

Guide to fact-finding missions under the Ottawa Convention



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The 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and On Their Destruction envisages mechanisms for resolving concerns relating to compliance with the treaty. These mechanisms, detailed in Article 8, include dispatching a fact-finding mission to gather information.

This guide is intended to assist states parties in preparing for such a fact-finding mission. It provides information on when and how fact-finding missions may be initiated and organised and suggests activities that states parties may wish to carry out before, during and after a fact-finding mission. It should be of use to international and national officials responsible for implementation of the Ottawa Convention, as well as others in the landmine ban community.



VERTIC is grateful to those states parties and to the international and non-governmental organisations that have provided comments and suggestions. Notwithstanding this valuable assistance, responsibility for this document rests with VERTIC.

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VERTIC is the Verification Research, Training and Information Centre, an independent, non-profit making, non-governmental organisation. Its mission is to promote effective and efficient verification as a means of ensuring confidence in the implementation of international agreements and intra-national agreements with international involvement. VERTIC aims to achieve its mission through research, training, dissemination of information, and interaction with the relevant political, diplomatic, technical, scientific and non-governmental communities.

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Foreword

VERTIC is pleased to make another contribution to the continuing dialogue on clarifying how the 1997 Ottawa Convention's compliance procedures may be used, by producing this *Guide to fact-finding missions under the Ottawa Convention*. VERTIC has previously contributed to states parties' implementation of the treaty's compliance provisions with its well-received *Guide to reporting under Article 7 of the Ottawa Convention* in 2001. The organisation looks forward to continuing its close co-operation with states parties, international organisations and fellow non-governmental organisations in effecting full implementation of this significant treaty over the coming years.

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. It draws on discussions with states parties, international organisations and non-governmental organisations, 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.

VERTIC presented a draft of this guide for consideration at the Fourth Meeting of States Parties to the Ottawa Convention, held on 16–20 September 2002 in Geneva, Switzerland. Comments were received from the governments of South Africa and the United Kingdom, the United Nations Department for Disarmament Affairs, the United Nations Mine Action Service, the International Committee of the Red Cross, Landmine Action and Mines Action Southern Africa. Notwithstanding this valuable assistance, the views expressed in this document, along with any errors or omissions, are those of VERTIC alone.

VERTIC wishes to thank the Diana, Princess of Wales Memorial Fund and the Foreign and Commonwealth Office and Ministry of Defence of the United Kingdom for financial assistance in the preparation, publication and distribution of this guide.

The guide was written by Angela Woodward, sub-edited by Eve Johansson and designed and produced by Richard Jones.

Trevor Findlay
Editor and Executive Director, VERTIC
20 December 2002

About the author

Angela Woodward is VERTIC's Legal Researcher. Her research interests include the legal aspects of treaty negotiation, implementation and verification, and her current research focuses on monitoring the implementation of agreements regulating small arms and light weapons, in particular the 1997 Ottawa Convention, United Nations arms embargoes and the 1972 Biological Weapons Convention. She also works on legal measures adopted to implement treaty obligations at the national level, as well as the role of the UN and other international organisations in verification generally.

Her publications include: 'Verifying the Ottawa Convention', *Verification Yearbook 2001*, VERTIC, London, 2001; 'The Mine Ban Treaty and National Implementation Legislation', *Landmine Monitor 2001*, ICBL, Washington, 2001 (with Laurence Baxter and Trevor Findlay); and 'The United Nations' Role in Implementing the Compliance Aspects of the Ottawa Convention', *Landmine Monitor 2000*, ICBL, Washington, 2000. She also contributed to and edited VERTIC's *Guide to Reporting under Article 7 of the Ottawa Convention*, VERTIC, London, 2001, in collaboration with researchers from Landmine Action UK. Angela has a BA (Hons) degree in Political Science and an LLB degree from the University of Canterbury, New Zealand, and worked previously for the Programme for Promoting Nuclear Non-Proliferation (PPNN) at the Mountbatten Centre for International Studies, University of Southampton, UK.

Acronyms

APM	Anti-Personnel Mine
CWC	Chemical Weapons Convention
E-MINE	Electronic Mine Information Network
ERW	Explosive Remnants of War
GICHD	Geneva International Centre for Humanitarian Demining
ICBL	International Campaign to Ban Landmines
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ISU	Implementation Support Unit
MSP	Meeting of States Parties
NGO	Non-Governmental Organisation
PPE	Personal Protective Equipment
UN	United Nations
UNDDA	United Nations Department for Disarmament Affairs
UNMAS	United Nations Mine Action Service
UXO	Unexploded Ordnance
VERTIC	Verification Research, Training and Information Centre

Glossary

Accession

Where a treaty so provides, a non-signatory state may join the treaty in a one-step process known as accession. The state indicates its consent to be bound by the treaty by depositing its instrument of accession with the treaty's depositary. The Ottawa Convention allows states to join by accession and those states which did not sign it before it entered into force on 1 March 1999 may now only join the treaty by accession. Compare with Ratification, Acceptance or Approval.

Adherence

When a state expresses its consent to be bound by a treaty through accession, ratification, acceptance or approval, it is said to adhere to that treaty.

Anti-Personnel Mine

A mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

Chemical Weapons Convention

The 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention). The treaty entered into force on 29 April 1997. It provides for regular and challenge inspections of facilities where chemical weapons are capable of being produced. Each state party is required to establish a National Authority to oversee its implementation of the treaty and to liaise with the treaty's verification body, the Organisation for the Prohibition of Chemical Weapons (OPCW), based in The Hague, Netherlands. See www.opcw.org.

Compliance

When a party is abiding by its obligations under an agreement it is said to be in compliance. Non-compliance may be the result of a genuine misunderstanding or disagreement about treaty terms, an inability to abide by obligations due to resource constraints, or an intentional and substantial attempt to break treaty obligations. Appropriate measures to redress each type of non-compliance should be determined by states parties as soon as a state is determined to be in non-compliance.

Compliance Process

The process for monitoring implementation and dealing with suspicions, allegations or determinations of a party's non-compliance. The process should help ensure that minor violations, ambiguous situations, ill-founded suspicions and frivolous allegations do not become major political issues that undermine the treaty. The process should also ensure that significant violations are dealt with effectively.

Depositary

The state, states or organisation charged with receiving documents from governments indicating their signature, ratification, acceptance, approval or accession to a treaty. The UN Secretary-General is the depositary for the Ottawa Convention.

Entry into Force

The point in time when a treaty comes in force for a state which has consented to be bound by it. The Ottawa Convention entered into force on 1 March 1999, six months after 40 states consented to be

bound by it by presenting their instruments of ratification, acceptance or approval to the treaty's depositary, the UN Secretary-General. At that time, the treaty provisions became binding only for those 40 states. For states that adhere to the treaty after 1 March 1999, the treaty enters into force for them on the first day of the sixth month after they have presented their instrument of ratification, acceptance, approval or accession to the depositary. For example, if a state deposits its instrument of ratification on 20 April 2003, the convention enters into force for it on 1 October 2003.

Explosive Remnant of War (ERW)

Includes unexploded ordnance (UXO) and abandoned ordnance.

Fact-Finding Mission

Where there is a strong suspicion that a party is not complying with its treaty obligations, a mission may be authorised and dispatched to collect information relevant to assessing its compliance. States parties use this information to determine whether the state is in compliance and take appropriate measures to redress non-compliance.

