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AMENDED MINES PROTOCOL

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Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany Treaty Doc. 105–1(A)]

The Committee on Foreign Relations to which was referred The Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II or the Amended Mines Protocol) to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects having considered the same, reports favorably thereon with 1 reservation, 9 understandings, and 14 conditions and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

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I. BACKGROUND

Introduction

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (also known as the "Convention on Conventional Weapons") was concluded at Geneva on October 10, 1980, was signed by the United States on April 8, 1982, entered into force on December 2, 1983, and was ratified by the United States on March 24, 1995. The Convention included three protocols, one of which (Protocol II) is the Protocol on Mines. U.S. adherence to the Protocol on Mines was approved in the resolution of ratification of the Convention itself.

When the Senate considered whether to give its advice and consent to ratification of the Convention on Conventional Weapons (CCW), it found serious deficiencies in the Mines Protocol. The President shared the Senate's concerns, and the resolution of ratification of the CCW therefore included the following condition:

> STATEMENT.—The Senate recognizes the expressed intention of the President to negotiate amendments or protocols to the Convention to carry out the following objectives:
>
> (A) An expansion of the scope of Protocol II to include internal armed conflicts.
>
> (B) A requirement that all remotely delivered mines shall be equipped with self-destruct devices.
>
> (C) A requirement that manually emplaced anti-personnel mines without self-destruct devices or backup self-deactivation features shall be used only within controlled, marked, and monitored minefields.
>
> (D) A requirement that all mines shall be detectable using commonly available technology.
>
> (E) A requirement that the party laying mines assumes responsibility for them.
>
> (F) The establishment of an effective mechanism to verify compliance with Protocol II.

The above concerns were raised by the United States in the First Review Conference for the CCW. On May 3, 1996, the CCW Review Conference adopted the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (also known as the "Amended Mines Protocol"). On January 7, 1997, the President submitted the Amended Mines Protocol to the Senate for its advice and consent to ratification.

Roughly two weeks after the adoption of the Amended Mines Protocol at the Review Conference, President Clinton announced a new anti-personnel land mine (APL) policy and pledged to "lead a global effort to eliminate these terrible weapons and to stop the enormous loss of human life." At that time, he restated the continuing U.S. commitment to help many afflicted nations with demining their lands and he imposed a unilateral moratorium on the use of most types of APL by U.S. forces. He also pledged to work towards an international treaty for a global APL ban.

In November 1996 the United States introduced a resolution in the United Nations General Assembly urging "states to vigorously pursue an effective, legally-binding international agreement to ban

the use, stockpiling, production and transfer of anti-personnel Land Mines (APL) with a view to completing the negotiations as soon as possible." The resolution passed by 185-0 (with 10 abstentions) and land mines thus became a matter of concern for the 1997 Conference on Disarmament.

During the same timeframe, the Canadian Government organized a coalition of like-minded states and interested international and non-governmental organizations to pursue a global land mine ban. The Canadian goal was to initiate a fast-track effort to achieve an APL ban—the so-called "Ottawa process."

The Senate's consideration of the Amended Mines Protocol has thus occurred in the midst of a larger and more widely-noted controversy over the Ottawa Convention and U.S. policy regarding that Convention. The Ottawa Convention is separate from the Convention on Conventional Weapons, and the Committee agrees with the Administration that the existence of the Ottawa Convention does not obviate the need to act on the Amended Mines Protocol. This Report inevitably reflects, however, the strong views that many Committee members hold regarding the broader aspects of land mine policy and, in particular, about the Ottawa Convention.

Using a draft treaty text prepared by the Government of Austria, negotiators met in Oslo, Norway, for two weeks during September, 1997. After initially declining to participate, the Administration at the last minute dispatched a delegation to Oslo. However, despite its active participation, the United States was not able to win critical exceptions—notably more time to resolve the need for a minefield barrier between North and South Korea and the U.S. military's desire to use "smart," self-deactivating APL to protect antitank minefields from dismounted breaching. Some 125 nations signed the Ottawa Treaty in December 1997, but neither the United States, China, Russia, nor any of the other major land mine producers elected to sign.

The United States refused to sign the Ottawa Convention for a number of specific reasons, which are discussed later in this report. The Administration's refusal to sign that Convention was supported by a majority of the members of the Committee.

Current Administration Policies Relating to Land Mines

Currently, the Administration supports the creation of an Ad Hoc Committee to negotiate an APL ban in the Conference on Disarmament (CD). In its view, the only kind of APL ban that will produce a significant humanitarian impact is one which includes as members the major producers/exporters of APL. The only way that those countries (including Russia, China, Vietnam, and Iran) will participate in the negotiation of a ban is if the process occurs within the CD, which makes decisions only by consensus. Achieving an export moratorium is seen as the first step towards conclusion of a realistic anti-personnel land mine ban which includes as signatories those countries which will not agree to the Ottawa Convention.

Previous discussions with Canada and other "Ottawa Core Group" members suggested a reluctance on their part to endorse any actions that detracted from the Ottawa process. However, there have been indications that these countries now will agree to

the negotiation of an export ban in the CD, since the Ottawa Convention has been signed. The Committee believes that the willingness of CD member states to prohibit export and transfer of long-duration APL, in particular, would go a long way toward reducing the indiscriminate and irresponsible use of long-duration APL in many countries by decreasing the ready availability of these weapons. However, as shall be discussed, if the export moratorium were also to include a prohibition on the transfer of short-duration APL, anti-tank mines, or U.S. mixed munitions (packages of self-destructing/self-deactivating anti-tank and anti-personnel munitions), such a treaty would meet stringent opposition.

Simultaneously with this diplomatic push, the Administration has mounted a significant demining initiative, which the Committee supports.

Finally, the Administration has urged the Senate to adopt the Amended Mines Protocol to the Convention on Conventional Weapons (CCW). The Administration has argued that it is important to pursue both ratification of the CCW's Amended Mines Protocol and negotiations within the CD on an APL ban concurrently, and that the latter should not and will not detract from the implementation of the Protocol. It is the view of the Administration that wide adherence to and full implementation of the Amended Mines Protocol will help reduce civilian casualties resulting from land mines until a truly global agreement to ban APL enters into force.

II. Implications of the Amended Mines Protocol

The Committee commends the Administration for its conduct of negotiations leading to the Amended Mines Protocol to the Convention on Conventional Weapons (CCW). Throughout these negotiations, the Administration maintained firm focus on essential national security factors, while working to create meaningful restrictions on the use of long-duration anti-personnel mines. As a result, the Amended Mines Protocol, while having little or no impact on the United States Armed Forces, will bring about a substantial decrease in civilian casualties caused by non-self-disarming/self-deactivating anti-personnel land mines. Moreover, unlike numerous other proposals, the Amended Mines Protocol will be widely observed—both by "right-minded countries" and by proliferant nations such as Russia and China. This, too, contributes to the positive humanitarian effects of the Protocol.

Military Implications of the Amended Mines Protocol

The Amended Mines Protocol is not a ban on U.S. land mines. It does ban the use of some types of devices, such as undetectable mines and mines designed to explode from proximity to mine detection equipment; however, these systems are not—and never have been—employed by the United States. Rather, the Protocol establishes clear and reasonable requirements for the use of mines. These requirements, such as the obligation to mark and monitor minefields, will provide important protections for civilian populations. Few militaries aside from the U.S. Armed Forces take the rigorous steps necessary to ensure the safety of noncombatants when engaging in military action. In agreeing to this Protocol,

other countries will, in effect, be agreeing to bring their military standards for land mine use up to par with those already in forece in the United States.

The Committee was assured on numerous occasions by the Executive branch that the provisions of the amended Protocol reflect the practices already adopted by the U.S. military. In those areas where the possibility for degradation of U.S. military capabilities exists (through misinterpretation of the Protocol), the Committee has recommended understandings to preclude this from happening. Taken together, the provisions of the resolution of ratification are designed to ensure that the United States military will not incur any reduction in fighting power or alteration in operating practice. The Executive branch repeatedly assured the Committee that, since the U.S. Armed Forces already observe the practices and obligations required of land mine use under the Amended Mines Protocol, ratification of the Protocol would have no implications for U.S. military effectiveness. These assurances were central to the Committee's decision to recommend ratification.

Significant Features of the Protocol

The Amended Mines Protocol includes provisions that achieve the first five of the six objectives noted in the March 1995 resolution of ratification of the CCW. Only limited progress was made toward establishing a verification mechanism, although it was agreed in Article 14 that High Contracting Parties should "consult each other and . . . cooperate with each other . . . to resolve any problems that may arise with regard to the interpretation and application of this Protocol." In his letter of transmittal of the Amended Mines Protocol to the Senate, President Clinton pledged to "pursue these issues in the regular meetings that the amended Protocol provides [in Article 13] for review of its operation."

A. SHORT-DURATION MINES

The Protocol properly differentiates between long-duration antipersonnel land mines (APL), which do not self-destruct or self-deactivate and are therefore a grievous humanitarian problem around the world, and short-duration APL, which self-destruct and self-deactivate rapidly and reliably, and therefore have not been a humanitarian problem.

Short-duration APL are a carefully-devised military capability. In modern maneuver warfare, military forces invariably will emplace a mine field but later find the requirement to move through it themselves. Short-duration mines are not designed to be long-lived enough to pose a major impediment to U.S. military planners, and their defensive benefits for U.S. forces are unquestionable. Moreover, short-duration mines also should be viewed as a humanitarian asset, in that they enable U.S. military forces to offer credible protection to civilian populations, whether in Korea or Bosnia-Herzegovina.

Unless an APL is used in areas marked and monitored to effectively exclude civilians, the Amended Mines Protocol requires the APL in question to be capable of self-destructing within 30 days of emplacement and of self-deactivation within 120 days of emplace-

ment. The Protocol specifies that the APL must accomplish these tasks with 90 percent reliability in the case of self-destruction, and 99.9 percent reliability for self-deactivation and self-destruction combined. Because long-duration APL typically have a thirty-year active "laid" life span, the Protocol thus requires that active laid life be reduced by roughly 99 percent.

All United States short-duration anti-personnel land mines meet the Protocol's technical criteria. The term "self-destructing," when used in conjunction with land mines, means that the mine blows up automatically at a preset time. "Self-deactivating" means that the mine can no longer function because an internal mechanism, such as power supplied by a battery, runs out. U.S. self-destructing mines can be set to one of three durations: 4 hours; 48 hours; or 15 days. (Only 5 percent of the inventory can be set for 15 days, and the vast majority of the "smart" mines in the inventory are set to last 4 hours.) United States mines self-destruct before or on the preset time with 99.99 percent reliability. Of 32,000 mines tested, only one missed its self-destruct time (and it was only one hour late in destructing). All U.S. self-destructing land mines are also self-deactivating. The reliability rate for self-deactivation within 120 days is 99.9999 percent.

In other words, U.S. short-duration mines exceed the Protocol's self-destruction/self-deactivation requirements by at least two orders of magnitude on the basis of self-destruction alone. Accordingly, U.S. mines so-equipped are physically incapable of presenting a long-lived hazard. The mines cannot be re-used, and the minefield poses no threat once self-destructed or de-activated. Finally, the U.S. military only employs mines if combat operations are imminent. It is for this reason that no one credibly alleges that U.S. "smart" mines have contributed to the humanitarian problem.

If other countries adhere to the Amended Mines Protocol, its technical limitations will make a substantial contribution to international efforts to reduce death and injury resulting from long-duration land-mine use. Indeed, if the Protocol had been in force and fully observed for the past thirty years, there would be little or no humanitarian APL problem today from the world's remaining unexploded mines. The Committee recognizes that the Protocol's specifications, including the original concept of self-deactivation, were created by the United States and regards this as cause for particular commendation.

The Committee notes that the requirement for self-deactivation is particularly valuable with respect to low-cost mines which may be manufactured by low-technology countries. The simplest form of self-deactivation is simply a mine which relies upon a battery as a power source; thus, once the battery is exhausted, the mine is rendered inert. By consequence, poor production quality will not create a humanitarian problem, but simply will cause the mine to stop functioning sooner than expected.

By restricting the use of long-duration APL while allowing full military use of short-duration APL, the Protocol strikes an appropriate balance between humanitarian concerns and military requirements for short-duration APL (as well as long-duration APL in static and closely-controlled environments such as Korea). This

is the principal reason why the Committee recommends the Protocol's approval.

B. DETECTABILITY

A second important feature of the Amended Mines Protocol is its prohibition (in Article 4, and in paragraph 2 of the Technical Annex) on the use or transfer of APL that are less detectable than 8 grams of iron in a single coherent mass. The Department of Defense determined that 8 grams of iron created a magnetic signature sufficiently strong to stand out against normal background noise as seen by a common metal detector. Nonmetallic mines, which are prohibited if they do not meet the Protocol's technical requirements for detectability, offer no military advantage. But they greatly complicate the task of humanitarian demining.

One of the more important deficiencies of the 1980 Mines Protocol is that it does not prohibit the use of non-detectable mines. A number of countries, such as China, have produced or deployed large numbers of non-detectable plastic mines which present a serious threat to civilians, peacekeepers, relief missions and mine-clearance personnel. The Amended Mines Protocol eliminates this earlier deficiency with respect to anti-personnel mines. The Committee urges the President to continue to seek the extension of this provision to ban non-detectable anti-tank mines, as well.

C. TRANSFER RESTRICTIONS

A third commendable feature of the Amended Mines Protocol is its restriction (in Article 8) on APL transfers. Parties to the Protocol are barred from transferring APL to governments that have not committed to observe the obligations of the Protocol themselves. Transfer of prohibited (e.g., non-detectable) mines is banned altogether. Many of the landmine tragedies around the world are caused by imported mines rather than those that are indigenously constructed. The Amended Mines Protocol outlaws the most undesirable aspects of the worldwide APL trade. Because a number of countries which have refused to take part in other land mine negotiations (but which are key suppliers of land mines around the globe) are now taking steps to join the Protocol, the restrictions on transfer will make an important contribution to reductions in civilian casualties.

D. SCOPE OF APPLICATION

Article 1 of the Amended Mines Protocol enlarges the scope of application of the Protocol to include armed conflict that occurs within the territory of a High Contracting Party. Given the terrible contribution that civil wars have made to the humanitarian land mine crisis (e.g., in Afghanistan, Angola, Mozambique and Cambodia), the extension of the Protocol's application to those wars is a major accomplishment. The Amended Mine Protocol will apply to all parties to such a conflict within the territory of a High Contracting Party, not just to established governments.

This aspect of the Amended Mines Protocol is, in fact, a step forward in the development of the rules of war, which generally have applied only to war among states (even though the United States

has considered them applicable to all its own military operations). The Amended Mines Protocol is the first treaty to accept the reality that internal armed conflicts are as deadly as inter-state wars, and therefore deserving of limitation through international rules.

III. Military Implications of a Land Mine Ban

As has been noted, the Amended Mines Protocol is not a land mine ban. It is for this reason, and for the numerous humanitarian benefits offered by the Protocol, that the Committee is able to recommend its ratification to the Senate.

Some have suggested that the United States, by ratifying the Amended Mines Protocol but refusing to adopt the Ottawa Convention, will fail to take serious steps to address the humanitarian consequences of land mine use. The Committee rejects this view, and believes it essential that one assess the implications for the United States Armed Forces of a ban on the use of the short-duration anti-personnel land mines upon which they rely. In the view of many members of the Committee, there is too little awareness of the grave risks involved with various proposals to forbid United States commanders in the field from using land mines to protect American servicemen.

While the Committee supports an international effort to end the indiscriminate carnage and devastation caused by anti-personnel land mines, all its members agree that both the Congress and the Executive branch must exercise care to protect the lives of U.S. servicemen sent around the world in defense of America's vital national security interests.

In the era of modern maneuver warfare and and diverse U.S. military commitments overseas, land mines are, in the view of the majority of Committee members, an essential military capability. If the United States were to deny this capability to its commanders in the field, the majority of the Committee believes the United States would needlessly be placing at risk the lives of its young soldiers, and would be jeopardizing the ability of the United States Armed Forces to accomplish its assigned missions.

Land mines serve several critical tactical functions. First, minefields are used to protect defending forces and to ensure that units are not outflanked or overrun during attack. The United States has used mines in every major conflict this century—and they have helped save the lives of countless U.S. servicemen. In their capacity as a defensive measure, land mines are an extremely important "force multiplier" that the Army and Marine Corps, with their downsized force structures, cannot today live without. APL afford protection to the U.S. military during the initial entry of forces. They also allow the United States to control more terrain with fewer forces and buy time for U.S. units to build-up to maximum strength.

More generally, without the ability to use mines to protect the flanks, and with no other alternative/offsetting capabilities, U.S. ground commanders would be forced to commit more forces to the wings, and keep more units in reserve. By spreading forces more thinly, the senior leadership of the U.S. Army and Marine Corps would have that much less flexibility in planning missions.

Second, APL are used to obstruct and influence the enemy's direction of movement. In this way, mines are used to channel enemy forces into zones where overwhelming U.S. firepower can be concentrated. Without mines, in the view of the majority of the Committee, battlefield dominance will be much harder for the United States to maintain. An enemy that is not forced to pick his way through a complex obstacle, such as a minefield, will move faster and thus be more difficult to halt or otherwise destroy. Loss of battlefield dominance inevitably will translate into larger numbers of U.S. military casualties. Additionally, when the United States interposes its Armed Forces to separate warring factions, whether in Bosnia Herzegovina or Korea, loss of the ability to shape and control the battlefield can increase the risk of war that will bring large numbers of civilian casualties, as well.

Third, mines are used to delay or stop enemy forces in their tracks. As such, mines serve as a force multiplier, and allow the U.S. Armed Forces to bring a variety of other weapons to bear on the opposing force. Since the Gulf War, military planners have emphasized high-tech weaponry in a continuing effort to minimize U.S. casualties and capitalize upon an area of comparative advantage. But the capabilities of precision-guided, standoff munitions are maximized when the enemy has been significantly slowed or brought to a halt (by a minefield, for example). Thus, banning APL use could undercut much of the value the United States has derived from the ongoing "revolution in military affairs." The majority of the Committee believes that elimination of mines from the U.S. military's inventory of weaponry will mean that the military will have less time to capitalize on the employment of standoff munitions; the enemy will close ranks with U.S. forces much more quickly than otherwise would be the case. When he does, there will be more enemy units with which to deal.

Fourth, land mines increase the effectiveness of other weapons systems. They are indispensable, for instance, in protecting anti-tank mines from tampering or breaching. Without APL, the opposing force can use satchel charges to destroy our anti-tank systems, or pull them out of the way. According to the Joint Chiefs of Staff, modeling has been done showing that it takes nearly ten times longer to breach an anti-tank minefield if APL are interspersed, than if they are not. This is why the United States employs mixed munitions which contain both anti-tank and anti-personnel mines.

