

Toward a global ban on landmines

by Anita Parlow

1. INTRODUCTION

The use of arms, projectiles, or material calculated to cause unnecessary suffering, and more especially of poisoned weapons (chemical and biological weapons), was banned under the conceptual framework of both the 1907 Hague Convention (IV) and the 1925 Geneva Protocol. In the discussions leading to a ban on the use of chemical weapons, diplomats from around the world referred to their use as “barbaric and dishonourable” because of their effect on soldiers or the likely indiscriminate impact on civilians. It is a universal achievement that it is now impossible to conceive of a world that does not show concern for civilians caught up in war. As international attention to the protection of civilians in internal armed conflicts grows, it is accompanied by renewed debate regarding regulation of warring parties’ conduct through humanitarian and human rights law.

During the Cold War, policy-makers viewed civilian deaths in wars of national liberation primarily in geopolitical terms. Under the moral mantle of anti-Communism, humanitarian questions were often confused with or subordinated to ideological considerations. The International Committee of the Red Cross (ICRC) reports that 80 per cent of the victims of armed conflict since World War II have been victims of non-international conflicts. Now, as ethnic and civil catastrophes shape the post-Cold War order, one of the more impassioned debates involves a rethinking of the changing nature of war and how it is waged. The gravity of breaches of international humanitarian law against civilians in Rwanda, Bosnia-Herzegovina and Iraq, combined with the seeming inability or unwillingness of the world community to stop them, underscores both the urgency and difficulty of enforcing universally accepted humanitarian principles. This raises both legal and pragmatic questions regarding the

degree to which nations are still resolved to adhere to the principles of humanitarian law and whether current examples of resistance to core humanitarian principles suggest a betrayal of the ideals that speak to our common sense of humanity.

The first restrictions on military conduct emerged after the 1859 Battle of Solferino.¹ More recent international efforts to restrain the conduct of war have been triggered by crises of disproportionate civilian deaths. Now large civilian casualty rates are again challenging the international community to direct the pressure of humanitarian discourse away from prerogatives of embattled rulers of fragmented States and place greater emphasis upon universal responsibility to one another. The growing effort to ban anti-personnel landmines presents an opportunity for nations to allow questions of military security to yield to national self-restraint. The non-governmental organization (NGO) lobby to ban the production, use and transfer of anti-personnel landmines is provoking a significant worldwide debate on the circumstances under which humanitarian concerns might override the arguments for the use of this weapon of war. The international lobby initially depended upon the global position of the United States to advance its humanitarian agenda. As a country with little commercial or strategic interest in landmines, the United States would appear to be well positioned to support, and indeed mobilize support for, the principles that would expand protection to civilians around the world. Although congressional leaders of the effort to ban anti-personnel mines indicated in an opening humanitarian salvo that the fight has just begun, disagreement between the Pentagon and the State Department over the merits of mine warfare has dimmed the chances that the Clinton administration will shift the balance away from arguments for the military necessity of one very small weapon.² To its credit, the administration is asking the right questions. But to find adequate answers, the world community must devise a humanitarian blueprint that takes human and economic costs into full account.

¹ See Convention (IV) respecting the Laws and Customs of War on Land, October 18, 1907, II, ch. I, art. 23(a), 36 Stat. 2277, T.S. No. 539, reprinted in Documents on the Laws of War, 43, 52 (Adam Roberts and Richard Guelff, eds., 1982); Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, 17 June 1925, 26 U.S.T. 571, T.I.A.S. No. 8061, 94 L.N.T.S. 65, reprinted in International Committee of the Red Cross, International Law Concerning the Conduct of Hostilities 174, 174-175 (1989). See also 1899 Hague Declaration 2 Concerning Asphyxiating Gases, reprinted in Documents on the Laws of War 35-37 (Adam Roberts and Richard Guelff, eds., 1982) banning delivery of asphyxiating gas by projectile.

² Interview with Department of Humanitarian Affairs Under-Secretary Peter Hansen, Geneva, 5 July 1995.

II. INDISCRIMINATE IMPACT ON CIVILIAN LIFE

With mounting evidence of severe disruption to civilian life, there is near universal agreement on the urgency of the global landmines problem.³ A recent State Department report estimates that roughly 65 million to 110 million uncleared anti-personnel landmines are scattered like seeds of death in fifty-six countries around the world.⁴ Even after peace has been negotiated in Cambodia, El Salvador and Mozambique, civilians continue to die or be crippled by exploding landmines at an overall rate of 500 per week.

Although precise international statistics are not kept on landmine injuries or deaths, most of the victims are poor farmers, women or often children who are collecting firewood, tending cattle or gathering food in an area that was previously a battleground.⁵ A particularly insidious weapon with a distinct purpose in the field of munitions, the anti-personnel mine is designed to maim opposition soldiers. *Landmines: A Deadly Legacy* describes the effect a mine explosion has on the human body. Landmines create:

“ruinous effects on the human body; they drive dirt, bacteria, clothing, and metal and plastic fragments into the tissue, causing secondary infections. The shock waves from an exploding mine can destroy blood vessels well up the leg, causing surgeons to amputate much higher than the site of the primary wound”.⁶

³ Dr Rémi Russbach, Medical Director of the International Committee of the Red Cross and founder of its Medical Division, writes that in the period between January 1991 and July 1992, 23 per cent of the 14,221 individuals seeking treatment at four ICRC hospitals were wounded by mines. Rémi Russbach, “Casualties of Conflicts and Mine Warfare”, in *A Framework For Survival: Health, Human Rights, And Humanitarian Assistance In Conflicts And Disasters*, pp. 121, 126 (Kevin M. Cahill ed., 1993) [hereinafter *Framework For Survival*].

