

Analysis of the request submitted by Ukraine for an extension of the deadline for completing the destruction of anti-personnel mines in accordance with Article 5 of the Convention

Submitted by the Committee on Article 5 Implementation

(Chile, Colombia, the Netherlands, Switzerland)

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1. At the 2006 Seventh Meeting of the States Parties (7MSP), the States Parties established “a process for the preparation, submission and consideration of requests for extensions to Article 5 deadlines.” This process includes States Parties seeking extensions being encouraged “to submit their requests 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.” The agreed process also sees that the Committee on Article 5 Implementation¹ are tasked with preparing an analysis of each request and that the President is responsible for submitting each analysis “to the States Parties well before the Meeting of the States Parties or Review Conference preceding the requesting State’s deadline.”
2. In a report submitted to the Ninth Meeting of the States Parties (9MSP), the President of the Eight Meeting of the States Parties (8MSP) remarked on how late requests have compounded challenges faced by the analysing group². In a report submitted to the Tenth Meeting of the States Parties (10MSP), the President of the Second Review Conference recorded that late requests “impeded the efforts of the analysing group and resulted in some analyses being completed much later than they normally should have.” Also at the 10MSP, “the Meeting recalled the importance of the timely submission of extension requests to the overall effective functioning of the Article 5 extension process and, in this context, recommended that all States Parties that wish to submit requests do so no later than 31 March of the year when the request would be considered (i.e., the year prior to the State Party’s deadline).”
3. Ukraine ratified the Convention on 27 December 2005. The Convention entered into force for Ukraine on 1 June 2006. In its initial transparency report submitted on 21 December 2006, Ukraine reported that there were no areas under its jurisdiction or control containing, or suspected to contain, anti-personnel mines. Having identified newly laid mines, Ukraine found itself in a position where it needed to submit a request for an extension of the original deadline, which lapsed 01 June 2016. Ukraine did so on 01 November 2018. In accordance with the Convention and the process agreed to at the 7MSP, if Ukraine believed it would be unable to comply with Article 5, paragraph 1 by its 1 June 2016 deadline, Ukraine should have submitted a request by 31 March 2015 for consideration by the Fourteenth Meeting of the States Parties (14MSP). Ukraine did not submit a request for extension for consideration by the 14MSP.
4. The 14MSP in 2015 concluded that “the Meeting received information on the part of Ukraine in relation to unprecedented challenges in the field of clearing areas contaminated by anti-personnel landmines, caused by aggression and activities of illegal armed groups. The

¹ Since the Fourteenth Review Conference

² Now Committee on Article 5 Implementation

country therefore does not currently have access to some mined areas and this situation is set to continue under the pressure of the conflict. Nevertheless, Ukraine emphasized that it was fully aware of the need for strict compliance with the obligations under the Convention and notified its intention to seek an extension of the period of Ukraine's implementation of article 5. The official, duly compiled, request would be soon submitted to the States Parties for their consideration. The Meeting welcomed that information and stated its full readiness to proceed with the examination of the announced extension request in the shortest possible time." Following a year of dialogue over the course of 2016 with the President of the Convention and the Committee on Article 5 Implementation, Ukraine did not submit a request for extension for consideration by the Fifteenth Meeting of the States Parties (15MSP).

