

The relationship between *residual contamination* and a State's obligations under the Anti-Personnel Mine Ban Convention

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Introduction:

Once the proactive phase of humanitarian demining has ended, many States will have to respond – for years if not decades – to the challenges of subsurface unexploded ordnance, and even previously unknown mines. For many States, the pro-active phase of humanitarian demining ends when implementation of demining obligations under the Anti-Personnel Mine Ban Convention has been completed. Once the structures that have been developed to carry out large-scale demining and related activities are no longer needed, States will need to have systems in place to deal with *residual contamination*. What exactly is *residual contamination* and how does it relate to a State's obligations under the Anti-Personnel Mine Ban Convention?

What is *completion*?

The practical answer to what completion of the implementation of Article 5 of the Anti-Personnel Mine Ban Convention means can be found in the definition of a “mined area” in Article 2 of the Convention as “an area which is dangerous due to the presence or suspected presence of mines.”² Hence, the implementation of Article 5 requires that States Parties render all such areas no longer dangerous due to the presence or suspected presence of anti-personnel mines. If 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 implementation when it no longer has any area under its jurisdiction or control that is “dangerous due to the presence of suspected presence of mines.” As of September 2014, 28 States Parties (out of 59, for which this obligation has been relevant) had reported completion.

In 2006, the States Parties to the Anti-Personnel Mine Ban Convention adopted a voluntary *declaration of completion* of Article 5 obligations.³ The purpose of the declaration is to ensure consistency among States Parties in reporting completion and to ensure that it is grounded in the Convention's legal text. The *declaration of completion* sees that a State Party declares that it has done exactly what the State Party has committed itself to doing in accordance with Article 5,

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<http://www.apminebanconvention.org/implementation-support-unit/overview/>

² Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Article 2, paragraph 5.

³ Final Report of the 18 22 September 2006 Seventh Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Annex IV, United Nations Document No. APLC/MSP.7/2006/5.

http://www.apminebanconvention.org/fileadmin/APMBC/MSP/7MSP/final_report/7MSP_Final_Report_e.pdf

paragraph 1. Ambiguous, and sometimes politically-loaded, language and terminology, such as *mine-free*, *impact-free* or *mine-safe*, are absent from this declaration.

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 declaring completion. The declaration further lists the practical steps that a State Party would take in accordance with the Convention, if it discovers previously unknown mined areas:

[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.*

What is *residual contamination*?

The United Nations' International Mine Action Standards (IMAS) define, in the context of humanitarian demining, *residual risk* as "the risk remaining following the application of all reasonable efforts to remove and/or destroy all mine or ERW hazards from a specified area to a specified depth."⁴ Building upon this, it is logical to define *residual contamination* as the sites 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 non-technical and/or technical survey and the analysis of any existing data relevant to the associated site/area, 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. For example, it would be particularly problematic if a State indicated that sites that are *challenging* to access, for whatever reason, are recorded as *residual*. Clearly, these areas do not amount to *residual contamination* but are in fact areas that, at present, the State considers dangerous due to the presence or suspected presence of anti-personnel mines and which must be processed prior to the State determining that the areas in question are fit for normal human activity.

⁴ IMAS 04.10, *Glossary of mine action terms, definitions and abbreviations*, 2003,

To not address areas that a State knows fall within the ambit of the Convention would be a serious breach of the Convention. If the State has indicated that these areas are *challenging* to access, it is implied that they are not *impossible* to access. It is incumbent upon the State to develop a plan to survey and / or clear these areas. If the State cannot complete implementation with respect to these areas by its Convention deadline, it will need to submit a request for an extended deadline.

Another scenario may be that areas in question are *impossible* to access rather than simply *challenging* to access. The State would need to consider very carefully whether this was the case as it would imply that there are parts of the sovereign territory of the State that national authorities could not access (i.e., that fell, essentially, outside of the State's effective control). That said, if it was the case that the State had knowledge of areas known or suspected to contain anti-personnel mines but that these areas were not under the effective control of the State for whatever reason, the State again should submit a request for an extension.

Yet another possible scenario is that areas should never in fact have been considered suspected hazardous areas. As the International Mine Action Standards note, "inaccessible areas, or areas with limited information available, should not by default be recorded as suspected hazardous areas. Suspected hazardous areas should only be recorded in a database when there is sufficient evidence to justify doing so."⁵ The State may wish to re-examine the information that led to these areas being entered into its database to determine if there was a basis of evidence for them to be considered suspected hazardous areas.

Conclusion:

There should be no grey area between what is known and must be dealt with proactively and what emerges after completion has been declared to which one must be responsive. The States Parties have been realistic and responsible on this point. They have acknowledged the possibility of *residual contamination* while ensuring that their Convention will be respected and that, as a result, once dangerous land will again be fit for normal human activity.

⁵ IMAS 07.11, Land release, 10 June 2009, as amended, paragraph 5.2(c)