It is the view of the majority of the Committee members, that, in the absence of technological alternatives offering a military capability equal to or greater than land mines, a ban on these systems will result in large numbers of American soldiers being killed. At greatest risk would be the units our nation relies upon to provide force projection—Marine Expeditionary Brigades and the Army's Airborne and Air Assault Divisions. These early entry and support units will have less "stopping power" and far fewer defense options. They will find it far more difficult to disrupt or deter enemy attack. The net result will be increased U.S. casualties.

According to the then-Chairman of the Joint Chiefs of Staff, General John Shalikashvilli, a moratorium on the use of land mines:

> constitutes an increased risk to the lives of US forces, particularly in Korea and Southwest Asia, and threatens mission accomplishment. It is the professional military judgment of the Joint Chiefs of Staff and the geographic Combatant Commanders that the loss of APL which occurs as a result of this moratorium, without a credible offset, will result in unacceptable military risk to US forces.

The Committee was alarmed by Pentagon estimates that U.S. casualties would increase by 15 percent during the initial phase of a conflict in the Persian Gulf region if land mines were banned with no credible, alternative technologies. United States casualty rates could reach as high as 30 percent in a North East Asian contingency, and 35 percent in various European theaters.

The Foreign Relations Committee heard testimony on February 3, 1998, from three retired four-star generals, including one who has earned the Nation's highest decoration for heroism—the Congressional Medal of Honor. Those witnesses were: (1) General Carl E. Mundy, a former commandant of the United States Marine Corps who has earned, among other things, the Bronze Star and the Purple Heart; (2) General Frederick Kroesen, former Commander of the United States Army, Europe, and Vice Chief of Staff for the United States Army, whose decorations include the Bronze Star, the Silver Star, and the Purple Heart; and (3) General Raymond Davis, former Assistant Commandant of the Marine Corps, who, as a lieutenant colonel in Korea, earned the Congressional Medal of Honor during the 1st Marine Division's historic "break out" from the Chosin Reservoir.

In his testimony, General Carl Mundy stated:

> We deserve to equip these young men and women with the very best in weaponry that we have, and I would submit that the self-destructing land mine is one of those weapons. Without it, we place them at greater risk. It is that simple.

Similarly, General Frederick Kroesen added that "any deployment of our American forces into a combat zone without a supply of anti-personnel mines that can be used to help guarantee their security would be highly irresponsible."

But General Davis summarized the danger of a land mine ban most succinctly when he warned:

> The lives of our sons and daughters should be given the highest priority when deciding whether or not to ban unilaterally the use of self-destructing mines. Let there be no doubt. If we were to deny our troops the ability to protect themselves on the battlefield with these mines, we would be needlessly putting at risk their lives.

For all of these reasons, the majority of the Committee believes that the most prudent means of addressing the humanitarian land mine problem is to establish strict conditions on the employment of long-duration mines and to promote a shift towards the use of short-duration mines which meet technological criteria designed to ensure that such mines pose no humanitarian threat. The Amended Mines Protocol accomplishes these two objectives.

Minority Views on the Implications of a Land Mine Ban

A minority of the Committee takes a more benign view of a land mine ban and of the Ottawa Convention. To these members, the issues are complex and must be analyzed against a backdrop of profound moral concerns.

For the United States, the choice not to sign the Convention was made confidently, but with sadness. U.S. military leaders said that they could not prudently forego anti-personnel mines along the border between South Korea and North Korea within the 10-year transition period permitted in the convention. They added that combat effectiveness would be imperiled by the requirement to end our practice of sowing of short-duration anti-personnel mines in anti-tank minefields.

Anti-personnel land mines can indeed be militarily effective weapons. As Jody Williams, the Nobel Prize-winning head of the International Campaign to Ban Land mines, has stated: "Nobody in their right mind denies the utility of land mines."

Yet, there is a long history of laws of war. These have all been adopted with an eye to limiting the inhumaneness of war by governing the use of weapons and tactics that are militarily useful. Thus, the United States does not condone torture, even though some have argued that it could save U.S. lives. Neither does the United States condone mass murder of civilians, even though such gruesome tactics might indeed save lives on the attacking side. Indeed, the Uniform Code of Military Justice bans all purposeful killing of non-combatants, even if such killing would be militarily useful. The United States also refrained from bombing dams in North Vietnam to cause flooding of their villages and cities.

The United States also bans, by various treaties, the use of poison gas, of toxins, or of biological warfare. Nobody denies that the use of such weapons might save U.S. lives in some cases, although perhaps only rarely. But the United States weighs the world's interest in sparing innocent civilians from the greatest horrors of war against any military utility of such weapons.

Both logic and humanity require that the United States engage in a similar calculus regarding anti-personnel land mines. The executive branch accepts this point and is trying both to limit the unintended casualties caused by land mines and to hasten the day when a world-wide ban on anti-personnel mines will be deemed feasible for U.S. forces.

There is continuing debate regarding the military usefulness of anti-personnel land mines. U.S. war-fighting doctrine is based increasingly upon fast maneuver and the exploitation of real-time battlefield intelligence. Anti-personnel mines inhibit fast maneuver. The United States tries to maximize their impact on enemy forces and to minimize the impact upon our own, but this is an imperfect science. Even though short-duration mines permit U.S. forces to cross through safely after a specified period of time, both past wars and recent exercises have shown that some U.S. forces may well be hemmed in, and some even killed or injured, as a result of those weapons.

Many—and probably most—military officers feel that the advantages of using anti-personnel land mines outweigh these risks. This

view is not unanimous, however. Thus, on September 9, 1993, General Alfred Gray, Jr., former U.S. Marine Corps commandant, addressed the American Defense Preparedness Association and said, in part:

> We kill more Americans with our mines than we do anybody else. We never killed many enemy with mines. . . . I know of no situation in the Korean War, nor in the five years I served in Southeast Asia, nor in Panama, nor in Desert Shield-Desert Storm where our use of mine warfare truly channelized the enemy and brought them into a destructive pattern. . . . In the broader sense, I'm not aware of any operational advantage from broad deployment of mines. . . .

Similar concerns have been expressed by retired General Jack Galvin, who was a battalion commander in Vietnam and is now the dean of the Fletcher School of Law and Diplomacy, and by retired Lieutenant General Robert Gard, who until this year was president of the Monterey Institute of International Studies. Lieutenant General Gard states: "The United States, with its enormous high-tech military arsenal, would be far better off if the use of . . . [anti-personnel land mines] were a war crime."

Even in Korea, the utility of anti-personnel land mines has been questioned. Retired Lieutenant General James F. Hollingsworth, a former I Corps commander in Korea, has warned against the use of "smart" mines:

> They would be scattered by the thousands, according to most scenarios, from the air and by artillery in the path of advancing troops south of the DMZ. In consideration of the certain prospects of the flood of civilian refugees in this area, and the fluidity and rapid response needs of our own counter-attacking forces, the use of scatterable mines, "smart" or not, would be a game plan for disaster.

Hollingsworth adds that "North Korea could neutralize much of their effectiveness with rocket-line charges, fuel-air explosives, and other breaching techniques." He insists that there are numerous other methods—not necessarily other weapons—to halt a North Korean advance. Hollingsworth concludes as follows:

> There is indeed a military utility to . . . [anti-personnel land mines], but in the case of US forces in Korea it is minimal, and in some ways even offset by the difficulty our own . . . [mines] pose to our brand of mobile warfare. The loss of this utility is a small and acceptable price to pay for moving the world toward a complete ban on . . . [anti-personnel land mines].

So it is only with difficulty that some Committee members support the Administration's decision not to sign the Ottawa Convention at this time. These members look forward to the day when, through the efforts of General David C. Jones, retired Chairman of the Joint Chiefs of Staff, the United States succeeds in developing new weapons and techniques that will permit it to join our NATO allies and the majority of the world's countries in banning anti-personnel land mines forever.

IV. An Assessment of the Ottawa Convention

The majority of the members of the Committee commend the Administration for its refusal to sign the Convention on the Prohibition of the Use, Production, Stockpiling, and Transfer of Anti-Personnel mines and on Their Destruction, opened for signature at Ottawa on December 3-4, 1997 (otherwise known as the Ottawa Convention). That Convention is not an effective worldwide APL ban. Most of the major producers and users of APL have declined to sign it. The Amended Mines Protocol, in contrast, is a genuine worldwide agreement that will include the major land mine powers.

Setting aside the question of universality and the military implications of a land mine ban, the Ottawa Convention also oversimplifies a complex problem requiring a carefully-planned, comprehensive solution. The Convention served unique political purposes, rather than humanitarian needs. It was negotiated without any serious consideration to security concerns. Indeed, few delegations had military representatives at all. It also was negotiated in a forum with large numbers of non-governmental organizations protesting aspects of the U.S. negotiating position and otherwise criticizing the United States as being part of the land mine problem. Additionally, a number of small countries such as the Seychelles, funded and emboldened by the various activist organizations, repeatedly sought to embarrass the United States. It was, in short, an environment where serious consideration of national security issues could not occur.

The result is that the Ottawa Convention is a poorly-conceived, poorly-drafted document which fails to take into account any of the security concerns of the United States or its closest allies. Not only does it ban short-duration mines that are not a humanitarian problem, but it permits some mines that are. Long-duration anti-tank mines with long-duration anti-handling devices are a significant humanitarian problem. But the Ottawa Convention permits their use without restriction, largely because the Austrian delegation drafted the treaty so as to allow Austria to continue to sell its anti-handling device. The Ottawa Convention thus failed to solve the humanitarian problem and has rendered further progress more difficult.

A spokesman for the Canadian Foreign Ministry recently said of the Ottawa Convention that U.S. Government officials who "urged us to remove this from politics and bring it back to the realm of humanitarian concerns . . . entirely missed the point. This is about politics." While this may be so with respect to the Ottawa Convention, the Committee notes that the Amended Mines Protocol provides meaningful solutions to the humanitarian problem.

Despite misgivings on the part of many in the Congress and the Administration, U.S. negotiators were dispatched to Oslo, Norway, with instructions to resolve five critical concerns with the draft Ottawa Convention (the so-called "red lines"). The analysis of those issues that follows reflects the views of the majority of members on the Committee, who concur largely with the Administration on these matters.

1. Exemption for the Korean Peninsula

In 1996, when President Clinton announced the U.S. APL policy and the intent to aggressively pursue an international agreement to ban the use, stockpiling, production, and transfer of APL, he also stated:

> The United States views the security situation on the Korean Peninsula as a unique case and in the negotiation of this agreement will protect our right to use APL there until alternatives become available or the risk of aggression has been removed.

The Department of Defense continues to study alternatives to APL, but a credible offsetting capability has yet to be developed. Accordingly, an exception for Korea remains a central element in U.S. APL policy. The United States' need to protect the right to use APL in Korea stems not only from U.S. commitments to South Korea as an ally, but from U.S. responsibilities as the leader of United Nations Forces in South Korea and from the essential military function that APL serve in U.S. defense plans for South Korea.

The situation on the Korean Peninsula is unique. First, it is the only place in the world where a UN unified command maintains a military armistice agreement. Moreover, the forces in South Korea are confronted by one of the world's largest military forces, maintained at a high state of readiness. Hostilities could resume with little or no notice. North Korea fields a large ground force, massed just north of the demilitarized zone. A sizeable percentage of this force is deployed roughly 30 to 60 miles of the South Korean capital, Seoul (population: 10 million). At present, U.S. war plans call for halting any North Korean offensive before it reaches Seoul, and for the use of APL to delay and disrupt the expected mass infantry attack by the North. Anti-personnel land mine use is intended to delay the attack long enough for other weapons systems to fully engage the enemy, and until U.S. and other UN forces can be reinforced to meet the aggression.

Without APL, U.S. officials argue, North Korea likely would destroy Seoul before the invasion could be turned. Under such circumstances, tens of thousands of soldiers and hundreds of thousands of civilians would be killed.

The United States' policy requirements for Korea could have been met in any number of ways by the negotiators in Oslo. The simplest solution would have been to grant an exception for Korea, noting the unique threat of aggression. (Obviously, the forces in Korea relying on APL are not there only to protect themselves or an ally; they are stationed in Korea to enforce the will of the international community, expressed through the United Nations.)

Equally sufficient would have been the adoption of the U.S. proposal to grant an exception to the ban on APL use for those situations where such systems are used in defense of UN-mandated or brokered cease-fires or truces. The United States proposed, in Oslo, that Article 3, paragraph 3, of the treaty be revised to read:

> The general obligations under Article 1 shall not apply to activities in support of a United Nations Command or its

> successor, by a State Party participating in that command, where a military armistice agreement had been concluded by a United Nations Command.

Indeed, U.S. negotiators were even willing to stipulate that in such a case, the number of anti-personnel mines would not exceed that necessary for that specific purpose. However, the "Ottawa Core Group"—led by Canada and various nongovernmental organizations such as the International Campaign to Ban Land Mines and the International Committee on the Red Cross—blocked all U.S. efforts to secure an exemption for Korea. These organizations failed to recognize that no treaty will prove effective in the long run if it decreases the sense of security of its participants or increases the likelihood of hostilities, which will lead to greater civilian casualties than the situation the treaty is meant to address.

2. Change the Definition of APL to Allow Use of "Mixed Munitions"

Virtually all U.S. anti-tank land mine systems are fielded in conjunction with anti-personnel mines to protect the anti-tank mines from being disabled or rapidly breached by the opposing force. Accordingly, the Ottawa Convention's ban on APL also would forbid the use of U.S. anti-tank systems. The United States sought a change in the draft treaty's definitions to ensure that munitions primarily designed as anti-tank, anti-vehicle, or runway denial systems would not be captured by the Convention.

Anti-tank and anti-vehicle munitions are designed to block or channel tanks and armored vehicles, not people, and are only deployed in areas where an armored offensive is imminent. Similarly, runway denial systems are designed primarily to deny access to airstrips and other military sites. The munitions that are integral to these weapons are designed to self-destruct or self deactivate within a very short period of time (15 days or less in the case of U.S. weapons) and are in accordance with the Amended Mines Protocol of the Convention on Conventional Weapons.

Generally speaking, in the case of U.S. mixed munitions, the majority of submunitions in each package are not APL. Moreover, the submunitions cannot be separately deployed from the rest of the munition after the munition leaves the production facility. Specific facts regarding individual systems follow:

GATOR: The *Gator* system is dispensed by both Air Force and Navy aircraft. It consists of a bomb casing that holds a mix of self-destructing anti-tank (AT) and anti-personnel land mines (APL). While the Air Force *Gator* carries 72 AT and 22 APL, the naval variant contains a mix of 45 AT and 15 APL. Delivery by aircraft allows the mines to be used deep in enemy territory to turn, block, disrupt, or delay the enemy before it is able to close with U.S. ground forces. *Gator* mines were used successfully during Operation Desert Storm to protect the flanks of U.S. forces engaging in combat operations. By consequence, the United States VII Corps was able to more effectively concentrate its forces during battle since units and reserves were not required for the flanks.

VOLCANO: *Volcano* is a system that either can be deployed on the ground (by two soldiers) or delivered from helicopter. It is the

principal delivery system for self-destructing mines in the U.S. inventory. The mine dispenser consists of six canisters of self-destructing/self-deactivating land mines, each of which contains five AT and 1 APL mine. When deployed by hand, two soldiers can use *Volcano* to establish a minefield in less than 10 minutes. Air-delivery emplaces the minefield in less than 30 seconds. A similar minefield, hand-emplaced, would take a 30-member engineer platoon 5 hours. U.S. Army light forces are particularly dependent upon the *Volcano.* It provides them the capability to establish rapidly minefields to delay enemy movement, isolate the battlefield, and reinforce friendly fire.

MOPMS: Finally, the *Modular Pack Mine System (MOPMS)* is a man-portable mine dispenser. It is operated by a single soldier using a hand-held radio control. Each *MOPMS* internally contains a mix of 17 anti-tank and 4 anti-personnel land mines (all of which self-destruct). The system serves a variety of roles. It can close lanes and gaps in minefields or at choke points, and also can be used for close-in protection of soldiers during defensive operations. The remote control unit gives the soldier the ability either to extend the self-destruct time of the mines or to destroy the minefield immediately.

While the primary U.S. "red line" dealt with the Ottawa Convention's treatment of mixed munitions, the Austrian text also created several other serious definitional problems. First, by failing to incorporate the word "primarily" before the definition of APL, the definition can be misconstrued to capture devices other than APL, such as anti-runway cluster munitions and anti-tank devices with certain types of anti-handling mechanisms.

Second, the treaty uses the term "incapacitating," which presumably is drawn verbatim from the Amended Mines Protocol (and CCW) definition. However, neither the Protocol nor the underlying CCW restricted non-lethal weapon technology that may temporarily disable, stun or signal the presence of persons but not cause permanent incapacity. The United States was unable to make this understanding clear in the context of the Ottawa Convention. (With respect to the Protocol, on the other hand, a formal understanding regarding interpretation of this term is included in the resolution of ratification reported to the Senate by the Committee).

Finally, with respect to Claymores, the Ottawa Convention definition covers such mines when they are used with a trip-wire or are otherwise target-activated. (When such mines are command-detonated, they do not meet the treaty's definition and therefore would not be subject to prohibition). However, unlike the Amended Mines Protocol, which specifically permits the use of trip-wired Claymores for the protection of units in the field, the Ottawa Convention bans all such uses, even for very short-term, small unit protection.

The United States received no support for any of its proposals to address these concerns.

3. Entry-Into-Force Transition Period

The United States went into the negotiations in Oslo proposing that the Convention enter into force only after at least 60 countries

have ratified it, including all five Permanent Members of the Security Council and at least 75 percent of the historic producers and users of APL. While such a requirement would guarantee that the APL ban would prove more effective, the Ottawa Core Group members were intent on negotiating an immediate ban.

In response, the U.S. delegation noted that since a number of significant land mine producers would remain outside the Ottawa treaty for the foreseeable future, the United States required a provision to give states the option of invoking a nine-year deferral period (in addition to the 10-year transition period allowed for currently deployed APL) for certain provisions. Such a deferral period was intended to allow states intent on giving up their APLs, in the absence of a universal treaty, the necessary time to prepare for that eventuality.

The President's 1996 announcement that the United States would relinquish the use of self-destructing/self-deactivating APL outside Korea when an international agreement took effect was based upon the presumption that the international agreement would be universal. The President explicitly retained the right, in the absence of such universality, to use self-destructing/self-deactivating APL worldwide. Consistent with the U.S. intent to retain "smart mines," the nine-year deferral was designed to ensure that the treaty would provide a means to prevent a gap in defensive capabilities.

The U.S. proposal made at Ottawa read as follows:

> In the event that a State Party determines that it cannot immediately comply with the provisions of paragraphs 1(a), 1(b) or 2 of Article 1, as they relate to retention, stockpiling, transfer not involving transfer of title to or control over, and use of anti-personnel mines, it may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession to the Convention that it will defer compliance with those provisions for a period not to exceed nine years from the entry into force of this Convention.

