Federal Foreign Office

STANDING COMMITTEE ON THE GENERAL STATUS AND OPERATION OF THE CONVENTION
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STATEMENT BY
MR. DIRK ROLAND HAUPT
FEDERAL FOREIGN OFFICE, BERLIN

Mr. Chairman,
Distinguished Colleagues,

Almost exactly six years ago, on July 23, 1998, Germany deposited her instrument of ratification of the Ottawa Convention after a thorough analysis of the consequences of this step in terms of implementing it at all relevant levels. As a result, it was concluded that ratification could be executed straightforwardly, given the fact that Germany conceived herself entirely to be in accordance with the provisions of the Convention:

- Stockpile destruction was completed in December 1997 and thus far ahead of the entry into force of the Ottawa Convention, and
- national implementation legislation pursuant to Article 9 of the Convention was enacted on July 6, 1998, in the "Act Implementing the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction."

In fact, the Convention has ever since been conceived to reflect, in a well-balanced manner, Germany's interests in facilitating and enabling humanitarian progress as well as in responding to her military requirements and capabilities, being a member in a defense alliance—and thus inviting the presence of foreign forces on her territory—and as participant in joint and combined operations. **The Convention is a successful instrument not least due to the fact that its provisions have proven to be apt to implementation largely on their own regulatory merits.**

Therefore, when contemplating—as is done in the non-paper by the chairs of this Standing Committee—the adoption of conclusions related to the implementation of the Convention, one has to ask if there is actually a clear need for improvement or clarification.

While Germany acknowledges that the implementation of the provision on the retention of antipersonnel mines in Article 3, which is granting an exemption from the general obligations in Article 1, would profit from a guideline assisting to apply the underlying principle of *singularia non sunt extenda* both in quantity and transparency, **we are, for the rest, not yet convinced** of the suggestion before us.

Our concerns address both the substance of the proposal—which we conceive mainly to serve the purposes of interpretation rather than the ones of facilitating implementation—as well as the procedure of decision-making, which is dependent on the substance we might agree.

On the substance, we would like to state that we are prepared to support recommendations and guidelines with the demonstrated capability of facilitating implementation, as in the case of Article 3, but that we are reluctant to agree to language which will create more open issues than it will actually help us to resolve.

Thus, Germany sees no merit in paralleling processes already underway in competent fora—such as the issue of sensitive fuzes which is rightly and appropriately dealt with in the context of the CCW Convention, where it exclusively should remain—and in defining behavior which she knows she cannot live up to as a consequence of remaining limitations in her jurisdiction, or for which specific treaty provisions already exist—as, for instance, in the case of providing protection and maintenance for transportation and storage sites of allied stationed forces, the sending States of which are not themselves States Parties to the Convention.

Furthermore, it is straightforwardly deducible from the wording of the Convention that, in the context of operations, exercises or other military activity sanctioned by the United Nations or otherwise conducted in accordance with international law, the mere participation of German Federal Armed Forces, or individual Germans, in operations, exercises or other military activity conducted jointly with the armed forces of States not party to the Convention which engage in activity prohibited under the Convention, is not to be considered as an activity pursuant to Article 1(1)(c) of the Convention. However, in order to obtain maximum reinsurance that no antipersonnel mines be used in joint operations, exercises or other military activity, the Federal Government consequently states the expectation, *inter alia* in the exchange of notes on agreed and applicable Rules of Engagement, that this prohibition would be observed, and considers this standard practice as very efficient in terms of faithfully implementing—and promoting—the aims of the Convention in concrete action.

On the procedure of decision-making we would, at this point, like to raise a twofold concern.

Firstly, Germany believes that the non-paper, as circulated, has in a number of issues actually crossed the borderline between facilitating implementation of the Convention and proposing to amend it. We, therefore, doubt that Article 12(2)(d) is a proper reference for these endeavors.

Secondly, as we obviously have not agreed to enter into an amendment procedure under Article 13, Germany would caution to get unclear as to the question whether we engage in activities possibly leading to a subsequent agreement regarding the interpretation of the Convention or the application of its provisions in the sense of Article 31(3)(a) of the Vienna Convention on the Law of Treaties. As for Germany, such an agreement could be concluded only with the advice and consent of both the Lower and Upper Houses of the Federal Parliament requiring the same comprehensive procedure as the ratification of the Ottawa Convention itself. To choose this method would necessarily have to imply that the need for subsequent interpretation was of pre-eminent significance.

The Ottawa Convention is, luckily enough, not in this condition and, therefore, not in need of a subsequent agreement regarding its interpretation. What it, however, always will be in need of is the good implementation example, the best practice achievable. We ought to concentrate on these tangible implementation steps. They define the scope of the progress we can make.