reached the deadline for implementation of Article 5, paragraph 1—“to clear all anti-personnel mines in mined areas under their jurisdiction or control”. The challenge remains a huge one. For despite improvements in techniques and equipment, research and development has thus far failed to uncover a cheap and affordable technological solution that will make the slow, laborious nature of mine clearance for humanitarian purposes a thing of the past.

Until that day, the three watchwords of the convention that have brought us so far in so short a time—promotion, participation and partnership—must continue to resound as we strive collectively to end the tragedies caused by anti-personnel mines. We must never resort to “business-as-usual” diplomacy: innovation and flexibility must continue to characterize work to implement the convention. For assistance to the victims of landmines, mine-risk education and stockpile destruction, supported by ever-increasing efforts to universalize the convention, will all have to be pursued relentlessly. For its part, the Geneva International Centre for Humanitarian Demining will pursue its mandate to assist the international community in reducing the impact of mines and unexploded ordnance. As it has for the past five years, the Centre remains committed to support the impressive efforts of the international community to implement the Anti-Personnel Mine Ban Convention.

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Notes

1. The formal title of the treaty is the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*.
2. 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, *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*, APLC/CONF/2004/5, Part III, “Ending the Suffering Caused by Anti-Personnel Mines: Nairobi Action Plan 2005–2009”, Nairobi, 3 December 2004.
3. “We remain gravely troubled that anti-personnel mines continue to kill or maim, adding new victims to the hundreds of thousands of landmine survivors requiring life-long care. ... And we call upon those states that have not joined our efforts, and in particular those that possess vast stocks of anti-personnel mines or continue to use this insidious weapon, to adhere to the Convention without delay.” First Review Conference, op. cit., Part IV, “Towards a Mine-Free World: the 2004 Nairobi Declaration”.
4. Statement by Ambassador Wolfgang Petritsch, President of the Nairobi Summit, to the Nairobi Summit Opening Press Conference, Nairobi, 29 November 2004.
5. Indeed, there is an element of conditionality involved in sponsorship for participation: assisted states are expected, for instance, to present details of their progress towards implementation.
6. First Review Conference, op. cit.
7. First Review Conference, op. cit., Part III.