The U.S. delegation was prepared to go so far as to link the optional nine-year deferral period to compliance with certain provisions comparable to those agreed in the Amended Mines Protocol. Nevertheless, this U.S. proposal, too, was rejected.

4. Withdrawal Clause

The fourth U.S. "red line" consisted of an objection to the Ottawa Convention's withdrawal clause. Rather than adopting the standard "supreme national interest" clause utilized in virtually every major arms control treaty, Article 18 of the Ottawa Convention utilized a "laws of war" formulation, prohibiting withdrawal during wartime and requiring a one year waiting period. The United States contended that a party must be allowed to withdraw when that party's supreme national interests are threatened, regardless of whether the party is engaged in armed conflict when the period of advance notice of withdrawal expires. The U.S. delegation contended that, as drafted, the treaty unduly infringes on the sovereign right of a country for self-defense.

Most other arms control treaties dealing with weapons of mass destruction have shorter withdrawal periods—ABM (6 months), CWC (90 days), BWC and NPT (3 months), and CTBT (6 months). Logically, if a country believes that "extraordinary events, related to the subject matter of this Convention, have jeopardized [its] supreme interests,' then it should be permitted to withdraw within a reasonable period of time.

Again, the U.S. position was not accepted. Instead, the Ottawa Core Group argued that the CCW contains the same withdrawal provision, which is correct. However, the CCW does not, at present, ban a class of weapons. Rather, it regulates their legitimate use as a means of defense. As the resolution of ratification for the Protocol makes clear, if new protocols containing arms control provisions should be added to the CCW, the withdrawal clause likely will become an issue.

5. Verification / Compliance

The final "red line" represents the one area where the United States, working with the German delegation, enjoyed modest success. The original draft text, when compared with other conventional arms control agreements, was sorely lacking in the necessary detail for a compliance/verification regime. Even as amended, however, the Convention is unlikely to be effectively verifiable.

Key factors inhibited developing an effective verification regime as part of an APL ban in the "Ottawa process." First, given the time constraints, rules of procedure, and strong opposition by key Ottawa process supporters to the protracted discussion necessary to develop such a regime, it was difficult to negotiate detailed compliance/verification provisions. Moreover, some countries, such as Mexico, repeatedly opposed any strengthening of the verification regime.

Second, due to the very nature of APL, an intrusive verification regime covering use, production, stockpiling and transfer may have only marginal returns with respect to increased assurance of compliance. The United States therefore focused on improving the Austrian text in two areas: to provide more detailed notifications; and to clarify the role of and procedures for the Fact Finding Missions.

Other Ottawa Convention Issues

The text of the Ottawa Convention raises several concerns related to interoperability of allied forces in coalition operations when one or more military forces is Party to the Convention and others are not. These issues can be identified in the General Obligations of Article 1, and they are further clarified in related articles, including 2, 4, 5, 6, and 8. The issues can be separated into three categories: (1) use of land mines during coalition operations; (2) storage of land mines; and (3) command and control.

With respect to "use," most (but not all) delegations seemed to agree that use means emplacement. Thus, since the United States is not a Party, other countries in a coalition would not violate the treaty so long as they did not engage in physical emplacement. However, Canada's comments during debate on the Convention suggested that simply receiving a tactical benefit from emplaced

mines would violate Article 1 regardless of who emplaced them. Moreover, under the Canadian view, the clearing requirements would come into play immediately upon taking over a mined area, even one mined by an allied force. Such a broad interpretation would raise significant concerns regarding whether U.S. forces could fight alongside our allies. One immediate concern would relate to the formulation of rules of engagement for Bosnia or Kosovo. Could NATO allies, many of whom proclaimed in Oslo that land mines have no military utility, continue to insist (as they have) that the United States be prepared to use APL to defend their troops in the event of a contingency?

There are two related legal issues regarding the storage of land mines. The treaty prohibits stockpiling and requires destruction of mines. The two technical questions are: 1) whether there is a destruction requirement for land mines owned by another State, but stored on the territory of a State Party; and 2) whether allowing a foreign-owned stockpile to exist on a State Party's territory would amount to assistance, encouragement or inducement under paragraph 1c. The answers to these questions are based on the interpretation of the language of paragraph 1c, as well as the words "jurisdiction or control" as they pertain to the destruction requirement. That is, what is "assistance," and is a U.S. base on State Party soil under that State Party's jurisdiction or control? How allies intend to interpret these requirements is a critical issue. If the issue is not clarified satisfactorily, U.S. stockpiles in Japan, Norway, Germany, Spain, and Italy, and on ships at Diego Garcia could be forced to be withdrawn.

Command and control issues could arise during NATO and coalition operations, since the control of U.S. mixed munitions is held at relatively high levels. Commanders that are State Party citizens may not be in a position to authorize Rules of Engagement (ROE) that allow for use of mines. In some NATO situations, the North Atlantic Council itself is the authorizing authority for ROE. To what extent would an order or ROE authorization constitute assistance, encouragement or inducement to take part in an activity that is prohibited by the Convention? If not rectified, this ambiguity ultimately could prevent NATO or other coalition commanders from commanding U.S. forces. It also could complicate future U.S. involvement in various operations.

V. Future Land Mine Arms Control Issues

A. DIFFERENTIATION BETWEEN SHORT-DURATION AND LONG-DURATION SYSTEMS

The majority of the Committee hopes that the Administration will re-emphasize the distinctions drawn in the Amended Mines Protocol rather than those the Administration tried to make at Oslo. In particular, the majority of the Committee expects that Senate approval of the Protocol will encourage the Administration to abandon its indefensible and illogical arguments relating to "mixed" mine systems and instead return to the Protocol's distinctions between short- and long-duration devices.

The Administration currently insists that if a short-duration anti-personnel mine is contained in a package that also contains

short-duration anti-tank mines, the anti-personnel mine becomes instead an "anti-handling device," a "little kind of explosive," or just a "munition."

No other country has accepted this diplomatically untenable argument. The attempt to exempt U.S. APL by mislabelling them as "mixed" systems was not only counterproductive at the Oslo conference; it was opposed even by the United States' closest APL allies (including Australia and South Korea). Progress in Oslo was achieved—not by the delegation's defense of the "mixed" munition red line—but by the repeated explanation to foreign delegations that the APL in mixed munitions are equipped with self-destructing/self-deactivation features. Moreover, any headway that was made in this respect was erased when, at the end of the Oslo conference, the Administration abandoned critical humanitarian principles for which it previously stood by deleting from its red-line proposal the requirement that permissible mixed munitions be self-destructing and self-deactivating. Had that proposal been accepted, any nation could have used canisters containing hundreds of long-duration, nondetectable anti-personnel mines without restriction so long as each canister contained a single anti-tank mine. Any agreement so drawn would have had serious humanitarian consequences.

The Oslo conference has been long ended, and the question of U.S. membership in the Ottawa Convention definitively resolved. But the Administration persists in its claim that APL in mixed munitions are not, in fact, APL; this contradicts (a) the President's May 16, 1996 policy which included "mixed" munitions among U.S. APL; (2) his enumeration of U.S. APL types banned from export, which includes "mixed" munitions; (3) the APL definition proposed by the United States, which is contained in the Protocol and which includes "mixed" munitions; (4) the APL definition used by the United States in the Conference on Disarmament, which includes "mixed" munitions; and (5) U.S. military acquisition and operational documents on "mixed" munitions, which describe them as containing APL.

If the Administration persists in this policy, it likely will have seriously negative national security consequences. The Administration's current policy calls for ending use of pure APL outside Korea in 2003. The Administration is not advocating this policy because these mines are a humanitarian problem; they are all short-duration mines.

On the contrary, many on the Committee suspect that this policy has been created and espoused so that the United States can declare that it is not using APL outside Korea. Unfortunately, this claim is unlikely to be believed by those who otherwise have sought to support the Administration for its rejection of other land mine proposals (e.g., the Ottawa Convention). It certainly will be rejected by all Ottawa states, since it will not bring the United States into Ottawa compliance.

In the view of the majority of the Committee, moreover, the U.S. policy on abolishing APL will create genuine harm to U.S. national security, in part because it seeks to forego use of the Pursuit Deterrent Munition (PDM). This is an indispensable capability for light infantry, Ranger, light combat engineers, and special operations

forces. There is no alternative to this munition. The nearest approximation is the command-detonated Claymore, which is far heavier, is slower to emplace, and cannot operate unattended.

The U.S. policy also will ban, in the near future, the use of the artillery-delivered ADAM mine, which constitutes the vast majority of U.S. APL and is the only mine that can be emplaced in hostile territory without exposing friendly forces to fire. The only way to preserve this capability under the current policy will be to spend more than $200 million repackaging ADAM in to a mixed munition solely so that it can be claimed to be no longer an APL—a claim accepted nowhere.

As has been noted previously, the Amended Mines Protocol makes a clear and reasonable distinction between mines which destroy themselves or deactivate (such as ADAM and the PDM) and those which do not. The majority of the Committee recommends that the misdefinition of mixed munitions be abandoned, and that future U.S. policy on land mine issues capitalize on terms set forth in the Technical Annex to the Protocol.

B. FUTURE NEGOTIATIONS ON AN EXPORT BAN

Having rejected the Ottawa Convention for its failure to accommodate U.S. security concerns, the Administration has refocused its attention on achieving a global anti-personnel land mine (APL) ban through the Conference on Disarmament. By negotiating a treaty through the CD, consensus will be required of several countries that refused even to participate in the Ottawa process. The significant roster of countries that elected not to sign the Ottawa Convention includes Russia, India, China, Israel, Egypt, Finland, Cuba, Iran, Iraq, Kuwait, Saudi Arabia, and the two Koreas. It is the hope of the Administration that agreement can be reached in the CD with these countries on curtailing exports of APL. Following this first step, the Administration intends to launch additional negotiations for a comprehensive ban.

Over the past two decades the United States has produced several varieties of reliable and effective short-duration mines. Because large-scale production of these mines has already occurred, further production for export is possible at relatively low cost. It is in the security interest of the United States that our allies be well equipped to defend themselves and to participate in joint operations. It is in everyone's interest that long-duration mines be replaced by short-duration mines, if reliance on such a capability is not to be eliminated altogether. Thus a strong argument can be made that the United States should export short-duration mines to allies requesting them (so as to end their use of long-duration mines).

For several years, the Administration has adopted a unilateral ban on all anti-personnel mine exports. The majority of members of the Committee notes that, while laudable as a gesture of restraint and leadership, the unilateral export moratorium has conveyed the misimpression that U.S. anti-personnel mines are not being exported for humanitarian reasons. As has been noted elsewhere in this report, U.S. land mines, because of their sophisticated disarming and de-activation safeguards, do not contribute to

the land mine crisis. Thus the U.S. policy, while well-intentioned, has created misconceptions about U.S. mines and has further complicated U.S. diplomatic efforts to secure exemptions for systems which meet the criteria specified in the Technical Annex to the Protocol.

In the view of many, the transfer moratorium also has had an adverse impact on U.S. defense relations with South Korea. The South Korean government has long desired to eliminate from its stockpile roughly one million long-duration, hand-emplaced antipersonnel mines, replacing them with a similar number of artillery-delivered mines that self-destruct four hours after emplacement. While the cost of developing such mines and starting a production line for them is prohibitive for Korea, the U.S. ADAM mine meets the South Korean requirement well. The Korean government therefore desires to import ADAM mines while destroying its long-duration mines. But under the Administration's policy, this is not permitted.

As a result, South Korea has kept its hand-laid long-duration mines. This will have two adverse humanitarian consequences if war erupts on the Korean peninsula. First, instead of vanishing in four hours, these mines potentially could lie in wait for 30 years. Second, the current inventory of South Korean mines will be less effective in blunting or stopping a North Korean attack than would ADAM munitions that are not hand-emplaced but rather are remotely-delivered by 155 mm artillery; thus a lightning strike by North Korea potentially would inflict far more casualties than otherwise need be the case.

Accordingly, many of the members of the Committee urge the Administration to differentiate, in future negotiations on a land mine export ban, between short-duration (e.g. "smart") and long-duration (e.g. "dumb") mines. The impetus behind the land mine issue is the grave international humanitarian crisis caused by "dumb" land mines scattered indiscriminately around the globe, not by "smart" mines (such as ADAM), which disarm in such a short period of time with such reliability as to pose no long-lasting threat to innocents. Insofar as the Administration has stated that negotiations on an export moratorium will serve as the "first step" towards negotiations on a comprehensive ban within the Conference on Disarmament, the approach taken in the export treaty likely will set the stage for all future negotiations. Unless the Administration is able to distinguish in a transfer ban between munitions which pose no threat to innocents and those which do, the United States will once again be placed in the situation of negotiating an Ottawa Convention like treaty, which—in the view of the majority of the Committee—clearly does not serve the national security interests of the United States.

The minority of the Committee, while in agreement that U.S. short-duration mines are of much less concern than long-duration mines from the humanitarian standpoint, shares the Administration's goal that an export ban be undertaken as a further step toward an effective world-wide APL ban. These members believe that the crucial purpose of negotiations in the CD should be to determine how extensive an export ban the world's major land mine producing countries can agree to accept. They sincerely hope that cur-

rent efforts to find alternatives to APL will bear fruit and that such alternatives will afford a long-term answer to the problem of fortified border regions such as that in Korea. In their view, while it might be possible in the context of a world-wide export ban to craft exemptions for some transfers of short-duration mines to replace long-duration mines, any U.S. interest in allowing such transfers to South Korea must be balanced against the broader humanitarian objective of moving all countries away from APL.

C. OTHER ISSUES RELATING TO LAND MINE NEGOTIATIONS

Many members of the Committee strongly recommend that the United States follow the model used in crafting the Amended Mines Protocol in all future land mine negotiations. Specifically, mines that cause a significant humanitarian problem should be tightly restricted, though care must be taken to preserve U.S. security obligations in Korea and the potential for similar requirements to emerge elsewhere in the future. Mines that do not cause such a problem should not be captured by future agreements, nor should the United States agree to any prohibition on use, production, stockpiling or transfer of short-duration anti-personnel land mines, in the view of these members.

The Committee recommends that the United States explore future modifications to the Protocol to raise the reliability requirement for self-destruction and self-deactivation, and to provide for improved verification. The Committee also supports seeking a ban on non-detectable anti-tank mines. The Committee also recommends, however, that future agreements on land mine transfers explicitly exclude short-duration anti-tank mines from coverage.

VI. COMMITTEE ACTION

The Amended Mines Protocol together with its Technical Annex was adopted at Geneva on May 3, 1996. It was submitted to the Senate on January 7, 1997, and referred on the same day to the Committee on Foreign Relations.

The Committee held two hearings related to the Amended Land Mines Protocol and land mine issues generally.

February 3, 1998 (open session)

General Carl E. Mundy, former commandant of the United States Marine Corps;

General Frederick Kroesen, former Commander of the United States Army, Europe, and Vice Chief of Staff for the United States Army;

General Raymond Davis, former Assistant Commandant of the Marine Corps and Congressional Medal of Honor recipient.

February 25, 1998 (open sesson)

Robert Grey, then-nominee for the rank of Ambassador during his tenure of service as U.S. Representative to the Conference on Disarmament.

At a markup on July 23, 1998, the Committee considered a resolution of ratification including 1 reservation, 9 understandings, and

14 conditions. The resolution was agreed to by the Committee by a roll-call vote of 14-4. Those members voting in the affirmative were Senators Helms, Lugar, Coverdell, Hagel, Smith, Thomas, Grams, Ashcroft, Frist, Brownback, Biden, Dodd, Kerry, and Robb. Those members voting in the negative were Senators Sarbanes, Feingold, Feinstein, and Wellstone.

RESERVATION

In its examination of the Amended Mines Protocol, the Committee became concerned that subparagraph 1(f) of Article 7 precluded the use of certain munitions against military establishments, such as supply depots, which are legitimate military targets. Specifically, Article 7 of the Amended Mines Protocol bans the use of "booby traps and other devices" in any manner that is "in any way attached to or associated with" ten different categories of items, one of which is "food and drink." This is an expansion of the prohibition contained in the original 1980 Protocol, to which the United States is already a party; the original provision barred only the use of booby traps against such targets.

Under the Protocol, the definition of "other devices" is broad, covering everything from special demolition munitions to satchel charges (such as C-4 with a timer). Moreover, the term "food and drink" is undefined, and therefore might be construed broadly to include all nature of food and drink, including supply depots and other logistics dumps. Because Article 7 prohibits the use of "other devices" in a manner that is "in any way attached to or associated with . . . food or drink", the Protocol threatens to make it far more difficult, or impossible, for the United States Armed Forces to accomplish certain types of missions.

A variety of U.S. military units train to use specialized explosive charges against a wide range of legitimate military targets, including depots and enemy supply dumps. As written, the Article 7 creates the potential that military personnel could be accused of "war crimes" under the CCW and the Protocol for legitimate military actions (for instance, if they were to drop a satchel charge under a truck carrying crates of rations). Likewise, the use of a demolition charge to destroy a mountain of ammunition and fuel barrels would be precluded if that mountain also contained crates of food.

Consequently, a reservation to the Protocol is necessary to ensure that this provision does not tremendously complicate mission accomplishment, and ultimately lead either to increased U.S. casualties or to a command decision not to employ the U.S. Armed Forces against supply dumps, depots, or other military locations containing "food or drink."

Such a reservation is also necessary to make clear that the Senate will not agree to the use of Article 7(f) of the Amended Mines Protocol (or like provisions in the Convention on Conventional Weapons) as a precedent for future "laws of war" treaties. The reservation clarifies the fact that stocks of "food or drink," if judged by the United States to be of potential military utility, will not be accorded special or protected status.

Some have argued that "food and drink"—regardless of whether it is in a military establishment or not—is particularly attractive

to civilians. For this reason, the proposed reservation requires that "due precautions are taken for the safety of the civilian population." However, in providing for the use of "other devices" to destroy any stock of food judged "likely to be used by an enemy military force," the Committee implicitly rejects the argument that munitions cannot be used against supply depots because civilians might be present. According to the same logic, neither cruise missiles nor gravity bombs should be used against supply depots. The Committee reservation makes clear that the Amended Mines Protocol may not be construed as a precedent for seeking to ban the use of other types of weaponry against these legitimate military targets in further negotiations associated with the "laws of war."

In making this reservation, the United States in no way diminishes the protections afforded civilians under the Amended Mines Protocol. Numerous other overlapping provisions of the Protocol eliminate all concerns over the appropriate employment of various munitions by the Armed Forces of the United States.

