

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

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Article 5 extension requests and the extension request process

Reflections on the Article 5 Extensions Process

**Submitted by the President of the Eleventh Meeting of the States
Parties on behalf of the States Parties mandated to analyse requests
submitted under Article 5 of the Convention**

The process for the preparation, submission and consideration of requests

1. At the 2006 Seventh Meeting of the States Parties (7MSP), the States Parties agreed “to establish a process for the preparation, submission and consideration of requests for extension(s) to Article 5 deadlines.” It was agreed that this process would feature the following elements:

(a) States Parties seeking Article 5 extensions are encouraged “to submit their request to the President no fewer than nine months before the Meeting of the States Parties or Review Conference at which the decision on the request would need to be taken”;

(b) The President, upon receipt of an extension request, “should inform the States Parties of its lodgement and make it openly available, in keeping with the Convention’s practice of transparency”;

(c) The President and the Co-Chairs and Co-Rapporteurs of the Standing Committees are mandated to “jointly prepare an analysis of the request indicating, inter alia: clarifications of facts sought and received from the requesting State; demining plans for the extension period; resource and assistance needs and gaps”;

(d) “In preparing the analysis, the President and the Co-Chairs and Co-Rapporteurs of the Standing Committees and the requesting States Party should cooperate fully to clarify issues and identify needs”;

(e) “In preparing the analysis, the President, Co-Chairs and Co-Rapporteurs, in close consultation with the requesting State, should, where appropriate, draw on expert mine clearance, legal and diplomatic advice, using the ISU to provide support”; and,

(f) “The President, acting on behalf of the Co-Chairs and Co-Rapporteurs, should submit the analysis to the States Parties well before the MSP or Review Conference preceding the requesting State’s deadline”.

The working methods use to analyse requests:

2 The process established by the 7MSP was first used in 2008 and subsequently each year since. One of the first tasks undertaken by the States Parties mandated to analyse requests (i.e., “the analysing group”) in 2008 was to agree to working methods, with some key points agreed to as follows:

(a) With respect to pre-analysis efforts, it was concluded that the Co-Chairs of the Standing Committee on Mine Clearance, with the support of their Co-Rapporteurs, could enhance the efficiency of the process by making an initial determination of the completeness of requests and immediately seeking to obtain additional information that may be necessary for a complete analysis.

(b) With respect to expertise that the 7MSP decisions indicated the analysing group could draw from, it was understood that expertise could be derived from a variety of sources and in a variety of forms.

(c) With respect to conflicts of interest, it was concluded that the President would ask members of the analysing group to excuse themselves from the analysis of their own requests or the analysis of a request with which they have a conflict of interest, such as a territorial or sovereignty dispute with the requesting State Party.

(d) With respect to preparing analyses, it was concluded that the analysing group could more effectively structure its work by developing forms or checklists as tools that could assist it in commenting on the completeness and quality of information provided and ensuring that the analysing group gives equal treatment to requests submitted. The analysing group subsequently developed a checklist that takes into account the provisions of Article 5, paragraph 4 of the Convention and the 7MSP decisions.

(e) With respect to decision making, it was concluded that the analysing group should aim for consensus in all aspects of the analysis process. It was further understood that, should there be differences of views regarding analyses, a variety of methods for taking decisions on analyses and/or for incorporating differing points of view of analysis exist.

The application of the process to date

3. Requests have been considered at each formal meeting/conference since the 2008 Ninth Meeting of the States Parties (9MSP). At each meeting/conference, the chair of the analysing group has submitted a report documenting the application of the process and working methods over the course of a year. In addition, the final report of the Second Review Conference has recorded the use of the process during 2008 and 2009. Some key points made are as follows:

(a) The ISU has provided to requesting States Parties a suggested outline for organising the content provided in Article 5 extension requests, with this outline annexed to the Final report of the Second Review Conference. Most States Parties that have submitted requests have made use of this suggested outline. In addition, all States Parties that have submitted a request or may need to in the near future have been made aware of the assistance available from the ISU.

(b) The process has led to the establishment of an orderly and predictable calendar for submitting, analysing and considering requests for extensions of Article 5 deadlines. It is implied that a State Party that believes it will be unable to complete implementation by its deadline should submit its request in advance of the last Meeting of the States Parties or Review Conference prior to its deadline. Given the timing of Meetings of the States Parties and Review Conferences, requests should normally be submitted by 31 March of each year. Nevertheless, on various occasions, late requests have been submitted. This has impeded the efforts of the analysing group by limiting opportunities for interaction between the group and requesting States Parties. This has also resulted in some analyses being completed much later than they normally should have thus affecting the ability of all States Parties to take informed decisions on requests.

