

**LESSONS FROM IRAQ AND AFGHANISTAN: IS IT TIME  
FOR THE UNITED STATES TO SIGN THE OTTAWA  
TREATY AND END THE USE OF LANDMINES?**

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I. INTRODUCTION

inexperienced with the horrors of landmines, at least on the levels seen in Iraq and Afghanistan. The most recent war fought in the United States was the civil war, which took place well before the explosion in landmine technology—there are no landmines left buried in the hills of Gettysburg today.<sup>4</sup> On the other hand, countries in Asia, Africa, and even Europe have seen the deadly impact of leftover landmines years after the bloodshed. So too has the Middle East—IEDs in Iraq and Afghanistan are killing Americans, but they are killing even more civilians. Americans are now confronting the devastation caused by the success of the IED strategy in Iraq and Afghanistan both in terms of direct harm to American troops, and also the way landmines indiscriminately kill children, women, and other innocent civilians whose only crime was to be in the proximity of a soldier,<sup>5</sup> or who are just unlucky. Hence, it is time for the United States to reconsider its position on landmine law and, not only join the Ottawa Treaty, but also campaign to improve it.

## II. HISTORY

### A. *History of Landmines Warfare*

#### 1. The First Silent Killers

The word “mine” is derivative of the Latin word *mina*, which means “vein of ore.”<sup>6</sup> The word was used by soldiers whose mission it was to dig mines in the ground in which to place explosives, which would cause the collapse of fortifications during a siege.<sup>7</sup> While today’s landmines are commonly associated with explosions, the lineage of the weapon more accurately traces its roots to ancient traps, such as spikes and stakes.<sup>8</sup> One such device, known as a caltrop, was a four-spiked device fashioned from iron (originally fashioned from

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4. MIKE CROLL, *THE HISTORY OF LANDMINES* 20 (1998). It should be noted that mines were used in the Civil War and this experience, for the first time, “demonstrated the longevity of mines in the ground. In 1960 five landmines with Rains fuzes were recovered near Mobile Alabama. Nearly a hundred years after they were laid it was noted that they were ‘still quite dangerous.’” *Id.* Yet these incidents in the United States are extremely rare, according to a 1995 study there are a total of 24,000 landmine victims every year. VICTIMS, <http://members.iinet.net.au/~pictim/mines/victims/victim.html> (last visited May 5, 2009).

5. “Soldier” specifically denotes persons who serve in the Army. In the interest of simplicity, “soldier” is used throughout this article to refer to all service members.

6. CROLL, *supra* note 4, at *ix*.

7. *Id.*

8. *See id.* at 4–5.

bone), so that when thrown on the ground, one spike always points upward.<sup>9</sup> This simple device has proved extremely reliable, ensuring

produce a weapon that would kill its victim without the need for a trigger to be pulled.”<sup>17</sup> While the basic knowledge of a pressure-activated landmine was around for many years before the Civil War, “it is unlikely that the American citizen-soldier was aware of them. It is therefore reasonable to credit (or reproach) the Americans with the development of the first operational devices.”<sup>18</sup>

Pressure landmines are deployed in much the same way as caltrops.<sup>19</sup> However, the use of explosives in lieu of spikes renders the product far more devastating in its effects since a mine causes injuries far in excess of the weight acting upon it.<sup>20</sup> This new triggering mechanism was developed first by Confederate Brigadier-General Rains.<sup>21</sup> When his 2,500 men defended a garrison at Yorktown against General McClellan’s 100,000-man army, Rains ordered his men to lay down his makeshift mines.<sup>22</sup>



Rommel had not attacked the allies—which weakened his forces—the allies may not have been able to break Rommel’s line. Thus, absent his error in judgment, Rommel might not have had to retreat from Africa.<sup>33</sup>

While WWII may have been the apex of mine warfare,<sup>34</sup> it was not the end, as demonstrated by the Vietnam War. Vietnam burned the very soul of the American soldier and citizen—for all its advanced military technology and tactics, America was unable to defeat its shadowy enemy.<sup>35</sup> A major factor in this defeat was the failure of the United States to effectively deal with the Vietcong’s offensive landmine operation, which at times paralyzed American forces.<sup>36</sup>

The 1950s through the ‘70s saw an increase in countries

caves and bedrooms, whereas other conventional weapons, such as rifles, require factories that are easy to locate and destroy.