Understanding 1: United States Compliance

This understanding states the view of the United States that U.S. military personnel may not be prosecuted for a violation of the Amended Mines Protocol unless they knowingly and intentionally kill or cause serious injury to a civilian. Further, the actions of U.S. military personnel can only be assessed in light of information that was reasonably available at the time. In other words, U.S. military personnel cannot be judged on the basis of information which only subsequently comes to light. Taken together, these two provisions erase the danger that U.S. military personnel will be at risk of being "second guessed" with respect to land mine use.

Understanding 2: Effective Exclusion

Understanding (2) states the view of the United States that the Amended Mines Protocol's requirement for U.S. military personnel to ensure the "effective exclusion" of civilians when using a Claymore mine is satisfied as long as the unit using the mine monitors various avenues of approach where the mines are deployed. United States military personnel have not violated the Amended Mines Protocol if a civilian is killed or injured by a trip-wired Claymore, provided that those personnel had posted sentries, or were otherwise maintaining overview of the area where the mines were emplaced. This understanding is important to ensure that small units of the U.S. Armed Forces (such as reconnaissance teams) will not find the requirements of Article 5(6)(b) impractical to fulfill. It is the understanding of the Committee that the U.S. Armed Forces already are trained to maintain appropriate safeguards in the employment of Claymores, and therefore that no changes to current operating procedures will need to be made.

Understanding 3: Historic Monuments

The Amended Mines Protocol contains a prohibition on the use of booby-traps and other devices in connection with historic monuments, works of art, or places of worship "which constitute the cultural or spiritual heritage of peoples." As written, this might apply to an extremely large category of buildings and items. Understand-

ing (3) states the view of the United States that Article 7(1)(i) will be interpreted as having a restrictive meaning. This understanding protects U.S. military personnel from accusations of violation of the Protocol by making clear that only a very limited class of objects having clearly and widely recognized cultural or spiritual importance fall within the purview of Article 7(1)(i).

Further, with respect to questions of compliance with respect to the use of booby-traps or other devices, Understanding (1) also applies. In other words, unless information about the cultural or spiritual significance of the object in question can be assessed as having been reasonably available to U.S. military personnel, the question of compliance does not arise.

Understanding 4: Legitimate Military Objectives

This understanding states the view of the United States that land, in and of itself, can be a legitimate military objective. Thus the use of land mines and other devices and munitions to neutralize or deny access to a piece of land is not prohibited under the Amended Mines Protocol. This understanding is fundamental to the application of the Protocol's requirements in a reasonable, militarily-sound manner, as is made clear in numerous instances within the article-by-article analysis.

Understanding 5: Peace Treaties

This understanding states the view of the United States that the Amended Mines Protocol requirement which allocates responsibility for turning over territory for mine clearance, or for the maintenance of protections (such as the marking and monitoring of minefields), will not have unintended consequences in connection with peace treaties or similar arrangements. In particular, without this understanding, the Amended Mines Protocol could be construed to impede negotiations where a party to the Amended Mines Protocol is negotiating the transfer of territory containing mines with a state that is not a party. This understanding makes clear that no agreement among states is precluded as long as responsibilities are allocated in a manner which reflects the essential spirit and purpose of Article 5.

Understanding 6: Booby-Traps and Other Devices

This understanding states the view of the United States that the prohibition against the deliberate construction of booby-traps in the form of apparently harmless objects does not preclude U.S. military personnel from booby-trapping items, either in advance or in the field, as long as those items are not specifically designed and constructed to serve as booby-traps. It is the mass production of apparently harmless portable objects specifically designed as booby traps (such as those used by Soviet forces in Afghanistan) toward which this provision is directed—not towards the ad hoc adaptation of devices, for example, by U.S. special operations forces.

Understanding (6) also states the view of the United States that a trip-wired hand grenade shall be treated under the Amended Mines Protocol only as a booby-trap, and not as a "mine" or an "anti-personnel mine." This clarification is necessary to prevent future confusion over whether a trip-wired hand-grenade (or any

similar device) might also fit the definitions of mine and anti-personnel mine, and thus also be subject to the relevant restrictions on such mines. Without this clarification, the Amended Mines Protocol could be misconstrued as preventing the use of trip-wired grenades unless, for example, these devices are clearly marked and visible. This would defeat the military utility of such a device in the first place and is not what the Amended Mines Protocol intended.

Finally, Understanding (6) also makes clear that hand-grenades, other than trip-wired hand grenades, are not covered by the Amended Mines Protocol at all. Concern arose that, without this clarification, the term "other devices" might be argued to capture a grenade, since it is manually-emplaced (e.g. thrown) and actuated automatically after a lapse of time. This provision makes clear that the Amended Mines Protocol's restrictions on "other devices" do not apply to hand grenades or similar devices.

Understanding 7: Non-Lethal Capabilities

This understanding states the United States' view of the definition of an anti-personnel mine. Specifically, Article 2, paragraph 3 of the Amended Mines Protocol leaves open the possibility that a device designed to incapacitate a person might be considered an anti-personnel mine. This understanding makes clear that the United States does not consider the Amended Mines Protocol to be relevant to non-lethal devices designed to temporarily incapacitate or otherwise affect a person, but not to cause permanent incapacity.

Understanding 8: International Tribunal Jurisdiction

Understanding (8), regarding the jurisdiction of any international tribunal, states the view of the United States that Article 14 permits only domestic penal sanctions for violations of the Protocol. Ratification of this Protocol, therefore, in no way authorizes the trial of any person before an international criminal tribunal for violations of either this Protocol or the Convention on Conventional Weapons. If such an effort were made to misinterpret the scope of Article 14, this understanding makes clear that the United States would not recognize the jurisdiction of any international tribunal to prosecute a U.S. citizen for a violation of this Protocol or the Convention on Conventional Weapons.

Additionally, and in relation to Understanding (8), the Committee notes that the Executive branch agreed that the new requirements of the Amended Mines Protocol are not part of generally-recognized customary law, and therefore, that the United States does not consider that the International Criminal Court may assert jurisdiction over these matters.

Understanding 9: Technical Cooperation and Assistance

This understanding makes clear that the United States may refuse to provide assistance to a country for any reason, and that other countries may not legitimately use the Amended Mines Protocol as a pretext for the transfer of militarily significant assistance or equipment under the guise of providing simple humanitarian assistance.

The Committee is increasingly concerned with the inclusion of treaty language which seeks to give countries the "right" to participate in the "fullest possible exchange" of technical information, equipment, and other forms of assistance. While well-intentioned countries, such as the United States, have agreed to such provisions in the past in order to obtain support for treaties of universal application, the Committee notes the risk posed to nonproliferation and arms control regimes by treaty language purporting to entitle countries to trade in sensitive technologies. Numerous countries have in the past, and will continue in the future, to cite these types of provisions to justify their illegitimate trade in dangerous, militarily-significant technologies. Accordingly, the Committee urges the Executive branch, in future negotiations, either to refrain from agreeing to the inclusion of such provisions, or to make clear within the treaty text that such provisions may not be used as a pretext for the transfer of weapons technology or other militarily-significant assistance.

Condition 1: Pursuit Deterrent Munition

Condition (1) makes clear that nothing in the Amended Mines Protocol restricts the possession or use of the Pursuit Deterrent Munition (PDM) since that mine is considered a short-duration (or "smart") mine fully in compliance with the provisions on self-disarming, self-deactivation, and detectability contained in the Amended Mines Protocol's Technical Annex. The PDM is a manually-activated mine with a hand grenade release. As such, it is primarily useful for small force protection. Light infantry, Ranger, light combat engineers, and special operations forces train to employ the PDM under circumstances (such as hostage rescue or the retrieval of a nuclear device) where capture of the unit would mean the failure of the mission. The United States has not developed any alternative technology to replace the PDM. Accordingly, given the fact that the Protocol in no way affects the use of this munition, and the unique nature of the device, this condition requires the President to agree that the United States will retain the PDM for use by the Armed Forces at least until January 1, 2003, unless an effective alternative to the munition becomes available. This certification will not keep the executive branch from eliminating the PDM as of that date, but it is intended to prompt careful thought before such an action if an effective alternative to the PDM has not been developed.

Further, in meeting Condition (1)'s certification requirement, the President must agree that a mere change in a tactic or an operational concept, in and of itself, will not constitute an "effective alternative" to the PDM. By clear implication, then, any replacement to the PDM likely must revolve around the application of an alternative technology. While tactics and operational concepts may be adapted or conformed to capitalize upon a new, technological alternative, the Committee does not agree that manipulation of doctrine alone is sufficient to justify the abandoning of this essential military capability.

Condition 2: Export Moratorium.

Condition (2) calls upon the President, in future negotiations on a land mine export ban, to avoid any restrictions on the transfer of any mine that is primarily designed to be exploded by the presence, proximity, or contact of a vehicle and which is equipped with an anti-handling device. The Committee makes this recommendation in light of the view, expressed by some, that transfers of these munitions should be prohibited, particularly if they contain anti-handling devices such as tilt rods, trip-wires, or anti-lift devices. The Committee does not support such proposals.

As the article-by-article analysis notes, the Amended Mines Protocol specifically ensures that mines "primarily designed" to be exploded by the presence, proximity, or contact of a vehicle are not treated as anti-personnel mines. With increasing restrictions on the use of anti-personnel mines, it was clear, from a military perspective, that alternative means of protecting anti-tank mines against enemy removal during combat operations would be increasingly important, and that those means should not also be imperiled by the same sorts of restrictions applicable to anti-personnel mines.

Anti-handling devices are the most common alternative for protecting anti-tank devices. But these devices, like anti-personnel mines, are intended to cause an anti-tank mine to detonate if handled by a person. (This is essential to prevent the rapidly disabling of anti-tank mines intended to slow, halt, or channelize enemy forces). The Amended Mines Protocol, however, makes clear that anti-tank mines equipped with an anti-handling devices do not fall within the definition of an anti-personnel mine. Therefore, they are not subject to the relevant, additional constraints. For this reason, the Committee views inclusion of such mines in a transfer ban meant to address anti-personnel mines as inappropriate and counterproductive. Moreover, it might create a dangerous precedent whereby some might seek to include such devices within the scope of future negotiations on a comprehensive land mine ban.

Condition 3: Humanitarian Demining Assistance

This condition expresses the views of the Senate on the extent to which the United States leads the international effort to address the problems posed by the indiscriminate use of anti-personnel land mines. It recognizes the fact that the United States has contributed more to the global demining effort than any other country, has done more to develop and share critical demining technology with other countries, and continues to expand its demining program. Finally, this condition urges the international community to match their diplomatic rhetoric with concrete action by joining the United States in addressing the land mine problem through demining efforts.

Condition 4: Limitation on the Scale of Assessment

This provision addresses the fact that the United States is scheduled to pay for implementation of this Protocol at the same rate of assessment that it pays to the United Nations (i.e., 25 percent). The Senate has already made clear that the United States should not be assessed to pay any more than 20 percent of the U.N. as-

sessments. The current U.S. assessment is nearly double the assessment rate to any other country. In contrast, Russia—one of the countries directly responsible for the transfer of long-duration mines and the resultant, indiscriminate carnage and human suffering—pays less than 5.67 percent.

Pursuant to this provision, the United States shall not pay more than $1 million per year (adjusted for inflation) for the implementation of the Amended Mines Protocol, unless the President first certifies that more funds are required and Congress enacts a joint resolution approving the President's certification.

Condition 5: United States Authority for Technical Cooperation and Assistance

This provision makes clear that the Executive branch must first obtain both statutory authorization and appropriation before funds are withdrawn from the Treasury to pay the United States assessed share of costs for the operation of the Protocol, or to provide assistance for Protocol-related activities. Accordingly, this condition prohibits the reprogramming of funds originally authorized for unrealted purposes, for any payment or assistance, including the transfer of in-kind items, under Article 11 or Article 13(d) of the Amended Mines Protocol.

Condition 6: Future Negotiation of Withdrawal Clauses

This provision expresses the sense of the Senate that treaties containing arms control provisions must allow a party to withdraw from such provisions when that party's supreme national interests are threatened, regardless of whether the party is engaged in armed conflict, provided that an appropriate period of advance notice has been given. Prohibiting withdrawal from arms control limitations during wartime—obviously the period in which a country's supreme interests are most likely to be jeopardized—unduly infringes on the sovereign right of a country for self-defense.

The underlying treaty to the Amended Mines Protocol (the Convention on Conventional Weapons) contains a withdrawal clause that bars the United States from withdrawing, even after the period of advance notice has expired, if the United States is engaged in armed conflict at that time. When the Senate gave its advice and consent to ratification of the CCW, that treaty was properly characterized as a "law of war" convention. As such, the withdrawal clause was appropriate since the CCW did not ban a class of weapons; it simply regulated their use as a legitimate defensive measure. Obviously, a treaty establishing rules for conduct of warfare is most relevant in time of armed conflict.

However, the Amended Mines Protocol contains provisions, such as Article 8, which are, on their face, not of a "law of war" nature. Thus, Article 8, which restricts the transfer of mines, would appear to be an arms control provision. Moreover, the President has asked the Senate to approve other protocols to the CCW that appear to be at least partly of an arms control nature. The proposed Protocol on Blinding Laser Weapons, for instance, includes a ban on the use of blinding laser weapons and on their transfer. If the CCW is to evolve into an arms control treaty, serious concern will arise with respect to its withdrawal clause.

Finally, as has been noted elsewhere, using the CCW as a model, the drafters of the Ottawa Convention (which is an arms control treaty) included in that treaty the CCW's withdrawal provision.

This condition states the expectation of the Senate that future U.S. negotiators will reject the inclusion of withdrawal provisions akin to the CCW's in any treaty if they would apply to an arms control provision. As the Administration noted in response to questions for the record regarding the Amended Mines Protocol: "there should be appropriate provision for timely withdrawal from any international agreement affecting U.S. armaments, regardless of how it is characterized, if there is a genuine risk of a situation arising where a more limited right to withdraw could jeopardize U.S. supreme national interests."

Condition 7: Prohibition on De Facto Implementation of the Ottawa Convention.

This condition requires the President to assure the Senate, before moving forward with ratification of the Amended Mines Protocol, that the Administration will not seek to limit the consideration of alternatives to anti-personnel and mixed anti-tank systems by dictating that only Ottawa Convention-compliant alternatives be pursued. To do so might signal an intent to engage in de facto implementation of the Ottawa Convention without having submitted the treaty to the Senate for advice and consent to ratification.

Concern that the Administration may have intended, at least at one point, to circumvent the Senate's prerogatives by attempting to implement the Ottawa Convention derives from a draft Presidential Decision Directive (PDD) circulated on January 30, 1998. Specifically, the draft PDD directed the development of alternatives for U.S. anti-personnel mines and mixed anti-tank systems. The draft PDD further stated:

> These APL alternatives should be compliant with the Convention on the Prohibition of the Use, Production, Stockpiling, and Transfer of Anti-Personnel Mines and on Their Destruction, otherwise known as the "Ottawa Convention." In other words, for the purposes of this PDD, an APL "alternative" must be designed and constructed so that it does not meet the definition of "anti-personnel mine" in the Ottawa Convention. . . . Like alternatives to APLs, the alternatives to mixed anti-tank systems that DoD explores should be Ottawa Convention-compliant.

This draft PDD appears to dictate compliance with a treaty that the President has not even signed—thereby bypassing the Senate and the Constitution. Accordingly, Condition 7 specifically precludes this draft direction, or any similar directive, from being implemented.

Aside from the Constitutional principles involved, the Committee is also very concerned with the substantive effect of a decision to limit consideration of non-APL solutions to those alternatives which are compliant with the Ottawa Convention. Specifically, the Committee suspects that very few "technological" alternatives would meet this narrow compliance requirement. As has been noted, the Ottawa Convention bans the possession, use, and devel-

opment of "anti-personnel mines." The drafters of the treaty deliberately refused to use the definition of APL contained in the Amended Mines Protocol. Because Sweden's effort to limit the Ottawa definition of APL to those mines "primarily" designed to be triggered by a person failed, a system can be banned even if it is not intended to explode due to the presence, proximity, or contact of an individual.

Few countries may recognize the significance of the differences in the APL definitions between the Protocol and the Ottawa Convention. Without the use of the word "primarily" in the Ottawa definition, a determination must be made as to whether additional munitions, other than those generally accepted as APL, fall under the Convention's definition and prohibitions. For these reasons, a search for APL alternatives which precludes anything but Ottawa-compliant systems may well be steered towards doctrinal or operational changes, rather than technological fixes. As the Committee makes clear in Condition (9), this is unlikely to be acceptable.

Additionally, Condition (7) requires the President to certify to the Congress that, in pursuing alternatives to anti-personnel mines and mixed anti-tank systems, the United States will only pursue those technologies which are affordable and which will provide a level of military effectiveness "equivalent" to that currently provided by the mine of mixed system in question.

The Committee agreed to the use of the term "equivalent" with the understanding that the Joint Chiefs of Staff will reject any alternative unless it offers a military capability that is at least equal to the capability provided by the relevant mine or mixed system. It is on the basis of its confidence that the Administration can be trusted to apply this common-sense definition of "equivalent" that the Committee is willing to accept the President's certification under paragraph (B) of this Condition. For the Administration to argue any other definition of the term "equivalent" would necessarily mean that it intends to pursue alternatives less effective than the mines they seek to replace. Obviously, the Committee would reject such an approach given the heightened risk at which this would place U.S. soldiers.

Condition 8: Certification With Regard to International Tribunals

Condition (8) is directly related to Understanding (8) (which makes clear that no international tribunal or similarly constituted body shall have jurisdiction over the United States or any of its citizens with respect to the Amended Mines Protocol or the Convention on Conventional Weapons). In order to fully clarify the shared understanding between the Executive and the Senate, Condition (8) requires a certification by the President as a condition of ratification. Specifically, prior to the deposit of the United States instrument of ratification for this Protocol, the President shall certify to the Congress that with respect to this Protocol, the Convention on Conventional Weapons, or any future protocol or amendment thereto, the United States shall not recognize the jurisdiction of any international tribunal over the United States or any of its citizens.

Condition 9: Tactics and Operational Concepts

Condition (9) operates in tandem with Condition (7). It makes clear that the Senate is unlikely to regard as acceptable any claim that a change in tactics or operational concepts would be sufficient, in and of itself, to constitute an effective alternative to mines. The Administration has repeatedly declared its intent to eliminate unilaterally U.S. APLs and mixed anti-tank systems. As National Security Advisor Sandy Berger committed in a May 15, 1998 letter to Senator Leahy:

> The United States will search aggressively for alternatives to our mixed anti-tank systems by (a) actively exploring the use of APL alternatives in place of the self-destructing anti-personnel submunitions currently used in our mixed systems, and (b) exploring the development of other techniques and/or operational concepts that result in alternatives that would enable us to eliminate our mixed systems entirely.

Mr. Berger's letter is of concern to the Committee insofar as it suggests that the development of "techniques and/or operational concepts" could constitute, in the Administration's mind, an acceptable form of APL alternative. The Administration may well find it difficult to identify acceptable "technological" alternatives to land mines and mixed systems. Thus, if it fails to find a credible, technological offset to replace land mines or mixed systems, the Administration may be tempted to argue that changes in "techniques and/or operational concepts" have eliminated the military's need for APL.

