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Implementing International Obligations to Clear Mines

by Stuart Casey-Maslen

Each State Party to the *Anti-Personnel Mine Ban Convention* (APMBC) that knows or suspects it has areas under its jurisdiction or control that contain anti-personnel (AP) mines has a clear deadline to locate and destroy those mines. According to Article 5(1), upon becoming party to the APMBC, a State must complete clearance within ten years, unless the deadline is pushed back in an agreement from the other States Parties at an annual meeting or five-yearly review conference.¹

The nature of the obligation is to make every effort to find all mined areas with AP mines in areas located on sovereign territory or on territory a State effectively controls abroad. Once a suspected mined area is confirmed as contaminated, the State Party must then destroy **all** the AP mines contained therein. In practice, however, all does not really mean all. This is the understandable result of technological constraints allied to the explicit introduction of risk-management methodology into demining operations. Detection technology limits the depth at which AP mines, especially those with minimum-metal content, will be identified. Mines that lie more than a dozen or so centimeters below the surface will likely remain undetected; however, some may rise in the months or years following clearance operations, presenting an ongoing threat to life and limb. Similarly, a decision must be taken as to which areas are subjected to full clearance and at which point this will start and end. The result of this decision may be that actual contamination is unwittingly overlooked.

In reality, the problem with demining is less that adjacent areas contaminated with mines are missed. Far more often, operations focus and persist in areas that palpably are not contaminated with explosive devices, which impede efficiency. Poor survey techniques and fear of legal liability in

some instances meant that operators and national programs have eschewed risk-management methods in favor of ultra-cautious (and ultra-expensive) approaches. Any ongoing mine clearance operation that does not locate a single mine (or other explosive threat) within ten days should ask itself whether it is working in the right place.

But while many States Parties seem to regard time as an infinite resource, funds—whether national or international—are most assuredly not. Even without the dictates of financial austerity and blossoming budget deficits, funding for mine clearance operations would already be in decline. The increasingly steep decline that we are currently witnessing will only accelerate in coming years, though major support for specific operations will likely still be available in case of overriding humanitarian need (e.g., should peace break out in Syria).

What does this mean for the implementation of the APMBC?

First, the generosity of extension periods with which States Parties have too frequently rewarded sluggishness and inefficiency must come to an end. Granting long extensions to laggard programs scarcely encourages positive change. Moreover, if a State Party is willfully failing to make every effort to confirm mined areas and then clear them “as soon as possible” (as Article 5 demands), they should not be granted an extension.¹ The legal reality should reflect the political and operational realities: that a State Party is in violation both of the APMBC and of international law. The notion of State responsibility means that a State should indeed be held responsible for its actions and its inaction. The current approach of the States Parties is to reward failure and willful inaction, hardly one that is conducive to encourage accountability and responsibility.

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Second, the Implementation Support Unit (ISU) needs to up its game materially. The new director, recently appointed, should ensure that extension requests are not just checked for formalist and procedural issues, but also that the review assesses whether the data is robust and coherent, and that the associated plans are ambitious and evidence-based. One 2016 extension request that was on the cusp of being submitted, and which the ISU reviewed, contained an unacceptable number of logical blunders and glaring mathematical errors. To ensure this does not reoccur, States must support the ISU with the necessary financial, human, and technical resources and requisite mandate to enable the ISU to do its work professionally.

Third, oversight of demining programs in affected States Parties needs to be enhanced. This is a task for donor States and operational experts. It is time the cooperative duty to facilitate and clarify compliance under APMBC Article 8(1) is applied directly to operations. With the consent of the territorial State, a mission of experts is an informal mechanism and no threat to sovereignty; a State Party that has nothing to hide should seek to hide nothing. Every year two or three States, especially those imminently seeking an extension, could be assessed without significant financial outlay on anyone's part and then supported where necessary.

Fourth, it is a regrettable reality that while lip service is paid to land release, in many programs the risk-management processes inherent in the concept are, in the words of Hamlet, "more honor'd in the breach than in the observance." Although landmine impact survey methodology has received the last rites, the wilder estimates of massive, widespread contamination and devastating impact that it falsely generated still call to us from beyond the grave. Today, far too few States can proffer a rational estimate of contamination based on **confirmed** and

not just **suspected** mined areas. This is even the case in States with demining programs that have been ongoing for two decades or longer. Investing in high-quality non-technical survey is a major operational requirement, not an optional extra.

From 28 November to 2 December 2016, States Parties and States not yet party to the APMBC will convene in Santiago, Chile, for the fifteenth meeting of the States Parties. Will it be business as usual? Another triumph of diplomatic form over operational substance? Or will States Parties finally grasp the mettle and resolve to make the Maputo Review Conference pledge of well-nigh completing global clearance by 2025 an operational reality? ©

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The author is editor of the Mine Action Review, produced by Norwegian People's Aid, and honorary professor at the University of Pretoria's Faculty of Law. This article is written in an individual capacity.

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