A Conversation about Land Cancellation and Release with H. Murphey “Murf” McCloy

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Humanitarian mine action is poised for another step forward via the Land Cancellation and Release approach. Unlike previous mine-action developments that were largely systemic (e.g., Landmine Impact Surveys) or technical (for example, the HSTAMIDS mine detector), Land Cancellation and Release is essentially conceptual. It balances surveys with risk-management assessments in order to speed the rate at which Suspected Hazardous Areas can be deemed safe and returned to productive use. In some cases, Land Cancellation and Release may occur without any clearance.

Since the term humanitarian demining was introduced by American and other practitioners (United Kingdom, France, etc.) or people in Afghanistan in late 1988, its doctrines and practices have matured as it spread to other conflict-affected countries. Many of its technical approaches can be traced to World War II and the extraordinary post-war clearance of mines and explosive remnants of war that rendered western Europe largely impact-free a mere five years later. What distinguished humanitarian demining—later expanded to the more holistic humanitarian-mine action—in the latter half of the 20th century from its World War II roots was an approach that sought to calculate precisely the scope and nature of the problem in advance, followed by more rigorous clearance and quality assurance. This approach, ultimately codified in the first edition of International Mine Action Standards in 2001, assured that mine-affected populations could occupy their lands again safely and that deminers would minimize risk to themselves.

The problem was that mine clearance that adhered to IMAS inevitably increased demining costs and times. IMAS’ high standards often introduced tensions between those donor nations, such as the United States, which encouraged IMAS at every step, and mine-affected nations eager to speed economic development and resettlement of populations while accepting greater human risk. I must confess that when I was Program Manager for Vietnam, I insisted that IMAS be followed to the letter.

Land Cancellation and Release will change mine action again. To learn more, I approached my colleague, H. Murphey “Murf” McCloy, a humanitarian-demining pioneer. Among other accomplishments, McCloy started the first United States humanitarian-demining program in Bosnia and Herzegovina in 1996 in cooperation with United Nations mine-action authorities. This program morphed into internationally supported programs in several Balkan countries that saved lives and contributed to regional confidence-building. Our conversation about Land Release and Cancellation follows.
This vendored plate image is implemented to highlight the area impacted by fighting and houses on sidings with Duds. 'Thieves to future of Peace, through support from U.S.-government grants and private donors, the land was demined and safely replanted, and is again producing delicious grapes for consumption in the region.

Stevens: What exactly is land release?
McCloy: The latest draft of IMAS 08.20 (Land Release), approved by the IMAS Review Board and that should soon be published, defines it as “...the process of applying all reasonable effort to identify or better define Confirmed Hazardous Areas (CHA) and remove all suspicion of mines/ERW through Non-technical Survey, Technical Survey and/or clearance using an evidence-based and documented approach.”

Stevens: What role do surveys play in the land-release process?
McCloy: Surveys play a central role in the land-release process, for good and for bad. On the “good side,” well-conducted surveys lay the groundwork for efficient and cost-effective mine action by narrowing the size of the areas that are genuinely hazardous and that need to be subjected to expensive, full-clearance measures. Doing so has two major benefits. First, scant demining resources are expended only on land that contains explosive threats. Second, some areas may be returned to safe use through the application of much less expensive survey measures alone—Non-technical Survey being the least costly, and Technical Survey being more costly but much less expensive than full clearance.

On the other hand, inadequate or inaccurate surveys can distort the mine/ERW picture. This can result in an exaggeration of the explosive threat in an area, causing unnecessary expenditure of clearance resources. Even worse, a “false clear” conclusion can divert the application of more definitive survey/clearance measures from potentially dangerous ground, thereby unnecessarily putting land users at risk.

Stevens: Given the need by donor nations, nongovernmental organizations and individual contributors to prioritize their limited funding, how do mine-action programs determine the appropriate “end state” to be reached?
McCloy: Programs don’t determine end state; stakeholders do. The decision varies with the stakeholders. The key stakeholders are the national authorities of a mine/ERW-affected nation and the international donors that support the mine-action efforts of those authorities with funding and other assistance.

