

CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON
THE USE OF CERTAIN CONVENTIONAL WEAPONS

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

REPORT

[To accompany Treaty Doc. 103-25]

The Committee on Foreign Relations, to which was referred the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects, and Two Accompanying Protocols on Non-Detectable Fragments (Protocol I) and on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof subject to the seven conditions as set forth in this report and the accompanying resolution of ratification.

CONVENTION ON CONVENTIONAL WEAPONS

PURPOSE

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects (The Convention on Conventional Weapons) and Two Accompanying Protocols on Non-Detectable Fragments (Protocol I) and on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) are designed to protect victims of armed conflict from the effect of certain weapons. The primary effect of the treaty is to restrict widespread and indiscriminate use of landmines.

BACKGROUND

The Conventional Weapons Convention was negotiated in Geneva from 1978–80 and entered into force in 1983. The United States signed the Convention in 1982, but it was not transmitted to the Senate for its advice and consent until May 1994.

The Convention was an outgrowth of the negotiations on international humanitarian law in armed conflict that took place in Geneva in the 1970s. During negotiations the non-aligned states made an effort to prohibit broad categories of weapons, including modern fragmentation weapons, incendiaries and high-velocity small-caliber ammunition (such as that for the M-16). In the end, however, the Conference adopted more limited restrictions (described below) on the use of three specific types of conventional weapons: (1) weapons with non-detectable fragments; (2) landmines and booby-traps; and (3) incendiaries.

The Administration has requested that the Senate give the earliest possible consideration to the Convention on Conventional Weapons. A Review Conference has been scheduled for September 25 to October 14, 1995, primarily for the purpose of considering improvements to the Convention and its protocols. The United States can be a full participant only if it deposits its instrument of ratification six months in advance of the Conference, which would be March 25, 1995. The Administration wishes to be a full participant at the Conference in order to pursue improvements in the Convention, particularly with regard to landmine provisions. Any amendments agreed upon by Parties at the Review Conference would have to be transmitted to the Senate for its advice and consent.

Since the conclusion of these negotiations in 1980, a total of 42 States have become Parties to the Convention, including France and most other NATO members, China, Japan and Russia. Italy ratified on January 19, 1995; the United Kingdom ratified on February 13, 1995.

MAJOR PROVISIONS

The most important part of the Convention is Protocol II, dealing with the use of land mines and similar devices. During the past two decades, millions of antipersonnel mines have been used indiscriminately in various conflicts in the third world, causing enormous numbers of civilian casualties. In response to the widespread uncontrolled use of landmines, the United States and other countries proposed a series of actions, including the adoption of export moratoria, extensive de-mining programs, and a U.S. proposal for transfer and stockpiling.

Protocol I prohibits the use of any weapons, the primary use of which is to injure by fragments that cannot be detected by x-rays. Protocol III prohibits the use of air-delivered incendiary weapons against military objectives within cities, towns, villages or similar civilian concentrations. Other incendiaries could only be used in such areas when military objectives are clearly separated and all feasible precautions are taken to minimize civilian casualties and damage.

The most significant provisions are as follows:

Articles

Article 1 provides that the Convention applies to international armed conflicts. It also applies to “national liberation” wars, but (as described below) the Administration proposes a reservation on this point.

Article 4 provides that a State ratifying or acceding to the Convention must accept at least two of its Protocols. As described below, the Administration proposes to accept the first two Protocols (on non-detectable fragments and landmines) at this time, but not the third Protocol (on incendiaries), which the Pentagon strongly opposes.

Article 7 includes a provision applying the Convention and the 1949 Geneva Conventions to any “national liberation movement” that accepts and applies those agreements.

Article 8 provides for the possibility of a Review Conference to consider amendments to the Convention or the addition of new Protocols.

Protocol I (non-detectable fragments)

This Protocol prohibits the use of any weapon of which the primary effect is to injure the human body with fragments that escape detection by x-rays. This Protocol only applies to wounding fragments, and does not prohibit munitions with plastic casings or internal parts. The U.S. military has made it clear that they have no interest in such weapons. In fact, the use of such weapons makes it more difficult to treat wounded civilians or U.S. military personnel.

Protocol II (landmines and booby-traps)

Article 1 limits the Protocol to landmines, excluding anti-ship mines at sea or in inland waterways. This provision was negotiated in accordance with the position of the Joint Chiefs of Staff, who preferred not to negotiate restrictions on naval mines in this context.

Article 3 regarding restrictions on the use of landmines restates customary international law as it applies to landmines and does not add any additional restrictions on military operations.

Article 4 imposes specific restrictions on the use of manually-emplaced landmines and booby-traps in cities, towns, villages or other areas containing a concentration of civilians. Such use is prohibited unless: (1) combat between ground forces is taking place or appears imminent; (2) the mines or booby-traps are placed on or in the close vicinity of a military objective belonging to or under the control of the enemy; or (3) measures are taken to protect civilians from their effects, such as warning signs, sentries or fences. These prohibitions on use are consistent with U.S. military doctrine and practice.

Article 5 imposes restrictions on the use of remotely delivered mines—that is, mines delivered by artillery, rocket or aircraft. In particular, their location must be accurately recorded or each mine must be equipped with a mechanism that renders the mine harmless or causes it to destroy itself, either automatically or by remote control. These restrictions do not affect the operations of the U.S. military, since all U.S. remotely delivered mines are equipped with self-destruct devices.

Article 6 imposes restrictions on the use of booby traps—that is, devices which function unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act. In particular, this provision prohibits the attachment of booby-traps to children’s toys, corpses, medical equipment, food or drink, or other specified objects that might pose special danger to the civilian population. In addition, the Article prohibits the use of booby-traps in the form of apparently harmless objects which are constructed to contain explosive material to detonate when disturbed (such as booby-traps made to resemble portable radios). These restrictions are consistent with U.S. military doctrine and practice.

Article 7 requires the recording of the location of all pre-planned minefields and all areas in which there has been large-scale and pre-planned use of booby-traps. The Article states that the parties “shall endeavor to ensure” the recording of the location of all other minefields, mines and booby-traps. These records must be exchanged at the end of active hostilities and all necessary and appropriate measures must be taken to protect civilians. This is also consistent with U.S. military doctrine and practice, which require that the location of all mines and booby-traps laid by the U.S. military be recorded.

Article 8 imposes special obligations for the protection of U.N. forces or missions operating in an area in which mines or booby-traps have been laid. It requires each party to the conflict, “as far as it is able,” to clear such mines and booby-traps, to take other measures to protect the U.N. force or mission from these devices, and to make available to the U.N. all information in its possession to the U.N. concerning the location of these devices in the area. These requirements are consistent with U.S. military doctrine.

Article 9 provides that parties to a conflict shall, after the cessation of active hostilities, “endeavor to reach agreement” on the provision of information and technical and material assistance to clear mines and bobby-traps laid during the conflict. No specific requirements for assistance or financial contributions are imposed. (The U.S. has in fact participated in or given assistance to mine-clearing efforts in a number of countries, including Kuwait, Afghanistan, Cambodia, Ethiopia and Mozambique.)

The *Technical Annex* contains specific guidelines for recording the location of mines and booby-traps.

Protocol III (incendiary weapons)

Article 1 defines the scope of weapons covered by the Protocol. It excludes munitions having only incidental incendiary effects, such as illuminants, tracers, smoke and signalling systems. It also excludes munitions that combine penetration, blast or fragmentation effects with an additional incendiary effect designed for use against military objectives such as armored vehicles, aircraft and facilities.

Article 2 prohibits the use of air-delivered incendiary weapons against any military objective located within a city, town, village or similar concentration of civilians. Other incendiary weapons could only be used in such areas when the military objective clearly is separated from the concentration of civilians and all feasible precautions are taken to minimize civilian casualties and damage to

civilian objects. Incendiary attacks on forests or other kinds of plant cover are permitted only where such plant cover is used to conceal military objectives or where it is itself a military objective.

The Administration recommends that the United States not ratify this Protocol to the Convention. Civilian and military defense officials argue that the U.S. may require the use of air-delivered incendiaries to eliminate chemical or biological facilities without exposing a nearby civilian population to the massive release of dangerous substances.

COMMITTEE COMMENTS

The Committee supports ratification of the Convention on Conventional Weapons. The Committee would be remiss, however, in not emphasizing and endorsing the Administration's position that the Convention (particularly its landmines Protocol) needs improvement. The Committee cites three major problems with the treaty in its present form:

1. To date, there are only 42 States Parties to the Convention, even though the Convention was completed 15 years ago. The Convention cannot be effective unless it is adhered to by most of the world's nations, particularly producing countries.

2. The Convention does not have any mechanism for verification and compliance.

3. The Convention does not cover internal armed conflict. Most of the civilian casualties from the use of mines over the past two decades have occurred in such internal conflicts.

The Administration recognizes these concerns and has assured the Committee that it will make a strong effort to resolve them at the Review Conference this fall. Accordingly, the Committee is pushing forward with Senate consideration in order to give the United States a seat at the table in upcoming negotiations to improve the enforcement mechanism and application of the treaty. Any amendments to the Convention must be submitted to the Senate for its advice and consent.

The Administration has made a number of proposals to advance changes during the preparatory meetings for the September-October Review Conference. In testimony before this Committee, the Administration advocated the following additions to the Convention:

Expansion of the scope of the Convention to include internal armed conflicts as well as international armed conflicts. The greatest civilian casualties from landmines have occurred in internal conflicts such as Cambodia, Angola and Iraq.

A requirement that all remotely-delivered mines be equipped with self-destructing and self-deactivating devices to ensure that they do not pose a danger to civilians long after the conflict is over. At present, the Convention gives parties an option to either equip mines with de-neutralizing devices or record the location of mines. Under the proposed changes, these devices would have a specified maximum lifetime and reliability standard, and would have a backup self-deactivating feature (for example, a battery that exhausts itself) to ensure that they do not detonate even if the self-destruct device should fail.

A requirement that manually emplaced antipersonnel mines without self-destruct devices and backup self-deactivation features be used only within controlled, marked and monitored minefields. These minefields would be protected by fencing or other safeguards to ensure the exclusion of civilians. Such minefields could not be abandoned (other than through forcible loss of control to enemy military action) unless cleared or turned over to another state that committed itself to maintaining the same protection.

A requirement that all mines be detectable using commonly-available technology. The Administration argues this would simplify the burden and risks of de-mining.