Condition (9) makes clear the view of the Senate that the Administration is unlikely to argue successfully that a new tactic or operational concept can replace APL or mixed systems. Moreover, the Committee expects that the Department of Defense will not expend scarce resources on researching new tactics or operational concepts that are not associated with new technological alternatives to APL. As Condition (1) makes clear, the Committee considers an "effective alternative" (for the Pursuit Deterrent Munition) to require more than a change in tactics or operational concepts, thereby implicitly suggesting the requirement for a "technological" remedy. Moreover, as the discussion of Condition (7) makes clear, the President may not limit the pursuit of alternatives to Ottawa Convention-compliant remedies because of the Committee's concern that such a limitation would threaten to push the alternatives considered towards changes of a purely tactical or doctrinal nature.

Condition 10: Finding Regarding the International Humanitarian Crisis

Condition (10) makes clear that United States short-duration anti-personnel land mines have not contributed to the international humanitarian problem posed by the indiscriminate use of land mines. As has been noted, the large majority of U.S. short-duration mines are designed to self-destruct 4 hours after emplacement. The longest-lived of this type of U.S. mine is designed to self-destruct in 15 days. Because of the short-lived nature of these systems, and the fact that U.S. self-destruct reliability is 100 percent within the

30 days allowed by the Amended Mines Protocol, U.S. short-duration mines cannot be credibly alleged to have contributed to the humanitarian crisis created by long-duration mines.

Condition 11: Approval of Modifications

This condition reaffirms that no amendment or modification of the Amended Mines Protocol or the Technical Annex, other than a minor technical or administrative change, shall enter into force for the United States unless the advice and consent of the Senate, pursuant to Article II, section 2, clause 2 of the Constitution, has first been obtained.

The Committee notes its concern that the Ottawa Core Group might be able to dominate, as a bloc, discussions on further amendments to the Protocol, and urges the Executive branch to reject efforts to turn the Protocol into an Ottawa-like ban. As the Committee has noted throughout its report on the Protocol, such is not the purpose of this treaty. Moreover, the Committee cautions that, due to the complex, interlocking nature of the various Articles of the Protocol and the detailed discussions held with the Senate on the meaning and effect of every provision, even a seemingly minor change to the Protocol might constitute a substantive modification requiring the further advice and consent of the Senate.

Condition 12: Further Arms Reductions Obligations

This condition affirms the Committee's intention to consider agreements between the United States and other countries involving militarily significant obligations on U.S. forces only as treaties. Some in the Executive branch persist in the mistaken belief that it is constitutionally acceptable to undertake militarily significant international accords by Executive agreement, approved by a simple majority vote of both Houses.

Condition 13: Treaty Interpretation

The Committee condition on Treaty Interpretation affirms that the constitutionally-based principles of treaty interpretation set forth in Condition (1) of the Senate's resolution of ratification of the INF Treaty (May 27, 1988) and Condition (8) of the resolution of ratification of the CFE Flank Document (May 14, 1997) apply to all treaties. These principles apply regardless of whether the Senate chooses to say so in its consideration of any particular treaty.

Condition 14: Primacy of the United States Constitution

This condition affirms that nothing in the Amended Mines Protocol shall be construed to require or authorize legislation, or the taking of any other action, by the United States, that is prohibited by the Constitution of the United States, as interpreted by the United States.

VII. Resolution of Ratification

Senate of the United States

IN EXECUTIVE SESSION

October ____, 1998

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A RESERVATION, UNDERSTANDINGS, AND CONDITIONS.

The Senate advises and consents to the ratification of the Amended Mines Protocol (as defined in section 5 of this resolution), subject to the reservation in section 2, the understandings in section 3, and the conditions in section 4.

SEC. 2. RESERVATION.

The Senate's advice and consent to the ratification of the Amended Mines Protocol is subject to the reservation, which shall be included in the United States instrument of ratification and shall be binding upon the President, that the United States reserves the right to use other devices (as defined in Article 2(5) of the Amended Mines Protocol) to destroy any stock of food or drink that is judged likely to be used by an enemy military force, if due precautions are taken for the safety of the civilian population.

SEC. 3. UNDERSTANDINGS.

The Senate's advice and consent to the ratification of the Amended Mines Protocol is subject to the following understandings, which shall be included in the United States instrument of ratification and shall be binding upon the President:

(1) UNITED STATES COMPLIANCE.—The United States understands that—

(A) any decision by any military commander, military personnel, or any other person responsible for planning, authorizing, or executing military action shall only be judged on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken; and

(B) Article 14 of the Amended Mines Protocol (insofar as it relates to penal sanctions) shall apply only in a situation in which an individual—

(i) knew, or should have known, that his action was prohibited under the Amended Mines Protocol;

(ii) intended to kill or cause serious injury to a civilian; and

(iii) knew or should have known, that the person he intended to kill or cause serious injury was a civilian.

(2) EFFECTIVE EXCLUSION.—The United States understands that, for the purposes of Article 5(6)(b) of the Amended Mines Protocol, the maintenance of observation over avenues of approach where mines subject to this paragraph are deployed constitutes one acceptable form of monitoring to ensure the effective exclusion of civilians.

(3) HISTORIC MONUMENTS.—The United States understands that Article 7(1)(i) of the Amended Mines Protocol refers only to a limited class of objects that, because of their clearly recognizable characteristics and because of their widely recognized importance, constitute a part of the cultural or spiritual heritage of peoples.

(4) LEGITIMATE MILITARY OBJECTIVES.—The United States understands that an area of land itself can be a legitimate military objective for the purpose of the use of landmines, if its neutralization or denial, in the circumstances applicable at the time, offers a military advantage.

(5) PEACE TREATIES.—The United States understands that the allocation of responsibilities for landmines in Article 5(2)(b) of the Amended Mines Protocol does not preclude agreement, in connection with peace treaties or similar arrangements, to allocate responsibilities under that Article in a manner that respects the essential spirit and purpose of the Article.

(6) BOOBY-TRAPS AND OTHER DEVICES.—For the purposes of the Amended Mines Protocol, the United States understands that—

(A) the prohibition contained in Article 7(2) of the Amended Mines Protocol does not preclude the expedient adaptation or adaptation in advance of other objects for use as booby-traps or other devices;

(B) a trip-wired hand grenade shall be considered a ''booby-trap'' under Article 2(4) of the Amended Mines Protocol and shall not be considered a ''mine'' or an ''anti-personnel mine'' under Article 2(1) or Article 2(3), respectively; and

(C) none of the provisions of the Amended Mines Protocol, including Article 2(5), applies

to hand grenades other than trip-wired hand grenades.

(7) NON-LETHAL CAPABILITIES.—The United States understands that nothing in the Amended Mines Protocol may be construed as restricting or affecting in any way non-lethal weapon technology that is designed to temporarily disable, stun, signal the presence of a person, or operate in any other fashion, but not to cause permanent incapacity.

(8) INTERNATIONAL TRIBUNAL JURISDICTION.—The United States understands that the provisions of Article 14 of the Amended Mines Protocol relating to penal sanctions refer to measures by the authorities of States Parties to the Protocol and do not authorize the trial of any person before an international criminal tribunal. The United States shall not recognize the jurisdiction of any international tribunal to prosecute a United States citizen for a violation of the Protocol or the Convention on Conventional Weapons.

(9) TECHNICAL COOPERATION AND ASSISTANCE.—The United States understands that—

(A) no provision of the Protocol may be construed as affecting the discretion of the United States to refuse assistance or to restrict

or deny permission for the export of equipment, material, or scientific or technological information for any reason; and

(B) the Amended Mines Protocol may not be used as a pretext for the transfer of weapons technology or the provision of assistance to the military mining or military counter-mining capabilities of a State Party to the Protocol.

SEC. 4. CONDITIONS.

The Senate's advice and consent to the ratification of the Amended Mines Protocol is subject to the following conditions, which shall be binding upon the President:

(1) PURSUIT DETERRENT MUNITION.—

(A) UNDERSTANDING.—The Senate understands that nothing in the Amended Mines Protocol restricts the possession or use of the Pursuit Deterrent Munition, which is in compliance with the provisions in the Technical Annex and which constitutes an essential military capability for the United States Armed Forces.

(B) CERTIFICATION.—Prior to deposit of the United States instrument of ratification, the President shall certify to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and to the Speaker of

the House of Representatives that the Pursuit Deterrent Munition shall continue to remain available for use by the United States Armed Forces at least until January 1, 2003, unless an effective alternative to the munition becomes available.

(C) EFFECTIVE ALTERNATIVE DEFINED.—For purposes of subparagraph (B), the term ''effective alternative'' does not mean a tactic or operational concept in and of itself.

(2) EXPORT MORATORIUM.—The Senate—

(A) recognizes the expressed intention of the President to negotiate a moratorium on the export of anti-personnel mines; and

(B) urges the President to negotiate a universal ban on the transfer of those mines that does not include any restriction on any mine that is primarily designed to be exploded by the presence, proximity, or contact of a vehicle, as opposed to a person and that is equipped with an anti-handling device, as defined in the Amended Mines Protocol, or a tilt rod or magnetic influence sensor, such mine not being considered an anti-personnel mine despite being so equipped.

(3) HUMANITARIAN DEMINING ASSISTANCE.—

(A) FINDINGS.—The Senate makes the following findings:

(i) UNITED STATES EFFORTS.—The United States contributes more than any other country to the worldwide humanitarian demining effort, having expended more than $153,000,000 on such efforts since 1993.

(ii) DEVELOPMENT OF DETECTION AND CLEARING TECHNOLOGY.—The Department of Defense has undertaken a substantial program to develop improved mine detection and clearing technology and has shared this improved technology with the international community.

(iii) EXPANSION OF UNITED STATES HUMANITARIAN DEMINING PROGRAMS.—The Department of Defense and the Department of State have significantly expanded their humanitarian demining programs to train and assist the personnel of other countries in developing effective demining programs.

(B) INTERNATIONAL SUPPORT FOR DEMINING INITIATIVES.—The Senate urges the international community to join the United States in providing significant financial and technical assistance to humanitarian demining programs, thereby making a concrete and effective contribution to the effort to reduce the grave problem posed by the indiscriminate use of non-self-destructing landmines.

(4) LIMITATION ON THE SCALE OF ASSESSMENT.—

(A) LIMITATION ON ASSESSMENT FOR COST OF IMPLEMENTATION.—Notwithstanding any provision of the Amended Mines Protocol, and subject to the requirements of subparagraphs (B) and (C), the portion of the United States annual assessed contribution for activities associated with any conference held pursuant to Article 13 of the Amended Mines Protocol may not exceed $1,000,000.

(B) RECALCULATION OF LIMITATION.—

(i) IN GENERAL.—On January 1, 2000, and at 3-year intervals thereafter, the Administrator of General Services shall prescribe an amount that shall apply in

lieu of the amount specified in subparagraph (A) and that shall be determined by adjusting the last amount applicable under that subparagraph to reflect the percentage increase by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the calendar year three years previously.

(ii) CONSUMER PRICE INDEX DEFINED.—In this subparagraph, the term ''Consumer Price Index'' means the last Consumer Price Index for all-urban consumers published by the Department of Labor.

(C) ADDITIONAL CONTRIBUTIONS REQUIRING CONGRESSIONAL APPROVAL.—

(i) AUTHORITY.—Notwithstanding subparagraph (A), the President may furnish additional contributions for activities associated with any conference held pursuant to Article 13 of the Amended Mines Protocol which would otherwise be prohibited under subparagraph (A) if—

(I) the President determines and certifies in writing to the appropriate

committees of Congress that the failure to make such contributions would seriously affect the national interest of the United States; and

(II) Congress enacts a joint resolution approving the certification of the President under subclause (I).

(ii) STATEMENT OF REASONS.—Any certification made under clause (i) shall be accompanied by a detailed statement setting forth the specific reasons therefor and the specific activities associated with any conference held pursuant to Article 13 of the Amended Mines Protocol to which the additional contributions would be applied.

(5) UNITED STATES AUTHORITY FOR TECHNICAL COOPERATION AND ASSISTANCE.—Notwithstanding any provision of the Amended Mines Protocol, no funds may be drawn from the Treasury of the United States for any payment or assistance (including the transfer of in-kind items) under Article 11 or Article 13(3)(d) of the Amended Mines Protocol without statutory authorization and appropriation by United States law.

(6) FUTURE NEGOTIATION OF WITHDRAWAL CLAUSE.—It is the sense of the Senate that, in negotiations on any treaty containing an arms control provision, United States negotiators should not agree to any provision that would have the effect of inhibiting the United States from withdrawing from the arms control provisions of that treaty in a timely fashion in the event that the supreme national interests of the United States have been jeopardized.

(7) PROHIBITION ON DE FACTO IMPLEMENTATION OF THE OTTAWA CONVENTION.—Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that—

(A) the President will not limit the consideration of alternatives to United States anti-personnel mines or mixed anti-tank systems solely to those that comply with with the Ottawa Convention; and

(B) in pursuit of alternatives to United States anti-personnel mines, or mixed anti-tank systems, the United States shall seek to identify, adapt, modify, or otherwise develop only those technologies that—

(i) are intended to provide military effectiveness equivalent to that provided by

the relevant anti-personnel mine, or mixed anti-tank system; and

(ii) would be affordable.

(8) CERTIFICATION WITH REGARD TO INTERNATIONAL TRIBUNALS.—Prior to the deposit of the United States instrument of ratification, the President shall certify to Congress that with respect to the Amended Mines Protocol, the Convention on Conventional Weapons, or any future protocol or amendment thereto, that the United States shall not recognize the jurisdiction of any international tribunal over the United States or any of its citizens.

(9) TACTICS AND OPERATIONAL CONCEPTS.—It is the sense of the Senate that development, adaptation, or modification of an existing or new tactic or operational concept, in and of itself, is unlikely to constitute an acceptable alternative to anti-personnel mines or mixed anti-tank systems.

(10) FINDING REGARDING THE INTERNATIONAL HUMANITARIAN CRISIS.—The Senate finds that—

(A) the grave international humanitarian crisis associated with anti-personnel mines has been created by the indiscriminate use of mines that do not meet or exceed the specifications on detectability, self-destruction, and self-deactiva-

tion contained in the Technical Annex to the Amended Mines Protocol; and

(B) United States mines that do meet such specifications have not contributed to this problem.

(11) APPROVAL OF MODIFICATIONS.—The Senate reaffirms the principle that any amendment or modification to the Amended Mines Protocol other than an amendment or modification solely of a minor technical or administrative nature shall enter into force with respect to the United States only pursuant to the treaty-making power of the President, by and with the advice and consent of the Senate, as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

(12) FURTHER ARMS REDUCTIONS OBLIGATIONS.—The Senate declares its intention to consider for approval an international agreement that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the treaty-making power as set forth in Article II, section 2, clause 2 of the Constitution of the United States.

(13) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally-based principles of treaty interpretation set forth in condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and condition (8) of the resolution of ratification of the CFE Flank Document, approved by the Senate on May 14, 1997.

(14) PRIMACY OF THE UNITED STATES CONSTITUTION.—Nothing in the Amended Mines Protocol requires or authorizes the enactment of legislation, or the taking of any other action, by the United States that is prohibited by the Constitution of the United States, as interpreted by the United States.

SEC. 5. DEFINITIONS.

As used in this resolution:

(1) AMENDED MINES PROTOCOL OR PROTOCOL.—The terms ''Amended Mines Protocol'' and ''Protocol'' mean the Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, together with its Technical Annex, as adopted at Geneva on May 3, 1996 (contained in Senate Treaty Document 105-1).

(2) CFE FLANK DOCUMENT.—The term ''CFE Flank Document'' means the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990, done at Vienna on May 31, 1996 (Treaty Document 105–5).

(3) CONVENTION ON CONVENTIONAL WEAPONS.—The term ''Convention on Conventional Weapons'' means the Convention on Prohibitions or Restriction on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, done at Geneva on October 10, 1980 (Senate Treaty Document 103–25).

(4) OTTAWA CONVENTION.—The term ''Ottawa Convention'' means the Convention on the Prohibition of the Use, Production, Stockpiling, and Transfer of Anti-Personnel Mines and on Their Destruction, opened for signature at Ottawa December 3–4, 1997 and at the United Nations Headquarters beginning December 5, 1997.

(5) UNITED STATES INSTRUMENT OF RATIFICATION.—The term ''United States instrument of ratification'' means the instrument of ratification of the United States of the Amended Mines Protocol.

VIII. Article by Article Analysis

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices (Protocol II) is annexed to the Convention on Prohibitions or Restriction on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (the Convention).

The Convention, including Protocol II, as well as two additional protocols, was concluded at Geneva on October 10, 1980. The United States ratified the Convention and expressed its consent to be bound by its Protocol II, as well as its Protocol I on Non-Detectable Fragments, on March 24, 1995.

In 1994, an international review of the Convention was begun to address, in particular, the strengthening of Protocol II. This international review process concluded in May of this year with the adoption of an amended Protocol II, including a revised Technical Annex (referred to herein variously as the amended Protocol or the amended Mines Protocol). It provides significant improvements over the current Protocol II of 1980 (the 1980 Protocol). The provisions of the amended Protocol are analyzed, article-by-article, below.

Article 1—Scope of Application

Article 1 consists of six paragraphs and addresses the scope of the Protocol.

Paragraph 1 establishes the material scope of application. Like the 1980 Protocol, the amended Protocol imposes a series of restrictions on the use of land mines, booby-traps and certain other delayed-action weapons. It applies to mines, both anti-personnel and anti-vehicle, laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

Paragraph 2 expands the circumstances in which the provisions of the Protocol must be observed. The 1980 Protocol is limited to international armed conflicts and "wars of national liberation" identified in Article 1(4) of Protocol I Additional to the 1949 Geneva Conventions. That is, by its terms, it applies only to situations of armed conflict between states or to cases "in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination."

The amended Protocol encompasses all internal armed conflicts, incorporating by reference situations referred to in Article 3 common to the Geneva Conventions of 1949. (Common Article 3 concerns non-international armed conflict occurring within the territory of a state.)

The result is particularly significant in several respects. First, it is in internal conflicts (such as Cambodia and Angola) that the greatest civilian casualties from mines have occurred. Regulating and restricting the use of mines in such conflicts in the future will mean, if the Protocol is complied with, significant reductions in civilian deaths and injuries.

Second, since the requirements of the amended Protocol apply to all armed conflicts, whatever their political character, it gives no

special status to "liberation wars", as do Article 1(4) of Additional Protocol I and references thereto in Article 7 of the Convention itself. It was because of this special status and the subjectivity and political controversy that the reference to it injects into international humanitarian law that the United States declared at the time of its ratification of the Convention in March of 1995, that Article 7 of the Convention will have no effect in this respect.