For the national authorities, the end state may be that point at which the explosive threat to the population has been reduced to impact-free or mine-free status, both of which involve a commitment to a long-term effort. The impact-free approach that the United States pursues envisions an end state in which “the last citizen has been rendered safe from the effects of mines.” The mine-free end state, favored by advocates of the Ottawa Convention ban on anti-personnel mines, envisions victory “when the last mine (anywhere) has been cleared/destroyed.”

For the foreign government (donor) stakeholder, the end state can take a variety of forms, depending on the resources that the donor has, and the donor’s assessment of the needs and chances of success (defined in the donor’s terms) in entering into a collaborative effort with the host nation and other international supporters. Each stakeholder must determine the appropriate end state for itself, whether it is pegged to the achievement of Ottawa Convention commitments, such as eliminating all mines within the national territory, or to shorter-term, pragmatic capacity-building goals (as is the case of most U.S. humanitarian mine-action assistance programs). These goals are oriented toward creating a host nation’s independent capability to plan, manage and execute its national program with or without external assistance.

The only stakeholder that is guaranteed to “be there” until the “last mine is cleared” end state is the mine-affected nation itself. Other stakeholders’ end states will vary in scope and duration as dictated by their individual political, socioeconomic and institutional needs. These goals are oriented toward creating a host nation’s independent capability to plan, manage and execute its national program with or without external assistance.

Unfortunately, “when the last mine (anywhere) has been cleared/destroyed.”

Stevens: Can these end states be defined early in the process to make it feasible to determine successful completion?
McCloy: Stakeholders/donors can and should establish their initial end state during the mobilization phase while they are collecting information on the situation in the host nation and marshalling assets to bring to bear on the problems known to exist. Planning an end state gives focus and purpose at the outset to the coordination and execution of the assistance that will be provided. This end state represents a goal to be achieved; objectives and other specific measures of effectiveness can be derived and measured using this goal.

Initial end states are not immutable; an initial approach to mine-action assistance can be revised. Conditions can change within the political, socioeconomic security framework of a post-conflict country, as can the end-state goals of the individual donors/stakeholders. The important thing is to have an end state in mind from the start. Making changes from a known point of reference is easier and more economical in terms of the expenditure of time, resources and political capital. It also provides a useful launch point from which to elicit and gauge cooperative efforts from host-nation authorities and other stakeholders.

Stevens: What is an acceptable level of residual risk?
McCloy: An acceptable level of residual risk is the lesser of the national mine-action authorities say it is. Residual risk, as defined in IMAS 04.10 Glossary of Terms (second edition, January 2003), is: “In the context of humanitarian demining, 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.”

Stakeholders/donors

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Land Release, in the process of determining when land can be released from suspicion all reasonable efforts is “the level of effort required to achieve the desired level of confidence that the land is free of mines/ERW.” Depending on the evidence of explosive contamination gathered from the survey techniques applied to a particular piece of ground, such as “low” or “very low”, so can vary from “no further efforts are required to release the land” to “more surveying is required to make a final determination,” all the way to “full clearance measures must be applied to this land before it can be returned to safe use.” It is the responsibility of the various national mine-action authorities to develop a national land-release policy, to prepare and publish standards and guidelines governing the land-release process, and to include a definition of the criteria for “all reasonable efforts” for their respective countries.

Stevens: Can people be confident that landmines/ERW in a community have deteriorated sufficiently to eliminate the risk of explosion?
McCloy: No. Landmine deterioration is a function of many variables, including those induced by local soil conditions, depth of burial, exposure to other weather phenomena, type of construction (hermetically sealed, plastic, metal or wooden casing; firing mechanism, etc.), composition of the explosive charge, age of the landmines, and passage of time. There is no set of conditions that will guarantee that all mines, even of the same type, will deteriorate to a stable state. In the world of limited resources, lower-cost measures such as non-technical and Technical Survey are desirable alternatives to the full-closure option. Mine-affected Ottawa States Parties are encouraged to adopt land-release policies that include all three methods. Ultimately, however, the disposal of mines/ERW within the national territory of a mine-affected state is the responsibility of the nation itself. Consequently, this is a decision for national authorities, with the national mine action authority responsible for developing a national land-release policy and relevant standards and procedures, hopefully in concert with other stakeholders, to include international donors and the local civilian community.

