

ICBL Statements on Article 5 Extension Requests
9th Meeting of the States Parties
Informal Discussions, 25 and 26 November 2008

Delivered by Simona Beltrami, ICBL Advocacy Director
Tamar Gabelnick, ICBL Treaty Implementation Director and
Gisela Luján Andrade, Landmine Monitor Researcher, Peru

INFORMAL DISCUSSIONS, 9MSP

The ICBL has said since 2006 that the credibility of Article 5 will rest in large part on how well the extension request process is handled, especially in this precedent-setting first year of requests. We have noted that a process where requests would get a simple and easy approval would be severely damaging to the overall integrity of the article. A so-called “rubber-stamping” exercise would remove the motivation of a firm time constraint; it would enable states to easily abuse the extension provision by taking as much time as they wanted, not as much as they needed, to demine their territory; and it could give States Parties the possibility to circumvent their mine clearance obligations altogether. In other words, it would render the 10-year deadline essentially meaningless. A serious and thorough review of each request, on the other hand, would reinforce the idea that extensions are only meant for the exceptional few cases, and that the states will be held to their duty to demine “as soon as possible.”

Overall, we have found the process established over the past year to have good potential, but to have fallen short in some critical areas.

Looking at the positive side,

- We heard yesterday that the process of writing the requests and revising them with input from the Analyzing Group turned out in many cases to be a very good planning exercise and in some cases led to markedly improved requests, including two shortened timeframes.
- We know that several – though far from all – of the members of the analyzing group spent a good deal of time studying the requests and worked hard to make it a constructive and thoughtful process, led by the tireless efforts of His Royal Highness Prince Mired.
- The analyses by and large reflected this detailed study of the requests in a manner befitting the seriousness of the process, pointing out strengths and shortfalls of the request as well as matters that still need the states’ attention. The analyses also send a positive message to states that might have to request an extension in the future, showing that their requests will be thoroughly scrutinized and must be carefully prepared and justified.
- The analyses in some cases encourage the requesting state to take steps to finish in a shorter period – sometimes “much” shorter – than requested.
- The analyses call on states to report back regularly on the benchmarks they set out for themselves during their extension period or identify them if they were not clear or present. If States Parties pay close attention to these reports, they will be able to know if states are on track to completing their obligations according to the plans in their requests.

- The inclusion of some of these findings as well as comments by other States Parties in the final report will lay down for the record what further clarifications, calculations, and even revised timetables the States Parties still expect from the requesting States Parties and is therefore an essential part of a meaningful process.

On the other hand

- The fact that there were 15 requests is bad news in itself – this is hardly the “few if any” suggested in Nairobi.
- We have always said that the requests should be for the shortest feasible time period, but some states presented rather unambitious requests which are not in keeping with the humanitarian imperative of the MBT or with respect for the disarmament goals of the treaty
- In a few cases, the group did not take as a firm stand as we thought they should have, perhaps because of the consensus-based approach Canada made reference to yesterday. For example, we have always said there should be no blank checks given to States Parties. But that is what was effectively given to the two requesting states that have not, and do not plan to, begin demining operations before their 10-year deadline ends. The ICBL believes that any state that does not even attempt to meet its deadline by beginning mine clearance before the 10 years are up does not merit the approval of the MSP.
- In terms of the workings of the analyzing group, we understood that some States Parties tried to politicize the process, creating regional alliances and undermining the cooperative workings of the group. This approach, plus a set of mostly closed-door discussions, stand in sharp contrast with the Mine Ban Treaty’s spirit of cooperation and transparency.

We have prepared critiques of all of the extension requests which we have put on your desks and outside. While we have questions and observations on all of them, we will restrict our specific oral comments and questions to those we have the most concerns about. But we would like to make a few general comments at the outset.

