The Article 5 Extension Request Process

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*International Campaign to Ban Landmines*

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resources used to clear their land, since the mined areas were fenced off and did not pose a threat to human life. According to an article by the Falkland Islands News Network in 2008, however, it was wrongly reported previously that the inhabitants were against demining because they didn’t want lots of strangers on the Islands while demining was being done. “[T]here people would object to the presence [of] soldiers on the economy if a large number of people came to help with demining.” The United Kingdom has requested a deadline extension of 10 years to clear the Falkland/Malvinas Islands. At the Intersessional Standing Committee Meeting in Geneva, Switzerland, on 4 June 2008, the United Kingdom stated, “Let there be no doubt that the [United Kingdom] takes its obligations under the Ottawa Convention extremely seriously.” The United Kingdom explained that undertaking demining operations in the Falklands could have negative environmental and socioeconomic consequences. Denmark. Most of the landmines in Denmark have been cleared, and only a small mined area remains in the marshes and dunes of the peninsula of Skallingen, left behind from World War II. Authorities in Denmark report that the remote area has been fenced and no mine-related casualties have been recorded since 1946. In its deadline extension request, Denmark claims that the delicate nature of the environment of Skallingen has prevented it from moving forward with clearance operations. Denmark states that clearance operations would risk “irreparable damage” to the environment without careful planning. Venezuela. Although it became party to the Ottawa Convention in 1999, according to the Landmine Monitor, Venezuela is still using AP mines and expects to miss its 2009 deadline: In 2007, Venezuela stated that it continues to employ AP mines to protect its rural areas from Colombian insurgents. Only a small amount of mine contamination remains, but Venezuela submitted a deadline extension request. Looking Ahead The Ottawa Convention has certainly been a powerful force for mine action in the international community. Since the entry into force of the Convention, production of anti-personnel mines has decreased and the trade of AP mines is almost non-existent. Millions of mines have been destroyed, and hundreds of square kilometers of land have been freed of landmine contamination. Indeed, the Ottawa Convention has been called a “success in progress,” and many States Parties have requested extensions beyond the 10-year deadline in order to finish their clearance work. Denmark is one such country. The Convention has been successful, but it risks losing its efficacy because it appears that States Parties are not taking their obligations seriously enough, whether or not that may be the case. Tamar Gabelnick of the ICBL believes that some countries need to rethink their approach to their Article 5 obligations. “For some States Parties in November 2008. Whether or not these countries were granted an extension, the 15 States Parties that have still applied face serious mine-affected States Parties and financial costs of the remaining landmine areas are great. Not all States Parties with 2009 deadlines will fail to complete clearance on time. Ultimate goals include Bulgaria, Costa Rica, France, Djibouti, FYR Macedonia, Guatemala, Honduras, Malawi, Montenegro and Suriname and have already fulfilled Article 5 clearance obligations. Deadline extension requests are not standing,” the Ottawa Convention’s Implementation Support Unit reports that two of the 16 remaining parties with 2009 deadlines will most likely finish clearance within the specified time. Niger and Uganda. The countries that have completed their obligations demonstrate to the world that it is possible to be mine-free within the allotted 10-year period. See Endnotes, page 112 This article was researched and written prior to UNSG. The Journal has hosted previously the content prior to publishing. For more up-to-date information about Ottawa extensions, see “The Article 5 Extension Request Process” by Tamar Gabelnick on the following page. Kateland Shane started working for The Journal of ERW and Mine Action in May 2006. She graduated from James Madison University in May 2007 with a Bachelor of Science in technical and scientific communication. She is currently pursuing a Master of Arts at JMU.