⁴ Office of International Security and Peacekeeping Operations, United States Department of State, *Hidden Killers: The Global Problem with Uncleared Landmines* p. 33 (1993) [hereinafter *Hidden Killers*]. The Director of the United Nations Demining Program, Patrick Blagden, estimates upward of 200 million mines. “Summary of United Nations Demining Report Presented by Patrick M Blagden, United Nations Demining Expert” in *ICRC Symposium on Anti-Personnel Mines, Montreux* 21-23 April 1993, p. 117 (1993) [hereinafter *Montreux Symposium*]. Additional estimates range between 100 and 200 million mines. See Jan Eliasson, UN Department of Humanitarian Affairs, *Informal Paper on the Subject of Land Mines* p. 1 (7 April 1993) (on file with author).

⁵ See Asia Watch & Physicians For Human Rights, *Land Mines in Cambodia: The Coward's War*, p. 9 (1991) [hereinafter *Land Mines in Cambodia*].

⁶ The Arms Project of Human Rights Watch & Physicians for Human Rights, *Landmines: A Deadly Legacy* p. 431 (1993). For additional discussion of landmine wound treatment, see Robin M. Coupland & Adrian Korver, “Injuries from Antipersonnel Mines:

In an attempt to combat the effects of war-related injuries, such as those created by landmines, the ICRC is currently running twenty-seven orthopedic programmes and as many surgical units in fourteen wartorn countries.⁷ This, combined with the fact that nearly 25 per cent of the civilian casualties treated by the ICRC in the eighteen-month period ending July 1992 were suffering from mine-related injuries gives some idea of the scope of the anti-personnel mine problem. In Cambodia, one out of every 236 people has lost at least one limb owing to surgical amputation following a mine explosion.⁸ This rate is high compared even with Angola, where amputations have to be performed on one of every 470 people. In the United States, where the threat posed by anti-personnel mines is minimal, amputations are performed on one of every 22,000 individuals. The ICRC's substantial efforts to stop the use of mines serves as a barometer for the magnitude of the problem. The humanitarian organization reports that in most mine-infested countries, it is generally impossible for local infrastructures to provide the necessary level of rehabilitative care, such as artificial limbs for survivors.

The French-based Handicap International, like the ICRC, reports that an increasing proportion of its resources is devoted to mine-related surgery or the fitting of prosthetic devices to women and children who step on anti-personnel mines as they herd sheep or search for firewood. Phillippe Chabasse, Executive Director of Handicap International, explained the reason for which his organization advocates a ban on anti-personnel landmines: disabled survivors are a major social and economic burden that further impoverish a society and impede Handicap International's ability to support community reconstruction. "We have to work very hard just to get back to zero".⁹

The Experience of the International Committee of the Red Cross", 300 *British Medical Journal* p. 1509 (1991); Robin M. Coupland, "Amputation for Antipersonnel Mine Injuries of the Leg: Preservation of the Tibial Stump Using Medial Gastrocnemius Myoplasty", 71 *Annals of the Royal College of Surgeons*, England, p. 405 (1989).

⁷ Interview with Dr Rémi Russbach, 13 Sept. 1993. See also Alain Garachon, *ICRC Technical Orthopaedic Programmes for War Disabled 2* (1993). Alain Garachon, Director of the ICRC's Rehabilitation Programme, noted that "a child injured at 10 years of age with a life expectancy of another 40 or 50 years will need 25 prostheses which at 125 USD each amount to 3125 USD. In countries where average incomes are of the order of 10 to 15 USD a month, one can easily understand that crutches are all that are available to that population".

⁸ *Landmines: A Deadly Legacy*, *supra* note 5, pp. 126-127.

⁹ Interview with Dr Phillippe Chabasse, Director, Handicap International, in London, England (18 May 1993). Chabasse also noted in his earlier presentation at the ICRC Symposium on Anti-Personnel Mines that "families have less and less the financial and production capacity to support" the growing numbers of handicapped persons. *Montreux Symposium*, p. 9, *supra* note 3, at 9. Also: *Rendre la Terre à La Vie*, Handicap International,

The presence of these "eternal sentinels" is not a problem of the past. The United States State Department notes, in its report *Hidden Killers*, that mines are increasingly a weapon of choice in the growing number of ethnic and civil conflicts engulfing the world.¹⁰ The United Nations estimates that four million mines have been sown across the former Soviet Union and Yugoslavia in the past three years alone.¹¹

The consequences of uncleared mines are particularly acute in developing countries. Oxfam International reports that the cumulative effect of the landmines problem carries with it the potential to destabilize entire economies as large tracts of land are rendered useless for cultivation or grazing.¹² In Somalia, the US State Department estimates that one million mines have rendered entire towns, villages and agricultural land useless.¹³ In Angola, British mine clearance teams estimate that twenty million mines were laid over 33 per cent of the country, contributing to starvation when productive land was rendered useless. In Mozambique, Human Rights Watch reports that over two million mines remain deployed, including thirty-two types of anti-personnel mines and nineteen types of anti-tank mines, manufactured by fifteen nations. In Afghanistan, the British-based Mines Advisory Group estimates that it will take between ten and fifteen years to clear the priority zones of Afghanistan, a country infested with ten million mines. Reports by the New York-based Arms Project of Human Rights Watch and by Physicians for Human Rights conclude that countries most infested by mines are impoverished and lack the ability to harness the requisite resources to respond to the exploded mine's medical, social, economic and environmental consequences.

July 1995.

In his testimony to the Senate Foreign Affairs Subcommittee on the Global Landmine Crisis, UN demining expert Patrick Blagden testified that 3,400 mine clearers in four countries have been able to remove between 65,000 and 80,000 mines, approximately one-thousandth of the world's total. "Two and one-half million were laid in Yugoslavia and Cambodia, [meaning] we are losing the battle at least thirtyfold". Interview with Patrick Blagden, 13 May 1994.

