

International Diplomacy: Arrangements for the Implementation of Mine Action Programs

Working Collectively to Eliminate the Landmine Threat

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Decades of persistent conflict around the world have left a legacy of destruction and mayhem in nearly 90 countries, a legacy sown in the form of landmines intended not only for strategic purposes but also as instruments of intimidation and terror. Although this legacy is unknown to most Americans, it goes to the heart of the humanitarian precepts of the U.S. national security strategy.

The international community has responded to this challenge in a number of ways. In addition to making an impressive commitment to educate and assist landmine victims and to remove or destroy landmines, two international instruments now restrict or prohibit the use of landmines.

The Convention on Conventional Weapons (the CCW Convention) || In 1980, the United Nations adopted the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons That May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (hereafter referred to as the CCW Convention), which the United States ratified in 1995. Two of the most important provisions stipulate that (a) Parties to a conflict must always distinguish between civilians and combatants, and civilians must not be targeted for attack; and (b) The use of weapons that are "of a nature to cause superfluous injury or unnecessary suffering" is prohibited. In 1990, humanitarian organizations began to document a

high number of civilian mine casualties, many of which were occurring after the cessation of hostilities. Following a formal request by the French government in 1993, a Review Conference of the CCW opened in Vienna in September 1995. Despite the successful adoption of a number of other protocols, talks to strengthen restrictions on the production, transfer and use of anti-personnel landmines (APL) became deadlocked, and the conference adjourned without placing any new limitations on these weapons and after making a decision to convene two additional sessions in January and May 1996.

During the May 1996 session, significant improvements were made in the original landmine protocol of the CCW. They included prohibiting the use of undetectable anti-personnel landmines, the expansion of the protocol to include internal conflicts, the tightening of regulations related to marking and monitoring anti-personnel minefields, the determination that responsibility for the proper maintenance or clearance of landmines rests with the mine-laying party, and the prohibition of any APL transfers to countries that are not party to or fail to apply the provisions of the protocol.

Pat Patierno meets deminers at a U.S. State Department-sponsored workshop about Mine Action Cooperation and Technology in Bangkok, Thailand.



Delegates agreed that annual meetings would be held to discuss the implementation of the protocol and that a third review conference would occur no later than 2001. The Amended Mines Protocol (AMP), formally entitled the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, has been ratified by almost 60 countries. Most of these countries, including the United States, which ratified in 1999, are key states not party to Ottawa.

The Ottawa Treaty II At the time that the international community was working to strengthen the CCW as an international legal instrument that would limit the use of APL, another mine ban process had begun to emerge. In October 1992, a number of prominent nongovernmental organizations (NGOs) met in New York to form a transnational alliance specifically dedicated to advocating the elimination of APL. The meeting marked the birth of the International Campaign to Ban Landmines (ICBL), an organization dedicated to seeking a new international norm prohibiting the use, production, transfer, and stockpiling of APL and to maintaining that the only way to address the issue effectively is to pursue a total mine ban.

Despite the improvements made in the AMP in 1996, the ICBL, which by 1996 represented more than 350 NGOs across the globe, concluded that the protocol had failed. At the closing session of the 1996 Review Conference, they joined with the Canadian government and other parties interested in a complete ban to propose that a conference be held later in the year to develop strategies aimed at imposing such a ban on APL. This set the scene for what came to be called the “Ottawa Process.”

The Canadian conference held in October 1996 was attended by 50 governments, the International Committee of the Red Cross (ICRC), the ICBL and the United Nations (UN). At the close of this conference, the Canadian government issued an invitation to all governments to come to Ottawa in December 1997 to sign a treaty prohibiting the production, stockpiling, transfer and use of APL.

International support continued to build. In December 1996, the UN General Assembly passed Resolution 51/45S calling on all countries to conclude a new international agreement prohibiting APL as soon as possible. International discussion on an Austrian-drafted text began in Vienna in February 1997 and concluded with the adoption of the

“Ottawa Treaty” at the September 1997 Oslo Diplomatic Conference. The treaty was signed by 122 nations at a ceremony on December 3, 1997, in Ottawa. Since then the number of signatories has risen to 139, of which 107 have ratified the convention.

The United States cited two reasons for not signing the Ottawa Convention: 1) the need for an adequate transition period in order to phase out anti-personnel landmines (APL) which it uses to protect American troops; and 2) The need to preserve the mixed anti-tank systems the United States relies on to slow down an enemy's armor offensive in battle.

A Comparative Analysis II The Ottawa Treaty was designed to impose a total ban on all APL, and states party to the treaty agree to forgo the use, transfer, production and stockpiling of all AP mines. Under the terms of Ottawa an “anti-personnel mine” is defined as a “mine designed to be exploded by the presence, proximity or



Working together, the international community can help to eliminate scenes like this.

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contact of a person, one that will “capacitate, injure or kill one or more persons.” Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person are equipped with anti-handling devices and “are not considered anti-personnel mines as a result of being so equipped.” As defined by the Ottawa Treaty, all person-activated APL are banned by state parties irrespective of whether they are placed in marked minefields or remotely delivered over large areas. The treaty also outlaws those categories of APL that are self-destructing or self deactivating (that is, programmed to explode or become inert after a set period of time).