Geneva International Centre for Humanitarian Demining (GICHD)

The GICHD supports humanitarian mine action through research, operational assistance and contributions to the implementation of the Ottawa Convention. An independent foundation supported by 18 governments, it hosts the Intersessional Standing Committee meetings and Co-ordination Committee process and is home to the Implementation Support Unit (ISU). See box 1 and www.gichd.ch.

Global Positioning System

Technology which permits the accurate determination of latitude and longitude using signals from satellites. The system is currently a US monopoly, although the European Union is considering establishing its own system.

Good Offices Function of the UN Secretary-General

As an impartial, trusted third party the UN Secretary-General may offer, or be called upon to exercise, his good offices to assist parties to resolve a dispute. This may involve facilitating communication or negotiation between the parties.

Implementation Support Unit

The Third Meeting of States Parties (MSP) to the Ottawa Convention, held in Managua, Nicaragua in 2001, gave the GICHD a mandate to establish an Implementation Support Unit (ISU) for the treaty. Its duties include serving as a conduit for states parties' communications and cooperation in implementing the treaty, by providing a 'one-stop location' for information on the treaty, as well as collecting, collating, storing and retrieving treaty documentation on the treaty and its implementation. See box 1 of this guide and www.gichd.ch.

In-Country Escort

Representatives of a state receiving a fact-finding mission nominated to accompany and assist a fact-finding mission while it is in its territory.

Information Technology

Encompasses all forms of electronic technology, including hardware and software, used to create, store, exchange and use information in its various forms. Includes digital and analog data, sound, still images and motion pictures.

Inspection Location

A facility or area at which fact-finding is carried out.

International Campaign to Ban Landmines (ICBL)

A network of more than 1200 non-governmental organisations in 60 countries, working for a global ban on landmines. Instrumental in the adoption of the Ottawa Convention. See www.icbl.org.

International Committee of the Red Cross (ICRC)

An impartial, neutral and independent organisation whose exclusive humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and co-ordinates the international relief activities conducted by the International Red Cross and Red Crescent Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is based in Geneva, Switzerland. See box 1 and www.icrc.org.

Landmine Monitor

An initiative by the International Campaign to Ban Landmines (ICBL) to monitor and report on implementation of and compliance with the Ottawa Convention. It also assesses the international community's response to the humanitarian crisis caused by landmines. See www.icbl.org/lm.

Managed Access

A state party must allow the greatest possible access to fact-finding missions, but it may manage such access in order to protect national security and sensitive installations. Where access is restricted, the state must make every reasonable effort to provide alternative means to resolve the compliance concern.

Mandate

The document granting the authority for the conduct of a fact-finding mission.

Marking

Placing a warning measure or measures identifying the position of a hazard or the boundary of a hazardous area. This may include the use of signs, paint marks and so on, or the erection of physical barriers.

Meeting of States Parties

The Ottawa Convention requires states parties to meet regularly in order to consider any matter with regard to the application or implementation of the convention. These meetings include annual Meetings of States Parties (MSP), which are being held from the first year after the treaty's entry into force until the first Review Conference in 2004, and any Special Meeting of States Parties that may be convened by the UN Secretary-General under Article 8 of the convention. See also Special Meeting of States Parties.

Mine Action

Activities that aim to reduce the social, economic and environmental impact of mines and unexploded ordnance. Mine action is not just about demining; it is also about people and societies, and how they are affected by landmine contamination. The objective of mine action is to reduce the risk from landmines to a level where people can live safely, in which economic, social and health development can occur free from the constraints imposed by landmine contamination, and in which the victims' needs can be addressed. Mine action comprises five complementary groups of activities: mine risk education; humanitarian demining (mine and UXO surveying, mapping, marking and clearance); victim assistance

(including rehabilitation and reintegration); stockpile destruction; and campaigning against the use of anti-personnel mines (APMs). A number of other enabling activities are required to support these five components of mine action, including: assessment and planning; the mobilisation and prioritisation of resources; information management, human skills development and management training; quality management; and the application of effective, appropriate and safe equipment.

Mine Action Centre

An organisation that carries out mine risk education training; conducts reconnaissance of mined areas, and the collection and centralisation of mine data; and co-ordinates local mine action plans with the activities of external agencies, mine action NGOs and local deminers.

Mine Risk Education

A process that promotes the adoption of safer behaviour by groups at risk, and which provides links between affected communities, other mine action components and other sectors. Mine risk education is an essential component of mine action. There are two related and mutually reinforcing components: community liaison; and public education. Generally, mine action programmes use both approaches, as they are mutually reinforcing. They are not, however, alternatives to each other, nor are they alternatives to eradicating the mine/UXO threat through clearance.

Mined Area

An area that is dangerous due to the presence, or suspected presence, of mines.

National Co-ordinator or Authority

A body designated by a government to ensure that a state's obligations under a treaty are carried out.

National Implementation Measures

Legislative, regulatory, administrative or other measures adopted by a state to give effect to a treaty on its territory. The type of measure adopted will depend on the state's constitutional requirements.

Non-Governmental Organisation (NGO)

A non-profit organisation which is independent of government. NGO activities include advocacy, research, monitoring, the provision of advice and/or the provision of assistance, including to disadvantaged sectors of society.

Ottawa Convention

The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (also called the Mine-Ban Treaty and the Landmine Treaty). The treaty entered into force on 1 March 1999. See <http://disarmament.un.org/MineBan.nsf>.

Perimeter

External boundary of an inspection site, defined by either geographic co-ordinates or description. May be subject to negotiation between the fact-finding mission and the receiving state.

Point of Entry

Designated location where a fact-finding mission must enter the territory of the receiving state.

Portal Monitoring

Continuous monitoring whereby entry to and exit from a designated site or facility through a designated entry/exit point (portal) is subject to continuous monitoring.

Personal Protective Equipment (PPE)

All equipment and clothing designed to provide protection, which is intended to be worn or held by an employee at work and which protects him/her against one or more risks to his/her safety or health.

Random Selective Access

This is a managed access technique whereby a receiving state and a fact-finding team leader negotiate the number of storage facilities or containers that the mission will have access to at a sensitive location.

Ratification, Acceptance or Approval

Following signature, the expression of a state's consent to be bound by a treaty. A signatory state becomes a state party to the Ottawa Convention on the first day of the sixth month after it has deposited its instrument of ratification, acceptance or approval with the treaty's depositary, the UN Secretary-General. Compare with Accession.

Request for Clarification

Any state party or states parties may request information from another state party concerning suspected non-compliance. The request shall be submitted through the UN Secretary-General and should include evidence supporting the suspicion.

Roster of Experts

The UN Secretary-General maintains a roster of experts submitted by states parties to serve on a fact-finding mission. All states parties are encouraged to submit details of their experts each year.

Special Meeting of States Parties

Any Ottawa Convention state party that issued a Request for Clarification of compliance which has not been satisfactorily resolved by other means and which cannot wait until the next scheduled Meeting of States Parties may propose that the UN Secretary-General convene a Special Meeting of States Parties in order to consider the matter. See Article 8 of the treaty.

State Party

The moment a treaty enters into force for a state, that state is a party to the treaty. A state party is then formally bound by all the rights and duties contained in the treaty.

Stockpile

The Ottawa Convention requires states parties to destroy or ensure the destruction of all APMS they own or possess, or that are under their jurisdiction or control, as soon as possible but not later than four years after the treaty has entered into force for that state. Under Article 3, states may retain or transfer APMS for development of and training in mine detection, mine clearance, or mine destruction techniques but the number must not exceed the minimum absolutely necessary for this purpose.