¹⁰ See *Hidden Killers*, p. 10, *supra* note 3. "Landmines pose a special problem to the world's poorest countries. For example, rural Africa, the world's most mine-infested region with roughly 18-30 million mines sown in eighteen countries, has the least capacity for mine-clearance. External support is required for a meaningful mine-clearance campaign to exist", *Id.* p. 34. "In fiscal year 1993, the US State Department, including USAID, allocated \$9 million for demining projects in Afghanistan, Mozambique, Somalia, Cambodia, and Central America", *Id.* p. ii.

¹¹ Telephone interview with Jan Eliasson, former Under-Secretary General for Humanitarian Affairs, 16 February 1994.

¹² Interview with Joel Charney, International Programme Director, Oxfam International, in London, England, 25 May 1993.

¹³ See *Hidden Killers*, pp. 153-154, *supra* note 3.

Landmines have substantially impeded UN peace-keeping operations as well as efforts by the United Nations High Commissioner for Refugees (UNHCR) to oversee the return of millions seeking post-Cold War resettlement. The High Commissioner for Refugees reports this disruptive effect: "UNHCR restructured operations in Afghanistan, Cambodia and Mozambique as a few ounces of foot pressure on the wrong patch of ground caused too many explosions".¹⁴

Although the international community is taking active steps to remove previously deployed mines, efforts to date have been inadequate. For example, a mine-removal programme under the direction of the United Nations is currently under way in Somalia, with some 200 Somalis trained in clearance techniques. Through a precarious process of using hand-held metal probes, 21,000 mines have been removed to date. The mine-clearance personnel are being doubled, but despite this the Director of the UN's Demining Programme, Patrick Blagden, says that without more technologically sophisticated, and therefore expensive, methods, "the situation is hopeless". Congressman Lane Evans, co-sponsor of the US landmines moratorium, quoted an estimate of \$3,500,000 to bring heavy mine-clearance vehicles into Somalia alone, leaving the price tag for the removal of mines from even the world's most heavily infested areas far more than the United Nations or its member States are prepared to pay.

III. INITIATIVES TO BAN LANDMINES

The possibility of curbing an epidemic which is maiming the world's poorest is spurring an organized effort in humanitarian and United Nations circles. In 1992, a coalition of humanitarian and human rights groups, including Human Rights Watch, Handicap International, Physicians for Human Rights, Medico International, Mines Advisory Group and Vietnam Veterans of America Foundation - which took the lead - launched an international campaign to ban the production, use and sale of mines. Although the anti-personnel landmine lacks the dramatic images of biological or chemical warfare that belligerents after World War I had a mutual interest in banning, the campaign is gaining momentum. The

¹⁴ Interview with Dr Sadako Ogata, UN High Commissioner for Refugees, in Washington, D.C., 13 May 1994. The interview occurred at the time of the Commissioner's testimony to the Foreign Operations Subcommittee of the Senate Appropriations Committee.

efforts of this international coalition of NGOs, whose members have been working in capitals around the world to persuade the States' diplomatic missions to support a ban, reflects an enhanced role for the international NGO community in enforcing international humanitarian law.¹⁵

The global campaign offers the world's governments an opportunity for a multilateral effort to apply humanitarian restraints on warfare. In a time of highly technical, modern, target-specific weaponry, the anti-personnel landmine is the most ubiquitous, least visible and, according to the US Department of State, the most deadly weapon levelled against civilians, who continue to be threatened long after the fighting is over. The opening rounds of this year's expert sessions at the United Nations have now ended, and it appears unlikely that many countries will support an outright ban on mine production and use. Should they indeed fail to do so, the NGOs and the ICRC - which are aggressively pressing for a ban - have little choice but to accept technological limits, such as self-destruct mechanisms, as a step toward their long-term goal.¹⁶

¹⁵ Even before the 1949 adoption of the Geneva Conventions, the NGOs and the ICRC acted to protect civilians from abuse by States. Traditionally, this effort was made in two discrete spheres; humanitarian law kept its focus on matters military, leaving human rights concerns for peacetime review. More recently, human rights reporting organizations such as the Human Rights Watch and Amnesty International have begun to incorporate humanitarian law principles into their human rights reporting. The two spheres, human rights and humanitarian law, appear to be converging in view of the international community's obligation to protect civilians from abusive State action in the context of internal conflicts. See generally Theodor Meron, "On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument", 77/3 *American Journal of International Law*, p. 589 (1983).

But sometimes action on the ground is required to bring the two sets of principles together. According to NGO coalition organizer, Jodie Williams, "When exploding mines impeded UN peacekeeping operations, the UN's concerns matched the NGOs' and the issue gained visibility." Interview with Jodie Williams, Director, Vietnam Veterans of America Foundation Landmines Campaign, in Washington, D.C., 18 December 1993.

¹⁶ Interview with Edward Cummings, Department of State Legal Office and member of US delegation to the United Nations expert sessions regarding the Review Conference of the Convention on Conventional Weapons, in Washington, D.C. (12 August 1994). Cummings described the US policy as stopping short of a ban. In a press conference following his presentation at the United Nations International Meeting on Mine Clearance, (Geneva, 5-7 July 1995) sponsored by the Department of Humanitarian Affairs, the head of the US Delegation, Cyrus R. Vance, said that, although there was not unanimity in the United States Government on the question of military utility of anti-personnel landmines, "the US position favours tightly restricting and controlling the stockpiling, production of landmines" and, where possible, restricting its use to governments. "It is our considered position that an outright ban is impossible — that a great majority of countries do not favor a ban," said the United Nations Secretary-General's former envoy to Yugoslavia.