(c) The “pre-analysis” work carried out by the Co-Chairs of the Standing Committee on Mine Clearance has proven to have been extremely important in acquiring additional information that may be necessary for a complete analysis.

(d) The checklist developed in 2008 has served as the basis for analysing group members to structure their input, it has ensured that each request has been treated in a uniform manner and it has provided the basis for the structure of the analyses that were ultimately prepared by the analysing group.

(e) The expertise of the ICBL, ICRC and UNDP has been called upon given the broad scope of these organisations’ expertise. Expert input on demining and other techniques to release suspected hazardous areas has been called for and provided by the Geneva International Centre for Humanitarian Demining. The views of the ICRC on legal matters have been sought. In addition, input from the leading humanitarian demining operators active in requesting States Parties has been requested and provided.

(f) The analysing group each year has sought to ensure that the approach taken by it with respect to requesting States Parties was one consistent with the Convention’s spirit of cooperation. The group’s chairs have engaged in a dialogue with requesting States Parties, writing to seek additional clarifications of various matters, offering advice on ways to improve requests and inviting representatives of all requesting States Parties to an informal discussion with the analysing group. Most requesting States Parties have responded well by providing additional clarity and with several submitting revised and improved requests.

(g) Requesting States Parties have been asked to ensure that final versions of requests for extensions include a 2-5 page executive summary containing an overview of information necessary for an informed decision on the request to be taken. With a view to balancing the need to access information and the need to address the costs which may be associated with translating a large number of requests, only the executive summaries of requests have been translated as formal meeting/conference documents with the detailed requests available in their original languages on the Convention’s website.

Benefits of the process for the preparation, submission and consideration of requests

4. It has been recorded that “the extension request process (has) resulted in the most comprehensive information ever prepared on the state of implementation by several requesting States Parties. In addition, some requesting States Parties (have) seized on the opportunity presented through an extension request to reinvigorate interest in their national

demining plan, in large part by demonstrating national ownership and that implementation is possible in a relatively short period of time.”¹

5. The process has also repeatedly highlighted that “some requesting States Parties, almost ten years after entry into force, still lacked clarity regarding “the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under (their) jurisdiction or control”, a matter which States Parties are obliged to report on in accordance with their obligations under Article 7 of the Convention.² It has been recommended on more than one occasion that “all States Parties in the process of implementing Article 5, particularly those that may believe it will be necessary at a future date to submit an extension request, intensify and accelerate efforts to locate and report on all mined areas that contain, or are suspected to contain, anti-personnel mines under (their) jurisdiction or control.”³

6. In addition, the process has pointed to “the value of States Parties requesting only the period of time necessary to gather and assess data on landmine contamination and other relevant information with a view to develop a meaningful forward looking plan based on this information,” and then submitting a second request containing plans based on a clearer understanding of the extent of the challenge and which project with greater certainty the amount of time that will be required to complete Article 5 implementation.⁴

7. The process has culminated in formal meetings/conferences taking decisions on requests. In addition to taking decisions on requests, “the States Parties have taken decisions related to each request, in many instances recording common understandings and concerns. These additional decisions, combined with the commitments made by States Parties in their requests, including annual projections of progress to be made during extension periods, have become important means for the States Parties to measure progress in the implementation of Article 5 by these States Parties.”⁵

Challenges of the process for the preparation, submission and consideration of requests

8. While the process has produced benefits for the States Parties, it has not been without its challenges. At the 9MSP, it was recorded that in 2008 “the commitment required on the part of analysing group members was too great for some. Examining dozens of pages of requests was a heavy burden as was ensuring that delegations were prepared for active participation in hours of meetings. It was a burden that States Parties knowingly accepted, though, when they chose to be, or in some instances vigorously competed to be, Co-Chairs and Co-Rapporteurs.” It was therefore recommended that “States Parties seeking and accepting the responsibility of being a member of the analysing group should note that a considerable amount of time and effort is required to fulfil this responsibility.” The ISU

¹ The Final Report of the Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines, Part II, paragraph 77.

² The Final Report of the Tenth Meeting of the States Parties, Annex II, paragraph 8.

³ The Final Report of the Tenth Meeting of the States Parties, Part I, paragraph 23.a.

⁴ The Final Report of the Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines, Part II, paragraph 74.

⁵ The Final Report of the Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines, Part II, paragraph 73.

has sought to simplify this process for analysing group members by extracting and presenting key aspects of requests.

9. At the Tenth Meeting of the States Parties (10MSP), it was again recorded that “the Article 5 extension request process places a heavy burden on the representatives of those States Parties that are mandated to analyse the requests. It remains important that the analysis process is State Party-driven. To further assist the States Parties in continuing to effectively lead this process, the President, with the support of the ISU, should consider ways and means (e.g., seminars, workshops, etc.) to increase the knowledge and expertise of the analysing group with respect to the technical subject matter contained within article 5 requests.” Further to this, the ISU has organized seminars for interested analysing group members.

