Report on the process for the preparation, submission and consideration of requests for extensions to Article 5 deadlines, 2007-2008

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President of the Eighth Meeting of the States Parties

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Background:

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 extension to Article 5 deadlines."[1] This process includes the President and the Co-Chairs and Co-Rapporteurs of the Standing Committees jointly preparing an analysis of each. In doing so this group of 17 States Parties (hereafter referred to as the "analysing group") is tasked, along with requesting States Parties, with cooperating fully to clarify issues and identify needs. In addition, in preparing each analysis, the analysing group 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. Ultimately, the President, acting on behalf of the Co-Chairs and Co-Rapporteurs, is charged with submitting the analyses to the States Parties well before the MSP or Review Conference preceding the requesting State's deadline.

2. The process agreed to at the 7MSP does not require the President to submit a report to a subsequent Meeting of the States Parties or Review Conference. However, as the process was used for the first time in 2007-2008, it is prudent that the President of the Eighth Meeting of the States Parties documents the effort undertaken, working methods established and lessons that have been learned. It is hoped that future groups of States Parties mandated to analyse requests would benefit from the first year's experience with the use of application of the process.

Report:

3. The 8MSP President's activities with respect to the process began at the 8MSP when he presented the paper entitled *An orientation to the process concerning Article 5 extension requests*.[2] With respect to preparing requests, pursuant to the decisions of the 7MSP, the 8MSP President encouraged requesting States Parties to continue to make use of the expert support provided by the Implementation Support Unit (ISU), to incorporate into their extension requests relevant aspects of their national demining plans and to be pragmatic in using or adapting the voluntary template adopted by the 7MSP.

4. All 15 States Parties that submitted requests for consideration by the Ninth Meeting of the States Parties (9MSP) received at least a briefing from the ISU on the extensions process. Many, however, benefited further by taking advantage of the ISU's advisory services, including by requesting and receiving a visit or visits by experts and follow-up support. Upon review of the initial information provided by requesting States Parties, the ISU in some instances suggested an outline to organise requests and to adapt the voluntary

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[1] Final Report of the Seventh Meeting of the States Parties, document APLC/MSP.7/2006/5.
[2] Document APLC/MSP.8/2007/INF.1.

template in such a way that often a large volume of information could be made as accessible as possible.

5. With respect to submitting requests, in accordance with the decisions of the 7MSP, the President encouraged relevant States Parties to submit preliminary requests in March 2008. On 8 February 2008, with a view to ensuring that requests would be submitted in a timely manner, the President wrote to the States Parties with deadlines in 2009 that had indicated that they will or may need to request an extension to remind them to submit their requests in March. It should be noted that only 7 of the 15 States Parties that submitted requests for consideration by the 9MSP submitted their initial requests in March 2008, with 4 others submitting them soon after. However, 4 requesting States Parties did not submit their requests until some time much later than March 2008.

6. The decisions of the 7MSP state 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's practice of transparency." On 4 April, the President wrote to all States Parties to inform them of the requests that had been received and instructed the ISU to make these requests available on the Convention's web site.[3] The President subsequently kept the States Parties informed of additional requests or revised requests received and ensured that these were available on the Convention's web site.

7. With respect to the responsibility of the President and the Co-Chairs and Co-Rapporteurs of the Standing Committees to jointly prepare an analysis of each request, on 11 March 2008, the States Parties mandated to analyse extension requests met principally to discuss working methods. The complete set of conclusions drawn by the analysing group is annexed to this report. Some highlights are as follows:

   a) 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. Concerning this matter, the analysing group called upon the expert advice of the ICBL, the ICRC and the UNDP given the broad scope of these organisations' expertise and concluded that the input provided was extremely useful. In addition, expert input on demining techniques was provided by the GICHD, on land release methods by the GICHD and Norway in its capacity as Coordinator of the Resource Utilization Contact Group, and, by the ICRC with respect to its views on legal matters.

   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. In this regard, it should be noted that Jordan, Peru and Thailand did not participate in the preparation

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[3] www.apminbanconvention.org

of the analysis of the request submitted by each and Argentina excused itself from the preparation of the analysis of the request submitted by the United Kingdom.

d) 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, which is annexed to this report, that takes into account the provisions of Article 5, paragraph 4 of the Convention and the 7MSP decisions. This checklist served as the basis for analysing group members to structure their input, it ensured that each request was treated in a uniform manner and it provided the basis for the structure of the analyses that were ultimately prepared by the analysing group.

e) With respect to transparency, it was concluded that working methods agreed to by the analysing group and relevant tools used would be communicated to all States Parties by the President and made available on the Convention's web site. On 4 April 2008, the President sent a complete set of our agreed working methods to the States Parties and on 4 June 2008, the President provided a further update to the meeting of the Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies.