A requirement that the party laying mines assume responsibility for them, including a duty at the end of active hostilities to clear them, maintain them in controlled fields to protect civilians, or turn them over to another State that has committed to maintaining the same protection. Where the party laying the mines no longer controls the territory in which the mines were laid, it would have a duty to provide assistance to ensure their clearance, to the extent this is permitted by the State in control of the territory in question.

The addition of an effective verification mechanism, including the possibility of fact-finding inspections by a Verification Commission where credible reports of violations have been made. If violations are found to have occurred, there would be a possibility of reference to the U.N. Security Council for action, as well as individual criminal liability for persons who willfully or wantonly put the civilian population in danger.

Further, the Administration finds that the command-detonated Claymore-type mines (i.e., actuated by means of a firing device controlled by a soldier in the field) does not pose the sort of danger to civilians that were the reasons for the restrictions on use of landmines in the Convention's landmines protocol. The Committee supports the Administration's proposal to seek appropriate action at the forthcoming Review Conference which would exclude the command-detonated Claymore-type mines from the restrictions applicable to the mine devices covered by the landmines protocol.

COMMITTEE RECOMMENDATIONS

In addition to the recommendations that the United States only accept Protocols I and II, the Administration has proposed the following conditions on U.S ratification:

- a. A statement that the fourth paragraph of the Preamble, which refers to the substance of two provisions of Additional Protocol I to the 1949 Geneva Conventions (a separate law-of-war agreement on international armed conflicts) applies only to States which have accepted those provisions. The two provisions in question would prohibit methods of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. The U.S. military has raised concerns about the possible effect of these provisions on military operations. The issue is being considered as part of the Administration's ongoing review of Additional Protocol I to the 1949 Geneva Conventions. (That Additional Protocol has not yet been submitted to the Senate.)

b. A Declaration that the provisions of the Convention on so-called national liberation wars will have no effect.

c. A Declaration that the United States will instead apply the Convention to all armed conflicts covered by the 1949 Geneva Conventions. In effect, this would constitute a reservation to the provisions of the Convention that would give so-called liberation movements the same status as governments if they accept and apply the Convention. The Administration takes the view that this would inject subjective and politically controversial standards into international humanitarian law. Instead, the Administration proposes that the United States declare its intent to apply the provisions of the Convention to all armed conflicts, whether international or internal, without regard to their political character.

d. An understanding that the provision of the landmines Protocol on booby-traps in the form of harmless portable objects does not prohibit the adaptation, for use as booby-traps, of portable objects created for another purpose. This is consistent with the language of the Protocol. It simply makes clear that the option is available to create field-expedient booby-traps provided they meet the further requirements of paragraph 1(b) of Article 6. This provision prohibits attaching or associating booby-traps with certain items such as children's toys.

The Committee recommends three further conditions be included in the Resolution of ratification along with the above conditions:

e. A declaration that any amendment to the treaty, including the formation of any commissions, and any submission of Protocol III, must be submitted to the Senate for its advice and consent;

f. A declaration that acknowledges that there are concerns about the acceptability of Protocol III regarding the use of incendiary weapons from a military perspective at this time that require further study by the U.S. Government. The Senate urges a report on this study when amendments to the Convention are presented for the Senate's advice and consent; and

g. A statement that the Senate recognizes the President's intention to negotiate certain specified conditions at the upcoming Review Conference in September, 1995.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on Tuesday, March 7, 1995, to consider ratification of the Convention. Testimony was received from Michael Matheson, Principal Deputy Legal Adviser for the Department of State, who has been the U.S. representative to the preparatory meetings for the Convention's Review Conference. He was accompanied by Major General Michael J. Byron, USMC, Vice Director of the Strategic Plans and Policy Directorate of the Joint Chiefs of Staff, who answered questions on the military position regarding the treaties provisions.

The Committee considered the Convention at its business meeting on March 22, 1995, and voted by voice vote with a quorum present to report if favorably to the Senate for its advice and consent.

CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF
CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO
BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EF-
FECTS

ARTICLE-BY-ARTICLE ANALYSIS OF PROVISIONS

The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects was concluded at Geneva on October 10, 1980. It consists of twelve preambular clauses, eleven operative articles, and three annexes protocols, one of which has a technical annex. The Convention text itself is merely a framework document containing procedural and formal provisions, while the substantive provisions are contained in the three annexed protocols.

The preamble

Paragraph 1 of the Preamble recalls the principle contained in Article 2(4) of the UN Charter that prohibits the use of force in international relations against the sovereignty, territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN.

Paragraphs 2 and 3 recall certain principles recognized by the customary international law of armed conflict, namely the general principle of protection of the civilian population against the effects of hostilities, and the prohibition on means and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

Paragraph 4 recalls the substance of provisions of Protocol I Additional to the 1949 Geneva Conventions, which adopted a new prohibition relating to the use of means or methods of warfare that are intended or may be expected to cause widespread, long-term and severe damage to the natural environment. The United States has not ratified Protocol I, and the Executive branch has not yet completed its review of that Protocol. Accordingly, U.S. ratification should include a statement that this provision applies only to states which have accepted those provisions.

Paragraphs 5–10 express a number of objectives sought by the majority of the states represented at the diplomatic conference that produced the Convention, including an end to the arms race, the progressive development of the rules of war, and negotiated limitations on conventional stockpiles.

Paragraphs 11 and 12 refer to the possibility that the UN General Assembly, the UN Disarmament Commission and the Committee on Disarmament might decide to consider similar restrictions on the use of conventional weapons. Efforts are now under way to conduct a formal review of the Convention by States Parties, with particular emphasis on improvements to the Protocol on landmines.

Article 1

Article 1 states the scope of application of the Convention. It provides that the Convention and its annexed protocols shall apply in the situations referred to in Article 2 common to the 1949 Geneva Conventions, including any situation described in Article 1(4) of Protocol I Additional to those Conventions. The reference to com-

mon Article 2 incorporates the traditional definition of international armed conflicts, namely conflicts between states or the occupation by one state of the territory of another. The treatment of “national liberation” wars in Article 1(4) of Protocol I, however, is objectionable, for reasons described more fully in the discussion of the related provisions of Article 7 below. Accordingly, U.S. ratification of the Convention should be subject to a declaration as proposed in the discussion of Article 7.

Article 2

Article 2 provides that nothing in the Convention detracts from other obligations imposed by international humanitarian law in armed conflict. This would include obligations under the four 1949 Geneva Conventions, the 1899 and 1907 Hague Conventions, and the prohibitions on the use of “dum-dum” bullets and chemical and bacteriological weapons.

Articles 3–11

These articles for the most part incorporate typical final clauses of an international convention. They include provisions for ratification, amendment and possible denunciation with one year’s notice. They provide for the possible convening of a review conference to consider amendments (which would enter into force in the same manner as the Convention itself). Such a review conference has been requested and will convene during the next two years to consider possible improvements to the Convention. On ratification of the Convention, a State may accept all three of the annexed protocols or any two of the three. There are no provisions on reservations.

One provision in these articles is objectionable. Paragraph 4 of Article 7 of that article provides that the Convention applies to the wars of “national liberation” identified in Article 1(4) of Protocol I Additional to the 1949 Geneva Conventions. (Article 1(4) of Additional Protocol I would apply the rules of international armed conflict to any armed conflict “in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.* * *”) In the case of a state that is party to the Convention but not to Additional Protocol I, an “authority” representing a “liberation movement” would, under this provision, be entitled to the protections of the 1949 Geneva Conventions (including those conferring prisoner-of-war status) if it accepts and applies those Conventions.

In our view, Article 1(4) of Additional Protocol I injects subjective and politically controversial standards into international humanitarian law and undermines the important traditional distinction between international and non-international armed conflicts. Accordingly, the United States should not accept the validity of Article 1(4) as a basis for the application of the rules of humanitarian law. We recommend that the United States declare, at the time of ratification of the Convention, that Article 7 will have no effect. During the coming Review Conference on the Convention, it is our intention to support an amendment extending the Convention to all internal armed conflicts. This would have the effect of applying the requirements of the Convention to all armed conflicts, whatever

their political character, without giving special preference and status to "liberation wars."

To demonstrate our support for humanitarian concerns, we should formally state, at the time of U.S. ratification, our intention to apply the provisions of the Convention to all international and non-international armed conflicts, as defined in common Articles 2 and 3 of the Geneva Conventions.

The Convention currently contains no provisions on verification or enforcement of its provisions. At the conference which adopted the Convention the United States proposed a mechanism for international investigation of possible violations, but was unable to secure its adoption because of strong opposition from the Soviet bloc. It is our intention to support adoption of such a provision during the upcoming international review of the Convention.

Protocol on non-detectable fragments (Protocol I)

This Protocol prohibits the use of any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays. This provision was designed to preclude the use of weapons using non-detectable fragments (such as glass or light plastic) as the primary wounding mechanism. Such weapons were regarded as likely to complicate or preclude effective medical treatment for no legitimate military purpose. However, this provision does not preclude non-metallic casing materials or other parts or components which are not designed as the primary wounding mechanism. The United States has no weapons of the type prohibited by this provision and no interest in acquiring them, nor to our knowledge do any western military establishments. The Protocol is therefore unobjectionable, and the United States should accept it at the time of ratification.

Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices (Protocol II)

As stated in Article 1, the Protocol imposes a series of restrictions in the use of landmines, booby-traps and certain other delayed-action weapons. It applies to mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways. Article 2 contains a series of definitions of terms used in the Protocol.

Article 3 sets forth a series of general restrictions on the use of these weapons, which are taken from principles of customary international law applicable to all types of conventional weapons. In particular, the article prohibits directing such weapons against the civilian population as such or against individual civilians, as well as the indiscriminate use of such weapons, and requires that all feasible precautions be taken to protect civilians from the effects of such weapons, taking all circumstances into account, including humanitarian and military considerations.

Article 4 sets forth a series of more specific restrictions on the use of mines in populated areas. Such weapons may only be used in cities, towns, villages or other areas containing a similar concentration of civilians if: (1) combat between ground forces is taking place or appears imminent; (2) these weapons are placed in the close vicinity of a military objective under the control of an adverse

party; or (3) measures are taken to protect civilians, such as the posting of warning signs, the posting of sentries, the issuance of warnings or the erection of fences.