Third, as provided for in paragraph 3, the amended Protocol will, if in force for a state involved in an internal armed conflict, govern that state's use of mines as well as the use of mines by the other party or parties to the conflict (that is, the insurgent group). There is no requirement that the adverse party or parties in the conflict meet specific criteria—e.g., be organized under responsible command and exercise some territorial control—as is the case in Protocol II Additional to the Geneva Conventions (the most recent attempt by the international community to improve the law applicable to internal conflicts).

Thus, although the amended Protocol expressly excludes from its scope of application situations of internal disturbances, such as riots, it does not permit the armed forces of a state—or of an insurgent group—to ignore its requirements in an armed conflict. It applies in all cases of non-international armed conflict and is therefore of broader application than Protocol II Additional to the Geneva Conventions.

As a result of this more comprehensive coverage, the cases where use of mines would technically be unregulated are quite few. Prospects that the amended Protocol will be observed by responsible militaries in all situations are therefore good, since few such militaries will wish to squander resources and material to maintain a double standard on the use of mines under such circumstances.

Finally, it was understood that certain provisions of the amended Protocol must be observed at all times. A statement to this effect was made part of the negotiating record by the delegation of Belgium, speaking on behalf of 24 other delegations, including the U.S. delegation, at the final plenary session of the Review Conference and was not contested by any other delegation.

This conclusion is supported, as well, by the scope of the Convention itself which makes clear that it and its annexed Protocols shall apply in situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949. Common Article 2 refers specifically to provisions which shall be implemented in peace-time, a recognition that certain provisions must be observed at all times if they are to be implemented in good faith. Among the provisions of the amended Protocol that must be so observed are: the provisions regarding the recording, marking, monitoring and protection of areas containing mines; the provisions of Article 8 regarding transfers; and the provisions of Articles 13 and 14 regarding consultations and compliance. A statement to this effect was made part of the negotiating record by the U.S. Delegation, and was not contested by any other delegation.

Paragraphs 4 and 5 are a response to the concern that the expanded scope of the Protocol could be used as a pretext to violate the sovereignty of a state or intervene in its internal affairs. The

provisions repeat verbatim Article 3 of Protocol II Additional to the Geneva Conventions.

An important point about paragraph 4 is that only "legitimate" means may be used to "defend the national unity and territorial integrity." Therefore, even imperative needs of state security may not be invoked to justify breaches of the rules of the amended Protocol as such actions are, by definition, illegitimate.

Paragraph 5 concerns, specifically, the principle of non-intervention, and provides that nothing in the amended Protocol itself shall be invoked to justify intervention in the affairs of a High Contracting Party. This does not mean that any action to enforce the Protocol, such as a discussion of compliance issues in the periodic meetings of Parties under Article 13, could be considered unlawful intervention.

Finally, paragraph 6 is a response to the concern that the application of the amended Protocol to other than High Contracting Parties could affect the legal status of such parties or of territory in dispute. This paragraph meets that concern by clarifying that application of the amended Protocol to such parties will not change their legal status or the status of disputed territory. The language is drawn from a similar provision in paragraph 2 of Article 3 Common to the Geneva Conventions of 1949.

Article 2—Definitions

Article 2 consists of 15 paragraphs, each providing a definition for a term used in the amended Protocol, including its technical annex. These definitions are not listed in any particular order of precedence, although it was generally recognized during the negotiations that the definition of "mine," "remotely-delivered mine," "anti-personnel mine," and "transfer" were particularly important.

Paragraph 1 of Article 2 defines "mine" as a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle. It repeats the formula of the 1980 Protocol verbatim.

There are several noteworthy aspects of this definition. First, the term "mine" includes both anti-personnel and anti-vehicle mines, including anti-tank mines. Thus, where reference is made to "mines," as in Article 3 concerning general restrictions on the use of mines, booby-traps and other devices, it is understood that both anti-personnel and anti-vehicle mines are being referenced.

The definition also contemplates that mines can be emplaced in a variety of ways—under, on or near the ground or other surface area. This makes clear that the critical defining characteristic of a mine is not its relationship to the ground or other surface area but rather its design function of being exploded by the presence, proximity or contact of a target, be that target a person or a vehicle. (This applies whether a munition is designed for this purpose in the factory, or adapted for this purpose in the field.)

It is also this characteristic, i.e. that the munition is designed to be activated by the target, that distinguishes a mine from so-called unexploded ordinance or UXO. UXO is not covered by the Protocol, either the 1980 or the amended version. Unexploded ordinance is a result of a malfunction of a munition; UXO is not "designed" in

any sense, and, in particular, is not designed to be detonated by the presence, proximity or contact of person. Although UXO presents a serious problem that requires concerted attention, it is a problem outside the scope of Protocol II.

Paragraph 2 defines "remotely-delivered mine" as a mine "not directly emplaced but delivered by artillery, missile, rocket, mortar, or similar means, or dropped from an aircraft." Such mines pose particular hazards to civilians, in part because their location cannot be marked as accurately as mines placed by hand or by mechanical mine layers and in part because, emplaced from long distances, it is often difficult to ensure that civilians are excluded from areas containing such mines. This definition was developed, therefore, to clearly categorize such mines in order to subject them to specific, additional restrictions. These additional restrictions are set forth in Article 6.

Excluded from the definition of remotely-delivered mines (and therefore from the additional restrictions of Article 6) are mines delivered by a land-based system from less than 500 meters, provided that such mines are used in compliance with, inter alia, the provisions of Article 5, which concern restrictions on the use of anti-personnel mines which are not remotely-delivered. Such mines were exempted from the definition of remotely-delivered mines because, delivered in the prescribed manner, they can be accurately marked and civilian protections can be reliably maintained.

Paragraph 3 defines "anti-personnel mine" as a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. This definition tracks closely with the definition of "mine" in paragraph 1. It adds, however, two elements.

The first is the word "primarily" in the phrase "primarily designed". This element was added to ensure that anti-tank mines equipped with anti-handling devices are not treated as anti-personnel mines. This was an important consideration for U.S. military operations. Anti-personnel mines are frequently used in conjunction with anti-tank mines to protect anti-tank mines against enemy removal during military operations. With increasing restrictions on the use of anti-personnel mines, it was clear, from a military perspective, that alternative means of protecting anti-tank mines against enemy removal during combat operations would be increasingly important.

One such common alternative is to equip anti-tank mines with anti-handling devices. But since such devices are, as a practical matter, intended to cause an anti-tank mine to detonate if handled by a person, there was concern that an anti-tank mine equipped with an anti-handling device would inadvertently fall within the definition of an anti-personnel mine, and be subject, therefore, to the additional constraints imposed on anti-personnel mines. Adding the word "primarily" before "designed" clarified that anti-tank mines that are equipped with anti-handling devices are not considered anti-personnel mines as a result of being so equipped. This language was not intended to exclude from the restrictions on anti-personnel mines any munition designed to perform the function of an anti-personnel mine. This interpretation of the phrase was made part of the negotiating record through a statement by the

German delegation at the final plenary session on behalf of 19 other delegations, including the U.S. delegation, and was not contested by any other delegation.

The second additional element in the anti-personnel mine definition is the reference to incapacitating, injuring or killing one or more persons. This description was understood to be broad enough to cover the range of hazards posed by anti-personnel mines.

However, the term 'incapacitating' does not restrict non-lethal weapon technology that may temporarily disable, stun or signal the presence of person but not cause permanent incapacity. To codify this shared understanding with the executive branch, the Committee recommends that the Senate adopt a formal understanding in the resolution of ratification for the Protocol which makes clear that "nothing in the Amended Mines Protocol may be construed as restricting or affecting in any way non-lethal weapon technology that is designed to temporarily disable, stun, signal the presence of a person, or operate in any other fashion, but not to cause permanent incapacity."

With respect to anti-personnel mines which have the potential to be either trip-wired or command-detonated, the definition applies when such mines are used with a trip-wire or are otherwise target-activated. When such mines are command-detonated, that is, exploded not by the target itself, but by an operator, they do not meet the definition of anti-personnel mine and are therefore not subject to the restrictions imposed on anti-personnel mines. They do, however, fall within the definition of "other devices" in paragraph 7.

A well-known example of such a munition is the Claymore, a munition used for protection of installations and units in the field which can be configured for detonation either by command or by trip wire. The Claymore and munitions like it are widely-employed by many militaries, mostly in the command-detonated mode. But despite their widespread use, there is little evidence that such mines, even in trip-wired modes, contribute to the humanitarian problems associated with land mines.

Accordingly, the Protocol is deliberately structured so as not to prevent the traditional military use of the Claymore. In a command-detonated mode, the Claymore does not fall within the definition of anti-personnel mine. In a trip-wired mode, the Claymore is not excluded from the restrictions applicable to anti-personnel mines by reason of the definition in paragraph 3. Specifically, such mines, when used in a trip-wired mode, are covered by the definition but special, less restrictive rules in Article 5 apply to their use for a limited time—72 hours—from their emplacement.

Finally, the term "anti-tank mine" is not used or defined in the amended Protocol; such mines are referred to by the use of the phrase "mines other than anti-personnel mines," which includes all mines designed to be exploded by the presence, proximity or contact of a vehicle. This formulation flows from the definitions for "mine" and "anti-personnel mine" when read in light of each other. Throughout this analysis mines other than anti-personnel mines are also referred to as anti-tank mines.

Paragraph 4 defines "booby trap" as any device or material which is designed, constructed, or adapted to kill or injure, and which

functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act. This is the same definition used in the 1980 Protocol. It is understood to include, for example, a hand-grenade when attached to a door and rigged to explode when the door opens, as well as devices designed in advance to function as booby-traps.

The Committee recommends that the Senate adopt a formal understanding that a trip-wired hand grenade shall be treated under the Amended Mines Protocol solely as a "booby-trap" and not as a "mine" or an "anti-personnel mine." It could be argued that such a device fit these latter definitions, and thus was subject to the relevant restrictions. Without this clarification, the Amended Mines Protocol could be misconstrued as prohibiting the use of trip-wired grenades unless, for example, these devices were clearly marked and visible. The negotiating record clearly supports the view that trip-wired hand grenades should be considered as "booby traps" for the purposes of the Protocol's application.

Paragraph 5 defines "other devices" as manually-emplaced munitions and devices, including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time. An example of such a device would be a Claymore-type munition in a command-detonated mode.

Hand-grenades, other than trip-wired hand grenades (as discussed previously) are not covered by the Amended Mines Protocol at all. Because some might argue that a hand-grenade is manually-emplaced (e.g. thrown) and actuated automatically after a lapse of time, the Committee recommends that the Senate clarify, in a formal understanding in the resolution of ratification, that the term "other devices" does not refer to a grenade.

Specific prohibitions on the use of booby-traps and other devices are found in Article 7.

Paragraph 6 defines "military objective" as, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. This is the same definition used in the 1980 Protocol and reflects a well-settled understanding of the term. The Committee recommends that the Senate adopt a formal understanding as part of the resolution of ratification clarifying the fact that land, in and of itself, can be a legitimate military objective. Thus the use of mines to neutralize or deny access to a piece of land is not prohibited under the Amended Mines Protocol.

Paragraph 7 defines "civilian objects" as objects which are not military objectives as defined in paragraph 6 of Article 2. Paragraph 6 and 7, therefore, read together, are exhaustive.

Paragraph 8 defines "minefield" as a defined area in which mines have been emplaced and "mined area" as an area which is dangerous due to the presence of mines. Although the terms are different, the provisions that apply to "minefields" and "mined areas" are the same in the Protocol.

Paragraph 8 also defines "phoney minefield" as an area free of mines that simulates a minefield. Such phoney minefields are subject to all the provisions relevant to minefields and mined areas generally; there are no special rules for phoney minefields.

Paragraph 9 defines "recording" as a physical, administrative and technical operation designed to obtain, for the purpose of registration in official records, all available information facilitating the location of minefields, mined areas, mines, booby-traps and other devices. This is a slight modification of the definition of "recording" in the 1980 Protocol, adding references to "mined areas" and "other devices." The reference to "other devices" is significant. The 1980 Protocol did not include such devices in its recording scheme. The amended Protocol has more rigorous recording requirements than the 1980 Protocol and expands the material scope of the recording requirements to include "other devices".

Paragraph 10 defines "self-destruction mechanism" as an incorporated or externally attached automatically-functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached. Self-destruction (SD) mechanisms are required for all anti-personnel mines that are not marked and monitored in accordance with Article 5, as well as, under Article 6, all remotely-delivered anti-personnel mines. Detailed reliability and timing requirements for self-destruction mechanisms are specified in the Technical Annex.

Paragraph 11 defines "self-neutralization mechanism" as an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated. The term is used in Article 6 in relation to remotely-delivered mines other than anti-personnel mines. There are no technical specifications for self-neutralization mechanisms in the Technical Annex.

Paragraph 12 defines "self-deactivating" (SDA) as automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition. Self-deactivation features are required as a backup for the self-destruction mechanisms required for all anti-personnel mines that are not marked and monitored in accordance with Article 5, as well as, under Article 6, all remotely-delivered anti-personnel mines. Detailed reliability and timing requirements for self-deactivation features are specified in the Technical Annex.

Paragraph 13 defines "remote control" as control by commands from a distance.

Paragraph 14 defines "anti-handling device" as a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with the mine. A limited restriction concerning mines with such devices appears in Article 3(6).

Paragraph 15 defines "transfer" as involving, in addition to the physical movement of mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced mines. This definition makes clear, therefore, that the transfer of areas of land (for example, in a peace agreement) is not constrained by the transfer re-

strictions of Article 8, even though mines may be present in the area. The Administration further clarified with the Senate its understanding of related issues in two classified memoranda and a letter to Chairman Helms that was received on July 23, 1998.

Article 3—General Restrictions on the use of mines, booby-traps and other devices

Article 3 consists of 11 paragraphs and sets forth both general rules and a number of specific prohibitions regarding weapons to which the amended Protocol applies. It is a significant improvement over Article 3 of the 1980 Protocol, from which it is derived.

Paragraph 1 sets forth the material scope of the Article. In contrast to a number of other articles of the Protocol, Article 3 applies to all mines, both anti-personnel and anti-tank, booby-traps and other devices.

Paragraph 2 places the responsibility for these weapons on the party that employed them and obligates that Party to clear, remove, destroy or maintain them as specified in Article 10. This provision, in conjunction with paragraph 2 of Article 5 and the whole of Article 10 of the amended Protocol, establish a comprehensive set of procedures for fulfilling this responsibility both during and after armed conflict. These procedures are explored in detail in the discussion of Article 10.

Paragraph 3 prohibits the use of mines, booby-traps or other devices which are designed or of a nature to cause superfluous injury or unnecessary suffering. This rule is derived from Article 23 of the Annex to Hague Convention No. IV, 18 October 1907, embodying the Regulations Respecting the Laws and Customs of War on Land. It thus reiterates a proscription already in place as a matter of customary international law applicable to all weapons. It also implicitly makes clear that mines, booby-traps and other devices are not, per se, of a nature to cause unnecessary suffering, for if that were considered to be the case, no such rule would be necessary and they would be prohibited entirely.

Which types of such weapons might cause "unnecessary suffering" can only be determined on a case-by-case basis, weighing the suffering caused against the military necessity for its use. One example of a prohibited device might be a mine or booby-trap that is filled with shards of glass. Such a weapon would likely be regarded as unnecessarily injurious because the shards would be undetectable by X-ray in the victim's body, and this would cause suffering that would be wholly unnecessary for its military purpose. (In any case, the device would be prohibited by Protocol I of the Convention on non-detectable fragments).

Paragraph 4 makes clear that mines, booby-traps and other devices must be used in compliance with the provisions of the Technical Annex and must themselves meet the technical specifications set forth therein. For example, anti-personnel mines used outside marked and monitored fields must be both self-destructing and self-deactivating in accordance with the precise timing and reliability standards set out in the Technical Annex.

Paragraph 5 prohibits the use of mines, booby-traps and other devices specifically designed to detonate by the presence of com-

monly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations. This provision is a result of concern with the possible development and proliferation of mines designed to impede demining activity. Although no state claimed to field such devices, in theory, mines could be adopted to detonate when a common mine detector is passed over them.

The provision clearly excludes situations where actual physical contact with mine detectors or abnormal use of mine detectors is required to detonate the mine. For example, a mine's trip-wire or tilt-rod (a type of vertical trip-wire) may be pulled or pushed in a sweep of a mine-detector, setting off the mine. This would not constitute the use of a mine in contravention of this provision.

Paragraph 6 prohibits the use of a self-deactivating mine, either anti-personnel or anti-tank, that is equipped with an anti-handling device capable of functioning after the mine has deactivated. The intent is to avoid situations where a self-deactivating mine, the "life" of which is normally limited by the life of its battery is dangerous indefinitely as a result of a long-lived anti-handling device. This would defeat the purpose of the self-deactivation function by leaving a hazardous mine in place.

All remotely-delivered anti-personnel mines and all anti-personnel mines used outside of marked and monitored fields must include a self-deactivation feature and therefore would be subject to this rule. Anti-tank mines that are remotely-delivered may be self-deactivating, although there is no absolute requirement that such mines have such a feature. (The U.S. had strongly supported a requirement in this regard but no consensus was possible.) In any case, where anti-tank mines are equipped with a self-deactivation feature, they may not have an anti-handling device capable of functioning after the mine has deactivated.

This provision was the result of lengthy discussion on anti-handling devices generally. During those discussions, the U.S. had proposed a ban on the use of all anti-handling devices on long-lived anti-personnel mines, that is, anti-personnel mines without SD/SDA. This was objectionable to many states. In the final analysis, the proscription on anti-handling devices that would outlive the self-deactivation feature for mines with a self-deactivation feature was the only proposal in this area that commanded consensus. It is a useful addition as it prevents, for example, the employment of anti-lift devices (a type of anti-handling device) that outlive the self-deactivation feature on self-deactivating mines.

Paragraph 7 codifies within Protocol II a well-established customary principle of the law of war prohibiting the targeting of the civilian population as such, or individual civilians or civilian objects. It also prohibits the use of such weapons in reprisals against civilians.

Paragraph 8 prohibits indiscriminate use of mines, booby-traps and other devices and defines such use as placement which: (a) is not aimed at a military objective as defined in Article 2, or (b) employs a method or means of delivery which cannot be directed at a specific military objective, or (c) may be expected to cause incidental loss of civilian life or damage to civilian objects excessive in

relation to the direct military advantage anticipated. This prohibition is already a feature of customary international law that is applicable to all weapons. Insofar as the United States considers land—including the neutralization or denial of access to a piece of land—to be a legitimate military objective, paragraph 8 in no way restricts the use of remotely delivered "mixed" munitions containing both anti-personnel and anti-tank mines.

