

-- DRAFT --

GUIDE TO FACT-FINDING MISSIONS

UNDER THE OTTAWA CONVENTION

Presented for consultation at the
Fourth Meeting of States Parties to the
1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of
Anti-personnel Mines and on their Destruction
(Ottawa Convention)

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- United Kingdom (Landmines Act 1998, sections 13-18)
- New Zealand (Anti-Personnel Mines Prohibition Act 1998, sections 17-24)
- South Africa (Anti-Personnel Mines Prohibition Bill, sections 14-26; draft legislation currently before Parliament)

Annex 4: Other treaties with fact-finding provisions*

PART 1: INTRODUCTION

Fact-finding under the Ottawa Convention

Under Article 8 of the 1997 Landmine Ban Treaty (Ottawa Convention), a fact-finding mission may be authorised by a meeting of states parties to collect information to help resolve a compliance concern—including alleged non-compliance. States parties may also volunteer to receive a fact-finding mission as a confidence-building measure. The fact-finding team would be drawn from a list of experts nominated by states parties and maintained by the UN Secretary-General. The team would report to the Secretary-General, who would in turn report the outcome to states parties for their consideration and possible further action.

Why should states parties prepare in advance for a fact-finding mission?

While most states parties are never likely to be called on to receive such a mission, engaging in advance planning and preparation for such an eventuality demonstrates a state party's commitment to the implementation of all aspects of the Ottawa Convention. It also serves to uphold the principles of non-discrimination and reciprocity, indicating that state's willingness to accept a fact-finding mission on its own territory, while at the same time expecting that other states will be similarly willing. Advance preparations for receiving a fact-finding mission do not imply that a state is engaging in, or will ever engage in, activity contrary to the treaty or that it believes a fact-finding mission will ever be dispatched to its territory. On the contrary, advance preparations indicate that a state party is confident that its compliance record will withstand scrutiny by such a mission and that they have nothing to fear.

On a more practical level, advance preparations will enable a fact-finding mission, if one is ever dispatched, to carry out its mandate as effectively and efficiently as possible. It is in the interests of both the fact-finding team and the receiving state that a mission not be unnecessarily delayed or prolonged. A significant side-effect of advance planning for a fact-finding mission is increased awareness of the Ottawa Convention among government officials, municipal authorities, military personnel and the general public.

About this guide

This guide is intended to assist states parties in their advance planning and preparations for receiving a fact-finding mission under Article 8 of the Ottawa Convention, as well as suggesting

activities they may wish to carry out immediately prior to, during and after receiving an actual mission.

The guide also provides information on how fact-finding missions relate to the rest of the Ottawa Convention and when and how such missions may be initiated and organised. The guide should be of use to international and national officials responsible for implementing the Ottawa Convention, as well as others in the landmine ban community.

The guide draws on discussions with states parties and non-governmental organisations (NGOs), recommended practice developed by states for fact-finding missions under this and other treaties, and VERTIC's own expertise and experience with regard to inspection arrangements in a variety of treaty regimes.

PART 2: FACT-FINDING MISSIONS IN CONTEXT

Fact-finding missions are just one of the mechanisms provided for in the Ottawa Convention's compliance system. This part of the report places fact-finding missions in the context of the other provisions of the treaty and describes the steps that are likely to be taken before fact-finding missions are resorted to.

The treaty's compliance system

In order to be able to determine whether states parties are complying with their obligations under the convention, information must be collected and scrutinised and any compliance concerns resolved. The treaty's official compliance system comprises the transparency measures (annual reporting) under Article 7 and the mechanisms envisaged under Article 8 for clarifying compliance concerns and dealing with any proven case of non-compliance. A disagreement between states parties about the application or interpretation of the treaty may be settled using the dispute settlement procedure provided for in Article 10.

Naturally, states parties can unilaterally collect information on the compliance of other states parties and either present it to all other states parties or seek to resolve their compliance concerns through bilateral or other discussions. Monitoring of treaty implementation by civil society, particularly Landmine Monitor, has also become an established and valued element of the compliance process. States parties may also call on the good offices of the International Committee of the Red Cross (ICRC) to help resolve a compliance concern.

Types of non-compliance

It is recognised that some states parties may have difficulty fulfilling all of their treaty obligations despite their best efforts. This particularly applies to meeting treaty deadlines for the destruction of anti-personnel landmine stockpiles. Such failure to comply may be due to competing pressures on their financial resources, technical expertise or personnel. In such circumstances each state party has a right to request and receive assistance, where feasible, from other states parties. The treaty also allows states that are unable to destroy all of the anti-personnel mines in mined areas within 10 years of entry into force to request an extension of up to 10 years. States may also transfer anti-personnel landmines to another state for destruction.

