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PROTOCOLS TO THE 1980
CONVENTIONAL WEAPONS CONVENTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOLS 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: THE AMENDED PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES (PROTOCOL II OR THE AMENDED MINES PROTOCOL); THE PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF INCENDIARY WEAPONS (PROTOCOL III OR THE INCENDIARY WEAPONS PROTOCOL); AND THE PROTOCOL ON BLINDING LASER WEAPONS (PROTOCOL IV)



JANUARY 7, 1997.—Protocols were read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 7, 1997.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the following Protocols 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: the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II or the amended Mines Protocol); the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III or the Incendiary Weapons Protocol); and the Protocol on Blinding Laser Weapons (protocol IV). Also transmitted for the information of the Senate is the report of the Department of State with respect to these Protocols, together with article-by-article analyses.

The most important of these Protocols is the amended Mines Protocol. It is an essential step forward in dealing with the problem of anti-personnel landmines (APL) and in minimizing the very severe casualties to civilians that have resulted from their use. It is an important precursor to the total prohibition of these weapons that the United States seeks.

Among other things, the amended Mines Protocol will do the following: (1) expand the scope of the original Protocol to include internal armed conflicts, where most civilian mine casualties have occurred; (2) require that all remotely delivered anti-personnel mines be equipped with self-destruct devices and backup self-deactivation features to ensure that they do not pose a long-term threat to civilians; (3) require that all nonremotely delivered anti-personnel mines that are not equipped with such devices be used only within controlled, marked, and monitored minefields to protect the civilian population in the area; (4) require that all anti-personnel mines be detectable using commonly available technology to make the task of mine clearance easier and safer; (5) require that the party laying mines assume responsibility for them to ensure against their irresponsible and indiscriminate use; and (6) provide more effective means for dealing with compliance problems to ensure that these restrictions are actually observed. These objectives were all endorsed by the Senate in its Resolution of Ratification of the Convention in March 1995.

The amended Mines Protocol was not as strong as we would have preferred. In particular, its provisions on verification and compliance are not as rigorous as we had proposed, and the transition periods allowed for the conversion or elimination of certain non-compliant mines are longer than we thought necessary. We shall

pursue these issues in the regular meetings that the amended Protocol provides for review of its operation.

Nonetheless, I am convinced that this amended Protocol will, if generally adhered to, save many lives and prevent many tragic injuries. It will, as well, help to prepare the ground for the total prohibition of anti-personnel landmines to which the United States is committed. In this regard, I cannot overemphasize how seriously the United States takes the goal of eliminating APL entirely. The carnage and devastation caused by anti-personnel landmines—the hidden killers that murder and maim more than 25,000 people every year—must end.

On May 16, 1996, I launched an international effort to this end. This initiative sets out a concrete path to a global ban on anti-personnel landmines and is one of my top arms control priorities. At the same time, the policy recognizes that the United States has international commitments and responsibilities that must be taken into account in any negotiations on a total ban. As our work on this initiative progresses, we will continue to consult with the Congress.

The second of these Protocols—the Protocol on Incendiary Weapons—is a part of the original Convention but was not sent to the Senate for advice and consent with the other 1980 Protocols in 1994 because of concerns about the acceptability of the Protocol from a military point of view. Incendiary weapons have significant potential military value, particularly with respect to flammable military targets that cannot so readily be destroyed with conventional explosives.

At the same time, these weapons can be misused in a manner that could cause heavy civilian casualties. In particular, the Protocol prohibits the use of air-delivered incendiary weapons against targets located in a city, town, village, or other concentration of civilians, a practice that caused very heavy civilian casualties in past conflicts.

The executive branch has given very careful study to the Incendiaries Protocol and has developed a reservation that would, in our view, make it acceptable from a broader national security perspective. This proposed reservation, the text of which appears in the report of the Department of State, would reserve the right to use incendiaries against military objectives located in concentrations of civilians where it is judged that such use would cause fewer casualties and less collateral damage than alternative weapons.

The third of these Protocols—the new Protocol on Blinding Lasers—prohibits the use or transfer of laser weapons specifically designed to cause permanent blindness to unenhanced vision (that is, to the naked eye or to the eye with corrective devices). The Protocol also requires Parties to take all feasible precautions in the employment of other laser systems to avoid the incidence of such blindness.

These blinding lasers are not needed by our military forces. They are potential weapons of the future, and the United States is committed to preventing their emergence and use. The United States supports the adoption of this new Protocol.

I recommend that the Senate give its early and favorable consideration to these Protocols and give its advice and consent to ratification, subject to the conditions described in the accompanying re-

port of the Department of State. The prompt ratification of the amended Mines Protocol is particularly important, so that the United States can continue its position of leadership in the effort to deal with the humanitarian catastrophe of irresponsible landmine use.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 7, 1996.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmission to the Senate for advice and consent to ratification, three protocols 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): (A) the Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices adopted at Geneva on May 3, 1996 (Protocol II or the Amended Mines Protocol); (B) the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons adopted at Geneva on October 10, 1980 (Protocol III or the Incendiary Weapons Protocol); and (C) the Protocol on Blinding Laser Weapons adopted at Geneva on May 3, 1996 (Protocol IV). Also submitted for transmittal for the information of the Senate is the report of the Department of State with respect to these Protocols, together with article-by-article analyses.

BACKGROUND

The Convention was concluded at Geneva on October 10, 1980, and signed by the United States on April 8, 1982. It entered into force on December 2, 1983, and, along with two of its Protocols, was ratified by the United States on March 24, 1995.

