

## **Intervention of the International Committee of the Red Cross**

### **Fifth Meeting of States Parties Bangkok**

**17 September 2003**

#### **General Status and Operation of the Convention Article 2**

On the occasion of this last meeting of States Parties before the Review Conference the ICRC would like to call attention to the extensive discussions on certain aspects of Article 2 that have occurred since the Oslo negotiations six years ago. We appreciate the constructive manner in which many States Parties have addressed this issue in the intersessional meetings and encourage additional States Parties to make their views known. These discussions, in our view, highlight the need for the Review Conference to resolve at least some of the differences in interpretation and practice that have arisen. They also demonstrate that solutions can be achieved if there is a will to do so.

For those participants who have not been party to previous discussions perhaps we should clarify that our remarks will focus only on certain mines intended for use against vehicles, which nonetheless employ sensitive fuses likely to be detonated by a person.

The ICRC's view is that this Convention prohibits any mine that is easily detonated by the presence, proximity or contact of a person. Specifically, this means that tripwires, breakwires, tilt-rods, low-pressure fuses and similar fuses associated with mines intended to attack vehicles are prohibited for State Parties. This position is based on the negotiating history, the object and purpose of the Convention and the basic international legal rules of treaty interpretation. It is also the view of most States that have spoken on this issue.

The implication of any other interpretation is that killing or maiming a person through detonation of a mine containing a relatively small amount of explosives (in the form of what is labelled an "anti-personnel mine") is prohibited whereas doing the same through the use of a more lethal mine containing far more explosives (an "anti-vehicle mine") is permitted. This would lead to an absurd situation that would undermine the credibility of the Convention.

It has been said that this interpretation was not the intent of negotiators. However, the fact that this issue was resolved in the Oslo negotiations in a manner which covers all mines with sensitive fuses is demonstrated by the removal of the word "primarily" from previous definitions of an anti-personnel mine. Protocol II of the Convention on Certain Conventional Weapons (CCW) as amended in 1996 defined an AP mine as one "primarily designed" to be detonated by the presence, proximity or contact of a person.

The fact that the word "primarily" was removed from the definition of an anti-personnel mine in the Ottawa Convention eliminated any ambiguity arising from the

labelling of a mine or the intent of the designer. In essence it created a definition based on how a mine functions not dependent on intent or other subjective factors. Such a definition is not, as is sometimes claimed, an "effects based" definition. It is a definition based on how a mine functions – which is a direct result of how it is designed.

Although some have attempted to read Article 2 more broadly to exclude all AV mines *per se*, it is clear that the only anti-vehicle mines excluded from prohibition under the Convention are those equipped with anti-handling devices and these are excluded only if such devices activate as a result of an intentional act to tamper with or otherwise disturb the mine.

We have also heard objections to resolving the issue of sensitive fuses in the context of this Convention due to concerns about universalisation and a preference to discuss this matter in other fora. Although we commend complementary efforts in the CCW context, we would like to point out that such tactical considerations and references to the views of non-States Parties are not a legitimate basis under international law for treaty interpretations and have no bearing on the obligations of States Parties to this Convention.

Discussions on this issue at the past four meetings of States Parties and in Intersessional Meetings have demonstrated that, although most States which have spoken support the ICRC's interpretation of Article 2, others do not see this matter as an issue for the Convention. Reflecting this divergence of views, actual practice as regards the production, use and transfer of certain mines with sensitive fuses also differs.

As a tool in establishing for the record the actual positions of various States Parties, the ICRC is distributing today a draft table containing the positions of those which have spoken on this question. In most cases we have been able to cite specific written statements. We hope this will facilitate further efforts to resolve remaining differences. We invite States cited in the table to provide to the ICRC any further clarifications or corrections which may be appropriate. We also urge all States not listed to make their views known on this important issue.

We urge States Parties to resume efforts to reach a common understanding on this matter, and on other points related to articles 1 and 3, in time for such understandings to be recorded at the 2004 Review Conference. In our view it would be extremely unfortunate if it were not possible to engage in a good faith effort to resolve core issues which have been debated for several years. Support for such a process should be among the decisions and recommendations made by this Meeting.

Based on our consultations, the ICRC believes that most States Parties recognise that mines that explode on the presence, proximity or contact of a person should not be used, produced, stockpiled or transferred. A number of States which have kept such systems are in the process of eliminating them. Given that States were able to negotiate the entire text of this Convention in well under a year we are confident that you can reach a common understanding on Article 2 in the fifteen months remaining until the First Review Conference.