

25/11 Am

Ninth Meeting of the States Parties to the
Convention on the Prohibition of Anti-Personnel Mines
Geneva, 24-28 November 2008

ICRC Statement on the extension request process

The International Committee of the Red Cross would like to present first a summary of findings contained in the paper officially presented by the ICRC on a legal interpretation of article 5.5 of the Convention in light of the accepted means of interpretation of treaties in international law (CONF Document APLC/MSP.9/2008/WP.4) and secondly, its general remarks concerning the extension request process to date.

1. Legal interpretation of article 5.5 of the Convention

The President of the 8th Meeting of States Parties asked the ICRC to provide the analysing group with a legal interpretation of article 5.5 of the AP Mine Ban Convention. It was felt that the accepted means of interpretation of treaties in international law, contained in the 1969 Vienna Convention on the law of treaties, might shed some light as to the interpretation to give to paragraph 5. The ICRC believes that these comments may prove useful to all States Parties in their assessment of extension requests.

The texts of Article 5.5 do not give rise to any discrepancies among official languages. States Parties taking part in a meeting of States Parties or a Review Conference need to 'assess' the extension requests and 'decide' by a majority of votes whether or not to grant these requests.

Article 31.1 of the 1969 Vienna Convention on the Law of Treaties, provides that a treaty 'shall be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'.

The first action of Article 5.5 requires that States Parties make an assessment of each extension request in order to be able to decide whether or not to grant the particular request.

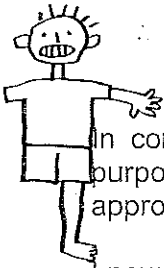
The ordinary meaning of the word 'assess' is to 'measure, to evaluate or to appraise'. We submit that it is essential that the analysis of extension requests by States Parties include a review of the factors referred to in paragraph 4 of article 5 together with a determination of whether the period of extension being sought is appropriate. No informed voting can take place without an analysis of extension request which would include the appropriateness of the length of the request.

In relation to the context: Article 5.1 clearly sets out the obligations of all States Parties to destroy or ensure the destruction of emplaced AP mines as soon as possible, but not later than 10 years after the entry into force of the Convention for the State Party. Even prior to clearance, article 5.2 spells out that each State Party shall make every effort to identify all mined areas and shall ensure as soon as possible that all AP mines in mined areas are perimeter-marked, monitored and protected by fencing or other means.

The overall object and purpose of the Convention is clear in the preamble, including in its first paragraph, which states that States Parties are determined to put an end to the suffering and casualties caused by AP mines that kill or maim hundreds of people every week.



ICRC



In conclusion, the context in which paragraph 5 is contained, as well as the object and purpose of the treaty reinforce the view that an 'assessment' includes an evaluation of the appropriateness of the length of the requested extension.

I now move to the 2nd action of Article 5.5:

Paragraph 5 requires States to decide, on the basis of their assessment of each request and in light of the factors listed in paragraph 4, whether to grant the request. This part of the sentence is clear in its content and its ordinary meaning: each extension request can be either adopted or rejected by a majority vote of States Parties present and voting at the Meeting of States Parties. The clear inclusion in the text of a possibility to refuse an extension request sends the clear signal that States in adopting the Convention in 1997 did not foresee this process to become a 'rubber stamp' process, in which all extension requests would be granted.

Paragraph 5 however stops short of laying out the consequences of a refusal to grant an extension request. If the object and purpose of the Convention is to be respected, the process can't simply stop there. Paragraph 5 therefore necessitates further elaboration by States Parties in the same way as the 7th MSP developed an interpretation of paragraphs 3 and 4 of article 5 and adopted a number of decisions relating to the preparation, submission and consideration of extension requests.

A negative vote on an extension request cannot simply end the process. Alternative lengths of time or other solutions need to be an integral part of this process in order to carry out meaningfully the assessment and informed voting on extension requests. This is necessary to ensure that the clear object and purpose of the Convention is served in this extension process.

For the same reasons, paragraph 5 does not exclude the possibility for the Meeting of States Parties to take a decision on an extension request, being positive or negative, which could be accompanied by conditions or comments, in the same way as the Conference of States Parties under the Chemical Weapons Convention has granted extension requests subject to a series of conditions.

These conclusions are presented in greater detailed in document We hope that they will enrich the debates of this week and allow for a full and rich debate on each extension requests.

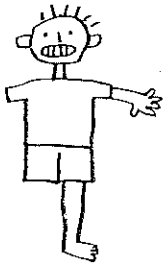
2. Comments on the extension request process

Based on the considerations explained above, let me highlight three core principles which we believe should guide the assessment and the voting on each extension request:

- First, the extension process should ensure that the fewest possible people fall victim to anti-personnel mines and that the 'non-use' and disarmament objectives of the Convention are fulfilled. Even if some of these requests state that the extension will have a very low humanitarian impact, we must not forget that failure to clear mines can constitute *de facto* use of these weapons.
- Secondly, the ICRC believes that extension periods should only be granted for the minimum period necessary to carry out a well prepared and financially viable clearance plan. Every State reviewing these requests should make an assessment as to whether the time requested really reflects the absolute minimum time necessary to clear the



ICRC



remaining mined areas. Past performance of the requesting States, including information contained in their transparency reports under article 7 should also be taken into account when assessing the likelihood of meeting the extension requests.

- Thirdly, given that States which are requesting extensions after ten years must have encountered serious problems in meeting their obligations, the plans submitted with each request need to demonstrate that these problems have been, or will be, overcome. If this has not been demonstrated, it may be appropriate to grant an extension only for the time needed to establish a concrete plan for fulfilment of the clearance obligation.

Before concluding, we would like to commend the work of the analysing group which met repeatedly this year and, in particular, its chairmanship by His Royal Highness Prince Mired Al-Hussein. This body, while representing a wide variety of views, has produced a thorough assessment of most extension requests filed. In many cases, the work carried out by the analysing group led to a very constructive dialogue with the requesting States and even to clarifications or amendments of requests by States.

However, we urge all States Parties to apply a similar and critical treatment to all extension requests at this meeting. This is crucial for the effectiveness and credibility of the process. At each step, the protection of civilians from landmines must be put above political and regional considerations.

In conclusion, we urge all delegations to become engaged in their own analysis of these requests, to benefit from the reports provided by the analysing group as well as the valuable perspectives provided by the International Campaign to Ban Landmines and to take an informed decision this week on each of these requests.



ICRC

International Committee of the Red Cross

Mines-Arms Unit 19 Avenue de la Paix 1202 Geneva Switzerland T+41 22 730 2667 F+41 22 730 2956 E-mail weapons.gva@icrc.org www.icrc.org/eng/mines