The Convention is part of a legal regime dealing with the conduct of armed conflict, including the four 1949 Geneva Conventions on the Protection of the Victims of War and the 1899 and 1907 Hague Conventions Respecting the Laws and Customs of War on Land. These important treaties attempt to reduce the suffering caused by armed conflicts and provide protection to the victims of war in a manner consistent with legitimate military requirements. The Convention, adopted October 10, 1980, contained three Protocols, each of which regulated the use of a particular type of conventional weapon thought to pose special risks of indiscriminate effects or unnecessary suffering. Protocol I, the Non-detectable Fragments Protocol, prohibits the use of any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays. Protocol II, the Mines Protocol, contains a detailed set of restrictions on the use of mines, booby-traps and similar devices, which are discussed at greater length below. Protocol III, the Incendiary Weapons Protocol, restricts the use of incendiary weapons in various ways.

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In March 1995, the United States Senate gave its advice and consent to ratification of the Convention, including its Non-detectable Fragments Protocol and its Mines Protocol. The Incendiary Weapons Protocol was not transmitted to the Senate at the time the Convention (and the two protocols) was transmitted and was instead given further study by the interagency community owing to certain military concerns. Those concerns have now been fully addressed.

The First Review Conference for the Convention completed its review with the adoption of an amended Mines Protocol on May 3, 1996. Also at that session, the Conference adopted a new Protocol IV, the Blinding Laser Weapons Protocol.

(A) THE AMENDED MINES PROTOCOL

The amended Mines Protocol is, overall, a significant improvement over the 1980 Protocol and will, if widely observed, result in a substantial decrease in civilian casualties caused by the indiscriminate use of anti-personnel mines. The provisions of the amended Mines Protocol essentially reflect the practices already adopted by U.S. forces for the protection of the civilian population.

At the same time, the provisions of the amended Protocol, although improved, do not provide a complete solution to the serious problem of indiscriminate use of these devices. The amended Protocol will, however, continue to constitute a critical factor in our efforts to eliminate anti-personnel mines altogether and, in this regard is entirely consistent with your May 16, 1996, announcement of our policy to pursue an international agreement to ban use, stockpiling, production, and transfer of anti-personnel landmines.

For these reasons, the amended Protocol is desirable. It is consistent with U.S. military interests and humanitarian concerns. The earliest possible entry into force of the amended Protocol is therefore highly desirable. Accordingly, the United States should ratify it at the earliest possible date.

(B) THE INCENDIARY WEAPONS PROTOCOL

Protocol III—the Protocol on Incendiary Weapons—was a part of the original Convention package adopted at Geneva on October 10, 1980, but it was not sent to the Senate for advice and consent to ratification because of concerns about the acceptability of the Protocol from a military point of view. Incendiary weapons have significant potential military value, particularly with respect to flammable military targets that cannot so readily be destroyed with conventional explosives.

At the same time, these weapons can be misused in a manner that could cause heavy civilian casualties. In particular, the Protocol prohibits the use of air-delivered incendiary weapons against targets located in a city, town, village or other concentration of civilians, a practice which caused very heavy civilian casualties in past conflicts.

The Executive Branch has given very careful study to the Incendiaries Protocol and has developed a specific condition that would, in our view, make it acceptable from a broader national security perspective. This condition consists of a proposed reservation that would reserve the right to use incendiaries against military targets

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located in concentrations of civilians where it is judged that such use would cause fewer casualties and less collateral damage than alternative weapons. A good example of this would be the hypothetical use of incendiaries to destroy biological agents in an enemy storage facility where explosive devices might simply spread the agents with disastrous consequences for the civilian population.

(C) THE BLINDING LASER WEAPONS PROTOCOL

The provisions of the Blinding Laser Weapons Protocol, Protocol IV, if widely observed, will result in a substantially reduced risk of widespread development, proliferation and use of blinding laser weapons. The Protocol is intended to address this risk in a timely way, before such weapons become commonplace.

At the same time, lasers are absolutely vital to our modern military and the legitimate use of lasers for other military purposes is acknowledged by the Protocol. Indeed, lasers provide significant humanitarian benefits on and off the battlefield. They allow weapons systems to be increasingly discriminate, thereby reducing collateral damage to civilian lives and property.

The inevitable incidental or collateral effect of legitimate military use of lasers is also recognized and is explicitly not covered by this Protocol. The Department of Defense, will, nonetheless, continue to strive, through training and doctrine, to minimize these effects.

The Blinding Laser Weapons Protocol is desirable therefore both because it reduces the potential risks of proliferation of blinding laser weapons and because it clarifies the legitimacy of other types of battlefield lasers. It is fully consistent with U.S. military interests, Department of Defense policy and humanitarian concerns generally. Accordingly, the United States should ratify it at an early date.

CONDITIONS

The Senate is being asked to include a number of conditions, described in detail in the accompanying analyses, in its resolution of advice and consent to ratification. The texts of the three understandings to the amended Mines Protocol and the reservation to the Incendiary Weapons Protocol follow:

(A) THE AMENDED MINES PROTOCOL

1. The United States understands, with reference to Article 3, Paragraph 9 of the amended Mines Protocol, that an area of land can itself be a legitimate military objective for the purpose of the use of landmines, if its neutralization or denial, in the circumstances ruling at the time, offers a definite military advantage.

2. The United States understands that Article 5, Paragraph 2 of the amended Mines Protocol does not preclude agreement, in connection with peace treaties or similar arrangements, to allocate responsibilities under this subparagraph in a manner which nevertheless respects the essential spirit and purpose of the Article.

3. The United States understands that Article 7, Paragraph 2 of the amended Mines Protocol does not prohibit the adaptation in advance of other objects for use as booby-traps or other devices.

(C) THE INCENDIARY WEAPONS PROTOCOL

The United States declares, with reference to Article 2, Paragraphs 2 and 3 of the Incendiary Weapons Protocol, that it will reserve the right to use incendiary weapons against military targets located in concentrations of civilians where it is judged that such use would cause fewer casualties and less collateral damage than alternative weapons.

