

APRIL 3, 2001

**STATEMENT OF EDWARD CUMMINGS
HEAD OF U.S. DELEGATION
TO THE SECOND PREPARATORY COMMITTEE OF THE
2001 REVIEW CONFERENCE OF STATES PARTIES TO THE
CONVENTION ON CERTAIN CONVENTIONAL WEAPONS**

Scope of Application of the CCW

Mr. Chairman, thank you once again for the opportunity to address this Preparatory Conference. Today, we are pleased to discuss what we and many other delegations believe to be one of the highest priorities before us.

The difficulty of preserving humanitarian values in time of war is apparent in all armed conflicts, international and internal. The fact is that the distinction between the types of conflicts matters little to the victims of war itself. We believe that the extension to internal conflicts of more of the principles and rules for the protection of the civilian population from the effects of hostilities would offer a significant advance without unduly restricting legitimate security requirements of a State to combat rebellion within its territory. As the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia has forcefully written:

"...elementary considerations of humanity and common sense make it preposterous that the use by States of weapons prohibited in armed conflicts between themselves be allowed when States try to put down rebellion by their own nationals on their own territory. What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife."

Indeed, as was clarified yesterday during the round table held on this issue, the trend in treaty making just in the last 10 years bears this view out. Most of the more recent treaties concerned with both weaponry and the conduct of war -- the Amended Mines Protocol of 1996, the Rome Statute of 1998 and the Second Protocol to the 1954 Hague Convention Protecting Cultural Property in armed conflict concluded just last year -- have clear-cut applicability in internal armed conflict. This conference is now in the position to reinforce and extend this important development.

We sense growing support for doing so and welcome the statements yesterday in support of this principle by many states, including, for example the delegations of Russia, India, and Brazil as well as the EU. We also share the sense of urgency about this issue expressed by the ICRC yesterday.

Our proposal on scope is straightforward, rooted in both customary international law and the precedent of the Amended Mines Protocol. In fact, the language of our proposal is substantively identical to the language of paragraphs two through six of Article 1 of the Amended Mines Protocol. It is, in part, also similar to the language of the 1999 Second Protocol to the 1954

Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict.

There are a number of options for expanding the scope of the Convention. We believe, along with the ICRC and other states that it would be simplest, most direct and most effective, as well as consistent with Article 8 of the Convention, to amend Article I of the Convention itself. First, Article 8 of the Convention envisions that new protocols will address "categories of conventional weapons not covered by the existing annexed Protocols." Expanding the scope of the Convention does not fall neatly within this framework. Second, by amending the Convention itself, all Parties would be bound by the same substantive rule, once they accede to an amended Convention. This will be particularly important in the case of new parties to the Convention. New Parties would be presumed to ratify an amended Convention, making automatic the application of the Protocols to which they accede in internal armed conflict. Amending the convention also avoids the problem of a multiplicity of instruments related the same purpose. Rather than having separate agreements for each protocol, expanding the scope on a protocol-by-protocol basis, amending the Convention will accomplish our shared goal in the most efficient way. Also, it is in the tradition of the law of treaties, that fundamental provisions such as scope of application, would be addressed in the framework convention itself. Finally, we should take into account the symbolic importance of amending the Convention as compared to other options. It does matter that the most important convention on conventional weapons, will, in the Convention itself, have a clear provision on scope, i.e., extension to non-international armed conflicts, which of course is the critical issue in international humanitarian law today.

**STATEMENT OF EDWARD CUMMINGS
HEAD OF THE U.S. DELEGATION
TO THE SECOND PREPARATORY CONFERENCE OF THE
2001 CCW REVIEW CONFERENCE**

April 5, 2001

Explosive Remnants of War

Mr. Chairman, thank you. The issue presented by this discussion is both very old and rather new. It is old because explosive remnants of war - unexploded ordnance - have been with us since the earliest use of explosive devices in armed conflict. It has always been true that unexploded devices have remained on battlefields following conflict - this has been among the costs of war. It is a cost that Egypt, China, Russia, Latvia and many Europeans - among others, of course - bear from the First and/or Second World War. I daresay that it is a cost that many nations represented in this room today must bear. The cost falls not just on our treasuries but on our citizens, civilians who unknowingly may disturb an explosive remnant of war.

