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## Implementing the Ottawa Convention in Southeast Europe: Meeting Expectations in a Challenging Environment

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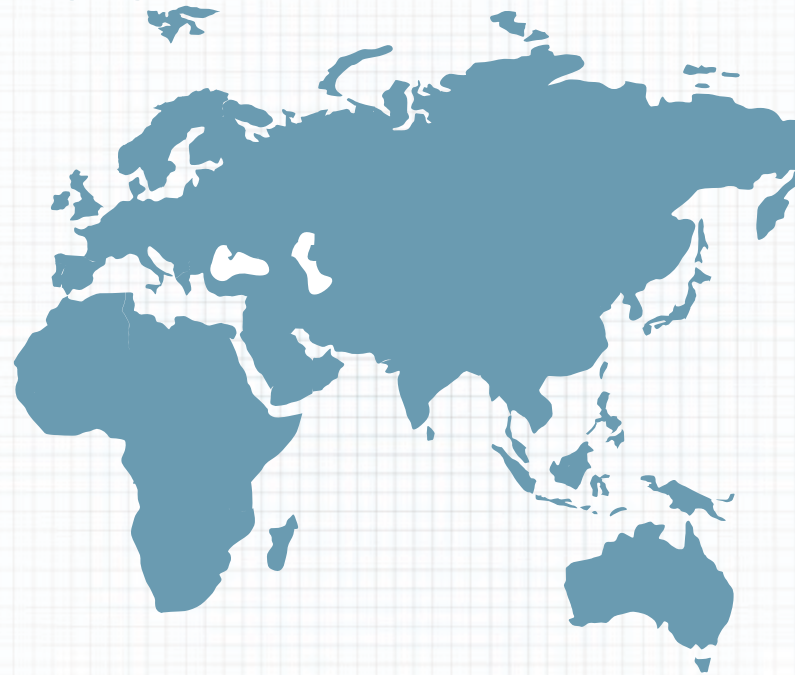
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# Implementing the Ottawa Convention in Southeast Europe: Meeting Expectations in a Challenging Environment



While great progress has been made in SEE in implementing Article 5, some states in the region continue to face great challenges. Seen here is a minefield warning sign in Croatia.

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As the 10-year deadline for fulfilling Article 5 of the Ottawa Convention<sup>1</sup> is rapidly approaching for the first States that ratified or acceded to the Convention, each State Party faces the requirement that all known anti-personnel mines be destroyed. The author examines the progress and challenges that remain in Southeast Europe regarding Article 5 implementation.

by Kerry Brinkert [ Geneva International Centre for Humanitarian Demining ]

Those wanting to solve the problems caused by anti-personnel mines had high expectations when the Ottawa Convention was adopted on 18 September 1997. After all, this event occurred little more than 17 months after the Convention on Certain Conventional Weapons<sup>2</sup> failed to meet expectations in addressing the problems caused by anti-personnel mines. Indeed, the CCW's marginally enhanced restrictions on the use of anti-personnel mines were deemed by the President of the International Committee of the Red Cross to be "woefully inadequate" and "unlikely to significantly reduce the level of civilian landmine casualties." Even the United Nations Secretary-General criticized the U.N.'s own vehicle for addressing humanitarian concerns associated with conventional weapons when the Secretary General said he was "deeply disappointed" by the inability of the CCW to produce results.<sup>3</sup>

Unlike the CCW, the Ottawa Convention met the expectations of those wanting a comprehensive approach to solving the problems caused by AP mines. But in meeting one expectation, states of the world created another. As noted by Croatia's Deputy Minister of Foreign Affairs when the Convention was opened for signature in December 1997, "We should bear in mind that we have not completed our journey yet. We have merely obtained a tool that will enable us to reach our final goal."<sup>4</sup>

## The Expectations and Challenges Ottawa Presents

The journey referred to involves addressing both external and internal expectations. When a state ratifies or accedes to the Convention, **externally**, other states expect that state to fulfil the obligations it has freely accepted. In addition, **internally**, a state's population will or should expect the state to do what is obliged of it to end the suffering and casualties caused by AP mines. In few other instances are the internal and external expectations as high and the challenges as great as they are in Southeast Europe (SEE).<sup>5</sup>

The **expectations** in SEE are high because the states of this region have in recent memory experienced the devastation of armed conflict in which anti-personnel mines have been used and have remained as a deadly legacy. As the Minister of Foreign Affairs of Bosnia and Herzegovina remarked in December 1997, all parties to war in that country supported the Ottawa Convention "because we experienced what the use of AP mines means and we know that we should do everything not to allow this to happen again."<sup>6</sup>

The challenges, however, are great, not only due to the magnitude of the problems, but also because fulfilling state responsibilities has been complicated in SEE. For instance, every state in the region has recently been in some form of transition in terms of the establishment or re-establishment of state structures or in terms of transition



The Ottawa Convention defines a "mined area" as "an area which is dangerous due to the presence or suspected presence of mines." Meeting expectations in implementing Article 5 means ensuring with confidence that all such areas ultimately will no longer be considered dangerous.

from pre- to post-Cold War state structures. Moreover, some SEE states lack the means to completely fulfil state responsibilities on their own.

