

INTERNATIONAL LAW AND ANTI-PERSONNEL LAND MINES

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The Convention on Conventional Weapons was adopted in 1980 to limit the use of conventional weapons that present special risks of causing unnecessary suffering or indiscriminate effects. The Convention currently contains three Protocols, each of which regulates the use of a specific type of weapons. Protocol I prohibits the use of weapons which rely on non-detectable wounding fragments. Protocol II regulates the use of land mines and booby-traps. Protocol III deals with the use of incendiary weapons. The United States ratified the Convention, together with Protocols I and II, earlier this year.

The Parties to the Convention are in the process of holding the First Review Conference for the Convention, which just completed a three-week session in Vienna. It succeeded in resolving one item on its agenda—namely, the adoption of a new Protocol on Blinding Lasers. This Protocol will prohibit the use and transfer of lasers “specifically designed to cause permanent blindness of unenhanced vision.” (The reference to “unenhanced vision” excludes persons using optical devices, such as those used to operate armored vehicles and to target tank and artillery fire.) This was a welcome development.

This was, however, not the main purpose of the Review Conference. The main objective was the revision of the current Protocol on Land Mines, which is an essential task in light of the serious humanitarian crisis created by the indiscriminate use of land mines in many areas of the world during recent decades. The United States is committed to taking vigorous action in various fora to deal with this crisis in all its aspects. The eventual goal should be the elimination of anti-personnel land mines, including a ban on their use, production, stockpiling and transfer, recognizing that States can move most effectively toward this goal as viable alternatives are developed that significantly reduce the risk to the civilian population.

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The revision of the land mines Protocol is an important first step toward this goal. If the restrictions of the Protocol had been observed during the conflicts of the past two decades, there might have been a substantial reduction in civilian casualties. Unfortunately, most of the States involved in these conflicts were not parties to the Convention, and it did not apply at all to internal armed conflicts, where most of these casualties occurred. As a result, large numbers of mines were laid without proper marking and recording, and often were used for the specific purpose of causing civilian casualties.

However, the current Protocol is not a sufficient answer to the problem of indiscriminate use of land mines. At the Review Conference, the United States is pressing for a number of substantial improvements in its provisions. These include, in particular, the following:

First, we favor an expansion in the scope of the Protocol to apply in internal armed conflicts, as well as during peacetime.

Second, we have proposed a requirement that all remotely-delivered mines be equipped with self-destruct devices to ensure that they do not remain a danger to civilians long after the conflict is over. These mines would also have backup self-deactivation features to ensure that they do not detonate even if the self-destruct device fails.

Third, we support a requirement that any anti-personnel land mines without self-destruct devices and backup self-deactivation features be used only within controlled, marked and monitored minefields. These minefields would be protected by fencing or other safeguards to ensure the exclusion of civilians. Such minefields could not be abandoned, other than through forcible loss of control to enemy military action, unless they were cleared or turned over to another State that had committed to maintain the same protections. Self-destruct devices on anti-personnel mines would have a maximum lifetime of 30 days from emplacement, and self-deactivation features would have a maximum lifetime of 120 days.

Fourth, we favor a requirement that all mines be detectable using commonly available technology. This would greatly simplify the burdens and risks of demining.

Fifth, we have proposed a requirement that the party laying mines assume responsibility for them, including a duty to clear them or maintain them in controlled fields to protect civilians at the cessation of active hostilities.

Sixth, we support the addition of an effective compliance mechanism, including the possibility of fact-finding inspections where credible reports of violations have been made. If violations are found to have occurred, there would be a possibility of reference to the United Nations Security Council for action, as well as individual criminal liability for persons who willfully or wantonly put the civilian population in danger.

Finally, we have proposed the addition of a mechanism for more frequent consideration of the land mines Protocol and for exchange of views on all aspects of the land mines issue.

The three-week session of the Review Conference that was just concluded made considerable progress on most of these issues. In particular, the Conference seems near agreement on expanding the scope of the Convention to internal conflicts, and on fundamental improvements in the requirements for marking, monitoring, recording and clearing of minefields, as well as the protection of international forces and missions from land mine hazards. However, a handful of States were not able to accept the requirements for detectability, self-destruct mechanisms and self-deactivation features that the great majority of the Conference thought essential to the humanitarian improvement of the Protocol. It was also not possible to reach agreement on a meaningful compliance procedure to deal with violations.

The Parties therefore decided to take a recess and to resume work next year: for a week in January in Geneva to focus on the technical issues that could not be resolved; and for two weeks in April and May in Geneva to conclude the revision of the Protocol. In the meantime, we and other like-minded governments are working hard to convince the dissenting States to modify their positions so that the Conference can be successfully concluded by next spring.

There should be no reason why these technical problems cannot be resolved in a manner consistent with both humanitarian and military requirements. On the detectability question, it is very important to have a clear specification of the metallic signature required for land mines, so that

they can be reliably detected and cleared. Otherwise, clearance teams will continue to take heavy casualties and it will be dangerous or impossible for civilians to return to their homes and fields. We have proposed a minimum standard of the equivalent of 8 grams of metallic content, which almost all States participating at the Review Conference were prepared to accept. The problem is that two countries-India and China-have large stockpiles of anti-personnel mines that fall well below this standard and were therefore unwilling to accept the proposed requirement.

The United States is familiar with this problem because we have over four million mines that also fail to meet the standard, but we are prepared either to forego their use or to adapt them to bring them up to the necessary metal content. In fact, it is relatively simple to make such mines detectable-all that is required is the attachment of a simple device containing the necessary metal mass, which can be done easily and cheaply by applying a small piece of metallic tape or attaching a small metal disk with tape, adhesive, or wire. We hope to convince China and India that the minor inconvenience of taking these steps is well worth the humanitarian benefit.

The issue of equipping mines with self-destruct and self-deactivation features may be more difficult and complicated. Here, Russia, China, and Pakistan have declined to accept the requirements that were acceptable to the rest of the Conference participants, either because they have stocks of non-compliant mines or because they may wish to acquire mines that would not comply. Russia, in particular, appears to have a large stock of anti-personnel mines-including the famous butterfly mine used in large quantities in Afghanistan-that cannot be readily brought into compliance because they will not destroy or deactivate themselves in a reasonable period of time with reasonable reliability. We hope to convince these governments to forego the use of these mines or, where possible, to use them within marked and monitored minefields so that the effect on the civilian population is minimized.

As I have noted, the goal of this Administration is the eventual elimination of anti-personnel land mines. The fact is, however, that this goal is not attainable today, both because the great majority of the major military powers are absolutely unwilling to accept such a total prohibition, and because our own military still requires such mines for certain military missions where there are currently no effective substitutes. Nonetheless, we can and we must act now to impose much stricter controls on landmine use that can, if complied with, substantially reduce the risk to the civilian population.