Many states and international and non-governmental organisations offer assistance to states parties to help them meet their treaty obligations (see Box 1). Some states may not sufficiently demonstrate their compliance due to inadvertence or lack of awareness of all of their obligations. These states should be advised of their obligations and the availability of assistance so that they can demonstrate their compliance with the treaty in future.

While minor concerns may be resolved without resort to the treaty's clarification mechanisms, states parties have a right to use the treaty mechanisms when this is appropriate and have a duty to co-operate with their operation should they be used. Regrettably, there may be instances where a state intentionally violates fundamental treaty provisions relating to prohibited activities. States might also be complicit in non-compliant activity by other states or non-state actors within or outside their territory. If these states fail to credibly demonstrate their compliance or there is convincing evidence that serious non-compliance is occurring in their territory states parties must address the situation in order to preserve the integrity of the treaty. The treaty envisages a series of steps of increasing political importance for addressing serious compliance concerns.

Good offices of the UN Secretary-General

Any state party may informally approach the UN Secretary-General requesting him to exercise his good offices to assist in the resolution of any concern relating to treaty implementation or compliance. States may wish to use this mechanism before invoking the other mechanisms in Article 8. As an impartial and trusted third party, the UN Secretary-General and the UN officials he appoints to act on his behalf can assist the parties to resolve the matter by facilitating communication or negotiation between them. The aim of the good offices function is to resolve matters cooperatively, amicably and in the least threatening and intrusive way.

Request for Clarification

The treaty provides that any state party may request information from another state party to resolve a concern relating to compliance. These requests are submitted through the UN Secretary-General. The treaty requires the requesting state to provide 'all appropriate information' relating to their query. All states parties are under a duty not to make unfounded requests and are obliged not to abuse this mechanism.

Box 1: Sources of assistance in meeting treaty obligations

All aspects of treaty implementation

Implementation Support Unit Telephone: +41 22 906 16 60
Geneva International Centre Fax: +41 22 906 16 90
for Humanitarian Demining (GICHD) Email: k.brinkert@gichd.ch
7bis, avenue de la Paix
P.O. Box 1300
CH-1211 Geneva 1,
Switzerland

National implementation measures

Legal Advisor Telephone: +41 22 734 60 01
Mines/Arms Unit Fax: +41 22 733 20 57
Legal Division Email: idaoust.gva@icrc.org
International Committee of the Red Cross
19, avenue de la Paix
CH-1202 Geneva
Switzerland

Article 7 transparency reporting

Guide to Reporting under Article 7 of the Ottawa Convention, VERTIC, London, 2001.

This guide is available in all UN languages as UN document number APLC/MSP.3/2001/INF/1 and on the UNDDA's Ottawa Convention website <http://disarmament.un.org/MineBan.nsf>

Mine Awareness, Mine Clearance, Stockpile Destruction and Victim Assistance

Treaty Implementation Officer Telephone: +1 212 963 1875
United Nations Mine Action Service (UNMAS) Fax: +1 212 963 2498
United Nations Email: seckj@un.org
FF-360, Third Floor, 304 East 45th Street
New York, NY 10017, U.S.A.

UNMAS maintains the Mine Action database of resources <http://www.mineaction.org>

The requested state must respond within 28 days, providing ‘all information which would assist in clarifying’ the query. In situations where there is no response, or where the information does not clarify the query, the requesting state may forward the matter, through the UN Secretary-General, for consideration by the next Meeting of States Parties (MSP).

The UN Secretary-General will then inform all states parties that the matter has been submitted to the next MSP and provide them with all information relating to the request. The requested state may provide further information to clarify the concern.

Convening a Special Meeting of States Parties

In situations where the suspected non-compliant activity might be a serious violation of the treaty or where the prohibited activity is continuing, states parties should convene urgently to consider all available information and to take appropriate action.

The treaty provides that a Special Meeting of States Parties may be called for by the state, or states, which made the request for clarification. In this situation, the UN Secretary-General will notify all states parties of the proposal and provide them with related information provided by the requesting and requested state(s). States parties must respond within 14 days indicating whether they support the convening of such a meeting. If at least one-third of states parties respond in favour, the UN Secretary-General will convene the meeting within a further 14 days. In order for this meeting to make valid decisions, a majority of states parties must attend and participate in any votes taken.

