

Reflections and understandings on the implementation and completion of Article 5 mine clearance obligations

Presented by the Committee on Article 5 Implementation
(Chile, Colombia, the Netherlands, Switzerland)

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I. Background

1. The purpose of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction ("the Convention") of putting an end to the suffering and casualties caused by anti-personnel mines will be achieved in large part by States Parties ensuring the efficient and effective implementation of the mine clearance obligations as enshrined in Article 5 of the Convention.
2. Since the entry into force of the Convention, 30 States Parties have reported completion of their Article 5 obligations. While the implementation of Article 5 has not taken place without practical and technical challenges, the States Parties have addressed these issues by taking a number of decisions, grounded in the goals and text of the Convention, to ensure the full and effective implementation of Article 5.
3. During the 7-8 June 2018 intersessional meetings of the Convention, the Committee on Article 5 Implementation held a panel discussion reflecting on the implementation of the mine clearance obligations of the Convention under Article 5. The discussion aimed to recall the objectives, definitions and understandings on the implementation of Article 5 adopted by the States Parties and to highlight some important lessons learned.

II. Objectives

4. The Committee on Article 5 Implementation notes that as implementation of Article 5 advances with a number of States Parties set to declare completion in the next years, a good opportunity presents itself to highlight understandings and lessons learned in the implementation of Article 5.
5. This document seeks to recall the obligation of States Parties' to destroy anti-personnel mines in mined areas under Article 5, reference understandings adopted by the States Parties on the implementation of this obligation and provide recommendations to States Parties in declaring completion.

III. Implementation of Article 5: obligations as a result of the Convention text

6. **Under Article 5** of the Convention a State Party must carry out, amongst other, the following three activities:
 - *To make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced (Article 5.2);*
 - *To ensure as soon as possible that all anti-personnel 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 anti-personnel mines contained therein have been destroyed (Article 5.2); and*

- *To destroy or ensure the destruction of all antipersonnel 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 5.1).
7. 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 and provides further guidance concerning the end point of implementation of Article 5:
- ***"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* (Article 2.1).
8. A number of States Parties face challenges related to anti-personnel mines of an improvised nature. As highlighted in the conclusions of the Committee on Article 5 Implementation, welcomed by *the Sixteenth Meeting of the States Parties*, the definition contained in Article 2.1 makes no distinction between an anti-personnel mine that has been "manufactured" and one that has been "improvised", since negotiators aimed for an effect-based definition.¹ Hence, States Parties affected by the latter type of anti-personnel mines must address them as part of their overall implementation challenge under the Convention including, in the fulfilment of Article 5 and Article 7 (transparency measures) commitments.
- ***"Mined area"** means an area which is dangerous due to the presence or suspected presence of mines* (Article 2.5).
9. The definition contained in Article 2.5 includes all mined areas regardless of how challenging a mined area is to access (e.g. areas on high mountains, in forested areas or areas where operations are compromised because of security issues, etc...). All areas fitting the definition of a mined area fall under the scope of Article 2.5 and, if containing anti-personnel mines, they must be addressed in accordance with Article 5 and reported under Article 7.

Obligation to destroy anti-personnel mines in mined areas under Article 5:

All areas falling under the definition of a "mined area" and containing "anti-personnel mines" must be addressed in order to meet the obligations under Article 5 of the Convention. This obligation is independent of the difficulty to access a "mined area" or of the type of anti-personnel mines emplaced (e.g. manufactured or of an improvised nature).

IV. Implementation of Article 5: commitments resulting from Meetings of the States Parties and Review Conferences

10. When questions or different readings regarding the implementation of certain articles of the Convention emerged, States Parties conferred on the matter and adopted understandings. These key understandings, accepted by all States Parties, guide the implementation of the Convention.

a. Identification of all mined areas

¹ Maslen, Stuart (2005), *"The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction"*, In: Commentaries on Arms Control Treaties, Volume 1.