Stockpile Destruction

States parties to the Ottawa Convention are obliged to destroy their stockpiles of banned mines within four years of the treaty's entry into force for them. Any APMS retained for training purposes under Article 3 must ultimately be destroyed. As with other treaty obligations, states parties have the right to seek and receive assistance in destroying stockpiles.

Tag

Unique identifier placed on military equipment to facilitate tracking of treaty-limited items.

Transparency

Openness of information. In the verification field it may refer to openness about a state's military activities and about any peaceful activities that may have military implications.

Trial Fact-Finding

An inspection undertaken in conditions approximating those of a real inspection in order to test preparations, procedures and/or equipment.

United Nations Department for Disarmament Affairs (UNDDA)

A part of the UN Secretariat which provides advice and assistance to the Secretary-General in the discharge of his responsibilities under the UN Charter and mandates assigned by the General Assembly and Security Council in the sphere of disarmament. The department promotes the goal of nuclear disarmament and nonproliferation and the strengthening of disarmament regimes in respect of weapons of mass destruction. It also promotes disarmament efforts in the area of conventional weapons, especially landmines and small arms. See <http://disarmament.un.org>.

United Nations Mine Action Service (UNMAS)

UNMAS is responsible for assisting mine-affected countries and co-ordinating UN assistance to them. It is the focal point within the UN for all mine-related issues. See www.mineaction.org.

Unexploded Ordnance (UXO)

Explosive ordnance that has been primed, fused, armed or otherwise prepared for use, or used. It may have been fired, dropped, launched or projected yet remains unexploded through either malfunction or design or for any other reason.

Verification

The process of gathering, interpreting and using information to make a judgement about parties' compliance or non-compliance with an agreement. The aim of verification is to establish or increase confidence that all parties are implementing a treaty fairly and effectively.

Victim Assistance

The care and rehabilitation provided for the immediate and long-term needs of mine victims, their families, and mine-affected communities. Victim assistance activities include: emergency and continuing medical care; physical rehabilitation treatment; the provision of prostheses; psychological and social support; and employment and economic integration programmes.

Introduction: about this guide

Under Article 8 of the 1997 Ottawa Convention (sometimes also known as the Landmine Ban Treaty or the Mine Ban Treaty), a fact-finding mission may be authorised by a meeting of the treaty's states parties to collect information to help resolve a concern about the compliance of a party or parties to the treaty. 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.

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 a state's willingness to accept a fact-finding mission on its own territory, while at the same time indicating that it expects other states to 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 that contravenes the treaty or that it believes that 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 is not unnecessarily delayed or prolonged. A significant benefit of advance planning for a fact-finding mission will be increased awareness of the Ottawa Convention among government officials, municipal authorities, military personnel and the general public.

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. It 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. It 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, international organisations 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.

Fact-finding missions in context

Fact-finding missions are just one of the mechanisms provided for in the Ottawa Convention's compliance system. This section 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

States parties have consistently affirmed their commitment to implement their treaty obligations in a co-operative manner, including the resolution of any compliance concerns which may arise. 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 a graduated series of 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 (see www.icbl.org/lm), has also become an established and valued element of the compliance process. States parties also may call on the confidential, technical advice of the International Committee of the Red Cross (ICRC: see box 1) to assist in the resolution of a compliance concern.

Types of non-compliance

It is recognised that some states parties may have difficulty fulfilling all their treaty obligations despite their best efforts. This applies particularly to meeting treaty deadlines for the destruction of anti-personnel landmine (APM) stockpiles and the clearance of mined areas. 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 the APMS in mined areas within ten years of entry into force of the convention for them to request an extension of up to ten years. States may also transfer APMS 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 through inadvertence or lack of awareness of all of their obligations. These states should be advised of their obligations and of 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 if they are 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 demonstrate credibly 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 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 co-operatively, 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 its query. All states parties are under a duty not to make unfounded requests and are obliged not to abuse this mechanism.

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 to 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 MSP 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 Secretary-General will convene the meeting within a further 14 days. For the decisions of this meeting to be valid, a majority of states parties must attend and participate in any votes taken.

Box 1 Sources of assistance in meeting Ottawa Convention obligations

All treaty implementation issues

Implementation Support Unit, Geneva International Centre for Humanitarian Demining (GICHD),
7bis Avenue de la Paix, PO box 1300, CH-1211 Geneva 1, Switzerland
Tel. +41.22.906.1660, fax +41.22.906.1690, e-mail k.brinkert@gichd.ch

National implementation measures

International Committee of the Red Cross (ICRC), Advisory Service on International Humanitarian
Law, 19 Avenue de la Paix, CH-1202 Geneva, Switzerland
Tel. +41.22.734.6001, fax +41.22.733.2057, e-mail dc_jur_consult.gva@icrc.org

Mine clearance, mine risk education, stockpile destruction and victim assistance

Treaty Implementation Officer, United Nations Mine Action Service (UNMAS), United Nations, FF-360,
Third Floor, 304 East 45th Street, New York, NY 10017, USA
Tel. +1.212.963.1875, fax +1.212.963.2498, e-mail mineaction@un.org
UNMAS maintains a database of mine action resources (E-MINE) at www.mineaction.org.

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>.

Countless NGOs play a vital role in implementing the treaty. Many of these are affiliated with the Inter-
national Campaign to Ban Landmines (ICBL), from whom further information on NGO assistance may
be obtained. See www.icbl.org.

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.

One of the 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, although a state may invite a fact-finding mission at any time. It is unlikely, however, that
a fact-finding mission would be authorised in a case where a state party has shown a willingness to comply
with the treaty, especially if it has sought assistance in order 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 concerned is not
complying with its obligations, states parties will request it to take measures to address the compliance

issue within a specified period. This can include co-operative measures provided for under Article 6 of the convention 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 serious non-compliance with an international treaty, the UN Security Council may be called on to consider the matter.

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, after consultation with the state receiving the mission, with appointing up to nine experts to serve on the fact-finding team. They will be drawn from the standing roster of experts maintained by the Secretary-General (see below). One of them 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. The mission will arrive as soon as possible after this period of notice. The team may stay at any location it is inspecting for up to seven days and may remain in the receiving 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, for example, in the fields of human rights, arms control and disarmament, and the environment.

The UN Secretary-General's standing roster of experts

One of the simplest, yet most valuable, contributions 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. Any state party may submit nominations. A wide range of skills and experience is likely to be required, including in the following areas:

- information technology/data analysis and processing, and computer forensics;
- explosives/ordnance, including mine clearance, demarcation, detection, emplacement, identification, mapping, marking, and technical survey;
- inspection procedures;
- military procedures;
- industrial procedures, including armament manufacturing processes;
- fieldwork and interviewing techniques;
- interpretation and translation;
- logistics;
- administration, including auditing, time management and record-keeping;
- negotiation and mediation;
- diplomacy; and
- inspection.

The UN Department for 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. On the basis of these submissions the UNDDA updates the roster and circulates it to states parties at the next MSP. States parties are therefore encouraged to review their previous submission and revise it 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.

States parties should not be discouraged from submitting names and details of qualified experts for the list because they are unable to fund or equip them. As costs relating to fact-finding missions are borne by all states parties except the receiving state, states submitting experts do not carry an additional financial burden. All states are encouraged to submit such details to the list in order to help the Secretary-General appoint a geographically balanced range of experts.

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

Where expertise required for a particular mission is not available on the list of experts, the 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. Nationals of the state or states requesting a fact-finding mission or those of any state directly affected by it shall not be appointed. In addition, the state receiving a mission is entitled to declare that it will not accept a particular expert or experts on the Secretary-General's list. This declaration must be transmitted, in writing, to the Secretary-General before the mission personnel are appointed.