The international community can encourage mine-affected countries to adopt a comprehensive land-release program, but it is up to the individual mine-affected countries themselves to decide when and where, and how such operations will be carried out.

Stevens: Isn’t Land Cancellation and Release a risk worth taking?
McCloy: Land Cancellation and Release is neither a sham nor a internationally-orchestrated cost-cutting measure that sacrifices the safety and well-being of civilian populations. It is instead a highly developed form of risk management that serves to offset the problems associated with shrinking donor funding for mine action worldwide. It does this by achieving operational economies of scale through database purification, along with the release of land through the application of validated processes appropriate to the threats confirmed through adequate and accurate survey techniques.

There is no relaxing of standards regarding the level of evidence required to tailor survey or clearance work to the specific tasks, nor is there any lessening or “watering down” of the standards to which survey and clearance operations must be performed. The aim is to employ full clearance (the most costly) resources only on genuinely hazardous areas identified through accurate and validated surveys.

The standards/guidelines set forth in the newly adopted land-recovery-associated IMAS (IMAS 08.20 Land Release; IMAS 08.21 Non-Technical Survey; and IMAS 08.22 Technical Survey), which include the long-standing IMAS 09.10 Clearance Requirements (published in 2003) set forth procedures and methodologies that, if properly codified, published and enforced by the respective national mine-action authority, will return land to safe use at a lower cost with a tolerable level of risk that is acceptable to all stakeholders, including the local civilian community.

Land Cancellation and Release includes such activities as purging the national mine/ERW database of invalid (redundant/incorrect) Suspected Hazardous Area entries as well as releasing land for safe use through a combination of Non-technical Survey, Technical Survey, and/or full-clearance operations.

Stevens: The Ottawa Convention ban on anti-personnel landmines calls for the total elimination of production and trade. Does Land Cancellation and Release undercut the goal of that ban?
McCloy: The Ottawa Convention process has evolved into a position that recognizes the “total elimination” position previously accepted by all States Parties with the cost-effective “all reasonable efforts/tolerable risk” approach of the Land Cancellation and Release process.

Annex C of IMAS 08.20 Land Release reads: “Article 5.2 of the Mine Ban Convention [commonly known as the Ottawa Convention] requires each State Party 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 and [to] ensure as soon as possible that all 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 AP mines contained therein have been destroyed.”

The sophistry involved in moving from the bottom-line position of destroying all anti-personnel mines to accepting the Land Cancellation and Release process is that it applies an obligation on the part of States Parties to the Convention to ensure that mined areas under their control are accurately surveyed, and then perimeter-marked by fencing or other means. The final connection between “destroying all mines” and using “all available methods” (i.e., “non-technical Survey – Technical Survey and clearance”) to release land in a more cost-effective manner is provided by a paper titled “Applying All Available Methods to Achieve the Full, Efficient, and Expedient Implementation of Article 5.2,” endorsed at the Ninth Meeting of States Parties in November 2008.

Two of the key conclusions of this paper are that, first, the States Parties acknowledge that land reassessment and release through non-technical means, when undertaken in accordance with high-quality national policies and standards that incorporate key principles highlighted in this paper, is not a shortcut to implementation of Article 5.1 but rather a means to more expeditiously release with confidence at one time deemed to be mined.

Second, many mine activities can be undertaken to assess and, where applicable, to release land that has been previously identified and reported as part of a “mined area.” Non-technical means, Technical Survey and clearance.

Note that it is the responsibility of the national authorities of the mine-affected countries to make this work. This responsibility is also reflected in the duties of the national mine-action authority as set forth in the land-recovery-related IMAS guidelines.

Annex C of IMAS 08.20 states that while proponents of the Ottawa Convention have tried to make a similar connection between survey and the elimination of mines/ERW for the Convention on Certain Conventional Weapons (to which the United States is a State Party), the implied connection between “all reasonable precautions” and “survey” are confusing.

