

Amending the Ottawa Convention: A Way Forward

With clearance deadlines for States Parties to the Ottawa Convention approaching or having passed, and available humanitarian aid being spread among an exploding number of worthy activities, should mine-action programs be held to the stringent letter of the Convention? The author posits that, with a simple solution, States Parties can fulfill the spirit of the agreement while eliminating costly, time-consuming and inefficient clearance obligations.

by Dennis Barlow [Center for International Stabilization and Recovery]

In his article in Issue 13.1 of this publication, Dr. Robert Keeley suggests an imaginative and altogether logical course of action to enhance the Ottawa Convention—amend it.¹

For years, James Madison University's Mine Action Information Center has called for an approach to mine action that would not sacrifice pragmatic plans and scarce resources on the altar of an unrealistic, "mine free" approach to landmine clearance. The reasons to

Committee Meetings of the Ottawa Convention. The "mine free" approach derives from Article 5, paragraph 1: "Each State Party undertakes to destroy or ensure the destruction of *all* anti-personnel mines," while the "impact free" proponents base their argument on the Preamble, which sets as its goal "an *end to suffering* and casualties" [emphasis added].² The goal of any strategic plan sets the path forward, and mine action is no different. Such terms establish the measures of effectiveness and progress

Do you favor or oppose an amendment to the Mine Ban Convention to clarify the endstate required for clearance efforts? Tell us your opinion—take the Ottawa Convention Amendment Survey at: <http://maic.jmu.edu>

us have always been evident: In a world suffering from so many humanitarian, medical, post-conflict and development issues, insisting on the removal of every last landmine would dilute practical planning and management procedures, while requiring almost unimaginable amounts of resources.

Which Endstate?

The debate among supporters of "mine free," "impact free" and "mine safe" endstates has generally been relegated to the realm of coffee breaks and free-form discussions at Standing

to be achieved, and disagreements relating to the proper endstate invariably result in confusion and dissension in policy as well as operational circles.

The obligation of the United Kingdom to help clear the Falkland-Malvinas Islands has forced the debate into the world of *realpolitik*. The United Kingdom has been one of the staunchest supporters of the Ottawa Convention, yet has both received and delivered harsh comments during heated exchanges relating to its Article 5 obligations—and no wonder. Critics of the U.K. argue that the convention is clear, and that the

U.K. government is required to "destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control."² At the 9th Meeting of the States Parties, British Ambassador John Duncan responded with some stern logic, observing that it would be unwise for his country to spend US\$100 million to clear an area in the Falkland-Malvinas Islands that has been without landmine accidents for the past 25 years. Clearly, he said, the money could be better spent. The U.K. observed that it was the spirit and not the letter of the Convention that it was upholding. This assertion came as a thunderbolt in that it confirmed what has been the position of the United States and others for a long time: Striving for a true impact-free environment is the most practical and logical way to approach mine action.

Extension Requests

At the conclusion of the first decade of the Ottawa Convention, the great majority of countries with clearance deadlines (15 of the 17 in 2009) have requested an extension to their Convention obligations. Therefore, we must ask several questions regarding the failure to meet clearance deadlines:

1. Why have so many countries had to request extensions?
2. As all 15 extension requests were granted by member states, will the international community (donors, international organizations, nongovernmental organizations, etc.) accept the rationale and costs for extension requests and approvals?
3. What does this situation mean for further support to affected countries?

4. How will it affect the donors providing financial support for clearance activities?
5. How will it affect the need for resources relating to development and humanitarian aid?

The CISR/MAIC believes that the impetus for an amendment to provide the proper guidance for these efforts is found in the first 14 words of the Convention: "Determined to put an end to the suffering and casualties caused by anti-personnel landmines."² Clearly the imperative to relieve suffering trumps any particular operational methodology. We also note a disturbing trend in discussions alluding to Article 5, paragraph 2, which states that "Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are *known or suspected* to be placed"² [emphasis added]—there being an implication that *not knowing* of landmines may be a way out of the political dilemma. To meet the question honestly and frankly seems to us the best recourse, rather than skirting the issue by fencing with words or playing legalistic roulette as affected countries try to satisfy the requirements of various donors and stakeholders.

Time for an Amendment

We do not understand the controversy about addressing the question of an amendment to the Convention. No one at the original meeting ruled out the need for amendments in the future, and Keeley points out that the U.S. Constitution has grown stronger—not weaker—through its amendment process.¹ Certainly the framers of the Mine Ban Convention envisioned the potential to update and enhance the document by

inclusion of Article 13, which lays out a very clear set of procedures to amend it.

In light of countries being unable to complete Article 5 clearance obligations and the confusing discrepancies between the terms found in the Preamble and Article 5, we wonder why no State Party has suggested an amendment to clarify this key issue and discuss it during an Amendment Conference. ♦

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