CONCLUSION

The amended Mines Protocol, the Incendiary Weapons Protocol and the Blinding Laser Weapons Protocol contain restrictions which offer significant humanitarian benefit. Subject to the recommended conditions, all three are consistent with U.S. military requirements, and with existing U.S. military practices. Ratification by the United States will highlight our commitment on restricting or prohibiting unacceptable methods of warfare and, with respect to the amended Mines Protocol in particular, will materially advance our efforts to end the scourge posed by anti-personnel mines altogether. An article-by-article analysis of each of the three protocols is enclosed.

The Department of State, the Department of Defense and the Arms Control and Disarmament Agency join in recommending that the amended Mines Protocol, the Blinding Laser Weapons Protocol and the Incendiary Weapons Protocol be transmitted to the Senate for advice and consent to ratification, subject to the conditions previously described, at an early date.

Respectfully submitted,

WARREN CHRISTOPHER.

Enclosures:

Tab (A) The Article-by-Article Analysis of the Amended Mines Protocol.

Tab (B) The Article-by-Article Analysis of the Incendiary Weapons Protocol.

Tab (C) The Article-by-Article Analysis of the Blinding Laser Weapons Protocol.

Article-by-Article Analysis of
the Protocol on Prohibitions or Restrictions
on the Use of Mines, Booby-traps and Other Devices
as Amended on 3 May 1996
Annexed to the 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

(Protocol II as Amended on 3 May 1996)

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 landmines, 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 ordnance or UXO. UXO is not covered by the Protocol, either the 1980 or the amended version. Unexploded ordnance 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. Additionally, 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.

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 landmines.

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.

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.

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.

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 restrictions of Article 8, even though mines may be present in the area.

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 commonly 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 United States 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 United States 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.

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 we support and regard 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 landmines, if its neutralization or denial, in the circumstances ruling at the time, offers a definite military advantage. We recommend that the United States declare this

understanding, as well, at the time of its acceptance of 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

presence of commonly 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.

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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 United States 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.

when 20 states ratify and which should occur in a reasonably short period.

Finally, it is, in the U.S. view, regrettable that the prohibition is limited to anti-personnel mines. Although the United States sought to apply this same requirement to anti-tank mines, it was not possible to achieve consensus on this proposal. As a unilateral matter, the United States will nonetheless observe a ban on transfer of anti-tank mines which fail to meet this detectability standard. We have invited other states to follow suit.

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 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. We recommend that the United States declare this understanding, as well, at the time of its acceptance of the amended Protocol.

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 a limited 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.)

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.

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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. We recommend that the United States declare this understanding, as well, at the time of its acceptance of the amended Protocol.

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 a limited 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.)

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. The exception in paragraph 1(g) of Article 7 does not, however, authorize kitchen utensils or appliances in military hospitals, military POW camps or military chapels to be booby-trapped.

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.

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.

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.

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 3, 1996). 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. This rule is aimed at further limiting the availability of mines of all types to non-state entities, such as insurgent groups and terrorists.

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 "pre-planned". 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 control 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 United States 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.

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 provisions," 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 landmines 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, ensuring 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.

The United States strongly supported these provisions, with the objective of creating a regular mechanism for

encouraging the improvement of the Protocol and the consideration of alternatives to anti-personnel mines that could facilitate the achievement of the President's goal of total elimination.

Article 14 -- Compliance

Article 14 consists of 4 paragraphs and is modelled 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 expressed its support for further legislation 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.

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.

Summary

The provisions of the amended Protocol essentially reflect the practices already adopted by U.S. forces for the protection of the civilian population. Furthermore, in most cases, U.S. mines already meet or exceed the technical requirements established by the amended Protocol, including its Technical Annex. One exception is the "M-14", a low-metallic anti-personnel mine which has a metallic signature below that required by the amended Protocol. Accordingly, the M-14 will either be modified to meet the requirement or disposed of, as circumstances require.

The amended Mines Protocol is consistent with U.S. military interests and humanitarian concerns and the United States should ratify it at the earliest possible date.

Indeed, the earliest possible entry into force of the amended Protocol is highly desirable since the possible deferral periods for certain of the key technical requirements run from entry into force.

Article-by-Article Analysis of
the Protocol on Prohibitions or Restrictions
on the Use of Incendiary Weapons
Annexed to the 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

(Protocol III)

The Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III or the Incendiary Weapons Protocol) 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 III, 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 on Mines, Booby-traps and Other Devices, as well as its Protocol I on Non-Detectable Fragments, on March 24, 1995.

The President, in submitting the Convention to the Senate for consideration in 1994, recommended that the United States exercise its right to ratify the Convention accepting only the first two Protocols and not the Incendiary Weapons Protocol. As the President's transmittal message to the Senate indicated, there were concerns about the acceptability of certain of its restrictions from a military point of view that required further examination. After very careful study, a condition has been developed that makes the Protocol acceptable from a broader national security perspective. This

condition is described in the analysis of the Protocol which follows.

The Protocol consists of 2 articles.

Article 1

Article 1 defines various terms used in the Protocol's substantive provisions. Incendiary weapons are defined as any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target. Accordingly, such weapons as high-explosive munitions and blast or fragmentation weapons are not covered by this protocol, even though they may have secondary burn effects on persons exposed or cause secondary fires. Similarly, laser weapons are not covered even if their primary effect is to set fire to objects or cause burn injuries, since they do not deliver burning substances on the target.

