
U.S. Policy Recommendation: Ottawa Convention on Anti-Personnel Landmines

by Trevor Holbrook*

INTRODUCTION

The military purpose of anti-personnel landmines (APLs) is to prevent or complicate access to specific areas by killing or incapacitating enemy ground troops.¹ Unfortunately, the vast majority of landmines used in the last several decades have been left in place following the end of conflict, posing a grave threat to local populations. Today, more than eighty million landmines remain active in over seventy countries. Since the end of the Cold War, the international community and non-governmental organizations (NGOs) have recognized the humanitarian crisis posed by landmines.

The scale of the landmine crisis is alarming and has both direct and secondary impacts on affected communities. Since 1975, it is estimated that over one million people have been killed or maimed by APLs, including hundreds of thousands of children.² Landmine victims become a burden on their families because many can no longer work, and most require substantial medical care. In addition to the physical threat these weapons pose, their presence can have strong psychological effects and can hinder development and economic opportunities. More so than the mine itself, the threat of its presence is the underlying cause of the humanitarian crisis. Mines Advisory Group founder Rae McGrath states, “Any area suspected of being mined is a minefield until proven safe.”³ The possibility of landmines can prevent civilians from using farmland or traveling to another village, reducing productivity and preventing trade. Moreover, mine clearance is dangerous and costly, deterring investment from mine-affected communities and preventing development. These factors keep communities trapped in poverty and insecurity, and prevent a return to normalcy for decades after a conflict ends.

In response to the alarming data regarding landmine casualties in the early 1990s, the International Committee of the Red Cross (ICRC) declared an epidemic and began an advocacy campaign to limit the suffering caused by these remnants of war.⁴ Growing outrage, combined with media attention, led to an unprecedented coalition of NGOs, intergovernmental organizations (IGOs), governments, and civilians calling for a global ban on anti-personnel landmines.⁵ In 1997, 124 states signed the Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on their Destruction, otherwise known as the Ottawa Convention.⁶ The



Courtesy of Trevor Holbrook.

Sign in Golan Heights, Israel warns of mines.

treaty combined provisions for arms control with requirements for human protection under international humanitarian law (IHL). The Ottawa Convention is aimed at eliminating the use of landmines in order to protect civilians in accordance with human rights law and IHL.⁷ Additionally, the Convention contains requirements for mine clearance and victim assistance. The goal of the International Campaign to Ban Landmines (ICBL) — a global coalition of NGOs that assisted the passage of the Ottawa Convention — and the Convention itself has been to eliminate the humanitarian landmine crisis, both through international cooperation in the humanitarian mine action⁸ effort and through the stigmatization of military landmine use.

As the concern over the landmine epidemic gained momentum in the early 1990s, the United States was at the forefront of the initial call for the ban. President Bill Clinton actively participated in the Ottawa Process⁹ leading up to the Convention, but ultimately refused to sign due to pressure from the Pentagon. Instead, President Clinton committed to developing alternative weapons, then banning landmine use, and signing the Ottawa Convention by 2006.¹⁰ However, following the administration change in 2000 and the start of wars in Afghanistan and Iraq, U.S. policy regarding landmines shifted as the international military focus turned to terrorism. In 2004, President George W. Bush announced that the United States would not sign the Ottawa Convention and would continue to produce and stockpile landmines. This stance has left the United States behind most other states, which have continued to move toward a global ban on landmines.

This article examines the consequences of the U.S. refusal to sign the Ottawa Convention and examines the implications of its continued refusal for the Ottawa Convention and customary international law. The United States has historically been a

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global leader and advocate for human rights and humanitarianism. In order to maintain this position, the United States must acknowledge the trend within the international community toward human security and protection and remain at, or at least near, the forefront of human rights law and IHL. Furthermore, continued U.S. refusal undermines the Ottawa Convention, which like other international law instruments, garners validity through consensus and mutual agreement. Without the support of the world's dominant power, the Ottawa Convention cannot become customary international law; thus U.S. refusal provides leeway for rogue states to continue the use and production of persistent landmines.

