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Mine-clearance Activities and ANSA Participation: An Analysis

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Recognizing the need to end the suffering and casualties caused by anti-personnel mines, Turkey signed the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Ant-Personnel Mines and on Their Destruction in 2005. Turkey has been exerting every effort to fulfill its obligations stemming from the Convention. To that end, Turkey no longer produces or uses anti-personnel mines and scoured in mine clearance, stockpile destruction, victim assistance and socioeconomic reintegration of mine victims. The latest demonstration of the determination with which Turkey fulfills its obligations is the Mine and Ordnance Disposal Facility that came into operation as of 8 November 2007.

Convinced that mine action is both a humanitarian issue as well as one that has to be backed by efforts aimed at ridding the world of the scourge of these indiscriminately used weapons through the global implementation of the Mine Ban Convention. Cognizant of the fact that over 40 states that produce, stockpile or use landmines are still not parties to the Convention—meaning that millions of mines remain at their disposal—and situated in a geographic region where the level of adherence to the Convention remains especially low, Turkey uses every opportunity to address this shortcoming. At the same time, Turkey is well aware of the fact that efforts by states alone are not adequate.

The Complementary Role of NGOs

Turkey, a globally binding international instrument that was hammered out by states with the support of inter-governmental and nongovernmental organizations. Conferring certain rights and obligations to States Parties, it gives them the right to seek and receive assistance in implementing the provisions of the Convention. In this context, the Convention stipulates that States Parties may seek assistance through NGOs, and that States Parties who have the capability may also provide such assistance to other States Parties through NGOs. Indeed, States Parties have benefited from assistance sought and provided through NGOs that carry out activities in this field on some occasions. The Convention, however, does not authorize NGOs to act ex-officio. In view of the relevant provisions of the Convention, the request and consent of the State Party concerned is a sine qua non element of the complementary activities of said NGOs. The Nairobi Protocol on Action, which is a political document designed as a five-year roadmap, does not amend or modify this understanding inherent in the Convention.

One of the ways in which States Parties have sought assistance through NGOs is by having their armed anti-personal state actor(s) engage in mine action. Under international law this is, however, questionable because a State Party does not bear a responsibility for acts that are committed in areas where a de facto authority, such as an ANSA, may have actual control. Several States Parties have requested or allowed such engagements in order to fulfill obligations they do not believe they can otherwise fulfill, as Mine Ban Convention obligations are not under States Parties’ jurisdiction or effective control. Some States Parties request or allow ANSA engagement in order to remove anti-personnel landmines from the list of weapons available to ANSAs with which they are engaged in armed struggle. Others have sought assistance or engagement within the context of efforts aimed at peace and reconciliation. In summary, States Parties that have acquiesced to NGO engagement of ANSAs may have benefited from this involvement for one reason or another.

The Need for a Case-By-Case Approach

The engagement of ANSAs should be considered on a case-by-case basis, primarily on the basis of defensibility difficulties. While the legal and academic debates on the definition of ANSAs continue, one crucial aspect is clear. Many terrorist groups, which pose a threat to domestic as well as international peace and security, fit the existing widely held definitions of ANSAs. As such, the activities of such groups may be punishable under the domestic criminal laws of the state(s) in question, as well as international treaty law. Dealings that may amount to or be considered as direct or indirect support for such groups may be similarly punishable. One only needs to look at the United States, European Union and NATO lists of terrorist organizations, as well as the counter-terrorism laws and lists of proscribed organizations defined as such by the United Kingdom, France, Germany, Australia and Canada. The only conceivable way in which ANSAs may be considered as such groups may be, if they renounce the use of violence, turn their weapons in and hand over or destroy or otherwise get rid of the rest of their means of violence over to justice. Even then, close scrutiny would be required.

Certain ANSAs may try to use humanitarian engagement as a strategy to legitimate their political/ideological aims or even to acquire a legal status. Subject to the specific and applicable provisions of international humanitarian law, they may seek to have their activities recognized by no means may establish a permanent and de jure status, organizations that carry out humanitarian work have the obligation to make sure that they are not otherwise. Also, they may undermine the sovereign rights and obligations of states (such as protecting citizens from terrorist attacks) thus increasing tensions and risking the security environment that they aim to enhance. Therefore, absolute compliance by the humanitarian organizations to the neutrality and impartiality principles are of vital importance. Moreover, in such a situation, particularly the common public may perceive them as such.

