INTERNATIONAL LAW AND ANTI-PERSONNEL LANDMINES

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Antipersonnel land mines are among the deadliest and most insidious weapons in the world today: their aim is to maim for life, they cannot distinguish between the footfall of a soldier and that of a child and they recognize no cease-fire or end to war. More than 110 million active mines are scattered in sixty-four countries and the problem is growing worse at a dramatic rate. In his last report on mine clearance, the United Nations Secretary-General indicated that for every mine being removed, another 20 are being laid; furthermore, he estimated that it would cost about 33 billion dollars to clear the globe of the currently buried land mines. Although impressive, these figures do not begin to describe the human suffering these weapons inflict nor can they give an idea of the profound disruption they cause to families, societies and economies; thus seriously undermining their effort and ability to recover from war.

In the execution of its humanitarian mandate, the International Committee of the Red Cross (ICRC) is confronted on a daily basis with the horrible consequences of the use of land mines. There are two main areas of activity of the ICRC with regard to this problem: the direct action in the field which involves the setting up of hospitals, surgical, and orthopedic centers; and the implementation and the encouragement of the development of international humanitarian law that not only establishes rules for the protection of the victims of armed conflict, but also limits means and methods of warfare.

In the past ten years, ICRC medical teams have treated over 140,000 war wounded of whom about 30,000 were victims of land mines; in other words, approximately 25% of all war injuries are caused by land mines. Out of these 25%, 58% are non-combatants, half of them women and children. These numbers vary a lot from one country to another; a sad example is Somalia where, at the height of the conflict, 74% of mine

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victims admitted to the ICRC Hargeisa hospital were women and children. Doctor Robin Coupland, an ICRC war surgeon, who has studied the problem closely, estimates that up to 50% of mine victims die within minutes of the blast and all gathered evidence seem to indicate that for every person who makes it to the hospital, one dies in the field.

The full extent of this tragedy is hard to assess since the total number of people maimed or killed will probably never be known. Many are isolated when the accident occurs, some die alone, and even for those who are lucky enough to make it to a hospital, medical facilities are usually overworked and have more important priorities than gathering information. Only recently have medical and relief organizations such as Handicap International, Save the Children, Physicians for Human Rights, to name a few, as well as the ICRC, begun collecting systematic data on mine blast injuries and deaths.

The first phase of helping a landmine victim is the surgical treatment which should be performed as soon as possible; unfortunately, in most cases, the transportation time to the hospitals may be days or even weeks; only about 20% of the patients admitted to ICRC hospitals because of a mine injury are admitted within six hours of the accident, while it is estimated that over 15% travel for more than three days often without treatment and by any means available.

The suffering of the victims is further enhanced by the lack of knowledge and training in war surgery since injuries of this severity and degree of contamination are rarely seen in civilian practice. Moreover, such patients also need roughly twice as much blood transfusion as those injured by fragments or bullets, which places additional burdens on the medical system in screening blood for HIV, hepatitis or other diseases. If amputation is needed, and according to ICRC hospitals, it is in more than 35% of mine injuries, the way the surgery is performed is extremely important since it will ultimately determine whether a victim can be adequately fitted with a prosthetic limb. In this respect, the ICRC medical division has organized instructional sessions and seminars in various countries in order to train and educate surgeons in these specific techniques, particularly with regard to amputation.

Successful surgical treatment does not begin to deal with the problems of rehabilitation and, later on, integration back into society. The rehabilitation of a mine victim who has lost a leg or an arm requires a prosthetic limb, each such prosthesis must be individually fitted, has a limited life and must be replaced after some years, if not months, in the case of children. Another problem is that prostheses are expensive items, for example, a child injured at the age of ten, with a life expectancy of another 40 to 50 years, will need 25 appliances during his or her lifetime,
at approximately $125.00 U.S. dollars for a prosthesis; that amounts to more than $3,000.00. In countries where the average per capita income is $15.00 to $20.00 per month, it is not surprising that crutches are often all people can afford. Furthermore, the manufacture and fitting of these prostheses requires a specialized workshop and trained technicians that are often not available in affected countries that lack the resources as well as the expertise.