The issue is new because the ICRC has presented us with proposals to address what they have termed "explosive remnants of war." But even here there are old issues - landmines, for instance, within the ambit of the ICRC proposals, are dealt with by the CCW and the Ottawa Convention. Also, the principal munition identified by the ICRC - the cluster munition - has been the subject of debate in the CCW before, specifically in the 1970s. Yet never before has such a comprehensive proposal to regulate unexploded ordnance - what we often call "UXO" - been offered for the consideration of States. For raising the UXO issue in this forum, we owe the ICRC a debt of gratitude.

It is now, however, up to States Parties to the CCW to consider the proposal of the ICRC and determine the scope of the issue, the nature of the problems, and the most appropriate measures in light of those problems. Each delegation participating in this Preparatory Conference is at the early stages of fully understanding the issues; for many of us, this may be the first sustained engagement in the issue. For that reason, we must take our responsibility to consider the ICRC proposal seriously, fully recognizing both the military advantages of the munitions that may leave UXO behind and the humanitarian concerns UXO can generate.

The proposal to deal with UXO illustrates a noteworthy dynamic: strengthening the reliability of munitions serves both military and humanitarian objectives. On the military side, it appears to us uncontroverted that the key weapon category identified by the ICRC - the cluster munition - serves extremely valuable and important military objectives. The military utility of cluster munitions has been recognized by those seeking restrictions on their use, as was made clear, for example, in Switzerland's intervention yesterday. As compared to traditional unitary bombs, improved cluster bombs cause less destruction,

reducing the harm to civilian populations during armed conflict. The particular tactical uses of cluster munitions by aircraft enable fewer sorties and thus reduces the risk to pilots. To the extent cluster munitions enable the targeting of more military objectives per sortie than the unitary bomb, they can shorten conflicts and reduce the need to deploy ground forces. All of these military advantages are strengthened when the munition has a high degree of reliability - that is, when the munition functions as designed, exploding on an intended military objective.

By the same token, a higher degree of reliability benefits both friendly military forces and civilian populations, since there is no military advantage to be gained by UXO. The unexploded ordnance - whether a submunition, artillery or mortar shell, or other munition -- can only serve to compound the advance of ones' military forces, since UXO can just as easily and unpredictably harm soldiers as civilians. It goes without saying that there is no legitimate military advantage in causing civilians to fear that they might set off UXO when playing in a field, walking along a river, or otherwise going about their business in an area formerly the site of hostilities.

With these common military and humanitarian advantages in mind, the United States has already begun to consider ways to enhance the reliability of cluster munitions. In January of this year, the United States Secretary of Defense directed that, in the future acquisition of cluster munitions, the U.S. goal is to attain a reliable functioning rate of at least 99 percent. Such a goal would include not only working to ensure, as much as feasible, that such munitions function as intended. It would also mean that, where such munitions fail to function as intended, they are reliably incapable of causing an explosive problem once their intended use has concluded.

Switzerland has submitted an important and thoughtful proposal dealing with reliability. We look forward to working closely with Switzerland on its proposals and to discussions with other delegations. A major issue to be addressed is reliability both in peacetime testing and in actual battlefield conditions. Our discussions should not be limited to particular technical means that may now be available to increase functioning rates of munitions, such as fusing. The self-destruct and self-deactivate technology for certain cluster munitions may differ from anti-vehicle mines. Technology innovations in the future may offer improved ways to reach higher rates of reliability. Thus, our discussions in this regard should not be limited to an examination of the specific technology that enables our anti-vehicle mines to attain a very high self-destruct/self-deactivate dependability rate.

At the same time, several delegations have noted that there are cost implications of the Swiss and ICRC proposals. In comparison to the known costs for detectability and self-destruct/self-deactivation features for mines - which we pointed out yesterday are minor, amounting to a few dollars per mine -- the costs of the remnants proposals are currently unknown and deserve considered study.