In addition, Article 1 specifically excludes from the definition of incendiary weapons: (1) munitions which may have incidental incendiary effects, such as illuminants, tracers, smoke or signaling systems; and (2) munitions combining penetration, blast or fragmentation effects with an additional incendiary effect, such as armor-piercing projectiles, fragmentation shells, explosive bombs and similar combined-effects munitions in which the incendiary effect is not specifically designed to cause burn injury to persons, but to be used against military objectives, such as armored vehicles, aircraft and installations or facilities. As a result, the Protocol only covers "pure" incendiaries, such as napalm or the type of incendiary bombs used in World War II and Korea.

Article 2

Article 2 contains the Protocol's substantive restrictions. Paragraph 1 states that the civilian

population as such and individual civilians or civilian objects may not be made the object of attack with incendiary weapons -- a principle that applies to all weapons under customary international law.

The text of paragraph 2 prohibits the making of any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons. Paragraph 3 prohibits other uses of incendiaries against military objectives located within concentrations of civilians, except when the target is clearly separated from the concentration of civilians and all feasible precautions are taken to limit the incendiary effects to the target and minimize civilian casualties. The proposed reservation of the United States as discussed below would revise the legal obligations of Article 2 on the United States so that the test of whether the use of an incendiary weapon is permitted in such circumstances would depend on whether it is judged that such use would cause fewer civilian casualties and less collateral damage than alternative weapons.

Paragraph 4 prohibits making forests or other kinds of plant cover the object of attack with incendiary weapons except when such natural elements are used to conceal combatants or other military objectives, or are themselves military objectives.

There have been a number of military reviews of the Incendiary Weapons Protocol since it was negotiated that raised concerns about the acceptability from a military point of view of paragraphs 2 and 3 of Article 2. Incendiary weapons have significant potential military value, particularly with respect to certain high-priority military targets. Incendiaries are the only weapons which can effectively destroy certain counter-proliferation targets such as biological weapons facilities which require high heat to eliminate bio-toxins. To use only high explosives would risk the widespread release of dangerous contaminants with potentially disastrous consequences for the civilian population. Certain flammable military targets are also more readily destroyed by incendiaries. For example, a fuel depot could require up to eight times the bombs and sorties to

destroy using only high explosives rather than incendiaries. Such an increase means a significantly greater humanitarian risk of collateral damage. The United States must retain its ability to employ incendiaries to hold high-priority military targets such as these at risk in a manner consistent with the principle of proportionality which governs the use of all weapons under existing law.

Summary

Accordingly, we recommend that the United States, in accepting the Incendiary Weapons Protocol, reserve the right to use incendiary weapons against military targets located in concentrations of civilians where it is judged that such use would cause fewer casualties and less collateral damage than alternative weapons.

With such a stipulation, the Incendiary Weapons Protocol is unobjectionable and should be ratified by the United States at an early date.

Article-by-Article Analysis of
the Protocol on Blinding Laser Weapons
Annexed to the 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

(Protocol IV)

The Protocol on Blinding Laser Weapons (Protocol IV) is annexed to the 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 (the Convention).

The Convention, including three annexed 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 on Mines, Booby-traps and Other Devices, 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 the Mines Protocol. It also took under consideration the question of adopting a new protocol on blinding laser weapons. This international review process concluded in May of 1996 with the adoption of an amended Mines Protocol and a new Protocol IV on Blinding Laser Weapons. The provisions of the new Protocol are discussed, article by article, below.

The Blinding Laser Weapons Protocol consists of four articles.

Article 1

Article 1 prohibits the employment of "laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices." Article 1 also prohibits the transfer of any such weapon to any state or non-state entity.

This prohibition is fully consistent with the policy of the Department of Defense, which is to prohibit the use of weapons so designed. Although the prospect of mass blinding was an impetus for the adoption of the Protocol, it was not the intent of the Conference to prohibit only mass blinding. Accordingly, under both the Blinding Laser Protocol and Department of Defense policy, laser weapons designed specifically to cause such permanent blindness may not be used against an individual enemy combatant.

Article 2

Article 2 concerns lasers other than those described in Article 1 and obligates High Contracting Parties to "take all feasible precautions to avoid the incidence of permanent blindness to unenhanced vision."

This requirement is also fully consistent with the policy of the Department of Defense which is to reduce, through training and doctrine, inadvertent injuries from the use of lasers designed for other purposes, such as range-finding, target discrimination, and communications.

Article 3

Article 3 provides that "blinding as an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment, is not covered" by the Protocol.

Article 3 reflects a recognition of the inevitability of eye injury as the result of lawful battlefield laser use. It

is an important measure in avoiding war crimes allegations where injury occurs from legitimate laser uses.

Article 4

Article 4 defines permanent blindness as "irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 Snellen measured in both eyes."

This definition of the term "permanent blindness" is of sufficient precision to prevent misuse or misunderstanding of the term which is a critical element of Article 1. It is also consistent with widely accepted ophthalmological standards.

Entry into force

The entry into force provision refers to the procedures contained in the main Convention. Those procedures provide that the new protocols, such as the Blinding Laser Weapons Protocol, will enter into force six months after twenty states have notified their consent to be bound.

Scope of application of the Protocol

The Protocol contains no provision regarding its scope of application. The Convention itself extends only to international armed conflicts (and to internal conflicts for "national liberation"). At the time of drafting and adoption of the Protocol participants were aware that it was proposed to extend the scope of the Mines Protocol to internal conflicts. However, at the final session of the CCW Review conference, certain states were unwilling to extend the scope of the Blinding Laser Weapons Protocol, despite having done so for the Mines Protocol. As a result, the scope of the Blinding Laser Weapons Protocol is limited to the scope of the CCW.

The United States favored an expanded scope of application for the Blinding Laser Weapons Protocol. As a

matter of policy, the United States will refrain from the use of laser weapons prohibited by the Protocol. Therefore, while the Blinding Laser Weapons Protocol does not legally apply to all armed conflicts, it is U.S. policy to apply the Protocol to all such conflicts, however they may be characterized, and in peacetime.