5. The 15MSP in 2016 "expressed serious concern that Ukraine [was] now in a situation of non-compliance with Article 5. The Meeting called on Ukraine to submit as soon as possible a request for extension in accordance with the process established by the States Parties at the Seventh Meeting of the States Parties. In this regard the Meeting welcomed the commitment by Ukraine to continue to engage with the Committee on Article 5 Implementation." Following a year of dialogue with the President of the Convention and the Committee of Article 5 Implementation, Ukraine did not submit a request for extension for the consideration by the Sixteenth Meeting of the States Parties (16MSP).
6. The 16MSP in 2017 "expressed serious concern that Ukraine remain[ed] in a situation of non-compliance with Article 5. The Meeting reiterated its call on Ukraine to submit as soon as possible a request for extension in accordance with the process established by the States Parties at the Seventh Meeting of the States Parties. In this regard the Meeting welcomed the commitment by Ukraine to continue to engage with the Committee on Article 5 Implementation."
7. Over the course of 2018 the President of the Convention and the Committee on Article 5 Implementation engaged with Ukraine in Geneva and in Kiev. On 1 November 2018, Ukraine submitted to the Chair of the Committee on Article 5 Implementation a request for extension of its 1 June 2016 deadline. On 6 November 2018, the Committee wrote to Ukraine to request additional clarification and information on the extension. On 14 November 2018, Ukraine submitted to the Committee on Article 5 Implementation additional information in response to the Committee's questions. Ukraine's request is for an additional 5 years (until 1 June 2021).
8. The Committee regretted that Ukraine failed to comply with its Article 5 obligations for more than two years and that it did not make use of the process collectively agreed to by the 7MSP. The decisions taken by the Meeting of the States Parties confirm that a failure to submit an extension request in accordance with the Convention and the agreed processes established by the States Parties constitutes a case of non-compliance under the Convention. The decisions taken by the Meetings of the States Parties also confirm that the period of ten years referenced in Article 5.3, as indicated in the text of the Convention, starts at "the entry into force of this Convention for that State Party", including for States that face situations with previously unknown mined areas, or newly mined areas, discovered within this ten year period.
9. The Committee further noted that late submission of the request has prevented the Committee from engaging with Ukraine in an extended cooperative dialogue as envisaged by the process established by the 7MSP. Also, in keeping with the decision taken at the 7MSP which sees that States Parties are encouraged, as necessary, to seek assistance from the

Implementation Support Unit in the preparation of their requests, beginning in 2015 and frequently since, the ISU made the availability of its assistance known to Ukraine.

10. The Committee welcomes that Ukraine decided to submit an extension request, hence returning to compliance with its article 5 obligations. The Committee also recognizes the difficulties faced by Ukraine. The request indicates that “the aggression of the Russian Federation against Ukraine, which started in 2014” led to mined areas having been emplaced by “armed groups subordinate to the Russian-led occupying authorities” in areas temporarily outside of the control of Ukraine in the Donetsk and Luhansk regions. The request also notes that the ongoing hostilities have caused further contamination in areas along the contact line. The request further, indicates that given the current situation, it is not possible to estimate the scale of anti-personnel mines contamination and to determine the required resources to carry out demining operations.
11. The request indicates that preliminary estimates show that about 8% (7’000 square kilometers) of the area which has been liberated from the “occupying authorities” in Donetsk and Luhansk regions contain or are suspected to contain anti-personnel mines as well as other explosive remnants of war. The Committee wrote to Ukraine to request additional information concerning suspected hazardous areas (SHA) and confirmed hazardous areas (CHA), progress made in addressing contamination and munitions identified and destroyed.
12. Ukraine responded by providing a list of 36 SHAs measuring 5’639’512 square meters and 17 CHAs measuring 53’196 square meters located in the territories of Donetsk and Luhansk. Ukraine also provided information on an additional 34 CHAs with no total area provided. Ukraine further indicated that since the beginning of demining operations in July 2014 the Pyrotechnical Group of the State Emergency Services of Ukraine (SESU) has cleared over 25,700 hectares of lands and 93 hectares contamination in bodies of water, addressing 1,000 infrastructure and livelihood objectives.
13. The request indicates that a total of 164,200 “dangerous explosive devices” including 832 “extremely dangerous explosive devices” have been rendered safe since July 2014. The request indicates that, during operations, deminers of the Armed Force of Ukraine have discovered PMN-2 mines, a type of mine which is not stockpiled in Ukraine. The request also indicates that in addition to “industrial-made” anti-personnel mines, the use of anti-personnel mines of an improvised nature has been identified. The Committee wrote to Ukraine to request additional information concerning the threat of anti-personnel mines of an improvised nature and to, if possible, provide some photographs of these devices. Ukraine indicated that devices include hand grenades and large-caliber rounds activated by trip wire and provided photographs of these munitions. The Committee noted the importance of Ukraine continuing providing disaggregated information on the munitions identified and destroyed.
14. The request indicates that the International Mine Action Standards (IMAS) were introduced in Ukraine by the National Organ of Standardization’s Resolution of 8 August 2016 number 230 “On adoption of the International Action Standards as national normative documents” and that at the moment, the National Mine Action Standards (NMAS) are being drafted on the basis of the IMAS to be finalized by the end of 2018. The Committee welcomed Ukraine’s efforts in this regard and in their use of IMAS and underlined the importance for Ukraine to ensure that NMAS are adopted by Ukraine as soon as possible. The Committee further noted the importance of ensuring that the most relevant land-release standards, policies and methodologies, in line with IMAS, are in place and applied for the full and expedient

implementation of this aspect of the Convention in line with Action 9 of the Maputo Action Plan. The Committee further noted the importance of Ukraine carrying out these efforts in an open and transparent manner with its partners.