The proposal to deal with UXO, however, raises more questions than it answers. It is simply the fact that the issue of "explosive remnants of war" is

extremely complex. It does not lend itself to simple, easy solutions. Even understanding the nature of the issue requires detailed understanding of the military utility of weapons that may cause UXO and the problems UXO causes. We do believe that some of the ICRC proposals have merit and deserve our consideration. In particular, we are prepared to consider what kind of steps would be appropriate to warn and educate civilians on the presence and effects of UXO. In this context, it would also be appropriate for all States to consider increasing their support for and interaction with the current mine action and clearance programs underway. We are also prepared to consider what kind of technical information can be made available to assist the UN and clearance organizations.

We would also note that the ICRC has suggested that anti-vehicle mines can be addressed outside the context of explosive remnants of war. We agree strongly with this approach. As other delegations have noted, anti-vehicle mines are very different from other kinds of weapons that leave UXO. We believe that they should be addressed as a method and means of war. Moreover, we have an opportunity to deal with anti-vehicle mines in the context of the joint U.S. - Danish proposal discussed yesterday. Parties that truly want to address the problems identified by the ICRC - a sentiment widely expressed during this meeting - have an opportunity to do so by supporting the U.S.-Danish proposal.

Yet we do believe that there are problems with some specific proposals of the ICRC. First, the ICRC's specific proposal to shift responsibility to clear UXO on the party that delivered the munition would not only be very difficult to implement but also goes counter to the long-established customary international law principle of the rights and responsibilities of the sovereign state over its territory. We are not convinced that the analogy made to the Amended Mines Protocol's provision on responsibility is entirely appropriate. The provision in Protocol II, which the U.S. proposed, is militarily feasible, as the dimensions of the responsibility are clearly established in the relevant articles of the Protocol.

Second, the ICRC has proposed dealing not just with UXO but with the use of cluster munitions near concentrations of civilians. We share the view expressed by others that existing international humanitarian law adequately regulates questions related to targeting, and that such a specific rule in the context of cluster munitions is unnecessary.

We also note that caution is necessary in applying provisions from other CCW protocols to explosive remnants of war. Each provision was written with an appreciation for the uniqueness of the weapons addressed in the relevant protocol. An analogy to UXO may not necessarily follow. For example, the specific rule developed for incendiary weapons in the CCW was based largely on how such weapons are used tactically, such as in close air combat. It also acknowledged the post-attack risk of fire spreading out of control, which is not a risk with cluster munitions. This rule in Protocol III, in our view, cannot be applied in a militarily feasible manner with respect to cluster munitions. Application of the incendiaries principle to cluster munitions could pose greater risks to civilians and greater damage to civilian objects in the vicinity of a military objective because the principal alternative to the use of cluster munitions, a traditional unitary bomb, can cause much more significant damage.

Finally, we strongly agree with the United Kingdom and France that the proposal to consider depleted uranium munitions within the context of remnants is inappropriate, particularly because DU on its own does not cause an explosive remnant.

We strongly agree with other delegations that the object of our work leading to the Review Conference should be the establishment of an open mandate for an experts process to consider the problem of UXO and measures that may effectively address that problem. These may include best practices, as the Canadian delegation has suggested, and may not lead to a protocol. As the Canadian delegation correctly noted this morning, negotiation of a protocol would, in all likelihood, take several years. Thus, CCW Parties should strongly consider taking feasible steps on a voluntary basis, unilaterally or in consultation with others, to address UXO problems in the short term. The Review Conference, in other words, should not prejudice the experts process by requiring a specific outcome, such as a draft legal instrument. The experts work should be open-ended.

Mr. Chairman, I would like to conclude by reiterating my government's keen interest in reducing the humanitarian and military problems caused by UXO. We look forward to working with you and with other delegations in crafting a workable mandate for experts work for adoption this December. Thank you.

STATEMENT BY THE US DELEGATION

September 25, 2001

Mr. Chairmen. Thank you.

By way of background, in April of this year, at the second preparatory conference for the CCW review conference, the U.S. and Denmark jointly proposed a new protocol on anti-vehicle or AV mines.

In response to consultations with interested states and organizations, we made a number of revisions to the April proposal which we presented and discussed at the FOC meeting on July 6th of this year and reviewed again at the August interessional.