A U.S. civil affairs soldier works with a Cambodian officer during an assessment visit.



The scope of the AMP covers not only mines but also booby traps and other devices. The scope of mines includes not only APL, defined as “any mine primarily designed to be exploded by the presence, proximity or contact of a person, [one] that will incapacitate, injure or kill one or more persons;” but also anti-vehicle mines, a category excluded by the Ottawa Convention.

Whereas APL are generally small devices containing explosives designed to wound, kill, or otherwise incapacitate personnel, anti-vehicle mines—much larger mines—contain greater amounts of explosives that have been designed to disable or destroy vehicles and tanks. Although anti-vehicle mines are generally used in small numbers and are easier to locate, they continue to pose a serious threat to the civilian population and to relief workers in many parts of the world. Furthermore, as a result of recent technological developments, the distinction between anti-personnel mines and anti-vehicle mines is becoming blurred.

Although Ottawa prohibits any dual-purpose or anti-vehicle mines if one of their functions is to be detonated by a person, it allows for the continued use of anti-vehicle mines equipped with antihandling devices defined as “devices intended

to protect a mine and are part of, linked to, attached to, or placed under the mine and activated when an attempt is made to tamper with or otherwise intentionally disturb the mine.” As noted by the ICRC, such mechanisms are increasingly being fitted to anti-vehicle mines to prevent their removal or clearance and are a particular danger to soldiers and deminers.

The AMP takes a different approach. Although prohibiting any device designed to “cause superfluous injury or unnecessary suffering,” the protocol allows self-destruction (SD) and self-deactivation (SDA) APL through the “Specifications on Self-Destruction and Self-Deactivation” delineated in Technical Annex 1. It specifies the following:

All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that in combination with the self-destruction mechanism, no more than one in 1000 activated mines will function as a mine 120 days after emplacement.

In addition, Article 5 allows weapons that are not in compliance

with the provisions of Technical Annex 1 but mandates that such weapons be placed within a marked area monitored by military personnel and cleared before the area is abandoned.

Although allowing for the continued use of some landmines, a number of provisions ensure that the SD and SDA APL will not become part of the humanitarian landmine crisis. Article 3 of the AMP specifically prohibits the use of mines, booby traps or other devices that “employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other noncontact influence during normal use in detection operation,” thereby protecting deminers. In addition, Article 3 prohibits the use of any mine against civilians by forbidding the indiscriminate placement of a weapon “which is not on, or directed against, a military objective; employs a method or means of delivery which cannot be directed at a specific military objective; or 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.”

Despite the difference between a total and a selective mine ban, both Ottawa and the AMP seek to limit the transfer of APL. The Ottawa Convention prohibits the transfer of APL except for the purpose of destruction, whereas the AMP prohibits the transfer of all mines prohibited in the protocol and prohibits the transfer of any mines to nonstates as well as states not bound by the convention.

In addition, both address the issue of transparency, although in a non-binding way. The Ottawa Convention requires states party to the convention to transmit detailed information about their efforts to comply with the treaty not more than 180 days after it has entered into force and requires that information be brought up to date on an annual basis. Under Article 9, such states are required to provide information ranging from the total number and types of APL stockpiled to the national measures taken to prevent and suppress violations of the treaty. Although 48 reports have thus far been submitted by states party to the Ottawa Convention, the reports vary widely in consistency and timeliness. Furthermore, only 20 of the signatories have reported that they have enacted implementation legislation. The *Landmine Monitor Report 2000* also reported verifying

the continued use of APL by at least one treaty signatory and the likely use of APL by several others.

As far as the AMP is concerned, verification measures require that at the cessation of hostilities, states report to the United Nations and other interested parties on areas they have mined, including those no longer under their control. Little information is available regarding the success of such verification mechanisms.

Regarding the destruction and removal of mines, the Ottawa Treaty obliges each state party to clear all APL in the ground within a period of 10 years following the date on which the convention entered into force for that country. This mandate covers mines not only within a country’s territory but also within territory that it occupies. An area is considered to be “mined” if it is thought to contain either APL or anti-vehicle mines. The AMP also mandates that all mines be removed after the cessation of active hostilities and designates the high-contracting parties as those who bear responsibility for the clearance of areas under their control. Protocol II, however, does not require the high-contracting parties to clear mined areas over which they no longer exercise control but does mandate that such parties



Basic computer training is taught to future deminers by a U.S. soldier stationed in Djibouti.

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provide technical and material assistance to the party that is in control.

Finally, both the Convention on Conventional Weapons (Article 11) and the Ottawa Treaty (Article 6) call on States Parties “in a position to do so” to provide humanitarian mine action assistance.

