

Mined areas discovered after the expiry of a State Party's Article 5 deadline

Presented by the Co-Chairs of the Standing Committee on Mine Clearance for discussion at the 22 May meeting of the Standing Committee

27 April 2012

Background:

The 11MSP noted that the Convention is silent on how to address situations where States Parties, which have never reported Article 5 obligations, discover previously unknown mined areas. The Meeting further noted a need to develop a rational response to such situations which is firmly anchored in the object and purpose of the Convention and which does not undermine the legal obligations to destroy all anti-personnel mines in mined areas as soon as possible.

In this context, the meeting requested that the President, supported by the Coordinating Committee, consult with all relevant stakeholders to prepare a constructive discussion on this matter at the May 2012 meetings of the Standing Committees with a view to recommendations on this matter being submitted for consideration the Twelfth Meeting of the States Parties.

For the sake of consistency, any decisions on this matter should also apply to States Parties which, after reporting compliance with Article 5.1, discover mined areas under their jurisdiction or control. It should be recalled that the "declaration of completion" adopted at the 7th Meeting of the States Parties and Action #22 of the Cartagena Action Plan adopted at the Second Review Conference are existing procedures which are necessary but not sufficient as they were intended to deal with small areas containing very limited numbers of anti-personnel mines discovered after completion of Article 5 obligations, which could be destroyed in a very short time.

The Co-Chairs of the Standing Committee on Mine Clearance would suggest that decisions on this matter should take into account the following understandings:

- Decisions should, as noted by the 11MSP, be "firmly anchored in the object and purpose of the Convention" and "not undermine the legal obligations to destroy all anti-personnel mines in mined areas as soon as possible.
- Decisions should regularize the matter of States Parties, which, more than a decade after entry into force, report mined areas (as defined by the Convention) for the first time. It should similarly deal with, in a uniform manner, those States Parties that discover new mined areas after implementation has been completed and deadlines have passed.
- Regularizing this matter would imply that there would be a process to ensure that all States Parties that have reported "mined areas" (as defined by the Convention) have a deadline if newly discovered areas cannot be addressed quickly (i.e., prior to the next Meeting of the States Parties or Review Conference).
- Decisions should emphasize the importance of transparency with States Parties discovering new mined areas immediately informing all States Parties and also reporting as required in accordance with Convention obligations and any related decisions of the States Parties.

With these understandings in mind, the Co-Chairs propose, for the basis of discussion at the May 2012 meeting of the Standing Committee on Mine Clearance, the following draft decisions.

Draft 12MSP decisions regarding mined areas discovered after the expiry of a State Party's Article 5 deadline:

1. If, after its original or extended deadline to implement Article 5.1 has expired, a State Party discovers a mined area (as defined by Article 2.5 of the Convention) under its jurisdiction or control that is known or suspected to contain anti-personnel mines, the State Party should:
 - a. immediately inform all States Parties of such a discovery; and
 - b. proceed to destroy or ensure the destruction of all anti-personnel mines in the mined area as soon as possible.
2. 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 to that Meeting or Review Conference for a deadline for completing the destruction of such anti-personnel mines, for a period of up to five years. The request should be submitted through the President as soon as possible and where feasible, at least 3 months before the next Meeting of the States Parties or Review Conference.
3. Each request should contain:
 - a) The requested deadline, bearing in mind:
 - (i) the obligation of each State Party to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control as soon as possible; and
 - (ii) that the State Party should request only the time necessary to complete the destruction of all anti-personnel mines in the mined area (where this can be determined prior to the submission of the request) or to obtain clarity regarding the remaining challenge, produce a detailed plan and submit a further request.
 - b) A detailed explanation of the reasons for the proposed request.
4. The States Parties mandated to analyze requests for extensions submitted under Article 5 will analyze requests submitted pursuant to this decision, using relevant existing agreed practices and methods.
5. The Meeting of the States Parties or the Review Conference should, taking into consideration the factors contained in paragraph 3 and the analysis of the request pursuant to paragraph 4, assess the State Party's request for a deadline and make a decision on the request in accordance with the provisions of the Convention and rules of procedure for Meetings of the States Parties / Review Conferences.
6. States Parties concerned by this decision should 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.

7. A deadline granted pursuant to the process established by this decision may be renewed upon the submission of a new request in accordance with paragraphs 2, 3, 4 and 5 of this decision. In requesting a further deadline a State Party should submit relevant additional information on what has been undertaken in the previous deadline period.