Summary

The Protocol is fully consistent with U.S. military interests, Department of Defense policy and humanitarian concerns generally. Accordingly, the United States should ratify it at an early date.

**PROTOCOL ON PROHIBITIONS OR
RESTRICTIONS ON THE USE OF MINES,
BOOBY-TRAPS AND OTHER DEVICES
AS AMENDED ON 3 MAY 1996
(PROTOCOL II AS AMENDED ON 3 MAY 1996)
ANNEXED TO THE 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**



**UNITED NATIONS
1996**

**PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES,
BOOBY-TRAPS AND OTHER DEVICES AS AMENDED ON 3 MAY 1996
(PROTOCOL II AS AMENDED ON 3 MAY 1996) ANNEXED TO THE 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**

ARTICLE 1: AMENDED PROTOCOL

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), annexed to the 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 ("the Convention") is hereby amended. The text of the Protocol as amended shall read as follows:

***Protocol on Prohibitions or Restrictions on
the Use of Mines, Booby-Traps and Other Devices
as Amended on 3 May 1996
(Protocol II as amended on 3 May 1996)**

Article 1

Scope of application

1. This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines 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.

2. This Protocol shall apply, in addition to situations referred to in Article 1 of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as no being armed conflicts.

3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Protocol.

4. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Protocol to parties to a conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

Article 2

Definitions

For the purpose of this Protocol:

1. "Mine" means 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.
2. "Remotely-delivered mine" means a mine not directly emplaced but delivered by artillery, missile, rocket, mortar, or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be "remotely delivered", provided that they are used in accordance with Article 5 and other relevant Articles of this Protocol.
3. "Anti-personnel mine" means 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.
4. "Booby-trap" means 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.

5. "Other devices" means 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.
6. "Military objective" means, 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.
7. "Civilian objects" are all objects which are not military objectives as defined in paragraph 6 of this Article.
8. "Minefield" is a defined area in which mines have been emplaced and "mined area" is an area which is dangerous due to the presence of mines. "Phoney minefield" means an area free of mines that simulates a minefield. The term "minefield" includes phoney minefields.
9. "Recording" means 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.
10. "Self-destruction mechanism" means 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.
11. "Self-neutralization mechanism" means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.
12. "Self-deactivating" means 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.
13. "Remote control" means control by commands from a distance.
14. "Anti-handling device" means 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.
15. "Transfer" involves, 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.

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

1. This Article applies to:
 - (a) mines;
 - (b) booby-traps; and
 - (c) other devices.
2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.
3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.
4. Weapons to which this Article applies shall strictly comply with the standards and limitations specified in the Technical Annex with respect to each particular category.
5. It is prohibited to use mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.
6. It is prohibited to use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.
7. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects.
8. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:
 - (a) which is not on, or directed against, a military objective. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used;
 - (b) which employs a method or means of delivery which cannot be directed at a specific military objective; or

(c) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

9. 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.

10. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to:

(a) the short- and long-term effect of mines upon the local civilian population for the duration of the minefield;

(b) possible measures to protect civilians (for example, fencing, signs, warning and monitoring);

(c) the availability and feasibility of using alternatives; and

(d) the short- and long-term military requirements for a minefield.

11. Effective advance warning shall be given of any emplacement of mines, booby-traps and other devices which may affect the civilian population, unless circumstances do not permit.

Article 4

Restrictions on the use of anti-personnel mines

It is prohibited to use anti-personnel mines which are not detectable, as specified in paragraph 2 of the Technical Annex.

Article 5

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

1. This Article applies to anti-personnel mines other than remotely-delivered mines.

2. It is prohibited to use weapons to which this Article applies which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex, unless:

(a) such weapons are 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; and

(b) such weapons are cleared before the area is abandoned, unless the area is turned over to the forces of another State which accept responsibility for the maintenance of the protections required by this Article and the subsequent clearance of those weapons.

3. A party to a conflict is relieved from further compliance with the provisions of sub-paragraphs 2 (a) and 2 (b) of this Article only if such compliance is not feasible due to forcible loss of control of the area as a result of enemy military action, including situations where direct enemy military action makes it impossible to comply. If that party regains control of the area, it shall resume compliance with the provisions of sub-paragraphs 2 (a) and 2 (b) of this Article.

4. If the forces of a party to a conflict gain control of an area in which weapons to which this Article applies have been laid, such forces shall, to the maximum extent feasible, maintain and, if necessary, establish the protections required by this Article until such weapons have been cleared.

5. All feasible measures shall be taken to prevent the unauthorized removal, defacement, destruction or concealment of any device, system or material used to establish the perimeter of a perimeter-marked area.

6. Weapons to which this Article applies which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground may be used without the measures provided for in sub-paragraph 2 (a) of this Article for a maximum period of 72 hours, if:

(a) they are located in immediate proximity to the military unit that emplaced them; and

(b) the area is monitored by military personnel to ensure the effective exclusion of civilians.

Article 6

Restrictions on the use of remotely-delivered mines

1. It is prohibited to use remotely-delivered mines unless they are recorded in accordance with sub-paragraph 1 (b) of the Technical Annex.

2. It is prohibited to use remotely-delivered anti-personnel mines which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex.

3. It is prohibited to use remotely-delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position.

4. Effective advance warning shall be given of any delivery or dropping 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

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:

- (a) internationally recognized protective emblems, signs or signals;
- (b) sick, wounded or dead persons;
- (c) burial or cremation sites or graves;
- (d) medical facilities, medical equipment, medical supplies or medical transportation;
- (e) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- (f) food or drink;
- (g) kitchen utensils or appliances except in military establishments, military locations or military supply depots;
- (h) objects clearly of a religious nature;
- (i) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
- (j) animals or their carcasses.