10. The Eleventh Meeting of the States Parties’ (11MSP’s) Phnom Penh Progress Report recorded that “while there was widespread appreciation for the 7 March 2011 workshop for representatives of States Parties mandated to analyse requests, it was noted that the engagement in and contributions to the analysis process from most States Parties mandated to carry out the task remained less than anticipated and hoped for.” It was suggested that the States Parties reflect on how they can enable the necessary in-depth analysis and discussion of the requests in order to ensure that high quality requests continue to be the norm.

11. The 11MSP therefore “noted that the Article 5 extension request process places a heavy burden on the representatives of those States Parties that are mandated to analyse the requests and in this context recommended that those States Parties mandated to analyse requests in 2012 reflect on the process to date with a view to identifying efficient methods to ensure that high quality requests and analyses are prepared and with a view to recommendations on this matter being submitted for consideration the Twelfth Meeting of the States Parties.”

Ensuring that high quality requests continue to be submitted

12. A high quality request should provide both detail and clarity with respect to a State Party’s original implementation challenge, what has been accomplished since entry into force, what remains to be done and the plan to address what remains to be done during the requested extension period. As noted, while the extension request process resulted in the most comprehensive information ever prepared on the state of implementation by several requesting States Parties, some requests that have been submitted have lacked detail and/or clarity. Providing detail and clarity is important to enable the analysing group to effectively carry out its work and for all States Parties to take informed decisions.

13. Detail and clarity is also important because it can assist the requesting State Party in using its extension request as a means to mobilise resources. As recorded in the final report of the Second Review Conference, “national ownership in the clearance of anti-personnel mines and other explosive hazards implies, *inter alia*,” components that include “a clear understanding of the size, location and quality of the Article 5 implementation challenge or a commitment to promptly acquire such an understanding” and “a realistic but not unambitious plan to complete implementation of Article 5 as soon as possible.” The report further indicated that “while the existence of these components will not guarantee that resources will flow in response to needs, demonstrating national ownership makes it significantly more likely that cooperation will flourish between those with needs and those in a position to provide assistance.”

Recommendation #1: The suggested outline for organising the content provided in Article 5 extension requests is a good starting point and should be used in a flexible manner

by requesting States Parties, with adaptations made if necessary according to national circumstances.

Recommendation #2: The extent of the past or present challenge should be expressed in requests in terms consistent with the language of the Convention (e.g., “areas in which anti-personnel mines are known to be emplaced”, “areas in which anti-personnel mines are suspected to be emplaced”, et cetera).

Recommendation #3: In recalling that it has been agreed at the 9MSP that States Parties, as appropriate, implement the recommendations contained in a paper on “making use of the full range of emerging practical methods to more rapidly release, with a high level of confidence, areas suspected of containing anti-personnel mines,” requesting States Parties should express in their plans projections for releasing such areas disaggregated according to the use of non-technical survey, technical survey and clearance, and with the size of these areas clearly and consistently expressed (e.g., in square metres or square kilometres).

14. While detail is important, accessibility is also important.

Recommendation #4: Requesting States Parties should give due attention to the appeal first made in 2008 to ensure that final versions of requests for extensions include a 2-5 page executive summary containing an overview of information necessary for an informed decision on the request to be taken. This should again include providing clarity with respect to a State Party’s original implementation challenge, what has been accomplished since entry into force, what remains to be done and the plan to address what remains to be done during the requested extension period. Each description of past or planned work should include a breakdown of data (e.g., number of areas, size of areas, etc.) on an annual basis.

15. A detailed demining plan is certainly a relevant piece of information for a proposed extension and something that requesting States Parties have been asked to provide pursuant to the decisions of the 7MSP. It should be expected that requesting States Parties can provide detailed plans for a two to five year period and accepted that it is much more difficult to do so in later years in a request. Beyond three to five years, circumstances will change (e.g., resource mobilisation efforts may have produced results dramatically different from expectations, natural disasters may have occurred, additional mined areas may have been discovered, new techniques may have dramatically increased the pace of work, et cetera).

Recommendation #5: Requesting States Parties should take advantage of the opportunity to demonstrate the seriousness of their commitment to proceed as soon as possible towards completion by detailing plans in their request which (a) over a period of up to five years express what and how much will be done by whom, where and when, with what assets (e.g., human resources, equipment, etc.) and requiring what quantity of resources derived from which source, and (b) where relevant, contain initial projections of expected progress in later years.

