

**Report to the meeting of The Standing Committee on the General Status and Operation  
of the Convention (May 31, 2002):**

**The Continuing Dialogue on the Facilitation and Clarification of Compliance**

**Purpose and Background:**

The purpose of this paper is to provide an update regarding developments with respect to the Continuing Dialogue on the Facilitation and Clarification of Compliance since the February 1, 2002 meeting of the Standing Committee on the General Status and Operation of the Convention. The co-chairs' report of that meeting noted, that: "There was a general agreement that the paper submitted by Canada could be the basis for further discussions."

The Canadian non-paper that was considered at the meeting of February 1, 2002 included 4 broad areas for discussion as set out below:

1. Compliance, implementation and cooperation:

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

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

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

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

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

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

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

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

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

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

3. Lessons learned from other fields:

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

*Are there lessons to be learned from other areas such as environment and human rights?*

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

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

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

**Update on activities since February 1, 2002**

1. Informal discussion held on May 17 in Geneva

On May 17, Canada hosted an informal discussion in Geneva to exchange views on the basis of the questions contained in the Canadian non-paper. States Parties, the ICBL, the ICRC and the United Nations were invited in accordance with the point made by some at the last Standing Committee meeting that discussions on the facilitation and clarification of compliance should be open to all States Parties. The discussion featured the participation of a wide range of States Parties and reinforced the spirit of cooperation which prevails on this matter.

## 2. Enhancements to the Intersessional Programme

The Coordinating Committee is not mandated to consider or take decisions on the substance of matters such as compliance. Nevertheless, its efforts have been complementary to the discussions on compliance as related to the full implementation of the Convention. This is reflected, in part, in the more effective preparations for Standing Committee meetings. In addition, on the basis of the President's Action Programme from the Third Meeting of the States Parties, the Coordinating Committee extensively examined the functioning of the Intersessional Work Programme. This examination and the resulting President's non-paper directly address two key questions raised in the Canadian non-paper:

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

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

Indeed, some have suggested that the term 'non-compliant' could be reserved for the most serious humanitarian questions, such as the use or production of anti-personnel mines, or for instances where States are willfully ignoring implementation of the Convention. Other questions, such as those related to relative progress on stockpile destruction, mine clearance and victim assistance, could then be considered in terms of implementation success and steps necessary to achieve full implementation, potentially a more constructive and cooperative approach.

By speaking of achievement of these obligations in positive terms, the focus of the discussion shifts from mechanisms needed to enforce compliance towards mechanisms to facilitate cooperation and assistance. The enhancements made to the Intersessional Program by the Coordinating Committee are consistent with this approach in that they suggest more opportunities be provided to States Parties to assess and communicate the challenges associated with mined areas, victim assistance or stockpiles, their plans to address these challenges, and their assistance needs, donors have the opportunity to respond accordingly

## 3. Discussions related to Article 7 reporting

Discussions related to Article 7 reporting have also complemented discussions related to compliance. Whereas in the past Article 7 reporting was viewed as a discrete element of compliance, the non-paper distributed by Belgium as Coordinator of the Article 7 Contact Group has spurred us to think about Article 7 as a tool for implementation. As is indicated in that non-paper, Article 7 reporting can be used as an important vehicle for communicating plans, progress and needs, and in this regard can support collective efforts to ensure implementation.

## 4. Co-operation in addressing allegations of the use of AP mines and lessons from other fields

Clearly, as described in the February non-paper, these are the gravest form of compliance concern and, "...for the sake of the Convention as well as for those countries accused –

*perhaps wrongly – of non-compliance, cooperative means should be found to deal with such accusations.”*

Discussions with respect to the possible deployment of AP mines by State Parties have focussed on understanding the interests and concerns of various participants, and in continuing to work co-operatively to make progress. A separate presentation will be made, for example, on lessons learned from other fields such as international humanitarian law and environmental law based on the work of Mme. Brigitte Stern of the French *Commission Nationale pour l'Elimination des Mines Anti-personnel* (CNEMA). Such work can serve to advance and inform the discussions to date.

In order to reinforce existing understanding and to continue progress, further open discussions on this issue, continued efforts to draw lessons from other fields, and other initiatives that States Parties may wish to pursue, are required. For example, State Parties may wish to look for ways to engage regional organisations to facilitate considerations of specific issues of compliance that may arise. States Parties may also wish to reflect upon the usefulness of asking the Secretary General of the United Nations to explain his understanding of the role of the UN should a formal Article 8 issue of compliance arise.

## **Conclusion**

In terms of the dialogue to date, considerable progress has been made. There is growing agreement on the need to continue to make concerted efforts to co-operate and offer assistance to ensure full implementation. And a sense appears to exist that States Parties should be prepared to respond in ways that are flexible, cooperative, adaptive and in accordance with the provisions of the Convention to allegations related to possible violations of the most serious actions prohibited by the Convention – those that may have serious humanitarian impacts and/or undermine the Convention. On the advisability of, and willingness to establish mechanisms not already mentioned in the Convention, however, a broad range of divergent views persists.

A spirit of co-operation, commitment and openness has characterised the discussions to date and Canada greatly appreciates the support and encouragement we have received in our role in facilitating this dialogue. We would be pleased to continue to do so in the future should State Parties so desire.