Victim assistance in the context of the Anti-Personnel Mine Ban Convention

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Geneva International Centre for Humanitarian Demining
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Excellencies, ladies and gentlemen: I would like to thank the CCW Protocol V Victim Assistance Coordinator for asking me to present to you.

For those of you who do not know me, I am Kerry Brinkert, Director of the Anti-Personnel Mine Ban Convention's Implementation Support Unit at the GICHD.

The purpose of my presentation is to provide an overview of this matter we call "victim assistance" in the context of the 1997 Anti-Personnel Mine Ban Convention with a view to suggesting certain lessons that you, the parties to Protocol V to the CCW, may wish to apply in implementing your protocol.
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...

AP Mine Ban Convention, Article 6.3

To begin, within the text of the AP Mine Ban Convention there are, in the English version; 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...."

Of course this phrase served as the reference for what eventually became paragraph 2 in Article 8 of Protocol V.
By incorporating these words into the text of the Convention, the matter we call *landmine victim assistance* found itself 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.

For many, incorporating these words in the text of the Convention was a major achievement.

From my perspective, however, as a professional implementation supporter, I believe the more difficult task came after entry into force when it fell to the States Parties to convert these words into action – to implement the Convention.
Four core aims, four key questions...

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<td>Stockpile Destruction</td>
<td>How much?</td>
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<td>Mine clearance</td>
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<td>Victim assistance</td>
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When it comes to taking stock of an implementation process, it is important ask four key questions:
- Who is responsible?
- For what, specifically, is each actor is responsible?
- How will this be measured?
- By when must what be achieved?
### Four core aims: Who? What? How much? By when?

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<tr>
<td>All States Parties</td>
<td>No use, production, transfer, etc. of AP mines</td>
<td>Yes or no: Use, production, transfer, etc. of AP mines</td>
<td>Immediately and always</td>
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<tr>
<td>All States Parties reporting stockpiled AP mines</td>
<td>Destroying all AP mine stockpiles under jur. / control</td>
<td>Number of mines destroyed relative to those reported</td>
<td>Within four years</td>
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<th>Mine clearance</th>
<th>Who is responsible?</th>
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<tr>
<td>All States Parties reporting AP mines in mined areas</td>
<td>Destroying all emplaced AP mines under jur. / control</td>
<td>Amount of area cleared, number of mines destroyed relative to reported</td>
<td>Within ten years</td>
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The drafters of the Convention made it quite easy 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.
Victim assistance: A dilemma for the States Parties

"In many mine affected countries the assistance available to address the needs of survivors is inadequate."
-- ICBL 2004

"The extent to which landmine survivors' needs are not being met is generally still unknown."
-- ICBL 2004

This 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 had found themselves in a situation in which they were setting themselves up for failure because there was no way to measure what it means to have fulfilled their promises to mine victims.
Victim assistance: Understanding the aim

Victim as defined by the States Parties:

- "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."
- A broad approach to what is considered a landmine victim has been accepted.
- However, the majority of attention has been focused on providing assistance to those individuals directly impacted by mines.
- These individuals have specific needs for assistance.

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 Convention's First Review Conference in 2004, the outcomes of this work were consolidated 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.
Victim assistance: Understanding the aim

Victim assistance, defined by the States Parties:

- 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
- The establishment, enforcement and implementation of relevant laws and public policies

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.
Victim assistance: Understanding the broader context

Victim assistance in the context of disability:

- Survivors are a sub-group of larger communities of persons with injuries and disabilities.
- The problems faced by landmine survivors are similar to the challenges faced by other persons with injuries and disabilities.
- Landmine victim assistance should not exclude any person injured or disabled in another manner.

While it was certainly important for the States Parties to better understand the aim, it was equally important that at the First Review Conference 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: Understanding the broader context

Victim assistance in the context of health care, social services, rehabilitation, reintegration and human rights:

- Victim assistance does not require the development of new fields or disciplines.
- Landmine victim assistance should be viewed as a part of a country’s overall public health and social services systems and human rights frameworks.
- These systems and frameworks should be made adequate to meet the needs of all citizens — including landmine victims.