Paragraph 9 provides that several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective. This provision is derived from Article 51(5)(a) of Additional Protocol I to the 1949 Geneva Conventions. However, Article 51(5)(a) is limited in its application to attacks by bombardment, prohibiting the indiscriminate shelling of an entire city, town or village on the basis of the presence of several distinct military objectives. It states, when so limited, a principle that the United States supports and regards as customary international law.

However, when applied to mine warfare, this article could leave the misleading impression that it is illegal to use mines to deny enemy access to or use of an area containing civilians or civilian objects. Thus, throughout the negotiations and at the final plenary of the Review Conference, the United States made clear its understanding that, with respect to this provision, an area of land can itself be a legitimate military objective for the purpose of the use of land mines, if its neutralization or denial, in the circumstances ruling at the time, offers a definite military advantage. The Committee recommends that the Senate declare this understanding, as well, at the time of its consent to the amended Protocol.

Paragraph 10 builds on a provision from the 1980 Protocol regarding precautions for the protection of civilians. Like the 1980 version, it requires taking all feasible precautions to protect civilians from the effects of weapons to which the amended Protocol applies. The amended provision includes four examples of circumstances which should be taken into account when considering such precautions. They are: (a) the effect of mines upon the local civilian population for the duration of the minefield; (b) possible measures to protect civilians; (c) the availability and feasibility of alternatives; and (d) the military requirements for a minefield.

These general considerations are relevant to all mines, both anti-personnel and anti-tank, as well as the other weapons to which the amended Protocol applies.

Paragraph 11 provides that effective advance warning be given of any emplacement of mines, booby-traps and other devices which may affect the civilian population, unless circumstances do not permit. This provision is drawn from the 1980 Protocol, although there it applied only to the use of remotely-delivered mines. It now applies to the use of all weapons to which the amended Protocol applies.

Article 4—Restrictions on the use of anti-personnel mines

One of the more important deficiencies of the 1980 Protocol is that it does not prohibit the use of non-detectable mines. A number

of states have produced or deployed large numbers of non-detectable plastic mines which present a serious threat to civilians, peacekeepers, relief missions and mine-clearance personnel. Article 4 is designed to eliminate that deficiency with respect to anti-personnel mines.

This article consists of a single paragraph prohibiting the use of anti-personnel mines which are not detectable as specified in the Technical Annex. Specifically, paragraph 2 of the Technical Annex requires that anti-personnel mines have attached or incorporated material "that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grams or more of iron in a single coherent mass." This means that all anti-personnel mines must be as detectable as an 8-gram lump of iron. Eight grams was chosen because it produces a metallic signature of a strength that will help mitigate factors that complicate clearance such as operator fatigue and background noise from soil with high-metallic content. Mines produced after 1 January 1997 must have the required material or device incorporated in their construction; mines produced before that date may, in the alternative, be modified to comply with this requirement by having the material or device attached to the mine, in a manner not easily removable, prior to its emplacement. (For example, this could be done through the use of durable clamps, wiring or special metallic adhesive tape that is designed to resist environmental deterioration.)

To secure this strict requirement, it was necessary to provide parties an option to defer compliance for up to nine years from entry-into-force of the Protocol to allow states with large inventories of non-detectable mines to modify or replace them. If a state determines that it cannot immediately comply with the requirements and elects to defer, it must declare its intention to do so and, to the extent feasible, minimize use of anti-personnel mines that do not comply.

Importantly, transfers of such non-compliant mines are prohibited, notwithstanding any deferral of compliance with other provisions. Moreover, a party may defer compliance only with respect to anti-personnel mines produced prior to January 1, 1997. Anti-personnel mines produced after January 1, 1997 must meet the detectability requirement or they cannot be lawfully used; there is no deferral option for newly-produced mines. This has much the same effect as a production ban on non-detectable mines, since there is no economic utility in producing a mine which can neither be used nor transferred.

It is also important to note that the Conference did not agree to the position of the states which wanted this deferral option to run from the entry into force of the Protocol for the particular state in question. This would have allowed states to defer the period indefinitely simply by postponing their own ratifications. Instead, the period runs from the overall entry into force of the Convention, which will occur when 20 states ratify and which should occur in a reasonably short period.

Article 5—Restrictions on the use of anti-personnel mines other than remotely-delivered mines

Another of the more important deficiencies of the 1980 Protocol is that it provides little effective protection for the civilian population against anti-personnel mines that remain active and dangerous for long periods. Such mines often cause civilian casualties for decades after they are laid. Articles 5 and 6 are designed to deal with that deficiency.

Article 5 consists of six paragraphs and contains key improvements over the 1980 Protocol regarding restrictions on anti-personnel mines that are not remotely-delivered.

The effect of the first four paragraphs is to require that all anti-personnel mines be kept within marked and protected minefields or be equipped with self-destruction (SD) mechanisms and self-deactivation (SDA) features in accordance with the Technical Annex to safeguard the civilian population.

With respect to the requirements to mark and protect minefields, paragraph 2 requires that all anti-personnel mines without SD/SDA be placed "within a perimeter marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area." The marking must be of a distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area. Paragraph 4 of the Technical Annex contains detailed specifications for the markings to be used, as well as an example of a readily-understood warning sign.

In essence, the mine-laying party has the responsibility to take whatever measures are necessary under the specific circumstances to keep civilians out of the minefield. The U.S. military has maintained minefields for a number of years in Guantanamo and Korea that meet these standards, and is confident that these requirements are feasible and realistic.

Mines in such an area must be cleared before the area is abandoned unless the area is turned over to a state which accepts responsibility for the required protections and subsequent clearance. With respect to this aspect of paragraph 2 on turning over territory containing mines, there was concern about potential unintended consequences in connection with peace treaties or similar arrangements. For example, it was feared that this requirement could impede negotiations where a party to the amended Protocol is negotiating the transfer of territory containing mines with a state not party.

It was widely understood, however, that this paragraph does not preclude agreement among concerned states, in connection with such arrangements, to allocate responsibilities under this paragraph in another manner which respects the essential spirit and purpose of the Article. This interpretation of the provision was made part of the negotiating record through a statement by the Australian delegation at the final plenary session on behalf of 16 other delegations, including the U.S. delegation. No other delegation contested this statement on the record. The Committee recommends that the Senate attach a formal understanding to the resolution of ratification making clear that the Protocol does not

preclude agreement among states as long as responsibilities relating to mines are allocated in a manner which reflects the spirit and purpose of Article 5.

Paragraph 3 states the only exception to the marking, monitoring, protection and clearance requirement: when "compliance is not feasible due to forcible loss of control of the areas as a result of enemy military action." For the party that laid the mines, regaining control of the area means a renewed obligation to comply with the requirements to mark, monitor, protect and clear. If another party gains control of the area, paragraph 4 makes clear that it is obliged to meet such requirements to the maximum extent feasible.

Paragraph 5 imposes a requirement to take all feasible measures to prevent removal or degradation of the perimeter markings.

With respect to the self-destruct/self-deactivation (SD/SDA) requirement for anti-personnel mines used outside of marked, monitored and protected fields, paragraph 3 of the Technical Annex provides detailed specifications to ensure that such mines do not pose a long-term threat to the civilian population. At least 90 percent of anti-personnel mines equipped with SD/SDA features must destroy themselves within 30 days of emplacement and no more than 1 in 1000 may be capable of functioning as mine within 120 days after emplacement. Put another way, the overall reliability of the two systems working together meets the same reliability standard—99.9 percent—that the United Nations uses as its standard for deeming a field cleared in a humanitarian demining context. In practice, the safety of compliant mines will be even higher, since the design of a self-deactivating mine will inevitably render all mines inoperative within a brief period (typically, through the exhaustion of the battery powering the mine).

To secure these strict requirements and technical standards for SD/SDA it was again necessary to provide parties an option, tightly limited, to defer compliance with the self-destruct element for up to nine years from entry-into-force of the Protocol to permit states with large inventories of non-compliant mines to bring themselves into conformity with the new rules.

As with the option related to detectability, if a state determines it cannot immediately comply with the SD requirement for non-remotely-delivered anti-personnel mines used outside of marked and monitored fields, it may declare, with respect to mines produced prior to entry-into-force of the amended Protocol, that it will defer compliance. To the extent feasible, it must then minimize use of anti-personnel mines that do not comply. It must, however, with respect to such mines, comply with the requirements for self-deactivation.

In other words, for a limited time, a deferring party may use anti-personnel mines without SD outside of marked and monitored fields, provided such mines self-deactivate within 120 days in accordance with the requirements of the Technical Annex. By the end of the deferral period, and sooner if possible, any anti-personnel mine used outside of marked and monitored fields must be both self-destructing and self-deactivating. Moreover, because the deferral option only applies to mines produced prior to entry-into-force, there is a strong disincentive to produce such non-compliant anti-

personnel mines after entry-into-force since such newly-produced mines may not be lawfully used outside of marked and monitored fields under any circumstances. Finally, as noted above, the deferral period runs from the overall entry to force of the amended protocol, rather than the date on which it enters into force for the particular state in question.

The last paragraph of Article 5 deals with "Claymore" type mines when used in a trip-wired mode. It establishes an exemption from the marking and protection requirements of subparagraph 2(a) of the Article for such mines, defined as anti-personnel mines "which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground." The exemption is restricted to a period of 72 hours from emplacement, at which point such mines are subject to the full set of protections required by subparagraph 2(a). (Typically, the personnel using the device will deactivate it and take it with them for protection at their next deployment point.) Furthermore, the exemption is contingent on (a) such mines being located in "immediate proximity" to the military unit which emplaced them and (b) the area of their emplacement being monitored by military personnel to "ensure the effective exclusion of civilians." This is consistent with the practice of U.S. and other western military forces, which have safely used the Claymore for unit protection in the field for many years. (Claymores used in a command-detonated mode do not fall within the definition of "anti-personnel mines" and are therefore not covered by Article 5.)

The Committee recommends that the Senate adopt a formal understanding of the term "effective exclusion of civilians" to ensure that the Protocol will not be construed as placing impractical requirements on U.S. military personnel. The requirement for U.S. military personnel to ensure the "effective exclusion of civilians" when using Claymore mines is satisfied as long as the unit so using the mine keeps overview of the various avenues of approach. No question of compliance with this paragraph will arise, even if a civilian is killed or injured by a trip-wired Claymore, if the military unit in question posted sentries or otherwise was maintaining overview of the area where the mines were emplaced.

Article 6—Restrictions on the use of remotely-delivered mines

Article 6 consists of 4 paragraphs and deals with restrictions on the use of remotely-delivered mines (those delivered by aircraft or artillery). It is a significant improvement over the requirements of the 1980 Protocol, particularly with respect to remotely-delivered anti-personnel mines, the use of which is banned unless equipped with SD/SDA features as specified in paragraph 3 of the Technical Annex.

Paragraph 1 requires that all remotely-delivered mines, both anti-personnel mines and anti-tank mines, have their locations recorded in accordance with specifications set forth in the Technical Annex.

Paragraph 2 bans the use of long-lived remotely-delivered anti-personnel mines, that is, anti-personnel mines that are not self-destructing and self-deactivating in accordance with the specifications of the Technical Annex. This provision reinforces the Article 5 restrictions on anti-personnel mines, in effect prohibiting all use of

long-lived anti-personnel mines outside of marked, monitored and protected areas.

Again, to secure this strict requirement, it was necessary to provide parties an option to defer full compliance for up to nine years from entry-into-force of the amended Protocol; the intent being to enable states with large inventories of non-compliant mines to bring themselves into compliance with the new rules.

Thus, in the case of remotely-delivered anti-personnel mines, if a state determines that it cannot immediately comply with either the SD or SDA requirement, it may declare, with respect to such mines produced prior to entry-into-force of the amended Protocol, that it will defer compliance and, to the extent feasible, minimize use of such mines that do not comply. During the deferral period, it must, however, with respect to such remotely delivered anti-personnel mines, comply with either the Technical Annex requirements for self-destruction or self-deactivation.

Put another way, for a limited time, a deferring party may use remotely-delivered anti-personnel mines without both SD and SDA (it must have one or the other). By the end of the deferral period, and sooner if possible, all such mines must be both self-destructing and self-deactivating.

Significantly, transfers of remotely-delivered anti-personnel mines without both SD and SDA are immediately prohibited regardless of any deferral, in accordance with Article 8(2). Moreover, because the option to defer compliance only applies to remotely-delivered anti-personnel mines produced prior to entry-into-force, such mines produced after entry-into-force cannot lawfully be used or transferred unless they meet all requirements of the amended Protocol. Like the parallel detectability provision, this has much the same effect as a production ban on long-lived remotely-delivered anti-personnel mines (i.e. those without both SD and SDA) since there is no economic utility in producing such a mine which can neither be used nor transferred.

Paragraph 3 applies to remotely-delivered mines that are not anti-personnel mines. It prohibits the use of such mines, unless, to the extent feasible, they are equipped with "effective" self-destruction or self-neutralization mechanisms and back-up self-deactivation features. (The United States took the position that such mines should be equipped with self-deactivation and either self-destruction or self-neutralization, but many other delegations were unwilling to go so far with respect to anti-tank mines.) Unlike SD and SDA for anti-personnel mines, which are subject to strict technical specifications, there are no specific reliability standards and no timing requirement other than that these features be designed such that the anti-tank mine, if so equipped, will cease to function as a mine when it no longer serves the military purpose for which it was placed in position.

Paragraph 4 carries forward a provision from the 1980 Protocol, requiring advance warning of any deployment of remotely-delivered mines which may affect the civilian population unless circumstances do not permit.

Article 7—Prohibitions on the use of booby-traps and other devices

Article 7 consists of three paragraphs and concerns the use of booby-traps and "other devices". It builds upon the booby-trap article of the 1980 Protocol, extending its prohibitions to "other devices" and providing additional limitations aimed at safeguarding civilians.

Paragraph 1 prohibits booby-traps or other devices attached to or associated with any of a series of objects thought to pose particular dangers to civilians or other protected persons, including: internationally recognized protective emblems; sick, wounded or dead persons; medical facilities or equipment; children's toys or objects specially designed for children; and food or drink.

In its examination of the Amended Mines Protocol, the Committee became concerned that subparagraph 1(f) of Article 7 precluded the use of certain munitions against military establishments, such as supply depots, which are legitimate military targets. Specifically, Article 7 of the Amended Mines Protocol bans the use of "booby traps and other devices" in any manner that is "in any way attached to or associated with" ten different categories of items, one of which is "food and drink." This is an expansion of the prohibition contained in the original 1980 Protocol, to which the United States is already a party; the original provision barred only the use of booby traps against such targets.

Under the Protocol, the definition of "other devices" is broad, covering everything from special demolition munitions to satchel charges (such as C-4 with a timer). Moreover, the term "food and drink" is undefined, and therefore might be construed broadly to include all nature of food and drink, including supply depots and other logistics dumps. Because Article 7 prohibits the use of "other devices" in a manner that is "in any way attached to or associated with... food or drink", the Protocol threatens to make it far more difficult, or impossible, for the United States Armed Forces to accomplish certain types of missions.

A variety of U.S. military units train to use specialized explosive charges against a wide range of legitimate military targets, including depots and enemy supply dumps. As written, the Article 7 creates the potential that military personnel could be accused of "war crimes" under the CCW and the Protocol for legitimate military actions (for instance, if they were to drop a satchel charge under a truck carrying crates of rations). Likewise, the use of a demolition charge to destroy a mountain of ammunition and fuel barrels would be precluded if that mountain also contained crates of food.

Consequently, a reservation to the Protocol is necessary to ensure that this provision does not tremendously complicate mission accomplishment, and ultimately lead either to increased U.S. casualties or to a command decision not to employ the U.S. Armed Forces against supply dumps, depots, or other military locations containing "food or drink."

Such a reservation is also necessary to make clear that the Senate will not agree to the use of Article 7(f) of the Amended Mines Protocol (or like provisions in the Convention on Conventional Weapons) as a precedent for future "laws of war" treaties. The reservation clarifies the fact that stocks of "food or drink," if judged

by the United States to be of potential military utility, will not be accorded special or protected status.

Some have argued that "food and drink"—regardless of whether it is in a military establishment or not—is particularly attractive to civilians. For this reason, the proposed reservation requires that "due precautions are taken for the safety of the civilian population." However, in providing for the use of "other devices" to destroy any stock of food judged "likely to be used by an enemy military force," the Committee implicitly rejects the argument that munitions cannot be used against supply depots because civilians might be present. According to the same logic, neither cruise missiles nor gravity bombs should be used against supply depots. The Committee reservation makes clear that the Amended Mines Protocol may not be construed as a precedent for seeking to ban the use of other types of weaponry against these legitimate military targets in further negotiations associated with the "laws of war."

In making this reservation, the United States in no way diminishes the protections afforded civilians under the Amended Mines Protocol. Numerous other overlapping provisions of the Protocol eliminate all concerns over the appropriate employment of various munitions by the Armed Forces of the United States.

Additionally, the use of booby-traps and other devices is forbidden in connection with historic monuments, works of art, or places of worship "which constitute the cultural or spiritual heritage of peoples." The Committee is concerned that some might argue that this paragraph, as written, applies to an extremely large category of buildings and items. To protect U.S. military personnel from erroneous accusations of noncompliance, the Committee recommends that the Senate adopt a formal understanding making clear that only a very limited class of objects (which have clearly and widely recognized cultural or spiritual importance) fall within this category. Further, the Committee notes that unless information about the cultural or spiritual significance of the object in question can be assessed as having been reasonably available to U.S. military personnel, the question of compliance does not arise.

Paragraph 2 prohibits the use of any booby-trap or other devices in the form of an apparently harmless portable object which is specifically designed and constructed to contain explosive material. This does not prohibit expedient adaptation of objects for use as booby-traps or other devices that are not designed or constructed for such use, and an understanding should be adopted at the time of ratification to make that clear. Such improvisation of booby-traps, for example to retard an enemy advance, does not pose the same sort of danger to the civilian population as the mass production of objects specifically designed as booby-traps toward which the provision was directed.

The Committee recommends that the Senate include a formal understanding in the resolution of ratification making clear that the prohibition against the deliberate construction of booby-traps in the form of apparently harmless objects does not preclude U.S. military personnel from booby-trapping items either in advance, or in the field, as long as those items are not specifically designed and constructed to serve as booby-traps. Paragraph 2 was not meant to

capture the ad hoc adaptation of devices, for example, by U.S. special operations forces.

Paragraph 3 restricts the use of booby-traps and other devices. Use in cities, towns, villages or other areas containing a similar concentration of civilians is permitted only if combat between ground forces is taking place or appears imminent and (1) these weapons are placed in the close vicinity of a military objective or (2) measures are taken to protect civilians, such as the posting of warning sentries; the issuance of warnings or the erection of fences. Again, the Committee notes that land, in and of itself, is considered a legitimate military objective.