2. It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.

3. Without prejudice to the provisions of Article 3, it is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar

concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

- (a) they are placed on or in the close vicinity of a military objective; or
- (b) measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences.

Article 8

Transfers

1. In order to promote the purposes of this Protocol, each High Contracting Party:
 - (a) undertakes not to transfer any mine the use of which is prohibited by this Protocol;
 - (b) undertakes not to transfer any mine to any recipient other than a State or a State agency authorized to receive such transfers;
 - (c) undertakes to exercise restraint in the transfer of any mine the use of which is restricted by this Protocol. In particular, each High Contracting Party undertakes not to transfer any anti-personnel mines to States which are not bound by this Protocol, unless the recipient State agrees to apply this Protocol; and
 - (d) undertakes to ensure that any transfer in accordance with this Article takes place in full compliance, by both the transferring and the recipient State, with the relevant provisions of this Protocol and the applicable norms of international humanitarian law.
2. In the event that a High Contracting Party declares that it will defer compliance with specific provisions on the use of certain mines, as provided for in the Technical Annex, sub-paragraph 1 (a) of this Article shall however apply to such mines.
3. All High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with sub-paragraph 1 (a) of this Article.

Article 9

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

1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.
2. All such records shall be retained by the parties to a conflict, who shall, without delay after the cessation of active hostilities, take all necessary and appropriate measures, including

the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control.

At the same time, they shall also make available to the other party or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control; provided, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, to provide for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

3. This Article is without prejudice to the provisions of Articles 10 and 12 of this Protocol.

Article 10

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

1. Without delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with Article 3 and paragraph 2 of Article 5 of this Protocol.
2. High Contracting Parties and parties to a conflict bear such responsibility with respect to minefields, mined areas, mines, booby-traps and other devices in areas under their control.
3. With respect to minefields, mined areas, mines, booby-traps and other devices laid by a party in areas over which it no longer exercises control, such party shall provide to the party in control of the area pursuant to paragraph 2 of this Article, to the extent permitted by such party, technical and material assistance necessary to fulfil such responsibility.
4. At all times necessary, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.

Article 11

Technological cooperation and assistance

1. Each High Contracting Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and

technological information concerning the implementation of this Protocol and means of mine clearance. In particular, High Contracting Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

2. Each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations System, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

3. Each High Contracting Party in a position to do so shall provide assistance for mine clearance through the United Nations System, other international bodies or on a bilateral basis, or contribute to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance.

4. Requests by High Contracting Parties for assistance, substantiated by relevant information, may be submitted to the United Nations, to other appropriate bodies or to other States. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations.

5. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and, in cooperation with the requesting High Contracting Party, determine the appropriate provision of assistance in mine clearance or implementation of the Protocol. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required.

6. Without prejudice to their constitutional and other legal provisions, the High Contracting Parties undertake to cooperate and transfer technology to facilitate the implementation of the relevant prohibitions and restrictions set out in this Protocol.

7. Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on specific relevant technology, other than weapons technology, as necessary and feasible, with a view to reducing any period of deferral for which provision is made in the Technical Annex.

Article 12

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

1. Application

(a) With the exception of the forces and missions referred to in sub-paragraph 2(a)(i) of this Article, this Article applies only to missions which are performing functions

in an area with the consent of the High Contracting Party on whose territory the functions are performed.

(b) The application of the provisions of this Article to parties to a conflict which are not High Contracting Parties shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

(c) The provisions of this Article are without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for a higher level of protection to personnel functioning in accordance with this Article.

2. Peace-keeping and certain other forces and missions

(a) This paragraph applies to:

(i) any United Nations force or mission performing peace-keeping, observation or similar functions in any area in accordance with the Charter of the United Nations; and

(ii) any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:

(i) so far as it is able, take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control;

(ii) if necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area; and

(iii) inform the head of the force or mission of the location of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such minefields, mined areas, mines, booby-traps and other devices.

3. Humanitarian and fact-finding missions of the United Nations System

(a) This paragraph applies to any humanitarian or fact-finding mission of the United Nations System.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

(i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b)(i) of this Article; and

(ii) if access to or through any place under its control is necessary for the performance of the mission's functions and in order to provide the personnel of the mission with safe passage to or through that place:

(aa) unless on-going hostilities prevent, inform the head of the mission of a safe route to that place if such information is available; or

(bb) if information identifying a safe route is not provided in accordance with sub-paragraph (aa), so far as is necessary and feasible, clear a lane through minefields.

4. Missions of the International Committee of the Red Cross

(a) This paragraph applies to any mission of the International Committee of the Red Cross performing functions with the consent of the host State or States as provided for by the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

(i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b)(i) of this Article; and

(ii) take the measures set out in sub-paragraph 3(b)(ii) of this Article.

5. Other humanitarian missions and missions of enquiry

(a) Insofar as paragraphs 2, 3 and 4 of this Article do not apply to them, this paragraph applies to the following missions when they are performing functions in the area of a conflict or to assist the victims of a conflict:

(i) any humanitarian mission of a national Red Cross or Red Crescent society or of their International Federation;

(ii) any mission of an impartial humanitarian organization, including any impartial humanitarian demining mission; and

(iii) any mission of enquiry established pursuant to the provisions of the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall, so far as is feasible:

(i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b)(i) of this Article; and

(ii) take the measures set out in sub-paragraph 3(b)(ii) of this Article.

6. Confidentiality

All information provided in confidence pursuant to this Article shall be treated by the recipient in strict confidence and shall not be released outside the force or mission concerned without the express authorization of the provider of the information.

7. Respect for laws and regulations

Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, personnel participating in the forces and missions referred to in this Article shall:

(a) respect the laws and regulations of the host State; and

(b) refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 13

Consultations of High Contracting Parties

1. The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol. For this purpose, a conference of High Contracting Parties shall be held annually.