Challenges notwithstanding, every SEE state has expressed its consent to be bound by the Ottawa Convention.<sup>7</sup> In doing so, each state has created expectations that significant mine-action progress will be made and that the ultimate desired impact, an end to suffering and casualties for all people for all time, will eventually be realised. On 18 September 2007, a decade will have passed since the Convention was adopted; States Parties are now on the eve of a judgment day for progress in meeting these expectations.

In accordance with Article 5 of the Convention, States Parties ultimately are expected to do three things:

1. Each State Party must "make every effort to identify all areas under its jurisdiction or control in which AP mines are known or suspected to be emplaced."<sup>8</sup>
2. Each State Party identifying such areas must "ensure as soon as possible that all AP mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all AP mines contained therein have been destroyed."<sup>8</sup>
3. Each State Party identifying such areas must "destroy or ensure the destruction of all AP mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party."<sup>9</sup>

Hence, the endstate that is expected of States Parties is nothing more or less than that which is stated in Article 5. On the one hand, the Article makes no reference to States Parties striving to become "mine free" or "mine safe" or "impact free"—all of which are terms that, while in frequent use, are operationally ambiguous, legally undefined and often politically loaded. On the other hand, the Article is straightforward in indicating that compliance is nothing short of "the destruction of all AP mines in mined areas under its jurisdiction or control"—mined areas that each State Party would have

made "every effort to identify."<sup>10</sup> This is the defined endpoint and the expectation for completion created by the States Parties of Southeast Europe when they ratified or acceded to the Convention.

#### Macedonia: Meeting the Expectation of Completion

Macedonia recently articulated the endpoint for Article 5 implementation well in its 15 September 2006, *Declaration of Completion*, which clearly and unambiguously states, "The Republic of Macedonia declares that it has destroyed all AP mines in areas under its jurisdiction or control in which AP mines were known or suspected to be emplaced, in accordance with Article 5 of the Convention. The Republic of Macedonia declares that it completed this obligation on 15 September 2006."<sup>11</sup>

Macedonia also illustrated that in reaching this endpoint, States Parties can use the common sense that realistically suggests they need not scour every last square metre of their territory to determine the presence or absence of AP mines. Common sense also suggests that it is impossible to assure with absolute certainty that every last mine has been located and removed from identified mined areas. Macedonia demonstrates this good sense by stating in its *Declaration of Completion*, "In the event that previously unknown mined areas are discovered [after 15 September 2006], the Republic of Macedonia will:

1. Report such mined areas in accordance with its obligations under Article 7 and share such information through any other informal means such as the Intersessional Work Programme, including the Standing Committee meetings;
2. Ensure the effective exclusion of civilians in accordance with Article 5; and
3. Destroy or ensure the destruction of all AP mines in these mined areas as a matter of urgent priority, making its needs for assistance known to other States Parties, as appropriate."<sup>11</sup>

Of course, common sense also dictates that States Parties must establish a high degree of confidence that all necessary measures have been taken. Macedonia illustrated its commitment to building such confidence by providing clarity with respect to the standards being applied and the means of verification and quality assurance being used. In doing so, Macedonia alluded to the International Mine Action Standards,<sup>12</sup> which outline what can and should be done in mine action by defining a "demining process" and hence providing guidance to States Parties in proceeding with tasks such as: identifying mined areas, establishing a national demining programme, locating and removing/destroying AP mines, and assuring that a high standard has been achieved in mine clearance and related activities. No state is obliged to use the IMAS as its set of standards; however, should individual States Parties wish, they can use the IMAS as guidance in establishing national standards for operational actions in order to meet expectations in fulfilling their legal Ottawa Convention obligations.

#### BiH and Croatia: More Time is Required

While Macedonia was able to fulfil its obligations in a 10-year period, it was understood when the Convention was adopted that some States Parties may need more time "to destroy or ensure the destruction of all AP mines in mined areas under [their] jurisdiction or control."<sup>9</sup> In accordance with Article 5.3 of the Convention, States Parties may request an extension for a period of up to 10 years. Indeed, this understanding was made clear by the Foreign Minister of Bosnia and Herzegovina in 1997 when he stated that "we are aiming to comply with the 10-year time limit and do not want to consider an extension yet but the reality of our problem may make this the only solution."<sup>6</sup>

BiH and Croatia have indicated that their challenging environment means they will not reach Article 5 completion in a 10-year period. This, however, does not represent a **failure** to meet expectations; claiming such would ignore the legal provisions in the Convention to request extra time and disregard these States' considerable efforts to date in proceeding to fulfil their obligations.

