

Fulfilling the obligations of Article 5 of the Mine Ban Treaty

Food for Thought Paper
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Background

Implementing Article 5 on the clearance of mined areas is one of the biggest challenges to States Parties to the Mine Ban Treaty. This applies, of course, to all affected States Parties, but also to all other States Parties “in a position” to support such clearance, whether through financial, technical, technological, or human capacities. Experiences, in particular since the adoption of the Cartagena Action Plan at the Second Review Conference in 2009, have demonstrated that a number of issues of concern remain to be addressed by States Parties. This paper reviews basic Article 5 requirements and provides food for thought on the following issues:

- What constitutes “every effort” to identify mined areas?
- How to streamline the content of extension requests?
- How to address the situation of States Parties that discovered or declared contamination after the expiry of their Article 5 deadline or after they declared completion?
- How to address the situation of States Parties that have mined areas under their jurisdiction but not control (or vice versa)?
- How to improve the quality of reporting on mine contamination and on progress on clearance?

Survey

Under Article 5(2), each State Party “shall make every effort to identify all areas under its jurisdiction or control in which antipersonnel mines are known or suspected to be emplaced.” The term “every effort” has never been precisely defined by States Parties,¹ although it has been accepted that the treaty does not require each State party to search every square meter of its territory to find mines. Presumably, the phrase “every effort” must include an obligation to conduct primary and secondary data gathering from the security forces (armed forces, police, and any state paramilitary groups that may have laid or come into contact with mines), relevant humanitarian and demining operators, as well as, when feasible, with any non-state armed groups present on the territory. Some form of national survey will normally be required of areas likely or suspected to contain mines. Such survey should especially include national borders, military barracks and camps, present and former military training areas, high-security prisons, and other sensitive infrastructure.

Important lessons have been learned over the past two decades in how best to conduct surveys of mine and explosive remnants of war (ERW) contamination. In particular, it is much better understood that a suspected hazardous area (SHA) identified during a **general survey**² or **landmine impact survey**³ does *not* mean a confirmed hazardous area (and therefore that technical survey and/or clearance is automatically required) nor does it accurately estimate the extent of land that is

¹ The question of what is meant by “every effort” has become a particular issue when states discover a new mined area that they had no knowledge of (see below).

² A rapid assessment of contamination without using technical means.

³ A more detailed community assessments of both contamination and socio-economic impact, but again without using technical means.

hazardous as a result of mine/ERW contamination. It is therefore regrettable that some States Parties continue automatically to conduct full clearance on SHAs, thereby possibly misusing precious resources.

Thus, the development of **non-technical survey**⁴ to cancel or confirm suspected mined areas is a critical element in any mine action program. Non-technical survey should revisit the area around an SHA (but not normally enter the suspected area) to verify the basis for the suspicion of contamination, more accurately estimate the area believed to be contaminated, and generate the necessary information for the technical survey or clearance tasks. Where there is no solid basis for believing that there are mines (and a simple fear of mines does not constitute evidence of mines), the SHA should either be cancelled altogether or, if there are reasons to believe there may be ERW, reclassified as a hazardous area suspected to contain ERW, in accordance with the International Mine Action Standards (IMAS).

Technical survey⁵ is conducted by demining personnel over a Confirmed Hazardous Area (CHA, i.e., one that has been confirmed to contain explosive hazards by non-technical survey). It uses technical means (detectors, machines, dogs, or a combination) to release part of the CHA by clearing “lanes” into the area. Where it defines the precise extent of the mined area (e.g. by finding the exterior of mine belts), these areas must then be fully cleared to humanitarian standards. The entire CHA must be released by either technical survey or clearance.

Marking and effective exclusion of civilians

Under Article 5(2), each State Party “shall ensure as soon as possible that all antipersonnel 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 antipersonnel mines contained therein have been destroyed.”⁶ The implementation of this obligation has been patchy to say the least, but it requires at least that all areas confirmed to contain anti-personnel mines must be marked with warning signs and measures taken to keep civilians out of the areas. States Parties shall not, as one had suggested, choose not to mark a mined area “because marked mined areas, which cannot be monitored by the army, could become a place where terrorists or others would come to search for explosive materials.” States Parties shall also not encourage civilians to enter any SHAs.

⁴ Non-technical survey “describes an important survey activity which involves collecting and analysing new and/or existing information about a hazardous area. Its purpose is to confirm whether there is evidence of a hazard or not, to identify the type and extent of hazards within any hazardous area and to define, as far as is possible, the perimeter of the actual hazardous areas without physical intervention. A non-technical survey does not normally involve the use of clearance or verification assets. Exceptions occur when assets are used for the sole purpose of providing access for non-technical survey teams. The results from a non-technical survey can replace any previous data relating to the survey of an area.” UNMAS, “IMAS 08.21: Non-Technical Survey, First Edition,” New York, June 2009, pp. 1–2.

⁵ The IMAS defines technical survey as “a detailed intervention with clearance or verification assets into a CHA [Confirmed Hazardous Area], or part of a CHA. It should confirm the presence of mines/ERW leading to the definition of one or more DHA and may indicate the absence of mines/ERW which could allow land to be released when combined with other evidence.” UNMAS, “IMAS 08.20: Land release, Draft First Edition,” 10 June 2009, p. 2.