In terms of the reasons for the requests, states frequently cited funding, environmental conditions and difficulty of terrain as a reason for lack of progress in their demining programs. Certainly these problems have caused unforeseen delays and need to be taken into account. Certainly as well States Parties need to consider the relationship between implementation of Article 5 with other States Parties’ duty to provide international cooperation and assistance under Article 6. However, evidence suggests that lack of sufficient political will and poor management of demining operations are equally to blame in some countries. The ICBL believes that in at least six cases (Denmark, Ecuador, Nicaragua, Peru, the United Kingdom, and Venezuela), a greater effort by the States Parties would likely have resulted in the state being able to comply with its 2009 deadline.

Several States Parties have still to generate a realistic estimate of their residual contamination, notably Bosnia and Herzegovina, Chad, Croatia, Thailand, and Zimbabwe. Excessive and inaccurate estimates impede effective planning and priority setting of demining operations.

Several States Parties have made unrealistic plans or have funding aims that are either unsupported by firm commitments or unlikely to be achieved. This concerns Bosnia and Herzegovina, Nicaragua, Thailand, and

Zimbabwe in particular. This may mean that targets will not be met and may even require states to seek a further, unexpected extension period.

Certain areas may be implicitly excluded from clearance plans. The treaty is clear that all mined areas under a State Party's jurisdiction or control must be cleared. This concerns Chad, Croatia, Denmark, and Yemen. In the case of Jordan, more detail is needed about the status of discussions to resolve border demarcation along the border with Syria.

In a few cases – Ecuador, Peru and Senegal – we have been calling for the states to reformulate their request with a view to shortening the projected time needed for completion. We will continue to press these states and others to take the shortest possible amount of time to implement their Article 5 obligations – not just because it is a treaty obligation, but because lives and livelihoods are at stake.

Finally, in two cases—United Kingdom and Venezuela—the ICBL has called for the extension request to be turned down unless the requests are revised to include a formal commitment to start demining operations before the expiry of the original Article 5. We will comment on these requests further, but we feel that consideration of these special situations deserve the greatest attention at this MSP because of the precedent they risk setting if accepted as is.

We will end here on our general comments, except to say that we hope that a much larger group of States Parties than those taking part in the analyzing group have come to this MSP prepared to engage on the requests, to ask probing questions, to point out important shortcomings in the requests, and finally to take a decision on each request that puts the interests of the convention and mine-affected communities above all else. You are all determining the future of Article 5 with your debate over the next couple days and your decisions on Friday. We look forward to a lively discussion.

COUNTRY-SPECIFIC COMMENTS:

CHAD

In addition to the good points made by the Analyzing Group, we would like to make two short comments and raise a technical question.

The ICBL recognizes that political instability and continued conflict have had a serious impact on Chad's ability to meet its deadline. However, we find that far greater progress should have been achieved by the mine action program in Chad after many years of significant UN and donor support. For example, it is troubling that Chad cannot make use of the data it has collected over the past several years.

Second, we note that while Chad aims to put forward a plan in its next request to complete the removal of all emplaced antipersonnel mines, this plan will not include most of the Tibesti region, which is not under Chad's control at present. We want to underscore that this area will of course eventually need to be cleared before Chad can declare completion of Article 5 obligations.

As we said earlier, unrealistically large estimates of contamination make it difficult if not impossible to conduct effective planning. We therefore welcome the request for a short amount of time to conduct the necessary surveys to clearly determine the remaining contaminated area.

We do have one technical question about the time requested, however. Chad is asking for an extension until January 2011 but anticipates asking for a second extension in 2011, after the additional survey work is done. In concrete terms, this would mean a request submitted at the MSP in the fall of 2011, meaning Chad will effectively be in breach of the treaty between January 2011 and this MSP. We therefore recommend that either Chad revise its extension period to take it up to the time of the next planned extension request submission (fall 2011) or plan to submit a request at the 10th MSP in the fall of 2010, though this may be too early according to the initial request).

ECUADOR

La ICBL quisiera compartir con los delegados algunas observaciones sobre la solicitud de prórroga presentada por Ecuador.

