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## AMENDED MINES PROTOCOL

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

## REPORT

[To accompany Treaty Doc. 105-1(A)]

The Committee on Foreign Relations to which was referred the Amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices (Protocol II or the Amended Mines Protocol), to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Convention Weapons which May Be Deemed to be Excessively Injurious or to have Indiscriminate Effects, having considered the same, reports favorably thereon with 1 reservation, 9 understandings and 13 conditions and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

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### I. BACKGROUND

#### *Introduction*

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

to the Protocol on Mines was approved in the resolution of ratification of the Convention itself.

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

STATEMENT.—The Senate recognizes the expressed intention of the President to negotiate amendments or protocols to the Convention to carry out the following objectives:

(A) An expansion of the scope of Protocol II to include internal armed conflicts.

(B) A requirement that all remotely delivered mines shall be equipped with self-destruct devices.

(C) A requirement that manually emplaced anti-personnel mines without self-destruct devices or backup self-deactivation features shall be used only within controlled, marked, and monitored minefields.

(D) A requirement that all mines shall be detectable using commonly available technology.

(E) A requirement that the party laying mines assumes responsibility for them.

(F) The establishment of an effective mechanism to verify compliance with Protocol II.

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

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

In November 1996 the United States introduced a resolution in the United Nations General Assembly urging "states to vigorously pursue an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel Land Mines (APL) with a view to completing the negotiations as soon as possible." The resolution passed by 185–0 (with 10 abstentions) and land mines thus became a matter of concern for the 1997 Conference on Disarmament.

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

The Senate's consideration of the Amended Mines Protocol has thus occurred in the midst of a larger and more widely noted controversy over the Ottawa Convention and U.S. policy regarding that Convention. The Ottawa Convention is separate from the Convention on Conventional Weapons, and the Committee agrees with the Administration that the existence of the Ottawa Convention, which neither the United States, China, Russia, nor several other major land mine producers elected to sign, does not obviate the need to act on the Amended Mines Protocol.

The Committee recommends adoption of the Amended Mines Protocol to the Convention on Conventional Weapons (CCW). Wide adherence to, and full implementation of, the Amended Mines Protocol will help reduce civilian casualties resulting from land mines until a truly global agreement to ban APL enters into force.

## II. IMPLICATIONS OF THE AMENDED MINES PROTOCOL

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

### *Military Implications of the Amended Mines Protocol*

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

The Committee was assured on numerous occasions by the executive branch that the provisions of the amended Protocol reflect the practices already adopted by the U.S. military. In those areas where the possibility of degradation of U.S. military capabilities exists (through misinterpretation of the Protocol), the Committee has recommended understandings to preclude this from happening. Taken together, the provisions of the resolution of ratification are designed to ensure that the United States military will not incur

any reduction in fighting power or alteration in operating practice. The executive branch repeatedly assured the Committee that, since the U.S. Armed Forces already observe the practices and obligations required of land mine use under the Amended Mines Protocol, ratification of the Protocol would have no implications for U.S. military effectiveness. These assurances were central to the Committee's decision to recommend ratification.

#### *Significant Features of the Protocol*

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

#### **A. Short-duration Mines**

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

Short-duration APL are a carefully-devised military capability. In modern maneuver warfare, military forces invariably will emplace a mine field but later find the requirement to move through it themselves. Short-duration mines are not designed to be long-lived enough to pose a major impediment to U.S. military planners, and their defensive benefits for U.S. forces are unquestionable.

Unless an APL is used in areas marked and monitored to effectively exclude civilians, the Protocol requires the APL in question to be capable of self-destructing within 30 days of emplacement and of self-deactivation within 120 days of emplacement. The Amended Mines Protocol specifies that the APL must accomplish these tasks with 90 percent reliability in the case of self-destruction, and 99.9 percent reliability for self-deactivation and self-destruction combined. Because long-duration APL typically have a thirty-year active "laid" life span, the Protocol requires that active laid life be reduced by roughly 99 percent.

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

preset time with 99.99 percent reliability. Of 32,000 mines tested, only one missed its self-destruct time (and it was only one hour late in destructing). All U.S. self-destructing land mines are also self-deactivating. The reliability rate for self-deactivation within 120 days is 99.9999 percent.

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

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

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

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

#### B. Detectability

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

One of the more important deficiencies of the 1980 Mines Protocol is that it does not prohibit the use of non-detectable mines. A number of countries, such as China, have produced or deployed

large numbers of non-detectable plastic mines which present a serious threat to civilians, peacekeepers, relief missions and mine-clearance personnel. The Amended Mines Protocol eliminates this earlier deficiency with respect to anti-personnel mines. The Committee urges the President to continue to seek the extension of this provision to ban non-detectable anti-tank mines, as well.

#### C. Transfer Restrictions

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

#### D. Scope of Application

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

This aspect of the Amended Mines Protocol is, in fact, a step forward in the development of the rules of war, which generally have applied only to war among states (even though the United States has considered them applicable to all its own military operations). The Amended Protocol is the first treaty to accept the reality that internal armed conflicts are as deadly as inter-state wars, and therefore deserving of limitation through international rules.