⁶ The paragraph further specifies that: “The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.”

Clearance

All clearance of areas containing antipersonnel mines must be conducted to humanitarian standards. That means all explosive ordnance must be identified down to a pre-determined depth (normally set by national standards) and then destroyed. Destruction of mines can be by detonation *in situ* or by neutralization and subsequent safe disposal of the components of the mine.

Meeting the clearance deadline and reporting compliance

As is well known, under Article 5(1) each state “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 it becomes a party to the Mine Ban Treaty. The requirement to *complete* clearance “as soon as possible” means that an affected State Party must *initiate* clearance operations “as soon as possible” and must then sustain those operations with the maximum possible expediency while, of course, respecting the requirements of safety for both the personnel involved in clearance and for the ultimate users of the land.⁷

A State Party may declare it has fulfilled its Article 5 obligations when it has cleared all antipersonnel mines from confirmed mined areas, having made every effort to identify all such areas under its jurisdiction or control, as described above under “Survey”. A model voluntary declaration of completion was adopted at the Seventh Meeting of States Parties:⁸

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 may voluntarily 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.

As noted above there is an understanding that a state may discover a mined area after such a declaration of completion and would then have to take additional steps to ensure it remains in compliance with Article 5. Under the Cartagena Action Plan:

All States Parties will ... [w]hen previously unknown mined areas are discovered after reporting compliance with Article 5 (1), report such discoveries in accordance with their obligations under

⁷ Thus, for example, under Paragraph 11 of the Cartagena Action Plan, States Parties note that they “are resolved to ensure the expeditious identification of all mined areas under their jurisdiction or control and to ensure the clearance and release of these areas as soon as possible....”

⁸ See “Final Report, Seventh Meeting of the States Parties, Geneva, 18–22 September 2006”, Doc. APLC/MSP.7/2006/5, 17 January 2007, Annex IV.

Article 7, take advantage of other informal means to share such information and destroy the anti-personnel mines in these areas as a matter of urgent priority.⁹

There may indeed be cases where states do discover a mined area after declaration of completion. In the case of Greece, for example, which declared completion in 2009, it has since become known that it still had an area marked as mined. Greece thus has to release this area as soon as possible, but before the expiry of its Article 5 deadline.

Streamlining the content of extension requests

Article 5(4) of the treaty lists the information that a requesting State Party must include in its extension request. These requirements have been interpreted by some States Parties as requiring very long submissions. In fact, what is required is useful “detail”, particularly on what progress has been made to date and on plans for the extension period. But providing such details does not mean that requests have to be long. Simple tables can summarize clearance and release by other means. For example, one State Party has submitted an extension request of more than 150 pages, but has not included an annual breakdown of land release, including clearance and release by survey. Another State Party has submitted an extension of more than 60 pages but that does not include annual plans for the release of mined areas during the extension period.

Extension requests need to be realistic, both in terms of the funding that is likely to be raised and the productivity and outputs that will be achieved. This does not mean, though, that requests should be unambitious. The requirement to complete clearance “as soon as possible” remains as important during an extension period (if not more so) than it was during the initial Article 5 deadline.

Shorter, sharper requests will facilitate the extension request process for all States Parties. In particular, they will help the Analysing Group to focus on substantive issues rather than on the need to clarify data in the requests.

In addition, given that circumstances can change quickly, a mid-term review for any State Party seeking an extension of more than five years to its Article 5 deadline could be instituted, to ensure that other States Parties and potential donors have reliable, up-to-date information on which to base their decisions on support to mine action programs, and to assess whether states are on track to meeting the commitments made in the extension request.

The need for a “special Article 5 deadline procedure”

Four States Parties, whose Article 5 deadline expired on 1 March 2009, were suspected for the first time in 2011 to be contaminated with antipersonnel mines. None reported mined areas during their Article 5 deadline nor has any yet sought or received an extension to its legal deadline. This is an issue not foreseen by the drafters of the treaty and it demands clarification from the States Parties about the actions to be taken to ensure full compliance with the requirements of Article 5.

In an act of commendable transparency, Germany reported suspected antipersonnel mine contamination on its territory for the first time during the 2011 Standing Committees. The suspected

⁹ “Cartagena Action Plan 2010–2014: Ending the Suffering caused by Anti-Personnel Mines”, Second Review Conference of the States Parties to the APMBC, 11 December 2009, Action Point #22. This provision envisions the case of small or scattered contamination that requires the intervention of residual mine clearance capacities.

mined area is on a former Soviet military training area in the erstwhile East Germany.¹⁰ Hungary has also stated that it now suspects it has antipersonnel mine contamination along its border with Croatia, remaining from the conflicts in the former Yugoslavia in the 1990s.¹¹ It has provided information on possible contamination to ICBL but as of 1 November 2011 had not yet formally reported on the issue to States Parties. Mali, whose Article 5 deadline also expired in 2009, may have new contamination resulting from the laying of mines by a non-state armed group in 2011.¹² Niger, whose Article 5 deadline expired in 2009, seemingly has a mined area around a former French military base (now a Nigerian military base) which was laid during the colonial period and which still contains antipersonnel mines.