Article 8—Transfers

Article 8 consists of three paragraphs and deals with the transfer of mines. The proliferation and easy availability of these weapons significantly increases the threat to the civilian population. Although transfer restrictions in a law of war convention are uncommon, it was, in the U.S. view, essential to address this aspect of the problem as a means of further reducing indiscriminate and irresponsible use. The Administration further clarified with the Senate its understanding of issues related to Article 8 in two classified memoranda and a letter to Chairman Helms that was received on July 23, 1998.

Paragraph 1(a) prohibits the transfer of all mines the use of which is prohibited by the amended Protocol, for example, anti-personnel mines which do not meet the detectability standards of the Technical Annex, remotely-delivered anti-personnel mines which do not have SD/SDA features in accordance with the Technical Annex, and anti-personnel mines and anti-tank mines that are specifically designed to be detonated by the presence of common mine detectors.

Moreover, in paragraph 3 a political commitment is included to refrain from actions inconsistent with this subparagraph starting from the adoption of the Protocol (which occurred on May 3rd of this year). Although such a political commitment does not legally bind the United States or prejudice the consideration of the amended Protocol by the United States Senate, it is in fact U.S. policy, pending entry into force, to observe all of the restrictions of the amended Protocol to the fullest extent possible from the time of adoption. This policy governs, as well, our observance of the provisions of Article 8.

Paragraph 1(b) prohibits the transfer of mines to recipients other than states or state agencies authorized to receive such transfers.

Paragraph 1(c) requires that parties exercise restraint in the transfer of mines to all states and, with respect to any state not bound by the amended Protocol, prohibit all transfers of anti-personnel mines, unless such a state agrees to apply the amended Protocol. This provides assurance that such transfers will only be made to states that are committed to observing all the use restrictions of the amended protocol.

Paragraph 1(d) requires parties to ensure that any transfers made within the limitations of the Article otherwise comply with applicable norms of international law.

Paragraph 2 makes clear that a party's decision to defer compliance with certain provisions (as permitted in limited cases under the Technical Annex) does not release it from the transfer prohibition in subparagraph 1(a). Thus, as earlier discussed, a party may elect to continue to use, for example, non-detectable anti-personnel mines for up to nine years from entry into force of the Protocol, but that party remains bound not to transfer such mines during that period.

Article 9—Recording and use of information on minefields, mined areas, mines, booby-traps and other devices

This article consists of 3 paragraphs and deals with the recording and use of information on all weapons subject to the Protocol, substantially improving the regime established by the 1980 Protocol.

Paragraph 1 requires parties to record all information on such weapons in accordance with the provisions of the Technical Annex. This is more expansive than the 1980 Protocol which imposed such a requirement only on minefields and booby-traps that were "preplanned". Paragraph 1 of the Technical Annex provides specific guidelines for such recording. The party laying mines is required, among other things, to record the location, perimeter and extent of minefields, and mined areas; the exact location of every mine, where feasible; and the type, number, emplacing method, type of fuse and life time, date and time of laying, anti-handling devices (if any) and other relevant information.

Paragraph 2 requires that records of all such information be retained. Immediately after the cessation of active hostilities, parties must take "all necessary and appropriate measures, including the use of such information" to protect civilians from these weapons in areas under their control. At the same time, parties must also make such information available to other appropriate parties, including the Secretary General of the United Nations, unless, in cases where forces of a party are in the territory of an adverse party, security interests require withholding the information.

Paragraph 3 clarifies that this Article is without prejudice to other Articles of the amended Protocol which deal with information about and removal of weapons subject to the Protocol.

Article 10—Removal of minefields, mined areas, mines, booby-traps and other devices and international cooperation

Article 10 consists of 4 paragraphs and concerns the clearance or maintenance of minefields, as well as the disposition of other weapons subject to the Protocol. It also apportions responsibility for these obligations and constitutes a major improvement over the 1980 Protocol.

Paragraph 1 requires the clearance, removal, destruction or maintenance of protections for all such weapons without delay after the cessation of active hostilities.

Paragraph 2 of Article 10 imposes this responsibility on the party in the best position to fulfill the responsibility—that is, the party in control of the area containing the weapons.

Paragraph 3 requires that, if a party employed weapons in an area that, after the cessation of active hostilities, is under the con-

trol of another party, the party which employed the weapons has an obligation to provide certain limited assistance to the party in control of the area with respect to the safeguarding or removal of those weapons. For example, if a party laid mines in an area over which it lost control, it is required to provide to the party in control of the area, "technical and material assistance necessary to fulfil" the removal or safeguarding responsibility set out in paragraph 1 of this Article. The provision of assistance is limited to that permitted by the party in control of the area and its scope and nature are unspecified.

Paragraph 4 requires that the parties endeavor to reach agreement "at all times necessary" on the provisions of technical and material assistance to fulfill removal and safeguarding responsibilities for mines, booby-traps and other devices.

Article 11—Technological cooperation and assistance

Article 11 consists of 7 paragraphs and deals with the exchange of equipment, material and information on the implementation of the amended Protocol and mine clearance. These provisions are designed to encourage these exchanges, which are necessary for prompt and effective mine-clearance operations and protocol implementation. No specific obligation exists to provide any particular type of assistance.

Paragraph 1 provides that each High Contracting Party undertakes to facilitate and has the right to participate in the fullest possible exchange of equipment and information concerning the implementation of the Protocol and mine clearance, and to refrain from "undue" restrictions on the provision of mine clearance equipment and information for humanitarian purposes. The U.S. and other western delegations made clear that this would not affect the discretion of states to restrict or deny permission to export such items for national security or other valid reasons. The Committee recommends that the Senate clarify this shared understanding with the Executive branch in a formal understanding in the resolution of ratification for the Amended Mines Protocol. The Committee further recommends that such an understanding make clear that other countries may not legitimately use the Amended Mines Protocol as a pretext for the transfer of militarily significant assistance or equipment under the guise of providing simple humanitarian assistance.

Paragraph 2 provides that each High Contracting Party undertakes to provide information for the mine clearance data base established within the UN system. Each party retains the right to determine the extent and type of information that it will provide.

Paragraph 3 provides that each High Contracting Party "in a position to do so" shall provide assistance for mine clearance on a bilateral or multilateral basis. This language was specifically designed by western delegations to reserve to contributing states the determination of whether, how, and how much to contribute. Paragraph 4 and 5 describe procedures by which High Contracting Parties may request assistance for these purposes.

Paragraph 6 provides that High Contracting Parties undertake, "without prejudice to their constitutional and other legal provi-

sions," to transfer technology to facilitate implementation of the Protocol. Once again, this language was specifically designed by western delegations to reserve to contributing states the ability to limit technology transfers in accordance with their laws.

The final paragraph notes the right of parties, where appropriate, to seek and receive, as necessary and feasible, technical assistance on relevant non-weapon technology as a means of reducing deferral periods.

Article 12—Protection from the effects of minefields, mined areas, mines, booby-traps and other devices

Article 12 consists of 7 paragraphs and improves provisions in the 1980 protocol on the protection of international forces and missions from land mines and other covered weapons.

Paragraph 1 makes clear that these provisions do not obviate the need for host-state consent to the entry of such missions into their territory (with the exception of UN peacekeeping forces and similar missions as provided in the UN Charter), do not change the legal status of the territories or parties affected, and are without prejudice to any higher level of protection granted by international law, including decision of the UN Security Council.

Paragraph 2 applies to UN forces or missions, and to regional peacekeeping forces established pursuant to Chapter VIII of the Charter. Each High Contracting Party is required, so far as it is able, to take such measures as are necessary to protect such forces and missions from the effects of mines in any area under its control (including their removal if necessary), and to provide information on such mines to the head of the force or mission. Paragraphs 3, 4 and 5 provide similar protections for international humanitarian and fact-finding missions, and for the International Red Cross and national Red Cross or Red Crescent societies.

Paragraph 6 requires that such information provided in confidence not be released without the express authorization of the provider. Paragraph 7 requires respect for the laws of the host state, without prejudice to the requirements of the duties of such forces and missions.

Article 13—Consultations of High Contracting Parties

Article 13 consists of 5 paragraphs and provides for regular meetings of parties to consider further improvements to the Protocol, exchange information and annual reports and review other issues related to the operation of the Protocol.

This adds a vital element to the 1980 regime, which contained no mechanism for consultations other than the complex review process which applies to the Convention as a whole. Meetings under this Article will concern only the Protocol itself, assuring that the Parties take responsibility for keeping it effective and up-to-date with respect to the problems it is meant to address.

Specifically, paragraph 1 and 2 provide for annual conferences of parties. Paragraph 3 describes the work of the conferences, including a review of the operation of the Protocol, preparation for review conferences, and consideration of the development of technologies to protect civilians. Paragraph 4 provides for annual reports by

High Contracting Parties on these and other matters to advance of each annual conference. Paragraph 5 deals with the allocation of costs of these meetings.

Article 14—Compliance

Article 14 consists of 4 paragraphs and is modeled on provisions of the Geneva Conventions of 1949.

Paragraph 1 calls upon parties to "take all appropriate steps, including legislative and other measures, to prevent and suppress violations" of the amended Protocol. The imposition of such a responsibility is an important element in promoting compliance with the Protocol.

Paragraph 2 requires High Contracting Parties to impose penal sanctions against persons who violate provisions of the Protocol and in doing so, wilfully kill or cause serious injury to civilians, and to bring such persons to justice. This obligation might be implemented, with respect to such persons found on the territory of a party, either by prosecuting the offender or extraditing him to another appropriate state for prosecution. To ensure that the United States is able to carry out fully its obligations in this regard, the Executive branch has already submitted legislation to Congress, providing jurisdiction to U.S. courts to enforce penal sanctions against such persons.

Paragraph 3 requires appropriate instruction and training for armed forces personnel on their obligations under the Protocol. Paragraph 4 requires consultation and cooperation among parties to resolve any problems that may arise with regard to the interpretation and application of the Protocol.

The Committee recommends that the Senate adopt a formal understanding in the resolution of ratification making clear that U.S. military personnel may be prosecuted for a violation of the Amended Mines Protocol only if they knowingly and intentionally kill or cause serious injury to a civilian. Further, the Committee notes that the actions of U.S. military personnel can only be assessed in light of information that was available at the time. In other words, U.S. military personnel cannot be judged on the basis of information which only subsequently came to light. Taken together, these two provisions erase the danger that U.S. military personnel will be at risk of being "second guessed" with respect to land mine use.

In addition the Committee recommends that the Senate make clear that Article 14 permits only domestic penal sanctions for violations of the Protocol. Ratification of this Protocol, therefore, in no way authorizes the trial of any person before an international criminal tribunal for violations of either this Protocol or the Convention on Conventional Weapons. The Committee further recommends that the Senate formally state the view of the United States that, if such an effort were made to misinterpret the scope of Article 14, the United States would not recognize the jurisdiction of any international tribunal to prosecute a U.S. citizen for a violation of this Protocol or the Convention on Conventional Weapons.

In order to fully clarify the shared understanding between the Executive and the Senate on the means by which the United States will enforce the provisions of both the Protocol and the CCW, the

Committee recommends that a certification be required of the President as a condition of ratification. Specifically, the Committee recommends that, prior to the deposit of the United States instrument of ratification for this Protocol, the President certify to the Congress that with respect to this Protocol, the Convention on Conventional Weapons, or any future protocols or amendments thereto, that the United States shall not recognize the jurisdiction of any international tribunal over the United States or any of its citizens.

Technical Annex

The Technical Annex consists of 4 paragraphs and an attachment. It provides substantial improvements over the current provisions on recording and marking of mines, including a requirement that mine records be kept at a level of command sufficient to ensure their safety, as well as a requirement that all mines produced after entry-into-force be marked to indicate, among other things, their country of origin and date of production.

It also provides detailed specifications for SD and SDA features and detectability, as well as their respective transition periods. It establishes specifications for internationally recognized signs for minefields and provides an example of an easy-to-understand international mine warning sign.

These provisions are described in detail above in connection with the relevant substantive provisions of the Protocol.

IX. Additional Views of Chairman Helms

The Committee on Foreign Relations approved by a vote of 14–4 a resolution of ratification for the Amended Mines Protocol on July 23, 1998. The resolution included 1 reservation, 9 understandings, and 14 conditions. Every provision was painstakingly negotiated with, and agreed to in full by, the Ranking Minority Member and the Administration. Indeed, even "sense of the Senate" language was discussed and modified at Administration request.

Whereas the Executive branch rarely comments or takes a position on "sense of the Senate" language, in the case of the Amended Mines Protocol, the Administration noted that, with respect to Condition (2), "we believe that the scope of the expression of views contained is far too narrow and we urge the Committee to modify it." The Administration then proposed alternative, non-binding language. Because of Administration opposition to the first version of the condition on the negotiation of an export moratorium, that provision was substantially re-worked, and little resembles today its earlier form.

Moreover, additional conditions expressing the sense of the Senate did not exist prior to the initiation of negotiations on the resolution with the Administration. Because the Administration objected to early iterations of Conditions (1) and (7), compromise was reached which resulted in significant changes to those conditions and in the creation of Condition (9), which expresses the sense of the Senate regarding technological alternatives to land mines. The Executive branch, in achieving its objectives of altering those two conditions, explicitly agreed to the new formulations and to the creation of Condition (9). At the completion of negotiations on the res-

olution, all parties involved made clear that the final product was fully supported by the Chairman and Ranking Minority Member, and the Administration. As in all things in the Senate, the document was the product of compromise.

Many on the Committee therefore were shocked when the Administration repudiated the compromise. The following day, at a business meeting convened to consider and approve the resolution of ratification for the Amended Mines Protocol (among other things), Administration officials declared that they do not "take a position" on sense of the Senate provisions, that they had several problems with the resolution, and that Condition (1) remained of particular concern to them. Despite these statements (which clearly distorted the truth and contradicted the assurances given the previous night), the resolution passed 14-4. The Committee's confidence in the Administration's trustworthiness was shaken, however, as a result of these events. It is regrettable that, in the intervening two months, the Administration has not retracted the comments made at the business meeting and reassured the Committee that the executive branch did, in fact, support all provisions of the resolution, as was agreed initially. The absence of this reassurance has delayed transmittal of the resolution to the Senate for consideration.

That said, both Senator Biden and I have remained steadfast in our support for the resolution as negotiated and approved by the Committee. However, because the Senate is now faced with relatively few legislative days remaining, we judged it necessary to engage in further discussions with Senators who are deeply concerned with the land mine issue, but who are not members of the Foreign Relations Committee, with the objective of securing consensus on the provisions of the resolution of ratification.

What follows is a specific identification of those changes to the resolution of ratification which I, together with Senator Biden, have agreed to propose if and when the Amended Mines Protocol is brought before the Senate for consideration. Following each substantive change is an explanation of its implications.

Condition 1: Pursuit Deterrent Munition

The phrase "and which constitutes an essential military capability for the United States Armed Forces." shall be deleted. Deletion of this phrase in no way affects the operation of the condition, which—as has been discussed in the report—requires Presidential agreement that the PDM will be retained at least until January 1, 2003, unless an effective alternative to the munition becomes available before then (such alternative not being a change purely of a tactic or operational concept). In other words, it matters little what the Senate calls the PDM, "essential" or not, so long as the Administration is precluded from destroying the PDM stockpile and the capability remains available for use by the U.S. Armed Forces.

Condition 2: Export Moratorium

The condition will be struck from the resolution. The significance of this deletion is that the full Senate will not have expressed its view on the wisdom of negotiating an export ban in general, or on

any particular aspect of that ban. The Committee's views, however, remain unchanged from those views expressed in this report.

Condition 3: Humanitarian Demining Assistance

The word "substantial" in Condition (3)(A)(ii), the word "significantly" in (3)(A)(iii), and the entirety of (3)(B) are to be deleted. The significance of this deletion is that the full Senate will not have expressed its view on the extent to which the Administration should be commended for the support it has provided to date for demining projects, or on the extent to which other countries should do more themselves. The Committee's views, however, remain unchanged from those views expressed in this report.

Condition 6: Future Negotiation of Withdrawal Clause

The word "inhibiting" is to be replaced with "prohibiting". This change is a useful clarification, but does not substantively affect the condition. The concern which gave rise to Condition (6) is the withdrawal clause of the Convention on Conventional Weapons (to which the Amended Mines Protocol is appended). That withdrawal clause, which has now been mimicked in the Ottawa Convention, would prohibit the United States from withdrawing from the treaty even if the United States' supreme national interests were threatened, if the U.S. were engaged in armed conflict at the time. As the report notes, such a prohibition may make sense for "laws of war" treaties, but it is unacceptable when applied to arms control limitations.

Condition 7: Prohibition on de facto Implementation of the Ottawa Convention

The title of this condition is amended to read: "Land Mine Alternatives". Further, subparagraph (A) is replaced with the following:

> the President, in pursuing alternatives to United States anti-personnel mines or mixed anti-tank systems, will not limit the types of alternatives to be considered on the basis of any criteria other than those specified in subparagraph (B) of this paragraph; and

While this reformulation of the condition removes any explicit reference to the Ottawa Convention, it does not alter the substance of what the President must certify to Congress. As the report makes clear, the intent of this provision was to ensure that the Administration did not frame its conception of "alternatives" to APL too narrowly. To do so would have meant that the Administration would have precluded exploration of alternative technologies which, though not "Ottawa-compliant," nevertheless might be safer to use, or pose even less of a risk to noncombatants than do U.S. short-duration mines.

However, this change does require additional clarification. The concept of "alternatives to United States anti-personnel mines, or mixed anti-tank systems," as contained in subparagraph (B), by its very nature entails considerations regarding safety of use, risks to non-combatants, and possibly other humanitarian requirements. Indeed, the only reason the United States is engaging in a search for alternatives is to determine whether a "more humanitarian" ca-

pability can be economically fielded without any reduction in military effectiveness.

Thus, this altered certification will continue to prohibit a narrowing of the scope of the search for alternatives to just those that are Ottawa Convention-compliant. But the criteria which may inform the President's decision about any particular alternative, both implicitly and explicitly, remain questions of "equivalent" military effectiveness, affordability, safety, and the aforementioned humanitarian considerations.

Condition 10: Finding Regarding the International Humanitarian Crisis

The word "indiscriminate" will be deleted. This change is consistent with the Committee's view that long-duration mines, which are not used by the United States outside of Korea, are to blame for nearly all of the civilian injuries and casualties caused by land mines. Condition 10 makes clear that short-duration mines are not part of the problem. Further, as the Committee report makes clear, a principal advantage of the Amended Mines Protocol is that it establishes tight restrictions on the use of long-duration mines. This, in turn, will reduce the human suffering associated with these weapons, since a number of countries which have not, to date, agreed to a comprehensive ban, will be bound by the Protocol's limitations.

Definition 4: Ottawa Convention

Definition of this term is no longer necessary given the change to Condition (7), so this provision will be deleted.

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