While experts serving on fact-finding missions will be nominated by states parties, they will not represent their state while serving on the mission. 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. They are also obliged to seek only information relevant to the mission mandate and to treat as confidential any information supplied in confidence.

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 (PPE) 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 (digital cameras, computers, printers, satellite telephone and data communications, radios, tape recorders, video recorders, Global Positioning System receivers);
- mine detection equipment;
- mine clearance equipment;
- UN tamper-proof tags and seals;
- vehicles; and
- medical supplies and equipment.

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;
- there is little information available to confirm or refute the alleged violation; and
- 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 APMS;
- produced APMS;
- retained a usable stockpile of APMS;
- not adopted measures to stop and prevent other states or non-state actors from conducting non-compliant activities on its territory;
- diverted or misused mines retained for training purposes as permitted under Article 3 of the convention;
- diverted or misused mines acquired or retained for purposes not permitted by the convention; and/or
- supported other states or non-state actors in activity not permitted by the convention.

The mandate

The treaty does not specify how a fact-finding mission's mandate is to be determined. Given his impartial role and his experience in drafting similar mandates under other agreements, the UN Secretary-General may be requested by the MSP to draft a mandate. Alternatively, a drafting group of states parties may be established to prepare a mandate for consideration by the meeting.

The mandate will be likely to describe the nature of the compliance concern, specify the establishment of a fact-finding mission, grant the mission responsibilities to collect any information relevant to the compliance concern, and require the mission to provide a factual report of its findings to the Secretary-General. It may also reaffirm the rights and duties of the mission and the state receiving the mission as provided in Article 8 of the convention.

Based on the practice of other UN-organised inspection missions, the mandate will likely require that the details of the mission's operation are developed in a separate inspection plan. This plan might specify one or more specific locations for initial inspection and the point of entry into the state's territory. However, the inspection plan must allow the mission leader the freedom to nominate further locations

for inspection in the light of evidence gathered during the initial phase of the mission. The UN Secretary-General will probably task the mission leader to recommend an inspection plan for his approval.

Appointing, assembling and dispatching the mission

As provided for in the treaty, the Meeting of States Parties is likely to ask the UN 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 to be transported to and from the state concerned. It would be helpful if some training were provided at this stage so that experts assigned to a mission had experience of working together before they were dispatched.

Although the treaty is silent on this point, it is likely that the UN Secretary-General will be responsible for notifying the receiving state of the arrival time and point of entry of the mission. The treaty states that the mission is responsible for notifying the state in advance of the equipment that the mission

Box 2 1946 Convention on 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.

intends to use. In addition to giving the receiving state an idea of what to expect, this should facilitate clearance of the equipment through customs.

The receiving state's responsibilities

While the treaty obliges all states parties to co-operate with a fact-finding mission, the state party receiving a mission has specific responsibilities. It 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 transport and accommodation, and the maximum security necessary for the mission while it is in territory under the state's control. The state 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).

The receiving state's 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.

Managed access

The receiving state party has the right to restrict access by the fact-finding mission if it considers this 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 restrict 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', states parties should be able to protect their sensitive equipment, information or areas while at the same time adequately demonstrating their compliance and ensuring effective verification.

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 have access to within a sensitive location;
- negotiating a number of storage containers the mission will have access to within a sensitive location (this technique is called 'random selective access'); and
- 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 may negotiate with the leading official of the receiving state a number of areas that may be inspected within the location, rather than seeking to inspect the entire site. The receiving state may thus still demonstrate co-operation with the mission, while managing its own time and resources in facilitating access.

Managing access to equipment

Managed access techniques can also be applied where there are a number of similar containers that the mission might ask to inspect. A mission member and a state official may agree on the number of ammunition storage containers that may be opened for inspection but the mission member should choose which specific ones will be opened. If a 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 that 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 also possible to allow a fact-finding mission access to military equipment without revealing sensitive information. Since a mission will only be looking for information relating to compliance with the Ottawa Convention, it will only require access to equipment, information or areas relating to APMS, not other weapon systems. However, as a state may attempt to disguise storage of APMS by mixing them with other weapons, the team may request access to storage containers for 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 a container is also being used to store significant quantities of APMS.

Confidentiality of information

Since a fact-finding mission should be concerned solely with collecting information relevant to non-compliance with the Ottawa Convention, irrelevant information 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.

Length of mission

A fact-finding mission may not remain at any particular site for more than seven days and it may not stay in the territory of the receiving state for more than 14 days without the agreement of the receiving state.

Advance preparations for receiving a 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 Ottawa Convention. Alternatively, a state may decide to allocate these additional tasks to a person or unit with responsibilities for co-ordinating the implementation of other treaties. This person or unit must be granted sufficient authority to carry out all relevant tasks. Ideally, the co-ordinator should be located within a government department or ministry as he or she will 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 an information resource on treaty compliance issues within government and liaise with all organisations that might be involved in a fact-finding mission. Tasks could include co-ordinating advance planning and preparations, as well as activities immediately prior to and during a fact-finding mission. A national co-ordinator could also liaise on follow-up action after a fact-finding mission. Further details on the procedures and activities states may carry out can be found later in this guide.

A decision on which organisations in the receiving state will be involved in a fact-finding mission necessarily depends on the mission's mandate. However, they are 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 affairs, health, interior/home, international development assistance, legal affairs/justice and trade

Government agencies

Border commission, customs

Municipal authorities

Police, health authorities

Private industry

Manufacturers of defence materiel, especially munitions

Other organisations

The national mine action centre; the UN Mine Action Centre; the International Committee of the Red Cross; international or national NGOs involved in mine action

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

Each state party is required under Article 9 of the treaty to adopt national implementation measures, which include penal sanctions, 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 co-operate fully with a fact-finding mission. The type of measure adopted by each state will depend on its constitutional requirements, but is likely to involve adopting legislation, regulations or administrative orders and amending instruction handbooks for the armed forces.

Treaty obligations that may require the adoption of national measures include:

- 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)); and
- 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 accorded to representatives of foreign governments on temporary official missions; and
- the same immunities and facilities in respect of their personal baggage as accorded to diplomatic envoys.

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

- facilitate a mission's access to private property where relevant information might be found;
- provide for national inspectors who might accompany mission personnel; and
- 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 is included in the Article 7 transparency reports available on the UN Department for Disarmament Affairs' website at <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 other states may be able to provide paper copies on request.

Examples of legislative measures are contained in Annex 3. While their inclusion here does not mean that VERTIC endorses these as models, states may find them useful in drafting their own measures.

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, training areas and ranges, military equipment production facilities, or former or current conflict areas.

By identifying potential sites, states can establish special procedures to facilitate a 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 transport, identifying suitable accommodation and 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 help in planning for the conduct of a mission. Mission personnel are 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. States which are also parties to the 1993 Chemical Weapons Convention (CWC) may decide to use the points of entry designated under that treaty.

Conducting trial fact-finding exercises

It would be helpful if experts nominated by states to serve on fact-finding missions received regular or periodic training. Procedures and techniques can be practised by conducting trial fact-finding missions. These allow experts to practise or refresh their skills in a practical situation and enable the state to refine its procedures for receiving a fact-finding mission. Trial fact-finding missions could be done nationally or in co-operation with other states parties as an additional means of demonstrating transparency and sharing knowledge and expertise.

Preparations once a fact-finding mission is authorised

Responding to the UN Secretary-General's notification

Following the authorisation of a fact-finding mission, the receiving state will be formally notified by 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 Secretary-General's communication as soon as possible so as not to delay the mission.

