

INTERNATIONAL LAW AND ANTI-PERSONNEL LAND MINES

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I. INTRODUCTION

Human Rights Watch was one of the six non-governmental organizations (NGOs) that initiated the International Campaign to Ban Land Mines in 1992.¹ The Campaign calls for a comprehensive international ban on the production, stockpiling, trade and use of antipersonnel land mines. It also calls for increased international resources for mine clearance and victim assistance programs.

The ban campaign has had many successes. In the past year, the number of NGOs endorsing a ban has grown from about 60 to more than 350. There are now organized national campaigns in about thirty nations, with recent launches in Afghanistan, South Africa, and the Philippines. A ban has been endorsed by the ICRC, UNICEF, UNHCR, UNHDA, United Nations Secretary-General Boutros-Ghali, and major influential media sources such as *The New York Times*, the *Times of London*, and the *Economist*. In September 1994, President Clinton gave a speech at the U.N. in which he changed United States' policy by embracing the goal of the eventual elimination of antipersonnel land mines. That was followed in December 1994 by the U.N. General Assembly's adoption of a resolution endorsing that goal. In March 1995, Belgium became the first nation to enact legislation to ban production, export, and use of mines. Eighteen nations have declared support for an immediate and comprehensive ban. Thirty-one nations have announced a moratorium on the export of mines. In July 1995, both the European Parliament and the Organization of African Unity passed resolutions calling for a comprehensive ban on antipersonnel mines. The United States Congress has approved an amendment to the FY 1996 foreign aid spending bill mandating a one-year moratorium on use of antipersonnel land mines by United States forces.²

A ban on anti-personnel mines is required for moral, humanitarian, economic, practical, and legal reasons. Perhaps first and foremost, a ban

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1. Human Rights Watch Arms Project, New York, New York, Nov. 3, 1995.

2. The bill has not yet been sent to the President for signature.

is needed because of the terrible toll mines take on civilian populations.³ The United States State Department estimates that 26,000 people each year are killed or maimed by mines. The vast majority of victims are civilians, not combatants. Moreover, the entire socio-economic fabric of some nations is disrupted by mines. A fundamental underpinning of the ban campaign is the conviction that the long-term human and socio-economic costs of mines outweigh the short-term military utility.

There are about 100 million mines scattered in more than 60 nations around the globe. Perhaps another 100 million are stockpiled in the arsenals of more than 100 countries. Each year, on average, another five million antipersonnel mines are produced in some 50 nations. The United Nations estimates that last year approximately 100,000 mines were removed in mine clearance programs, while 2.5 million new mines were laid. These mines claim a new victim every 20 minutes. Even as international awareness of and efforts to cope with the disaster caused by land mines grows, the crisis worsens.

II. AN ILLEGAL WEAPON

As the experience of recent decades has shown, the rules contained in the Land Mines Protocol to the 1980 Convention on Conventional Weapons (CCW) have proven completely ineffective in safeguarding civilians from the devastating effects of antipersonnel land mines. In the ten years after the Protocol came into force (1983-1993), an estimated 65 million new mines were laid, claiming hundreds of thousands of victims. Few would disagree that the indiscriminate and irresponsible use of land mines has been increasing.

Human Rights Watch believes that only a total ban on the use, manufacture, stockpiling and transfer of antipersonnel mines can significantly reduce the harm to civilians from mine warfare. Moreover, Human Rights Watch believes that customary international law already requires that land mine use be banned in armed conflict. A Human Rights Watch memorandum, was prepared for governmental delegates preparing for the Review Conference of the CCW.⁴

Human Rights Watch believes that the Land Mines Protocol should be brought into conformity with already existing humanitarian law —

3. For a better understanding of the scope and nature of the land mines crisis, see HUMAN RIGHTS WATCH AND PHYSICIANS FOR HUMAN RIGHTS, *LAND MINES: A DEADLY LEGACY* (1993) [hereinafter HUMAN RIGHTS WATCH]; and SHAWN ROBERTS AND JODY WILLIAMS, *AFTER THE GUNS FALL SILENT: THE ENDURING LEGACY OF LAND MINES* (1995).

