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Thank you Dr. Cornelis for that kind introduction. Dr. van Kamp, Dr. Sahli, Ambassador Carbonez, Commissioner Busquin, ladies and gentlemen, I am very pleased to have the privilege of speaking here today at the Brussels Demining Conference. I understand that this auditorium is full of experts on the science and technology of the detection and removal of landmines. Instead of getting into the details of this research, what I'd like to do is offer a few thoughts on the challenges that landmines pose, put this issue into a broader perspective and, in the end, explain why I am optimistic about the future of this important international humanitarian challenge.

When I look at the issue of humanitarian demining today, the basis of the challenge is in the moral sphere: landmines are inherently indiscriminate weapons. This is a different problem from that which a commander faces on the battlefield when soldiers might indiscriminately attack civilians during a battle. The problem with landmines emerges when the battle is over and the military forces leave—the minefields remain in the soil. If these weapons are not removed or if the minefield is not clearly marked so that everyone knows that they are present, these mines will still be dangerous to civilians and innocents months or even years later. It is this violation of the principle of discrimination, a principle that is so important to the western view of the restraint of warfare, which is the moral challenge posed by landmines.

When one digs a little deeper into the issue, one gains significant insight by examining the intellectual basis for the principle of discrimination. Professor James Turner Johnson convincingly argues that two sources for this principle wind their way through international legal and moral thinking. The first of these is a canonical source emerging from the Church during the Middle Ages. The Church's canon lawyers argued that since members of the church—priests, monks, friars—could not participate in warfare in any manner, these people should be spared the hardships of warfare. This canonical expression, "The Peace of God," later grew to include other members of society whose social function did not include the making war—this list included pilgrims, travelers and peasants tilling the soil, to include their animals and property.

The second intellectual source for the principle of discrimination emerges from the secular realm: the code of chivalry. Under this code, a knight was obliged to protect those who, under the structure of medieval feudal society, came to be under his protection; in other words, the peasants and artisans who worked on his estates. However, when a peasant enlisted in the irregular infantry, he lost the protection that he would normally have expected to receive had he stayed at home. Thus other knights were no longer obliged to protect such people if they were found on the battlefield.

These two sources provide differing bases for discrimination. On the one hand, the canonical source stipulates that people who do not participate in war have a *right* not to be bothered by war. On the other, medieval knights, working under the code of chivalry, saw the protection given to the weaker members of

society as a *gift* that could be revoked at any time at the knight's convenience. The canonical source represents an *absolute* view of discrimination that is right-based and is something that can never be taken away. The source in the code of chivalry is a *relative* view of discrimination and the protections embodied in the principle of discrimination can, under certain circumstances, be taken away.

These two intellectual sources for the principle of discrimination eventually emerge in some of the earliest texts on early international law. The Spanish Dominican brother, Francisco de Vitoria, in the early 16th century incorporates the relative view of discrimination in his work *On the Laws of War*, noting that "It is never right to slay the guiltless, even as an indirect and unintended result, *except when there is no other means* of carrying on the operations of a just war."

Almost a century later, the Dutchman Hugo Grotius, in his work *The Rights of War and Peace* also outlines a similar view of discrimination: "A reason for which it will be necessary to guard against things, which fall not within the original purpose of an action, and the happening of which might be foreseen: *unless indeed the action has a tendency to produce advantages, that will far outweigh the consequences of any accidental calamity...*" These works are among the founding intellectual bases for what would later become modern international law, and this received view of the relative nature of discrimination had a significant influence on the formation of international humanitarian law.

But there were other influences on the restraint of warfare throughout history. For example, during the period of "limited war"—the era of Frederick the Great in the 18th century—one sees a limitation, and one that directly restricts the

threat posed to non-combatants, simply from the nature of warfare. During this period, one can argue that warfare was limited in three areas: geography, weapons, and targets. The geographic area where a battle might occur was limited primarily to geographic area of the magazines that were the base of supplies for the armies. As for weapons, the destructiveness of weapons during this era was relatively limited. And in the case of the heavy artillery, these weapons were also geographically limited to the roads that could support these large, heavy cannons. Finally, commanders were forced to limit the targets for attack during this period out of pure military self-interest. In the era before professional militaries, a commander could ill-afford the damage to his army's discipline that would result if he were to order an attack against targets that were not essential to achieving his campaign goals. So while none of these areas directly provided protection to non-combatants, the secondary effects of the limitations inherent to limited warfare led to the protection of non-combatants and civilian objects.

Unfortunately, this era did not last as the nature of warfare continued to evolve. The French Revolution and the rise of Napoleon marked the beginning of what has come to be termed "total war"—where all members of the society were involved in the war effort as mass conscript armies, the labor demands of the industrial revolution to arm those armies, and the increased destructiveness of weapons combined to make warfare a total societal endeavor. And the logical extension of this is that if society is fully engaged in supporting the nation's war

effort, and is essential to that effort, then society itself becomes a legitimate target for military attack.