Logistical arrangements

If preparations for receiving a fact-finding mission have not been carried out in advance, then they should be made now. They may be facilitated by the national co-ordinator for Ottawa Convention implementation or, 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 probably 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.

Transport and accommodation

Once the point of entry and initial location for inspection have been identified, the state can arrange for suitable transport 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

Any additional measures that may need to be adopted to ensure that the privileges and immunities to which the mission members are entitled should be undertaken before the mission arrives.

Base room and communications

Preparations should be made for providing a secure base where the mission may organise its inspection activities. This facility should have electrical power points and telephone points. It may be necessary to allocate radio frequencies for the mission's use.

Readying personnel for the team's arrival

The state may wish to conduct pre-mission briefings for all personnel 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 mission's mandate, 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 openness and willingness to comply 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 designated for inspection. Where a facility is designated, the state may monitor any movement of personnel or materiel entering and exiting the facility ('portal monitoring') and provide a log of this information to the mission after it has entered the site. Once the mission has arrived, it may be invited to take over portal monitoring until it has finished its tasks at that inspection site.

Where areas suspected of being recently sown with mines are to be inspected, these areas should be marked off and the local population warned about their existence through an appropriate mine risk education programme. The inspection process will aim to identify who was responsible for the mine-laying; it is recognised that this need not have been done by the state on whose territory it occurred.

Hosting a fact-finding mission

Reception at point of entry

The receiving state's customs, immigration and protocol officials should ensure that the fact-finding mission's 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 this is 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 transport, accommodation and security arrangements for mission members and their equipment, details of the locations designated for inspection, and a report on weather conditions at the inspection sites. This information will inform the mission leader's decision as to the mission's 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 to the site. This will depend on the type of site being inspected. For example, where a military facility or base 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.

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 at the site. 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.

Site briefing

While this is not provided for in the treaty, state officials may wish to hold a briefing session for the fact-finding mission before it begins its activities. This is another opportunity for the state to demonstrate its co-operation in assisting the mission, as well as providing information on its compliance. It will

speed the mission's work at the site and help it to complete its work within the timeframes specified in the treaty. It must not, however, be used to frustrate or hinder the conduct of the mission.

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; and
- a site orientation tour.

The mission leader and the leading official of the receiving state should then agree basic formalities such as the time at which 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 finalise its inspection plan. It will probably present this to the receiving 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 fact-finding mission, the state will have many 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 policy officials, with knowledge of the state's policies, and local on-site officials with knowledge of the history and function of the site and any weapon systems stored there. Among these officials should be those with full technical knowledge of munitions. State officials would not need to provide information on an issue unrelated to its compliance with the Ottawa Convention, but it is worth noting that one effective way of demonstrating compliance is to provide some information on the nature of activities under way at the site under inspection. Moreover, refusal to provide information in response to relevant questions may be seen as demonstrating a lack of good faith and openness.

Officials accompanying the mission would also be expected to help 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 state has agreed the mission should have access.

Additionally, the mission may require access to private property where information relating to compliance with the convention might be found. The mission might reasonably 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 that 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 receiving 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 or changes in the inspection plan, 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. Generally speaking, two such meetings, one at the start and the other at the end of the day, would be the best arrangement. 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 involves detailed records of APMS 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 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 the fact that mission members and state officials speak different languages. 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.

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.

Providing further information

Once the fact-finding mission has left its territory, officials of the receiving state should be prepared to provide further information requested by the mission leader in preparing his or her mission report

or by the UN Secretary-General. Also, information that was not immediately available during the mission should be sent to the Secretary-General as soon as possible. Any additional information that becomes available after the mission has left should also be transmitted to the Secretary-General or the reconvened Meeting of States Parties or Special Meeting of States Parties. This will further demonstrate the state's transparency and willingness to co-operate in clarifying the compliance concern.

Annex 1: Article 8 of the 1997 Ottawa Convention

Facilitation and clarification of compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.
2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.
3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.
4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.
5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one-third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.
6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.
7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.

8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to 9 experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

- (a) The protection of sensitive equipment, information and areas;
- (b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- (c) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

Annex 2: Sample form for submitting details of experts to the UN Secretary-General

States Parties may wish to submit details of experts using the sample form (see below) distributed by the UN Department for Disarmament Affairs. They may also choose to use another format.

To assist the UN Secretary-General in selecting appropriate experts for any fact-finding mission authorised, it would be helpful if states provided as much information as possible. States parties may nominate any expert they consider to be qualified under Article 8(9) of the treaty. See the list of skills and expertise on page 17 of this guide.

Nominations of experts should be sent to: Regional Disarmament Branch, Department for Disarmament Affairs, UN, Room DC2-560, New York, NY 10017, USA. Tel. +1.212.963.0076 or fax +1.212.963.4989.

Article 8 of the Ottawa Convention: Roster of Experts

In order to serve as a member of a fact-finding mission to clarify issues relating to compliance with the Ottawa Convention, experts nominated by States Parties should: (a) possess a detailed knowledge of the use of all types of mines in conflict situations, and have a detailed understanding of how these weapons may be employed; (b) be capable of recognising common types of mines and understand the characteristics of such weapons; (c) possess a detailed knowledge of common types of clearance equipment and techniques, including the relative capabilities of such items; (d) possess a detailed knowledge of minefield recording, mapping and marking procedures, and be able to read standard topographical maps.

State Party _____ **Date** _____

Last name		First name		Middle name	
Country of nationality		Place of birth		Date of birth	Gender
Mother tongue				Other languages	
Present post and relevant functions					
Relevant past experience, including field mission assignments					
Permanent address				Tel.	
Present address				Fax	
				E-mail	

Source United Nations Department for Disarmament Affairs

Annex 3: Examples of national measures to implement Article 8

This section includes legislation adopted, or drafted, by four states parties to implement their rights and obligations under Article 8. VERTIC does not hereby endorse any legislation as an appropriate model. However, states may find these examples interesting and useful for drafting their own legislation.

States may wish to seek specialist advice on drafting legislation to implement the Ottawa Convention from the ICRC Advisory Service on International Humanitarian Law (details in box 1).

Burkina Faso

Presidential Decree

Décret No. 2001-180/PRES/PM/SECU, 2 May 2001 portant interdiction des mines antipersonnel au Burkina Faso (extract)

Article 4

À l'occasion des missions d'établissement de faits prévues à l'article 8 paragraphe 11 de la Convention d'Ottawa, l'autorité administrative désigne une équipe d'accompagnement dont chaque membre a la qualité d'accompagnateur.

L'équipe d'accompagnement a pour mission d'accueillir toute mission d'inspection, de vérifier le mandat d'inspection ainsi que les instruments d'inspection au point d'entrée de la mission sur le territoire du Burkina Faso et d'assurer sa bonne exécution.

Article 5

Dans le cadre de l'exécution de leur mission, les membres de la mission d'établissement des faits jouissent des privilèges et immunités prévus à l'article VI de la convention sur les privilèges et immunités des Nations Unies, adoptés le 13 février 1946.

Article 6

Le chef de l'équipe d'accompagnement prend toutes les dispositions qu'il estime nécessaires à la protection de la confidentialité et du secret relatif aux zones, locaux, documents, données ou informations ainsi que des droits de la personne.

Avant l'arrivée de la mission d'établissement des faits, il entreprend des démarches préalables nécessaires pour l'autorisation de l'inspection des lieux concernés.