### III. FUTURE LAND MINE ARMS CONTROL ISSUES

#### A. Differentiation Between Short-Duration and Long-Duration Systems

The majority of the Committee hopes that the Administration will re-emphasize the distinctions drawn in the Amended Mines Protocol by making distinctions between short- and long-duration devices.

The Protocol makes a clear and reasonable distinction between mines which destroy themselves or deactivate (such as the Pursuit Deterrent Munition) and those which do not. The majority of the Committee recommends that future U.S. policy on land mine issues capitalize on terms set forth in the Technical Annex to the Protocol.

## B. Future Negotiations on an Export Ban

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

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

For several years, the United States has adopted a unilateral ban on all anti-personnel mine exports. Yet, as has been noted elsewhere in this report, U.S. land mines, because of their sophisticated disarming and de-activation safeguards, do not contribute to the land mine crisis.

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

The minority of the Committee, while in agreement that U.S. short-duration mines are of much less concern than long-duration mines from the humanitarian standpoint, shares the Administration's goal that an export ban be undertaken as a further step toward an effective world-wide APL ban. These members believe that the crucial purpose of negotiations in the CD should be to deter-

mine how extensive an export ban the world's major land mine producing countries can agree to accept. They sincerely hope that current efforts to find alternatives to APL will bear fruit and that such alternatives will afford a long-term answer to the problem of fortified border regions such as that in Korea, as well as to the use of APL in mixed munitions. In their view, while it might be possible in the context of a world-wide export ban to craft exemptions for some transfers of short-duration mines to replace long-duration mines, any U.S. interest in allowing such transfers to South Korea must be balanced against the broader humanitarian objective of moving all countries away from APL.

Furthermore, the minority does not regard short-duration mines as a panacea. If produced or exported widely, these mines could also pose grave humanitarian problems. They are dispersed by air in large numbers over wide areas, and verification of deployed mines' compliance with self-destruct/self-deactivation requirements would be virtually impossible. This is among the reasons why the executive branch has expressed support for a global ban, and an intention to sign the Ottawa Convention if suitable alternatives to APL, including those used in mixed munitions, are developed.

#### C. Other Issues Relating to Land Mine Negotiations

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

The Committee recommends that the United States explore future modifications to the Protocol to raise the reliability requirement for self-destruction and self-deactivation, and to provide for improved verification.

### IV. COMMITTEE ACTION

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

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

*February 25, 1998 (open session)*

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

*February 3, 1998 (open session)*

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



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

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

At a markup on July 23, 1998, the Committee considered a resolution of ratification including 1 reservation, 9 understandings, and 14 conditions. The resolution was agreed to by the Committee by a rollcall vote of 14–4. Those members voting in the affirmative were Helms, Lugar, Coverdell, Hagel, Smith, Thomas, Grams, Ashcroft, Frist, Brownback, Biden, Dodd, Kerry, and Robb. Those members voting in the negative were Sarbanes, Feingold, Feinstein, and Wellstone.

The resolution of ratification was reported to the full Senate, together with Executive Report 105–21, but was not acted upon during the 105th Congress. At a markup on March 23, 1999, the Committee considered a resolution of ratification including 1 reservation, 9 understandings, and 13 conditions. The resolution was agreed to by voice vote.

#### *Reservation*

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

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

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

Consequently, a reservation to the Protocol is necessary to ensure that this provision does not tremendously complicate mission accomplishment, and ultimately lead either to increased U.S. cas-

ualties or to a command decision not to employ the U.S. Armed Forces against supply dumps, depots, or other military locations containing “food or drink.”

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

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

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

#### *Understanding 1: United States Compliance*

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

#### *Understanding 2: Effective Exclusion*

Understanding (2) states the view of the United States that the Amended Mines Protocol’s requirement for U.S. military personnel to ensure the “effective exclusion” of civilians when using a Claymore mine is satisfied as long as the unit using the mine monitors various avenues of approach where the mines are deployed. United States military personnel have not violated the Amended Mines Protocol if a civilian is killed or injured by a trip-wired Claymore, provided that those personnel had posted sentries, or were maintaining overview of the area where the mines were emplaced. This understanding is important to ensure that small units of the U.S. Armed Forces (such as reconnaissance teams) will not find the re-

quirements of Article 5(6)(b) impractical to fulfill. It is the understanding of the Committee that the U.S. Armed Forces already are trained to maintain appropriate safeguards in the employment of Claymores, and therefore that no changes to current operating procedures will need to be made.

#### *Understanding 3: Historic Monuments*

The Amended Mines Protocol contains a prohibition on the use of booby-traps and other devices in connection with historic monuments, works of art, or places of worship “which constitute the cultural or spiritual heritage of peoples.” As written, this might apply to an extremely large category of buildings and items. Understanding (3) states the view of the United States that Article 7(1)(i) will be interpreted as having a restrictive meaning. This understanding protects U.S. military personnel from accusations of violation of the Protocol by making clear that only a very limited class of objects having clearly and widely recognized cultural or spiritual importance falls within the purview of Article 7(1)(i).

