

International Campaign to Ban Landmines
Statement on Preventing and Suppressing Prohibited Activities
and Facilitating Compliance
Eighth Meeting of States Parties to the Mine Ban Treaty
Dead Sea, Jordan
22 November 2007
Delivered by Tamar Gabelnick, ICBL

Mr. President,

Earlier we spoke of the mine ban treaty as being a success in progress. But when it comes to national implementation measures under Article 9, unfortunately we cannot even go that far.

Only 53 states parties have enacted new domestic laws to implement the treaty. This is not success, this is failure. An additional 37 states say there is no need for new legislation, though we believe that states should have specific legislation that includes penal sanctions for any potential future violations of the treaty in order to ensure that all of the treaty's obligations and prohibitions are expressly mentioned.

As the Nairobi Action Plan states "Primary responsibility for ensuring compliance with the Convention rests with each State Party" through fulfillment of Article 9 obligations. Only by adopting national implementation measures with penal sanctions can States Parties effectively prevent and suppress activities prohibited by the treaty within a country's borders or by its citizens elsewhere.

Mr. President, we are aware that the discussion on Article 9 comes at the end of a long and full week, but we feel this topic should receive the same attention in this room as the other treaty obligations since it is at the core of ensuring full compliance with the convention. We are discouraged by the small number of states that report on progress being made, though we thank Chile for providing an update today. We are concerned that this lack of information means that no work is being done in capitals to push for national legislation and measures to be developed as soon as possible.

Given the importance we attach to this matter, the ICBL – along with the ICRC – has led a workshop and a series of bilateral meetings in Geneva this year to encourage states to bring this to the top of their legislative agendas, and we will continue to raise the matter at the national and international levels.

I will now hand the microphone to Steve Goose to speak about other compliance matters.

Thank you.

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Delivered by Steve Goose, Human Rights Watch, Head of Delegation

Thank you, Mr. President. In this tenth anniversary year of the Mine Ban Treaty, it is appropriate to begin by reflecting back on the record of compliance. In 1997, as the Mine Ban Treaty was being developed and negotiated, opponents and skeptics often dismissed it as a “feel good” exercise and said it would be an unenforceable treaty, one without teeth that states were likely to ignore. Ten years later, the doubters have been proven wrong – at least thus far. The States Parties’ record for treaty implementation and compliance has been extremely impressive over the years, though not flawless. States Parties have successfully implemented and complied with the Mine Ban Treaty to a degree that few observers would have expected. It is a record that most any other multilateral treaty would envy.

However, it is a record that appears to be increasingly under siege. Much of this Eighth Meeting of States Parties has been devoted to two issues that could be seen in the context not just of implementation, but compliance with the Mine Ban Treaty:

- First, it is now evident that a large number of States Parties will not meet their mine clearance deadline—at least half of those with deadlines in 2009 and 2010. Several have not yet removed a single mine, and others have not made their best efforts to clear mined areas as soon as possible.
- Second, many States Parties are still not providing adequate assistance to survivors, even those “in a position to do so.”

But on the first day of this meeting, the ICBL elaborated another list of compliance concerns. This was not done to gleefully point fingers or recklessly and hostilely make accusations. The ICBL has done as much or more than anyone else to promote the success of the Mine Ban Treaty, and no one wants to see it succeed more than the ICBL. But problems cannot be dealt with by wishing them away or putting one’s head in the sand. This treaty and this process are strong enough to be capable of dealing with challenges in an open and straightforward fashion. But first, there must be recognition that some serious compliance concerns have arisen—compliance concerns related to the fundamental obligations of the treaty: the prohibitions on use, transfer, and stockpiling.

- Venezuela has indicated that it is still deriving military benefit from mines it laid around military bases, and that it has delayed clearance for lack of alternatives. This would seemingly constitute “use” of antipersonnel mines and therefore be a violation of the treaty. It appears there are other examples of States Parties continuing to use antipersonnel mines they laid in the past to serve an ongoing military or strategic purpose.

- The UN arms embargo monitoring group for Somalia has made detailed allegations of transfers of antipersonnel mines from Eritrea and Ethiopia to factions in Somalia, despite strong denials from those States Parties.
- Afghanistan and Cape Verde missed their stockpile destruction deadlines, Belarus has said it will miss its deadline, and Ukraine appears to be in serious doubt.
- There appears to be widespread abuse of the exception in Article 3 allowing for retention of mines for training and development purposes, with many States Parties retaining more antipersonnel mines than (in the words of the treaty) “absolutely necessary” and not using the retained mines for the permitted purposes; in essence, still stockpiling the weapon.

There is no indication that States Parties are pursuing these compliance concerns with any degree of vigor or coordination. Added to this list of compliance concerns should be the fact that so few States Parties have enacted national measures to implement the treaty, as required. Moreover, ongoing State Party disagreements about fundamental matters that affect compliance, such as what landmines are banned, and what acts are banned under the prohibition on assistance, undercut the credibility of the treaty and raise concerns for the future.

The ICBL has expressed its dismay over the years with the failure of States Parties to operationalize Article 8 (Facilitation and Clarification of Compliance), and the failure to develop informal mechanisms to ensure that, short of invoking Article 8, compliance concerns are addressed in a systematic and coordinated fashion.

One could argue that over the past decade the system has worked. But the problem is that it is not a system. The truth is that compliance concerns have been handled in an extremely ad hoc, uncoordinated, unplanned fashion that has relied heavily on the ICBL and the ICRC, and the willingness of individual States Parties, and often individual diplomats, to take action.

If States Parties want to ensure that the Mine Ban Treaty remains strong and effective for the long run, addressing these matters now should be a high priority, along with getting mines out of the ground and assisting the affected communities and individuals.

Mr. President, the experience of the past decade has shown that a treaty with stringent disarmament requirements can succeed, even without an intrusive verification regime. Indeed, it can succeed even if the primary means for monitoring implementation of and compliance with the treaty is carried out by non-governmental organizations, as in the case of the ICBL’s Landmine Monitor initiative.

Cooperative compliance has worked for the Mine Ban Treaty in large part because of the sustained “like-mindedness” of States Parties and their shared commitment to the humanitarian goals of the treaty; the ongoing power and effectiveness of the partnership between states, the ICBL, ICRC and UN agencies that has characterized the Ottawa Process from the beginning; the continued avoidance of “business as usual diplomacy” in

carrying out the work of the treaty; and the open and inclusive atmosphere that dominates that work.

But a major weakness is the lack of a coordinated system to address compliance concerns, including the lack of will to operationalize Article 8. The ICBL has repeatedly called for the development of informal mechanisms or an informal body to ensure that matters of compliance are dealt with in a systematic and coordinated fashion – including the operationalization of Article 8, should it ever be necessary to invoke it. This could involve past and present Presidents of Meetings of States Parties, some or all of the co-chairs of the Standing Committees, some variation of the Contact Group model, or another innovative approach. States Parties have thus far not given enough serious consideration to the need for this, much less creative thought about how to do it.

If the treaty is still to be held up as the shining example for implementation and compliance in ten more years, States Parties will have to give serious consideration and creative thought as to how they will meet the current and potentially increasing challenges to compliance with *all* aspects of the Mine Ban Treaty. If such challenges are not met, the goal of a world free of landmines will remain elusive indeed.

Thank you.