UN Secretary-General Boutros Boutros-Ghali, in his statement on 13 May 1994 before the Foreign Operations Subcommittee Hearings on the Global Landmine Crisis, supported a total ban on landmines:

A Group of Governmental Experts constituted by the UN Secretary General to prepare the Review Conference of the States Parties to the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1980 CCW) to take place in Vienna from 25 September to 13 October 1995 held four meetings in 1994 and 1995. The Final Report of the Group of Experts whose final meeting took place in Geneva from 9 to 20 January 1995 indicates that the primary purpose of Protocol II of the 1980 CCW (Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices — hereinafter Landmine Protocol) is to protect civilian populations from indiscriminate suffering both during and after conflicts. The Final Report, importantly, does recommend restrictions on the use of landmines in internal wars. But by proposing complex and limited restrictions rather than an outright ban on the production, use and transfer of anti-personnel landmines, the recommended regime creates a complex programme with insufficient enforcement procedures. Many NGOs claim that the Review Conference is in danger of failing in its central mission: to reduce civilian casualties in the growing number of internal conflicts.

The meetings of experts stopped short of specifying a minimum of metallic content to ensure detectability, offered “self-destruct mechanisms” as a solution to avoid post-war explosions and left undecided the question of a verification provision or enforcement measure.¹⁷

In the United States, initial congressional response to this NGO-led effort has been just short of remarkable. In 1993, the US Congress extended for three years a 1992 moratorium that forbids the US export, sale

“An international Convention on Mines is urgently needed. Its purpose should be to reach agreement on a total ban on production, stockpiling, trade and use of mines and their components. Only in this way can the international community begin to make sustained headway against the killing, maiming and societal destruction caused by these terrible weapons”.

The Secretary-General reinforced this advocacy of a global ban at the International Meeting on Mine Clearance in his address to the Plenary Session on 6 July 1995, saying that the 50th Anniversary of the United Nations offers an opportunity for “clear humanitarian action”. See UN International Meeting on Mine Clearance, *SG/Conf. 7/2*, 9 June 1995.

Arms Watch Director, Steve Goose, reported that the NGOs’ approach is to keep the heat on and enlist more NGOs, particularly in the developing world, to “make this much more of a grass roots campaign”. Interview with Steve Goose, Director, Human Rights Watch/Arms Watch Project, in Washington, D.C., 12 August 1994.

¹⁷ See CCW/Conf. 1/GE/23, 20 January 1995. See also *Landmines and Blinding Weapons from Expert Group to the Review Conference: ICRC Briefing and Position*, ICRC, February 1995.

or transfer of anti-personnel landmines abroad. The Congress stopped short of legislating a ban on the production of landmines, a measure that producers and the military threatened to oppose.¹⁸ According to leading ban proponent Senator Patrick Leahy, “[W]hen the Senate voted 100-0 for my amendment to stop all United States landmine exports, the goal was to put this country in a position to seek a broader, international agreement to end the landmine scourge”.

The congressional action caught the Pentagon, as well as the world’s landmine producers, off guard and it resulted in substantial international interest in considering controls on this type of munition. However, momentum for a total ban on landmines has been slowed since the advent of lobbying on behalf of the world’s various military and security apparatuses. Thus the United Nations chooses to focus on eradicating the danger caused by landmines already deployed. The General Assembly, in its forty-eighth session (1993), adopted a Belgian proposal for financing of mine-clearance operations that are often prerequisite to resettlement and repatriation. This resolution calls on the Secretary-General to review the scope of the anti-personnel landmines problem and to consider the “advisability” of establishing a voluntary trust fund to finance the growing number of mine-clearing efforts that are prerequisite to peace-building measures. The Voluntary Fund was created in 1994 and is administered by the United Nations’ Department of Humanitarian Affairs, which was itself created in 1991 to respond to humanitarian disasters.¹⁹

The UN General Assembly also unanimously adopted a US-sponsored resolution calling on the international community to agree to a moratorium on the export of those anti-personnel mines that pose an inordinate danger to civilian populations. Ironically, the United States was one of only three countries to abstain on a vote on the same day calling for a United Nations conference to review the convention that places humanitarian limits on the use of landmines. This position, in sharp contrast to the overwhelming international support for the resolution, demonstrates, in part, the effect on US policy of the disagreement between the Pentagon and the Congress over the question of placing meaningful restraints on these hidden killers.

¹⁸ Telephone interview with Rod Bilz, Public Relations, Alliant Techsystems (16 December 1993); see also John Ryle, “The Invisible Enemy”, *New Yorker*, 29 November 1993, at p. 120.

¹⁹ *Supra*, note 1. Hansen said he hoped for \$75 million in contributions from member States to the United Nations Voluntary Trust Fund for Mine Clearance Activities. Interview, Geneva, 5 July 1995.

In any event, Senator Patrick Leahy, in a strongly-worded letter to the *New York Times*, highlighted what has become the most significant obstacle to the United Nations initiative, namely the refusal for strategic reasons to abandon mine warfare.

Following the NGO efforts and the ICRC's 1993 Montreux Symposium on Anti-Personnel Mines, eighteen producing countries enacted moratoria on the transfer and use of landmines. Furthermore, the United Nations General Assembly, in its 49th session, enacted two additional resolutions²⁰ on 15 December 1994 which most notably urged all States to take measures to become parties to the Protocol, invited them to declare moratoria on the export of anti-personnel landmines and indicated that, for humanitarian reasons, States should move toward "the ultimate goal of the eventual elimination of anti-personnel landmines" with the caveat that such a goal should be reached after the development of "viable and humane alternatives".

The Clinton administration, through UN Ambassador Madeleine Albright, has promised to align its stated values to specific policy choices. UN Ambassador Albright promised to expand US diplomatic initiatives to restrict sales, and to open discussion with "primary landmine producing and exporting countries on the content and scope of a permanent export control regime."²¹ Responding to the sharpened voice at the Pentagon, NGOs have called her position rhetorically firm but politically inadequate. The US abstention, and current debate within the US Department of Defense, suggest a split within the administration that could cause the United States to lose its leadership role and derail any hopes for a ban.²²

²⁰ A/RES/49/75D and A/RES/49/79.