4. For a full discussion of legal issues see *Land Mines in International Law: Why is a Complete Ban Required*, in HUMAN RIGHTS WATCH, *supra* note 1, at 261-318.

notably customary prohibitions on the use of means of warfare that cannot meet the proportionality test (expected military utility must outweigh anticipated humanitarian toll) and those which are indiscriminate (weapons which cannot distinguish military objects from civilians and those whose effects cannot be limited).⁵ These principles are incorporated, respectively, into Articles 35(1) and (2) and 51(4) of 1977 Additional Protocol I, which the 1980 Land Mines Protocol was intended to supplement. Human Rights Watch believes the use of antipersonnel land mines violates these provisions. Because of the delayed-action effect of land mines, it is both impossible to discern in a particular instance whether military utility surpasses humanitarian harm, and possible to recognize—especially given the horrific injuries they cause and the long-term risk they pose—that, at least in the aggregate, the military utility of antipersonnel mines is far outstripped by their devastating humanitarian consequences. The delayed-action function also means that mines cannot distinguish military targets from civilians, and that their effects cannot be controlled.

A comprehensive ban on production, stockpiling, trade and use would also be consistent with the idea expressed in the 1972 Convention on the Prohibition of Bacteriological and Toxin Weapons, that weapons which pose intolerable harm should be banned as “repugnant to the conscience of mankind.”

Human Rights Watch also believes that a comprehensive ban would be the most practical and effective approach to the land mines crisis. A flat ban—in addition to providing enhanced protections—would be much easier to follow, monitor, and enforce than a patchwork of restrictions, as contained in Protocol II. A complete prohibition will help create the stigmatization of parties who continue to use, manufacture or export mines. Such stigmatization, much or more than the Protocol itself, will diminish use, production, and supply. The combination of a comprehensive ban, international stigmatization, enforcement measures, and the possibility of sanctions or censure against users, producers, or exporters makes a complete proscription more viable than further modest and unenforceable restrictions.

III. VIENNA REVIEW CONFERENCE

The Review Conference of the 1980 Convention on Conventional Weapons held in Vienna from the 25 of September through the 13th October, concluded in a fashion that few would have predicted: nations

5. Monica Schurtman and Kenneth Anderson, then with the Human Rights Watch Arms Project, drafted an alternative protocol: *Draft of a Protocol Banning All Antipersonnel Mines*, May 1994.

agreed to a new protocol restricting blinding laser weapons, but were unable to reach consensus on revisions to the existing land mines protocol. Nations will meet again on the 15th through 19th of January, and on the 22nd of April through the 3rd of May 1996 to try to break the deadlock on land mines. Eighty-four nations sent delegations to the review conference, including 44 of the 50 states parties and 40 observer nations. More than 100 representatives from nearly 70 NGOs in 20 nations also participated.

Based on the tentative agreements reached during four preparatory "government experts" sessions in 1994 and 1995, NGOs were expecting little of significance to result from Vienna. For the most part, even these low expectations were not met. While nations were willing in public speeches to acknowledge the humanitarian disaster brought about by land mines, when nations engaged in closed door negotiations, military considerations clearly predominated over humanitarian concerns. In discussing new restrictions on mines, it appears that delegates paid little to no attention to the human and socio-economic implications of land mines usage. Rather, they were preoccupied with the perceived military utility of mines, and therefore with protecting their own mine inventories and insuring their own armies were able to use mines in as unfettered a manner as possible.

Most NGOs in Vienna were calling for a comprehensive ban on antipersonnel land mines (no production, stockpiling, transfer, and use), and were supportive of three other steps that were seen as advancing the cause of a total ban: regular and more frequent review of the CCW (5 years or less), expansion of the scope of the CCW from application only in international conflicts, to application in all circumstances; and establishment of strong verification and compliance mechanisms.