8. On 29-30 April 2008, the analysing group met to begin discussions on requests received by that time. The intention was to conclude work on as many requests as possible by the end of August 2008 and that by mid-September 2008 work on the remaining requests would be concluded. Ultimately, the group was able to complete its work on only 10 of the 15 requests by the end of September 2008 with work on the final 5 requests not completed until mid-November 2008.

9. The decisions of the 7MSP make it clear that in preparing an analysis, the President and the Co-Chairs and Co-Rapporteurs of the Standing Committees and the requesting States Party should cooperate fully. The President underscored this point in the paper he presented to the 8MSP, noting in it his intention to work in close collaboration with requesting States Parties and expressing the view that the analysis of requests should be a cooperative one ultimately leading, in many circumstances, to improved revised requests for extensions.

10. The analysing group sought to ensure that the approach taken by the analysing group with respect to requesting States Parties was one consistent with the Convention's true spirit of cooperation. The chair engaged in a dialogue with all 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. During the week of 2-6 June 2008, representatives of most requesting States Parties, including many national demining directors, met with the analysing group. In addition, the President wrote to requesting States Parties to invite views on analyses prepared by the analysing group. The approach paid off with 14 of the 15 requesting States Parties providing additional clarity with respect to their requests and with several submitting revised and improved requests.

11. Pursuant to a dialogue between the analysing group and requesting States Parties, three requesting States Parties (Chad, Denmark and Zimbabwe) in their final submissions

requested only the period of time necessary to assess relevant facts and develop a meaningful forward looking plan based on these facts. The analysing group noted the importance of States Parties that find themselves in such circumstances taking such an approach.

12. In the paper presented to the 8MSP, the President indicated that he would encourage requesting States Parties to ensure that final versions of requests for extensions included a 2-5 page executive summary containing an overview of information necessary for an informed decision on the request to be taken. It was further indicated that, 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, the President would ask the 9MSP Executive Secretary to ensure that only the executive summaries of requests are translated in time for the meeting and that the detailed requests would be made available in their original languages. It should be noted that all 15 requesting States Parties indeed did submit brief executive summaries containing an overview of information necessary for an informed decision on the request to be taken at the 9MSP.

13. The working methods of the analysing group included the conclusion drawn by the group that it 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 existed. In total, the analysing group met eight times between 11 March and 10 November 2008.[4] While the analyses produced by the group may not have been as rigorous as some members desired, ultimately the final products were agreed to by all participating members of the analysing group, thus ensuring that views contained in the analyses represent the points of view of a wide diversity of States Parties from all regions.

Observations and recommendations:

14. The work of the analysing group was greatly aided by the calendar established pursuant to the decisions of the 7MSP, which sees, for instance, that in 2008 requests were received only from those States Parties with deadlines in 2009. It is recommended that Co-Chairs of the Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies continue to update and make available a calendar of time lines for Article 5 related matters.

15. The extension request process resulted in the most comprehensive information ever prepared on the state of implementation by several requesting States Parties. In addition, some requesting States Parties seized on the opportunity presented through an extension request to reinvigorate interest in national demining plan, in large part by demonstrating national ownership and that implementation is possible in a relatively short period of time. It is recommended that States Parties that will need to submit a request at a future date equally seize on the opportunities presented by the extension request process to clearly communicate the state of national implementation and to reinvigorate interest in a collective effort to complete implementation of Article 5.

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[4] The analysing group met on (1) 11 March 2008, (2) 29-30 April 2008, (3) 15-16 May 2008, (4) 2-6 June 2008, (5) 9-10 July 2008, (6) 28-29 August 2008, (7) 24, 26 and 29 September 2008, and (8) 10 November 2008.

16. Some of the best requests (i.e., requests that were coherently organised and that were clear and complete in the presentation of facts) were submitted by States Parties that made good use of the services provided by the ISU and / or engaged in an informal dialogue with the President and / or members of the analysing group even before submitting a request. It is recommended that all States Parties that believe they will need to request an extension should make use of the expert support provided by the Implementation Support Unit. It is further recommended that requesting States Parties make use of the suggested outline for preparing a request that has been developed by the ISU, adapting it and the voluntary template agreed to at the 7MSP as relevant according to national circumstances.

17. The challenges faced by the analysing group in 2008 in using a process for the first time were compounded by late requests, by – in one instance – a non-request in that no time had been requested, and, by requests that lacked clarity and contained data discrepancies. It is recommended that requesting States Parties adhere to the March submission date or otherwise inform the President of circumstances that may prevent timely submission. It is further recommended that all States Parties implementing Article 5 should ensure that best practices for the management of mine action information are adhered to in order that, if they should at a later date need to request an extension, all necessary information is available to serve as a factual basis for a national demining plan and a time period to be requested.