At this meeting states parties will consider all information put forward in deciding whether to take action to resolve the matter, including steps to redress non-compliance. States parties are required to try to reach any decision at the meeting by consensus. However, if this is impossible, a decision may be made by a majority of the states parties present and voting.

Among the possible steps that the meeting may take is the authorisation of a fact-finding mission if further information is required. This can only be done by the decision of a majority of states parties present and voting. It is unlikely, however, that a fact-finding mission would be dispatched in a case where a state party has shown a willingness to comply with the treaty, especially if it has sought assistance to do so.

Redressing non-compliance

In considering action to redress non-compliance, states parties will consider all available information, including the report of a fact-finding mission. In cases where it is clear that the state is not complying with its obligations, states parties will request it to take measures to address the compliance issue within a specified period of time. This can include co-operative measures provided for under Article 6 and procedures available under international law. The state must report to the Meeting of States Parties, through the UN Secretary-General, on all measures taken in response to any request to address the compliance issue. If compliance is not achieved, a meeting of states parties may recommend further procedures 'in accordance with international law'. Ultimately, as in other cases of severe non-compliance with an international treaty, the UN Security Council may be called on to consider the matter.

PART 3: FACT-FINDING MISSIONS IN PRACTICE

The Ottawa Convention's provisions relating to fact-finding missions

At the same time as a meeting of states parties authorises a fact-finding mission, the UN Secretary-General is likely to be tasked, in consultation with the state receiving the mission, with appointing up to nine experts to serve on the fact-finding team. The experts will be drawn from the standing roster of experts maintained by the Secretary-General (see below). One of these experts will be appointed as the mission's leader. The mission will be mandated to collect information in places where the non-compliance is alleged to have occurred, as well as any other places directly related to the compliance issue. (All these places will be within the jurisdiction or control of the state receiving the fact-finding mission.)

The state will receive at least 72 hours' notice of the mission's arrival. It is envisaged that the mission will arrive as soon possible after this time. The team may stay at any location it is inspecting for up to 7 days and it may remain in the state's territory for up to 14 days. The mission leader will report its findings to the UN Secretary-General, who will convey the report to the Meeting of States Parties that authorised it.

While no fact-finding mission has yet been conducted under the Ottawa Convention, many states parties will have experience of fact-finding practices under other treaties. Examples are to be found in Annex 4.

UN Secretary-General's standing roster of experts

One of the most important contributions that states parties can make to the Ottawa Convention's compliance process is the submission of names of experts for the UN Secretary-General's standing roster. All states parties may submit nominations. A wide range of skills is likely to be required, including the following:

- Information technology/data analysis and processing
- Explosives/ordnance experience, including mine clearance, detection, identification, mapping and marking
- Familiarity with military procedures

- Field-work and interviewing experience
- Interpretation and translation skills
- Negotiation skills.

The UN Department of Disarmament Affairs (UNDDA) has prepared a template form which states parties' may use to submit details of their national experts for the roster. The UNDDA requests this information from states parties each year, following a Meeting of States Parties. Based on these submissions the UNDDA updates the roster and circulates it to states parties at the next Meeting of States Parties. States parties are therefore encouraged to review their previous submission and revise them to ensure that the roster contains up-to-date information. This template form, as well as information on where to send completed forms, is included in Annex 2.

It would be helpful if these experts were available on short-notice and capable of being released from their current duties for extended periods. However, this should not adversely affect their nomination, as the UN Secretary-General will discuss specific requirements with potential mission members should the need arise. It would be helpful if states supply appropriate contact details so that the UN Secretary-General can consult with them urgently. States that have appointed a national co-ordinator for the treaty may also wish to provide this information to the UNDDA, to assist the UN Secretary-General's task of appointing experts quickly.

Where expertise required for a particular mission is not available on the list of experts, the UN Secretary-General is likely to issue a call to states parties for such expertise.

While all experts on the roster may be appointed to any mission, there may be exceptions. Experts who are nationals of the state or states that proposed the meeting to consider the compliance concern, as well as those of any state affected by the alleged non-compliance, may not be appointed to the mission. In addition, the state receiving a mission may declare that it will not accept a particular expert or experts on the UN Secretary-General's list. However, this declaration must be transmitted, in writing, to the UN Secretary-General before the mission personnel are appointed.