Asimismo queremos aprovechar la oportunidad para agradecer la invitación extendida por el Ecuador a la ICBL para visitar y conocer mejor la realidad del país. Durante la visita, que se produjo en el mes de septiembre de este año, pudimos comprobar que los factores climáticos, logísticos y de terreno citados en la solicitud de prórroga constituyen obstáculos formidables a las tareas de desminado.

Aún así, hay que destacar que los niveles de productividad registrados en los últimos 9 años han sido muy bajos.

Según indicado en la solicitud, Ecuador tiene previsto aumentar el número de desminadores y modificar la estructura de los equipos con miras a aumentar su eficiencia. La ICBL considera esto positivamente y está convencida de que esta mayor inversión en recursos humanos, así como el incremento previsto en el presupuesto, tendrían que verse traducidos en una aceleración del ritmo de trabajo.

La ICBL considera también que el área de 228.000 metros cuadrados sospechada de estar minada en la provincia de Morona Santiago se podría ver en buena medida reducida a raíz de una acción de evaluación e identificación más precisa de las zonas efectivamente contaminadas.

Para concluir, la ICBL insta al Ecuador a que siga incrementando sus esfuerzos para revisar y adelantar el cronograma de trabajo, y conseguir declarar su territorio libre de minas en un periodo mucho menor a los ocho años solicitados.

PERU

La ICBL desea hacer llegar a los delegados presentes algunos comentarios sobre la solicitud de extensión presentada por Perú, así como su agradecimiento al gobierno de Perú por haber recibido a la misión de la ICBL en septiembre de este año y permitirnos tener un conocimiento más preciso sobre la problemática planteada por las minas terrestres en Perú.

En primer lugar, la ICBL reconoce la modificación hecha por Perú para reducir el periodo de extensión inicialmente solicitado así como saluda su pública manifestación de cumplir con sus obligaciones de desminado lo antes posible. Del mismo modo, reconoce las dificultades logísticas y de condiciones ambientales y geográficas experimentadas por Perú para realizar el desminado en la zona fronteriza con Ecuador.

No obstante, también considera que éstas no justifican los muy bajos niveles de productividad alcanzados en los últimos años en el desminado de esta zona.

En segundo lugar, la ICBL apoya las discusiones que se llevan en Perú –según pudimos enterarnos en nuestra visita a Perú en septiembre- para que unidades de desminado de la policía sean trasladadas a la zona de la frontera, una vez que se haya culminado con las labores de desminado en la zona de la infraestructura nacional.

En tal sentido, la ICBL considera que, de acuerdo a los avances registrados en el desminado de las torres eléctricas de alta tensión, el Perú será capaz de terminar dichas operaciones en 2010 y que, por lo tanto, a partir de esta fecha, los desminadores de la policía podrían contribuir de manera significativa en el progreso del desminado en la frontera y, por tanto, cumplir con su compromiso del Artículo 5 en un tiempo mucho menor al solicitado. Por lo tanto, la ICBL considera que el Perú debería calificar la culminación del desminado de la infraestructura pública como una de sus principales prioridades, a fin de concentrar recursos y esfuerzos en el desminado de la frontera con Ecuador.

De otro lado, la ICBL saluda la decisión de Perú de asegurar el 70% del presupuesto necesario para el desminado en la infraestructura pública y hace un llamado para que la voluntad política demostrada en esta decisión se extienda a otros campos de acción decisivos para la aceleración del desminado en la frontera: el traslado de las unidades de desminado de la policía a la frontera y la asignación de un helicóptero a tiempo completo encargado de las evacuaciones humanitarias.

Finalmente, la ICBL reitera su llamado al Perú para que haga todos los esfuerzos necesarios a fin de terminar el desminado en la zona de la frontera con Ecuador en un tiempo inferior a los ocho años solicitados.