²¹ Interview with the Public Relations Team of the US Mission to the United Nations, in Washington, D.C. (15 December 1993). Ambassador Albright also calls efforts to persuade UN General Assembly members to observe a moratorium on the export of landmines, a "first step in the Clinton administration's comprehensive effort to address the devastating consequences of their [mines] indiscriminate use". Madeleine Albright, US Permanent Representative to the United Nations, Press release, 15 December 1993.

²² In a letter to Senator Patrick Leahy from Secretary of State Warren Christopher and Secretary of Defense William J Perry, the Secretaries indicated that the administration is conducting an "intensive policy review" to determine the parameters of the US position regarding landmines. However, the letter indicated the unlikelihood of US support for a ban:

"[W]e are concerned that the legislation that you are considering, which would ban US production/procurement of anti-personnel landmines, would be counterproductive to the goal we all share of developing as quickly as possible an effective anti-personnel landmine control regime. Pursuing this legislation now would prejudice US negotiating

In May 1994, President Clinton submitted to Congress a message in support of ratification of the Landmine Protocol to the CCW, which Congress then ratified in March 1995, with certain reservations. The legislation ensures that the US will take part in the forthcoming Review Conference. It appears likely that the United States will not support a ban despite the urging of several longer-term States parties.

The United Nations Meeting on Mine Clearance, which was held in Geneva in July 1995, brought together Ministers and senior officials from 97 governments in one of the first high-level attempts on a worldwide scale, to address the landmine crises.

The background papers presented to the aforesaid UN meeting indicate the character and nature of the many dilemmas that mine warfare creates for civilian populations once hostilities have ceased, and the degree to which the United Nations bureaucracy is getting set to respond to a problem that is outpacing current solutions. The Chairman of the International Meeting on Mine Clearance, Mr Erik Derycke, Belgian Minister for Foreign Affairs, said that, despite reluctance of some States to support a total ban, the two-day meetings were designed to mobilize the international community with hopes for an eventual ban.²³ Working sessions included: 1) Mine Surveys; 2) Current Methods in Mine Clearance; 3) Training Indigenous De-miners; 4) Management of De-mining Operations; 5) New Technologies in Mine and Minefield Detection and Mine Clearance; 6) Treatment and Rehabilitation of Landmine Victims; 7) Emergency Mine-Clearance Problems and Solutions; 8) Education and Mine Awareness; 9) The Integrated Mine-Clearance Programme.

position, restricting our ability to conduct effective consultations with countries critical to control regime”.

Letter from Warren Christopher, Secretary of State, and William J Perry, Secretary of Defense, to Patrick Leahy, US Senator (28 June 1994) (on file with Senator Leahy) [hereinafter Christopher letter].

Senator Leahy points out that the previous administrations' failure to seek ratification of the Conventional Weapons Convention was linked to a dispute with Congress over ratification of two earlier international agreements regarding the law of war: Protocols I and II to the 1949 Geneva Conventions, which the United States signed in 1977. The Reagan administration submitted the more limited Protocol II of the 1949 Conventions for ratification, withholding support from the more extensive Protocol I. The Senate Foreign Relations Committee refused to act, waiting for the submission of both of the almost universally accepted Protocols to the Geneva Conventions before acting on either. The Department of Defense is currently reviewing these Protocols. This dispute between the Executive and the Congress was in part responsible for the refusal of the Reagan and Bush administrations to submit for ratification the 1980 CCW. Interview with Patrick Leahy, US Senator, in Washington D.C., 13 May 1994.

²³ Interview, Geneva, 5 July 1995.

The UN General Assembly has not yet passed on the question of limiting mine warfare for consideration by the United Nations' agenda for disarmament. However, the NGOs of the US advocate that the United Nations member States should do far more than produce a fund to pay for the costs of mine clearance.

The Sri Lankan Ambassador to the United Nations, whose nation's army has suffered severe casualties due to mines sown by opposition forces in its tragic civil war, opposes restraints on mine warfare. According to Ambassador Stanley Kalpage, "In the world of United Nations *realpolitik*, the member States appear less than convinced that an outright ban, given the combined problems of creating verifiable international agreements and implementing them, is little more than romantic humanitarianism". NGO supporters of a total ban argue that a ban on landmines inherently falls within the meaning of international law that requires armies to direct their activities solely against military and not civilian objectives. At a series of ICRC and NGO meetings on the subject, most participants agreed that the problem with landmines is that they do not distinguish between military and civilian footfalls, and continue to kill long after a conflict is over.²⁴ The NGO's and ICRC's strategy to achieve a ban is to stigmatize the use of anti-personnel mines much as bacteriological and chemical warfare was stigmatized in the past, while urging on the governments' deliberations from the outside and focusing long-term attention on the issue.²⁵

²⁴ *International Conference for the Protection of War Victims*, ICRC (Geneva, 30 August - 1 September 1993). The Conference's Final Declaration, adopted on 1 September 1993 by consensus of the 168 participating States, concluded: "We refuse to accept that civilian populations should become more and more the principal victim of hostilities and acts of violence perpetrated in the course of armed conflicts", *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, p. 377.

Cambodia's civil conflict is the first war in history where mine-related casualties have exceeded injuries caused by all other weapons. Cambodia has the highest percentage of disabled inhabitants of any country in the world. Of the country's 8.5 million inhabitants, over 30,000 are amputees and a further 5,000 or so amputees live in refugee camps along the Thai border. In 1990 alone, as many as 6,000 Cambodians had a leg or foot amputated as a result of an injury caused by a mine. See Eric Stover & Dan Charles, "Cambodia's Killing Minefields", *New Scientist*, 19 October 1991, p. 29; *Land-mines in Cambodia*, *supra* note 4, pp. 59-79; *NGO Conference on Anti-personnel Mines* (London, 24-26 May 1993).