IV. BAN

There was no serious discussion of a ban on anti-personnel land mines in the working group sessions. Despite the fact that a ban proposal (offered by Sweden) was in the conference president's "rolling text," nations declared that it was a non-starter and spent almost no time whatsoever debating the merits of the proposal. This contrasted with the public statements of many nations in the plenary sessions and elsewhere. In connection with the conference, Austria, Denmark, Mozambique, and New Zealand made strong statements in support of an immediate and comprehensive ban on antipersonnel mines, bringing the total of ban supporters to eighteen nations. Austria renounced the use of anti-personnel mines and declared that it had destroyed all of its anti-personnel

mines.⁶ France announced that it was henceforth banning production and export of anti-personnel mines, and beginning destruction stockpiles France indicated, however, that it reserved the right to continue using mines. Ukraine declared a moratorium on the export of all anti-personnel mines, bringing the total of nations with some form of export moratorium to thirty-one.

V. REVIEW

In one of the few successes in Vienna, it appears that nations will agree to hold the next review conference within five years time, with preparatory meetings in 2000 and the conference in 2001. NGOs had pressed strongly for this, as it will keep governments focused on the land mines issue, provide the opportunity for more meaningful changes than those agreed to this time, and also permit the possibility of addressing other weapons that have negative humanitarian implications.

VI. SCOPE

It appears that partial success will be achieved on the scope issue, with nations agreeing to expand application to internal as well as international conflicts. This is an important step forward as land mines have been used primarily in internal conflicts. However, NGOs and most nations present in Vienna supported application in all circumstances, including internal "disturbances." India, China, Pakistan, and Mexico opposed the broader application.

VII. VERIFICATION AND COMPLIANCE:

A key flaw of the 1980 CCW is the lack of any verification and compliance provisions. Without these, there is no real accountability and nations will act with impunity in violation of the law. A very solid proposal put forth primarily by Western nations, involving fact-finding missions, was rejected by China, India, Pakistan, and Mexico, on sovereignty grounds.

VIII. RESTRICTIONS

The vast majority of the delegates' time was spent not on the four above issues, but on a complicated set of proposed restrictions and requirements for antipersonnel mines, ostensibly aimed at lessening the humanitarian toll. Most NGOs did not actively lobby on these issues, as

6. Some question remained about a Claymore-type mine, which Austria does not classify as a mine.

they implied an acceptance of the continued use of anti-personnel mines. Disturbingly, however, in many cases there was backsliding even on these modest restrictions from positions largely agreed to in the preparatory meetings. China, Russia, India and Pakistan were the nations cited most often for preventing consensus on these issues.

The heart of the package of restrictions put forward most notably by the United States is the requirement that all remotely delivered mines have both a self-destruct and self-deactivating mechanism. With a few loophole exceptions, non-remotely delivered mines would have to be in marked and monitored minefields. Some nations, notably China, have balked at the self-deactivating requirement which is seen as a near fail safe device, such as a battery expiring, rendering the mine inert. There is disagreement also on the technical specifications for self-destruct and self-deactivation. Going into Vienna, nations were discussing a self-destruct time limit of 7-90 days, with an acceptable failure rate of 1 in 1,000. The emerging consensus now seems to be 30 days and 1 in 20, though some nations have advocated 365 or more days and 1 in 10 failure rate. For self-deactivation, initial parameters of 30 to 365 days have given way to 120 to 200 days. Moreover, some nations, notably Russia, are insisting on a 15 year grace period for the new restriction, to take effect.

On another issue of humanitarian concern, it was expected that agreement would be reached in Vienna that all land mines must be detectable, and that a uniform standard (at least eight grams of metal in every mine) would be set. Instead, nations have decided not to have any detectability requirement for antitank mines, and a few nations, especially India and China, are balking at the eight gram requirement for antipersonnel mines.

The fact that nations were unable to reach agreement on even modest new restrictions on land mines in Vienna is a strong argument in favor of the comprehensive ban approach. As long as mines are viewed as legitimate and useful weapons, nations are unlikely to take steps that will significantly address the global land mines crisis. While the Vienna review conference was disappointing in many ways, NGOs also had reason for encouragement. A few years ago, not many people were thinking about land mines. Because of the work of the Campaign, and others, it is increasingly in the public discourse. The Review Conference would not have happened if it were not for the work of the Campaign. The fact that countries are so concerned about world opinion in how they deal with the land mines crisis was a factor in their decision to suspend proceedings. Indeed, it can be argued that while governments made little progress in Vienna, the Campaign to Ban Land Mines continued to gather strength.