

**Notes for ICRC intervention under the item
"The practical implementation of the various other provisions of the
Convention"**

**Standing Committee on the General Status and Operation of the Convention
Friday 12 May 2006**

Statement on Articles 3 and 2

Thank you Mr. Co-Chair.

In **Action #55** of the Nairobi Action Plan, all States Parties have undertaken to exchange views and share their experiences on the practical implementation of the various provisions of the Convention, including Articles 1, 2 and 3, with a view to promoting "the effective and consistent application of these provisions".

We wish to make a statement on the definition of anti-personnel mines under Article 2, but before doing that we would like to take this opportunity to briefly comment on the presentations made this morning under the item "**Article 3**: plans for and use of mines retained".

The ICRC thanks the 18 government delegations that have this morning provided, in many cases detailed, updates on their plans for and use of mines retained under Article 3, in fulfilment of the commitment they made in **Action #54** of the Nairobi Action Plan. We call on the remaining States that have retained mines under Article 3 to provide such information in their Article 7 reports using the Amended Form D or at the 7th Meeting of the States Parties in September. Sharing such information is a crucial means to promote transparency in the application of Article 3 and confidence among States Parties in the faithful implementation of the Convention.

We welcome in particular the announcement by Moldova that it has destroyed its entire remaining number of mines retained. We also welcome the announcement by other States that they are in the process of revising downwards the number of mines retained for training and research, and we encourage other States to consider reducing the number of mines they are retaining with a view to making it more realistic relative to their actual needs.

In permitting the retention of anti-personnel mines for training and research purposes, Article 3 creates an exception to the Convention's absolute prohibition on the use, retention and transfer of anti-personnel mines. In this regard, the qualification, in Article 3, that the amount of mines retained "shall not exceed the minimum number absolutely necessary for" training and research purposes must be interpreted conservatively, bearing in mind that the retention of excessive quantities of anti-personnel mines would undermine the Convention's objective of the total elimination of these inhumane and indiscriminate weapons.

Mr. Co-Chair,

The ICRC shares the concerns expressed by the ICBL with regard to the interpretation and application of **Article 2** of the Convention. In particular, we wish to address here the matter of the continuing divergence in the interpretation of Article 2 among States Parties with regard to mines with sensitive fuses, and like the ICBL we would like to see States Parties agree a common understanding on this issue.

The ICRC's views on this issue are well known, but I will briefly summarise them here for the benefit of delegates who are new to these discussions. It is the view of the ICRC -- based on the negotiating history of the Convention, its object and purpose, and the basic rules of treaty interpretation – that any mine which is likely to be detonated by the presence, proximity or contact of a person is an antipersonnel mine prohibited by this Convention. In particular, this means that States Parties are prohibited from producing, stockpiling, transferring or using so-called "anti-vehicle" mines that are equipped with tripwires, breakwires, tilt-rods, low-pressure fuses and similar fuses that are likely to be triggered by the contact of a person.

The positions of the States Parties that have expressed their views on this issue are presented in the table ***Anti-vehicle" mines with sensitive fuses – Positions and relevant practice of States Parties on Article 2 of the Ottawa Convention***, which we distributed to delegations this morning.

Out of 28 States Parties that have clearly expressed their position on this issue, 22 share the ICRC's view that mines with sensitive fuses are prohibited by Article 2 of the Convention. Since we last circulated this table at the 2005 meeting of this Standing Committee, the list of States Parties that consider mines with sensitive fuses to be prohibited by Article 2 now includes two new additional States Parties that have recently expressed their position for the first time – Estonia and the Former Yugoslav Republic of Macedonia – as well as three States that have clarified their positions – Germany, Slovenia and Croatia. We very much welcome these additions and clarifications.

Six other States Parties that have expressed their views on this matter seem to take a different position. While some of these States do not necessarily disagree with the position that mines with sensitive fuses are prohibited, they consider that such mines should not be discussed in the context of this Convention, but instead should be addressed in the Convention on Certain Conventional Weapons (CCW).

As we have stated in the past, discussions occurring outside of the Ottawa Convention have no bearing on the legal obligations of States Parties under Article 2. While we commend the efforts made in the CCW to reach a common understanding whereby certain sensitive fuses would not be accepted methods of detonation for mines intended for use against vehicles, we note that despite these efforts, the States Parties to the CCW have been unable to reach an agreement on this or other issues related to landmines. This makes resolving the question of mines with sensitive fuses likely to be detonated by a person among Ottawa Convention States Parties all the more important.

I should also like to mention that, as appears in the table, most of the stated policy and practice of States, even among some who otherwise have not provided their interpretation of whether mines with sensitive fuses likely to be detonated by a person are covered by Article 2, support the ICRC view that such mines are unacceptable.

To conclude, the differences in the interpretation and application of Article 2 between a small number of States Parties and other States Parties to this Convention underscores the need for further work towards the effective and consistent application of Article 2, as called for in Action #55 of the Nairobi Action Plan. In this regard, we call on States Parties that have not yet done so to make their views known on this important issue.

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