²⁵ Aryeh Neier, Director of the Soros Foundation, in his keynote address to VVAF-led NGO Conference on Anti-Personnel Mines, in London (24 May 1993). Neier advised the coalition to "stigmatize" mine warfare in the same manner that biological and chemical warfare are stigmatized by the world community. Since the ICRC Montreux meetings and the NGO Conference in London, producing States have placed moratoria on landmines and, more recently, the Organization of African Unity supported a restriction on use, with NGOs in Mozambique preparing a country-wide conference in June 1995 on the scope of the problem in Mozambique.

NGOs consider that international education on the scope and problem of landmines constitutes an initial victory. But they are now facing the most salient question: how to build an effective effort to press for real restraints on mine warfare, using the sessions for the upcoming Review Conference of the 1980 CCW as a component of a far larger strategy. Although the ICRC supports an initiative to ban the production, use and transfer of landmines, the Review Conference offers only some promise of constructing standards that will impose technological restraints to limit yet undeveloped types of warfare.²⁶ Perhaps the most important dimension is the application of its Protocol II to internal conflicts.²⁷ Along with the central questions of applicability to internal conflicts and the capacity to monitor, verify or enforce any new restraints, the landmine debate is likely to become polarized, as it has in the US, between proponents of an immediate, total ban and those who favour technical modification coupled with export controls that are likely to remain porous. Perhaps the most important work lies not in legal wrangling over the Protocol but in devising workable mine-clearance programmes coupled with an effective regime of export controls.

IV. MILITARY STRATEGY OR HUMANITARIAN NECESSITY

Jan Eliasson, former UN Under-Secretary General for Humanitarian Affairs, called the recent shift in the use of anti-personnel mines in warfare sufficient grounds to justify a complete ban.²⁸

²⁶ See: Louise Doswald Beck, ed., *Bleeding Weapons: Reports of the Meeting of Experts Convened by the International Committee of the Red Cross on Battlefield Laser Weapons, 1989 - 1991*, ICRC, Geneva, 1993.

²⁷ A central issue for the Review Conference of the 1980 CCW is its application to internal armed conflict. Although this article will not trace the legal evolution of placing humanitarian restraints on internal conflict, it is relevant to note that Article 3 common to the four 1949 Geneva Conventions imposes legal obligations on parties involved in an internal war. In 1975, Antonio Cassese argued for the proposition of customary laws of internal war. See Antonio Cassese, "The Spanish Civil War and the Development of Customary Law Concerning Internal Armed Conflicts", in *Current Problems of International Law*, p. 287 (Antonio Cassese, ed., 1975). Protocol II confirms the validity of legal regulation of internal war and provides some details about the human rights of civilians in internal armed conflict. David P. Forsythe, "Human Rights and Internal Conflicts: Trends and Recent Developments", 12 *California Western International Law Journal*, pp. 287, 294 (1982); Robert K. Goldman, "International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua", 2 *American University Journal of International Law and Policy* pp. 539, 543 (1987). The ICRC argues that the Convention applies to both liberation movements and States party: Yves Sandoz, "A new step forward in international law - Prohibitions or Restrictions on the Use of Certain Conventional Weapons", *IRRC*, No. 220, January-February 1981, p. 10.

²⁸ Interview with Jan Eliasson, *supra* note 10. Renewed interest in the humanitarian law of war is, in part, due to the strategic focus of domestic conflicts in which civilian populations are the primary targets of hostilities.

Eliasson, and his successor Peter Hansen, who coordinates the UN Demining Programme, support an outright ban on production and sales under existing law. "Mines once served a defensive purpose, deployed on clearly marked battlegrounds. But with the increased targeting of civilians or civilian territory as a war objective, the anti-personnel landmine, which kills long after the conflict is over, is transformed into a weapon of terror".²⁹

Therein lies the humanitarian problem. State officials and military officials who argue against restrictions on mine warfare defend the use of mines as inexpensive and technically undemanding weapons that help establish "parity" in counter-insurgency situations.³⁰ The assumption is that villages, open fields and grazing lands are justifiable targets because they may harbour or support the enemy. However, the light, easy-to-handle explosives that are planted to deny opposing forces access more frequently deny civilians the full use of their villages and agricultural lands. At the January 1994 meeting of Governmental Experts in Geneva, the ICRC questioned representatives of the world's armed forces about the military utility of mines. The overall conclusion of the military experts gathered at that meeting was that mines serve an important, if limited, military function. However, British military strategists who support a ban suggest that it might be custom, rather than military necessity, that undergirds arguments for continued use of anti-personnel landmines.

On 14 June 1995, governmental and non-governmental organizations in Mozambique's first national symposium on the subject of landmines pointed out that while it is Third World countries that suffer the consequences of mine warfare, it is primarily the developed world that produces them. Delegates also pointed out that the extent and implications of mine-related problems, while not as extensive as predicted, impede post-war reconstruction, and that Mozambicans do not want the mined countries to be marginalized in the global debate.³¹

Despite their overwhelming pro-mine stance, the problem of uncleared mines cannot be laid solely at the doorstep of national armed forces.

²⁹ Interview with Jan Eliasson, *supra* note 10. See generally "Cambodia's Killing Minefields", *supra* note 23; Americas Watch, *Landmines in El Salvador and Nicaragua: The Civilian Victims* (1986).

³⁰ Meeting, American Society of International Law, in Washington, D.C. (6-9 April 1994).

³¹ Interview with João Paulo Cuelho, Chair, Landmine Symposium sponsored by Eduardo Mondlane University and Human Rights Watch, 14 June 1995.

Anti-personnel mines are also widely used by some guerrilla forces that are not acknowledged by governments, as belligerents frequently do not subject themselves to the restraints prescribed by international humanitarian law. There is mounting evidence of growth in the use of anti-personnel landmines by insurgents; the low-cost plastic mine is an increasingly effective "poor man's weapon", which at three to twenty US dollars each is designed to reduce the mobility of even the best equipped regular armies.

