

**INTERSESSIONAL FOR THE OTTAWA CONVENTION
9 FEBRUARY 2004, GENEVA
STATEMENT BY TIM CAUGHLEY,
AMBASSADOR FOR DISARMAMENT**

NEW ZEALAND'S POSITION ON ARTICLE 2

We have not previously put forward our official position on Article 2 and, in order to encourage debate and progress these issues in time for the Review Conference, we will do so today. I don't have a solution to put forward and I recognise that there are several valid points of view on this provision, but we look forward to working with you to find the elusive convergence to which you referred in your introduction.

Anti-Vehicle Mines

The Ottawa Convention prohibits State parties from using APMs, which are defined under Article 2.1 of the Convention as mines "designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons".

New Zealand regards anti-vehicle mines that can be "exploded by the presence, proximity or contact of a person" to be anti-personnel mines. That is, we align ourselves with the countries in the 1st section of the ICRC's very helpful paper.

Much has been made of the "design" argument and that mines designed in good faith to be detonated by a vehicle would in most instances be subject to the exception under Article 2.1. The design argument is used in the context of the 1996 CCW Amended Protocol II on "Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices". Amended Protocol II to the CCW indeed uses the wording - anti-personnel mines "primarily designed to be exploded by the presence, proximity or contact of a person". The critical distinction is that Amended Protocol II is intended to regulate the use of certain categories of weapons, whereas the Ottawa Convention, with its own set of definitions, is a comprehensive prohibition of all anti-personnel mines. Certainly consideration of this issue in the context of the CCW doesn't preclude its consideration under the Ottawa process.

While the "design" argument on the face of it may have a literal basis, we believe that the strict interpretation of Article 2 would conflict with the objectives of the Convention. It would leave open the possibility that state parties could deploy excessively sensitive AVMs, which were capable of being detonated by the presence of a person, relying on the exception under Article 2.1 as a defence by asserting that the mines were designed to be detonated by vehicles. Such an interpretation would leave a worrying loophole in the Convention, effectively giving State parties scope to interpret their obligations under this provision in a manner that could compromise the humanitarian objectives of the Convention.

Anti-handling devices

While the Convention expressly provides an exception for AHDs, we prefer the view that if an AVM is fixed with AHDs, which are designed in such a way that these are prone to accidental detonation then the device and the mine to which it is attached should not be considered to be an AVM but effectively becomes an APM for the purposes of the Convention. We believe that this interpretation - the so-called "functional" approach - is consistent with the humanitarian "object and purpose" of the Convention (to use the Vienna Convention on the Law of Treaties rules on treaty interpretation).

The object and purpose are set out in some detail in the preamble of the Ottawa Convention, one of which is “to put an end to the suffering and casualties caused by anti-personnel mines that kill and maim hundreds of people every week”.