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

#### *Understanding 4: Legitimate Military Objectives*

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

#### *Understanding 5: Peace Treaties*

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

#### *Understanding 6: Booby-Traps and Other Devices*

This understanding states the view of the United States that the prohibition against the deliberate construction of booby-traps in the form of apparently harmless objects does not preclude U.S. military

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

Understanding (6) also states the view of the United States that a trip-wired hand grenade shall be treated under the Amended Mines Protocol only as a booby-trap, and not as a “mine” or an “anti-personnel mine.” This clarification is necessary to prevent future confusion over whether a trip-wired hand-grenade (or any similar device) might also fit the definitions of mine and anti-personnel mine, and thus also be subject to the relevant restrictions on such mines. Without this clarification, the Amended Mines Protocol could be misconstrued as preventing the use of trip-wired grenades unless, for example, these devices are clearly marked and visible. This would defeat the military utility of such a device in the first place and is not what the Amended Mines Protocol intended.

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

#### *Understanding 7: Non-Lethal Capabilities*

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

#### *Understanding 8: International Tribunal Jurisdiction*

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

Additionally, and in relation to Understanding (8), the Committee notes that the executive branch agreed that the new requirements of the Amended Mines Protocol are not part of generally-rec-

ognized customary law and, therefore, that the United States does not consider that the International Criminal Court may assert jurisdiction over these matters.

*Understanding 9: Technical Cooperation and Assistance*

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

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

*Condition 1: Pursuit Deterrent Munition*

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

Further, in meeting Condition (1)’s certification requirement, the President must agree that a mere change in a tactic or an oper-

ational concept, in and of itself, will not constitute an “effective alternative” to the PDM. By clear implication, then, any replacement to the PDM likely must revolve around the application of an alternative technology. While tactics and operational concepts may be adapted or conformed to capitalize upon a new, technological alternative, the Committee does not agree that manipulation of doctrine alone is sufficient to justify the abandoning of this military capability.

*Condition 2: Humanitarian Demining Assistance*

This condition expresses the views of the Senate on the extent to which the United States leads the international effort to address the problems posed by the indiscriminate use of anti-personnel land mines. It recognizes the fact that the United States has contributed more to the global demining effort than any other country, has developed and shared critical demining technology with other countries, and continues to expand its demining program.

*Condition 3: Limitation on the Scale of Assessment*

This provision addresses the fact that the United States is scheduled to pay for implementation of this Protocol at the same rate of assessment that it pays to the United Nations (i.e., 25 percent). The Senate has already made clear that the United States should not be assessed to pay any more than 20 percent of the U.N. assessments. The current U.S. assessment is nearly double the assessment rate of any other country. In contrast, Russia—one of the countries directly responsible for the transfer of long-duration mines and the resultant, indiscriminate carnage and human suffering—pays less than 5.67 percent.

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

*Condition 4: United States Authority for Technical Cooperation and Assistance*

This provision makes clear that the executive branch must first obtain both statutory authorization and appropriation before funds are withdrawn from the Treasury to provide any assistance or payment under Article 11 or Article 13(3)(d) of the Protocol. Accordingly, this condition prohibits the use of reprogrammed funds for any payment or assistance, including the transfer of in-kind items, under Article 11 or Article 13(3)(d) of the Amended Mines Protocol.

*Condition 5: Future Negotiation of Withdrawal Clauses*

This provision expresses the sense of the Senate that treaties containing arms control provisions should allow a party to withdraw from such provisions when that party’s supreme national interests are threatened, regardless of whether the party is engaged in armed conflict, provided that an appropriate period of advance notice has been given. Prohibiting withdrawal from arms control limitations during wartime—obviously the period in which a coun-

try's supreme interests are most likely to be jeopardized—unduly infringes on the sovereign right of a country to self-defense.

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

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

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

#### *Condition 6: Land Mine Alternatives*

This condition requires the President to assure the Senate, before moving forward with ratification of the Amended Mines Protocol, that he will not seek to limit the consideration of alternatives to anti-personnel and mixed anti-tank systems too narrowly. To do so would mean that the Administration would preclude exploration of alternative technologies which might be safer to use, or pose even less of a risk to noncombatants, than U.S. short-duration mines.

The Committee is very concerned with indications that the Administration may intend to limit consideration of non-APL solutions to those alternatives which are compliant with the Ottawa Convention. Specifically, the Committee suspects that very few “technological” alternatives would meet this narrow compliance requirement. For this reason, a search for APL alternatives which precludes anything but Ottawa-compliant systems may well be steered towards doctrinal or operational changes, rather than technological fixes. As the Committee makes clear in Condition (8), this is unlikely to be acceptable.

Additionally, this Condition requires the President to certify to the Congress that, in pursuing alternatives to anti-personnel mines

and mixed anti-tank systems, the United States will only pursue those technologies which are affordable and which will provide a level of military effectiveness “equivalent” to that currently provided by the mine or mixed system in question.

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

Finally, the Committee notes that the concept of “alternatives to United States anti-personnel mines, or mixed anti-tank systems,” as contained in subparagraph (B), by its very nature entails considerations regarding safety of use, risks to non-combatants, and possibly other humanitarian requirements. Indeed, the only reason the United States is engaging in a search for alternatives is to determine whether a “more humanitarian” capability can be economically fielded without any reduction in military effectiveness.