Victim assistance also was wisely understood by the States Parties in the context of broader health care, social services, rehabilitation, human rights efforts.

In particular, it was understood that “there are important contextual differences between humanitarian demining and activities related to assisting in the care, rehabilitation and reintegration of landmine victims.”

Humanitarian demining including explosive ordnance disposal, 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, as recorded by the States Parties, “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.”
Victim assistance: Understanding responsibility

- Each State Party in a position to do so has a responsibility to support mine victims.
- It is a basic responsibility of a State to ensure the well-being of its population.
- This responsibility is most pertinent for those States that are responsible for significant numbers – hundreds or thousands – of landmine survivors.
- While not forgetting the responsibilities to landmine victims wherever they may be, a greater emphasis must be placed on the fulfilment of the responsibilities to landmine victims by these States Parties.

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A final set of conclusions drawn by the States Parties at the First Review Conference that 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 AP Mine Ban Convention, this responsibility is most pertinent for – and hence the challenges faced in fulfilling it most profound for – those States that 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.
Victim Assistance

25 States Parties have indicated that they have a responsibility for significant numbers of landmine survivors:

- Afghanistan
- Albania
- Angola
- Bosnia and Herzegovina
- Burundi
- Cambodia
- Chad
- Colombia
- Croatia
- DRC
- El Salvador
- Eritrea
- Ethiopia
- Guinea Bissau
- Jordan
- Mozambique
- Nicaragua
- Peru
- Senegal
- Serbia
- Sudan
- Tajikistan
- Thailand
- Uganda
- Yemen

Of the Convention’s 156 parties, 25 have indicated that they hold ultimate responsibility for the care, rehabilitation and reintegration of significant numbers of landmine survivors.

This brings us back to those four key questions: Who is responsible? For what? How will this be measured? By when must this be achieved?

As a result of the First Review Conference, the aim is understood with greater clarity, particularly its place in broader contexts of medical care, rehabilitation, reintegration and human rights. Thanks to self-identification, we can point to 25 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 guarantee of the rights of one’s population forever, in the context of the AP Mine Ban Convention we can use various milestones such as the Convention’s Second Review Conference in 2009 as instances when progress should be made and measured.

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 was giving to the Convention’s prohibitions or its obligations to destroy mines. There is now a “strategic approach” available for the States Parties to apply. And promoting the application of this approach is exactly what Co-Chairs of the Convention’s Standing Committee on Victim Assistance, including Markus Reiterer of Austria, have done since 2005.

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<td>Afghanistan</td>
<td>What can be / should be achieved will be different for each State Party.</td>
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<td>The logical starting point for action in the context of the AP Mine Ban Convention is gaining a better understanding of what can be / should be achieved by the time of the Second Review Conference (December 2009).</td>
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<td>Albania</td>
<td>As the ultimate responsibility rests with the State, each must define what can be / should be achieved.</td>
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<td>Angola</td>
<td>Others may assist in understanding problems, developing plans and monitoring implementation.</td>
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<td>Bosnia and Herzegovina</td>
<td>However, real and sustainable progress cannot be made without the affected States Parties themselves &quot;owning&quot; the problem and the solutions to it.</td>
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<td>Burundi</td>
<td>Until what is desired is measurable and time-bound, success / failure will constantly be an undefined and / or a changeable target.</td>
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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 25 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 relatively more developed States to perhaps tens of thousands in relatively less developed ones.

And the capacity of each to act is dramatically diverse – from some of the world’s poorest states recovering from recent conflict to middle income states that have been largely spared from conflict.
Victim Assistance: Setting the Agenda

24 States Parties can / should set the agenda:

☐ 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?

☐ 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?

