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Standard-setting: Lessons Learned for the Future

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**PARTICIPATION AND PARTNERSHIP:
A RIGHTS-BASED APPROACH TO A WEAPON'S LEGACY**

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1. The process of the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Convention or Convention) is considered to be a landmark in international humanitarian law. This historic initiative, known as the Ottawa Process, was a fast track diplomatic coup that achieved a global ban on landmines within a period of 14 months. Moreover, the Mine Ban Convention was negotiated, drafted, signed, and adopted completely outside the traditional United Nations (UN) framework for disarmament processes.²
2. The Convention bans landmines, requires the destruction of stockpiled mines and mines already in the ground, and prohibits the transfer of mines.³ It is also the first disarmament treaty to include what is often referred to as a humanitarian provision, but has been transformed into the legal foundation to pursue a rights-based approach to survivor assistance.⁴
3. Using this extraordinary example of the Mine Ban Convention, particularly the “victim assistance” provision,⁵ this paper explores the relationship between the nature of a standard setting process, and the form of the resulting instrument and its domestic implementation. It

1 Landmine Survivors Network.

2 Signed by 121 States in Ottawa on December 3, 1997. It entered into force on March 1, 1999. Kenya became the 122nd country by signing on December 5th.

3 The Geneva Conventions only address mine clearance, specifically prohibiting the use of prisoners of war to do so.

4 The language reads, “States Parties in the position to do so to provide care and assistance, as well as social and economic reintegration to landmine survivors. It is the ICBL’s position that all States are in a position to do something, and the governments themselves have adopted this understanding when reporting. This can be compared to the principle of progressive implementation in the context of economic, cultural, and social rights.

5 This paper uses victim assistance and survivor assistance interchangeably. Survivor assistance is preferable, but victim assistance is the language of the Convention.

will first provide a brief background to the process leading up to its adoption, survey the actors in the process, and then consider how the implementation of survivor assistance obligations has been influenced by the standard-setting process.

BACKGROUND THE OTTAWA PROCESS

4. Despite efforts by interested diplomats and activists, the landmine ban dossier of the Conference on Disarmament had been languishing for years.⁶ In 1983 Convention on Certain Conventional Weapons (CCW), which included Protocol II on “Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices” had received a tepid international response, and the landmine problem continued to grow earning the denomination “a slow moving weapon of mass destruction.”⁷ By way of response, a Review Conference was held in 1995 in Vienna where amendments to Protocol II were rejected.
5. In Vienna, landmine survivors began to coordinate to “try to move the poster children off the walls into the forum.”⁸ The negotiations were structured in the traditional manner, with NGOs having a specific period of time allocated for speaking. Using this period, and the hallways, survivors self-empowered by working on key advocacy points, handing out flyers, giving personal testimony, and lobbying in an effort to make the posters and stories of mine survivors come to life. Survivors persistently approached the governments, other NGOs, and the media. This added dimension to the process was not in competition with the policy expertise available and stated objectives, but rather gave it the lifeblood needed for the very human dimension of the problem.⁹
6. Two more sessions were held in Geneva in 1996, resulting in the adoption of Amended Protocol II. It was understood by many to be a “humanitarian failure”,¹⁰ having not achieved a legal ban on landmines. The President of the Review Conference, Ambassador Johan Molander from Sweden, later remarked that “the cumbersome diplomatic process, based on universality and consensus, set in motion a chain reaction that was difficult to foresee. It created a focal point for the international efforts to ban landmines.”¹¹

6 Attempts were made to get landmines banned under the two Additional Protocols to the Geneva Conventions, but no agreement was reached and in 1977 the Diplomatic Conference adopting the two Protocols to the Geneva Conventions recommended to the UN General Assembly that a separate conference be convened to negotiate a separate legal instrument. Eventually the Convention on Certain Conventional Weapons (CCW) was adopted with three annexed Protocols. Few States ratified the treaty, and the use of landmines was increasing, resulting in a growing population of victims.

