Mine-clearance Activities and ANSA Participation: An Analysis

Sadi Caysi
Avrasya Stratejik Araştırmalar Merkezi

Follow this and additional works at: http://commons.lib.jmu.edu/cisr-journal
Part of the Defense and Security Studies Commons, Emergency and Disaster Management Commons, Other Public Affairs, Public Policy and Public Administration Commons, and the Peace and Conflict Studies Commons

Recommended Citation
Available at: http://commons.lib.jmu.edu/cisr-journal/vol11/iss2/24

This Article is brought to you for free and open access by the Center for International Stabilization and Recovery at JMU Scholarly Commons. It has been accepted for inclusion in Journal of Conventional Weapons Destruction by an authorized editor of JMU Scholarly Commons. For more information, please contact dc_admin@jmu.edu.
Mine-clearance Activities and ANSA Participation: An Analysis

Effective mine action requires numerous actors to peacefully collaborate: governmental and nongovernmental, international and local. Armed non-state actors that operate beyond central control, such as rebel opposition groups and paramilitary organizations, and private defense companies can often provide necessary contributions to mine action. Understanding ANSAs allows humanitarian organizations to communicate, cooperate, and avoid conflict.

by Dr. Sadi Catoz [Azerbayca Anadolu Armağan Merkezi]

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 Anti-Personal Mines and on Their Destruction in 2003. 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, stockpiled 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 of vital national importance, Turkey supports efforts aimed at ending the world’s scourge of these indiscriminately used weapons through the global implementation of the Mine Ban Convention. Cognizant of the fact that Turkey, along with 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 ANGS

NGOs are a crucially binding international instrument that was hammered out by states with the support of inter-governmental and nongovernmental organizations. Confirming 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 that have acquiesced to NGO engagement of ANSAs may have a “sine qua non” role in filling, as Mine Ban Convention states, the gap left by States Parties in addressing the human 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 benefitted 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 one of the core elements of the complementary activities of NGOs.

The Nairobi Plan of 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 non-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 obligates all states 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 NGOs, 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, taking into account a range of factors that may or may not 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 by the United Kingdom, France, Germany, Australia and Canada. The only conceivable way in which terrorist organizations’ grounds may be engaged, is if they renounce the use of violence, turn their weapons in and hand them over to the relevant authorities and accept acts of violence over to justice. Even then, close scrutiny would be required.

Certain ANSAs may try to use humanitarian engagement as a strategy to legitimize their political/ideological aims or even to acquire a legal status. Subject to the specific and applicable provisions of international humanitarian law, by no means may an ANSA establish a permanent and de jure status, organization that carry out humanitarian work have the obligation to make sure that they are not abused. Otherwise, they may undermine the sovereignty and interests 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 these engagements as patronizing.

In addition to these general points that would apply to all NGOs, the issue of NGO engagement with armed non-state actors, there are reasons specific to the Mine Ban Convention. First, ANSAs that engage in terrorist activities should not be permitted to carry out activities on behalf of and supported by ANSAs, by any means may not be forgotten that terrorism is an international crime and NGOs wish to carry out humanitarian activities in the field. In such a case, the State Party may make the sovereign choice of requesting or allowing the engagement of ANSAs, on the other hand, by any means may be engaged. In this regard, 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 one of the core elements of the complementary activities of NGOs. Second, engaging ANSAs on a relatively small scale, often out of necessity, and consent of the State Party concerned is one of the core elements of the complementary activities of NGOs. As there are actors in the Mine Ban Convention, there are reasons specific to the Mine Ban Convention and consent of the State Party concerned is one of the core elements of the complementary activities of NGOs.

Following on and as described in the beginning of this paper, there are indeed States Parties that have recognized foreign and obligations of the State. Such NGOS activities may serve the illegitimate objectives of armed non-state actor(s) in question in increasing tension and thus adversely affecting not just the local security environment, but also endangering international efforts aimed at combatting terrorism. Not surprisingly, many countries have called for a ban on the use of such weapons, sending the wrong kind of signals to states that are outside the Convention, but are seriously contemplating accession. All of these, many states would want to be part of a community that adheres to their international obligations, especially on a matter of national security?

“After all, how many states would want to be part of a community that adheres to their international obligations, especially on a matter of national security?”

Conclusion

It is clear that NGOS and third parties cannot be considered as direct or indirect support for such groups may be proscribed. It is absolutely essential to create a mine-free world where we can build on our efforts to eradicate a scourge that has lasted for decades, will have occurred.

A Policy Prescription

For the reasons outlined above, the delicate issue of engaging armed non-state actors, there are reasons specific to the Mine Ban Convention and consent of the State Party concerned is one of the core elements of the complementary activities of NGOs. ANSAs that previously did not use anti-personnel mines, Turkey signed the Convention, the request and consent of the State Party concerned is one of the core elements of the complementary activities of NGOs. Thus, action 46 is contingent upon the position of the State Party. Moreover, it is also evident from this action, quoted by many to mean that engagement has to take place. “...the delicate issue of engaging armed non-state actors within the context of the Mine Ban Convention has to be done with utmost caution, prudence and common sense.”

58 | notes from the field | journal of mine action | spring 2009 | 11.2

Published by BMJ Scholarly Commun, 2009

11.2 | spring 2009 | journal of mine action | notes from the field | 58
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

News Brief

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 dissimilar 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 unsuccessf ul 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.