Many relief organizations have become involved in rehabilitation along with the ICRC which, in the last fifteen years, fitted over 60,000 amputees with prostheses. In 1994, twenty-four ICRC orthopedic centers produced over 12,000 artificial limbs and as of June 1995, fourteen countries were host to Red Cross orthopedic programs. Unfortunately, demand still outruns supply.

In addition to the physical trauma, the psychological trauma of the loss of a limb is considerable, especially in children and young adults. Unemployment, divorce, poor marriage prospects and social isolation are just some of the problems which will make rehabilitation all the more difficult. Although several studies have been conducted on the subject, as to this day, the full social, economic and financial implications in a country infested by land mines are unknown.

Unlike chemical or biological weapons, land mines have never been banned by international consensus; their use has merely been regulated both by customary international humanitarian law and by the 1980 United Nations Convention on Certain Conventional Weapons.

There are two basic rules of international humanitarian law that apply directly to anti-personnel land mines and that have been reaffirmed, for example in the 1977 Protocol I addition to the Geneva Conventions:

1. Parties to a conflict must always distinguish between civilians and combatants. Civilians may not be directly attacked, and indiscriminate attacks and the use of indiscriminate weapons are prohibited;

2. It is prohibited to use weapons which cause unnecessary suffering. Therefore, the use of weapons whose damaging effects are disproportionate to their military purpose is prohibited.

These rules have become part of customary international law and thus apply to all States irrespective of their treaty obligations.

The second source is treaty law, which applies only to States party to specific treaties. The most relevant text is the 1980 United Nations Convention on Conventional Weapons (CCW). Protocol II of this treaty is
entitled "Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices."

The main provisions of the Protocol are as follows:

(1) Mines may be directed only at military objectives, indiscriminate use is prohibited and all feasible precautions must be taken to protect civilians;

(2) Remotely-delivered mines may not be used unless their location is accurately recorded or they are fitted with an effective neutralizing mechanism;

(3) Record must be kept of the location of pre-planned minefields, and the parties to a conflict are also to keep records on other minefields laid during hostilities;

(4) At the end of hostilities, the parties are to try to agree either among themselves or with other States or organizations to take the necessary measures to clear minefields.

Since this treaty was the result of various compromises, it contains serious flaws and major weaknesses among which: (1) it does not apply to internal armed conflicts, (2) no clear responsibility is assigned for the removal of mines, (3) it does not prohibit the use of non-detectable mines, (4) provisions for remotely delivered mines are not strong enough, (5) provisions on the use of hand-placed mines are too weak, (6) there is no effective implementation or monitoring mechanism, (7) as of now, only fifty-five States have become party to the Convention, and (8) the Convention should be reviewed more often, at least every five years.

In 1993, the French government took the initiative to ask for a review Conference of the 1980 Convention. This Conference was held in Vienna from September 25 to October 13, 1995, and has been preceded by four expert group meetings in Geneva.

This Conference is a unique opportunity to render this Convention a dynamic and meaningful means of limiting the suffering and destruction caused by the use of land mines and we all assumed that today, we would be able to speak of the results of the Vienna Conference; instead, it has been suspended until January 1996 as it was unable to reach agreement on amendments on Protocol II.

However, several important gains were made, in particular the adoption of Protocol IV on blinding laser weapons and provisional agreements on certain aspects of Protocol II. These include: (1) the extension of the scope of the landmine restrictions to cover internal as well as international armed conflicts, (2) the assignment of responsibility for the clearance of land mines to those who lay them, (3) an increased protection
from land mines for ICRC, national Red Cross and Red Crescent personnel and other humanitarian workers, and (4) a requirement that all minefields be recorded.

A number of other rules were considered but either ran into deadlock over technical issues or were weakened by the introduction of exceptions:

(1) A prohibition on the use of antipersonnel mines which are not detectable; however, no agreement was possible on specifying a minimum metallic content for achieving this; and

(2) A prohibition of the use of long-lived antipersonnel mines except in fenced, marked and guarded minefields, nevertheless, the present chairman text allows the continued use of “dumb mines” without fencing “when direct enemy military action makes it impossible to comply.”

The concern for the ICRC is that even if these measures were to be adopted at the next meeting, although representing a big progress, they will probably prove inefficient and difficult to monitor. Furthermore, the following aspects have to be taken into consideration. Some States indicated that they would need grace periods up to fifteen years in order to fit their mines with a minimum metal content (to render them detectable) and equip them with a self-destructing or neutralizing system. If mines continue to be sown at the present rate, up to 75 million could be added in such a period to the existing 110 million.

