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The Article 5 Extension Request Process

Tamar Gabelnick

*International Campaign to Ban Landmines*

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resources used to clear that 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. “If people would object to the positive [effect] on the economy if a large number of people came to help with demining?” the United Kingdom stated. In a Danish report that the remote area has been fenced and no mine-related casualties have been recorded since 1994. In its deadline extension request, Denmark claims that the delicate nature of the environment at the 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 2019 deadline. In 2007, Venezuela stated that it continues to employ AP mines to protect its rural bases from Colombian insurgents. Only a small amount of mine contamination remains, but Venezuela submitted a deadline extension request extension.

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 48 States have become part of its process to pledging to never use, produce, transfer, develop, or stockpile anti-personnel mines.

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 countries, there needs to be a much greater effort on the part of the national authorities to prioritize clearance and work more efficiently,” Gabelnick says. “There are some areas that are simply out of their reach.” She recommends that parties make more of an effort to mobilize resources to get the work done as soon as possible. Other parties do not have accurate estimates of the contamination level. According to the ICBL, such parties should conduct Technical and non-Technical Surveys first to determine the scope of the problem. Country will then be able to develop national mine action strategies better after assessing the situation.

Gabelnick: The Article 5 Extension Request Process

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

When 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.” The result 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 have to continue to make military or strategic use of the mines.

Despite the urgent need to remove emplaced mines for humanitarian and disarmament purposes, there is a possibility of requesting more time or extensions to the 10-year deadline. Mine-affected states that became parties in 2009 did not receive 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, did seek such an extension. The extension request process has therefore been much discussed. As of 2008 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 Committee of the Red Cross and other participants discussed at length the question of how many years 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 ICRC, was that the extension should be “the minimum necessary, but in no case shall the extension exceed 10 years.” Ultimately, the text was changed to allow for up to 10 additional years, which would be renewable. States Parties requesting more time would have to provide a detailed rationale for the extension, and other States Parties must assess and vote on the request. The understanding remained, however, that such extensions should be the exception, not the rule.

The extension issue then put aside for many years while States Parties focused on how to complete mine-clearance...
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The Current State of Play

Again, the decisions of the TMSP have proven significant given that most have transpired over the past two years. If the extension request process was developed to complement simple treaty language with additional informal mechanisms with a view to promote effective treaty implementation, then we have collectively and by a disappointing margin failed to meet our goal. As noted above, at the 9th Meeting of States Parties 15 states submitted requests for an extension, 10 of them for periods of five years or longer. There are certainly some States Parties requesting extensions, such as Bosniaregions, Thailand, and Vietnam, that had very large suspected hazardous areas and were generally expected to need more time to demine them. Others, like Denmark, Jordan, Moldova and Nicaragua, should have been able to complete their obligations on time, but failed to do so because of problems with access, the need to provide security to local communities, are the supposed reluctance on the part of the islanders to remove the mines and the high cost involved in bringing in the necessary equipment.

The treaty’s Implementation Support Unit was instructed to assist states in developing their requests with the overarching goal of having a sound, complete extension request. The request should be based on the country’s extension request.

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International Standing Committee meetings in June 2008, if the international community’s intention—as reflected in the Nairobi Action Plan—was for “few, if any states” to ask for an extension, thus we have collectively and by a disappointing margin failed to meet our goal. As noted above, at the 9th Meeting of States Parties 15 states submitted requests for an extension, 10 of them for periods of five years or longer. There are certainly some States Parties requesting extensions, such as Bosniaregions, Thailand, and Vietnam, that had very large suspected hazardous areas and were generally expected to need more time to demine them. Others, like Denmark, Jordan, Moldova and Nicaragua, should have been able to complete their obligations on time, but failed to do so because of problems with access, the need to provide security to local communities, are the supposed reluctance on the part of the islanders to remove the mines and the high cost involved in bringing in the necessary equipment.

In other words, the United Kingdom has demonstrated why it is crucial for the integrity of Article 5. Not only would these extensions have given states the ability to delay their efforts indefinitely, but also the number of those—including Ecuador, Peru, the United Kingdom and Venezuela—that should not have needed to make a request and certainly not for the length of time requested. Each offers its own set of special circumstances to support its request, but none justifies the length of time requested. Ecuador and Peru, each with less than 50,000 square meters (132 acres) to clear, cite difficult climate, geographic and logistical issues involved in completing their requests eight more years. 5 But Ecuador plans to increase significantly its number of deminers and may be able to sharply reduce its estimate of the number of hazardous areas through Technical Survey. Peru’s request does not reflect these developments and in any case, it simply lacks ambition.

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signal to states with deadlines in the coming years on how their own cases will be handled. The precedent set at the MSP would either discount states from presenting unjustified extension requests or it would let them know that “anything goes.”

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 MSP. Despite the importance of their role, a small number of states in the Analyzing Group encouraged a passive and uncritical role for the group, report- edly politicalising and personalising 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 standards to different states, showing the regional bias of some Analyzing Group members. Perhaps the most positive outcome of the group’s work was the proactive engagement with the request- ing states that in some cases led to new requests reflecting improved proposals.

The MSP and the End Game
After the analyses were given to the other States Parties, it was their turn to reflect on and guide the outcome at the MSP. The treaty says that the MSP, on review Conference, shall “as- sess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.” This question was therefore how states would react to those requests that did not merit approval as presented. As noted above, 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 op- tion 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 MSP, Ambas- sador Jurgen Streuli 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 of concern in the requests. This approach was satisfactory for most cases, but the ICBL was still calling for States Parties to turn down requests from any state 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—along with Ecuador, Peru and Senegal— to finish demining more quickly than initially planned. The decision for Venezuela was the weakest, commenting simply that it “may find itself in a situation wherein it could complete implementation before October 2014 and that this could ben- efit the Convention.” Other useful comments in the analyses did not make it into the final decisions because the concerned states were given the chance to approve the decision language.

Conclusion
Despite some shortcomings, the first extension request decision process produced a solid foundation on which the future implementation of Article 5 can rest. States Parties that asked for more time to demine were challenged to show that they were truly seeking the minimum time necessary to com- plete the work. The process could still use improvement—to prevent regional discrepancies in the treatment of requests for example—but overall States Parties continued that there will be no rubber-stamping of requests and made it clear that the duty to demine “as most possible” also applies to the extension period. [See Endnotes, page 112]

The Case of Mozambique

A decade has passed since the signing of the Ottawa Con-vention and the commitment of the States Parties to a work toward eradicating landmines in all affected coun- tries. 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, be-coming 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 when the government and the then-rebel movement RENAMO signed a peace agreement, 10% of the country was still affected by landmines and other UXO.

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 pres- ence of landmines and other UXO constitutes a major impedi- ment 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. A recent baseline assessment carried out by the HALO Trust in the remaining affected areas, has shown that there is work to be done to comply with Article 5 of the Ottawa Convention. The 2009 CCC deadline is approaching, and the landmine problem is far from solved. Out of the 56 States Parties with deadlines for 2009 and 2010, only 10

by Maria Isabel Macedo dos Santos [Instituto Nacional de Desminagem Mozambique]