7 Ken Anderson who was with the Open Society Institute at the time is attributed with coining this term. This is good example of the importance of terminology in a campaign. The anti-personnel mine was difficult to place within the arms control vocabulary, being a not quite small arms, and not quite a mass weapon. This terminology was a simple way of demonstrating how serious its consequences are. In addition, the use of statistics was important, for example, every 22 minutes someone steps on a landmine. This simple form of communicating an injustice gave the ban movement an important power.

8 Jerry White, Executive Director and Co-Founder of Landmine Survivors Network.

9 The importance of lived experience to inform policy positions has been particularly apparent in the context of the draft Disability Rights Convention process. In January 2004, a Working Group was established to draft a text to be used as a basis for negotiation. The 40 member Working Group was composed on 12 NGOs, 1 National Human Rights Institution and 27 Governments. More than half of the experts were people with disabilities. This composition had a crucial influence on how diplomats understood the objectives each provision was trying to achieve. The Coordinator of the Working Group, the New Zealand Ambassador to the United Nations in New York, has continued to emphasize the necessity of having this technical expertise and lived experience understanding in the process.

10 Jody Williams, International Campaign to Ban Landmines, AFP-DL82 (3 May 1996).

11 Molander, J, Foreword to Maresca and Maslen, *The Banning of Anti-Personnel Landmines*, at xxiii.

7. The 1996 Ottawa Conference opened with an increasingly frustrated NGO community, which presented a “People’s Treaty” for signature to mobilize civil society efforts and engage government officials supportive of a ban. This ended up being unnecessary, as Lloyd Axworthy, Canada’s Foreign Minister at the time, took diplomats by surprise by issuing the challenge that Canada would hold a signing ceremony in December 1997 for a new Mine Ban Convention. Conferences and negotiation talks were held all over the world, with States meeting in Ottawa in 1997 according to Lloyd Axworthy’s prediction. Once the symbolic Ottawa signing was completed, the UN reinherited the Convention, and it became international law on March 1, 1999, six months after its 40th ratification.
8. During a large part of the negotiating process, victim assistance was barely on the agenda as the central focus of the ICBL was a landmine ban pure and simple. There was resistance within the campaign to adding victim assistance to the advocacy agenda as it would risk adding too greater commitment (either for mine-affected states which had limited means and infrastructure, or adding a resource obligation for traditional donor countries). It was argued that this would be counterproductive to the overriding goal of the campaign: a total ban on landmines.
9. The recently formed Landmine Survivors Network (LSN) began lobbying bilaterally with governments to create an understanding of the centrality of victim assistance to the negotiation process. In addition, survivors began to lobby within the International Campaign to Ban Landmines (ICBL) to include stronger language on the need for effective victim assistance. Going into the 1997 Ottawa negotiations, it was not clear that victim assistance would avoid being relegated to the preamble, but reasonable success was achieved with a stand-alone provision that included reference to international cooperation on victim assistance to include physical rehabilitation as well as social and economic reintegration.¹²

THE ACTORS IN THE PROCESS

10. One of the key elements that led to this success was the partnership between governments and the ICBL. Canada led challenge with strong support from Norway, Austria, South Africa, Australia, and New Zealand as key government players. They were relatively small or mid-level powers, but like-minded and determined to achieve change. This leadership sensibility was necessary to move the process as quickly as it did, but certain governments, such as the United States were alienated by the process. The negative or otherwise effect of this is still debated. Upon reflection, the question posed in 1997 remains: Which was better, a strong-no-exceptions treaty without U.S. participation, or a “weaker” treaty with exceptions for Korea among other things, but with U.S. support. Outside the UN process, these progressive powers were able to establish an important resource base, with the additional support of the foundation world. George Soros’s Open Society Institute, in particular, took a leadership role in funding the international landmine ban campaign.¹³
11. The other component was the NGOs in the form of the ICBL, led by Jody Williams, an employee of the U.S.-based Vietnam Veterans of America Foundation (VVAFA). The ICBL created the appearance of mobilizing civil society into an emergent “super power”. The ICBL was able to say that there were over 1000 organizations in over 90 countries that were participating in the campaign. Even though many of the names on the list were not active