The Ottawa Treaty’s View of Survivor Assistance || With the entry into force of the Ottawa Treaty in March 1999, the social and economic integration of landmine survivors became part of international treaty law. Article 6, paragraph 3 of the Ottawa Treaty requires States Parties to provide mine survivor assistance in order to reintegrate landmine survivors into society. The Ottawa Treaty is especially noteworthy because it is the first arms control and disarmament treaty to incorporate language supporting victims of the target weapon. In the treaty’s preamble, States Parties express their wish “to do their utmost in providing assistance for the care and rehabilitation, including the social and economic rehabilitation of mine victims.” To achieve this goal, Article 6, Paragraph 3 of the treaty obligates signatory states to support survivor assistance, stating that “[e]ach State Party in a position to do so shall provide assistance for

the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs.”³

Based on these provisions, the treaty “implies a responsibility of the international community to support survivor assistance programs in mine-affected countries with limited resources.”⁴ This means that States Parties can ask, or be asked, for survivor assistance. Specifically, Article 6, Paragraph 7(e) grants states the right to request other States Parties to assist victims.

Two arguments advanced in favor of the inclusion of mine survivor assistance in the treaty included: 1) the inclusion of survivor assistance is necessary if the treaty is going to provide a complete response by the international community to the dangers posed by mines, and 2) the inclusion of survivor assistance is consistent with international law, particularly international humanitarian law, which requires states to take positive obligations toward the treatment of prisoners of war.^{5,A}

Humanitarian Mine Action || There can be little doubt that the commitment of the states party to each of those treaty instruments has resulted in increased funding for mine action. However, critical to the goal of eliminating the landmine

threat is a requirement for an investment by the international community of \$1 billion per year. The sheer size of that fiscal challenge has made it virtually impossible for the international community to respond at that level. Nevertheless, the ICBL has waged an effective campaign to keep the issue in the public eye and has pressured both governments and international organizations to fund initiatives such as mine awareness, mine clearance, surveys and survivor assistance. Initiatives of this kind have increased since the 1968 level of \$159 million, including in-kind donations. In its most recent report (issued in September 2000), the *Landmine Monitor* reports that the sum of \$219 million—not including in-kind contributions—was provided by major donors to humanitarian demining.

Mine clearance is taking place in 65 mine-affected countries or areas. In 1999, the seven largest mine-clearance programs cleared a combined total of 168.41 square kilometers. The number of mine victims in Cambodia decreased from an average of almost 500 a month in 1996 to fewer than 50 a month in 1999. Before long, Namibia is expected to issue a declaration that its country is mine-safe, a status that both Costa Rica and Honduras have

A Nicaraguan deminer practices during a training exercise.



certified for their land. Despite continued conflict through out Afghanistan and Angola, mine clearance is being pursued in areas that are free of conflict in an effort to reopen land for agriculture and other purposes.

Strategic Impact || Increased awareness of the impact of landmines has evoked a significant debate on the overall value of their continued use. Arguments on both sides of the issue far outweigh the scope of this article. Critical to an overall understanding of the two treaty instruments, however, is a discussion of the impact of the treaties on the strategic use of landmines.

Military forces have relied on landmines to defend the perimeter of operational areas, to impede the forward progress of opposing military forces and to channel those forces to areas targeted by more capable weapons. Both treaties have had a significant impact in altering those historic strategic purposes.

With few exceptions, states party to and signatories of the Ottawa Treaty are reported to have complied with provisions that prohibit the use of anti-personnel landmines. There is no doubt that since the inception of the Ottawa Treaty, the use of landmines has

declined drastically. Parties to the Convention are relying on different weapons or have developed alternative war doctrines to achieve their military objectives.

Such strategic changes are less obvious for parties to the CCW. Other than APL designated for the protection of its forces in Korea, the United States currently has no landmines deployed anywhere in the world. U.S. force protection strategy, however, reserves the right to use short-duration landmines, the kind permitted under the CCW, in any future military engagement. The United States is the only producer of short-duration landmines that have been designed to deactivate after a specified time and pose little, if any, humanitarian threat to non-combatants.

Neither treaty has had a significant impact on the use of anti-personnel landmines by rebel groups or nonstate actors. Reports of mine use by such groups have been made in almost 20 countries in recent years: Afghanistan, Angola, Myanmar, Colombia, Democratic Republic of the Congo, Georgia, India, Iraq (northern), Lebanon, Nepal, Pakistan, Philippines, Russia (Chechnya), Senegal, Somalia, Sri Lanka, Sudan, Turkey and Uganda.

Conclusion || Both the CCW and the Ottawa Treaty are useful instruments in the international campaign to remove the scourge of landmines from the Earth. They constitute valuable contributions to the body of international humanitarian law. These instruments are complementary, not mutually exclusive. Both address problems generated by anti-personnel landmines; they address the issue of transparency; they require the removal of mines after the cessation of hostilities; and they require the provision of humanitarian mine action assistance.

Although the focus of the international community has largely been on the Ottawa Treaty, the CCW's Amended Mines Protocol is an effective and useful alternative because it has captured and can continue to capture states not party to Ottawa. Although both treaties share similar objectives, only the AMP offers states an opportunity to protect their military interests while fostering humanitarian initiatives designed to minimize or eliminate the threat to noncombatants. When used in tandem, however, these instruments comprise useful strategic tools in the global effort to respond to the humanitarian challenges posed by landmines around the world.



Global conferences and regional workshops bring together members of the mine action community to reach consensus and accommodation.