Recommendation #6: The States Parties should consider taking decisions on requests that call for both mid-term assessments of requesting State Parties’ efforts to implement Article 5 and revised plans to be submitted three to five years after requests have been granted. States Parties should incorporate into their extension request plans commitments to review the implementation of after three to five years after requests have been granted.

Ensuring that high quality analyses continue to be prepared

16. While the States Parties were deliberate in establishing an analysis process that is States Parties-driven, it has been frequently acknowledged that this process places a heavy burden on those representatives that are tasked with preparing the analyses. The agreed process, however, permits the analysing group to draw on expert mine clearance, legal and diplomatic advice and to call upon the ISU to acquire such expertise.

17. For the first time, in 2012 the analysing group issued an invitation to eleven expert organisations to provide views on the requests that had been received in 2012. These organizations were selected on the understanding that they are the world's leading not-for-profit organisations with demining expertise, which have both widespread international experience and are active in and knowledgeable about the work of the Convention. The views provided were highly appreciated by the analysing group.

Recommendation #7: The analysing group should continue to call for extensive expert input to draw out key technical, legal and policy issues in requests and to more generally enable the group to better understand and assess the requests.

Recommendation #8: The analysing group should call for expert input as soon as possible following the receipt of requests and, if additional information or revised requests are provided by requesting States Parties, the analysing group should consider again drawing upon expert organisations to provide views.

18. Accelerating the analysis process is important in order to increase its efficiency. Requests are to be submitted by 31 March. The analysis process should be completed by the end of September (assuming formal meetings/conferences take place the last week of November or first week of December) in order to comply with UN documentation demands. While this six month period may seem sufficient to complete the process, with respect to most requests it has not been possible, in part because there are few opportunities to schedule meetings in July or August. In addition, the analysing group typically experiences a changeover of one-quarter to one-half of its membership in July/August due to normal rotations at permanent missions.

Recommendation #9: The analysing group should aim to complete as much of its work as possible before July, in part by being as ready as possible to begin its work once requests are submitted. To accelerate the process, the analysing group may wish to be briefed by the ISU on the process and working methods before 31 March of each year.

19. While analysing group members need to invest time into being prepared to carry out their responsibilities, making the process as efficient as possible means ensuring that when the group is asked to meet, its time is used wisely. Documentation – particularly requests – should be as complete as possible.

Recommendation #10: The analysing group should request that the ISU follow-up with requesting States Parties immediately after requests have been received in order to address any information discrepancies and clarity challenges. In addition, the “pre-analysis” efforts of the Co-Chairs of the Standing Committee on Mine Clearance should continue in an effort to immediately seek any additional information that may be required to make a complete analysis. Requesting States Parties should consider incorporating additional information provided into their requests, for example, by revising their requests to include relevant additional information that is furnished in the course of the analysis process.

20. Supporting the work of the analysing group has, since 2008, been an increasingly important part of the work of the ISU. In addition, ways and means mentioned above to increase the efficiency of the process point to additional demand being placed on the ISU. Providing the support demanded by the States Parties requires resources. When the process

was agreed to in 2006, the 7MSP agreed “to encourage all States Parties in a position to do so to provide additional, earmarked funds to the ISU Trust Fund to cover costs related to supporting the Article 5 extensions process.” However, the burden of covering the ISU’s costs continues to be shouldered by only a small number of States Parties with some of the States Parties with the greatest means not providing any funds to the ISU at all.

Recommendation #11: The States Parties should give due regard to their repeated commitments to provide the necessary funding to the ISU to provide the support required by the States Parties.

Ensuring a cooperative engagement of Article 5 implementing States Parties continues after requests have been granted

21. The process for the preparation, submission and consideration of requests agreed to at the 7MSP is a means to an end. That end is the complete implementation of Article 5.1 by each State Party that has reported mined areas, under its jurisdiction or control, which contain or are suspected to contain anti-personnel mines. Through cooperative engagement that takes place during the extensions process, many States Parties improve and reinvigorate their national demining programmes and chart a new, more coherent path towards completion. This valuable cooperative engagement could continue after requests have been granted.

Recommendation #12: At both meetings of the Standing Committees and formal meetings/conferences, States Parties that have been granted extensions should be requested to provide updates on efforts to implement the plans contained in their requests. Such reports should clearly document progress and challenges relative to what it committed to achieve.

Recommendation #13: To assist States Parties that have been granted extensions in updating States Parties on their efforts, the analyses of requests and decisions taken on them should contain annual benchmarks on projected survey and clearance activities, planned allocation of financial and other resources, plus other actions such as development of new standards/policies, etc.

Recommendation #14: Progress reports or other documents prepared for formal meetings/conferences should document the efforts of States Parties in implementing the plans contained in their extension requests, highlighting if necessary the need for more intensive cooperative dialogue in instances when States Parties are falling behind their expressed benchmarks for progress.