12 While it is too early to say that this has set a standard for disarmament treaties, the new Protocol on Explosive Remnants of War (Protocol V to the 1980 CCW) has an article that mirrors the Mine Ban Convention’s article 6(3), applying it to the context of care and rehabilitation and social and economic reintegration of victims of explosive remnants of war.

13 The Open Society Institute funded a three-year project to seed the campaign.

participants, the message of extensive global participation was important for building momentum and political will.

12. Critical to the success was the active involvement of the stakeholders: survivors, deminers, experts in arm control, faith based organizations, development specialists, operational NGOs, human rights organizations, environmentalists, academics, the security establishment and the International Committee of the Red Cross. It was an interdisciplinary collaboration based on the authentic complaint of those affected by the weapon. It was not just mine-affected communities asking for their land back to be able to subsist, nor was it simply environmentalists arguing the pollutive effects of the weapon; rather it was a cross-sectoral coalition of all types, making the claim more legitimate. These organizations were represented from North and South and proved to be equal actors in their organizing, analysis, and political skills, challenging many traditional NGO stereotypes.
13. The process also demonstrated that while government representatives negotiate treaties, they are in large part generalists. This results in a dependence on NGO expertise, material, and textual suggestions.

THE IMPLEMENTATION PHASE

14. The implementation of the Convention is intimately connected with the form the process took. The process was a partnership between government and civil society, which has been directly translated into the implementation framework established. Thus, the critical phase of implementation remains a dynamic interaction between all the stakeholders, both at the international and national levels.
15. From the survivor assistance perspective, the participation of landmine survivors, the majority from countries in conflict and post-conflict, and often from the developing world, provided an opportunity to put their interests and concerns into the decision-process to influence outcomes. In addition to providing a unique opportunity to ensure that their voice was heard in the drafting of an international convention, the treaty process fulfilled an important capacity-building role for the actors. This has resulted in experts on survivor assistance who have remained engaged at the implementation stage. Their involvement has created important channels and focus for the linking of survivor assistance advocacy efforts at the local, national, and international levels. Accordingly, the outcomes have not only included the adoption of the Convention, but also ensuring that governments are complying with the Convention.

Design of a Structure

16. Victim assistance was initially coupled with Mine Awareness, and because of its qualitative component was less understood than other parts of the Convention such as landmine stockpile destruction within four years. To ensure that victim assistance was not marginalized, the ICBL established a Working Group on Victim Assistance (WGVA) in 1998 and elected LSN to serve as Chair. The WGVA has five general goals: 1) To secure increased levels of funding for victim assistance programs; 2) To promote a broad range of activities to meet the needs of landmine survivors; 3) To promote inclusion of landmine survivors in decision making, planning, and implementation of programs and activities that concern them; 4) To advocate for the rights of landmine survivors, and 5) To facilitate information sharing about victim assistance among all relevant actors.¹⁴

¹⁴See www.icbl.org

17. Today, the WGVA has over 100 members representing approximately 40 organizations and country campaigns.
18. A parallel governmental structure was established at the First Meeting of States Parties in Maputo. Consistent with the concept of partnership, this Standing Committee of Experts on Victim Assistance, Socio-Economic Reintegration and Mine Awareness (SCVA) works closely with the WGVA on Government implementation of victim assistance obligations. However, if civil society had not called for a SCVA, the stakeholders would not have had a role and a void would have resulted in a whole working vocabulary and understanding that has emerged around the concept of victim assistance. The institutionalized Government and NGO interaction ensured that content has now been breathed into this vaguely written standard, and it is an entrenched part of the implementation system.