OTTAWA CONVENTION

The Ottawa Convention is considered unique in that the global humanitarian community mobilized states in the effort to ban a weapon that was actively in use throughout the world. Eleven years after opening for ratification, the Convention has 156 States Parties, and international trade in landmines has virtually ceased.¹¹ Civilian casualties are almost seventy percent below levels reported in the early 1990s.¹² While several key states such as China, Russia, India, and the United States have not signed the Convention, very few states have used landmines in the last several years as a result of increasing stigmatization. Non-signatories to the Convention are very reluctant to use mines because of the high political costs involved. In the past five years, the only governments to deploy landmines were Russia, Myanmar, and Nepal; all of whom used the mines within their own borders to fight insurgencies.¹³

In terms of international law, the Ottawa Convention has been noted for its role in successfully incorporating the concepts of human security into the international legal framework. By using humanitarian advocacy and involving NGOs in the process, the Convention is the first treaty to eliminate a tool used for the protection of national security in favor of enhancing human security. The preamble to the Convention highlights this humanitarian focus in stating its purpose:

[T]o put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenseless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement, believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines. . . .¹⁴

While the Convention establishes specific timetables and guidelines for disarmament, the most important provisions are those that require states to clear all mines from their territories and ensure an ongoing commitment to assist victims and threatened populations.¹⁵ Furthermore, reservations¹⁶ are not permitted under any circumstances, preventing states from maintaining any existing minefields or stockpiles.

U.S. LANDMINE POLICY AND ITS IMPLICATIONS

The U.S. government has defended its decision not to sign the Ottawa Convention based on a number of factors. First, the United States is, by a considerable margin, the world's largest financial donor to humanitarian mine action, contributing over \$1.2 billion to activities in fifty countries since 1993. This funding supports mine clearance training and work, local mine risk education, victim assistance, mine-affected area surveys, and destruction of stockpiles. In many ways, these U.S. efforts surpass the requirements of the Ottawa Convention. Second, the United States has committed to using only detectable, non-persistent landmines that will self-detonate or lose power after a short period of time.¹⁷ Although landmines have not been used in any U.S. conflict since the 1991 Gulf War, the U.S. government still views landmines as an indispensable military tool.¹⁸

Third, the U.S. government argues that the Ottawa Convention focuses too specifically on anti-personnel landmines while ignoring other unexploded ordnance (UXO).¹⁹ The United States maintains that the most effective method of controlling the UXO threat to civilians is the creation and implementation of responsible guidelines for their production, use, and subsequent



Pile of landmines at the War Museum in Siem Reap, Cambodia.

removal. The Convention has been criticized for ignoring the dangers related to anti-tank mines, cluster munitions, and other UXOs.²⁰ Fourth, the United States perceives the “mine-free” target of the Ottawa Convention to be an inefficient and misguided goal. The intention of the comprehensive clearance goal is to increase the international focus on mine clearance, while ensuring that areas and villages are not overlooked. The United States supports a “mine-impact free” goal which will eliminate the threat of landmines in populated areas and transportation routes,²¹ the method which it argues allows for the most cost-effective clearance of mine threats.

Finally, the U.S. government has refused to sign the Ottawa Convention because it does not allow for reservations. According to the United States, the unique situation in the demilitarized zone (DMZ) of the Korean peninsula requires the use of anti-personnel landmines in order to deter North Korean forces from entering South Korea. Without landmines, a substantially higher number of troops and weaponry would be required in Korea and more lives would be at risk. As a result, the United States has determined that the military necessity of landmines outweighs the humanitarian benefits of a total ban on anti-personnel landmines.

Because the United States has been a strong advocate for universal human rights in the past and initiated the call for a landmine ban, it has been widely criticized for its refusal to accede to the Ottawa Convention. The government clearly needs to balance its competing expectations and requirements, but the landmine issue has become politically volatile. The ICRC argues that landmines are not an indispensable military weapon and that their value is dramatically outweighed by their post-conflict effects. The stigmatization of mine use has made their political costs prohibitive. As international law moves into the arena of human security, the United States cannot afford to sacrifice its position in international affairs and international law to defend a marginally useful military tool.