SENEGAL

As we describe in more detail in the extension request critiques we circulated, the ICBL finds that Senegal has made limited progress in meeting its Article 5 obligations, with almost no land cleared to date to humanitarian standards and no clear picture of the true extent of the contamination. While the conflict with the MFDC made it difficult to begin demining operations before the end of 2004, if the national authority and mine action center had been set up earlier, demining operations might have been able to begin much more quickly after the nominal end of the conflict. Reasons for the continued lack of progress—especially given apparent success in raising funds for demining—are not clear. While some areas remain difficult to access for security reasons, there appear to be several places where the demining operations could begin immediately, and rapid progress could likely be made on known mined areas beginning with the few high priority sites.

Even considering the special security challenges Senegal is facing, given the level of estimated contamination and predictions of even less contamination after technical survey, an extension of seven years seems to be excessive. We encourage Senegal to quickly set out plans to conduct technical survey of all its suspected

hazardous areas to identify contaminated areas and then revise its strategic plan accordingly with a view to finishing its Article 5 obligations as soon as possible.

THAILAND

The ICBL has found that the key factors that have prevented Thailand from far greater progress in clearance operations in the last 10 years, and which may continue to pose obstacles, are political instability and indifference. Budget cuts by the Supreme Command in 2005 forced TMAC to cut manpower by half, severely curtailing survey and clearance. Financial constraints over the years have also limited TMAC's ability to employ competent data management staff. The responsibility does not lie with TMAC but with the Armed Forces Supreme Command and successive governments that have not prioritized humanitarian demining and have not given mine action the support needed to fulfill Thailand's obligations under the treaty. After some two years of debate, the government has yet to reconstitute TMAC as a civilian agency that would make it at least eligible for funding from some international donor agencies that will not fund a military entity. Until that happens, timelines for tackling Thailand's remaining mine contamination remains speculative.

While recognizing the legitimate need for Thailand to be granted more time to demine its territory, we believe that Thailand still needs to provide more clarity on the following points:

1. Data on demining results and productivity (for example, the request claims an average yearly clearance productivity of about 50km², whereas it has only reported clearing a total of 56.1km² in 2000–2008).
2. The feasibility of the timelines TMAC has suggested for dealing with remaining contamination within the period of the requested extension. The request estimated Thailand had 528km² of "real minefields." Despite the low annual clearance rates in past years, the request suggests annual clearance will climb from 43.07km² in 2009 to 64.71km² in 2016. Given past productivity, achieving these results would therefore only be feasible if achieved through methods other than manual clearance, meaning that TMAC would have to continue to identify large areas to release.
3. Whether the predicted budget needs are realistic, and the source and direction of funds. Significant funding has been allocated from the national budget for 2009, which is very good news, but a plan to secure medium to long-term funding will still be needed to support the demining program.

Finally, in addition to regular reporting on the benchmarks set out in the request, we encourage Thailand to report on the progress of TMAC's transition to a civilian agency given the importance of this change to attracting the necessary resources to meet Thailand's ambitious demining plans.

UNITED KINGDOM

We would like to begin by emphasizing that the ICBL does not in any way question the UK's contribution to and dedication to the alleviation of human suffering caused by antipersonnel mines. And despite certain comments by the delegation earlier today, we trust that the UK does not question the contributions and dedication of the ICBL or ICRC or its fellow States Parties. What we do question is the manner in which the UK has gone about fulfilling its obligations under Article 5.

As was clear from the many interventions this morning, States Parties find it difficult to understand and accept that the United Kingdom, one of the wealthiest mine-affected states under this treaty, has not only failed to finish its clearance obligations within 10 years, it has failed to even *start* demining operations. We were pleased that so many states expressed concern not just about the UK's extension request itself, but about the impact it might have on the integrity of the treaty, and the bad precedent it would set.

The UK informed us that it plans to issue a tender in 2009 to begin demining at a still unspecified time in 3 areas. We welcome this as a step in the right direction. But, we find it entirely insufficient. It is not, of course, a revision of the extension request. According to the treaty language, States Parties "must assess and decide upon the request for an extension," not assess an oral pledge made during the MSP that has no legal force.

