

**Interventions by Stephen Goose, Head of Delegation,
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**To the Standing Committee on General Status and Operation of the Convention
On Article 2**

16 May 2003

Article 2 (Legal Interpretation)

Mr. Co-Chair, as many delegates are aware, the ICRC convened a meeting last night to discuss its proposal for a process to move forward on the issue of anti-vehicle mines with sensitive fuzes in the context of the Mine Ban Treaty. Most regrettably, a number of States rejected the proposal. In light of this very disturbing outcome, and in light of the fact that there are so many new delegates in the room, we believe it is necessary to revisit and review the legal aspects of this issue in some detail. We have not done so in a long time.

Before we do that, we would like to thank Croatia for the clarifications it just gave regarding their Claymores and anti-vehicle mines (AVMs) with anti-handling devices, as well as their willingness in the future to discuss AVMs with tilt rods under Article 2.

At the conclusion of the Oslo negotiations in 1997, the ICBL hailed the Mine Ban Treaty as a gift to humanity. It was, and is, a remarkable treaty, one that got stronger instead of weaker during the negotiations and has only gotten stronger over time. But we pointed to the Article 2 provision on anti-vehicle mines with anti-handling devices as the most problematic result of the treaty; we said this was a potential loophole that could have serious humanitarian consequences.

However, our criticism was somewhat muted then, and subsequently, because negotiators made clear that anti-vehicle mines with anti-handling devices that explode from the unintentional contact of a person are considered antipersonnel mines and therefore banned. This was stated explicitly by the Austrian chair in the working group on definitions, stated explicitly by the South African president in the Committee of the Whole, and was agreed to with no objections.

To reinforce what the negotiators agreed to without a single dissenting view in Oslo, the ICBL has pushed for public statements on this matter during Standing Committee meetings. These statements over the years have been collected in the *Landmine Monitor Report*. To date, we have about two dozen such statements, with the vast majority supporting the Oslo interpretation. A few have diverged and a few have been vague or non-committal.

Among those supporting the negotiators' view have been Austria, Australia, Brazil, Canada, Ireland, Italy, Mexico, Netherlands, New Zealand, Norway, Slovakia, South Africa and Switzerland.

Among those dissenting have been Denmark, France, Germany, Japan, and the United Kingdom.

It is important that more States Parties make their views known. States Parties should be striving to reach a common understanding on this issue at the Review Conference in 2004. There should not be confusion about what the convention bans and what it does not.

This is a strong treaty, and a strong process. States Parties should not be shy about taking on difficult issues. This is hailed as the most successful and innovative multilateral instrument and forum of the past decade or more. Surely it can withstand the process of clarifying definitions and what is truly prohibited. Surely it can withstand the process of reaching common understandings and most importantly common practices that will ensure the greatest protections for civilians.

As the Review Conference approaches, many will be watching to see if States Parties have remained true to the letter and the spirit of the gift to humanity bestowed by negotiators in 1997. Thank you.

Article 2 (Best Practices)

Thank you for allowing me to take the floor again after my lengthy intervention on legal interpretation of Article 2. While it is disturbing that States Parties are reluctant to clearly reach a common legal understanding, it is stunning that they are now apparently unwilling to even engage in a process of identifying best practices in the Mine Ban Treaty context. Having rejected a very modest and sensible ICRC approach, it is now incumbent upon States Parties to devise an alternative process to move this issue forward (i.e. anti-handling devices and sensitive fuzes - trip wires, break wires, tilt rods fuzes and low pressure fuzes.).

Up to this point, the best practices discussion has addressed two elements: anti-handling devices and sensitive fuzes. It is probably appropriate in some ways to separate the two. The anti-handling device issue clearly is controversial for some states. Sensitive fuzes should not be. Indeed, sensitive fuzes should not even be considered an Article 2 interpretation issue, as they are already captured under Article 2. Sensitive fuzes are NOT anti-handling devices; they are not “intended to protect a mine” as in the anti-handling device definition. There should be no question that mines with sensitive fuzes that explode from the presence, proximity or contact of a person, are prohibited. They are captured by the Mine Ban Treaty definition of an antipersonnel mine, regardless of what label may be put on them. This should not be considered a controversial statement.

Several States Parties have destroyed or dismantled mines with tripwire and tilt rods because they considered them banned by the treaty. Our perception is that there is

near unanimity among States Parties that tripwires, break-wires, tilt rod fuzes and low-pressure fuzes should not be used.

States Parties should be prepared at the 2004 Review Conference to state explicitly that mines or other munitions fitted with these sensitive fuzes are prohibited.

Some of the reasons advanced for not following this course make little or no sense to us. Three main reasons have been put forth, related to universalization, the CCW, and expanding scope. Some say that pursuit of clarity about sensitive fuzes in the Mine Ban Treaty context will hurt efforts to universalize the treaty. But does anyone really think that any nation is staying outside of the Mine Ban Treaty because it wants to use anti-vehicle mines with tripwires or tilt rods? That point aside, do we really want to say that the right way to universalize the treaty is to permit munitions that function as antipersonnel mines? Do we really want a treaty that encourages use by new States Parties of munitions that function as antipersonnel mines?

A second argument is that the CCW is a more appropriate forum. We welcome work in any forum, especially technical work, aimed at identifying the most dangerous sensitive fuzes and most dangerous anti-handling devices, those that pose the gravest hazard to civilians. But it should be recognized that any work in the CCW context will have implications for the Mine Ban Treaty. The real question is why the CCW? That forum is notorious for its slow pace and disappointing results; there is not much to show for the one year of work already done on best practices in the CCW.

Third, some have claimed that the ICBL, ICRC and certain States Parties are using this issue to attempt to expand the scope of the Mine Ban Treaty to include other weapons. That is simply not the case. We are looking for other than more explicit recognition of what was agreed to in Oslo in 1997. We would contend that, far from the ICBL or others wanting to expand the scope or the definition, we are witnessing an effort by a small number of States Parties to reinterpret or even subvert the agreement in 1997.

At a bare minimum, States Parties should at the Review Conference formally agree that mines with sensitive fuzes such as tripwire, break-wires, tilt rods and low pressure fuzes are prohibited.

There should also be agreement that anti-vehicle mines with overly sensitive anti-handling devices that explode from the unintentional act of a person are prohibited. Technical work should be done that helps identify what those overly sensitive anti-handling devices are, and what best practices regarding AHDs might be.

If there is a failure to address the matters of mines with sensitive fuzes and anti-handling devices, it will be a dark blot on the fine record of the Mine Ban Treaty.

If, as seems to be happening, States Parties decide to simply ignore these issues, NGOs are likely to be highly critical at the Review Conference, citing this as a major failure.