Thus, this certification prohibits an unreasonable narrowing of the scope of the search for alternatives; nevertheless the criteria which may inform the President’s decision about any particular alternative, both implicitly and explicitly, remain questions of “equivalent” military effectiveness, affordability, safety, and the aforementioned humanitarian considerations.

#### *Condition 7: Certification With Regard to International Tribunals*

Condition (7) is directly related to Understanding (8) (which makes clear that no international tribunal or similarly constituted body shall have jurisdiction over the United States or any of its citizens with respect to the Amended Mines Protocol or the Convention on Conventional Weapons). In order to fully clarify the shared understanding between the Executive and the Senate, Condition (7) requires a certification by the President as a condition of ratification. Specifically, prior to the deposit of the United States instrument of ratification for this Protocol, the President shall certify to the Congress that with respect to this Protocol, the Convention on Conventional Weapons, or any future protocols or amendments thereto, the United States shall not recognize the jurisdiction of any international tribunal over the United States or any of its citizens.

#### *Condition 8: Tactics and Operational Concepts*

Condition (8) operates in tandem with Condition (6). It makes clear that the Senate is unlikely to regard as acceptable any claim that a change in tactics or operational concepts would be sufficient, in and of itself, to constitute an effective alternative to mines. The Administration has repeatedly declared its intent to eliminate uni-



laterally U.S. APLs and mixed anti-tank systems. As National Security Advisor Sandy Berger committed in a May 15, 1998 letter to Senator Leahy:

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

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

Condition (8) makes clear the view of the Senate that the Administration is unlikely to argue successfully that a new tactic or operational concept can replace APL or mixed systems. Moreover, the Committee expects that the Department of Defense will not expend scarce resources on researching new tactics or operational concepts that are not associated with new technological alternatives to APL. As Condition (1) makes clear, the Committee considers an "effective alternative" (for the Pursuit Deterrent Munition) to require more than a change in tactics or operational concepts, thereby implicitly suggesting the requirement for a "technological" remedy. Moreover, as the discussion of Condition (6) makes clear, the President may not limit the pursuit of alternatives to Ottawa Convention-compliant remedies because of the Committee's concern that such a limitation would threaten to push the alternatives considered towards changes of a purely tactical or doctrinal nature.

*Condition 9: Finding Regarding the International Humanitarian Crisis*

Condition (9) makes clear that United States short-duration anti-personnel land mines have not contributed to the international humanitarian problem posed by the use of land mines. As has been noted, the large majority of U.S. short-duration mines are designed to self-destruct 4 hours after emplacement. The longest-lived of this type of U.S. mine is designed to self-destruct in 15 days. Because of the short-lived nature of these systems, and the fact that U.S. self-destruct reliability is 100 percent within the 30 days allowed by the Protocol, U.S. short-duration mines cannot be credibly alleged to have contributed to the humanitarian crisis created by long-duration mines.

Further, the Committee notes that a principal advantage of the Amended Mines Protocol is that it establishes tight restrictions on the use of long-duration mines. This, in turn, will reduce the

human suffering associated with these weapons, since a number of countries which have not, to date, agreed to a comprehensive ban, will be bound by the Protocol's limitations.

*Condition 10: Approval of Modifications*

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

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

*Condition 11: Further Arms Reductions Obligations*

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

*Condition 12: Treaty Interpretation*

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

*Condition 13: Primacy of the United States Constitution*

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

## V. RESOLUTION OF RATIFICATION

**Senate of the United States****IN EXECUTIVE SESSION***May \_\_\_\_\_, 1999*

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

**1 SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A**  
**2 RESERVATION, UNDERSTANDINGS, AND CON-**  
**3 DITIONS.**

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

**9 SEC. 2. RESERVATION.**

**10** The Senate's advice and consent to the ratification  
**11** of the Amended Mines Protocol is subject to the reserva-  
**12** tion, which shall be included in the United States instru-  
**13** ment of ratification and shall be binding upon the Presi-  
**14** dent, that the United States reserves the right to use other  
**15** devices (as defined in Article 2(5) of the Amended Mines  
**16** Protocol) to destroy any stock of food or drink that is  
**17** judged likely to be used by an enemy military force, if  
**18** due precautions are taken for the safety of the civilian  
**19** population.

1 **SEC. 3. UNDERSTANDINGS.**

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

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

9           (A) any decision by any military com-  
10 mander, military personnel, or any other person  
11 responsible for planning, authorizing, or execut-  
12 ing military action shall only be judged on the  
13 basis of that person's assessment of the infor-  
14 mation reasonably available to the person at the  
15 time the person planned, authorized, or exe-  
16 cuted the action under review, and shall not be  
17 judged on the basis of information that comes  
18 to light after the action under review was  
19 taken; and

20           (B) Article 14 of the Amended Mines Pro-  
21 tocol (insofar as it relates to penal sanctions)  
22 shall apply only in a situation in which an indi-  
23 vidual—

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

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

3 (iii) knew or should have known, that  
4 the person he intended to kill or cause seri-  
5 ous injury was a civilian.