In order to examine the reasons behind U.S. landmine policy, it is important to contrast the prominent military and humanitarian viewpoints on the issue. The military viewpoint stresses the value of anti-personnel landmines in conflict situations. They are considered “force multipliers” because they allow for the protection of larger areas with fewer troops. During military operations, active battlefields are viewed in terms of tactics and strategic objectives. Traditionally, marginal efforts aim to

minimize “collateral damage” to civilians during wartime, while most concentrate on the main strategic objectives. The United States maintains that the responsible use of landmines in conflict situations is proportionately acceptable, in terms of military value, weighed against the potential danger to civilians.

The humanitarian viewpoint, on the other hand, focuses on the short- and long-term effects that landmines and other UXOs have on civilian populations. The ICRC conducted a study²² of the military effectiveness of landmine use and found that the weapons were generally used in violation of international law and that their use had minimal effects on the outcome of the conflicts.²³ Because the responsible use of landmines requires substantial effort and organization, the ICRC concluded that armed forces are generally unable to follow IHL when marking and mapping landmines. Furthermore, because military operations focus on battlefield tactics, they often neglect to consider the post-conflict consequences when planting mines. In other words, battlefields often return to their use as crop fields, soccer fields, or playgrounds when conflicts end. The humanitarian viewpoint acknowledges the numerous and considerable effects that landmine presence can have on post-conflict recovery and development.²⁴

The presence of both viewpoints is evident in the complex and contradictory arguments found in U.S. landmine policy. The United States claims that, by remaining outside of the restrictions and requirements of the Ottawa Convention, it has more freedom to dedicate efforts toward the greatest humanitarian threats from all types of UXOs.²⁵ However, this rationalization fails to recognize the value of international solidarity and collective commitment. The primary purpose of the Ottawa Convention is to highlight the importance of human security under IHL by banning the use of anti-personnel landmines. The United States acknowledges the existence of humanitarian threats from UXOs, but has failed to recognize the importance of the Ottawa Convention in the legal process toward eliminating those threats. As illustrated by the recent Convention on Cluster Munitions,²⁶ the international community intends to eliminate the humanitarian threat of persistent and indiscriminate weapons through the introduction of human security into international law. While both the United States and the international community claim to be concerned with reaching the same goal, the U.S. has chosen to take a slow, incremental approach in opposition to the international majority.

As a result of 12 years of competing priorities and lack of determination, the United States is preventing the full eradication of the humanitarian landmine threat.²⁷ Though it seems that the trend toward human security in international law will continue to move forward without the support of the United States, the refusal of such a dominant world power stands in the way of the Ottawa Convention becoming customary international law and significantly hampers the international protection of all victims from the threat of indiscriminate remnants of war.

U.S. POLICY OPTIONS

The policy that the United States chooses to follow regarding the Ottawa Convention has important implications, both for human security and post-conflict development in future conflict areas and for the framework of international law. Over the last 15 years, U.S. landmine policy has reverted from a progressive to an increasingly ostracized stance. From its current position,

the United States could follow one of three possible courses of action regarding landmine policy: (1) continued adherence to the current policy; (2) movement toward the standards set out on the Ottawa Convention with an exception for the Korean peninsula; or (3) accession to the Ottawa Convention.

If it adheres to the current policy, the United States will continue to support humanitarian mine action on its own terms by identifying high-risk areas and considering the costs and benefits of removing landmines in remote areas. Continued support for mine clearance training, mine risk education, and victim assistance will continue to exceed the guidelines set out by the Ottawa Convention. The military will produce and stockpile non-persistent, detectable landmines and retain the right to deploy them in conflict. While it is highly unlikely that the United States would use landmines in future conflict due to the political consequences, the option will remain.

Following this policy will keep the United States at odds with the global humanitarian movement and the international community, and will prevent greater acceptance of human security and protection into international law. The Ottawa Convention will remain partially effective and, although landmines will become increasingly stigmatized, their use by rogue states and non-state actors will continue to inflict suffering and obstruct development.²⁸ As the human security concept moves toward the elimination of additional indiscriminate weapons and tactics to prevent the suffering of innocent civilians, the United States will be seen as supporting inhumane warfare as the government continues to focus strictly on national security.