Development of a Vocabulary

19. As in most treaty contexts, the implementation phase required an understanding of the Convention's terminology, for example, victim assistance. Unlike the core human rights treaty bodies, the Mine Ban Convention did not establish a body that would be responsible for developing jurisprudence around its content. For the most part the Convention contains concrete, time-bound obligations. However, the victim assistance component did not have the same framework, which posed initial challenges.
20. In 1998, the ICBL held a General Assembly where the Steering Committee was expanded, including survivor representation. The ICBL accepted LSN's draft of goals for victim assistance, rendering it one of the central pillars of the ICBL's implementation work.¹⁵ The Convention language, together with the goals established by the ICBL in Frankfurt, have entrenched this.
21. The early stage of implementation of the Mine Ban Convention, particularly the survivor assistance component, was a carry over to convention campaign. The vocabulary of the campaign was mainly development and arms control driven, and not rights-based language. However, it was about empowerment of an affected community through their participation and inclusion. As early as the Vienna meeting, there was incremental, but systematic training of survivors on understanding the international process, tools on how to translate their message into lobbying and media strategy, and organizing at the local level. This work was eventually formalized into an ICBL program called "Raising the Voices", which was run by LSN. The program has brought survivors from all over the world to participate in the formal sessions of the Mine Ban Convention, specifically the victim assistance component. These survivors are an integral part of the ICBL's work, particularly in regard to in-country implementation and monitoring.¹⁶ Participation and inclusion of survivors are now expected in the approach to victim assistance in the Convention's implementation framework.

¹⁵ The ICBL's 1998 victim assistance goals: 1) The ICBL will press governments to commit \$3 billion over the next 10 years to support victim assistance, including social and economic reintegration; 2) The ICBL will press governments to support a whole range of landmine victim assistance activities: acute care, supply of prosthetics and wheelchairs, physical therapy, psychological support, data-gathering, landmine awareness, social reintegration, land tenure, and legal and employment services; 3) The ICBL and national campaigns will promote the sharing of landmine victim information and assistance strategies among members and other groups to effect the best possible rehabilitation outcomes for mine victims; 4) The ICBL will promote and involve landmine victims and landmine infested communities in the planning and implementation of mine assistance programs.

¹⁶ Landmine Monitor, published under the auspices of Human Rights Watch and published annually since 1999, reports on the status of victim assistance in every country in the world. The Landmine Monitor relies on a vast network of researchers who necessarily coordinate with survivors, operational NGOs, service providers, government departments and ministries, as well as UN agencies to obtain the necessary information.

22. It appears the participation of diverse stakeholders helps ensure success in coalition and advocacy work. The ICBL is a case in point. Most groups come to a coalition with a particular expertise, and represent or stand for a particular constituency. With proper coordination, such variety and diversity can result in a disciplined and channeled product reaching a broader audience.
23. LSN, in consultation with other NGOs active in the ICBL, as well as governments and UN representatives, began to define survivor assistance to include the “care and rehabilitation provided for the immediate and long-term needs of mine victims, their family members and/or dependants, and mine-affected communities. Victim assistance includes, but is not limited to, emergency and medical care; access to prosthetics, wheelchairs and other assistive devices; social and economical reintegration;¹⁷ psychological and peer support; accident prevention programs; and legal and advisory services.
24. Another question was how to define landmine victims. Again this was a consultative process with partners in the process. LSN’s proposal received acceptance, “[h]uman beings impaired due to physical, psychological, social or economic harm or injury caused by the explosion of landmines; family members and/or dependants of the mine-disabled or mine fatalities; all human beings affected by the existence by mines who, due to the threat of mines, could not or cannot pursue their normal activities.”
25. The recent Nairobi Summit was convened to review the past five years of Mine Ban Convention implementation, as well as design an Action Plan for the next five years. Consistent with the principle of partnership, the ICBL, through its national campaigns, coordinating body, Working Group Chairs, and researchers, had substantial input into the drafting of these documents, providing the on-the-ground understanding of the challenges that remain.
26. For the first time, there is now a comprehensive overview, agreed to and adopted by States Parties, of how the Mine Ban Convention has been understood and implemented. The Nairobi Summit Review Conference showed that there is a better understanding of survivor assistance. We now have a minimum standard and base-line for future measurement: we know what survivor assistance is, who is responsible for it, who is responsible for assisting with it, and where it rests vis-à-vis broader health care, social services and human rights contexts.