Article 5 deals with remotely-delivered mines, that is, mines delivered by aircraft or artillery. It requires: (1) that such mines only be used against an area which is itself a military objective or contains military objectives; (2) that their location be accurately recorded or that they be equipped with an effective neutralizing mechanism which destroys the mine or renders it harmless when it no longer serves the military purpose for which it was placed in position; and (3) that effective advance warning be given when such mines are used where they may affect the civilian population, unless circumstances do not permit.

Article 6 deals with booby-traps, that is, devices which kill or injure and which function unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act. Paragraph 1(a) prohibits the use of any booby-trap in the form of an apparently harmless portable object which is specifically designed and constructed to contain explosive material. This does not prohibit the adaptation for booby-trap use of objects not designed or constructed for that purpose, and understanding should be adopted at the time of ratification to make that clear. Such improvisation of booby-traps, for example to retard an enemy advance, does not pose the same sort of danger to the civilian population as the mass production of objects specifically designed as booby-traps toward which the provision was directed.

Paragraph 1(b) of Article 6 prohibits booby-traps attached to or associated with any of a series of objects thought to pose particular dangers to civilians or other protected persons, including: internationally recognized protective emblems; sick, wounded or dead persons; medical facilities or equipment; children's toys or objects specially designed for children; and food or drink. Paragraph 2 prohibits booby-traps designed to cause superfluous injury or unnecessary suffering (a principle of customary international law applicable to all weapons).

Article 7 deals with the recording and publication of the location of mines and booby-traps. Parties are required to record the location of all pre-planned minefields laid by them, and all areas in which they have made large-scale and pre-planned use of booby-traps. They are to endeavor to ensure the recording of the location of other mines and booby-traps, but are not strictly required to do so where operational requirements make that impracticable. All such records must be retained. Immediately after the cessation of active hostilities, the party which laid the mines must take all necessary and appropriate measures to protect civilians from their effects, and make information on the location of the mines available to the appropriate parties.

Article 8 contains special requirements to protect the personnel of UN peacekeeping forces. Upon the request of the head of such a force, each party to a conflict is required, so far as it is able, to remove mines or render them harmless, to take such measures as may be necessary to protect the UN force from the effects of such mines, and to make available to the head of that force all information in its possession concerning the location of such mines. As a

matter of policy, the United States will encourage observance of the provisions of Article 8 with respect to non-UN peacekeeping forces in which our armed forces participate.

Article 9 provides that, after the cessation of active hostilities, the parties shall endeavor to reach agreement on the provision of information and technical and material assistance for the purpose of facilitating the removal of mines and booby-traps laid during the course of the conflict. No specific obligation exists to provide any particular type of assistance.

Finally, the Protocol contains a technical annex providing guidelines for recording the location of minefields, mines and booby-traps, which are to be taken into account in carrying out the requirements of the Protocol, but which are not strictly mandatory.

The provisions of this Protocol essentially reflect the practices already adopted by western military forces for the protection of the civilian population. Their observance by other countries could help substantially to reduce casualties among civilians and peacekeeping forces that may result from these weapons. The Protocol is therefore desirable and consistent with U.S. military interests, and the United States should accept it upon ratification of the Convention.

At the same time, we recognize that these provisions do not provide a complete solution to the serious problem of indiscriminate use of these devices. Accordingly, it is our intention, during the upcoming international review of the Convention, to support amendments that would strengthen the requirements of Protocol II, with particular attention to requirements on recording and marking, on self-destructive mechanisms, and on other precautions to protect the civilian population. We also intend to press forward in other international fora with our recent proposal for a moratorium on the export of all anti-personnel landmines.

ENTRY INTO FORCE

This Convention and its Protocols I and II shall enter into force six months after the date on which the United States has deposited its instrument of ratification.

TEXT OF RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That (a) the Senate advise and consent to the ratification of the following Convention and two accompanying Protocols, concluded at Geneva on October 10, 1980 (contained in Treaty Document 103-25), subject to the conditions of subsections (b) and (c):

(1) The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects (in this resolution referred to as the "Convention").

(2) The Protocol on Non-Detectable Fragments (in this resolution referred to as "Protocol I").

(3) The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, together with its technical annex (in this resolution referred to as "Protocol II").

(b) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which shall be included in the instrument of ratification of the Convention:

(1) RESERVATION.—Article 7(4)(b) of the Convention shall not apply with respect to the United States.

(2) DECLARATION.—The United States declares, with reference to the scope of application defined in Article 1 of the Convention, that the United States will apply the provisions of the Convention, Protocol I, and Protocol II to all armed conflicts referred to in Articles 2 and 3 common to the Geneva Conventions for the Protection of War Victims of August 12, 1949.

(3) UNDERSTANDING.—The United States understands that Article 6(1) of Protocol II does not prohibit the adaptation for use as booby-traps of portable objects created for a purpose other than as a booby-trap if the adaptation does not violate paragraph (1)(b) of the Article.

(4) UNDERSTANDING.—The United States considers that the fourth paragraph of the preamble to the Convention, which refers to the substance of provisions of Article 35(3) and Article 55(1) of Additional Protocol I to the Geneva Conventions for the Protection of War Victims of August 12, 1949, applies only to States which have accepted those provisions.

(c) The advice and consent of the Senate under subsection (a) is given subject to the following conditions, which are not required to be included in the instrument of ratification of the Convention:

(1) DECLARATION.—Any amendment to the Convention, Protocol I, or Protocol II (including any amendment establishing a commission to implement or verify compliance with the Convention, Protocol I, or Protocol II), any adherence by the United States to Protocol III to the Convention, or the adoption of any additional protocol to the Convention, will enter into force with respect to the United States only pursuant to the treaty-making power of the President, by and with the advice and consent of the Senate, as set forth in Article II, Section 2, Clause 2 of the Constitution of the United States.

(2) DECLARATION.—The Senate notes the statements by the President and the Secretary of State in the letters accompanying transmittal of the Convention to the Senate that there are concerns about the acceptability of Protocol III to the Convention from a military point of view that require further examination and that Protocol III should be given further study by the United States Government on an interagency basis. Accordingly, the Senate urges the President to complete the process of review with respect to Protocol III and to report the results to the Senate on the date of submission to the Senate of any amendments which may be concluded at the 1995 international conference for review of the Convention.

(3) 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 antipersonnel 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.

APPENDIX

CONSIDERATION OF THE CONVENTION ON THE PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (THE CONVENTION ON CONVENTIONAL WEAPONS) TREATY DOC. 103-25

TUESDAY, MARCH 7, 1995

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-419, the Dirksen Senate Office Building, Hon. Richard G. Lugar presiding.

Present: Senators Lugar, Ashcroft, and Pell.

Senator LUGAR. This hearing of the Senate Foreign Relations Committee will come to order. The Committee meets this morning for purposes of considering the Convention on Conventional Weapons.

This Convention is formerly known as the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

The Convention was negotiated in Geneva, Switzerland from 1978 through 1980, and entered into force in 1983. The United States signed the Convention in 1982. But it was not transmitted to the Senate for its advice and consent until May 1994.

The administration has requested the Senate give the earliest possible consideration to this Convention.

A review conference has been scheduled for the September-October time frame, primarily for the purpose of considering improvements to the Convention and its Protocols.

The United States can be a full participant only if it deposits its instrument of ratification 6 months in advance of the Review Conference, which would be, effectively, March 25, 1995.

It is understood that any amendments agreed to at the Review Conference would have to be transmitted to the Senate for its advice and consent.

The most important part of the Convention is Protocol II, dealing with the use of land mines and similar devices. In response to the widespread, uncontrolled and indiscriminate use of antipersonnel mines that have caused enormous civilian casualties in various conflicts, the United States and other countries proposed a series of actions, including the adoption of export moratoria, extensive demining programs, and the United States proposal for transfer and stockpiling.

Protocol I prohibits the employment of any weapons, the primary use of which is to injure by fragments that cannot be detected by x rays.

Protocol III prohibits the use of air-delivered incendiary weapons against military objectives within cities, towns, villages or similar civilian concentrations.

Other incendiaries could only be used in such areas when military objectives are clearly separated and all feasible precautions are taken to minimize civilian casualties and damage.

Since the conclusion of the negotiations in 1980, a total of 42 states have become parties to the Convention, including most NATO countries, China, Japan, and Russia.

Senate consideration of this administration request for advice and consent to ratification may represent something of a unique experience for some members.

Normally, it is the executive branch that wants a so-called clean treaty and argues against Senate attachment of any conditions to the resolution of ratification.

However, in the case of the Convention on Conventional Weapons, it is the administration that has recommended that the United States accept only Protocols I and II.

In addition, the administration has proposed conditions on the United States' ratification.

Last, the administration has asserted that the Convention needs improvement and has made a number of proposals to be considered at the Review Conference.

To help the committee understand the intricacies of the Convention and its Protocols as well as the administration's rationale for attaching conditions to ratification and proposing additional improvements, we are pleased to welcome this morning two witnesses from the administration, Mr. Michael Matheson, Principal Deputy Legal Adviser at the Department of State, who has been the United States' representative to the preparatory meetings for the Convention's Review Conference, and General Michael Byron, Vice Director of the Strategic Plans and Policy Directorate at the Joint Chiefs of Staff.

Mr. Matheson will offer the administration's testimony. And both he and General Byron will be available to answer questions.

At this moment, let me turn to Senator Pell for comments before asking the witnesses to proceed. Senator Pell.

Senator PELL. Thank you. I join in welcoming the—I join you in welcoming Mr. Matheson and General Byron before our committee today.

But as you point out, we have under consideration this morning the Convention on Conventional Weapons. That Convention was signed by our country in 1982 and submitted to the Senate for its advice and consent last May.

The Senate is being asked to agree to two Protocols prohibiting the use of any weapons with the primary purpose of injuring with fragments that cannot be detected by x ray and restricting the use of land mines and booby-traps.

Succeeding administrations have weighed the pros and cons of adhering to a third protocol restricting the use of incendiary weapons. The Clinton administration has decided to set aside that issue and seek Senate approval of the Convention and just the two Protocols.

I am pleased the administration is actively seeking to tighten the restrictions on land mines. And that approval can best be accomplished if the United States is a full participant in the Review Conference scheduled this autumn.

For that to happen, the Senate must approve the Convention this month. Senator Lugar and I will do our best to speed matters along. If all goes smoothly, the committee should be able to take up the Convention at its next business meeting.