6 (2) EFFECTIVE EXCLUSION.—The United  
7 States understands that, for the purposes of Article  
8 5(6)(b) of the Amended Mines Protocol, the mainte-  
9 nance of observation over avenues of approach where  
10 mines subject to that Article are deployed con-  
11 stitutes one acceptable form of monitoring to ensure  
12 the effective exclusion of civilians.

13 (3) HISTORIC MONUMENTS.—The United  
14 States understands that Article 7(1)(i) of the  
15 Amended Mines Protocol refers only to a limited  
16 class of objects that, because of their clearly rec-  
17 ognizable characteristics and because of their widely  
18 recognized importance, constitute a part of the cul-  
19 tural or spiritual heritage of peoples.

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

1           (5) PEACE TREATIES.—The United States un-  
2       derstands that the allocation of responsibilities for  
3       landmines in Article 5(2)(b) of the Amended Mines  
4       Protocol does not preclude agreement, in connection  
5       with peace treaties or similar arrangements, to allo-  
6       cate responsibilities under that Article in a manner  
7       that respects the essential spirit and purpose of the  
8       Article.

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

12           (A) the prohibition contained in Article  
13           7(2) of the Amended Mines Protocol does not  
14           preclude the expedient adaptation or adaptation  
15           in advance of other objects for use as booby-  
16           traps or other devices;

17           (B) a trip-wired hand grenade shall be  
18           considered a “booby-trap” under Article 2(4) of  
19           the Amended Mines Protocol and shall not be  
20           considered a “mine” or an “anti-personnel  
21           mine” under Article 2(1) or Article 2(3), re-  
22           spectively; and

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

1           to hand grenades other than trip-wired hand  
2           grenades.

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

10          (8) INTERNATIONAL TRIBUNAL JURISDIC-  
11          TION.—The United States understands that the pro-  
12          visions of Article 14 of the Amended Mines Protocol  
13          relating to penal sanctions refer to measures by the  
14          authorities of States Parties to the Protocol and do  
15          not authorize the trial of any person before an inter-  
16          national criminal tribunal. The United States shall  
17          not recognize the jurisdiction of any international  
18          tribunal to prosecute a United States citizen for a  
19          violation of the Protocol or the Convention on Con-  
20          ventional Weapons.

21          (9) TECHNICAL COOPERATION AND ASSIST-  
22          ANCE.—The United States understands that—

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

1 or deny permission for the export of equipment,  
2 material, or scientific or technological informa-  
3 tion for any reason; and

4 (B) the Amended Mines Protocol may not  
5 be used as a pretext for the transfer of weapons  
6 technology or the provision of assistance to the  
7 military mining or military counter-mining ca-  
8 pabilities of a State Party to the Protocol.

9 **SEC. 4. CONDITIONS.**

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

13 (1) **PURSUIT DETERRENT MUNITION.**—

14 (A) **UNDERSTANDING.**—The Senate under-  
15 stands that nothing in the Amended Mines Pro-  
16 tocol restricts the possession or use of the Pur-  
17 suit Deterrent Munition, which is in compliance  
18 with the provisions in the Technical Annex.

19 (B) **CERTIFICATION.**—Prior to deposit of  
20 the United States instrument of ratification, the  
21 President shall certify to the Committee on  
22 Armed Services and the Committee on Foreign  
23 Relations of the Senate and to the Speaker of  
24 the House of Representatives that the Pursuit  
25 Deterrent Munition shall continue to remain



1 available for use by the United States Armed  
2 Forces at least until January 1, 2003, unless  
3 an effective alternative to the munition becomes  
4 available.

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

9 (2) HUMANITARIAN DEMINING ASSISTANCE.—  
10 The Senate makes the following findings:

11 (A) UNITED STATES EFFORTS.—The Unit-  
12 ed States contributes more than any other  
13 country to the worldwide humanitarian  
14 demining effort, having expended more than  
15 \$153,000,000 on such efforts since 1993.

16 (B) DEVELOPMENT OF DETECTION AND  
17 CLEARING TECHNOLOGY.—The Department of  
18 Defense has undertaken a program to develop  
19 improved mine detection and clearing tech-  
20 nology and has shared this improved technology  
21 with the international community.

22 (C) EXPANSION OF UNITED STATES HU-  
23 MANITARIAN DEMINING PROGRAMS.—The De-  
24 partment of Defense and the Department of  
25 State have expanded their humanitarian

1 demining programs to train and assist the per-  
2 sonnel of other countries in developing effective  
3 demining programs.

4 (3) LIMITATION ON THE SCALE OF ASSESS-  
5 MENT.—

6 (A) LIMITATION ON ASSESSMENT FOR  
7 COST OF IMPLEMENTATION.—Notwithstanding  
8 any provision of the Amended Mines Protocol,  
9 and subject to the requirements of subpara-  
10 graphs (B) and (C), the portion of the United  
11 States annual assessed contribution for activi-  
12 ties associated with any conference held pursu-  
13 ant to Article 13 of the Amended Mines Proto-  
14 col may not exceed \$1,000,000.