While experts serving on fact-finding missions are nominated by states parties, they do not represent their state while serving on the mission. Instead, experts are appointed in their personal capacity to serve the UN Secretary-General for the duration of the mission. This requires mission members to adhere to the responsibilities of UN personnel. These include the duty to act impartially and to follow instructions from the Secretary-General, not their own governments, in the conduct of their duties. They are also obliged to seek only information relevant to the performance of the mission mandate and to treat as confidential any information supplied in confidence.

States parties should not be discouraged from submitting qualified experts for the list due to an inability to provide financial or equipment support should its experts be appointed. As costs relating to fact-finding missions are borne by all states parties, states submitting experts do not carry an additional financial burden. All states are encouraged to submit experts to the list to help the Secretary-General appoint a geographically balanced range of experts.

Fact-finding mission equipment

States may wish to provide their own nationals serving on a mission with safety equipment and, if requested, nationals of other states serving on the mission. This may include Personal Protective Equipment and emergency medical equipment.

States parties may also assist a fact-finding mission by providing other equipment if requested by the Secretary-General. Ideally, the UN should have its own equipment ready for immediate dispatch. However, this will depend on the particular requirements and geographic location of a specific mission. Equipment supplied by the UN itself could include:

- Information technology (cameras, computers, Global Positioning System, satellite telephone communications, tape recorders, video recorders)
- Mine detection equipment
- Mine clearance equipment
- UN tamper-proof tags and seals.

When a fact-finding mission might be authorised

While the treaty itself does not specify the precise circumstances under which fact-finding missions might be authorised, it is only likely to be in situations where the alleged activity would be a significant breach of the treaty, where there is little information available to confirm or refute the alleged violation and/or where the state has not co-operated in clarifying the matter.

A fact-finding mission might be authorised in cases where a state party is alleged to have:

- used anti-personnel landmines
- produced anti-personnel landmines
- retained a large, useable stockpile of anti-personnel landmines
- not adopted measures to stop and prevent other states or non-state actors conducting non-compliant activities on its territory
- diverted or misused mines retained for training purposes as permitted under Article 3 of the convention, and/or
- supported other states or non-state actors in activity not permitted under the treaty.

The mandate

The treaty does not specify how a fact-finding mission's mandate is to be determined. Based on practice in other cases, the UN Secretary-General may be requested by the Meeting of States Parties to propose a draft mandate, given his impartial role and his experience in drafting similar mandates under other agreements. Alternatively, a drafting group of states parties may be established to prepare a mandate for consideration by the plenary.

The mandate will likely include information on the nature of the compliance concern. Ideally, it will specify one or more specific locations for inspection, although the mission leader should be allowed the freedom to nominate further locations during the mission. The mandate should also specify the fact-finding mission's point of entry into the state's territory.

Appointing, assembling and dispatching the mission

As provided for in the treaty, the meeting of states parties is likely to request the Secretary-General to facilitate the conduct of the fact-finding mission. This is likely to include assembling the fact-finding team for pre-mission briefing and familiarisation, identifying and obtaining appropriate equipment for the mission and arranging for the mission's transportation to and from the state concerned. Although the treaty is silent on this point, it is likely that the Secretary-General will be responsible for notifying the receiving state of the arrival time and point of entry of the mission. The mission leader is responsible for notifying the state in advance of the equipment that the mission intends to use. In addition to giving the receiving state an idea of what to expect, it should also ensure clearance of the equipment through customs.

The receiving state's responsibilities

While the treaty obliges all states parties to cooperate with a fact-finding mission, the state party receiving a mission has specific responsibilities. The state must ensure that the mission is efficiently received at border control. It is also obliged to allow the mission to bring any equipment necessary into its territory. It must provide appropriate transportation and accommodation for the mission and ensure the maximum security necessary for the mission while it is in territory under its jurisdiction or control. It is also required to grant the mission access to all areas or installations under its control where information relevant to the compliance concern could be expected to be collected. In addition, it is obliged to make all efforts to ensure that the mission is given the opportunity to speak with all relevant personnel.

Finally, the receiving state party is required to accord fact-finding personnel the privileges and immunities detailed in Article VI of the 1946 Convention on the Privileges and Immunities of the United Nations (see Box 2 for details)

States parties' rights

The treaty also accords the receiving state rights so that it may maintain the confidentiality of equipment, activities or locations not related to the Ottawa Convention.