Rather, BiH and Croatia are well-placed to claim **success** in meeting expectations if:

1. They achieve by 2009 "a status of work conducted under a national demining programme that one could reasonably expect after a 10-year period"



Croatia is one of the SEE states that has made significant progress in implementing Article 5 since the Convention entered into force. Pictured here is a scene of a demining operation near Petrinja, Croatia, taken 18 October 2006.

given the challenging environment in which they find themselves.

2. It is clear that a detailed plan is in place to enable each to declare completion in as short a time period as possible after 2009.<sup>13</sup>

Being able to claim interim success in meeting expectations, though, will be no easy matter. Making decisions on whether to grant extensions will be a serious affair for States Parties. As Croatia itself remarked in September 2006, "the extension possibility is not there to serve as an excuse to mine-affected States Parties for making every effort 'to destroy or ensure the destruction of all AP mines in mined areas under their jurisdiction or control,' but as a necessary tool" ... "a vehicle for the full implementation of the Convention and not a means for getting around it."<sup>14</sup>

#### "SMART" Strategies for Implementing Article 5

BiH and Croatia are not only well-poised to use the extension provision of Article 5 as a "vehicle for the full implementation of the Convention," but they may also be good examples to other States Parties regarding how to communicate the matter of meeting 10-year expectations of progress in implementation. Good work has been done and those responsible should take pride in their efforts. The task with respect to the extension request is now to say what has been done, to explain the impeding circumstances and to say what will be done.

A template for preparing extension requests has been developed and enhanced by Canada and is ready for consideration by the States Parties at their November 2007 meeting.<sup>15</sup> Ultimately, though, this is a voluntary guide and there is nothing stopping States like BiH and Croatia from proceeding with the task at hand. In doing so, it is advisable that States Parties be as "SMART" as possible with their achievements and goals—that is, specific, measurable, achievable, relevant and time-bound. They can articulate matters that are specific and relevant to the actual obligations of the Convention and quantify matters to the extent possible. In addition, in communicating what will be done in the future, they can again be specific, measurable and relevant, but also communicate matters that are achievable in a time-bound manner.

For a State Party like BiH, its Landmine Impact Survey report may be a good starting point. After all, the report in part claims that it "establishes baseline data for measuring progress."<sup>16</sup> Consequently, questions that naturally may be on the minds of States Parties evaluating a request for an extension might be:

- What means have been used to verify whether there indeed are mined areas within these suspected hazard areas? In the process of doing so, what amount of the suspected hazard areas originally logged has been released and how much remains?
- Of the areas identified to contain AP mines, what is the total area in which Article 5 obligations were fulfilled? What means were used to fulfil these obligations and to assure quality? How many AP mines were destroyed and how many other explosive remnants of war destroyed?
- How much area and which areas remain in which Article 5 obligations must still be fulfilled? Of these, which areas have been and have not yet been perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians? What is the estimated date for destroying or ensuring the destruction of all anti-personnel mines contained within each area identified as containing AP mines?
- If area remains in which anti-personnel mines are suspected to be emplaced, what is the basis for the continuing suspicion and what is the estimated size of each area? What is the estimated date for determining whether mined areas indeed exist in suspected hazard areas?

#### Conclusion

Over the past year, the Convention community has discussed with great interest the Article 5 extension request process. However, it is important to recall a point the Convention's President made at the Seventh Meeting of the States Parties:<sup>17</sup> "Work on an extensions process should not be seen as an alternative to fulfilling Article 5 obligations."<sup>18</sup> That is, the extensions process is all about communicating that interim expectations have been met. Actually being in a position to meet Article 5 obligations means continuing to carry out the important work of survey, land release, detection and destruction.

Also in this regard, while BiH and Croatia may require the use of the extensions request process, the Seventh Meeting of the States Parties' Geneva Progress Report<sup>19</sup> recorded that Albania has provided details on national demining plans that are consistent with fulfilling Article 5 obligations by the Convention's 10-year deadline. Therefore, Albania should soon be able to declare, as Macedonia has, that it has fulfilled its Article 5 obligations, and Serbia may be in a similar position in due course. ♦

See Endnotes, Page



Since January 2002, **Kerry Brinkert** has served as the Manager of the Anti-personnel Mine Ban Convention Implementation Support Unit at the Geneva International Centre for Humanitarian Demining. Prior to that, Brinkert was the Section Head of Research, Policy and Communications with the Mine Action Team of Canada's Department of Foreign Affairs and International Trade.

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