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The International Campaign to Ban Landmines was very specific in saying that there were to be no exceptions to the 10-year deadline placed in the Ottawa Convention. However, with the Convention’s first mine-clearence deadline quickly approaching in 2009, at least 15 countries have found they may have bitten off more than they can chew. Or have they? by Tamar Gabelnick

[Special Report]

The Article 5 Extension Request Process

The International Campaign to Ban Landmines was very specific in saying that there were to be no exceptions to the 10-year deadline placed in the Ottawa Convention. However, with the Convention’s first mine-clearence deadline quickly approaching in 2009, at least 15 countries have found they may have bitten off more than they can chew. Or have they? W hen the Ottawa Convention was being negotiated in 1997, the International Campaign to Ban Landmines called for a text with “no exceptions, no reservations, and no loopholes.” This was a treaty that was remarkably simple and straightforward, including with regards to mine clearance. Under Article 5, mine-affected States Parties have a clear duty to destroy all anti-personnel mines in mined areas as soon as possible, but no later than 10 years after joining the treaty. The link between the treaty’s humanitarian and disarmament objectives is equally clear; the sooner the mines are taken out of the ground and destroyed, the sooner people can farm the land, use grazing pastures, gather wood, walk to markets and schools, and engage in countless other essential activities safely again. The longer it takes to clear mined areas along borders or around security installations, the longer a State Party may be continuing to make military or strategic use of the mines. Despite the urgent need to remove emplaced mines for humanitarian and/or disarmament purposes, there is a possibility of requesting one or more extensions to the 10-year deadline. Mine-affected states that became parties to the Convention in 2009 are still using AP mines and expect to miss their 2009 deadlines in 2009, and those that do not expect to finish on time were required to request an extension at the 9th Meeting of the States Parties in November 2008. Fifteen countries, or about two-thirds of the original group with 2009 deadlines, will seek such an extension. The extension request process has literally been modelled on that of 2008 as States Parties and other interested actors grappled with how to handle the requests in a way that would respect the intent of the treaty and set the best possible precedent for future requests. The History of the Extension-request Process The extension-request story does not begin with the 2008 meeting, however, but rather in 1997, when the Ottawa Convention was drafted. During the negotiations, states, the ICBL, the International Campaign to Ban Landmines and other parties discussed at length the question of how many States Parties should be given to clear mined areas, or indeed whether there should be a deadline at all. It was eventually recognized the Ottawa Convention was drafted. During the negotiations, states, the ICBL, the International Campaign to Ban Landmines and other parties discussed at length the question of how many States Parties should be given to clear mined areas, or indeed whether there should be a deadline at all. It was eventually recognized that without the impetus of a legally binding deadline, the clearance work could drag on indefinitely, which would not be in keeping with the convention’s intent. At the same time, states understood that in some cases—because of the sheer quantity of mined areas or other extraordinary circumstances—certain mine-affected states would need...more than 10 years to clear their land. The original proposed text, put forward by the ICBL, was that the extension should be “the minimum necessary, but in no case shall the extension exceed five years.” The text was changed to allow for up to 10 additional years, which would be renewable. States Parties proposing more time would have to provide a detailed rationale for the extension, and other States Parties must assent and vote on the request. The understanding remained, however, that such extensions should be the exception, not the rule. The extension issue was then put aside for many years while States Parties focused on how to complete mine-clearence
obligations as efficiently and safely as possible. It reappeared in preparation for the 7th Meeting of States Parties, which took place 18–22 September 2008 in Geneva, when States Parties developed mechanisms both to guide the requesting states in the preparation of the requests and to assist the other States Parties in evaluating them. The ICBL and the ICRC, in particular, encouraged the development of such mechanisms in order to ensure that member states took seriously both the duty to destroy and the rights of other States Parties to thoroughly assess and make an informed decision on them. Without such safeguards in place, the concern was that granting an extension would be only a formality, which could seriously undermine tension without repercussions.

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<p>signal to states with deadlines in the coming years on how their own cases can be handled. The precedent set at the MSMP would either discourage states from presenting unjustified extension requests or it would force them to know that “anything goes.”</p>