In addition to these general points that would apply to all the Mine Ban Convention’s obligations, there are specific reasons to recognize Mine Ban Convention obligations in the case of ANSAs. ANSAs engage in armed conflict and those activities of ANSAs, including those of ANSAs, may be covered by the Mine Ban Convention. Following engagement and exposure, ANSAs can only be used as a basis for engagement of ANSAs. For the reasons outlined above, the delicate issue of engaging armed non-state actors under theMine Ban Convention should be considered in terms of the responsibilities that the Convention oblige ANSAs to have.

Parties may seek assistance through NGOs, and that States Parties who have the capability may also provide such assistance to other States Parties if a certain part of their territory is under the control of ANSAs. It must be observed that the obligation to conform to the Convention requires States Parties to consider the possibility that in the event that engagement with armed non-state actors is contemplated, States Parties to the Mine Ban Convention should be informed in the same way that the engagement is to take place. Turkey is one of the States Parties that shares this view.

On the other hand, when such a prior consent of the territorial State Party is not required, mine clearance and other relevant humanitarian work by third parties may, as also described above, undermine the sovereign rights and obligations of the state. Such activities may not serve the legitimate interests of the State Party concerned and obtaining its consent. By implication, mine action would be necessary in order for such an engagement to take place.

Conclusion

It is clear that NGOs and third parties cannot achieve the common goal of creating a mine-free world if they build their activities on ignoring or challenging sovereign rights of the State Party concerned. They must work in coopera- rationally to help the states that have requested their assistance. On the other hand, it is clear that any engagement of ANSAs must be done in close cooperation and with the informed consent of the territorial State Party concerned. States Parties to the Mine Ban Convention must adopt a case-by-case approach to determine whether or not engagement is possible or necessary.
NGOs and international institutions may also devise ways and means through which they can fulfill humanitarian goals. They could find a way to advance such goals and help states create a more secure environment at the same time. They could assure states regarding the pure humanitarian purpose of their respective institutions. Furthermore, they could prevent third party abuse of the humanitarian cause for the purpose of intervening or undermining the sovereign rights of the state. In short, establishing an environment of mutual trust between actors is essential to overcoming legal and political impediments. Exploring the criteria and conditions for engaging armed non-state actors to secure their respect for international humanitarian law and human rights standards may, indeed, yield some positive results. However, this exercise cannot not be done in a vacuum, turning a blind eye to other relevant factors and developments that shape and at times threaten international security. Otherwise, they will lead to more harm than good in the long run.

See Endnotes, page 112

Swiss Exploring Gender in Mine Action

The initiative to understand the topic of gender in mine action has recently generated significant discussion throughout the global community. Specialists exploring this area are shedding new light on the disseminator practices, behaviors and communications of males and females in order to improve international mine-action activities in the field and office. As part of the Gender and Mine Action Programme, the Swiss Campaign to Ban Landmines is currently researching and producing a gender-integrated manual that synthesizes practical recommendations with actual case studies.

Not only will the manual answer the question of why mine-action practitioners should be more cognizant of gender issues, it will also answer the question of how gender-attentive procedures may be implemented. For the latter purpose, the SCBL hopes to integrate legal theory and accessible resources to make progress easily attainable. Practicality is imperative, since the manual is intended for a broad audience of mine-action organizations, governments, donors, civil-society actors, gender-focused organizations and community-based organizations.

The first section of the manual will elaborate on gender as it relates to each of the five pillars of mine action. This section will include an overview of the current state of affairs, real-world illustrations, best practices and unsuccessful enterprises. The manual will highlight recommendations to promote realistic application of the information presented. The second section of the manual will feature five in-depth case studies of Lebanon, Mozambique, Sudan, Sri Lanka and Colombia. Reports for each country will include details about the current mine problem for that country, insight about the regional gender situation, best practices and successful gender initiatives. Recommended topics for further research and piloting will also be incorporated.

The SCBL would appreciate participation in providing diverse personal perspectives for the manual. Though the formal submission deadline of 15 February 2008 has passed, e-mail Marie Nilsson at m.nilsson@scbl-gender for more information or to send comments. SCBL is interested in receiving a broad range of pertinent content: project examples, initiatives, tips, ideas, measures of achievement, successful integration stories, unsuccessful initiatives, problems and relevant photos.

Additionally, the Journal of Mine Action’s upcoming issue 12.2 will focus upon gender in mine action, and related articles are now being accepted. Please see the "Call for Papers" on the back cover of this magazine for more information.

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