

International Campaign to Ban Landmines

Intervention on Friday, 17 June 2005

Standing Committee: General Status and Operation of the Convention

Agenda Item: The practical implementation of the various other provisions of the Convention

Speaker: Steve Goose (Human Rights Watch), Head of ICBL Delegation

Topic: Common Understandings and Article 1

It should come as no surprise to anyone in the room that the ICBL views the inability of States Parties to reach common understandings on Articles 1, 2, and 3 as one of the greatest failures of the Nairobi Summit and of the first five years of the Mine Ban Treaty. We have pushed for common understandings in part because we perceive that in fact the vast, vast majority of States Parties agree on these matters. But more importantly we have asked for common understandings because it undercuts the credibility of the treaty to have distinctly contradictory interpretations and state practice on key obligations.

In particular, we have well documented the inconsistent and contradictory implementation of Articles 1 and 2 by a small number of States Parties. This not only threatens the credibility of the treaty, but ultimately could very negatively affect its humanitarian impact. If the situation persists, the operation of the treaty will suffer and the norm against the weapon will eventually erode. Consistent interpretations and practice are essential to the integrity of the treaty.

The inconsistent interpretations and practices that we have noted to date are already serious blemishes on the very admirable record of treaty implementation. It should be inconceivable that States Parties cannot agree on fundamental issues of interpretation and implementation of the treaty, such as what landmines are banned under Article 2 and what acts are banned under the prohibition on assist in Article 1.

Having failed thus far to reach formal understandings, it is more important than ever to document, and to discuss, state practice on these matters, and particularly where practice is widely divergent.

I would like to focus the rest of my remarks on issues related to Article 1, and my colleague Mark Hiznay will address Article 2. There are new Landmine Monitor Fact Sheets available on both Articles.

There has been a lack of clarity regarding what types of acts are permitted or prohibited within the context of the Article 1 prohibition on assistance. But in a positive vein, over the past five years, many States Parties have recognized the need to address this issue and

to share views on policy and practice, and an understanding of how Article 1 applies to joint military operations and the meaning of “assist” has begun to emerge.

A total of 36 States Parties have declared that they will not participate in planning and implementation of activities related to the use of antipersonnel mines in joint operations with a state not party to the Mine Ban Treaty who may use antipersonnel mines. Kenya, Spain, Tanzania, Turkey, and Zambia provided new statements affirming this understanding during 2004.

However, some States Parties have declared that only “active” or “direct” participation in joint operations in which antipersonnel mines are used is prohibited; each country’s understanding of what constitutes “active” or “direct” assistance varies. Australia has formally declared that it is permissible to provide “indirect support such as the provision of security for the personnel of a State not party to the Convention engaging in such [prohibited] activities,” presumably including the laying of antipersonnel mines. Should Australian armed forces be able to provide cover fire for soldiers in the act of laying antipersonnel mines?

But, the issue of assistance is not a theoretical one. ICBL has raised questions about possible prohibited assistance by at least six States Parties since 1999, including instances of several States Parties engaging in joint military operations with forces actively using antipersonnel mines.

States Parties must treat this as a serious matter to be dealt with urgently. The Mine Ban Treaty’s effectiveness and credibility depend on it.