Again, in keeping with the basic characteristics of the international system which points to ultimate responsibility resting with each State, these 25 States Parties themselves must define what can be / should be achieved.

Others, like our friends from the WHO, ILO and the UN Office of the High Commissioner for Human Rights have the expertise and capacity to assist in understanding problems, developing plans to deal with these problems, and, others like our friends from the non-governmental organizations 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 AP Mine Ban Convention is that the space has to be provided to 25 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.
10 steps in developing a national response

1. Sensitise relevant ministries to Convention obligations.
2. Establish an inter-ministerial group, inclusive of survivors and civil society organisations, to oversee the process.
3. Assign responsibility to various ministries according to competence.
4. Organise a national workshop to begin a situation analysis and to develop goals.
5. Complete the situation analysis, establishing an inventory of who is doing what, and what plans and strategies are already in place.
6. Review the situation analysis to project what the situation should look like in the future.
7. Establish SMART objectives.
8. Organise a second workshop to seek views on the development of a national plan.
9. Complete a plan, taking into account plans and budgets of existing ministerial activities.
10. Mobilise resources, ensuring integration into broader appeals for development assistance.

How in practical terms can a State that has the responsibility for significant numbers of survivors proceed in setting the agenda? On the basis of input provided by victim assistance experts participating in the work of the AP Mine Ban Convention, the ISU has recorded a 10 step approach to developing a national response. The 10 steps are as follows:

1. Sensitise relevant ministries to Convention obligations. Many may not know that the State has accepted obligations in a weapons related treaty that concerns health care, rehabilitation, reintegration and human rights.
2. Establish an inter-ministerial group, inclusive of survivors and civil society organisations, to oversee the process.
3. Assign responsibility to various ministries according to competence.
4. Organise a national workshop to begin a situation analysis and to develop goals.
5. Complete the situation analysis, establishing an inventory of who is doing what, and what plans and strategies are already in place. That is, many States should already have well-developed health care and disability strategies. The key is to see what is there and to ensure that it takes into account the specific needs of survivors.
6. Review the situation analysis to project what the situation should look like in the future.
7. Establish SMART objectives.
8. Organise a second workshop to seek views on the development of a national plan.
9. Complete a plan, taking into account plans and budgets of existing ministerial activities.
10. Mobilise resources, ensuring integration into broader appeals for development assistance.
And so this is how “victim assistance” has become to be seen in the context of the AP Mine Ban Convention.

What I would suggest is the same potential exists for Protocol V of the CCW.

What the AP Personnel Mine Ban Convention can provide to Protocol V is a method of fulfilling obligations to survivors – that is, in the context of broader State medical care, rehabilitation, reintegration and human rights responses / structures, without discrimination according to cause of injury or disability.
Victim assistance & Protocol V: Coherence is possible (and for some necessary)

Allow me to conclude by saying that coherence is possible because assisting the victims should be non-controversial and because it is generally accepted that basic responsibilities of States are to ensure the wellbeing and to guarantee the rights of their populations, including the wellbeing of rights of persons with disabilities, some of whom are survivors of landmines and other explosive remnants of war.

I would also suggest that for some coherence is necessary given that most of the parties to Protocol V, 40 of 43, have already accepted the strategic and comprehensive approach to victim assistance by virtue of being parties to the AP Mine Ban Convention.

Moreover, 6 of the 40 States that have accepted both the AP Mine Ban Convention and Protocol V have indicated that they are ultimately responsible for significant numbers of survivors. It should be noted that these States for them most part do not disaggregate and all do not discriminate according to whether individuals are survivors of AP mines or other ERW.

As well, I have noted indications from those States that have neither acceded to the AP Mine Ban Convention nor Protocol V that they essentially are on the same page.
Finally, let me say that while my mandate concerns the AP Mine Ban Convention and while my masters are the States Parties to that Convention, I would be pleased to contribute to ongoing discussions on coherence in implementation as it concerns victim assistance or coherence in implementation more generally.

Thank you.