15. The Committee noted the importance of Ukraine reporting on its progress in a manner consistent with International Mine Action Standards (IMAS), disaggregating by area cancelled through non-technical survey, reduced through technical survey and addressed through clearance. The Committee further noted the importance of Ukraine employing language that is consistent with the International Mine Action Standards.
16. The request indicates that a 2 September 2014 Decree of the President of Ukraine designates the Ministry of Defence (MoD) as the authority on matters concerning mine action until the adoption of National Mine Action Legislation which will aim to create the legal grounds for the development of the mine action programme in Ukraine. The Committee wrote to Ukraine to request additional information on the process (timeline for the adoption, responsible governmental bodies, parliamentary process etc.) and content of this legislation. Ukraine responded by indicating that on November 5, 2018 the Verkhovna Rada (Parliament) of Ukraine “passed the first reading the draft law of Ukraine on Mine Action”. The Committee underlined the importance of the adoption of a national mine action legislation as soon as possible in order to provide clarity on the role of national and international institutions in Ukraine. The Committee noted that doing so could contribute to increase clarity concerning the implementation of the mine action program.
17. The request indicates that in November 2015, the MoD, acting upon the decision of the Prime Minister of Ukraine, prepared the “State Program on Mine Action in Ukraine 2017-2021” for approval by the Cabinet of Ministers of Ukraine. The request also indicates that, the activities and implementation of the program were suspended due to the absence of national legislation. The Committee wrote to Ukraine to request further information on the activities and content of the program. Ukraine responded by indicating that implementation of the programme foresees allocation of funding for mine action from the State budget, as well as allocation of funding for the State central executive bodies. The Committee reiterated the important role of national mine action legislation being in place as soon as possible and welcomed additional information as well as status and progress in implementation of the State program.
18. The request indicates that Resolution № 1071 of 13 December 2017 of the Cabinet of Ministers of Ukraine approved the “State Program Restoration and Development of Peace in Eastern Regions of Ukraine for 2017 – 2021” concerning, in part, the humanitarian demining of regions of Donetsk and Luhansk regions in an area measuring 700,000 hectares over the course of 2018-2020 with a total of 251.2 million hryvnas (approximately US\$9 million) allocated for this purpose from the State budget. The Committee wrote to Ukraine to request information on the responsible entity for the implementation of this program and the role of non-governmental organizations. Ukraine responded by indicating that Resolution № 1071 defined the Ministry for Temporary Occupied Territories and Internally Displaced Persons of Ukraine as a “state customer” of the program. Ukraine also indicated that the State Emergency Service of Ukraine, subordinated to the Ministry of Internal Affairs of Ukraine, carries out the program on territories and in bodies of water in Donetsk and Luhansk regions (survey as well as clearance of mines and explosive devices, remaining after antiterrorist operation) with activities being financed by the State budget.
19. The request indicates that all competent Ukrainian government authorities are involved in demining with the MoD carrying out survey activities in areas where the military contingents

of the Joint Forces Operation (JFO) are deployed; the SESU carry out demining activities on land and in the sea in the regions that are not in conflict; the State Border Guards carry out demining in regions under their control; the States Service of Special Transport of Ukraine is responsible for demining of the transport infrastructure (i.e. railways and roads); and the SESU and the National Polices of Ukraine carry out counter-IED measures. The request also indicates that units of the SESU is part of the JFO and participates in demining activities to restore vital objects and provide security functions for the Organisation for Security and Co-operation in Europe Special Monitoring Mission as well as of those deployed by international organization near combat area and in the so-called "grey zone".