11. Identifying mined areas should be done through a “formal, well documented and recorded process”, including a *“credible investigation of the presence of mines that features (a) a thorough and well described methodology ensuring objective assessments, (b) input provided by a sufficient number of credible informants whose names and contact details are recorded, and, (c) quantified survey information, is a necessary precondition for being able to release land without the deployment of technical means.”*²

UNDERSTANDING #1

The requirement to “make every effort to identify all areas”, as found in Article 5.2, is understood by States Parties as an obligation to carry out evidence-based assessments and surveys. These are to be defined and elaborated in national standards based on International Mine Action Standards (IMAS), and include the need to ensure an evidence-based approach when designating an area as a “suspected hazardous area” or “confirmed hazardous area”.

b. Destruction of anti-personnel mines in mined areas and applying all available methods to implement Article 5

12. While the Convention does not indicate how a State Party should achieve implementation of Article 5, States Parties’ practices and common understandings, supported by the development and enhancement of the IMAS, have demonstrated efficient and effective ways to accomplish this.
13. *“The Convention does not contain language that would require each State Party to search every square metre of its territory to find mines. The Convention requires, however, the destruction of all anti-personnel mines in mined areas which a State Party has made every effort to identify. 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 are not synonymous with Convention obligations.”*³
14. *“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.” Anti-personnel mines, and the clearance of them, have and / or could have a humanitarian impact, an impact on development, an impact on the disarmament goal of the Convention and an impact on solidifying peace and building confidence. The totality of the impacts caused by anti-personnel mines should be addressed in the context of the Convention.”*⁴
15. The 2008 Ninth Meeting of the States Parties (9MSP), *“in recognising the value of States Parties making use of the full range of emerging practical methods to more rapidly release, with a high level of confidence, areas suspected of containing anti-personnel mines, [...] warmly welcomed the proposal submitted by Norway on the full, effective and expedient*

² Ninth Meeting of the States Parties, 2008, *Applying all available methods to achieve the full, efficient and expedient implementation of Article 5*, APLC/MSP.9/2008/WP.2. The 9MSP encouraged the implementation of the recommendations contained therein.

³ Sixth Meeting of the States Parties, 2005, *Final Report*, APLC/MSP.6/2005/5.

⁴ Ibid.

implementation of article 5, and agreed to encourage States Parties, as appropriate, to implement the recommendations contained therein.”⁵

16. The 9MSP stressed that the full, efficient and expedient implementation of Article 5 requires the application of evidence-based non-technical survey, technical survey and clearance. The States Parties noted the importance of the development and implementation of national standards, methodologies, policies and procedures for releasing land through non-technical and technical means that are evidence-based, accountable and acceptable to local communities as well as the importance of applying certain principles in the development of national policies as indicated in the paper *“Applying all available methods to achieve the full, efficient and expedient implementation of Article 5”* welcomed by the 9MSP and including the following:

- *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; and*
- *a common set of terminology to be used when describing the process.*

17. The Convention’s Action Plans - the *Nairobi Action Plan 2005-2009*⁶, the *Cartagena Action Plan 2009-2014*⁷ and the *Maputo Action Plan 2014-2019*⁸ - contain actions which reference the importance of the IMAS and of putting in place methodologies to efficiently and effectively address the remaining challenge.

UNDERSTANDING #2

In line with the recommendations adopted by the 9MSP⁹ and subsequent Convention Action Plans, States Parties have committed to undertaking evidence-based non-technical surveys, technical surveys and clearance in their implementation of Article 5. These actions are to be elaborated in national standards, based on IMAS, which aim for the full, efficient and expedient clearance of mined areas.

c. Declaring completion

18. Through the aforementioned practices, State Parties have demonstrated that it is possible to achieve completion of Article 5 implementation not in decades, but in years.

19. A State Party that has identified one or more areas that fit the definition of an *“area which is dangerous due to the presence or suspected presence of mines”* under its jurisdiction or

⁵ Ninth Meeting of the States Parties, 2008, *Final Report*, APLC/MSP.9/2008/4.