15 (B) RECALCULATION OF LIMITATION.—

16 (i) IN GENERAL.—On January 1,  
17 2000, and at 3-year intervals thereafter,  
18 the Administrator of General Services shall  
19 prescribe an amount that shall apply in  
20 lieu of the amount specified in subpara-  
21 graph (A) and that shall be determined by  
22 adjusting the last amount applicable under  
23 that subparagraph to reflect the percent-  
24 age increase by which the Consumer Price  
25 Index for the preceding calendar year ex-

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1 ceeds the Consumer Price Index for the  
2 calendar year three years previously.

3 (ii) CONSUMER PRICE INDEX DE-  
4 FINED.—In this subparagraph, the term  
5 “Consumer Price Index” means the last  
6 Consumer Price Index for all-urban con-  
7 sumers published by the Department of  
8 Labor.

9 (C) ADDITIONAL CONTRIBUTIONS REQUIR-  
10 ING CONGRESSIONAL APPROVAL.—

11 (i) AUTHORITY.—Notwithstanding  
12 subparagraph (A), the President may fur-  
13 nish additional contributions for activities  
14 associated with any conference held pursu-  
15 ant to Article 13 of the Amended Mines  
16 Protocol which would otherwise be prohib-  
17 ited under subparagraph (A) if—

18 (I) the President determines and  
19 certifies in writing to the appropriate  
20 committees of Congress that the fail-  
21 ure to make such contributions would  
22 seriously affect the national interest  
23 of the United States; and

1 (II) Congress enacts a joint reso-  
2 lution approving the certification of  
3 the President under subclause (I).

4 (ii) STATEMENT OF REASONS.—Any  
5 certification made under clause (i) shall be  
6 accompanied by a detailed statement set-  
7 ting forth the specific reasons therefor and  
8 the specific activities associated with any  
9 conference held pursuant to Article 13 of  
10 the Amended Mines Protocol to which the  
11 additional contributions would be applied.

12 (4) UNITED STATES AUTHORITY FOR TECH-  
13 NICAL COOPERATION AND ASSISTANCE.—Notwith-  
14 standing any provision of the Amended Mines Proto-  
15 col, no funds may be drawn from the Treasury of  
16 the United States for any payment or assistance (in-  
17 cluding the transfer of in-kind items) under Article  
18 11 or Article 13(3)(d) of the Amended Mines Proto-  
19 col without statutory authorization and appropria-  
20 tion by United States law.

21 (5) FUTURE NEGOTIATION OF WITHDRAWAL  
22 CLAUSE.—It is the sense of the Senate that, in ne-  
23 gotiations on any treaty containing an arms control  
24 provision, United States negotiators should not  
25 agree to any provision that would have the effect of

1 prohibiting the United States from withdrawing  
2 from the arms control provisions of that treaty in a  
3 timely fashion in the event that the supreme na-  
4 tional interests of the United States have been jeop-  
5 ardized.

6 (6) LAND MINE ALTERNATIVES.—Prior to the  
7 deposit of the United States instrument of ratifica-  
8 tion, the President shall certify to Congress that—

9 (A) the President, in pursuing alternatives  
10 to United States anti-personnel mines or mixed  
11 anti-tank systems, will not limit the types of al-  
12 ternatives to be considered on the basis of any  
13 criteria other than those specified in subpara-  
14 graph (B); and

15 (B) in pursuit of alternatives to United  
16 States anti-personnel mines, or mixed anti-tank  
17 systems, the United States shall seek to iden-  
18 tify, adapt, modify, or otherwise develop only  
19 those technologies that—

20 (i) are intended to provide military ef-  
21 fectiveness equivalent to that provided by  
22 the relevant anti-personnel mine, or mixed  
23 anti-tank system; and

24 (ii) would be affordable.

1           (7) CERTIFICATION WITH REGARD TO INTER-  
2 NATIONAL TRIBUNALS.—Prior to the deposit of the  
3 United States instrument of ratification, the Presi-  
4 dent shall certify to Congress that, with respect to  
5 the Amended Mines Protocol, the Convention on  
6 Conventional Weapons, or any future protocol or  
7 amendment thereto, the United States shall not rec-  
8 ognize the jurisdiction of any international tribunal  
9 over the United States or any of its citizens.

10           (8) TACTICS AND OPERATIONAL CONCEPTS.—It  
11 is the sense of the Senate that development, adapta-  
12 tion, or modification of an existing or new tactic or  
13 operational concept, in and of itself, is unlikely to  
14 constitute an acceptable alternative to anti-personnel  
15 mines or mixed anti-tank systems.

16           (9) FINDING REGARDING THE INTERNATIONAL  
17 HUMANITARIAN CRISIS.—The Senate finds that—

18           (A) the grave international humanitarian  
19 crisis associated with anti-personnel mines has  
20 been created by the use of mines that do not  
21 meet or exceed the specifications on detect-  
22 ability, self-destruction, and self-deactivation  
23 contained in the Technical Annex to the  
24 Amended Mines Protocol; and

1           (B) United States mines that do meet such  
2           specifications have not contributed to this prob-  
3           lem.