The purpose of this presentation is to (1) briefly review the main features of our proposal (2) describe the revision resulting from our acceptance of the EU proposal made in August to include self-neutralization in our proposal (3) attempt to address questions that were raised on Monday and (4) extend our appreciation for the support extended us by our new cosponsors, as well as welcome additional support.

Our proposal has, of course, two key features.

It would, first of all, prohibit the use of non-detectable anti-vehicle mines. From a humanitarian perspective, such a prohibition would greatly facilitate the detection and clearance of anti-vehicle mines, especially on roads used by civilian traffic and humanitarian vehicles.

From a military perspective, it would help reduce casualties among peacekeepers and friendly military forces. The U.S. military believes strongly that detectability of anti-vehicle mines is actually, all things considered, militarily advantageous.

Secondly, our proposal would prohibit the use of remotely delivered anti-vehicle mines without self-destruct or self-neutralization mechanisms and a back-up self-deactivation mechanism.

Long-lived, remotely delivered mines pose serious risks to the civilian population since they could remain active in areas used by civilians long after they served their military purpose.

Self-destruct or self-neutralization mechanisms and self-deactivation features on such mines would address that problem.

Self-destruct also make sense from a military perspective, reducing the risks to one's own forces, without compromising legitimate military uses of remotely-delivered mines.

"Remotely delivered mines" refers to mines delivered by artillery or aircraft.

Let me stress that AV mines that are not remotely delivered would not be subject to the self-destruct requirement.

For instance, our proposal would not require self-destruct for hand-emplaced border minefields.

Let me make a few general points about our proposal that I hope will address some of the questions that have been raised.

First, our proposal does not address anti-personnel mines and does not change any obligations relating to such mines in the AMP. It deals only with that category of landmines known as mines other than anti-personnel mines. This material scope is set out right up front in Article I of the proposal.

Second, it is important to stress that our proposal does not cover, at all, issues of stockpiling. This means that states can adopt, indeed even ratify, the AV mine protocol without having to change, modify or destroy their stockpiles. They comply as long as the mines, when actually used, that is, when emplaced, satisfy the requirements.

Third, it follows that if a state already has non-detectable mines in the ground, our proposal would not require removing them since it concerns the use -- the emplacement -- of mines after entry into force, not before.

Fourth, it bears repeating that our proposal does not require self-destruction mechanisms for mines that are not remotely-delivered, such as hand-emplaced mines that may be used in long-term border minefields.

Fifth, our proposal applies the same reliability numbers for self-destruct and self-deactivation (SD/SDA) for remotely-delivered AV mines as for remotely-delivered AP mines agreed to in 1996 when the AMP was adopted.

I should note here that the technology for reliable SD/SDA devices for AV mines is exactly the same as the technology for reliable SD/SDA devices for anti-personnel mines. State parties, of course, accepted this requirement when they adopted the Amended Mines Protocol in 1996. It was then, and is still, widely available and relatively inexpensive.

Sixth, our proposal incorporates key provisions of the 1996 Amended Mines Protocol (AMP) important to many countries, such as provisions on general restrictions, on technological cooperation and assistance, on penal sanctions and on transfers. Article 1(3) of our proposal accomplishes this, referring to the provisions of Articles 3, 9, 10, 11, 12 and 14 of the AMP. Yesterday it was suggested that we also incorporate by reference the AMP provision dealing with recording of remotely delivered minefields in article 6(1) and we have done so to ensure a comprehensive approach that satisfies the considerable interest expressed by a large number of states and the ICRC in incorporating such additional AMP provisions.

Let me turn to the revision resulting from our acceptance of the German proposal made in August to include self-neutralization in our proposal.

We are grateful to the European Union and the German Delegation for this enhancement of our proposal. By offering states an option of either SD or SN, the long-running debate about the relative military and humanitarian benefits of these alternative approaches to eliminating the threat posed by long-lived remotely delivered AV mines can be pragmatically addressed. States can decide, case-by-case, what approach works best. The SN option adds flexibility to the regime without compromising the humanitarian and military benefits. By the way, incorporating the SN alternative has changed the text very little. It necessitated changes only to Article 1(2) where we added a reference to the definition of self-neutralization found in the AMP and to Article 4(1) and (2) where we added the phrase "or self-neutralization" after the references to "self-destruct".