20. The request indicates that three non-governmental organization (the HALO Trust, the Danish Demining Group (DDG) and Fondation Suisse de Deminage (FSD)) work in humanitarian demining activities in Ukraine as follows:

- a. HALO Trust began its work in 2015 and in 2016 was invited to carry out non-technical survey and to mark mines and UXO in liberated areas in Donetsk and Luhansk regions.
- b. DDG has been active in Ukraine since 2014 with dissemination of information among the Donbas population and in February 2016 it took part in non-technical survey and marking of anti-personnel mines and UXO in liberated areas in Donetsk and Luhansk.
- c. FSD started working in 2015, disseminating information among the Donbas population and was later invited by the MoD to carry out survey and the marking of mines and UXOs in liberated areas in Donetsk and Luhansk. The request indicated that these organizations work in areas more than 15km away from the line of contact.

21. The Committee wrote to Ukraine to request information on how NGOs are tasked and by which entity. Ukraine responded by indicating that the activities of the non-governmental organizations are managed by the MoD of Ukraine in accordance with agreements signed by the Ministry of Defence of Ukraine and the organization. Ukraine also indicated that tasks are in line with the *Annual Action Plan for humanitarian demining in liberated areas in Donetsk and Luhansk* and that a work permit to operate in the area of the JFO is issued by the Joint Operation Headquarters (JOH) on the request of the Department of Environmental Safety and Mine Action of the MoD (in its capacity as the National organ for mine action). Ukraine further indicated that JOH directs the PG SESU to destroy the explosive devices, identified by the non-governmental organizations.

22. The request indicates that anti-personnel mines have a significant impact on the population and that demining efforts, apart from decreasing casualties, will provide a number of benefits to the population such as delivery of humanitarian cargos, provide open access to essential goods and services, agricultural land, infrastructure objects, forest, rivers, recreational facilities and have an overall positive impact on the internal migration of the populations. The request further indicates that clearance efforts will improve access to agricultural land and increase agricultural and livestock production as well as decrease fires in forest, steppes, nature reserve and on arable land and will mitigate threats to the environment and emergencies related to mine and contamination by explosive objects. The Committee noted that the continued implementation of Article 5 during the requested extension period has the potential of making a significant contribution to improving human safety and socio-economic conditions in Ukraine. The Committee further indicated the

importance of Ukraine providing information on injuries and casualties caused by anti-personnel mine in an age and sex disaggregated manner.

23. The request indicates that the circumstance which impedes the ability of Ukraine to destroy anti-personnel mines in the mined areas is the fact that “currently Ukraine does not have control over the temporary occupied parts in Donetsk and Luhansk regions, as well as over the Autonomous Republic of Crimea”. The Committee noted the importance of Ukraine keeping the Committee and the States Parties informed of the security situation and how these changes positively or negatively affect implementation
24. As noted, Ukraine’s request is for 5 years (until 1 June 2021). Ukraine noted that releasing land in fulfillment of article 5 obligations in the extended time period is depending on cessation of hostilities, restoration of the constitutional order and the re-gaining full control over the occupied territories. The Committee noted the importance of implementation advancing as much as possible as the situation permits. The request further indicates that this timeframe is suggested on the basis of the analysis of current and potential challenges, including the extent of the problem, human, material and financial resources expected and availability of survey and demining capacity.
25. The request indicates that since 2015 the MoD develops an *Annual Action Plan for humanitarian demining in liberated areas in Donetsk and Luhansk* with the aim of supporting efforts to restore infrastructure and agricultural areas. The Action Plan includes a list of assignments and activities and those responsible and a timeframe including:
 - a. Regular activities: development of the information management system, meetings with operations on the information management system, ensuring immediate response to the local population’s notification on detection of explosive devices, demining of territories and infrastructure facilities in Donetsk and Luhansk regions.
 - b. Preparatory activities: approval of reporting templates on quality control and hand over, conduct of NTS and TS operations and marking.
 - c. Demining operations of territories and facilities within administrative regions of Donetsk and Luhansk regions
 - d. Quality control and transfer of cleared territories
 - e. Reporting and provision of information
 - f. Participation in international events: Cooperation and engagement with international governmental and non-governmental organizations, states, experts and other parties involved in the mine action.
26. The Committee noted the importance of implementing these activities as soon as possible to ensure a conducive environment for mine action in Ukraine.
27. The request indicates that operations are budgeted and financed through the relevant state authorities and military detachments, during the fiscal year. The request indicate that the MoD is seeking to ensure that the engineers corps of the Armed Forces is equipped with modern tools for detection with state funds as well as support from donor states and international organizations. The request further indicates that through this support the detachments of the Armed Forces of Ukraine currently have a range of modern handheld mine detectors but require an additional 250 mine detectors (Vallon VMC-1) to replace outdated mine detectors (USSR-made) as well as 20 armored vehicles. The request further indicates that the SESU requires 60 sets of equipment to survey explosive objects, 10 armored vehicles for detection and explosive transportation as well as mechanical demining