En cas de refus ou de l'absence de la personne qui a qualité pour autoriser l'accès, le président du Tribunal de Grande Instance ou le juge délégué par lui peut ordonner l'accès des lieux après avoir vérifié que la demande d'inspection est conforme aux stipulations de la Convention d'Ottawa.

Source Décret No. 2001-180/PRES/PM/SECU, 2 May 2001 portant interdiction des mines antipersonnel au Burkina Faso. The full text of this presidential decree is available in Burkina Faso's Article 7 Transparency Report for calendar year 2000, Form A, National Implementation Measures, <http://disarmament.un.org/MineBan.nsf>.

New Zealand

Anti-Personnel Mines Prohibition Act 1998 (extract)

PART 5. Fact-Finding Missions

Purpose of this Part

17. Purpose of this Part—

The purpose of this Part is to facilitate fact-finding missions under the Convention by—

- (a) Confirming the right of members of a fact-finding mission to inspect places in New Zealand in accordance with the Convention; and
- (b) Enabling New Zealand officers to secure access for a member of a fact-finding mission where consent is not, or may not be, obtainable; and
- (c) Enabling New Zealand officers to accompany or assist a member of a fact-finding mission.

Access by Fact-Finding Missions

18. Fact-finding missions—

A member of a fact-finding mission has the right, and every person must permit a member of a fact-finding mission, to—

- (a) Enter a place in accordance with the Convention; and
- (b) Inspect the place in accordance with the Convention; and
- (c) Exercise, in connection with the fact-finding mission, a function contemplated, or a power provided for, in the Convention.

19. Officers who may accompany member of fact-finding mission—

- (1) To facilitate a fact-finding mission, a member of a fact-finding mission may be accompanied by any officer.
- (2) Despite subsection (1), a person appointed by the Minister under section 4 (2) may not accompany a member of a particular fact-finding mission unless that person is also appointed under section 4 (2) (f) to accompany or assist that member.

Directions

20. Ministerial directions—

- (1) The Minister may, by notice in writing, issue directions to any person for the purpose of facilitating any fact-finding mission under the Convention.
- (2) The Minister may, under subsection (1), direct a person to provide to a fact-finding mission, by speaking to a member of the mission or otherwise, any information related to a compliance issue specified in a direction, within such reasonable period as is specified in the direction.
- (3) Every person commits an offence who wilfully fails to comply with a direction given by the Minister under this section.
- (4) Every person who commits an offence against subsection (3) is liable on summary conviction to a fine not exceeding \$100,000.

New Zealand Assistance with Fact-Finding Missions

21. Identification certificates—

The Minister may issue a certificate identifying any member of a fact-finding mission or any officer who may accompany a member of a fact-finding mission.

Enforcement

22. Search warrants—

(1) A District Court Judge, Justice, Community Magistrate, or Registrar (not being a member of the police), who, on an application, is satisfied that there are reasonable grounds for believing that entry to a place by a member of a fact-finding mission is necessary for the purpose of exercising any function contemplated, or any power provided for, in the Convention, may issue a search warrant in respect of the place.

(2) An application under subsection (1)—

(a) May not be made unless the consent of a person in control of the place is not, or may not be, obtainable; and

(b) Must be made by an officer in writing; and

(c) Must include a copy of relevant provisions of the Convention and a copy of the documents (if any) authorising the fact-finding mission.

(3) For the purposes of subsection (2) (a), ‘consent’ means consent to a member of a fact-finding mission, and any officer who may accompany the member, entering the place to exercise any function contemplated, or any power provided for, in the Convention.

(4) A warrant issued under subsection (1)—

(a) Authorises the member of the fact-finding mission (and any officer who may accompany the member) to enter the place at any time within 14 days of the issue of the warrant (or within such further time as the Judge, Justice, Community Magistrate, or Registrar may specify in the warrant) for the purpose of exercising any function contemplated, or any power provided for, in the Convention:

(b) Authorises an officer who may accompany the member of the fact-finding mission to use such force as is reasonable in the circumstances for effecting entry to or inspection of a place specified in the warrant (including force to break down a door or break open anything in the place):

(c) May be issued without conditions or subject to any conditions the Judge, Justice, Community Magistrate, or Registrar thinks fit.

23. Obligations of officers accompanying member of fact-finding mission—

(1) Every officer who accompanies a member of a fact-finding mission on an inspection—

(a) Must carry any identification certificate issued to him or her under section 21 or another means of identifying himself or herself as an officer who may accompany a member of a fact-finding mission; and

(b) Must produce the identification certificate or other means of identification to any person appearing to be in charge of a place entered—

(i) On entering the place (if such a person is then present); and

(ii) At any reasonable time afterwards, if asked to do so by the person; and

(c) Must have any warrant (whether issued under section 22 or otherwise) authorising entry to the place with him or her and produce it if required to do so; and

(d) If any thing is seized, must ensure that an occupier or person in charge of the place is given a written inventory of all things seized.

(2) If there is no person appearing to be in charge of the place at any time between the time of entry and the time the inspection concerned has been completed, every officer who accompanies a member of a fact-finding mission on the inspection must, as soon as practicable after the inspection is completed, ensure that an occupier or person in charge of the place is given a written notice stating that the place has been entered, and specifying—

- (a) The time and date of entry;
- (b) The circumstances and purpose of entry;
- (c) The name of every person entering.

(3) If an officer who is not a member of the police discovers any offence or suspected offence against this Act as a result of accompanying a member of a fact-finding mission on an inspection, the officer must report that offence or suspected offence to the police as soon as practicable after the completion of that inspection.

24. Obstruction of member of fact-finding mission—

(1) Every person commits an offence who wilfully obstructs, hinders, resists, or deceives any member of a fact-finding mission who is exercising in New Zealand any function contemplated, or any power provided for, in the Convention.

(2) Nothing in subsection (1) applies to a refusal to give consent to entry by a member of a fact-finding mission who is not acting pursuant to a search warrant (whether issued under section 22 or otherwise).

(3) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding \$20,000.

Source Anti-Personnel Mines Prohibition Act 1998, no. 111. The full text of this legislation is available in New Zealand's Article 7 Transparency Report for the period 1 July 1999–27 December 1999, Form A, National Implementation Measures, <http://disarmament.un.org/MineBan.nsf>.

South Africa

Anti-Personnel Mines Prohibition Bill 2002

This draft legislation was published for consultation by the public and members of South Africa's parliament. The content of the Bill is still subject to change before legislation is adopted.

CHAPTER 5. DOMESTIC INSPECTIONS

Appointment of domestic inspector

14. (1) The Minister may, in writing, appoint a competent person as a domestic inspector to—

- (a) investigate and enforce compliance with this Act; or
- (b) assist an international inspector investigating any alleged non-compliance with the Convention.

(2) The Minister must issue to every domestic inspector a certificate of appointment identifying the domestic inspector by name, indicating the inspector's status and authority to conduct inspections and setting out any conditions imposed on him or her in terms of section 15.

(3) A domestic inspector must comply with the instructions of the Minister in performing his or her functions.

(4) A domestic inspector who is not in the full-time service of the State must be paid such remuneration and allowances as the Minister may, with the approval of the Minister of Finance, determine.

Conditions imposed on domestic inspector

15. (1) The Minister may impose any condition on a domestic inspector regarding the performance of his or her functions, which conditions may relate to the protection—

- (a) of sensitive equipment, information or areas;
- (b) of any constitutional right; and
- (c) safety of the domestic inspector.

(2) A condition imposed under subsection (1) may require a domestic inspector not to exercise a specified power while on specified premises.

(3) Domestic inspectors must adhere to commonly accepted safety standards and practices with regard to anti-personnel mines.