One might ask why this announcement came so late, when the Analyzing Group has been asking for such information for months, and the ICBL and others have been calling for such a step for years, in keeping with the obligation to begin demining as soon as possible. And why is it just an oral announcement, and not part of a revised extension request. If the UK is serious about beginning its clearance operations, it should formally revise its request like so many other states have done.

Even taking the oral announcement into account, the UK falls far short of the standard set by other States Parties. There is still no starting date, no timeline, no plan, no budget and no completion date.

Moreover, the announcement only concerns three areas. What about the other 114 areas? What are the year by year plans to begin and finish demining *all* mined areas? What resources is the UK making available for this work? Without such information presented formally as part of the request, States Parties do not have the necessary information to make a decision. There is no way to know if the United Kingdom intends to demine the entirety of its mined areas within the requested 10-year extension period, if ever.

The UK's actions seem to indicate that it believes that it, and it alone, is above the extension request approach agreed by all States Parties and well implemented by so many other mine affected states, with many expending huge effort and making many sacrifices to do so.

For these reasons, the ICBL believes that the United Kingdom's request - which we must emphasize has not changed - still cannot be accepted as is. An approval on Friday would send the wrong message to other mine-affected states that are making their best effort to comply with their obligations, despite the high costs, despite the technical difficulties, and despite the danger to their deminers. If one state is allowed to ignore clear legal obligations on the basis the work is challenging and expensive or because its humanitarian or developmental implications are judged minimal, other mine-affected States Parties may believe that they may also avoid fulfilling their treaty obligation.

We strongly encourage the UK to revise its request before Friday. It should begin clearance before the expiry of its 2009 deadline. It should only ask for a one-year extension to conduct the necessary

technical assessments to be able to resubmit a request with a concrete, time-bound demining plan for fulfillment of its legal obligations, based on factual knowledge. This interim request approach is being taken by Denmark, Chad, and Zimbabwe, and has been widely praised this week by States Parties. Why cannot the UK do the same? If the UK does not make these revisions to its request, we urge States Parties to vote against it on Friday and to invite the UK to return in a year with another request.

Granting a blanket ten year extension without any binding commitment to begin and complete all demining operations would be a precedent that would haunt the treaty for years to come.

VENEZUELA

En primer lugar la ICBL quisiera solicitar una clarificación sobre uno de los puntos de la presentación hecha por Venezuela esta mañana. En la presentación se manifestó que Venezuela tiene a su disposición personal de desminado ya capacitado. Sin embargo, la solicitud de prórroga indica que se requiere tiempo adicional en 2009 para la capacitación del personal, lo cual supone un aplazamiento del comienzo del trabajo hasta 2010. La ICBL agradecería a la delegación Venezuela una clarificación sobre este punto.

Con respecto a la solicitud de Venezuela, la ICBL quiere resaltar su profunda preocupación por el hecho que, nueve años después de la entrada en vigor de la Convención para Venezuela, las operaciones de desminado aún no han empezado.

Sean cuales sean las razones, la ICBL considera que esto contradice la letra y el espíritu de la Convención ya que el artículo 5 estipula claramente que la remoción de las áreas minadas tiene que ser realizada «cuanto antes».

Aún más preocupante resulta el hecho de que el cronograma agregado a la solicitud de prórroga preve que las tareas de desminado no empiecen antes de octubre 2009, es decir después de vencer el plazo establecido para Venezuela según los términos de la Convención. La ICBL considera que, en principio, cualquier solicitud que no prevea el inicio de los trabajos dentro del plazo de 10 años previsto para su cumplimiento, tiene que ser rechazada.

Por lo tanto, la ICBL insta a Venezuela a que revise su solicitud para modificar el cronograma con miras a comenzar el desminado antes del 1 de octubre de 2009 e identifique formas de completarlo en menos de los cinco años solicitado. Esto parecería ser posible ya que en el pasado Venezuela ha indicado repetidamente que estaría en condiciones de cumplir con sus obligaciones de desminado en tres años.