Because 100 million dumb mines (not fitted with a self-destructing or neutralizing device) remain in stockpiles, they will probably continue to be used regardless of the prohibition, especially in the absence of implementation and verification mechanisms. Self-destructing mines are more expensive and uncertainty prevails as to their reliability (experts estimate the failure rate between 5 and 20%). Mapping mines are always difficult in the context of a conflict (maps can get lost, often there is no time to accurately record the emplacement, geographic elements interfere easily). The short life of self-destructing mines may be compensated through an increased use and there is the added danger that they will be perceived as less dangerous than the so called dumb-mines. And finally, the promotion of self-destructing mines legitimizes their use generally.

For the ICRC, the only effective solution to the humanitarian crisis anti-personnel mines have created is to stigmatize them and to prohibit their production, use, transfer and stockpiling. Indeed, further restricting and even banning only the use of antipersonnel land mines will not be effective without strict measures regarding production and transfer since it
is precisely the cheapness and easy availability of these weapons that have largely contributed to the enormous scale of the problem. Moreover, the low level of pledges at the July 1995 International Meeting on Mine Clearance, convened by the United Nations' Secretary-General, demonstrates that international commitments are insufficient to ensure the rapid removal of land mines already in place.

So far, sixteen countries along with the United Nations Secretary-General, the European Parliament, and the Organization for African Unity have joined the ICRC in its call for a total ban. This solution is simpler, easier to verify, and far more effective.

The ICRC is of the position that any measure adopted by the Review Conference, short of a total ban, should be evaluated by two criteria:

One, will they significantly, and in the shortest time possible, reduce the level of civilian casualties?

Two, do they move towards the goal endorsed by the 1994 United Nations General Assembly of the "eventual elimination of antipersonnel land mines"?

During the three-week session of the Review Conference in Vienna, 36 people were killed and 243 maimed by land mines in Cambodia alone and about 1,600 people world-wide suffered the same fate. These appalling statistics illustrate the urgency of dealing effectively with the landmine crisis.

Remarks by Bruno Zimmermann, Deputy Head, ICRC Delegation to the U.N.

I would like to take the floor on several aspects raised by the questions from the audience thereby to some extent also repeating the presentation made earlier by my colleague Ms. Sand Trigo, which I support fully.

Indeed, international humanitarian law is not homogeneous, and one can see various lines of division: such as whether a specific rule is customary or treaty-based, at a given time and for a given party or group of parties. Successive treaties have dealt more or less with the same subject-matters, with changing scope, substantive rules, and states party to them; various treaties have been codified in different fora and they have been

1. Resolution A/RES/49/75D.
fitted with different implementation, supervision, and review mechanisms.

The regulation of land mines belongs to the law governing the conduct of hostilities, a domain of international humanitarian law where it is much more difficult, broadly speaking, not only to devise rules but also to check on their correct application than in the domain of protection of, and assistance to, persons in the power of the enemy. Whatever the difficulty, these two domains, also called "Hague Law" and "Geneva Law", have somehow been merged by the adoption of 1977 Protocols I and II additional to the 1949 Geneva Conventions.

Whether in "Geneva Law" or in "Hague Law", it has often been possible only to progress one step at a time, and the process has expanded in decades, and even more than a century, if one thinks of the development since the 1864 Geneva Convention or the 1868 St. Petersburg Convention. The ICRC knows this and has learned to use the necessary realism and patience. This is why, subject to some sine qua non conditions regarding the outcome of the work which Ms. Sand Trigo just described to you, the ICRC considers that the decision to go on with the Review Conference next year is better and more promising than if the participants had decided to stop where they stood mid-October in Vienna.

But again, the ICRC has the feeling, after years of work and contacts on this subject matter, that any restrictions that might be adopted short of a total ban would give no guarantees for the respect of the aforementioned principles of the prohibition of indiscriminate effects and of the prohibition of superfluous injury and unnecessary suffering. Ms. Sand Trigo explained to you why the ICRC has reached this conclusion and why, therefore, a set of new restrictions would be seen as a step towards the total ban, which remains the ICRC's objective.