And I would be remiss if I did not pay tribute to our colleague, Senator Leahy, the Senator from Vermont who has taken such an interest in this problem for many years. Thank you.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK LEAHY

Mr. Chairman, I want to thank you for scheduling this hearing on very short notice. Unless the Senate ratifies the Conventional Weapons Convention by March 24, 1995, the U.S. Government will be unable to participate fully as a party at the September conference to review the CWC, and especially Protocol II, the "Landmine Protocol." That would be very unfortunate because the United States has been a leader in efforts to stop the killing and maiming of civilians by antipersonnel landmines. It is vitally important that our government continue to show that leadership at the review conference.

A century ago, landmines were used for defensive purposes, to defend a piece of territory or channel the enemy into or away from an area. In recent years, landmines have been increasingly used as offensive weapons, and often as weapons of terror against civilian populations. They are scattered in huge numbers on roads, foot paths, around water holes, in fields and rice paddies, even in heavily populated areas. In countries like Afghanistan, Bosnia, Cambodia, and Angola, they have been used to turn vast areas of territory into death traps for years or even decades. People are still being killed and maimed in Europe from landmines left from World War II, and in Vietnam and Laos from the Vietnam War.

Today, there are an estimated 110 million unexploded landmines in 62 countries. These tiny, concealed bombs have been aptly called "weapons of mass destruction in slow motion." Every day, an estimated 70 people are killed or injured by landmines. That is 26,000 people each year, the overwhelming majority of whom are innocent civilians including thousands of children.

In the past year alone, millions of new mines were added to those already laid. During that same period, the landmine manufacturers produced another 5 to 10 million new mines. These will be added to the existing tens of millions of mines in existing stockpiles. The State Department has said that "landmines may be the most toxic and widespread pollution facing mankind."

What makes landmines so insidious, and what makes the case for stopping their proliferation and use so compelling, is that they cannot discriminate between civilians and combatants. Guns can be fired by soldiers at soldiers and artillery can be aimed at military targets. But landmines will mangle or kill whoever steps on them. A military target today may be occupied by civilians next week or next month when the mine is triggered. The long-term social and economic costs caused by landmines is immense, and the cost of locating and removing them is incalculable.

In 1992, when the United States enacted its moratorium on exports of antipersonnel landmines, almost no one was paying attention to this problem. Since then, 18 countries have declared export moratoria. Last September, President Clinton announced a U.S. goal of the eventual elimination of antipersonnel landmines, and on December 15, 1994, the U.N. General Assembly adopted a U.S. resolution endorsing the goal. Then just last week, the Belgian Parliament passed legislation imposing a five year total ban on antipersonnel landmines, the first NATO country to do so.

The September review conference is the next stage in what is likely to be a long process towards realizing the goal of eliminating antipersonnel landmines. The Conventional Weapons Convention is universally regarded as badly flawed. Only 42 countries have ratified it, and in the ten years since it came into force the number of civilian casualties from landmines has skyrocketed. Some have suggested that the CWC is flawed beyond repair.

While it would be naive to regard the CWC as a solution to the landmine problem, I believe it can be a basis for progress towards the goal of eliminating antipersonnel landmines. In the meetings of experts in preparation for the review conference, the United States has made several important proposals, including that the scope of the CWC be extended to internal conflicts, that antipersonnel landmines be easily detectable, and that the CWC include a verification regime.

If accepted, these proposals could help reduce civilian casualties, although they fall far short of what is needed to stop the widespread use of such tiny, cheap and effective weapons. I am convinced that the only way to reach the goal of eliminating antipersonnel landmines is to treat them with the same stigma as poison gas and other indiscriminate, inhumane weapons. There will always be the pariahs of the world who are willing to use chemical weapons or commit other outrages against their own people, but they will be the rare exception if the price of using antipersonnel landmines is to be branded a war criminal and ostracized by the international community.

Mr. Chairman, I want to briefly mention the issue of blinding laser weapons, since several countries including some of our closest allies have proposed that a protocol prohibiting their use be added to the CWC. I believe the United States should support this effort. Although the Pentagon insists that it is not developing antipersonnel blinding weapons, there is widespread concern that it is only a matter of time. I recognize that there are legitimate uses of lasers in warfare, and would not want such a protocol to impede those uses. However, I believe it would be inexcusable not to seize this opportunity to seek international agreement on a narrowly written prohibition on the use of weapons that are specifically designed to blind personnel. The United States should be actively pursuing this goal, not standing in the way of it.

Mr. Chairman, your support and Senator Pell's support for my landmine export moratorium amendment and its three year extension was much appreciated. By holding this hearing you have moved us another step towards ending the terrible toll landmines take on thousands and thousands of innocent people around the world.

Senator LUGAR. Senator Pell, I join you in that tribute to Senator Pat Leahy, who has, indeed, been a leader in this field. He has organized dear colleague letters. And a number of us have been much better informed through his advocacy.

At this point, I would like to call on you, Mr. Matheson, for your testimony.

STATEMENT OF MICHAEL J. MATHESON, PRINCIPAL DEPUTY LEGAL ADVISER, UNITED STATES DEPARTMENT OF STATE; ACCOMPANIED BY MAJOR GENERAL MICHAEL J. BYRON, USMC, VICE DIRECTOR FOR STRATEGIC PLANS AND POLICY, THE JOINT STAFF

Mr. MATHESON. Thank you very much, Mr. Chairman. I am pleased to have the opportunity to testify today on behalf of the administration in support of the ratification of the Convention on Conventional Weapons.

Prompt U.S. ratification of this Convention is an important part of the overall U.S. strategy for dealing with the very serious problem of the indiscriminate use of land mines, which has caused very severe civilian casualties in armed conflicts during the past two decades.

As you mentioned, sir, the Convention was concluded in 1980, signed on behalf of the United States in 1982, and entered into force in 1983.

Because of concerns about its provisions on incendiary weapons, the Convention was not submitted to the Senate during the previous two administrations. However, as the magnitude of the humanitarian crisis over land mine use became evident, renewed interest in U.S. ratification developed.

And so, in November, 1993, the Senate voted 100 to nothing for a provision in the National Defense Authorization Act that called for submission of the Convention to the Senate.

And in May, 1994, the President submitted the Convention and two of its three Protocols for the Senate's advice and consent.

Now, the Convention and its protocols restrict, for humanitarian reasons, the use in armed conflicts of three specific types of conventional weapons.

As you mentioned, the two protocols submitted to the Senate are Protocol I, which deals with nondetectable fragments, and Protocol II, which deals with land mines and booby-traps.

The Protocol not submitted at this time to the Senate is Protocol III, which deals with incendiary weapons.

The section-by-section analysis which was transmitted to the Senate with the Convention described these provisions in some detail. So let me just highlight a few of the main provisions.

Protocol I is a straightforward prohibition on the use of any weapon relying on fragments that are not detectable by x ray. This prohibition is desirable from a humanitarian viewpoint and in no way constrains U.S. military plans.

Protocol II is a more detailed set of restrictions on the use of land mines and booby-traps.

Among these restrictions are requirements for the recording of the location of mines; special restrictions on the use of mines delivered by aircraft or artillery; requirements for the use of mines in areas containing concentrations of civilians; and prohibitions of certain types of booby-traps that could pose unnecessary danger to civilians.

The Protocol was essentially a Western proposal. On the whole, it basically codified the responsible practices that have already been adopted by the United States and other Western military forces to minimize civilian casualties from the use of these devices.

If these restrictions had been observed during the conflicts of the past two decades, such as those in Afghanistan, Cambodia and Angola, there might have been a substantial reduction in civilian casualties.

Unfortunately, most of these states were not party to the Convention. And it did not apply to internal armed conflicts, where most of these casualties occurred. As a result, large numbers of mines were laid without proper marking and recording, and often were used for the specific purpose of causing civilian casualties.

Now, that is not to say that the Landmines Protocol, as it currently stands, is an adequate answer to this problem. In fact, the United States is pressing and will press at the Review Conference, for a series of substantial improvements to the Protocol.

Among other things, we will press for an expansion of the scope to include internal armed conflicts; a requirement that all mines delivered by artillery or aircraft be equipped with self-destruct devices to ensure that they are no longer a danger to civilians long after the conflict is over; a requirement that any antipersonnel mines without self-destruct devices and backup self-deactivation features be used only within controlled, marked and monitored mine fields; a requirement that all mines be detectable, to facilitate mine clearance; a requirement that the party laying mines assume responsibility for them, including their ultimate disposal; and the addition of an effective verification mechanism, including the possibility of fact-finding missions.

These proposals are described in greater detail in a paper which I have submitted for the record of this hearing.

These proposed improvements to the Landmines Protocol are one important element of the broader U.S. strategy on the landmine problem.

The important point in this context, which you have already referred to, is that the ability of the United States to effectively press forward with its various landmine initiatives would be seriously compromised if we do not promptly ratify the Convention.

Under the terms of the Convention, the United States will be a full participant at the Review Conference this fall only if it is a state party. And it will only become a state party six months after it deposits its instrument of ratification.

So in other words, to be a full participant at the Review Conference, we must ratify this month.

Furthermore, the failure of the United States to ratify would inevitably cast doubt on the seriousness of the U.S. commitment to dealing with the landmine problem as a whole, and would erode the credibility of our various proposals on land mine use, export and clearance.

For these reasons, we very much appreciate the willingness of the committee to give expedited consideration to the ratification of the Convention.

Now, this leaves the third Protocol, which imposes restrictions on the use of incendiary weapons, particularly in populated areas.

As the President's message indicated, there are concerns about the acceptability of these restrictions from a military point of view, which are explained in greater detail in the transmittal documents.

And in light of the need for further examination of these problems, the President recommended that the United States exercise its right to ratify the Convention while accepting only Protocols I and II.

The President also recommended, as you mentioned, that U.S. ratification of the Convention be subject to four conditions, which are described in some detail in the transmittal package.

These conditions state the U.S. understanding on various matters and reserve to certain provisions that would, in our view, give inappropriate status to so-called national liberation movements.

We are satisfied that the recommended conditions adequately deal with these points.

Mr. Chairman, this Convention has now been ratified by most of the major military powers and nearly all of our NATO allies. It is the basic international document that regulates the use of specific types of conventional weapons for the purpose of reducing civilian casualties.