⁶ First Review Conference of the States Parties, 2004, *Final Report*, Part III – Nairobi Action Plan 2005-2009, Action #24, APLC/CONF/2004/5

⁷ Second Review Conference of the States Parties, 2009, *Final Report*, Part III - Cartagena Action Plan 2009-2014, Action #15 APLC/CONF/2009/9

⁸ Third Review Conference of the States Parties, 2014, *Final Report*, Part III - Maputo Action Plan 2014-2019, Action #9, APLC/CONF/2014/4

⁹ Ninth Meeting of the States Parties, 2008, *Applying all available methods to achieve the full, efficient and expedient implementation of Article 5*, APLC/MSP.9/2008/WP.2.

control will know that it has fulfilled its obligations under Article 5 when the areas no longer contain anti-personnel mines.

20. Until 2006, statements made by States Parties to indicate that they had successfully completed their Article 5 obligations varied in form, content and place of submission. The Seventh Meeting of the States Parties (7MSP) noted that *“an increasing variety of statements of completion could promote uncertainty over fulfilment of this central Convention obligation.”*¹⁰

21. To address these concerns and provide greater clarity and certainty that the obligations of Article 5 have been met by a State Party, the 7MSP adopted a voluntary declaration as a means to report completion of Article 5 obligations. States Parties have since then been using the language of the voluntary declaration to report 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 share such information through any other informal means such as the Intersessional Work Programme, including the Standing Committee meetings; (ii) ensure the effective exclusion of civilians in accordance with Article 5; and (iii) 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.

22. In adopting the voluntary declaration, States Parties affirmed:

- the importance of ensuring consistency among States Parties in reporting completion and using language grounded in the legal text of the Convention;
- the importance of being realistic in enabling States Parties to express that it is always possible that previously unknown mined areas are discovered after completion has been declared; and
- the importance of being practical by providing a series of steps that a State Party would take in line with the Convention, should it discover previously unknown mined areas after declaring completion.

UNDERSTANDING #3

States Parties have adopted the voluntary declaration of completion as a means to report completion of their Article 5 obligations, which helps to avoid confusion concerning the scope and meaning of the State Party’s achievement.

23. The adoption of the voluntary declaration of completion was the first formal acknowledgment by States Parties that, following completion, previously unknown mined areas may be discovered. The declaration allows States Parties to express that areas not

¹⁰ Seventh Meeting of the States Parties, 2006, *Final Report*, APLC/MSP.7/2006/5.

known to be contaminated at the time of declaring completion may be discovered in the future.

24. Neither the Convention nor any decision taken by the States Parties contains language defining the term “residual contamination”. In the case of the Convention, ‘residual contamination’ should be understood *as unknown anti-personnel mine contamination under a State Party’s jurisdiction or control after all known or suspected mined areas have been processed and considered fit for normal human use.*
25. The IMAS define ‘residual risk’ as *“the risk remaining following the application of all reasonable effort to identify, define, and remove all presence and suspicion of explosive ordnance through non-technical survey, technical survey and/or clearance”* (IMAS 04.10, 2014) and ‘residual contamination’ as *“contamination which gives rise to residual risk”*. Accordingly, areas that are known or suspected to contain anti-personnel mines and newly mined areas cannot be considered ‘residual’.
26. At the Twelfth Meeting of the States Parties (12MSP) States Parties adopted a *rational response* for situations in which a State Party, after its original or extended deadlines to implement Article 5 has expired, as an exceptional circumstance, discovers previously unknown mined areas (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. This *rational response* complements the declaration of completion adopted in 2006 and states that:
 - (a) *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 and all stake-holders of the affected area 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.*
 - (b) *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, which should be as short as possible and no more than ten years, either to that Meeting or Review Conference if the timing of the discovery permits or to the next Meeting of the States Parties or Review Conference if the timing of the discovery does not permit, in accordance with the obligations enshrined in Article 5 and the process for submission of requests for extensions agreed to at the Seventh Meeting of the States Parties. Requests submitted should be analysed also in accordance with the process agreed to at the Seventh Meeting of the States Parties and commonly practiced since 2008, and decided upon in accordance with Article 5.*
 - (c) *States Parties concerned by the above mentioned 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 antipersonnel 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.¹¹