Box 2: 1946 Convention on the Privileges and Immunities of the United Nations

Article VI

Experts on missions for the United Nations

Section 22

Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connexion with their missions. In particular they shall be accorded:

- a. immunity from personal arrest or detention and from seizure of their personal baggage;
- b. in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- c. inviolability for all papers and documents;
- d. for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- e. the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- f. the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23

Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Managing access

The receiving state party has the right to make arrangements regulating access to certain equipment, information or areas. These arrangements relate to what the receiving state party considers necessary for:

- The protection of sensitive equipment, information or areas
- The protection of any constitutional obligations the receiving state party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- The physical protection and safety of fact-finding team members.

If a state chooses to manage the mission's access for these reasons, it must make every reasonable effort to demonstrate compliance with the convention through alternative means. By employing recognised managed access techniques to certain equipment, information or areas, states parties should be able to adequately demonstrate their compliance. Managed access can result in effective verification by the mission and adequate controls on sensitive equipment, information or areas by the receiving state.

Examples of managed access techniques that states may wish to adopt include:

- Switching off computers in areas where the mission will have access
- Negotiating a number of areas the mission will access within a sensitive location
- Negotiating a number of storage containers the mission will access within a sensitive location
- Shrouding equipment or components that are not relevant to the Ottawa Convention.

Managing access to locations

At a large site with many potential areas for inspection, the mission leader and national co-ordinator may negotiate a limited number of areas that will be inspected within the location, rather than seeking to inspect the entire site. In this way the receiving state may still demonstrate transparency and co-operation with the mission, while managing its own time and resources in facilitating access.

Managing access to equipment

Likewise, this technique can be applied where there are a number of similar containers that the mission might request to inspect. A mission member and state official may agree on the number of containers that may be opened for inspection. A mission member should choose which specific ones will be opened. If the container cannot be opened on the spot, perhaps for safety reasons, it may be sealed and tagged and its description and tag number noted and agreed by a mission member and an accompanying state official. The state should indicate where and when the mission may view its contents. At that time, the container and its seals should be checked by both the mission member and a state official to ensure it is the same container and that it has not been tampered with, before it is opened in their presence.

Managing access to sensitive equipment or components

It is possible to allow the mission access to military equipment without revealing sensitive information. Since the mission is only looking for information relating to compliance with the Ottawa Convention, it requires access to equipment, information or areas relating to anti-personnel landmines, not other weapon systems. However, as a state may attempt to disguise storage of anti-personnel mines by mixing them with other weapons, the team may request access to storage containers of other weapon systems. To protect any sensitive equipment or weapon components when these containers are opened, the state may shroud parts of the equipment. It should still be possible for the mission to determine whether the container is also being used to store anti-personnel landmines.

Confidentiality of information

Since a fact-finding mission should be concerned solely with collecting information relevant to non-compliance with the Ottawa Convention, any information collected inadvertently which is irrelevant to the mission's mandate should be disregarded. It will not appear in the report presented to states parties by the UN Secretary-General. In addition, any information supplied to the fact-finding mission in confidence and which is not related to the subject matter of the fact-finding mission will be treated on a confidential basis.

PART 4: ADVANCE PREPARATIONS FOR RECEIVING A FACT-FINDING MISSION

Some activities that will facilitate the conduct of a fact-finding mission may be carried out in advance of a mission being dispatched. It may be necessary to implement these gradually, depending on the availability of resources or necessary assistance.

Appointing a national co-ordinator or national authority

States may find it helpful to appoint a national co-ordinator or national authority to act as a focal point for all activities relating to the treaty. Alternatively, the state may decide to allocate these additional tasks to a person or unit with responsibilities for co-ordinating implementation of the other treaties. Once the preparatory activities described below have been carried out, this post may fall into abeyance until a mission is dispatched to its territory. Ideally, the co-ordinator should be located within a government department or ministry as they will be need to have access to official personnel, areas and documents in the course of their work.

Suggested role of a national co-ordinator

The national co-ordinator could act as a liaison between all organisations that might be involved in a fact-finding mission. This could include co-ordinating advance planning and preparations, as well as activities immediately prior to an actual fact-finding mission. A national co-ordinator could also liase on follow-up action after a fact-finding mission. Further details on the procedures and activities that states may carry out are contained in the Parts 5 and 6 of this guide.

A decision on which organisations in the receiving state may be involved in a fact-finding mission necessarily depends on the terms of the mission's mandate. However, it is likely to include government departments and agencies, branches of the armed forces, private industry and municipal authorities.