We expect it to be the vehicle by which improved controls on the use of landmines can be adopted, and which, in turn, will lead to more far-reaching controls on the production, transfer and stockpiling of these devices.

We cannot effectively pursue these goals unless the United States promptly ratifies the Convention. We, therefore, strongly urge the committee to give it prompt and favorable consideration.

Mr. Chairman, that is the end of my prepared remarks. I, of course, would be happy to answer your questions.

I also have with me, as you mentioned, Major General Michael Byron, who is the Vice Director of the Strategic Plans and Policy Directorate of the Joint Staff, in case the committee should wish to direct questions to him as well.

Thank you, sir.

Senator LUGAR. Well, thank you very much, Mr. Matheson.

[The prepared statement of Mr. Matheson follows:]

PREPARED STATEMENT OF MICHAEL J. MATHESON

Thank you, Mr. Chairman. I am pleased to have the opportunity to testify today on behalf of the administration in support of the ratification of the Convention on Conventional Weapons. Prompt U.S. ratification of this Convention is an important part of the overall U.S. strategy for dealing with the very serious problem of the indiscriminate use of landmines, which has caused severe civilian casualties in armed conflicts during the past two decades.

The Convention was concluded in 1980, signed on behalf of the United States in 1982, and entered into force in 1983. Because of concerns about its provisions on incendiary weapons, the Convention was not submitted to the Senate during the previous two administrations. However, as the magnitude of the humanitarian crisis over landmine use became evident, renewed interest in U.S. ratification developed. In November 1993, the Senate voted 100-0 for a provision in the National Defense

Authorization Act that called for submission of the Convention to the Senate. In May 1994, the President submitted the Convention and two of its three Protocols for the Senate's advice and consent.

The Convention and its Protocols restrict, for humanitarian reasons, the use in armed conflicts of three specific types of conventional weapons. The two Protocols submitted to the Senate are Protocol I, which deals with non-detectable fragments, and Protocol II, which deals with landmines and booby-traps. The Protocol not submitted at this time to the Senate is Protocol III, which deals with incendiary weapons. The section-by-section analysis transmitted to the Senate with the Convention describes these Protocols in some detail. Let me highlight a few of the main provisions.

Protocol I is a straightforward prohibition on the use of any weapon relying on fragments not detectable by x-ray. This prohibition is desirable from a humanitarian viewpoint and in no way constrains U.S. military plans.

Protocol II is a more detailed set of restrictions on the use of landmines and booby-traps. Among these restrictions are: requirements for the recording of the location of mines; special restrictions on the use of mines delivered by aircraft or artillery; requirements for the use of mines in areas containing concentrations of civilians; and prohibitions on certain types of booby-traps that could pose unnecessary danger to civilians. The Protocol was essentially a western proposal, and on the whole it basically codified the responsible practices that had already been adopted by the United States and other western military forces to minimize civilian casualties from the use of these devices.

If these restrictions had been observed during the conflicts of the past two decades—such as those in Afghanistan, Cambodia and Angola, there might have been a substantial reduction in civilian casualties. Unfortunately, most of these states were not party to the Convention and it did not apply at all to internal armed conflicts, where most of these casualties occurred. As a result, large numbers of mines were laid without proper marking and recording, and often were used for the specific purpose of causing civilian casualties.

This is not to say that the landmines Protocol, as it currently stands, is an adequate answer to this problem. In fact, the United States will press for a series of substantial improvements to the Protocol at the review conference scheduled for September and October of this year. Among other things, we will press for:

- An expansion of scope to include internal armed conflicts;
- A requirement that all mines delivered by artillery or aircraft be equipped with self-destruct devices to ensure that they are not a danger to civilians long after the conflict is over;
- A requirement that any anti-personnel mines without self-destruct devices and backup self-deactivation features be used only within controlled, marked and monitored minefields;
- A requirement that all mines be detectable to facilitate mine clearance;
- A requirement that the party laying mines assume responsibility for them, including their ultimate disposal; and
- The addition of an effective verification mechanism, including fact-finding missions.

These proposals are described in greater detail in a paper which I have submitted for the record of this hearing.

These proposed improvements to the landmines Protocol are one important element of a broader U.S. strategy on the landmine problem. The important point in this context is that the ability of the United States to effectively press forward with its various landmine initiatives would be seriously compromised if it does not promptly ratify this Convention. Under the terms of the Convention, the United States will be a full participant at the review conference this fall only if it is a state party, and it will only become a state party six months after it deposits its instrument of ratification. In other words, to be a full participant at the review conference, we must ratify this month.

Further, the failure of the United States to ratify would inevitably cast doubt on the seriousness of the U.S. commitment to dealing with the landmine problem as a whole, and would erode the credibility of our various proposals on landmine use, export and clearance. For these reasons, we very much appreciate the willingness of the committee to give expedited consideration to the ratification of the Convention.

This leaves the third Protocol, which imposes restrictions on the use of incendiary weapons, particularly in populated areas. As the President's message indicated, there are concerns about the acceptability of these restrictions from a military point of view, which are explained in greater detail in the transmittal documents. In light of the need for further examination of these problems, the President recommended

that the United States exercise its right to ratify the Convention, while accepting only Protocols I and II.

The President also recommended that U.S. ratification of the Convention be subject to four conditions, which are described in detail in the transmittal package. These conditions state the U.S. understanding on various matters and reserve to certain provisions that would, in our view, give inappropriate status to so-called national liberation movements. We are satisfied that the recommended conditions adequately deal with these points.

Mr. Chairman, this Convention has now been ratified by most of the major military powers and nearly all of our NATO allies. It is the basic international document that regulates the use of specific types of conventional weapons for the purpose of reducing civilian casualties. We expect it to be the vehicle by which improved controls on the use of landmines can be adopted, and which will lead in turn to more far-reaching controls on the production, transfer and stockpiling of these devices. We cannot effectively pursue these goals unless the United States promptly ratifies the Convention. We therefore strongly urge the committee to give it prompt and favorable consideration.

That is the end of my prepared remarks. I would be happy to answer the committee's questions, and I also have with me Major General Michael J. Byron, the Vice Director of the Strategic Plans and Policy Directorate of the Joint Staff, should the committee wish to direct any questions to him.

U.S. PROPOSALS TO IMPROVE THE CONVENTION ON CONVENTIONAL WEAPONS

One important part of the U.S. strategy on landmines is to encourage substantial improvements in the substance and scope of the landmines Protocol. A formal review conference will be held from September 25 to October 13, 1995 in Vienna to consider possible amendments. The U.S. is pressing for the following changes:

- The expansion of the scope of the Protocol, which is presently limited to international armed conflicts, so as to encompass internal armed conflicts as well. It is in these internal conflicts (such as Cambodia and Angola) that the greatest civilian casualties have occurred.
- A requirement that all remotely-delivered mines (that is, those delivered by aircraft, rocket or artillery) be equipped with self-destruct devices to ensure that they are not a danger to civilians long after the conflict is over. These devices would have a specified maximum lifetime and minimum reliability, and would have a backup safety feature to ensure that they deactivate even if the self-destruct device does not function.
- A requirement that any anti-personnel mines without self-destruct devices be used only within controlled, marked and monitored minefields. These minefields would be protected by fencing or other safeguards to ensure the exclusion of civilians. Such minefields could not be abandoned (other than through forcible loss of control to enemy military action) unless they were cleared or turned over to another state that had committed to maintain the same protections.
- A requirement that all mines be detectable using commonly-available technology. This would greatly simplify the burden and risks of demining.
- A requirement that the party laying mines assume responsibility for them, including a duty at the end of active hostilities to clear them or maintain them in controlled fields to protect civilians. Where the party laying the mines no longer controls the territory in which they were laid, it would have a duty to provide assistance to ensure their clearance, to the extent this is permitted by the state in control of the territory in question.
- The addition of an effective verification mechanism, including the possibility of fact-finding inspections by a verification commission where credible reports of violations have been made. If violations are found to have occurred, there would be a possibility of reference to the U.N. Security Council for action, as well as individual criminal liability for persons who willfully or wantonly put the civilian population in danger.

The U.S. has already made progress in marshalling support from other states for these changes. However, we will be seriously hampered in this effort if we do not ratify the Convention in time to be a full participant at the 1995 review conference. Specifically, under the terms of the Convention, we will not become a party to the Convention until six months after we deposit our ratification, which means that we must do so by mid-march 1995.

Senator LUGAR. The committee will now engage in questioning you and General Byron. I will ask that in the first round we have a ten-minute time limit.

Let me begin by asking for general background. The Convention was signed on behalf of the United States April 8th, 1982, but was not submitted to the Senate until May 12th, 1994. What was the reason for that 12-year delay?

Mr. MATHESON. The reason had nothing to do with the provisions which we have submitted to you. Rather, it dealt with the incendiaries Protocol, which we have, for the time being, reserved.

And the reasons for those concerns were military in character and related to the desire of the military to preserve certain options concerning the use of incendiaries that would be precluded by parts of the incendiaries Protocol.

And maybe General Byron would like to elaborate on that point.

Senator LUGAR. General Byron.

General BYRON. Let me just quickly refer to my notes, sir. The Joint Staff view on Protocol III is that there are some significant flaws, and it unduly constrains U.S. forces.

The administration, as you know, did not submit Protocol III for ratification because of the objections of the Joint Chiefs and the commanders of our combatant commands.

Specifically, Article 2 of the Protocol prohibits air-delivered incendiary attack in all circumstances on a military objective located within a concentration of civilians. This is the wording from the protocol.

However, in our view, the U.S. must retain the ability to employ incendiary weapons against certain types of high priority targets.

In particular, these are the only weapons that can destroy high priority counter-proliferation targets such as biological weapons facilities where deadly agents would risk heavy civilian casualties if not destroyed by extremely high heat.

Senator LUGAR. So in any event, the administration has accepted the views of the Joint Chiefs which have been expressed, I gather, for really 12 years consistently, submitted Protocols I and II and if those—that ratification is deposited by March the 25th, it still gives us an opportunity to participate in the Review Conference, is that correct?

Mr. MATHESON. Yes. That is correct because the Convention specifically recognizes that a state need only accept two of the three Protocols on ratification. And the JCS concerns will be referred for further study within the administration.

Senator LUGAR. To date, there are only 42 state parties to the Convention even though the Convention was completed 15 years ago.

