

**ICBL Statement on the Discovery of Mined Areas after the Expiry of Article 5 Deadlines
MBT Intersessional Standing Committee Meeting on Mine Clearance
22 May 2012**



Thank you Mme Chair,

We are grateful to the co-chairs for all their work on this and to SPs for having agreed at the 11MSP that this important matter needed to be addressed. The fact that we are dealing with this issue is disturbing in all cases. First there are the cases of newly laid mines, which is of course the most troubling because of the threat to the norm we are working hard to establish and the heightened risk for casualties this might create. Second, information we have that at least one State Party is reporting now on mined areas that were known about for over a decade is alarming and seems to represent a case of non-compliance with the treaty. Finally, there are cases of SPs that simply were not aware they had mined areas before their deadline expired. Even these cases worry us since we believe that SPs discovering mined areas 10 years or more after joining the treaty may not have been making “every effort” to located mined areas under their jurisdiction or control.

That said, we welcome the co-chairs’ efforts to address these unusual situations in a forward-looking manner. Although we originally proposed with the ICRC to create a process to establish a new deadline along the lines of the co-chairs’ paper, we do not have a strong view on whether it is better to go this path or follow Canada’s suggestion to extend the original one. From a legal point of view, we believe it is best to make use of the current treaty text to the extent feasible, though we do not believe it is not enough to simply say the treaty applies to these cases; the technicalities on how this would work in practice would also need to be included in any eventual decision.

Whichever approach is taken, we would want to ensure that states are encouraged to clear the mined areas in the shortest possible period. We also need to take care to create a system that reflects that these are unusual and regrettable cases. It should create no incentives for other States Parties to delay reporting mined areas until after their deadline expires. Nor should it create a disincentive for SPs in this situation to come forward and announce their discovery.

The two approaches involve different timeframes – one for 5 years maximum, and one for an extension for up to 10 years. On the latter proposal, we strongly believe the starting point for an extension should be the original deadline, with the 10 year period reduced accordingly depending on when the request was made. So ultimately the timeframe for an extended deadline could be shorter than the 5 years period included in the co-chairs’ proposal. We understand this might cause a problem if a state with an original deadline in 2009, for example, discovers mined areas in 2018, but clearly almost 20 years should not go by without a state being aware of mined areas on its territory.

Again, we believe any decision at the 12MSP should explicitly require SPs to only request the minimum amount of time strictly necessary to complete Article 5 obligations. We believe that any mined areas that went unnoticed – or even that were newly planted – should be quite small and not require years and years to address. In this regard, we appreciate Norway’s suggestion that a year be given to get on with the work and avoid needing to ask for additional time, as long as this extra year is really to be used to conduct actual survey and clearance and not delay the process.