Box 3: Organisations that might be involved in a fact-finding mission

Government departments

Agriculture, Commerce/Industry, Defence, Environment, Foreign, Health, Interior/Home, International development assistance, Legal affairs/Justice and Trade

Government agencies

Border commission, Customs

Municipal authorities

Police, Health

Private industry

Manufacturers of defence materiel, especially munitions

Other organisations

National Mine Action Centre, UN Mine Action Centre, International Committee of the Red Cross, international or national NGOs involved in mine action

Other organisations may also be involved.

Adopting national implementation measures to facilitate the conduct of fact-finding missions

Each state party is required to adopt national implementation measures, under Article 9 of the treaty, to enforce the treaty's prohibitions in its territory. It may also be necessary to adopt national measures to enable the state and its officials to fully co-operate with a fact-finding mission. The type of measure adopted by each state depends on its constitutional requirements, but is likely to involve adopting legislation, regulations or administrative orders and amending handbooks for instruction of the military.

Treaty obligations that may require the adoption of national measures:

- According fact-finding mission personnel the privileges and immunities specified in the treaty (Article 8(10)). (See box 2 for details of these privileges and immunities).
- Receiving, transporting and accommodating the fact-finding mission (Article 8(11))
- Ensuring the security of the mission to the maximum extent possible (Article 8(11)).
- Allowing the fact-finding mission to bring equipment into the State's territory (Article 8(12)).
- Enabling the mission to speak with those who might provide relevant information (Article 8(13))
- Granting the mission access to all areas and installations under its control where relevant information might be found (Article 8(14)).

Obligations contained in Article VI of the 1946 UN Convention on the Privileges and Immunities of the United Nations require the mission to be accorded:

- Immunity from personal arrest or detention and from seizure of their personal baggage
- Immunity from any legal process for any communication, written or oral, or acts done by them in the course of the performance of their mission
- Inviolability for all papers and documents
- The right to use codes and receive papers or correspondence by courier or in sealed bags in their communications with the United Nations
- The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions
- The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

In addition, states may wish to adopt national measures to:

- Facilitate the mission's access to private property where relevant information might be found
- Provide for national inspectors who might accompany mission personnel
- Apply managed access arrangements to areas under inspection.

Many states parties have already included these provisions in their national legislation to implement the treaty. Information on national laws adopted are included in the Article 7 transparency reports available on the UN Department for Disarmament Affairs' website <http://disarmament.un.org/MineBan.nsf>. States parties may wish to consult examples of legislation adopted by other states parties in drafting or amending legislation, especially states with which they share a similar legal system or language. Some legislation is available on the internet while states may be able to provide paper copies on request.

Examples of legislative measures are contained in Annex 3. While VERTIC does not endorse these as model laws, states may find them useful in drafting measures applicable to their state.

Identifying areas or locations where information relevant to a fact-finding mission mandate may be expected to be found

It may be helpful for states parties to identify in advance which sites a fact-finding mission might be mandated to visit. These will be sites where information relating to a compliance concern might be expected to be found. Examples include military bases, munitions storage areas, military equipment production facilities or former conflict areas.

By identifying potential sites, states can establish special procedures to facilitate the fact-finding mission's visit to the site. Examples include: training personnel at those sites, identifying any special requirements for the security of the team, identifying means of transportation, identifying suitable accommodation, identifying appropriate base room facilities for each potential inspection site.

Identifying potential points of entry and exit for a fact-finding mission

As states receiving fact-finding missions have a responsibility to receive, transport and accommodate mission members, it may be helpful to plan the basic logistical arrangements for these activities in advance. Identifying where a mission might arrive and depart from the state's territory will assist in planning for the conduct of a mission. The mission is likely to arrive and depart together through a state's international airport. For states with more than one major airport, the one nearest to areas or installations where fact-finding might be expected to take place is likely to be chosen. States may wish to provide standing advice to customs and protocol officials at these potential points of entry and exit regarding their responsibilities if a fact-finding mission arrives.

PART 5: PREPARATIONS ONCE A FACT-FINDING IS AUTHORISED

Responding to the UN Secretary-General's notification

Following the authorisation of a fact-finding mission, the receiving state will receive formal notification from the UN Secretary-General. The notification is likely to include the mission's mandate, the names of the mission members and the mission leader, as well as its expected date of arrival. The state should respond to the UN Secretary-General's communication as soon as possible so as not to delay the mission's fulfilment of its mandate.