UNDERSTANDING #4

States Parties have understood that a State Party may, after declaring completion and after its original or extended deadlines to implement Article 5 have expired, in exceptional circumstances, discover a previously unknown 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. In such circumstances States Parties will implement the *rational response* to such situation as adopted by States Parties at the 12MSP.

Areas that are known or suspected to contain anti-personnel mines cannot be considered 'residual contamination' and must be addressed under the State Party's obligations under the convention.

V. Recommendations

27. Since the adoption of the voluntary declaration of completion of Article 5 Implementation, a number of States Parties have declared completion and in doing so have employed the language introduced by the 7MSP and the 12MSP. In many cases, States Parties have also provided a detailed account of their mine action programme. In addition, some have included a list of the precise areas that contained, or were suspected to contain, anti-personnel mines and the methods and means used to address these areas. This practice aimed at providing all States Parties with certainty that the completion criteria envisioned by the Convention had been met.

RECOMMENDATION #1

The Committee recommends that States Parties continue the voluntary practice of submitting to a Meeting of the States Parties/Review Conference a declaration of completion that incorporates the language adopted by the 7MSP and 12MSP. In addition, the Committee further recommends that States Parties when formally declaring completion provide detailed information on the activities carried out throughout the duration of the mine action programme taking into account the elements included in annex I (*Draft table of content for a voluntary declaration of completion*).

28. At present, declaring of completion consist of a one-way communication from the concerned State Party to the States Parties. Given the importance of the implementation of Article 5 to achieving the aim of the Convention to end the suffering and casualties caused by anti-personnel mines and the importance of a high degree of clarity concerning Article 5 completion, the Convention could benefit from a voluntary cooperative dialogue on the content of declarations of completion.

RECOMMENDATION #2

¹¹ Twelfth Meeting of the States Parties, 2012, *Final Report*, APLC/MSP.12/2012/10.

In keeping with the traditional spirit of cooperation of the Convention, the Committee recommends that States Parties in a position to declare completion, employ the services of the Convention's Implementation Support Unit in the elaboration of the declaration of completion and consider sustaining a cooperative dialogue with the Committee on Article 5 Implementation concerning the content of the declaration of completion, which could lead to an enhanced declaration of completion.

ANNEX I : Draft table of content for a voluntary declaration of completion

1. Concise background of the circumstances which led to the emplacement of anti-personnel mines in mined areas under the jurisdiction or control of the State Party;
2. National coordination mechanism put in place to address the identified challenge;
3. Detailed description of every effort made by the State Party to identify all areas under the State Party's jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced including the survey methodologies and standards employed;
4. Overview of the results of these efforts in a geographically disaggregated manner including an overview of the suspected and confirmed hazardous areas identified and the size of these areas;
5. Efforts made by the State Party to ensure the effective exclusion of civilians from these areas;
6. Methodologies and standards employed to address the identified mined areas including the criteria for the reclassification of land;
7. Overview of the capacity employed to address the challenge including organizations tasked with survey and clearance and, if applicable, national and international funding applied;
8. Result of operations disaggregated by geographical location, areas and area cancelled through non-technical survey, area reduced through technical survey and areas addressed through clearance as well as the number of items found and destroyed. Annex tables highlighting the accomplishments of the program (tables can be drawn from the Guide to Reporting);
9. Handover process and involvement of the communities in the decision making process, including in the use of land following its release;
10. Ongoing monitoring mechanisms in place following the hand over process, for any previously unknown mined areas which may be identified following completion; and
11. Coordination and mechanisms in place to address situations in which previously unknown mined areas are discovered and the actions a State Party would take in this situation.