Let me ask, generally, why have so many nations been reluctant to sign onto the Convention? Can the Convention be effective with only 42 state parties? And have our closest allies ratified the Convention? Who has not and why?

Mr. MATHESON. Well, first of all, the numbers are somewhat misleading in that the states which have already ratified include most of the major military powers and virtually all of our major allies in NATO and elsewhere.

And this will include, in addition to the states which are already parties, the United Kingdom, Italy and Belgium, which have already deposited ratifications during the past month.

As to those who have not ratified, which is largely states in the Third World, I think that, in some cases, they may feel that the restrictions are too demanding, particularly in the case of landmines.

In other cases, particularly among the neutral or nonaligned, they may feel that the restrictions do not go far enough.

It is our hope to encourage broader adherence to the Convention among more states. And we hope that the improvements which are going to be negotiated this fall at the Review Conference will assist us in doing that.

Senator LUGAR. Let me ask with regard to verification, the Convention does not appear to have mechanisms for verification and compliance.

Therefore, why should the Senate give its advice and consent to ratification without such mechanism? And do we plan to propose to rectify this omission at the upcoming review conference?

Mr. MATHESON. First of all, I think we should keep in mind that this is not an arms control agreement where there would be restrictions on production and stockpiling that would require intrusive verification schemes.

Rather, it is a law of war treaty dealing with the use or weapons in armed conflict, where it is typically much easier to see what the enemy is doing and what violations occur.

Having said that, however, we agree that it is a defect in the Convention that it includes nothing in the way of verification.

And we and other Western states have put on the table a proposal which will be considered at the Review Conference for a verification mechanism which would in-

clude the possibility of fact-finding missions in the event that serious allegations are made.

So we hope very much to improve the provisions on this issue.

Senator LUGAR. Is it your testimony that the administration will submit to the Senate any amendments to the Convention that might be adopted at the Review Conference?

Mr. MATHESON. Yes, sir. We will.

Senator LUGAR. The administration is, in effect, proposing a reservation to the provisions of the Convention dealing with national liberation wars.

Is such a reservation an adequate means of dealing with this matter? And why does the administration only propose a statement rather than an understanding or a reservation?

Mr. MATHESON. We, basically, are proposing two things on this issue. First, we propose a statement of our intention to apply the provisions of the Convention to all internal conflicts regardless of their political character. Since that is a statement of our intention, it does not require a reservation.

Our other proposal is a declaration which has the effect of a reservation, legally and in fact, to the provisions of the Convention which give special status to so-called national liberation movements.

We feel that singling out these particular movements on the basis of political criteria is an inappropriate way to deal with the issue. But at any rate, we feel that what we have proposed is a perfectly adequate means of dealing with the problem.

Senator LUGAR. Just following through on the point of internal armed conflicts, let me ask a question that will make, for the record, your testimony.

In light of the fact that most of the civilian casualties from the use of mines over the past two decades has occurred in such internal conflicts, why should the Senate give its advice and consent to ratification of the Convention before this defect is corrected?

And what does the United States propose to do to rectify the defect at the upcoming Review Conference?

Mr. MATHESON. You are absolutely correct that this is a very serious problem because, as you mentioned, most of the casualties that have occurred in the civilian population during the past couple of decades have been in internal armed conflicts—civil wars—that are not presently covered by the Convention.

We and a number of other states have proposed that the Review Conference correct that defect by expanding the scope of the Convention to include all internal armed conflicts.

And we have made encouraging progress on that issue at the experts meetings that have occurred this year. Again, the only way we can effectively push these and other improvements to the Convention is by becoming a full party so that we can be a full participant at the review conference.

But that certainly is one of the issues we will place the greatest stress on.

Senator LUGAR. In Protocol I, the nondetectable fragments Protocol, does Protocol I, on nondetectable fragments, affect any weapon that is of interest to the United States military?

Mr. MATHESON. My understanding is that it does not.

Perhaps General Byron would like to comment on that.

General BYRON. Yes, sir. I second that, sir. It does not. And we do not have any interest in any weapon that would, sir.

Senator LUGAR. What does the Protocol cover? And would it affect munitions with plastic casings and parts?

Mr. MATHESON. It does not affect plastic casings and parts. It applies to munitions which have wounding fragments that are made of nondetectable material like light plastic or glass.

And the reason it singles those out is that it is thought, if they existed, that they would complicate medical treatment for persons who were injured by these fragments.

Senator LUGAR. In Protocol II, which covers landmines and booby-traps, how would Protocol II affect the United States military doctrine and practice on the use of landmines and booby-traps?

Mr. MATHESON. Again, my understanding is that it would not because, in fact, it was negotiated to raise the world up to the standards already being observed by the U.S. military.

And maybe General Byron would like to comment.

Senator LUGAR. Do you agree, General?

General BYRON. Yes, sir. I do. It, in fact, codifies the doctrine of most of our Western militaries including that of our own, sir.

Senator LUGAR. Would this Protocol have affected United States use of landmines in the Gulf War?

Mr. MATHESON. Again, let me ask General Byron.

Senator LUGAR. General Byron?

General BYRON. No, sir. It would not have. The use of landmines in the Gulf War would not have been affected by the application of the landmines Protocol, as U.S. doctrine meets or exceeds the standard provided by the Protocol.

Senator LUGAR. This Protocol has been in force for a dozen years, but does not seem to have lessened the danger to civilians from the use of land mines. Why do you believe this is so?

Mr. MATHESON. The main reason is that it has not been applicable in the conflicts where most of these casualties have occurred, either because the states in question have not been a party or because they were internal conflicts not covered by the Convention.

If the Convention had been applicable, we believe it would have substantially reduced civilian casualties; although, as we have said, it is not entirely adequate. And we need to improve it.

Senator LUGAR. What changes to Protocol II is the United States going to propose at the upcoming Review Conference? And do those changes have a realistic chance of adoption?

Mr. MATHESON. The main proposals we have made to improve the Convention were outlined in my testimony. They include an expansion of the scope of the Convention to cover internal armed conflicts, a requirement that all mines delivered by aircraft and artillery have self-destruct devices, and a requirement that all other mines either have self-destruct devices or be placed in controlled minefields that are marked and monitored and have fencing or other protections to keep civilians out.

We have proposed that all mines be detectable by currently available means so as to facilitate mine clearance.

We have proposed a requirement that the party which lays mines have responsibility for them, including their eventual disposal, and finally, the addition of an effective verification scheme, including the possibility of fact-finding missions.

We have had significant, heartening success in the experts meetings on most of these points.

Probably the most difficult one we will have before us in the Review Conference will be the verification proposals because there seems to be some sensitivity about that among nonaligned delegations. But we intend to press as strongly as we can.

Senator LUGAR. Senator Pell?

Senator PELL. Thank you, Mr. Chairman.

What military activities might we engage in that would be prohibited by this Protocol?

Mr. MATHESON. Well, as we have said, the landmines Protocol as it presently stands is perfectly consistent with U.S. military plans and operations.

If we were to go beyond our own military doctrine and to use mines in ways which would be prohibited by the Protocol then, of course, that would be a violation.

That would include indiscriminate use of mines, and failure to mark and record the location. But these are not within our contemplation because our military already complies with these standards.

Senator PELL. I remember some years ago working on the ENMOD, the Environmental Modification Treaty. And I was just curious how you could reconcile the United States' refusal to be a party to the 1949 protocols on the environment but also being a party to the ENMOD Convention.

Mr. MATHESON. Well, first of all, we have not submitted additional Protocol I, although we have submitted additional Protocol II to the Senate.

And the reasons for having not submitted additional Protocol I relate to concerns of the U.S. military about various of its provisions, which include the provisions on irregular combatants and some of the provisions on means and methods of warfare which they feel might unduly restrict military combat.

An extensive study is being undertaken right now, first of all by the JCS, and then by other elements of the government, on whether we should reconsider our attitude toward additional Protocol I.

I do not believe that there is any inconsistency between any of those concerns and the Environmental Modification Convention.

That Convention, you may recall, deals with the specific type of weapons which use environmental modification techniques to cause destruction, damage or injury; whereas additional Protocol I is dealing with the whole range of conventional means and methods of warfare.

Senator PELL. My recollection of the ENMOD Convention was that it could include the development of tsunamis, tidal waves, elimination of every—of foliage—

Mr. MATHESON. Yes.

Senator PELL [continuing]. And a variety of things. Would any of those practices be contradictory to what we are permitted under this treaty?

Mr. MATHESON. These provisions are not contradictory. And we are still fully committed to the Environmental Modification Convention in terms of its scope.

Senator PELL. I was just given the item here that basically—under additional Protocol I, "It is prohibited to employ methods or means of warfare which are intended or may be expected to cause widespread, long-term, severe damage to the natural environment."

You feel that this would not be in contradiction?

Mr. MATHESON. Well, the U.S. military has raised concerns about that particular provision because it applies to the generality of conventional means and methods of warfare.

And their concern, as I understand it, is that it might inhibit or preclude certain kinds of operations which might have serious effects on the environment.

Again, that is not inconsistent with the Environmental Modification Convention, which only regulates the specific category of weapons you mentioned; that is, those which employ environmental modification techniques as a weapon—tsunamis, earthquakes and the like.

Additional Protocol I deals with the possibility of damage to the environment from the usual kind of conventional operations.

Senator PELL. Could you describe for us the kind of incendiary weapons—I am changing the subject here—the kind of incendiary weapons usage that would be prohibited?

Mr. MATHESON. The incendiaries Protocol prohibits the use of any air-delivered incendiaries against military targets located in a concentration of civilians.

That would include any type of air-delivered incendiaries—napalm, phosphorous weapons and so on.

Senator PELL. What about the bombing the Germans did of Coventry or we did of Leipzig? Would they be prohibited under this treaty?

Mr. MATHESON. Well, what would be prohibited would have been the use of air-delivered incendiaries, not conventional explosives, but incendiaries. And of course, we used incendiaries against Dresden and against a number of Japanese cities. That would have been prohibited by this.

Senator PELL. That would have. The other incendiary weapons could be used only on military targets separated from civilian concentration. Why would we object to that restraint?

Mr. MATHESON. Well, again, the military has raised concerns. And perhaps I should refer to General Byron.

General BYRON. Again, sir, our interpretation is that the article prohibits in all circumstances the air-delivered incendiary attack on a military objective located within a concentration of civilians.