The question arises as to how to deal with these situations under the treaty, ensuring that the treaty's high clearance standards are upheld, and that consistent obligations are imposed on all States Parties in full transparency. The ICBL believes that a State Party that finds itself in the position of having mined areas suspected to contain antipersonnel mines should be required to solicit a new deadline under a "special Article 5 deadline procedure". This should apply both to:

- a State Party that has not previously declared mined areas and whose Article 5 deadline has expired; as well as
- a State Party with previously declared mined areas but whose deadline has already passed without an extension being sought and granted in accordance with Article 5.

The new deadline sought should be specific, for no longer than is absolutely necessary, but in no case should exceed five years. The additional time is intended to enable the affected State Party to confirm antipersonnel mine contamination and to complete all necessary clearance. This special deadline is not renewable. In addition, the State Party concerned should respect its Article 7 reporting obligations and keep other States Parties regularly informed of progress made in fulfilling its Article 5 obligations.

If a State Party is certain that it will be able to complete clearance of a newly discovered contaminated area in a very short period of time (prior to the next Meeting of States Parties where it would be able to seek a new deadline), it would not be required to initiate the procedure described above. Even in this case, the State Party shall, upon discovery of the contaminated area, share this information with other States Parties as well as its plan and timeline for clearance, and then report on the completion of clearance.

This issue should be initially explored during the 11MSP with a clear agreement for an in-depth consideration at the 2012 Standing Committee on Mine Clearance with a view to States Parties adopting a decision on the new procedure at the 12MSP in Geneva in December 2012.

Issues of jurisdiction or control and the need to request an extension

Certain States Parties have still to acknowledge that they are legally obliged by the treaty to clear areas they control or over which they assert jurisdiction but do not control. This issue is clear in Article 5 of the Mine Ban Treaty, which lays down the obligation to clear areas under *either* the

¹⁰ Statement of Germany, Standing Committee on Mine Action, Mine Risk Education and Mine Action Technologies, Geneva, 21 June 2011.

¹¹ Letter to ICBL from Ambassador György Molnar, Director-General, Department for Security Policy and Non-Proliferation, Ministry of Foreign Affairs, Budapest, 5 October 2011.

¹² See, e.g., Jemal Oumar, "Al-Qaeda lays landmines in Wagadou Forest", Magharebia, Nouakchott, 13 October 2011, www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2011/10/13/feature-02.

jurisdiction *or* the control of each State Party.¹³ If a State Party controlling an area of land that contains mined areas is not able to fulfill its Article 5 obligations in time, both this State Party and any other State Party asserting jurisdiction should seek an extension to the deadline.¹⁴

For example, as of November 2011, neither Turkey nor Cyprus had indicated if they would submit an extension request for the disputed area of northern Cyprus. Turkey has not formally acknowledged responsibility for clearance in northern Cyprus, while Cyprus has asserted jurisdiction. The ICBL believes that in accordance with Article 5, both Turkey and the Republic of Cyprus, to the extent they assert jurisdiction or exercise control over the mined areas, will need to request an extension.

Reporting

Reporting by affected States Parties, both on the extent of mine contamination and on progress in clearing that contamination, remains generally inadequate. The treaty obligations (Article 7) to report on contamination and clearance, drafted in the 1990s, are today widely understood to be insufficient measures of progress towards completion of Article 5, and even these have not been respected by all affected States Parties. Thus, under Action #17 of the Cartagena Action Plan, adopted by the Second Review Conference of, affected States Parties undertake to:

Provide annually, in accordance with Article 7, precise information on the number, location and size of mined areas, anticipated particular technical or operational challenges, plans to clear or otherwise release these areas and information on the areas already released, disaggregated by release through clearance, technical survey and non-technical survey.

Notwithstanding this undertaking, most States Parties' Article 7 reports either fail to disaggregate land release accurately through clearance, technical survey, and non-technical survey, or they do not even report the extent of such release. There is a pressing need to ensure quality reporting by all affected States Parties of the extent of contamination and of efforts to rid their territory of this contamination.

¹³ See, for example, Statement of the ICBL, Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies, Geneva, 28 May 2009.

¹⁴ This is what occurred in the case of the Falkland Islands/Malvinas. Since both Argentina and the UK assert jurisdiction over the islands, both States Parties submitted extension requests.

Annex. The text of Article 5

Article 5. Destruction of anti-personnel mines in mined areas

1. Each State Party 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.
2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which antipersonnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all antipersonnel 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. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.
4. Each request shall contain:
 - a) The duration of the proposed extension;
 - b) A detailed explanation of the reasons for the proposed extension, including:
 - (i) The preparation and status of work conducted under national demining programs;
 - (ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and
 - (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;
 - c) The humanitarian, social, economic, and environmental implications of the extension; and
 - d) Any other information relevant to the request for the proposed extension.
5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.
6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.