The second option would move U.S. policy in the direction of the Ottawa Convention mine ban, while maintaining an exception for the situation in the Korean DMZ. The goals of the Ottawa Convention would be strengthened to a small degree, as U.S. disapproval of landmine use will further stigmatize the weapon. Aside from Korea, it is unlikely that the United States would use landmines in future conflicts due to the growing stigmatization. Therefore, producing and stockpiling these weapons serves only to comfort military officials. However, it is unlikely that additional countries would accede to the Convention, preferring instead to declare their own exceptions for continued use. Such a trend of exceptions would mean that the landmine ban would not be considered customary international law.

The third and most favorable option is a U.S. commitment to accede to the Ottawa Convention before the end of the current presidential term in 2012. The military would be allowed the next three years to develop alternative technology, while maintaining access to current stockpiles in the meantime. The Convention requires States Parties to remove all landmines in the territories they control within ten years, allowing the United States until 2022 to replace landmines in the Korean DMZ with alternative weapons. By rejoining the rest of the progressive international community, the United States could renew its com-



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Three Republic of Korea soldiers patrolling the border at Panmunjeom in the DMZ between North and South Korea.

mitment to human rights and IHL and cooperate in constructing future treaties focused on human security. With the United States as a State Party to the Ottawa Convention, the ban on landmine use would approach customary international law. With the full commitment of donor countries, the humanitarian threat of landmines would be significantly mitigated. Countries remaining outside of the Convention would come under increased pressure to accede, reducing the threat of landmine use to mostly non-state actors. Because of the grave humanitarian threat posed by landmine use and UXOs, the United States must acknowledge that the civilian costs far outweigh their military value, and that international solidarity is the best path to their eradication.

CONCLUSION

While the purpose of the Ottawa Convention is clearly in line with the U.S. mission to support human rights and humanitarian action around the world, perhaps the most important reason for accession to the Convention are the treaty's implications for the future of international law. While the United States has supported the elimination of civilian landmine threats over the last twenty years, it has also continued to insist on the tactical military importance of indiscriminate anti-personnel landmines and has developed its policy based heavily on the military viewpoint. This insistence flies in the face of the international community's acknowledgement of the disproportionate humanitarian effect of such weapons and the successful introduction of the human security concept into international law. Accession to the Convention is in the best long-term interest of the United States, allowing it to stay near the forefront of international law. Possessing the technology and capability to develop new weaponry, the United States must find an alternative to landmine use in Korea. The cost of ignoring the international consensus in order to maintain a fifty-year-old war zone is short-sighted and in opposition to U.S. goals to spread freedom and improve international security.

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ENDNOTES: U.S. Policy Recommendation: Ottawa Convention on Anti-Personnel Landmines