¹⁷ The use of social and economic reintegration can also be found in the Convention on the Rights of the Child (CRC) and its two Optional Protocols. Article 39 “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” Article 6(3) of the Optional Protocol to the CRC on the involvement of children in armed conflict provides “States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.” In addition, Article 7(1) provides “States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.” Article 9(3) of the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography provides “States parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.” In addition, Article 10(2) provides “States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

27. The Action Plan has 11 commitments under victim assistance and the challenge will be to create concrete measurables of when and how to achieve these commitments.¹⁸

CONCLUSION

28. The Mine Ban Convention process has been viewed by some as a singular event in international law making; the speed; the will; the partnership, and the success. However, Lloyd Axworthy has stated that that “[t]he success of the landmines campaign was a not a unique event, never to be replicated in the world of diplomacy . . . The landmines campaign was a harbinger of the new multilateralism; new alliances among states, new partnerships with non-state actors, and new approaches to international governance.”¹⁹
29. From a survivor right’s perspective, Axworthy’s statement accurately represents the critical success factors: partnership and participation. The Mine Ban Convention was initially conceived as a typical disarmament treaty with the focus on a ban of landmines. Accordingly, the early Convention drafts were silent on the issue of survivor assistance. It was only the well-orchestrated efforts of survivors themselves, reaching out to NGO and government allies, that led to the inclusion of a provision on survivor assistance. Absent the active participation of survivors in the treaty process, the resulting agreement would likely have remained focused on a narrow ban alone, missing the opportunity to develop a true international and humanitarian framework for addressing the landmine scourge.
30. Survivors had much to gain and much to contribute through participation in the Mine Ban Convention process. Coalition building and negotiating with governments, while representing the broader victim assistance community in the process, enhanced the quality of the ultimate legal instrument through ensuring coverage of the perspective of this important group.
31. The process of developing the Mine Ban Convention has contributed to the prioritization of the landmine issue, including the rights of landmine survivors, in national and international agendas, which in turn stimulated awareness. This helped contribute to a shift in thinking about landmine victims as victims, to people who have survived and must be integrated. The text, combined with an intense effort at the implementation level, has helped direct attention to survivor issues, including resources to programming in this area. The consequent policy design and development around the meaning of survivor assistance has helped us give content to and strengthen the concept of a rights-based approach to social and economic reintegration.
32. Furthermore, the process has had transformative benefits, such as providing opportunities for governments, NGOs, advocates and the specific community concerned, to build knowledge and develop networks and coalitions in pursuit of a common goal.
33. The Mine Ban Convention, and the process that surrounds it, presents an interesting model from which other standard-setting processes may draw inspiration, both in seeking to build coalitions to participate in the drafting of an instrument and to oversee its long-term implementation.

¹⁸ The priorities are to: Establish an effective national mine victim data collection capacity, provide health care services necessary to meet the needs of survivors; provide physical rehabilitation services necessary to meet the needs of survivors; provide social and psychological support services to meet the needs of survivors; support the economic reintegration of survivors; and establish, implement and enforce the necessary legal and policy framework to meet the needs of mine victims.

¹⁹ Towards a New Multilateralism, in *To Walk Without Fear: The Global Movement to Ban Landmines*, 448 (1998, Oxford University Press).