Again, the wording on this is such that it reduces and takes away the military's ability to employ these weapons that we would use to hold certain types of high priority targets at risk.

When used in combination with high explosives, the incendiaries are the only weapons—and let me emphasize, the only weapon that can safely destroy high priority counter-proliferation targets such as biological weapons facilities.

The destruction of most biotoxin agents is accomplished only through the application of extremely high heat. This fact makes the use of incendiaries essential against this type of target.

To use high explosives only against biological weapons facilities would likely spread the biotoxin throughout the adjoining countryside, risking far greater civilian casualties.

Senator PELL. All right. But, just to return to my earlier point: Am I correct in saying that the ratification of the incendiaries Protocol would prohibit the activities the Germans did in Coventry, as we did in Dresden or Leipzig?

Mr. MATHESON. Yes, sir. I believe so.

Senator PELL. That would be correct. Thank you.

We understand the United States may require air-delivered incendiaries, as you pointed out, General, to eliminate the chemical or biological weapons facilities.

Would it not be possible to accept Protocol III and work out a condition allowing for attacks on chemical and biological facilities when it is the best or the only way to proceed?

General BYRON. Sir, Protocol III has been reviewed by the Joint Chiefs since 1981. And I believe it has been reviewed six times.

And at each time of a review, we have carefully considered alternative methods or means. And each time, we have found that the wording is unacceptable because

of the inordinately high risk that runs both to our military operations and the inflexibility to our commanders, sir.

Senator PELL. OK.

Mr. MATHESON. I think to summarize the situation, the administration has held Protocol III back for further study. Obviously, we would study not only the issues you have described, but the various possible ways of dealing with them. But to date, we have not yet found a solution that is consistent with our military concerns.

Senator PELL. Could you describe briefly how you would like to improve the Convention itself? What steps have we been disappointed in not achieving?

Mr. MATHESON. Yes. The most important ones, again, are expansion of the scope of the Convention to include internal armed conflicts, where most of the civilian casualties for the past couple of decades have occurred; a requirement that all remotely-delivered mines, that is, mines delivered by aircraft or artillery, have self-destruct devices so that they are not active and a threat to civilians after the conflict has ceased; a requirement that all other mines either have self-destruct devices or be placed in controlled mine fields that are protected from civilians; a requirement that all mines be detectable by commonly available means so as to facilitate mine clearance; a requirement that the party which lays mines have responsibility for them, including their eventual disposal; and some kind of effective verification mechanism, which would include the possibility of fact-finding missions.

Senator PELL. Could you describe for me—I should know the answer, but I do not—what the self-destructive device in a land mine is? Does that mean that it would rot away, or is there an alarm clock that shoots it off?

Mr. MATHESON. It is a device that is designed to automatically cause the mine to self-destruct after a specified period of time.

In our proposal, we also require that there be a backup self-deactivating device in case the self-destruct device fails.

So we have, essentially, put out a proposal that would go very far toward complete guarantee that these mines would not be a threat to civilians after the prescribed periods of time.

Senator PELL. What is the prescribed, rough prescribed period of time? What is the range?

Mr. MATHESON. That has not yet been decided. We are considering, within the administration, exactly what we would propose.

There have been some general discussions of the issue in the experts' meetings. And they, basically, have ranged from weeks to months. We have not yet established a position, but hope to do so within the next month or two.

Senator PELL. OK. I thank you very much.

Senator LUGAR. Senator Ashcroft.

Senator ASHCROFT. Thank you, Mr. Chairman.

It is my understanding that, in order to be a part of the deliberations, that a ratifying state has to accept at least two of the Protocols.

We seem to be focussed on and most interested in the landmine Protocol. Of the 42 ratifying states, how many of them have subscribed to the Protocol on mines, or how many of them have omitted it?

And of the ones that have pending notification of ratification, what is their status as it relates to Protocol II?

Mr. MATHESON. To my knowledge, there is only one state that has ratified the Convention without accepting the landmines Protocol. Oddly enough, that is the state of Benin. And I have no idea why that was the case.

But everyone else has accepted the landmines Protocol.

Senator ASHCROFT. What Protocols are being ignored or are not being accepted?

Mr. MATHESON. The only other Protocol that has not been accepted by anyone is Protocol III, the incendiaries Protocol, which was not accepted by France. So, basically, with those two exceptions, everyone who has ratified has accepted all three. [Pause.]

Senator ASHCROFT. Is there an argument being made by the Administration that military lasers that are used to blind combatants in the field should be added to the Convention?

Mr. MATHESON. This is an issue which will certainly come up at the Review Conference because there are states which have proposed adding an additional protocol to the Convention to prohibit lasers which are used to blind personnel.

We have discouraged this because we want to preserve the focus of the Conference on the landmines issue which is, by far, the most serious in terms of civilian threats.

We also have concerns of a military character about the breadth of the proposal that has been put on the table. As you may know, the military relies heavily upon

the use of lasers on the battlefield for various purposes, including targeting and range-finding.

And we are concerned that the breadth of this proposal might end up having U.S. military personnel accused of war crimes for having used weapons in this mode.

It may be that General Byron would like to elaborate.

General BYRON. Yes, sir. Senator Leahy and Congressman Evans have recently inquired, in a letter to the Secretary of Defense, essentially, the same question. The Office of the Secretary is now in the process of researching that topic and drafting a reply.

And as soon as we complete that, we will be very happy to provide that for you for the record.

But again, to follow my colleague, I agree with his general rundown on the analysis of the laser protocol and the fact that it is very broadly worded. We are still trying to look at all of the parts in it, sir.

Senator ASHCROFT. Is it fair to say that when we speak about self-destructing and self-deactivating that self-destruction would be a detonation of the mine?

Mr. MATHESON. The self-destruct device would be. The passive self-deactivation would not be a detonation. It would cause the mine no longer to function.

Senator ASHCROFT. Is there any thought that self-destruction by detonation is a hazard as well?

Mr. MATHESON. Our mine experts have told us that it is by far safer for the civilian population and for the mine clearance teams for the mine to completely eliminate itself by self-destruction.

The chances of a civilian actually being present at the exact spot at the precise moment that a mine self-destructs are extremely small. And that person would probably already be in serious danger by having wandered into a minefield.

So we find it much better for the safety of all concerned for the mine to be completely eliminated.

If it simply deactivated itself without self-destructing, then it would have to be assumed to be live by any mine clearance team. And the civil authorities of the area would have to assume the mines were live and keep civilians out of the area.

So in effect, many of the same problems would occur if the mine had not self-destructed but only self-deactivated.

Therefore, we think the reliance on self-destruction as the primary mechanism is very important. And we have had now great success in convincing other countries that this is the case. It seems to be on the way toward acceptance.

Senator ASHCROFT. Would this cover, also cover submunition?

Mr. MATHESON. No. It covers only mines as defined in the Convention; that is to say, something which is activated by the contact or presence of a person or a vehicle. So it would not cover, for example, a cluster bomb or something like that.

Senator ASHCROFT. I have no further questions.

Thank you, Mr. Chairman.

Senator LUGAR. Thank you very much, Senator Ashcroft.

Let me continue with two more questions on Protocol II. Why is the administration not proposing a total ban on anti-personnel mines?

Mr. MATHESON. As you probably know, the President said in his speech to the UN General Assembly last fall that it is our ultimate objective to eliminate anti-personnel mines.

And of course, we can reach that kind of eventual goal more readily when we develop practical and humane alternatives.

But for the present, many military forces, including the United States military, do rely upon land mines for some important military functions which are legitimate if they are conducted in accordance with the rules of humanitarian law.

This would include, for example, the use of antipersonnel mines in barrier minefields in border areas, or the use in armed conflict to protect military positions or to limit the movement of enemy forces.

So instead of a total prohibition at this time, we are pressing for a series of various protections, both in this Convention and elsewhere, to try to reduce the threat to civilian populations, primarily by discouraging the use of mines which have long lives and, therefore, would remain a threat to the civilian population after the conflict is over.

Senator LUGAR. How do the United States proposals for amending Protocol II fit together with other elements of United States policy on landmines such as export moratoria, the proposed control regime and the United States demining initiatives?

Mr. MATHESON. The United States has a general policy on landmines which includes a number of different initiatives, all of which reinforce each other and fit together.

One important element, of course, is the Convention—the restrictions on use in armed conflict. And we, of course, intend to ratify, to encourage others to ratify, and to improve the use restrictions at the Review Conference.

At the same time, we are proposing a separate control regime which will regulate other aspects of the landmine problem—production, stockpiling, export, again with the purposes of reducing the overall availability of anti-personnel mines and reducing the reliance on long-lived mines, and also reinforcing the provisions of the Convention on use.

At the same time, we are encouraging other states to adopt unilateral export moratoria similar to the one which we have adopted as a means of transition into the long-term control regime.

And we are engaged in extensive de-mining activities in various countries of the world where there have been armed conflicts and large numbers of mines laid.

So we have a number of different prongs of our strategy, all of which reinforce one another.

Senator LUGAR. And finally, with regard to Protocol III, your testimony, both of you, has been that the administration has decided not to submit Protocol III and that this decision has been reviewed, as I recall, General, at least six times by the Joint Chiefs in recent years.

And therefore, the status of the administration's review on the Protocol is that it is current. You have reviewed—the Joint Chiefs, at least, have recently, I gather, before reaching this decision not to submit Protocol III, is that correct?

Mr. MATHESON. Yes, sir. That is correct.

Senator LUGAR. Just for the standpoint of the record, why should the Senate not delay action on this Convention until the administration's review of Protocol III is completed?

Are you testifying it is completed, you have come to a decision, and you are not going to submit it?

Mr. MATHESON. No. We have set it aside for further study. But as we have said before, it is essential that we proceed with the ratification of the Convention itself so that we will be able to be a full participant at the Review Conference and make the changes to the landmines Protocol which are essential to protecting the civilian population.

Senator LUGAR. Senator Pell, do you have further questions of the witnesses?

Senator PELL. I do, sir. Thank you.

Mr. Matheson, which countries that export anti-personnel mines at this time—or to put it another way, which are the major countries that export anti-personnel mines?

Mr. MATHESON. I have a list which I will refer to.

Senator PELL. And maybe submit it for the record?

Mr. MATHESON. Yes. I would be glad to do that.

Senator LUGAR. It will be so included.