2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.

3. The work of the conference shall include:

(a) review of the operation and status of this Protocol;

(b) consideration of matters arising from reports by High Contracting Parties according to paragraph 4 of this Article;

(c) preparation for review conferences; and

(d) consideration of the development of technologies to protect civilians against indiscriminate effects of mines.

4. The High Contracting Parties shall provide annual reports to the Depositary, who shall circulate them to all High Contracting Parties in advance of the conference, on any of the following matters:

- (a) dissemination of information on this Protocol to their armed forces and to the civilian population;
- (b) mine clearance and rehabilitation programmes;
- (c) steps taken to meet technical requirements of this Protocol and any other relevant information pertaining thereto;
- (d) legislation related to this Protocol;
- (e) measures taken on international technical information exchange, on international cooperation on mine clearance, and on technical cooperation and assistance; and
- (f) other relevant matters.

5. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 14

Compliance

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.
2. The measures envisaged in paragraph 1 of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, wilfully kill or cause serious injury to civilians and to bring such persons to justice.
3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.
4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

Technical Annex1. Recording

(a) Recording of the location of mines other than remotely-delivered mines, minefields, mined areas, booby-traps and other devices shall be carried out in accordance with the following provisions:

(i) the location of the minefields, mined areas and areas of booby-traps and other devices shall be specified accurately by relation to the coordinates of at least two reference points and the estimated dimensions of the area containing these weapons in relation to those reference points;

(ii) maps, diagrams or other records shall be made in such a way as to indicate the location of minefields, mined areas, booby-traps and other devices in relation to reference points, and these records shall also indicate their perimeters and extent; and

(iii) for purposes of detection and clearance of mines, booby-traps and other devices, maps, diagrams or other records shall contain complete information on 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 on all these weapons laid. Whenever feasible the minefield record shall show the exact location of every mine, except in row minefields where the row location is sufficient. The precise location and operating mechanism of each booby-trap laid shall be individually recorded.

(b) The estimated location and area of remotely-delivered mines shall be specified by coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity. The total number and type of mines laid, the date and time of laying and the self-destruction time periods shall also be recorded.

(c) Copies of records shall be held at a level of command sufficient to guarantee their safety as far as possible.

(d) The use of mines produced after the entry into force of this Protocol is prohibited unless they are marked in English or in the respective national language or languages with the following information:

- (i) name of the country of origin;
- (ii) month and year of production; and
- (iii) serial number or lot number.

The marking should be visible, legible, durable and resistant to environmental effects, as far as possible.

2. Specifications on detectability

(a) With respect to anti-personnel mines produced after 1 January 1997, such mines shall incorporate in their construction a material or device 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 grammes or more of iron in a single coherent mass.

(b) With respect to anti-personnel mines produced before 1 January 1997, such mines shall either incorporate in their construction, or have attached prior to their emplacement, in a manner not easily removable, a material or device 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 grammes or more of iron in a single coherent mass.

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraph (b), it may declare at the time of its notification of consent to be bound by this Protocol that it will defer compliance with sub-paragraph (b) for a period not to exceed 9 years from the entry into force of this Protocol. In the meantime it shall, to the extent feasible, minimize the use of anti-personnel mines that do not so comply.

3. Specifications on self-destruction and self-deactivation

(a) All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in one thousand activated mines will function as a mine 120 days after emplacement.

(b) All non-remotely delivered anti-personnel mines, used outside marked areas, as defined in Article 5 of this Protocol, shall comply with the requirements for self-destruction and self-deactivation stated in sub-paragraph (a).

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraphs (a) and/or (b), it may declare at the time of its notification of consent to be bound by this Protocol, that it will, with respect to mines produced prior to the entry into force of this Protocol, defer compliance with sub-paragraphs (a) and/or (b) for a period not to exceed 9 years from the entry into force of this Protocol.

During this period of deferral, the High Contracting Party shall:

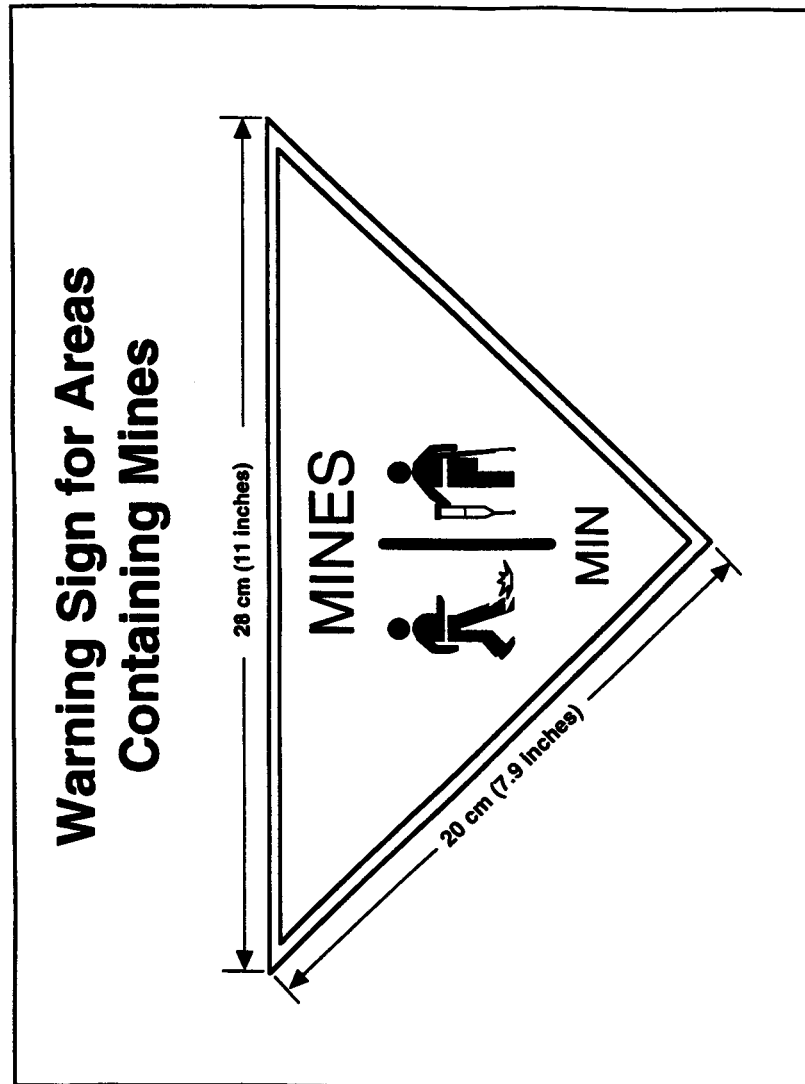
(i) undertake to minimize, to the extent feasible, the use of anti-personnel mines that do not so comply; and