Commercial interests pose less of an obstacle to those who seek to achieve a ban than strategic interests. Although the combined global trade in landmines is about \$200 million annually, it is a relatively small part of the \$600,000 million global arms budget, but the demand for landmines is increasing.³² The end of the Cold War has led to a reduction of nuclear forces, but business is growing in the area of small conventional arms, as industries rush to supply adversaries in the estimated twenty-nine wars now in progress around the globe.

According to the New York-based Arms Watch, 100 companies in forty-eight countries produce more than 340 types of anti-personnel mines. Most of the world's landmine-producing facilities are government owned, with the largest exporters located in Italy, Russia, Ukraine, Belarus and China, the latter also being an important export target for Western firms that produce mine-related technology. For private companies, like Daimler Benz of Germany, Tecnovar of Italy, Daewoo Corporation of South Korea, or Alliant of the United States, landmine sales are typically part of a larger product line and not separately itemized in company annual reports. Producers are proliferating, according to a recent study by the US Defense Intelligence Agency. The agency names China, Egypt, Pakistan and South Africa as new "ambitious marketers of landmine munitions deeply involved in high technology proliferation".

The official data places the United States well behind the market leaders. In *Landmines: A Deadly Legacy*, Human Rights Watch observes that the United States had shifted from its role as a leading exporter of mines during the Vietnam era to a minimal level of export prior to its three-year moratoria. The Human Rights Watch report notes that the

³² *Landmines: A Deadly Legacy*, *supra* note 5, at pp. 35, 37. This is especially true with the sales of plastic, scatterable mines - although difficulty in tracking landmine production and sales is compounded by the fact that no company makes meaningful public disclosure of its land mine sales. For an overview of mine variety and availability see *Jane's Military Vehicles and Logistics 1992-1993* (1993).

Minnesota-based Alliant Techsystems, a former subsidiary of Honeywell Incorporated's Defense Systems, is the US Army's largest munitions contractor and a company with one of the largest economic stakes in self-destructing mines. Not surprisingly, Alliant argued for the utility of landmines with self-destruct mechanisms to Congress, stating that this mechanism provided a practical way to achieve the goal of the UN Protocol.³³ According to Alliant, "self-destructing mines serve a military purpose of protecting US soldiers by providing: force multiplier effects, safety to troops, elimination of hazardous and time-consuming clearance, and American forces understand them".³⁴

V. THE RELEVANT LAW

The law that principally governs the use of anti-personnel landmines is commonly referred to as the Landmines Protocol (or Protocol II) annexed to the 1980 CCW. Its inclusion was largely in response to the high numbers of civilian casualties caused by mines and unexploded munitions in Vietnam. The 1980 CCW is based on the "principle that prohibits the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering".³⁵

The original draft presented by Britain was intended to reduce harm to civilians in armed conflicts, deriving its provisions from customary law codified by the Hague Conventions of 1899 and 1907 and the fundamental principles of the Geneva Conventions and their Additional Protocols, which require warring parties to refrain from targeting civilian populations.

The applicability of international norms to military conduct is indisputable given the Nuremberg Trials' explicit recognition of the Hague codification and the overwhelming ratification of the Geneva Conventions. However, while these norms have been useful in raising consciousness and, in a few instances, providing a basis for war crimes trials or

³³ Interview with Tim Rieser, Aide to Senator Patrick Leahy, in Washington, D.C. (12 July 1994). (Rieser noted that several conversations were initiated by Alliant representatives to lobby support for the retention of a self-destruct solution).

³⁴ Alliant Techsystems, Press release, 16 December 1993 (generally concerned with company views on efforts to curb impact on civilians).

³⁵ 1980 CCW, Preamble.

other interventions, they have rarely been used for restraining the conduct of protagonists in an internal conflict. The campaign to ban landmines challenges governments to break from this tradition; to breathe meaning into humanitarian principles rather than belatedly to complain about conduct the world community considers objectionable.

The Landmines Protocol states that its central intention is to protect civilian populations from the "indiscriminate" effects of war. In addition, it requires that combatants take "feasible precautions" (defined as "practicable or practically possible" under the prevailing circumstances) to protect civilians from the effect of mines and booby traps. The parties to it are required to keep records of minefields which would facilitate mine-clearance activities once hostilities have ceased. It prohibits in all circumstances the use of mines "either in offence, defence, or by way of reprisals against the civilian population or individual civilians" (Article 3 (2)).

But in practical experience, the Landmines Protocol has completely failed to serve its purpose: to protect innocent civilians. In fact, since the adoption fifteen years ago of the Landmines Protocol, civilian injuries due to exploding mines have skyrocketed. But despite evidence of ignorance of the law governing the use of mines, the most significant legal and diplomatic argument against restraints on mine warfare is found in the States' argument that the law does not apply to internal conflicts. A conventional view regarding the application of humanitarian law, including the Conventional Weapons Convention, continues to be that internal conduct does not come within the political jurisdiction of the international community.³⁶ But given the increasing number of internal conflicts and the increased visibility of humanitarian issues, the question of self-restraint

³⁶ The issue of the application of the Protocol to internal conflict has emerged as a substantive issue at the Meetings of the Governmental Experts to prepare the Review Conference of the 1980 CCW. Their discussions have reflected the tension between the State's right to national sovereignty and political independence and its duty to respect the rights of civilian populations. *Progress Report of the Group of Governmental Experts to Prepare the Review Conference of the States' Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or to Have Indiscriminate Effects*, UN GAOR, 49th Sess., Agenda Item 10, at p. 8, UN Doc CCW/CONF.1/GE8 (1994). The Summary Report noted that the "issue of extending the scope of Protocol II and/or the Convention as a whole was widely discussed to extend the scope of at least the Protocol to cover non-international conflicts that," according to the Chair, "cause the greatest problem", *Id.* "Alternative A" and "Alternative B" of Article I reflect the necessity to protect civilian populations "in all circumstances" inferring the likely application of the revised Protocol to internal conflict. Fourth Session, 20 January 1995, CCW/CONF.1/GE/23, Final Report.

