

Statement Director of the ISU – 8 June 2018

Thank you Vincent and thank you for inviting the ISU to participate in this panel.

Excellencies, dear colleagues.

It a real pleasure to be able to address the plenary and recall the obligations under Article 5 of the Convention as well as the understandings adopted by the States Parties on the implementation of Article 5.

This will not be new for many of you. Others may not be as familiar with the wealth of understandings adopted.

Slide 1

To begin with, it's important that we look at the text of the Convention. Text which was carefully crafted with the support of a number of States and organizations to ensure one end result, as it is eloquently put in the Preamble of our Convention: “ending the suffering and casualties caused by anti-personnel mines.”

Article 5 of the Convention requests States Parties to carry out three key tasks:

- Each State Party... “Shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced.”
- “shall as soon as possible” ensure that these mined areas “are perimeter marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until

all anti-personnel mines contained therein have been destroyed.”

- “undertakes to destroy or ensure the destruction of all anti-personnel 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.”

Article 5 does not stand alone within the Convention but has a relationship with other Articles of the Convention.

Importantly, it has a relationship with Article 2 which defines the key terms used in Article 5:

First an "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate injure or kill one or more persons.

Now, I do not want to go into the presentation by the panellists, but I will simply note that the definition does not include references to the way mines are made or where they are made, like “ISO certified factory made mine” or anything along those lines.

Second a "Mined area" means an area which is dangerous due to the presence or suspected presence of mines. (this includes those on high mountains, in the bush, in the forest, areas where operations are compromised because of security, etc..)

This is the starting point and should be the end point of understanding what it means to implement Article 5 of the Convention.

Understandings

States Parties have found the text of Article 5 to be clear and unequivocal and comprehensive, some actors outside of the Convention have held, and sometimes propagated, misconceptions about what Article 5 means and its implementation and whether it is realistic to implement.

To address these issues, the States Parties rolled up their sleeves and got to work to address these misconceptions.

At the 2005 Sixth Meeting of the States Parties (6MSP) the States Parties developed a number of understandings on what it means to implement Article 5 and perhaps more importantly what it does not mean.

Some of the most important points that came out of this discussion and can be found in the final report of the Sixth Meeting of the States Parties are the following:

- First, that The Convention does not contain language that would require each State Party to search every square meter of its territory to find mines.

This understanding discredits the myth that the Convention implies the need for a search for a supposed “last landmine”. A state must however “make every effort to identify all areas under its jurisdiction or control” which could be construed as an obligation upon a mine-affected State to carry out assessments and surveys defined and elaborated upon in the IMAS and subsequently address these areas.

- Second: It should be noted that while terms like “mine-free”, “impact-free”, and “mine safe” are sometimes used, such terms do not exist in the text of the Convention and they are not synonymous with Convention obligations.

This understanding highlights that while a variety of terms like “mine-free”, “impact-free”, and “mine-safe” are often heard, these terms may be not universally defined or defined at all. In some instances, terms such “impact-free” and “mine-safe” have been used to describe a milestone towards fulfilment of Article 5 of the Convention but should not be confused with completion of Article 5.

For public relations purposes, “mine-free” may be used as a short reference to communicate that there are no known areas in a particular location or country that are considered dangerous, due to the presence or suspected presence of mines.

- Third: Clearance of all mined areas in accordance with Article 5 is part of the Convention’s overall comprehensive approach to ending the suffering and casualties caused by anti-personnel mines – “for all people, for all time”.

The totality of the impacts caused by anti-personnel mines should be addressed in the context of the Convention.

This set of understandings recalls that all mined areas need to be addressed in order that the Convention can conclusively achieve its purpose of putting an end to the suffering and casualties caused by anti-personnel mines.

And it implies that all emplaced anti-personnel mines have potential impacts. A conclusively “impact-free” state can only be achieved if the totality of impacts is addressed.