Logistical arrangements

As the state receiving a fact-finding mission is responsible for receiving, transporting, accommodating and ensuring the physical protection and safety of fact-finding mission personnel while they are in its territory, some logistical activities must be organised once a mission has been authorised. These may be facilitated by the national co-ordinator for Ottawa Convention implementation if such a person has been appointed in advance. Alternatively, an ad hoc co-ordinator may be appointed for this purpose.

Visa requirements

The state must ensure that any necessary visas for mission members' entry to and exit from its territory are processed in advance of the team's arrival.

Receiving the fact-finding mission at the point of entry

The point of entry into the state's territory is likely to be stated in the UN Secretary-General's notification. The state will need to ensure that appropriate reception, customs and protocol arrangements are made before the team arrives on the date specified. This will likely involve the state's customs and diplomatic protocol staff, who will need to be informed of the mission's date and place of arrival as well as of their responsibilities in receiving the mission.

Transportation and accommodation

Once the point of entry and initial location for inspection have been identified, the state can arrange for suitable transportation between these areas and the accommodation facilities to be used by the mission.

Security measures

The state must ensure that any necessary security measures for the physical protection and safety of mission members are put into effect. In addition, adequate measures to protect the safety of the mission's equipment may be needed, subject to the mission's right to control the equipment at all times and to preserve the integrity of any data collected.

Privileges and immunities

The mission members must be assured of the privileges and immunities that they are due under the treaty (see Box 2). Any additional measures that may need to be adopted to ensure these rights are accorded should be undertaken before the mission arrives.

Readying personnel for the team's arrival

The state may wish to conduct pre-mission briefings for its personnel who will be involved in receiving, transporting or accompanying mission members. Such personnel will include customs and protocol staff at the point of entry, defence personnel accompanying the mission and personnel working at the location or locations stated in the mandate. The national co-ordinator may arrange these briefings. Briefings may include information on the mandate that the mission is conducting, their responsibilities under the treaty during the mission and any techniques for managing access to be used at specific locations.

Preserving inspection locations

The state should ensure that the inspection locations stated in the mission's mandate are not disturbed prior to the mission's arrival. This will help demonstrate the state's transparency and compliance with the treaty. Whether or not such disturbance is intended to remove incriminating evidence, tampering with sites may imply that intention. Specific arrangements will depend on the mandate of a particular mission and the sites for inspection. Where a facility is designated for inspection, the state may monitor any movement of personnel or materiel exiting the facility and provide a log of this information to the mission after it has entered on-site. Once the mission has arrived, it may be invited to take over exit monitoring procedures until it has finished its tasks at that inspection site.

Where areas suspected of being recently sowed with mines are to be inspected, these areas should be marked off and the local population warned about its existence.

Preparations should be made for providing a secure base-room where the mission may organise its inspection activities. This room should have electricity outlets and telephone points.

Preparing briefing sessions for the fact-finding mission's arrival

The state may also wish to prepare a briefing session to present information to the mission on its arrival at the location. This may include health and safety information at the location, details of past and present activities carried out at the site, information on the duties of key personnel at the site and site orientation information. Ideally, such information should be provided in a briefing pack to mission members in advance of their arrival. This will speed the mission's work at the site and assist in the completion of their activities within the timeframes specified in the treaty. Any such activity must not, however, be used to frustrate or hinder the conduct of the mission.

PART 6: HOSTING A FACT-FINDING MISSION

Reception at point of entry

The state's customs, immigration and protocol officials should ensure that the fact-finding mission personnel and equipment are processed through checkpoints at the point of entry without delay. Appropriate transportation for the team and all its equipment should be available immediately to transfer the mission and all of its equipment to their first destination.

General briefing

While not provided for in the treaty, it would be helpful if the receiving state provided a short, general briefing to the mission on arrival indicating what measures they have put in place to facilitate the mission. This would include information on transportation, accommodation and security arrangements for mission members and their equipment, details of the locations for inspection, and a report on the weather conditions at the inspection sites. This information will inform the mission leader's decision as to their first destination.

Arrival at inspection site

As the fact-finding mission will be accompanied to the inspection site by state officials, these officials should facilitate procedures for the mission's rapid entry on site. These will depend on the type of site being inspected. For example, where a facility is designated for inspection, visitors may be required to identify themselves and follow signing in and out procedures. The mission's team leader will have the mandate signed by the UN Secretary-General, while individual mission members will hold appropriate identification for these purposes. If the inspection site is a remote area suspected of being mined, there may be no formal procedures on arrival. The location of any perimeter marking, or identification of the extent of the mined area should be conveyed to the mission.