Termination of appointment of domestic inspector

16. The Minister may, after giving a domestic inspector an opportunity to make representations and considering such representations, for good reason terminate the appointment of such a domestic inspector.

Entry and search of premises with warrant

17. (1) A domestic inspector accompanied by a police official may, on the authority of a warrant issued in terms of subsection (5) and subject to section 18, enter any premises specified in the warrant, including a private dwelling, and—

- (a) inspect, photograph, copy, test and examine any document, record, object or material, or cause it to be inspected, photographed, copied, tested and examined;
- (b) seize any document, record, object or material if he or she has reason to suspect that it might be used as evidence in a criminal trial; and
- (c) examine any activity, operation or process carried out on the premises.

(2) A domestic inspector who removes anything from the premises being searched must—

- (a) issue a receipt for it to the owner or person in control of the premises; and
- (b) unless it is an item prohibited in terms of this Act, return it as soon as practicable after achieving the purpose for which it was removed.

(3) Upon the request of a domestic inspector acting in terms of a warrant issued in terms of subsection (5), the occupant and any other person present on the premises must—

- (a) make available or accessible or deliver to the inspector any document, record, object or material which pertains to an investigation contemplated in subsection (1) and which is in the possession or under the control of the occupant or other person;
- (b) furnish such information as he or she has with regard to the matter under investigation; and
- (c) render such reasonable assistance as the inspector may require to perform his or her functions in terms of this Act efficiently.

- (4) Before questioning any person at the premises in question, the domestic inspector or police official must advise that person of his or her right to be assisted at the time by an advocate or attorney, and allow that person to exercise that right.
- (5) A warrant contemplated in subsection (1) may be issued by a judge or a magistrate—
- (a) in relation to premises on or from which there is reason to believe that a contravention of this Act has been or is being committed; and
- (b) if it appears from information on oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act.
- (6) The warrant may impose restrictions on the powers of the domestic inspector.
- (7) A warrant issued in terms of this section—
- (a) remains in force until—
- (i) it is executed;
- (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority;
- (iii) the expiry of one month from the day of its issue; or
- (iv) the purpose for the issuing of the warrant has lapsed, whichever occurs first; and
- (b) must be executed by day unless the person who issues the warrant authorizes the execution thereof by night.
- (8) No person is entitled to compensation for any loss or damage arising out of any *bona fide* action by a police official or domestic inspector under this section.
- (9) Anti-personnel mines seized or preserved for evidence in criminal proceedings must be held, handled and disposed of in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and the Explosives Act, 1956 (Act No. 26 of 1956).

Identification prior to entry, and resistance against entry

18. (1) A domestic inspector or police official who has obtained a warrant in terms of section 17(5) must immediately before entering the premises in question—
- (a) audibly announce that he or she is authorised to enter the premises and demand admission to the premises; and
- (b) notify the person in control of the premises of the purpose of the entry, unless there are reasonable grounds to believe that such announcement or notification might defeat the purpose of the search.
- (2) The domestic inspector must—
- (a) hand to the person in control of the premises a copy of the warrant or, if such person is not present, affix such a copy to a prominent place on the premises; and
- (b) on request of the person in charge of such premises, show his or her certificate of appointment to that person.
- (3) A domestic inspector or police officer contemplated in subsection (1) may overcome resistance to the entry and search by using such force as is reasonably required, including the breaking of a door or window of the premises.

(4) Before using force, the police officer or domestic inspector must audibly demand admission and must announce the purpose of the entry, unless there are reasonable grounds to believe that doing so might defeat the purpose of the search.

Entry and search of premises without warrant

19. A domestic inspector, accompanied by a police official, may enter and search any premises and seize or remove any anti-personnel mine without a warrant if—

- (a) a person who is competent to do so consents to such entry, search, seizure or removal; or
- (b) immediate entry to the premises is required—
 - (i) to ensure the safety of any person; or
 - (ii) to prevent serious damage to the environment, and there are reasonable grounds to believe that a warrant would be issued in terms of section 17(5) and that the delay caused by obtaining a warrant would defeat the object of the warrant.

Offences and penalties in respect of search of premises

- 20. (1) A person is guilty of an offence if he or she wilfully obstructs, or knowingly makes a false statement to, a police official or domestic inspector during a search under a warrant obtained in terms of section 17(5).
- (2) Any person convicted of an offence contemplated in subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment.

CHAPTER 6. INTERNATIONAL INSPECTIONS

International fact-finding missions to Republic

21. (1) An international fact-finding mission, authorised and mandated by the parties and appointed by the Secretary-General of the United Nations, may in accordance with Article 8 of the Convention enter and stay in the Republic to investigate any matter concerning the Republic's alleged non-compliance with the Convention.

- (2) The Minister—
 - (a) must take the necessary administrative measures to receive, transport and accommodate the mission;
 - (b) is responsible for ensuring the security of the mission to the maximum extent possible while in the Republic;
 - (c) must make all efforts to ensure that the mission is given the opportunity to speak with all relevant persons who may be able to provide information relating to the compliance matter in question; and
 - (d) must grant the mission access to all areas and installations under the control of the Republic where facts relevant to the compliance matter could be expected to be collected.
- (3) The Minister must instruct a domestic inspector to accompany and assist an international inspector.
- (4) An international inspector, when accompanied by a domestic inspector and a police official, has all the rights referred to in sections 17, 18 and 19.
- (5) The costs of any international fact-finding mission are to be borne by the parties.
- (6) Subject to the Public Finance Management Act, 1999 (Act No.1 of 1999), the Minister may reimburse any person who is not part of the international fact-finding mission in respect of any expenditure legitimately incurred by that person in connection with such mission.

Certificate as international inspector

22. The Minister must issue to every member of an international fact-finding mission in South Africa a certificate that—

- (a) identifies the international inspector by name and indicates the inspector's status and authority to conduct a fact-finding mission in South Africa;
- (b) states that the international inspector enjoys the privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946; and
- (c) sets out any condition contemplated in section 23.

Conditions imposed on international inspector

23. (1) The Minister may impose any condition on an international inspector regarding the performance of his or her functions, which conditions may relate to the protection—

- (a) of sensitive equipment, information or areas;
 - (b) of any constitutional right; and
 - (c) safety of the international inspector.
- (2) A condition imposed under subsection (1) may require an international inspector not to exercise a specified power while on specified premises.
- (3) In the event of the Minister imposing any condition on an international inspector, the Minister must make every reasonable effort to demonstrate through alternative means the Republic's compliance with the Convention.
- (4) International inspectors must adhere to commonly accepted safety standards and practices with regard to anti-personnel mines.

Immunities and privileges of international inspectors

24. (1) An international inspector enjoys the privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations set out in Schedule 3 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001).

- (2) (a) An international inspector may import any equipment necessary to perform his or her functions in respect of a fact-finding mission into the Republic, and may export the equipment from the Republic at the end of the mission.
- (b) The import and export of equipment contemplated in paragraph (a) is free from any tax or duty.

Source Anti-Personnel Mines Prohibition Bill (as introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette 23744 of 26 August 2002. The English text is the official text of the Bill); B44-2002. ISBN 0-621-32975-4.

United Kingdom

Landmines Act 1998 (extract)

Fact-finding missions under the Ottawa Convention

Rights of entry etc. for fact-finding missions

13. (1) If it is proposed that any of the functions of a fact-finding mission should be carried out in the

United Kingdom, the Secretary of State may issue an authorisation under this section in respect of that mission.