Declaration of Completions

At the 7MSP it was noted that the States Parties were employing a variety of different terms in declaring completion and stressed that “this could promote uncertainty over fulfilment of this central Convention obligation.”

To address these concerns and provide greater clarity, the States Parties adopted a voluntary declaration of completion of Article 5 obligations.

The language for declaring completion was elaborated by Guatemala and the ICRC.

As you can appreciate from the declaration:

- The Language employed ensures consistency among States Parties in reporting completion and sees that this consistency is grounded in the legal text of the Convention.
- The declaration of completion is realistic in enabling States Parties to express that it is always possible that previously unknown mined areas may be discovered, once completion has been declared.
- The declaration also indicates the practical steps that a State Party would take, in accordance with the Convention, should it, in fact, discover previously unknown mined areas after declaring completion.

The adoption of the declaration of completion was the first formal acknowledgment by the States Parties that, following completion, residual contamination may be a reality. The declaration allows for the possibility for States Parties to express that there remains a risk that previously unknown mined areas may be discovered, after the declaration of completion.

So What is completion?

In simple terms, a State Party that has reported one or more areas that fit the definition of “an area which is dangerous due to the presence or suspected presence of mines” will know that it has completed Article 5 implementation when it no longer has any area under its jurisdiction or control that “is dangerous due to the presence or suspected presence of mines”.

How to do it

Now while the Convention does not indicate how a State Party should achieve this end, the States Parties have time and again reiterated that completion “is indeed possible. This has been demonstrated by State practices. Achieving this end state has been greatly aided by the development of the United Nations’ International Mine Action Standards”.

At the Ninth Meeting of the States Parties in 2008, Norway, presented a paper entitled Applying All Available Methods to Achieve Full efficient and expedient implementation of Article 5 which sought to address the issue concerning the imprecise identification and significant overestimation of the size of mined areas which in many cases led to the inappropriate allocations of time and resources.

In this paper, adopted by the States Parties, it was highlighted that land can be released through non-technical survey, technical survey and clearance and indicated that the process should be carried out with certain principles in mind including:

- A formal, well documented and recorded process for identifying mined areas;
- Well defined and objective criteria for the reclassification of land;
- A high degree of community involvement and acceptance of decision-making;

- A formal process of handover of land prior to the release of land;
- An ongoing monitoring mechanism after the handover has taken place;
- A formal national policy addressing liability issues.

At this time the international standards were being enhanced in this regard. Since this time, the IMAS have developed to provide much of the necessary guidance for the development of National Standards by States Parties to achieve completion of Article 5 obligations and they continue to be strengthened.

In recent years, the pursuit of the Convention's mine clearance aim has shown that implementation of Article 5 is indeed possible, and, for many States Parties, that it is possible in years, not decades.

Also, declaring completion, States Parties have provided not only this declaration but a longer more detailed text of how they were able to declare with a high level of certainty that they have completed their Article 5 obligations.

Since the entry into force, 61 States Parties have declared having an obligation under Article 5, 30 States Parties have declared completion.

Now, if a State Party faces impeding circumstances in implementation and cannot address its contamination by the deadline of 10 years after entry into force... including because of the magnitude of the challenge, financial constraints, security, conflict, newly laid mines etc.. it may submit a request for extension.

The States Parties have, at the Seventh Meeting of the States Parties, developed an extension request process. Several observations and reflections have been made on this matter many of which were captured in a document including recommendations entitled “Reflections on the Article 5 Extensions Process” adopted at the 12MSP.

One important recommendation was that:

A detailed demining plan is a critical part of the extension requests and it should be expected that requesting States Parties can provide detailed plans for a two to five year period (even 5 years is optimistic).

Beyond three to five years, circumstances will change (e.g., resource mobilization efforts may have produced results dramatically different from expectations, natural disasters may have occurred, additional mined areas may have been discovered, new techniques may have dramatically increased the pace of work, et cetera).

Residual contamination

Now, following completion of States Parties’ obligations under Article 5, the States Parties are fully aware that States may face residual contamination.