- ¹ John Troxell, *Landmines: Why the Korea Exception Should be the Rule*, 30(1) PARAMETERS: US ARMY WAR COLLEGE QUARTERLY 82 (2009) (stating that the military purpose of landmines is “to channel enemy forces into a specific area, or to defend flanks, restricted terrain, or border zones,” and therefore landmines increase the defensive capabilities and cause significant casualties for the attacking force).
- ² International Campaign to Ban Landmines, <http://www.icbl.org> (last visited Oct. 23, 2009) [hereinafter ICBL].
- ³ Kristian Berg Harpviken, *Guides to Humanitarian Mine Action*, 24(5) THIRD WORLD QUARTERLY 967, 967-76 (2000).
- ⁴ International Committee of the Red Cross, *Anti-Personnel Landmines and Explosive Remnants of War*, available at <http://www.icrc.org/Eng/mines> (last visited Oct. 19, 2009).
- ⁵ Kerry Brinkert, *The Convention Banning Anti-Personnel Mines: Applying the Lessons of Ottawa’s Past in Order to Meet the Challenges of Ottawa’s Future*, 24(5) THIRD WORLD QUARTERLY, 781, 781-793 (2003).
- ⁶ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, 2056 U.N.T.S 211 [hereinafter Anti-Personnel Landmines Convention].
- ⁷ David Atwood, *Promoting Compliance: Observance on the Anti-Personnel Mine Ban Convention*, 17 THE GENEVA CENTRE FOR SECURITY POLICY (2000).
- ⁸ According to ICBL, Humanitarian Mine Action is a comprehensive response to the problem of landmines and other UXO. It focuses on marking minefields, total mine clearance, mine risk education, victim assistance, and advocacy. It is carried out by a wide array of NGOs, IGOs, and states. ICBL, *supra* note 2.
- ⁹ The Ottawa Process was spearheaded by the Canadian government with the involvement of a large coalition of Mine Action NGOs under the leadership of the ICBL. Canadian Foreign Affairs Minister Lloyd Axworthy was instrumental in pushing the process forward despite its unconventional methods. Canadian Red Cross, *Canada’s Role in the Ottawa Process*, available at <http://www.redcross.ca/article.asp?id=24621&tid=001> (last visited Nov. 11, 2009).
- ¹⁰ Dale Carr, *An Evaluation of the U.S. Policy on Anti-Personnel Landmines* (1999) (presenting the results of a strategy research project of the U.S. Army War College).
- ¹¹ ICBL, *supra* note 2.
- ¹² International Committee of the Red Cross, *The Mine Ban Convention after 10 Years: Achievements and Challenges*, available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/mine-fact-sheet-011109> (last visited Nov. 11, 2009).
- ¹³ Peter Herby & Eve La Haye, *How Does it Stack Up? The Anti-Personnel Mine Ban Convention at 10*, ARMS CONTROL TODAY 6 (2007), available at http://armscontrol.org/act/2007_12/herby (last visited Oct. 23, 2009).
- ¹⁴ Anti-Personnel Landmines Convention, *supra* note 6.
- ¹⁵ *Id.*
- ¹⁶ Under international law, a reservation is a statement by a state made when ratifying or acceding to a treaty in which the state indicates an exclusion or modification of certain provisions with regard to that state.
- ¹⁷ Richard Kidd, *U.S. Landmine Policy and the Ottawa Convention Ban on Anti-Personnel Landmines: Similar Path*, DIPNOTE, http://blogs.state.gov/index.php/entries/anti_personnel_landmine/ (last visited Oct. 23, 2009).
- ¹⁸ Carr, *supra* note 10.
- ¹⁹ Unexploded Ordnance includes any type of explosive weapon that did not explode upon deployment, including landmines, bombs, shells, grenades, etc.
- ²⁰ Carr, *supra* note 10.
- ²¹ Anti-Personnel Landmines Convention, *supra* note 6.
- ²² The ICRC study examines the military and civilian effects of landmine use in conflict from WWII through the 1990s. The study determined that landmine deployment methods generally do not comply with international law, that their objectives are rarely met, and that they routinely cause substantial human and social threats during and after the conflict. The report was conducted by the ICRC along with numerous weapons and military experts. International Committee of the Red Cross, *Anti-Personnel Landmines: Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines*, available at <http://www.icrc.org/Web/eng/siteeng0.nsf/html/p0654> (last visited Oct. 23, 2009).
- ²³ *Id.*
- ²⁴ Doug Tuttle, *Continued Push for a Mine Free World: Tenth Annual Landmine Report Released*, CENTER FOR DEFENSE INFORMATION, available at <http://www.cdi.org/program/issue/document.cfm?DocumentID=4440&IssueID=89&StartRow=1&ListRow=10&appendURL=&Orderby=DateLastUpdated&ProgramID=89&issueID=89> (last visited Nov. 15, 2009).
- ²⁵ Andrew Latham, *The Politics of Stigmatization: Global Cultural Change and the Transnational Campaign to Ban Antipersonnel Landmines* (paper prepared for presentation at the International Studies Association 40th Annual Convention), available at <http://www.ciaonet.org/isa/laa01/>.
- ²⁶ To date, 24 states have acceded to the Convention on Cluster Munitions, which will come into force six months after the thirtieth state accedes. Convention on Cluster Munitions, May 30, 2008, available at http://www.clusterconvention.org/pages/pages_ii/ii_a_textenglish.html (last visited Nov. 15, 2009).
- ²⁷ Daniel Smith, *The Landmine Web*, FOREIGN POLICY IN FOCUS, available at <http://www.fpif.org/fpiftxt/512> (last visited Oct. 23, 2009).
- ²⁸ Daniel Smith’s concept of “The Landmine Web,” whereby states dependent on or wary of several world powers, namely the United States, are reluctant to sign the Ottawa Convention before their powerful neighbors, adversaries, or partners, provides an interesting consideration of the ‘domino effect’ should the United States agree to sign the treaty. *Id.*