### 3. With Sticks and Duct Tape: IEDs

In actuality, all exploding landmines before the Second World War were IEDs<sup>43</sup>—and while the Second World War may have been the zenith of the manufactured landmines, improvised landmines were the key force multipliers used against the United States in Vietnam, Iraq, and Afghanistan.<sup>44</sup> It is likely that insurgents would use manufactured landmines if they could obtain them. However, because improvised devices can be designed to meet the local battlefield requirements and can be made in places not easily detected and targeted, they have become the preferred weapon in insurgencies.<sup>45</sup> Understanding the devices is necessary to fully comprehend the backdrop of the law in this field. As we will see below the law evolved to address different aspects of this weaponry and because weapons also develop faster than the law, the world has been playing catch up ever since.

An IED-maker can use commercial explosives—whatever old munitions he has on hand—or make the explosives from household goods.<sup>46</sup> IEDs can employ numerous triggering mechanisms, from remote radio waves to a simple rubber hose that, when stepped on or driven over, ignites the explosion using the change in air pressure in the hose as a trigger.<sup>47</sup>

Moreover, the types of IEDs vary greatly. The most common IED currently used in Iraq is the 155-artillery-shell, which is wired to explode on the ground and designed to kill foot soldiers and disable vehicles. In Afghanistan insurgents are making most of their own calcium ammonium nitrate—a fertilizer produced in Pakistan—which can be used to make explosives, a tactic first seen in the First World War.<sup>48</sup> The Iraqi insurgency also us









## 2. Ottawa Treaty

As of September 2012 there were 160 parties to the Ottawa Treaty, formally known as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

generate media attention for their cause, which in turn yielded widespread public awareness.<sup>74</sup>

In March of 1995 Belgium announced that it was domestically banning the use, production, and export of landmines.<sup>75</sup> However, despite this small victory and the success that the movement had in bringing public attention to the issue, “without direct governmental support, the movement found it difficult to elevate the issue to the international legislative level.”<sup>76</sup>

One year later, in what is referred to as the “Ottawa Process,” the Canadian government held a conference to which 50 countries sent representatives in order to create an international standard on the legality of landmines.<sup>77</sup> The group set a goal to come back in one year “with an agreed international convention,” which it did.<sup>78</sup> “The speed and momentum of the movement was unprecedented, culminating in December 1997 with the Ottawa Convention where 122 nations signed the Convention. . . .”<sup>79</sup> The Treaty would go into effect after it was ratified by 40 countries.<sup>80</sup> On March 1, 1999, Burkina Faso became the 40th country to ratify the treaty and it went into effect as international law. “This was the first time in history that some states agreed to ban completely a weapon in widespread use by most of the world’s armed forces.”<sup>81</sup>

This principle of the Treaty is simple: “civilians should not be killed or maimed by weapons that strike blindly and senselessly, either during or after conflicts. . . .”<sup>82</sup> To reach this goal the Treaty established that parties may not produce, transfer, and, within 4 years, must destroy all landmine stockpiles, save a small supply for the purpose of training in how to detect and disarm landmines.<sup>83</sup> Further,

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74. *See id.* “Hundreds of civil society groups flooded to join the movement including major international agencies such as the International Committee of the Red Cross (ICRC) and different UN agencies.” *Id.* These efforts included the help of “people [like] Princess Diana to bring the matter into people’s living rooms and on their TV screen—to such an extent that governments began to think: ‘yes, why don’t we ban landmines’.” *Id.* (internal quotation marks omitted).

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. RED CROSS, *supra* note 72.

81. Herby & La Haye, *supra* note 65.

82. *Id.* at 10.