(It is important that we understand that “residual contamination” is not a mined area that we know exists.)

residual contamination should be understood as the locations or areas where mines and / or unexploded ordnance are discovered after all confirmed or suspected hazardous areas have been processed and considered fit for normal human use (at least with respect to the surface and immediate subsurface of these areas). Residual contamination does not amount to locations or areas which,

on the basis of evidence gathered through survey and the analysis of any existing data are known by national authorities to be either confirmed or suspected hazardous areas.

The term *residual contamination* (and derivatives of it) must not be used ambiguously. Areas that are *challenging* to access (in high mountains, in forests) and are not impossible to access must not be classified as residual.

Previously unknown mined areas

There is the possibility that States Parties, in exceptional cases, discover previously unknown mined areas after original or extended deadlines have passed, including new mined areas.

In this case, the States Parties adopted a decision of what to do in situations where States Parties, in exceptional cases, discover previously unknown mined areas. This complements and strengthens the declaration of completion adopted in 2005.

It simply says that in these cases that State Party should:

- *immediately inform all States Parties*
- *and if it is unable to destroy or ensure the destruction of all anti-personnel mines in the mined area before the next Meeting of the States Parties or Review Conference (whichever falls earlier), it should submit a request for an extended deadline in accordance with the process established by the States Parties.*

Ladies and gentlemen, in my appreciation, one of the reasons why this Convention has worked, is thanks to the cooperative and transparent nature of the way we implement it, the camaraderie, in

meeting a common objective, and I am looking forward to these principles to be continuously strengthened through our joint actions.

I think I will leave it at that.



A mine-free world: challenges and opportunities in realising the 2025 aspiration



Anti-Personnel Mine Ban Convention

Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction

www.apminebanconvention.org

Article 5 – destruction of AP mines in mined areas

Each State Party...

- “shall **make every effort to identify all areas** under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced.”
- “shall as soon as possible” ensure that these mined or **en** areas “are perimeter marked, monitored and protected by fencing or other means, to **ensure the effective exclusion of civilians**, until all anti-personnel mines contained therein have been destroyed.”
- “undertakes to destroy **sure the destruction of all anti-personnel 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.”



Declaration of Completion

[State] declares that it has destroyed [ensured the destruction of] all anti-personnel mines in areas under its jurisdiction or control in which anti-personnel mines were known or suspected to be emplaced, in accordance with Article 5 of the Convention. [State] declares that it completed this obligation on [date].

In the event that previously unknown mined areas are discovered after this date, [State] will:

- i. report such mined areas in accordance with its obligations under Article 7 and*
- ii. share such information through any other informal means such as the*
- iii. Intersessional Work Programme, including the Standing Committee meetings;*
- iv. ensure the effective exclusion of civilians in accordance with Article 5; and*
- v. destroy or ensure the destruction of all anti-personnel mines in these mined areas as a matter of urgent priority, making its needs for assistance known to other States Parties, as appropriate.*



Previously unknown mined areas

If after its original or extended deadline to implement Article 5 has expired, a State Party, as an exceptional circumstance, discovers a mined area (as defined by Article 2.5 of the Convention), including a newly mined area, under its jurisdiction or control that is known or suspected to contain anti-personnel mines, the State Party should:

- *immediately inform all States Parties of such a discovery and shall undertake to destroy or ensure the destruction of all anti-personnel mines in the mined area as soon as possible.*
- *If the State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines in the mined area before the next Meeting of the States Parties or Review Conference (whichever falls earlier), it should submit a request for an extended deadline...*

States Parties concerned by this decision shall continue to fulfil their reporting obligations under Article 7 of the Convention, including the obligation to report on the location of all mined areas that contain or are suspected to contain anti-personnel mines under their jurisdiction or control and on the status of programs for their destruction. Each State Party should also continue to provide updates relative to these and other commitments at meetings of the Standing Committees, Meetings of the States Parties and Review Conferences.





The Implementation Support Unit

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