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

14          (11) FURTHER ARMS REDUCTIONS OBLIGA-  
15          TIONS.—The Senate declares its intention to con-  
16          sider for approval an international agreement that  
17          would obligate the United States to reduce or limit  
18          the Armed Forces or armaments of the United  
19          States in a militarily significant manner only pursu-  
20          ant to the treaty-making power as set forth in Arti-  
21          cle II, section 2, clause 2 of the Constitution of the  
22          United States.

23          (12) TREATY INTERPRETATION.—The Senate  
24          affirms the applicability to all treaties of the con-  
25          stitutionally-based principles of treaty interpretation

1 set forth in condition (1) of the resolution of ratifi-  
2 cation of the INF Treaty, approved by the Senate  
3 on May 27, 1988, and condition (8) of the resolution  
4 of ratification of the CFE Flank Document, ap-  
5 proved by the Senate on May 14, 1997.

6 (13) PRIMACY OF THE UNITED STATES CON-  
7 STITUTION.—Nothing in the Amended Mines Proto-  
8 col requires or authorizes the enactment of legisla-  
9 tion, or the taking of any other action, by the Unit-  
10 ed States that is prohibited by the Constitution of  
11 the United States, as interpreted by the United  
12 States.

13 **SEC. 5. DEFINITIONS.**

14 As used in this resolution:

15 (1) AMENDED MINES PROTOCOL OR PROTO-  
16 COL.—The terms “Amended Mines Protocol” and  
17 “Protocol” mean the Amended Protocol on Prohibi-  
18 tions or Restrictions on the Use of Mines, Booby-  
19 Traps and Other Devices, together with its Tech-  
20 nical Annex, as adopted at Geneva on May 3, 1996  
21 (contained in Senate Treaty Document 105-1).

22 (2) CFE FLANK DOCUMENT.—The term “CFE  
23 Flank Document” means the Document Agreed  
24 Among the States Parties to the Treaty on Conven-  
25 tional Armed Forces in Europe (CFE) of November



1 19, 1990, done at Vienna on May 31, 1996 (Treaty  
2 Document 105-5).

3 (3) CONVENTION ON CONVENTIONAL WEAP-  
4 ONS.—The term “Convention on Conventional  
5 Weapons” means the Convention on Prohibitions or  
6 Restrictions on the Use of Certain Conventional  
7 Weapons Which May be Deemed to be Excessively  
8 Injurious or to Have Indiscriminate Effects, done at  
9 Geneva on October 10, 1980 (Senate Treaty Docu-  
10 ment 103-25).

11 (4) UNITED STATES INSTRUMENT OF RATIFICA-  
12 TION.—The term “United States instrument of rati-  
13 fication” means the instrument of ratification of the  
14 United States of the Amended Mines Protocol.

## VI. ARTICLE-BY-ARTICLE ANALYSIS

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

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

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

### *Article 1—Scope of Application*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Article 2—Definitions*

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

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

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

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

It is also this characteristic, i.e. that the munition is designed to be activated by the target, that distinguishes a mine from so-called unexploded 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.

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

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

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

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

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

Paragraph 4 defines "booby trap" as any device or material which is designed, constructed, or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.

This is the same definition used in the 1980 Protocol. It is understood to include, for example, a hand-grenade when attached to a door and rigged to explode when the door opens, as well as devices designed in advance to function as booby-traps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 15 defines "transfer" as involving, in addition to the physical movement of mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced mines. This definition makes clear, therefore, that the transfer of areas of land (for example, in a peace agreement) is not constrained by the transfer restrictions of Article 8, even though mines may be present in the area. The Administration further clarified with the Senate its understanding of related issues in two classified memoranda and a letter to Chairman Helms that was received on July 23, 1998.



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

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

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

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

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

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

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

Paragraph 5 prohibits the use of mines, booby-traps and other devices specifically designed to detonate by the presence of 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 U.S. had strongly supported a requirement in this regard but no consensus was possible.) In any case, where anti-tank mines are equipped with a self-deactivation feature, they may not have an anti-handling device capable of functioning after the mine has deactivated.

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

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

Paragraph 8 prohibits indiscriminate use of mines, booby-traps and other devices and defines such use as placement which: (a) is not aimed at a military objective as defined in Article 2, or (b) employs a method or means of delivery which cannot be directed at a specific military objective, or (c) may be expected to cause incidental loss of civilian life or damage to civilian objects excessive in relation to the direct military advantage anticipated. This prohibition is already a feature of customary international law that is applicable to all weapons. Insofar as the United States considers land—including the neutralization or denial of access to a piece of land—to be a legitimate military objective, paragraph 8 in no way

restricts the use of remotely delivered "mixed" munitions containing both anti-personnel and anti-tank mines.

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

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

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

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

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

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

One of the more important deficiencies of the 1980 Protocol is that it does not prohibit the use of non-detectable mines. A number of states have produced or deployed large numbers of non-detectable plastic mines which present a serious threat to civilians, peacekeepers, relief missions and mine-clearance personnel. Article 4 is designed to eliminate that deficiency with respect to anti-personnel mines.

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

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

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

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

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

Another of the more important deficiencies of the 1980 Protocol is that it provides little effective protection for the civilian population against anti-personnel mines that remain active and dangerous for long periods. Such mines often cause civilian casualties

for decades after they are laid. Articles 5 and 6 are designed to deal with that deficiency.