Both the intellectual history of the principle of discrimination and the evolution of warfare played important roles in shaping the view of how civilians ought to be protected in warfare. The other important piece of this puzzle is the principle of military necessity. This term has, unfortunately, come to have a negative connotation with many people who believe, incorrectly, that the military uses “military necessity” as a justification for breaking the laws of war—this is not the case. Perhaps the best definition of military necessity, as well as its earliest codifications, comes from Francis Lieber, who wrote the field manual that governed the Union Army’s actions during the U.S. Civil War. Article 14 of *General Orders 100* states: “Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of war, and which are lawful according to the modern law and usages of war.” This famous “Lieber Code” would become the source and inspiration for many of the European military codes that would emerge in the years following the U.S. Civil War—its influence on codified international humanitarian law has been profound.

It should be readily apparent from even this short discussion that a tension exists between the principles of discrimination and military necessity. The former argues for the protection of civilians and civilian objects, while the latter makes the case that inadvertent harm to civilians and civilian objects, while regrettable, is acceptable if a significant military gain results and there is no other way to

proceed. This tension is captured best, I think, in international law in the First Additional Protocol to the 1949 Geneva Conventions, Article 57. A Commander will:

Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be *excessive* in relation to the concrete and direct military advantage anticipated...

The operative phrase “excessive in relation to the concrete and direct military advantage” is the source of many disagreements. Actions that one person may categorize as “excessive” may be considered legitimate by another. And who makes the determination about what is excessive in this regard? It is the military commander on the scene who makes this determination and who bears the responsibility, subject to later review.

In today’s world, what is the military necessity of landmines, looking at it through the lens of modern international humanitarian law? In the era of massed armies that was prevalent during the last century, landmines played a very significant military role. Mines were used to block, disrupt or channel an adversary’s advance. During the battle, this tactical and operational effect would be extremely useful for the military commander on the battlefield, where there would be little direct threat to civilians at the time of the battle. Where mines become a problem, as noted earlier, is when the battle ends, the armies have all gone home, and the minefields still remain in place and present a threat to civilians.

It was in response to these concerns and others that the International Campaign to Ban Landmines went to work. The group’s efforts and the results

they achieved cannot be considered anything but extraordinary in international politics. For the first time, a grass-roots campaign comprised primarily of non-governmental organizations persuaded the vast majority of the world's nations to collectively give up a militarily useful weapon of war by signing the Ottawa Convention that bans the "Use, Stockpiling, Production and Transfer of Anti-Personnel Mines."

In addition to this development, I'm happy to say that warfare as practiced by most nations of the world today seems to be evolving away from massed armies and indiscriminate effects of 20th century warfare. As an example, during the Cold War, NATO's sole purpose was the territorial defense of Western Europe. In this era when mass and firepower were the keys to a successful defense, landmines had a significant military purpose. Today, the Soviet Union and Warsaw Pact have dissolved and the threat posed by that enormous conventional force structure is no more. Instead, threats today come from terror groups, narco-terrorists and those who are trying to sell or move weapons of mass destruction. Instead of massed firepower on yesterday's static and linear battlefield, today's militaries are now transforming themselves to become smaller, more agile and more capable organizations that can employ force in discrete amounts, in precise locations, to achieve specific, limited effects. With less of a need to defend against the threat posed by massed armies, landmines have entered into an era of decreasing military utility, at least for the military forces of NATO member nations. It is this evolution in warfare away from massed armies

and the indiscriminate effects of weapons such as landmines that allows me to be optimistic about the future and the eventual demise of this weapon.

Although this is a bright spot in the evolution of warfare, other challenges remain. While most nations see warfare evolving from where landmines have a practical military use, *non-state actors* see the landmine and its horrifying, indiscriminate nature as being a very useful weapon if the objective is to psychologically terrorize and influence populations and governments. The world has seen this too many times in recent years—in the Balkans, Africa and South America—to continue to ignore this problem.

And this should give everyone gathered here today all the more reason to continue the work that you are doing, both at home and at this conference here in Brussels. Estimates on the number of active landmines range from 55 to 110 million in over 68 countries throughout the world. While these numbers suggest that significant disagreement exists over the actual number of landmines that still need to be found and destroyed, the fact remains that even the low end of this spectrum is a huge number. And the countries where these landmines are located are not only in the regions about which we might immediately think, such as Africa and Southeast Asia, but they are also located here in Europe in the Balkans, and in the Western Hemisphere in many Latin American states—close to home for all of us here in this auditorium, one way or another.

In the end, there is room for hope, I think. The evolving nature of warfare today suggests that for the most part, there will be a diminishing military need for landmines. It is the efforts and the devotion of resources by many of the world's

nations to humanitarian demining efforts that will help facilitate the eradication of these weapons. And finally, it is conferences such as the Brussels Landmine Conference that brings together those who are doing the cutting edge research on detection and removal of landmines that will in the long run provide the technology that will make the worldwide efforts to eliminate landmines successful.

Thank you very much.