

ICRC statement
The discovery of mined areas after the expiry of Article 5 deadlines

**Standing Committee on Mine Clearance, Mine Risk Education
and Mine Action Technologies**
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The ICRC would like to thank the co-Chairs for their proposal, as well as Australia, Canada, Germany, Hungary, Norway and others for their contributions and active engagement on this issue. It is in our view quite important to find an appropriate response to this matter, which concerns the exceptional situation where a State Party discovers or reports mined areas after the expiry of its Article 5 deadline. What is at stake is the principle that all States Parties with mined areas should be addressing clearance challenges within a time-bound framework and in a transparent manner.

As the co-Chairs' paper has indicated, these situations were not envisaged at the time the Convention was drafted. The way they are dealt with now will not only provide a way forward in the future; it could also have implications for the implementation of Article 5 more generally.

We have considered the three proposals under discussion to date – from the co-Chairs, Norway and Canada - and consider that they all have merit. Each of them shares the goal to bring states that discover or report mined areas after the expiry of their Article 5 deadline within a framework that provides for mined areas to be addressed rapidly, under the oversight of the States Parties. They simply have slightly different means of achieving this goal.

The co-Chairs' proposal is in our view the best tailored to the specific situation at hand for a variety of reasons. This proposal would establish a specific process, closely based on the existing Article 5 extension request regime, which would ask affected states to immediately inform the States Parties of the discovery of new mined areas and proceed with clearance. However, if the mined area/s could not be cleared by the next Meeting of States Parties or Review Conference, the affected State would be expected to submit a request to the States Parties for a deadline, which should be the minimum time necessary to either determine the true extent of contamination or to ensure the clearance of the mined area.

Norway's suggested amendment to the co-Chairs' proposal would effectively grant a State another year before it would have to seek a deadline, during which time it would prioritise the sharing of detailed information with the States Parties, while proceeding to address the mined area. The ICRC acknowledges the pragmatism of Norway's proposal but would recommend that if this suggestion is adopted, the process should be closely aligned to the established extension request process in requiring States to submit their deadline request 9 months before the Meeting of States Parties or Review Conference (rather than 3 months as currently proposed by the co-Chairs).

Since it would be surprising if a state were to discover large mined areas for the first time more than 10 years after the entry into force of the Convention, the ICRC supports the co-Chairs' proposal for the deadline to be limited to a maximum of 5-years renewable. It should be noted that according to the proposal, this period would run from the date of the decision on the request, to which should be added the time between the discovery of the area and the date of the decision. If this deadline were to be extended above 5 years in the first instance, this would provide little incentive for states to strive to identify or report mined areas within their original article 5 deadlines, or to submit an extension request where mined areas are discovered before the expiry of that deadline. Furthermore, it is important to highlight that the

Convention's fundamental Art. 5 obligation is to clear all mined areas "as soon as possible". For this reason, even the 5-year maximum deadline would need to be justified by the State requesting a deadline and should never be routinely granted by the States Parties without question.

Canada has suggested a different approach. It would place states with newly discovered or reported mined areas within the existing and familiar framework under Article 5, the extension request regime. Although this may appear to be the simplest way forward, questions will arise as to the date from when the extension period would run and the timeframe for submission of the request. In our view, if this option were to be adopted, the extension period should run from the date of expiry of the original or extended article 5 deadline, as has been the case for all States that have obtained an extension to date. In addition, it is not clear what would happen if a State discovered or reported a mined area more than 10 years after the expiry of their deadline. In this case, the maximum period provided under Article 5 would have already expired.

Because of the uncertainties associated with the Canadian proposal, the ICRC considers that the co-Chairs' proposal is more appropriate for the situation we are facing. If the Canadian approach were nonetheless pursued, we believe that further work would be needed to ensure all of its implications are thought through and certain questions clarified.