Human Rights Watch has argued that the Landmines Protocol already applies to internal conflict since the civilian populations' need for protection from combatants

in the conduct of internal wars has moved in from the periphery of humanitarian discourse.

The ICRC's legal department and some NGO legal specialists argue that indiscriminate use of anti-personnel landmines in internal conflict is *already illegal* under the customary law that prohibits indiscriminate use of weapons, a position that underscores the need for a global ban. Despite such interpretations, some government officials at best prefer modifications in the design of anti-personnel landmines to include self-destruct devices, perhaps owing to a lack of will to support an action unpopular with the world's military strategists.³⁷

The effort to transform the growing international revulsion to mines into norms that could meaningfully sustain an international ban has attracted considerable media interest both to the problem itself and to the forthcoming United Nations Review Conference. Beyond the problem of the Landmine Protocol's applicability to internal conflicts, the current law provides no obligation for mine clearance; no verification provisions; no enforcement procedures; says nothing about the production or transfer of mines; and leaves sufficient space in its operative clauses as regards its application to domestic wars to keep lawyers debating for decades.³⁸

VI. DEMINING: A SLOW AND DANGEROUS PROCESS

With military and commercial interests advocating self destruct mechanisms as a high-tech alternative to a ban on production, stockpiling and transfer, the necessity for an ongoing programme of mine clearance

remains the same whether they are enmeshed in international or internal war. Interview with Steve Goose, Deputy Director, Arms Watch. In addition, the ICRC attached great importance to verification procedures through a permanent, independent, supervisory body.

³⁷ Louise Doswald-Beck, Legal Department, ICRC. The rules of humanitarian law of war reflect a tension between the "standards of civilization and the necessities of war". Interview, Geneva, April 1994.

³⁸ A few member States view the UN's preparatory sessions as a way to raise the entire question of how to assess the development of new weapons in humanitarian terms. For example, the ICRC has shown a clear interest in discussing new weapons such as anti-personnel laser weapons to get ahead of the technology rather than mop up after it. See Anita Parlow & Bob Deans, "Long After Wars End, Land Mines Remain, Bringing Death Underfoot", *Atlanta Journal & Constitution*, 16 January 1994 at A1. Also, Anita Parlow, "Banning Land Mines", 16 *Human Rights Quarterly*, No 4, November 1994, p. 715.

poses the central practical dilemma. Although mine technology is increasingly sophisticated, clearance technology has not kept pace. As Jan Eliasson notes, "[I]t is one thing to lay mines and quite another to clear them". Eliasson calls the bottom line a budgetary matter. Without a legal obligation in the Landmines Protocol for mine sowers to remove their deadly legacy once hostilities have ceased, "the international community will most likely remain the primary entity capable of paying for the costly demining efforts".³⁹

Mine clearance and disposal are not only expensive at an estimated \$400 to \$700 per mine, but also primitive, slow and hazardous. Electronic sweepers are typically ineffective off the main roads because widely used plastic mines are difficult to locate and do not respond to metal detectors. Rae McGrath, Director of the British-based Mines Advisory Group, who conducts mine-clearance programmes around the world for the United Nations, reports that the "plough would seem an effective way to breach minefields, but if the ground is too rough or community water systems and agricultural and grazing fields are involved, demining requires the far more widely used, dangerous and time-consuming hand-held probe".⁴⁰

Mine clearance problems appear to be exacerbated, rather than relieved, by some cutting-edge technology. For example, one recently produced device releases a cloud of ethylene vapour, which is then detonated, to breach minefields. Because this fuel-air mix does not cover the area uniformly, its detonation leaves gaps in the minefield below. Moreover, this controversial method of mine clearance has a disquieting offensive potential and is unusable in sensitive areas such as water filtration systems and villages.

Additional problems concern the need of mine-clearance personnel to know which mines have been sown, a considerable problem since few mined areas are mapped. In Kuwait, a country with sufficient funds to finance the best mine-clearance effort, over eighty such personnel have been killed although all were trained in the most up-to-date techniques.

³⁹ ICRC President, Cornelio Sommaruga, vows to continue the landmine campaign as part of the ICRC's effort to create a world in which a "humanitarian space" is preserved. Interview in Geneva (8 May 1995).

⁴⁰ Rae McGrath, *Report on the Afghanistan Mines Survey* 58, London, England, 1991.

VII. CONCLUSION

Just as nuclear arms were a symbol of the Cold War, anti-personnel landmines are becoming a symbol of its aftermath. The Review Conference of the 1980 Convention places anti-personnel landmines in the context of present-day armed conflict and offers an opportunity to make its Protocol II an effective instrument for controlling their production and use.

Whatever the outcome of the Vienna Review Conference, the NGOs and the ICRC have demonstrated an enhanced ability to move States to action. They view the Vienna Conference as one step in a continuum that would ban mine production, use and transfer, institute a verification regime and support technologies for mine detection and clearance that are sustainable in local communities. Little would be lost and much gained by a clear humanitarian decision that would offer hope to those who figure among the world's most impoverished and who seek a future that extends beyond conflict and holds promise of post-war reconstruction.⁴¹

Anita Parlow is an attorney and journalist currently writing a book, *War Dispatches: Humanitarian Intervention in Sudan, Rwanda and Mozambique*. She has covered human rights and humanitarian issues for the Washington Post, Atlanta Constitution, Monitor Radio and National Public Radio. She has served as a consultant to: Human Rights Watch, the US Committee for Refugees and the US-based Refugee Policy Group.

⁴¹ The author is grateful to the William Penn Foundation, Mrs Kenneth Montgomery, the Uniterra Fund, Reebok International and the Public Welfare Foundation for underwriting this work as part of a series of articles on human rights and humanitarian intervention.