(ii) with respect to remotely-delivered anti-personnel mines, comply with either the requirements for self-destruction or the requirements for self-deactivation and, with respect to other anti-personnel mines comply with at least the requirements for self-deactivation.

4. International signs for minefields and mined areas

Signs similar to the example attached and as specified below shall be utilized in the marking of minefields and mined areas to ensure their visibility and recognition by the civilian population:

- (a) size and shape: a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle, and 15 centimetres (6 inches) per side for a square;
- (b) colour: red or orange with a yellow reflecting border;
- (c) symbol: the symbol illustrated in the Attachment, or an alternative readily recognizable in the area in which the sign is to be displayed as identifying a dangerous area;
- (d) language: the sign should contain the word "mines" in one of the six official languages of the Convention (Arabic, Chinese, English, French, Russian and Spanish) and the language or languages prevalent in that area; and
- (e) spacing: signs should be placed around the minefield or mined area at a distance sufficient to ensure their visibility at any point by a civilian approaching the area."



PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF
INCENDIARY WEAPONS

(PROTOCOL III)

Article 1

Definitions

For the purpose of this Protocol:

1. "Incendiary weapon" means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target.

(a) Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances.

(b) Incendiary weapons do not include:

(i) Munitions which may have incidental incendiary effects, such as illuminants, tracers, smoke or signalling systems;

(ii) Munitions designed to combine penetration, blast or fragmentation effects with an additional incendiary effect, such as armour-piercing projectiles, fragmentation shells, explosive bombs and similar combined-effects munitions in which the incendiary effect is not specifically designed to cause burn injury to persons, but to be used against military objectives, such as armoured vehicles, aircraft and installations or facilities.

2. "Concentration of civilians" means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.

3. "Military objective" means, 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.

4. "Civilian objects" are all objects which are not military objectives as defined in paragraph 3.

5. "Feasible precautions" are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 2

Protection of civilians and civilian objects

1. It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons.

2. It is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons.

3. It is further prohibited to make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.

4. It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

بروتوكول إضافي
إلى اتفاقية حظر أو تقييد استعمال أسلحة تقليدية معينة
يمكن اعتبارها مخرطة الضرر أو عشوائية الأثر

《禁止或限制使用某些可被认为具有过分伤害力或
滥杀滥伤作用的常规武器公约》
附加议定书

ADDITIONAL PROTOCOL
TO THE 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

PROTOCOLE ADDITIONNEL
À LA CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI
DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME
PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPPANT
SANS DISCRIMINATION

ДОПОЛНИТЕЛЬНЫЙ ПРОТОКОЛ
К КОНВЕНЦИИ О ЗАПРЕЩЕНИИ ИЛИ ОГРАНИЧЕНИИ
ПРИМЕНЕНИЯ КОНКРЕТНЫХ ВИДОВ ОБЫЧНОГО ОРУЖИЯ,
КОТОРЫЕ МОГУТ СЧИТАТЬСЯ НАНОСЯЩИМИ ЧРЕЗМЕРНЫЕ ПОВРЕЖДЕНИЯ
ИЛИ ИМЕЮЩИМИ НЕИЗБЕЖНО НЕИЗБИРАТЕЛЬНОЕ ДЕЙСТВИЕ

PROTOCOLO ADICIONAL
A LA CONVENCION SOBRE PROHIBICIONES O RESTRICCIONES DEL EMPLEO
DE CIERTAS ARMAS CONVENCIONALES QUE PUEDAN CONSIDERARSE
EXCESIVAMENTE NOCIVAS O DE EFECTOS INDISCRIMINADOS



ADDITIONAL PROTOCOL
TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON
THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH
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OR TO HAVE INDISCRIMINATE EFFECTS



UNITED NATIONS
1995

ADDITIONAL PROTOCOL
TO THE 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

ARTICLE 1: ADDITIONAL PROTOCOL

The following protocol shall be annexed to the 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 ("the Convention") as Protocol IV:

"Protocol on Blinding Laser Weapons
(Protocol IV)

Article 1

It is prohibited to employ laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices. The High Contracting Parties shall not transfer such weapons to any State or non-State entity.

Article 2

In the employment of laser systems, the High Contracting Parties shall take all feasible precautions to avoid the incidence of permanent blindness to unenhanced vision. Such precautions shall include training of their armed forces and other practical measures.

Article 3

Blinding as an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment, is not covered by the prohibition of this Protocol.

Article 4

For the purpose of this Protocol 'permanent blindness' means irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 Snellen measured using both eyes."

ARTICLE 2: ENTRY INTO FORCE

This Protocol shall enter into force as provided in paragraphs 3 and 4 of Article 5 of the Convention.