- (2) An authorisation under this section shall—
 - (a) contain a description of the area of the United Kingdom (the ‘specified area’) where the fact-finding mission is to carry out its functions; and
 - (b) state the names of the members of the mission.
- (3) Such an authorisation shall have the effect of authorising the members of the fact-finding mission—
 - (a) to exercise within the specified area such rights of access, entry and unobstructed inspection as are required for the purposes of the carrying out of the mission’s functions under the Ottawa Convention; and
 - (b) to do such other things within that area in connection with the carrying out of the mission’s functions as they are entitled to do by virtue of that Convention.
- (4) Such an authorisation shall, in addition, have the effect of authorising any constable to give such assistance as any member of the fact-finding mission may request for the purpose of facilitating the carrying out of the functions of the mission in accordance with the Ottawa Convention.
- (5) Any constable giving assistance in accordance with subsection (4) may use such reasonable force as he considers necessary for the purpose mentioned in that subsection.
- (6) The occupier of—
 - (a) any premises in relation to which it is proposed to exercise a right of entry in reliance on an authorisation under this section, or
 - (b) any premises on which an inspection is being carried out in reliance on such an authorisation, or a person acting on behalf of the occupier of any such premises, shall be entitled to require a copy of the authorisation to be shown to him by a member of the fact-finding mission.
- (7) The validity of any authorisation purporting to be issued under this section in respect of any fact-finding mission shall not be called in question in any court of law at any time before the conclusion of the carrying out of the mission’s functions in the United Kingdom.
- (8) Accordingly, where an authorisation purports to be issued under this section in respect of any fact-finding mission, no proceedings (of whatever nature) shall be brought at any time before the conclusion of the carrying out of the mission’s functions in the United Kingdom if those proceedings would, if successful, have the effect of preventing, delaying or otherwise affecting the carrying out of the mission’s functions.
- (9) If in any proceedings any question arises whether a person at any time was, or was not, a member of any fact-finding mission, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.
- (10) If an authorisation is issued under this section, the Secretary of State may issue an amendment varying the specified area, and—
 - (a) from the time when the amendment is expressed to take effect this section shall apply as if the specified area were the area as varied;

- (b) subsections (7) and (8) shall apply to the amendment as they apply to the authorisation;
- (c) the Secretary of State may issue further amendments varying the specified area and in such a case paragraphs (a) and (b) shall apply.

Offences in connection with fact-finding missions

14. (1) A person is guilty of an offence if—

(a) he refuses without reasonable excuse to comply with any request made by a member of an authorised fact-finding mission or by a constable assisting such a mission; and

(b) that request is one made for the purpose of facilitating the carrying out by that mission of its functions under the Ottawa Convention.

(2) A person is guilty of an offence if he wilfully obstructs any member of an authorised fact-finding mission in the carrying out of the mission's functions under the Ottawa Convention.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(4) In this section 'authorised fact-finding mission' means a fact-finding mission in respect of which an authorisation has been issued under section 13.

Privileges and immunities for fact-finding missions

15. (1) Members of a fact-finding mission shall enjoy—

(a) immunity from suit and legal process in respect of things done or omitted to be done by them in the carrying out of their functions under the Ottawa Convention;

(b) the like immunity from personal arrest or detention and the like inviolability for all papers and documents as, in accordance with the 1961 Articles, are accorded to a diplomatic agent; and

(c) like exemptions and privileges in respect of their personal baggage as, in accordance with Article 36 of the 1961 Articles, are accorded to a diplomatic agent.

(2) The immunities, privileges and exemptions accorded to members of fact-finding missions by virtue of subsection (1)(b) and (c) shall be enjoyed by them at any time when they are in the United Kingdom either—

(a) for the purpose of carrying out in the United Kingdom any of the functions of the mission; or

(b) while in transit to or from a country or territory in connection with the carrying out, in that country or territory, of any of the functions of the mission.

(3) If any of the immunities, privileges or exemptions accorded to a member of a fact-finding mission under this section is waived in any particular case by the Secretary General of the United Nations, this section shall have effect in that case as if it did not confer that immunity, privilege or exemption on that member of the mission.

(4) If in any proceedings a question arises whether a person is or is not entitled to any immunity, privilege or exemption by virtue of this section, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.

(5) In this section ‘the 1961 Articles’ means the Articles which are set out in Schedule 1 to the Diplomatic Privileges Act 1964 (Articles of Vienna Convention on Diplomatic Relations of 1961 having force of law in the United Kingdom).

Reimbursement of expenditure

16. The Secretary of State may reimburse any person in respect of expenditure incurred in connection with the carrying out of the functions of a fact-finding mission.

Information and records

Information and records for Ottawa Convention purposes

17. (1) The Secretary of State may, by notice served on any person, require him to give, in such form and within such reasonable period as is specified in the notice, such information as—

- (a) the Secretary of State has reasonable cause to believe is or will be needed in connection with anything to be done for the purposes of the Ottawa Convention; and
- (b) is described in the notice;

and the information required by a notice may relate to a state of affairs subsisting before the coming into force of this Act or of the Ottawa Convention.

(2) The Secretary of State may, by notice served on any person, require him to keep such records as—

- (a) the Secretary of State has reasonable cause to believe will facilitate the giving of information which that person may at any time be required to give under subsection (1); and
- (b) are specified in the notice.

(3) A person who without reasonable excuse fails to comply with a notice served on him under subsection (1) or (2) is guilty of an offence and liable—

- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(4) A person on whom a notice is served under subsection (1) and who knowingly makes a false or misleading statement in response to it is guilty of an offence and liable—

- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Power to search and obtain evidence

18. (1) If—

- (a) a justice of the peace is satisfied, on information on oath, that there are grounds for issuing a warrant under this subsection in relation to any premises; or
- (b) in Scotland, a justice (within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995) is so satisfied by evidence on oath, he may issue a warrant in writing authorising a person acting under the authority of the Secretary of State to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant and to search them.

(2) There are grounds for issuing a warrant under subsection (1) in relation to any premises if there are reasonable grounds for suspecting—

- (a) that an offence under this Act is being, has been or is about to be committed on the premises; or
- (b) that evidence of the commission of such an offence is to be found on the premises.

(3) A person who enters any premises under the authority of a warrant under this section may—

- (a) take with him such other persons and such equipment as appear to him to be necessary;
- (b) inspect any document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under this Act;
- (c) take copies of, or seize and remove, any such document;
- (d) inspect, seize and remove any device or equipment found on the premises which he has reasonable cause to believe may be required as such evidence;
- (e) inspect, sample, seize and remove any substance found on the premises which he has reasonable cause to believe may be required as such evidence.

(4) A constable who enters the premises—

- (a) under the authority of the warrant, or
- (b) by virtue of subsection (3)(a),

may search any person found on the premises whom he has reasonable cause to believe to be in possession of any document, device, equipment or substance which may be required as evidence for the purposes of proceedings in respect of an offence under this Act.

(5) No constable shall, by virtue of subsection (4), search a person of the opposite sex.

(6) If a warrant under this section so provides, a person (other than a constable) who exercises the powers conferred by the warrant shall do so only in the presence of a constable.

(7) A person is guilty of an offence if he wilfully obstructs another in the exercise of any power conferred by a warrant under this section.

(8) A person guilty of an offence under subsection (7) is liable—

- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

Source Landmines Act 1998 c. 33. The full text of this legislation is available in the United Kingdom's Article 7 Transparency Report for the period 1 March 1999–1 August 1999, Form A, National Implementation Measures, <http://disarmament.un.org/MineBan.nsf>.