

## **Anti-Personnel Mine Ban Convention Intersessional Meetings**

### **Panel Discussion: Cooperative Compliance and the Anti-Personnel Mine Ban Convention**

**12:00-13:00, 2 July 2020**

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#### **What are measures to monitor compliance under the APMBC?**

The Convention contains various measures and mechanisms for promoting its implementation and ensuring compliance with its provisions.

Under Article 7, States are required to report annually to the UN secretary-general on national implementation measures adopted, all stockpiled anti-personnel mines, mined areas, mines retained for training purposes, destruction of mines and measures taken to prevent civilians from entering mined areas. States can also provide voluntary information on other efforts to implement the Convention, such as victim assistance.

If there are concerns about a State's compliance with the treaty, Article 8 provides a range of possible measures for the purpose of facilitation and clarification of compliance. To date, States Parties have always addressed compliance concerns through a cooperative approach.

#### **What actions were adopted to strengthen compliance in the Oslo Action Plan?**

Against this backdrop, we welcome the introduction of new commitments in the Oslo Action Plan under the section on "Measures to ensure compliance". These actions, i.e. actions 48, 49 and 50, aim to support full respect for the core obligations of the Convention -- notably the general obligations under Article 1, stockpile destruction obligations under Article 4, mine clearance obligations under Article 5, and the strict exceptions to the prohibitions on retention and transfer under Article 3. Also relevant to actions 48, 49 and 50 are the obligations under Article 7 to ensure transparency, in particular by reporting on progress made in implementing the core obligations, and obligations under Article 9 to ensure national implementation. We urge States Parties to swiftly and faithfully implement these actions.

In this first year after the adoption of the Oslo Action Plan, it is very timely to have this panel discussion to discuss how these actions are understood and implemented by States Parties in the next five years. As much has been said by the previous speaker about Action 49, in the interest of time, I will only focus on Action 48 and Action 50.

#### **Action 48**

Action 48 is a welcome measure to ensure compliance with the Convention. It addresses cases of alleged or known non-compliance with the general obligations enshrined in Article 1 of the Convention.

Compared with the previous Review Conference action plans, for the first time a specific action addresses alleged or known non-compliance with Article 1(2).

Article 1 contains the core provisions – termed general obligations – of the Convention. Paragraph 1 sets out comprehensive prohibitions of use, development, production, otherwise acquisition, stockpiling, retention or transfer of anti-personnel mines under all circumstances, and of assisting, encouraging or inducing anyone to engage in these prohibited activities. In other words, paragraph 1 consecrates a *negative obligation* to refrain from certain acts prohibited by the Convention.

Under Article 1(2), each State Party “undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.” This general obligation to destroy or ensure the destruction of all AP mines consecrates a *positive obligation* to take certain actions to achieve the object and purpose of the Convention, namely a world free of AP mines.

The basic undertakings of Article 1(2), together with the comprehensive prohibitions in paragraph 1 of the same article, set out the scope of the Convention and are the basic reference for provisions contained in other Articles, specifying the content of those obligations or governing their implementation.

The general obligation set out in Article 1(2) is operationalized through good faith implementation of the relevant provisions of the Convention, namely Articles 4 and 5. These articles commit each State Party to destroy or ensure the destruction of all anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible and within deadlines, except for the retention and transfer of mines for purposes permitted under Article 3. Ensuring full respect for these obligations is essential to achieve the goal of a mine-free world. For this reason, it is significant that the issue of compliance with Article 1(2) is addressed in Action 48 of the Oslo Action Plan.

To implement Action 48, it is essential to understand what constitutes an alleged or known non-compliance with the general obligations in Article 1. In this regard, we commend the Committee on Cooperative Compliance for its work over the past years to address allegations of use under paragraph 1 through dialogue with the concerned States Parties, which has provided some useful clarifications when dealing with non-compliance with Article 1(1). On the contrary, it merits further reflections by States Parties as to what amounts to non-compliance with Article 1(2). For example, missing the Convention deadline for stockpile destruction or the deadline for mine clearance without requesting an extension as a consequence of a lack of due diligence by the concerned State Party, not clearing or repeated delays in clearing mines without good reason, or intentionally retaining mines exceeding the minimum number absolutely necessary for permitted purposes.

It is important to underscore that Action 48 was adopted in accordance with the mechanism for the “facilitation and clarification of compliance” under Article 8 of the Convention, with the general intent of States Parties to “consult and cooperate with each other” and to work together “in the spirit of cooperation”.

## **Action 50**

The Convention, in its Article 9, requires States Parties to take national legal and administrative measures, including the imposition of penal sanctions, to ensure respect for its provisions within their territory and by persons under their jurisdiction or control.

This may involve the adoption of criminal legislation, including the imposition of penal sanctions, to ensure respect for the Convention's provisions within their territory and by persons under their jurisdiction or control. It may also require issuing administrative instructions to the armed forces and introducing changes in military doctrine, policies and training.

As was already mentioned, 23 years after the Convention came into force, there remain more than 30% of States Parties yet to take the required domestic measures to fully implement the Convention. This is an unsatisfactory level of implementation. It is therefore very timely that Action 50 sets out a time-bound commitment for States Parties that have not yet done so to urgently adopt appropriate national implementation measures and report no later than 20MSP in 2022.

We understand that the adoption of domestic measures to implement the treaty can be a lengthy and complex process. For its part, the ICRC stands ready to continue helping States in developing their national implementing legislation. The ICRC has developed various tools to assist States in the development of their national implementing legislation, including a model law, factsheets and an updated [national IHL implementation database](#). Most recently, we have developed a new Checklist, which provides guidance to States on the legal/regulatory/administrative framework necessary to ensure implementation of the Convention, as well as good practices.

This checklist is not meant to replace or replicate the ICRC model law, but rather serves as a quick and user-friendly reference for States Parties that have not yet reported on national implementation measures to assess if their existing domestic legislation (and administrative measures) is sufficient to comply with Article 9, and if not, what missing elements should be further addressed either by adopting a stand-alone legislation or by amending an existing legislation, among others. To this end, the checklist is in the form of a list of questions, and makes reference to the ICRC model law.

This [checklist](#) is now made available for download on the ICRC website, and is being translated to French, Arabic and Spanish. I will share the address for download in the chat box momentarily.

As always, the ICRC remains available to provide States with assistance and advice on implementing measures. If possible and where invited to do so, the ICRC can provide hands-on technical and drafting advice to governments, including legal drafting workshops.

Thank you for your attention.