Stevens: At the humanitarian mine-action workshop hosted by China in April 2004, several Western demining organizations intimated that Chinese demining procedures at the time were not up to IMAS standards, imperiled both deminers and the affected populations, and were harmful to the environment. The Chinese defended their approach as “practical, reliable, simple, and low cost—and particularly suited for mine-cleared in developing countries.” This approach was rejected by the Western participants, in part because it implied that the lives of people in developing countries were not as worthy as those in richer countries. Doesn’t the new Land Cancellation and Release IMAS essentially echo the Chinese approach?

McCloy: While the Chinese demining procedures were definitely low-cost, they were not in accordance with the IMAS. In the case of the Land Cancellation and Release
Reconciling Real-world Situations with Formal Land Cancellation and Release

The three scenarios below help to explain some of the dilemmas mine-action authorities face when implementing Land Cancellation and Release policies:

**Angola**, here is a hypothetical scenario drawn from real situations. A key dirt road connects two towns in Angola. It was reportedly mined and the adjoining areas may well be mined. Yet, for the past year residents have used this road with trucks, 4x4s and animal-drawn carts without suffering any injuries or deaths. Should the Angolan national mine-action authority declare this area safe?

**Cambodia**, here is another hypothetical situation inspired by actual scenarios. One or more polygons on a Landmine Impact Survey of a district in Cambodia indicate that the areas in question are mined. Yet, for the last three years farmers in this allegedly mined area have been intensively cultivating their rice paddies and have not suffered any injuries or deaths. Should the Cambodian national mine-action authority still make an effort to survey the land before declaring it safe, or should they use their limited resources to clear other land that is definitely mined?

In all three cases, the answers to the real-world situations described above would have to be provided by the countries’ national mine-action authorities. The national mine-action authorities could all release areas “empirically cleared” based on the evidence available. There must still be a process undertaken to define the actual limits of the areas declared tolerably free from the risk of mines.

The use of the land without adverse consequences in the three examples cited above does provide evidence (and here I stress evidence, not proof) that these areas contain no explosive threats and may not need to be subjected to full clearance in order to be returned to safe usage. Nevertheless, these areas still need to be accurately defined in terms of grid coordinates and turning points (like any other piece of cleared ground), and officially released only after being subjected to the land-release processes and procedures specified by the national mine-action authority of the respective country.

To further illustrate, a national mine-action authority may feel that the fact that a farmer has plowed certain ground without encountering a mine may be due more to luck than to the actual absence of explosive threats, and, therefore, would require more stringent (and costly) final proofs to release land plowed only once, but would require less costly measures for land that has been plowed two times or more. Similarly, while the roadbeds of well-traveled sections of road may be considered for release short of full clearance, the fact is that there is much less compelling evidence that there are no explosive threats present on the adjacent slopes. Consequently, the roadbeds may be defined and released after less costly and time-consuming measures while the accompanying verges of these same sections of road may require much more work to achieve release. In the end, it will all depend on the proofs/procedures specified by the national mine-action authority. Given the same conditions in different countries, the proofs and procedures could be different in each situation, depending on how the national authorities view “tolerable risk.”

**Sri Lanka**, the above photo depicts a freshly cultivated field on the Jaffna Peninsula, directly adjacent to some red minefield demarcation stakes. The area was cleared in one day. When the deminers arrived the next day, a farmer had already plowed to the red stakes. In this case, one could say that the farmer conducted de facto quality assurance/quality control. What is the Sri Lankan national mine-action authority to do?

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Stevens: Which would you rather visit: a known mined area that had simply been released following a data-collection exercise with accuracy and thoroughness certified by the host government but unknown to you?

McCloy: All things being equal, naturally I would feel confident that the residual-risk potential would be lower for an area subjected to full clearance than for that released through survey alone. However, if I trusted the abilities of each link in the mine-action chain, I would not hesitate to visit either area you described, although I would probably be more “situationally aware” in the survey-released area.

If I were a local that needed the land to feed my family, I would probably feel the same way. Above all, I think that the risk management inherent in the land-release process is far superior in terms of lower risk/higher safety than doing it yourself village demining (or informal demining) as it is now called, which is what many inhab-