equipment. The Committee noted that adoption of national mine action could support Ukraine's efforts to ensure that international support continues to flow to the mine action program. The Committee further noted the importance of Ukraine continuing to report their needs for assistance (e.g. within their Article 7 reports) and engaging with relevant Committees of the Convention on the matter of cooperation and assistance.

28. The Committee noted that the request includes other relevant information that may be of use to the States Parties in assessing and considering the request, including photos, the annexed annual work plan as well as annexed tables including a list of sites in liberated territories in Donetsk and Luhansk regions identified for technical survey and demining and the organization responsible for technical/non-technical survey, list of liberated territories in Donetsk and Luhansk regions for external quality control and their subsequent transfer to local communities' authorities and a list of liberated territory in Donetsk and Luhansk regions, which may contain explosive remnants of World War II
29. The Committee noted that the Convention would benefit from Ukraine submitting to the Committee an updated detailed annual work plan for 2019 by 30 April 2019 and to ensure that preparations are put in place for the submission of a second request for extension by 31 March 2020. The Committee noted that the work plan should contain an updated list of all areas known or suspected to contain anti-personnel mines using terminology consistent with the IMAS, and to the extent possible, an annual projection of which areas and what area would be dealt with during the remaining period covered by the request including a detailed budget based on new funding levels. The work plan will also benefit from Ukraine providing clarity on the "State Program on Mine Action in Ukraine 2017-2021" the "State Program Restoration and Development of Peace in Eastern Regions of Ukraine for 2017 – 2021" and the "Annual Action Plan for humanitarian demining in liberated areas in Donetsk and Luhansk" and how these plans complement one another.
30. The Committee noted the necessity and importance of each State Party that has reported mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control and which believes that it will be unable to implement Article 5.1 with respect to all such areas within a ten year period submitting a request for an extension in accordance with the procedures outlined in the Convention and the decisions of the Seventh Meeting of the States Parties. The Committee further noted the importance of a State Party providing information on changes to the status of the control of mined areas when such a State Party has indicated that matters related to control affect the implementation of Article 5 during extension periods.
31. The Committee noted that the Convention would benefit from Ukraine reporting annually to the States Parties on the following:
 - (a) Progress of continuing land release relative to the commitments given in Ukraine's annual work plan, disaggregated in a manner consistent with IMAS, including identification of new mined areas, and their impact on annual targets as given in Ukraine's work plan;
 - (b) Updated information on the development and adoption of National Mine Action Legislation expected to be finalized by 2018;

- (c) Updates on the status and progress in implementation of the “State Program on Mine Action in Ukraine 2017-2021” and the “State Program Restoration and Development of Peace in Eastern Regions of Ukraine for 2017 – 2021.”
 - (d) Efforts to mitigate the impact of anti-personnel mines to the population as well as information on injuries and casualties caused by anti-personnel mines, disaggregated by sex and age;
 - (e) Changes to the status of the control of mined areas and how these changes positively or negatively affect implementation;
 - (f) External financing received and resources made available by the Government of Ukraine to support implementation; and
 - (g) Updates regarding the structure of Ukraine’s mine action program, including existing and new organisational, institutional capacities and requirements for support.
32. The Committee noted the importance, in addition to Ukraine reporting to the States Parties as noted above, of keeping the States Parties regularly apprised of other pertinent developments regarding the implementation of Article 5 during the period covered by the request and other commitments made in the request at intersessional meetings, Meeting of the States Parties and Review Conferences as well as through its Article 7 reports using the Guide for Reporting.