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

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

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

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

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

It was widely understood, however, that this paragraph does not preclude agreement among concerned states, in connection with such arrangements, to allocate responsibilities under this paragraph in another manner which respects the essential spirit and purpose of the Article. This interpretation of the provision was made part of the negotiating record through a statement by the Australian delegation at the final plenary session on behalf of 16 other delegations, including the U.S. delegation. No other delegation contested this statement on the record. The Committee recommends that the Senate attach a formal understanding to the resolution of ratification making clear that the Protocol does not preclude agreement among states as long as responsibilities relating to mines are allocated in a manner which reflects the spirit and purpose of Article 5.

Paragraph 3 states the only exception to the marking, monitoring, protection and clearance requirement: when "compliance is not feasible due to forcible loss of control of the areas as a result of enemy military action." For the party that laid the mines, regain-

ing control of the area means a renewed obligation to comply with the requirements to mark, monitor, protect and clear. If another party gains control of the area, paragraph 4 makes clear that it is obliged to meet such requirements to the maximum extent feasible.

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

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

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

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

In other words, for a limited time, a deferring party may use anti-personnel mines without SD outside of marked and monitored fields, provided such mines self-deactivate within 120 days in accordance with the requirements of the Technical Annex. By the end of the deferral period, and sooner if possible, any anti-personnel mine used outside of marked and monitored fields must be both self-destructing and self-deactivating. Moreover, because the deferral option only applies to mines produced prior to entry-into-force, there is a strong disincentive to produce such non-compliant anti-personnel mines after entry-into-force since such newly-produced mines may not be lawfully used outside of marked and monitored fields under any circumstances. Finally, as noted above, the deferral period runs from the overall entry to force of the amended protocol, rather than the date on which it enters into force for the particular state in question.

The last paragraph of Article 5 deals with “Claymore” type mines when used in a trip-wired mode. It establishes an exemption from

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph 1 prohibits booby-traps or other devices attached to or associated with any of a series of objects thought to pose particular dangers to civilians or other protected persons, including: inter-



nationally recognized protective emblems; sick, wounded or dead persons; medical facilities or equipment; children's toys or objects specially designed for children; and food or drink.

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

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

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

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

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

Some have argued that "food and drink"—regardless of whether it is in a military establishment or not—is particularly attractive to civilians. For this reason, the proposed reservation requires that "due precautions are taken for the safety of the civilian population." However, in providing for the use of "other devices" to destroy any stock of food judged "likely to be used by an enemy military force," the Committee implicitly rejects the argument that munitions cannot be used against supply depots because civilians

might be present. According to the same logic, neither cruise missiles nor gravity bombs should be used against supply depots. The Committee reservation makes clear that the Amended Mines Protocol may not be construed as a precedent for seeking to ban the use of other types of weaponry against these legitimate military targets in further negotiations associated with the "laws of war."

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

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

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

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

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

### *Article 8—Transfers*

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

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

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

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

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

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

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

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

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

Paragraph 1 requires parties to record all information on such weapons in accordance with the provisions of the Technical Annex. This is more expansive than the 1980 Protocol which imposed such a requirement only on minefields and booby-traps that were "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 U.S. and other western delegations made clear that this would not affect the discretion of states to restrict or deny permission to export such items for national security or other valid reasons. The Committee recommends that the Senate clarify this shared understanding with the executive branch in a formal understanding in the resolution of ratification for the Amended Mines Protocol. The Committee further recommends that such an understanding make clear that other countries may not legitimately use the Amended Mines Protocol as a pretext for the transfer of militarily significant assistance or equipment under the guise of providing simple humanitarian assistance.

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

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

Paragraph 6 provides that High Contracting Parties undertake, "without prejudice to their constitutional and other legal 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 land mines and other covered weapons.

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

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

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

*Article 13—Consultations of High Contracting Parties*

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

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

Specifically, paragraph 1 and 2 provide for annual conferences of parties. Paragraph 3 describes the work of the conferences, including a review of the operation of the Protocol, preparation for review conferences, and consideration of the development of technologies to protect civilians. Paragraph 4 provides for annual reports by High Contracting Parties on these and other matters to advance of each annual conference. Paragraph 5 deals with the allocation of costs of these meetings.

*Article 14—Compliance*

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

Paragraph 1 calls upon parties to “take all appropriate steps, including legislative and other measures, to prevent and suppress violations” of the amended Protocol. The imposition of such a re-

sponsibility is an important element in promoting compliance with the Protocol.

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

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

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

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

In order to fully clarify the shared understanding between the Executive and the Senate on the means by which the United States will enforce the provisions of both the Protocol and the CCW, the Committee recommends that a certification be required of the President as a condition of ratification. Specifically, the Committee recommends that, prior to the deposit of the United States instrument of ratification for this Protocol, the President certify to the Congress that with respect to this Protocol, the Convention on Conventional Weapons, or any future protocols or amendments thereto, that the United States shall not recognize the jurisdiction of any international tribunal over the United States or any of its citizens.

*Technical Annex*

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

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

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