18. 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 is 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.

Annex I:

Conclusions on working methods drawn by the States Parties mandated to analyse Article 5 Extension requests, 11 March 2008

1. Pre-analysis

- 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 initial determination of the completeness of requests and immediately seeking to obtain additional information which may be necessary for a complete analysis.

2. Expertise

Recalling that the 7MSP agreed that "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," the following was concluded:

- Expertise could be derived, on a case-by-case basis, from a variety of sources, including, inter alia: the Resource Utilization Contact Group Coordinator, given the Contact Group's focus on supporting Article 5 implementation; the ICBL and its relevant member organizations; the ICRC; relevant UN agencies, departments and offices; regional organizations; the operations unit of the GICHD; donor States Parties which have supported and will support requesting States Parties, and consultants with relevant expertise.

- Given their broad scope of expertise, the ICBL and ICRC will be invited, where appropriate, to provide the analysing group with a written critique of requests submitted. These critiques could serve as valuable inputs into the analysis process.

- The following procedure would be used regarding the acquisition of expert advice:

  i) The Co-Chairs of the Standing Committee on Mine Clearance, working with their Co-Rapporteurs, would develop an initial suggestion to the analysing group of expertise that may be required and the source of such expertise.

  ii) The analysing group could consider this suggestion, as well as other ideas or input, in order to arrive at a proposed course of action.

  iii) The President would inform the requesting State Party of the intended course of action and provide the requesting State Party with the opportunity to share any comments or concerns.

  iv) The President, notwithstanding any grave concerns expressed by the requesting State Party which would need to be considered by the analysing group, could then, in accordance with the decisions of the 7MSP, instruct the ISU to acquire the expertise desired by the analysing group.

3. Conflicts of interest

- It was concluded that in order to avoid conflicts of interest, 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.

4. **Content / form of the analysis**

Taking into account: (i) that requesting States Parties are obliged, in accordance with Article 5, paragraph 4, to include various elements in an extension request; (ii) that the 7MSP encouraged requesting States Parties both to append their national demining plans to their extension requests, and, to make use, on a voluntary basis, of the template adopted at the 8MSP; and, (iii) that the President and the Co-Chairs and Co-Rapporteurs of the Standing Committees, are tasked with "jointly preparing 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," the following was concluded:

- 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.

5. **Decision making**

- It was concluded the analysing group should aim for consensus in all aspects of the analysis process. It was 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 existed.

6. **Transparency**

- In recalling that the decisions of the 7MSP make mention of "the Convention's practice of transparency," it was concluded that working methods agreed to by the analysing group and relevant checklists / templates would be communicated to all States Parties by the President and made available on the Convention's web site (www.apminebanconvention.org); that the President, when notifying the States Parties of the receipt of requests could extend an open invitation for expressions of interest; and, that the Co-Chairs of the Standing Committee on Mine Clearance could request that the President provide an update on the process at their meeting on 4 June.

Member of Analysing Group: _____

Annex II:

Article 5 Analysing Group Extension Request Checklist*

Requesting State Party: _____

	Relevant Facts in Request	Remarks/Views
Total land to be addressed at entry into force, as defined in Article 2, paragraph 5		
Estimated **land remaining to be addressed** in accordance with Article 5 paragraph 4.b.i		
Amount of time requested, in accordance with Article 5, paragraph 4.a		
Circumstances which impeded the ability of the requesting state party to fulfil its obligations, in accordance with Article 5 paragraph 4.b.iii		

	Relevant Facts in Request	Remarks/Views
Annual projections of mined areas to be addressed, in accordance with Article 5 paragraph 4.b.i		
Methods to be used to render mined areas no longer dangerous, in accordance with Article 5, paragraph 4.b.i and Article 5, paragraph 4.b.ii		
National financial resources required, in accordance with Article 5, paragraph 4.b.ii		
International financial resources required, in accordance with Article 5, paragraph 4.b.ii		
Humanitarian, social, economic and environmental implications of the extension, in accordance with Article 5, paragraph 4.c		

	Relevant Facts in Request	Remarks/Views
Any other information relevant to the request, in accordance with Article 5, paragraph 4.d		

Conclusions:

* Each member of the analysing group should complete a checklist for each request submitted (with the exception of instances when an analyser indicates it has a conflict of interest). Analysers should feel free to use this checklist in a flexible manner, for instance, providing initial observations and views in a narrative format rather than in a tabular format.