[The questions and answers referred to follow:]

RESPONSES OF MICHAEL J. MATHESON TO QUESTIONS ASKED BY SENATOR HELMS

Question. Please define more fully the type of effective verification mechanism the United States plans to promote at the upcoming Review Conference.

Answer. At the most recent meeting of government experts to prepare for the Review Conference, the United States obtained the support of the western group for the attached proposal on verification. The proposal would create a Verification Commission and would provide for the possibility of fact-finding inspections. The inspected party would have the right to make any arrangements it considered necessary for the protection of any constitutional obligations it might have with regard to proprietary rights, searches and seizures, or other constitutional protections or for the protection of the conduct of military operations.

Question. One of the greatest flaws of this Convention is that it does not apply to internal conflicts. The U.S. has expressed its intention to negotiate an amendment that would expand the scope of the Convention to internal armed conflicts. How effective will such a provision be in light of national sovereignty issues and what terms for enforcement does the U.S. plan to negotiate in this amendment at the Review Conference?

Answer. The effectiveness of the application of these restrictions in internal conflicts will depend in part on the adequacy of the provisions on verification and compliance, and in part on the political will of the parties to insist that there be compliance with the restrictions in all circumstances. Our proposal for verification is described in the answer to the previous question. At the most recent experts meeting, the western group agreed to support the attached provision on compliance which,

among other things, provides for the possibility of collective measures by the parties or a referral to the Security Council. It would also apply the "grave breach" provisions of the 1949 Geneva Conventions to any willful or wanton violation causing death or serious injury to the civilian population, which would have the effect of making such violators subject to personal criminal liability in national courts.

In our view, there is nothing incompatible with national sovereignty in our proposals. Several international agreements, including the 1949 Geneva Conventions, already apply various restrictions to military activities during internal armed conflicts. The proposals on landmines would simply require states parties to apply and enforce restrictions on the use of landmines that no sensible government would contemplate violating in an internal conflict.

RESPONSES OF MICHAEL J. MATHESON TO QUESTIONS ASKED BY THE SENATE
FOREIGN RELATIONS COMMITTEE

MAJOR EXPORTERS OF LANDMINES

Question. Could you supply a list of current major landmine exporters?

Answer. Through the 1980s, major exporters included the following: Belgium, Bulgaria, China, Former Czechoslovakia, France, Hungary, Italy, Former Soviet Union, the United Kingdom, and Former Yugoslavia.

It is difficult to provide a list of current major landmine exporters, largely because there is no existing system for reporting landmine sales, a gap which our proposed anti-personnel landmine control regime would help fill. One key indicator of exports often is how widely a given country's mines appear throughout the world over time. The breakup of former exporters such as Czechoslovakia, the Soviet Union, and Yugoslavia into a number of new countries also has made the task of identifying major exporters more difficult.

The U.S. share of the international market for conventional landmines never exceeded eight percent. Our customers primarily had been responsible end-users such as Canada, Israel, and Greece. Of course, no U.S.-produced anti-personnel landmines or components have been exported since the U.S. moratorium was enacted in October, 1992.

Of the other historic major exporters listed above, the following have moratoria on the export of anti-personnel landmines in place: Belgium, the Slovak Republic, France, Italy, Russia, and the United Kingdom. The United States continues to encourage anti-personnel landmine producers and exporters to adopt export moratoria.

Question. This treaty has languished for 13 years with only 42 states parties. Why do you feel there is any new or different momentum now to make this an effective treaty? Doesn't the cheap cost and effectiveness of the landmines make the chances of banning landmines in developing countries a remote possibility?

Answer. Although there are currently only 42 parties to the Convention, most of the major military powers and virtually all of our allies have ratified or intend shortly to do so. In particular, Australia, Belgium, Canada, China, Denmark, France, Germany, Greece, India, Italy, Japan, the Netherlands, New Zealand, Norway, Pakistan, Russia, Spain, and the United Kingdom have all ratified; and Israel has tabled the Convention with the Knesset and hopes to ratify within the month.

It is true, on the other hand, that we need to have substantially greater adherence to the Convention by third-world states if it is to be fully effective, in light of the large and growing humanitarian problem posed by the indiscriminate use of anti-personnel landmines. The convening of the Review Conference has already accelerated the pace of ratifications, and we believe that serious improvements in the Convention at the Review Conference will do likewise. We intend to lead the effort to encourage a major expansion in the number of parties.

It is true that banning landmines outright would not be practical at this time, even if that were militarily acceptable to us. It is important to note that the Convention does not ban landmines, nor are we proposing to amend it to do so. We believe the restrictions we have proposed are perfectly feasible and cost-effective, and that there is no reason why any third-world military force could not readily comply with them. These restrictions would not deny the use of landmines for legitimate military purposes, but rather require that reasonable measures be taken to protect the civilian population from their effects. We have already made significant progress at the meetings of government experts in developing a consensus in favor of such measures, including the third-world delegations, and we hope to bring this process to a successful conclusion at the Review Conference.

Question. The President of the Red Cross has asked the United Nations to strengthen the Convention to include a ban on blinding laser weapons now being

developed. The United States is one of the nations developing such weapons. What will the U.S. position on banning such weapons be at the Review Conference?

Answer. This is an issue of considerable complexity and the proposed prohibition raises significant concerns. We believe that our core focus at the Review Conference must remain on the indiscriminate use of anti-personnel landmines. We cannot afford to divert attention from this critical and immediate humanitarian problem.

As we prepare for the Review Conference we are studying our position with respect to a number of issues, including the proposal on lasers. However, we remain concerned that the proposal is drawn too broadly. It would be a situation of grave consequence if the proposal could lead to prosecution of those who use our laser-guided systems. In addition, such a proposal could constrain the use of laser systems that provide both military and humanitarian benefits through greater target discrimination. Even those advancing this proposal acknowledge legitimate uses of lasers in ways that provide such benefits.

RESPONSES OF MICHAEL J. MATHESON TO QUESTIONS ASKED BY SENATOR BIDEN

Question. What is the meaning of the term “remote control” in Protocol II, Article 2, paragraph 3?

Does the negotiating history of the Convention shed light on the meaning of the term? If so please provide the relevant documents.

Answer. The language of Article 2 of Protocol II suggests that the term “remote control” was used to refer to munitions detonated by command from a distance, as distinguished from munitions that detonate automatically after a lapse of time or that are detonated by the presence, proximity or contact of a person or vehicle. We are not aware of any negotiating history that sheds further light on the meaning of the term. In particular, we know of nothing in the text or the negotiating record that would suggest that the term was limited to radio command as opposed to wire command, or that any minimum distance was contemplated.

Question. What is the meaning of the term “remotely-controlled” in Protocol II, Article 5, Paragraph 1(b)?

Does the negotiating history of the Convention shed light on the meaning of the term? If so, please provide the relevant documents.

Answer. The language of Article 5 of Protocol II suggests that the term “remotely-controlled” was used to refer to a neutralizing mechanism that is activated by command from a distance, as distinguished from a self-actuating mechanism within the mine that automatically neutralizes a mine after a period of time. We are not aware of any negotiating history that sheds further light on the meaning of the term. In particular, we know of nothing in the text or the negotiating record that would suggest that the term was limited to radio command as opposed to wire command, or that any minimum distance was contemplated.

Question. If there is not a common understanding of the term “remote control,” will you seek to clarify this issue at the Review Conference in September? In particular, will you commit to proposing an exemption to command-detonated weapons, such as the Claymore mine?

Answer. We realize that the Claymore in its command-detonated mode does not pose the sort of dangers to the civilian population that were the reason for the restrictions in the Convention. We are therefore prepared to seek appropriate action at the Review Conference to exclude the command-detonated Claymore from the restrictions applicable to the devices covered by the landmines Protocol.

Senator PELL. Which of the top half does not? [Pause.]

Mr. MATHESON. The list of major exporters really depends upon the timeframe you are looking at. But historically, it has included countries like Russia, some of the Eastern European countries and China.

The United States has typically not been a major exporter because, even before our moratorium, we never got up to more than eight percent of the total worldwide market. And we would always export, even so, to responsible countries like Israel, Canada and other allies.

So we never were a major exporter. And now we have gone, essentially, to zero. But I will be glad to give you a more detailed list with the major exporters for the record.

Senator PELL. Thank you. Have we asked those countries that are on that list to require self-destruction or self-deactivation mechanisms?

Mr. MATHESON. Yes. We have proposed to all of them that this be one of the features of the regime for the Convention.

Senator PELL. What has been their response?

Mr. MATHESON. Well, at the last experts meeting, there was general support finally for the U.S. proposal that there be a requirement for self-destruction, or alternatively for use of mines only within controlled mine fields. So that seems to be a proposal which is succeeding.

Senator PELL. Self-destruct means blow itself up. Deactivation means that the fuse rots, or what does it mean?

Mr. MATHESON. Deactivation means that it can no longer function as a mine. Typically, a self-destruct mine will operate by means of a battery. And the battery will run down, predictably. And when it runs down, the mine will no longer be capable of operation.

That is the way our self-destruct mines work. And that is the way we think they should be designed so that in the rare event that the self-destruct mechanism does not work, the mine will, nonetheless, surely be incapable of operation at a certain period thereafter by a means of the exhaustion of the battery.

Senator PELL. Which countries have been taking the lead in not wanting to put these devices on, adding these devices to the land mines?

Mr. MATHESON. Well, there were concerns initially about our proposal among some of the European countries, some of the nonaligned countries.

Senator PELL. Which ones? Which European countries?

Mr. MATHESON. Well, there was a period of time when France and Germany had a proposal before the experts group which did not include a requirement for self-destruct.

But these countries have now come aboard. And at the last experts meeting, we seemed to have general consensus on the desirability of that as a requirement.

Senator PELL. And this would apply to the countries, former Soviet countries.

Mr. MATHESON. Those which ratify, yes.

Senator PELL. I have no further questions.

Senator LUGAR. Thank you very much, Senator Pell.

Senator PELL. Thank you.

Senator LUGAR. Mr. Matheson and General Byron, we thank you for coming to the committee and for your testimony. And as Senator Pell and I have indicated, we are hopeful the committee will act upon this in a timely way as you have suggested.

Mr. MATHESON. Thank you very much, sir.

Senator LUGAR. And the hearing is adjourned.

[Whereupon, at 10:47 a.m., the hearing was adjourned, to reconvene subject to the call of the Chair.]