

TOWARDS THE FULL IMPLEMENTATION OF ARTICLE FIVE

PRESIDENT'S PAPER

States Parties have consistently reaffirmed their commitment to fulfilling the mine clearance obligations under Article 5 at the first Review Conference. In particular, they committed to 'strive to ensure that few, if any, States Parties will feel compelled to request an extension in accordance with the procedure set out in Article 5, paragraphs 3-6 of the Convention' (*Nairobi Action Plan* Action #27 refers).

Nevertheless, the Convention allows States Parties to seek an extension to their mine destruction deadline if they are unable to meet it (Article 5-3). There are 45 States Parties for which mine clearance deadlines fall due from 2009. And despite their best of efforts to meet their deadlines, it is possible that some will seek extensions.

States Parties have highlighted the need to ensure an effective and efficient process for handling these requests. The process should operate cooperatively and transparently, in the spirit of the Convention. It must contribute to realising the full implementation of the Convention.

The first Article 5 deadlines fall due before the likely date of the 2009 Review Conference. So decisions on extensions may need to be taken at the Meeting of the States Parties (MSP) in 2008 should any State Party with a 2009 deadline request one. States Party requesting extensions will need to begin work on requests even earlier to satisfy the obligations under Article 5. Accordingly, there is a need to clarify, and decide as appropriate, key elements of an extensions process at the Seventh MSP. Such action, which would not extend, alter or add to obligations under the Convention, will ensure the system is operational by the 2008 MSP.

As States Parties have noted, work on an extensions process should not be seen as an alternative to fulfilling Article 5 obligations. Rather, development of a process is a pragmatic acknowledgment that some States Parties, despite their best efforts, will require an extension and States Parties must be in a position to respond to that request in a timely manner. It is in the interests of all mine-affected populations, States Parties and our Convention that efforts to fulfill Article 5 mine clearance obligations continue. Further, extensions are not an automatic right. They will only be granted on the basis of an informed decision by States Parties.

Extension request content and format

The Convention lays down some clear guidelines on the content of extension requests in Article 5-4:

4. Each request shall contain:
 - a) The duration of the proposed extension;
 - b) A detailed explanation of the reasons for the proposed extension, including:
 - (i) The preparation and status of work conducted under national demining programs;
 - (ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and

- (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;
- c) The humanitarian, social, economic, and environmental implications of the extension; and
- d) Any other information relevant to the request for the proposed extension.

States Parties are strongly encouraged to illustrate how the extension period will contribute to the meeting of Article 5 obligations. To this end, States Parties are strongly encouraged to provide information on their national demining plan, including resource needs, for the extension period. Additionally, concerned States Parties agreed to provide information relating to resources they themselves have contributed to fulfil their Article 5 obligations. (*Nairobi Action Plan Action #22* refers).

It is the responsibility of the requesting State Party to provide all information relevant to their request, drawing on assistance as necessary. States Parties should, as necessary, seek assistance from the Implementation Support Unit (ISU) in the preparation of their requests. States Parties in a position to do so should assist states requesting an extension to fulfill their Article 5 obligations in accordance with Article 6-4 of the Convention (*Nairobi Action Plan Action #44* is also relevant in this regard). International and non-government organisations are strongly encouraged to provide assistance where they are in a position to do so.

The President's consultations revealed strong support for elaboration of a common template for extension requests to assist States Parties seeking an extension to fulfill the information requirements of Article 5-4. This would be in line with the precedent of States Parties' decision to adopt a common template to better facilitate provision of information as required by Article 7. The President expresses appreciation for Canada's work to elaborate a template.

It is proposed that the 7MSP:

consider a voluntary template to facilitate extension requests

strongly encourage States Parties seeking Article 5 extensions to append their national demining plans to their extension requests.

Submission of extension requests

According to Article 5-3 of the Convention, States Parties 'may submit a request to a Meeting of the States Parties or a Review Conference...'. In reality, this timing provides little scope for States Parties to fulfill their obligation to assess requests in accordance with Article 5-5. Depending on the number of requests in any one year, States Parties may need to consider concurrently more than one request at a MSP or Review Conference. Timely submission of requests would ease this assessment burden by ensuring all issues were clarified before such a meeting. And it would better ensure other vital issues received due attention at the MSP or Review Conference.

States Parties may also need time to identify and clarify issues relating to the request, including a requesting States Party's resource needs. In turn, a requesting State Party may use this work to revise its request before States Parties vote on it. Such work would be undertaken in the

cooperative spirit of the Convention. It would provide States Parties a better basis for making informed decisions. And it should help ensure requesting States Parties have in place clear strategies for meeting their goals during an extension period.

It is proposed that the 7MSP:

encourage States Parties seeking Article 5 extensions 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.

Reviewing and assessing extension requests

In accordance with Article 5-5, the MSP or Review Conference shall assess extension requests. States Parties need to determine whether the period of extension being sought is appropriate. In doing so, Article 5-5 states that States Parties shall take ‘into consideration the factors contained in paragraph 4 (of Article 5)...’. In carrying out this obligation, the States Parties may benefit from a review of the requests. Moreover, a review of a request provides an opportunity for a requesting State Party to clarify aspects of its request, including identifying resource requirements.

It is proposed that the 7MSP agree that:

the President, upon receipt of an extension request, should inform the States Parties of its lodgment and make it openly available, in keeping with the Convention practice of transparency

the President and the Co-Chairs and Co-Rapporteurs of the Standing Committees, jointly prepare a review 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

in preparing the review, 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

in preparing the review, the President, Co-Chairs and Co-Rapporteurs should draw on expert mine clearance, legal and diplomatic advice, using the ISU to acquire necessary expertise and to otherwise provide support

the President, acting on behalf of the Co-Chairs and Co-Rapporteurs, should submit the review to the States Parties well before the MSP or Review Conference preceding the requesting State’s deadline.

Deciding an extension request

The States Parties, having assessed an extension request shall ‘decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period’, in

accordance with Article 5-5. This process for receiving, assessing and deciding extension requests should apply to consideration of requests submitted in accordance with Article 5-6.

Costs

To the extent that this process for the review, assessment and deciding of extension requests imposes additional costs on the ISU, these shall be met through voluntary contributions from States Parties. In this regard, States Parties should recall their commitment to provide funding for mine action in accordance with *Nairobi Action Plan #45*.

It is proposed that the 7MSP:

encourage all States Parties in a position to do so to provide additional, ear-marked funds to the ISU Trust Fund to cover costs related to supporting the Article 5 extensions process.

Declaration of completion of Article 5 obligations

Statements by States Parties that they have successfully completed their Article 5 obligations are a key measure of the success of Article 5. Statements made to date vary in form, content and place of submission. An increasing variety of statements of completion could promote uncertainty over fulfillment of this central Convention obligation. A basic standard for declarations of completion of Article 5 obligations could provide greater clarity and certainty to all States Parties that the objectives of Article 5, namely the destruction of all anti-personnel mines in identified mined areas under the State Party's jurisdiction or control, have been met. The States Parties are encouraged to use the draft declaration prepared by Guatemala and the ICRC as the basis of their consideration of a standard declaration at the 7MSP.

It is proposed that the 7MSP:

adopt a standard declaration as a voluntary means to report completion of Article 5 obligations.