In the last few weeks, in addition to the expressions of support for our proposal we have received, a number of continuing concerns have been expressed which I would like to briefly address.

One has to do with an impression that there just isn't time to reach agreement this year or expressed from another angle, that there really isn't cause to do something this year.

We believe there is both.

The problem on the ground with respect to the irresponsible use of AV mines is real. The disruption of humanitarian relief and peace operations is real. The civilian injury and death is all too real. The sooner we agree on implementable practical steps to address it; the better. So from a humanitarian perspective, we believe its important to take this step this year.

From a negotiating perspective, we believe that resolution of the AV mine issue will provide a strong impetus to get a more coherent result on the issue of explosive remnants of war.

Furthermore, we believe there is a proliferation risk with remotely-delivered AV mine systems in particular. That's why we think the standard agreed in 1996 for remotely-delivered AP mines may have even more meaning today for remotely-delivered AV mines.

We understand that there's skepticism about accomplishing this in December. But our sense that it's possible is firmly held. We are genuinely encouraged by the great number of states and organizations which tell us they support the our proposal completely on the substance.

Cost issues we know are an important concern. In specific terms , two potential costs are at issue: The first relates to detectability. The cost of making a landmine detectable is minimal, requiring only the incorporation of a small amount of metal prior to employment. The concept of an inexpensive, self-adhesive metallic patch is one of many inexpensive ways to address this issue. The second relates to self-destruction or self-deactivation technology. For those states that have already incorporated such technology into their anti-personnel landmines, the cost would be similar, since the technology should be the same for both kinds of mines. For those adopting such technology for the first time, the costs need not be prohibitive. We estimate that the cost for the United States is approximately 20 USD per mine using high-quality, off the shelf components. While even \$20 per mine may be significant, put in the context of the cost to clear a long-lived mine, which on average is \$300 to \$1000 per mine, the cost is comparatively low. Thus, its possible to consider such costs as investments that will reduce potentially higher costs down the road for clearing mines within territory one controls, to say nothing of the cost such mines have in a humanitarian and military sense. Considering the issue from such a perspective, it becomes clear that it can be cost-effective to address the problem with detectability, self-destruction and self-deactivation.

Another concern raised is that our proposal is somehow still an amendment of the Amended Protocol II. As we have noted before, the proposal for a new protocol is designed specifically to address this concern. It stands alone and separate from the AMP. It could be accepted individually or in addition to the AMP. It does not amend in any way Parties obligations, for AMP state parties, with respect to anti-personnel mines, or, more importantly for Ottawa states perhaps, with respect to booby-traps or other devices. It would simply establish new obligations with respect to anti-vehicle mines, but these would build upon the obligations Parties already bear with respect to such mines. Article 2 of our proposal, which some have raised as evidence of an amendment, is included only to make crystal clear that parties to both protocols would be required to use SD/SN/SDA on remotely delivered AV mines. It is not, strictly speaking, necessary as a legal matter and if it represents a stumbling block for some delegation we are certainly prepared to address concerns relating to it.

Finally, concern has been expressed about the impact concluding a new protocol on AV mines might have on universality. We take this concern very

seriously. We have worked hard to broaden the adherence to this regime. We are very committed to doing so. It is our sense that a stand-alone protocol on AV mines - a broadly relevant issue, particularly in developing areas -- offers the possibility of attracting the interest of a wide group of states not yet party to CCW. The relevance of the regime for many states and regions would, we believe, increase.

Mr. Chairman, I have referred throughout this intervention to "our" proposal for it is, in fact, shared more broadly than before since we have welcomed as cosponsors Germany, Poland, Finland, Japan and the United Kingdom.

I would like to conclude by underscoring the appreciation of my delegation for their support, as well as the support of our original cosponsor Denmark, for a protocol on mines other than anti-personnel mines and for their commitment to its aims.

Thank you very much.