The views put forward by the Analyzing Group were critically important because they provided the basis on which other states took their decisions at the 9MSP. Despite the importance of their role, a small number of states in the Analyzing Group encouraged a passive and uncritical role for the group, reportedly polishing and personalizing the workings of the group. They also fought hard to keep the group’s work closed and secret, which is highly unusual for the work of the Ottawa Convention, born out of a close collaboration between states and nongovernmental partners. Despite these constraints, the group managed to produce several final analyses with useful constructive criticism. But the analyses clearly applied different constraints. While the analyses were given to the other States Parties, it remains to be seen how states would react to those requests that did not merit approval as presented. In most cases, the first action was for the Analyzing Group to try to get certain countries to amend the requests, including the amount of time requested. This approach was the most logical and diplomatic way of dealing with the problem, and it worked in a few cases. States did, of course, have the option to turn down the request, but that would mean that the country would be in violation of the treaty when its deadline passes, and therefore, States Parties were reluctant to consider this possibility. The solution proposed by the President of the MSMP, Ambassador Jung Steiali of Switzerland, was for states to grant all requests as drafted, but with comments from States Parties that in certain cases encouraged the country to complete the demining work faster than planned and/or to clarify other outstanding issues in the requests. This approach was satisfactory for most cases, but the ICBL was still calling for States Parties to turn down requests from states that had no plans to begin demining operations before its original 10-year deadline, namely the United Kingdom and Venezuela. States Parties chose to focus their criticism on the United Kingdom and Venezuela, presented a request for the maximum 10 years with no timeline or budget for beginning, let alone finishing, its demining duties. In essence, they were asking for carte blanche to implement Article 5 if and when it liked. States Parties understood that such a request would be highly detrimental to the treaty and therefore spoke out publicly and privately against it. The United Kingdom tried to calm its critics by announcing that it would launch a tender in 2009 to turn down the request, but that would mean that the duty to demine “as much as possible” also applies to the extension period.</p>

The Case of Mozambique

A decade has passed since the signing of the Ottawa Convention and the commitment of the States Parties to work toward eradicating landmines in all affected countries. In this period, significant progress on landmine clearance and victim assistance has been registered, and significant areas have been cleared and released to the communities. The Progress

Mozambique signed and ratified the Ottawa Convention, becoming a State Party in March 1999. In May 2003, Mozambique hosted the First Meeting of States Parties in its capital, Maputo. In compliance with Ottawa Convention Article 4, Mozambique destroyed its anti-personnel landmine stockpiles in February 2003 and has been conducting clearance activities to meet the March 2009 deadline. Like many affected countries, Mozambique has endured war and destabilization for more than 30 years, leaving landmines and unexploded ordnance spread all over the country. In 1992 and 1999, the governments of Mozambique and the then-rebel movement Renamo (RENAMO) signed a peace agreement to end Mozambique’s 15-year-long civil war. As a result of this agreement, Mozambique has been demining its countryside since then. The Problem

Mozambique faces many other challenges, including poverty, natural disasters and endemic diseases such as HIV/AIDS. The majority of its population is rural and, consequently, the presence of landmines and unexploded ordnance is widespread. In response to the problem of landmines and UXO, Mozambique has been making considerable progress in clearing landmines and unexploded ordnance from affected areas. In May 2003, Mozambique was one of the first countries to adopt the Ottawa Convention’s procedures and standards for mine action. In 2003, Mozambique hosted the First Meeting of States Parties in its capital, Maputo. In compliance with Ottawa Convention Article 4, Mozambique destroyed its anti-personnel landmine stockpiles in February 2003 and has been conducting clearance activities to meet the March 2009 deadline. Like many affected countries, Mozambique has endured war and destabilization for more than 30 years, leaving landmines and unexploded ordnance spread all over the country. In 1992 and 1999, the governments of Mozambique and the then-rebel movement Renamo (RENAMO) signed a peace agreement to end Mozambique’s 15-year-long civil war. As a result of this agreement, Mozambique has been demining its countryside since then. The Problem

Mozambique faces many other challenges, including poverty, natural disasters and endemic diseases such as HIV/AIDS. The majority of its population is rural and, consequently, the presence of landmines and UXO constitutes a major impediment to the economic and social development of affected areas. Fifteen years of demining activities have elapsed, surveys have been conducted and thousands of square meters of land have been released to the people. Recent baseline assessments carried out by the HALO Trust in the remaining affected areas, has shown that there is work to be done to comply with Article 7 of the Ottawa Convention. The 2009 C. The Demining deadline is approaching, and the landmine problem is far from solved. Out of the 36 States Parties with deadlines for 2009 and 2010, only 10