Site briefing

While not provided for in the treaty, in practice state officials may wish to hold a briefing session for the fact-finding mission before it commences its inspection activities. This is another opportunity where the state may demonstrate its co-operation in assisting the fact-finding mission as well as providing information on its compliance. Information that might be included

in a briefing will depend on the type of site that the fact-finding mission is inspecting. It may include:

- On-site procedures to protect health and safety
- Regulations on the use of electronic equipment in explosives storage areas
- Site facilities, layout, history and operations
- An introduction to key on-site personnel
- An official statement by the national co-ordinator on the state's position regarding the compliance concern.

The mission leader and the leading state official should then agree basic formalities such as what time the inspection is deemed to have commenced and the timing of planning and daily facilitation meetings.

Planning meeting

Following a site briefing, the mission may meet to prepare an initial inspection plan. The mission will likely present this to the state in a planning meeting where the two sides will discuss initial inspection activities and the provision of documents requested by the mission.

Co-operation during the inspection

Throughout the mission, the state will have opportunities to provide information and respond to questions from mission members, including during site inspections. As mission members may separate into sub-teams, the state may wish to provide appropriate officials to accompany each sub-group. Such officials should be expected to be able to answer the mission's questions. It might be appropriate for accompanying personnel to include state officials, with knowledge of the state's policies, and on-site officials, with knowledge of the history and function of the site and any weapon systems stored there. State officials need not provide information on an issue unrelated to its compliance with the Ottawa Convention. However, refusal to provide information to relevant questions may be seen as demonstrating a lack of transparency.

Officials accompanying the mission would also be expected to assist in facilitating the mission's access to locations within a site and to implement any managed access procedures that have been explained to the mission. These officials may also facilitate access to any off-site locations to which the mission has requested, and the state has agreed, access for fulfilling the mission's mandate. Additionally, the mission may require access to private property where information relating to compliance with the convention might be found. The mission might be expected to provide evidence supporting its request for access to these other areas. Subject to its constitutional obligations to its citizens, the state should assist the mission's access to those areas. The assistance of local police may be needed to ensure access is in accordance with the state's constitutional obligations. Some states parties have already provided for this possibility in their domestic legislation implementing the treaty. See Annex 3 for examples of these provisions.

Facilitation meetings

The mission leader and state officials may agree to hold facilitation meetings throughout the mission's visit for the purpose of informing each other about the conduct of the mission, requesting and providing information and clarifying queries on information collected. These meetings may be held as required, or may be scheduled to convene at certain times each day. Those attending the meeting may include the mission leader, mission personnel not undertaking inspection duties at the time, the leading state official or national co-ordinator, other state officials and key on-site personnel.

These meetings are an opportunity for the mission and state officials to clarify any queries relating to information collected during its inspection activities. Also, the mission may choose to request documents from state officials that may be held on-site or within government departments or agencies. Where this relates to detailed records of Ottawa Convention-related munitions stored at a facility, the state may still provide appropriate information without revealing specific information about other equipment not related to the Ottawa Convention. For example, it may provide the mission with a generic list of munitions held and provide detailed information on those items which may be related to the compliance concern.

It is suggested that, in order to avoid any ambiguities that may arise relating to a request or the provision of information, the mission and state officials agree on formal information exchange procedures. This may be especially appropriate where individual mission members and state officials refer to equipment or military systems by different names, or to avoid any imprecision

caused by different languages being spoken by mission members and state officials. It would be helpful if all those participating in such meetings express themselves clearly and in a measured way, especially if interpreters are involved. Requests for information by the mission and responses by state officials may be exchanged on official paper and allocated a serial number. With the integrity of information in these exchanges assured, its veracity in the final report cannot then be challenged or refuted.

Mission members and state officials may also use these meetings to discuss access to specific areas for inspection and any managed access arrangements that may be employed. Where access is restricted in this way, the state must make every reasonable effort to demonstrate compliance with the convention through alternative means.

Final briefing

Once the mission has completed its inspection activities at each location it might be appropriate for mission members and state officials to hold a final briefing. This will provide a further opportunity for the mission to bring outstanding queries to the state's attention and for the state to respond to them. The state may, of course, provide further information to a reconvened meeting of states parties after the mission has left its territory.