83. RED CROSS, *supra* note 72; Ottawa Treaty, *supra* note 1. The Treaty sets out that a

the Treaty requires that, within 10 years of joining, a country should clear and destroy all landmines within its territory.<sup>84</sup> However, because some signing nations have a high proliferation level of landmines and do not have the financial capability to clear all of their emplaced mines within the 10-year window, they may seek help from the international community to help clear their mines.<sup>85</sup>

According to the Treaty a mine is defined as “a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity, or contact of a person or vehicle.”<sup>86</sup> The Ottawa Treaty is primarily intended to eliminate APLs.<sup>87</sup> Conversely, remotely detonated mines are not covered under the Treaty.<sup>88</sup> This is true because remote mines do not continue “killing and maiming after hostilities have ended.”<sup>89</sup> Thus, because a remote mine is detonated by a triggerman and “aimed” at a particular target it does not have the generation-killing effect of APLs and is less “barbaric.”<sup>90</sup>

The Ottawa Treaty has been a success. While there are still a reported 15,000 to 20,000 new victims of APLs per year, this number

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country may request a small stock of landmines for training purposes. *Id.*

84. Ottawa Treaty, *supra* note 1. “In a unique development for an international treaty on weapons, the convention contains not only prohibitions or regulations of certain weapons. It also contains positive commitments to international cooperation in mine clearance and in providing for the care, rehabilitation, and social and economic reintegration of mine victims.” Herby & La Haye, *supra* note 65, at 6.

85. Ottawa Treaty, *supra* note 1. “The campaign pressed hard for the convention to legally bind signatories to act in positive ways in not only ending the use, production, stockpiling and transfer of mines but also to remove mines, promote mine awareness and assist victims of landmines.” AFRICA-ASIA, *supra* note 71.

Extensions are not automatic and should be for the minimum period to implement a well-prepared and adequately funded clearance operation. It is important that extensions requests be managed in a way that maintains the credibility of the treaty and creates maximum pressure for completion before and deadline or within a realistic and well-planned extension period.

Herby & La Haye, *supra* note 65, at 9.

86. Ottawa Treaty, *supra* note 1.

87. Ottawa Treaty, *supra* note 1, at art. 2, § 1.

Anti-personnel mines are mines that are designed to explode by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.

*Id.*

88. *See* Ottawa Treaty, *supra* note 1, at art. 2.

89. Herby & La Haye, *supra* note 65, at 9.

90. *See id.*

is down from an average of 26,000 per year in the 1990s.<sup>91</sup> Moreover, “[t]he international trade in these weapons has virtually ceased, with a significant number of non-parties enforcing export moratoria, including China, India, Pakistan, Russia, Singapore, South Korea, and the United States of America.”<sup>92</sup>

The Ottawa Treaty has 156 parties and the CCW Protocol II has 88 parties. Assuming the measure of success is the *number* of nations

to-0 vote. The Senate has since made the moratorium permanent.<sup>98</sup> In 1994, Senator Leahy organized the first congressional hearing on landmines, titled "The Global Landmine Crisis."<sup>99</sup> The very next year, Senator Leahy attempted to push legislation banning the use of



Demilitarized Zone on the 38th parallel [hereinafter Korean DMZ] is virtually the only place where the United States uses mines that would be banned by the Ottawa Treaty.<sup>108</sup> The mines are deployed across a 151-mile stretch of no-man's land abutting a country "where a highly dangerous and unpredictable regime has put a million heavily armed troops within twenty-five miles of the South Korean capital."<sup>109</sup> Some argue that even with the massive mine field, the U.S. and Republic of Korea (R.O.K.) forces could not withstand an advance from North Korea.<sup>110</sup>

Those who support the U.S. position have asked: "Would Canadians and Swedes, who have been most critical of the American deployment of mines, be willing to take up these responsibilities with their own forces (with or without landmines)?"<sup>111</sup> During the negotiations surrounding the Ottawa Treaty, the delegation from the United States attempted to include a provision in the final treaty that excluded the Korean DMZ from the final proposal.<sup>112</sup> This proposal was rejected. The United States then attempted to obtain an additional nine years to remove mines in Korea beyond the 10 provided for in the Treaty; this provision also was rejected.<sup>113</sup>

Therefore, the United States refrained from joining the Ottawa Treaty, not because of its contempt for international law, but rather

without incurring a military cost of the kind identified by the United States and other nonparties. The Convention bans stockpiling, yet sixty-four of the parties never had such stockpiles.”<sup>115</sup>

Despite the United States’ failure to join the Ottawa Treaty the world has seen a dramatic decrease in the use, production, and transfer of anti-personnel mines.<sup>116</sup> Principally because of the Treaty’s legal provisions, but also because landmines have been greatly stigmatized around the globe.<sup>117</sup> Indeed, only Myanmar and Russia have confirmed that they have planted new “Ottawa-banned” mines between 2006 and 2007.<sup>118</sup> The United States, on the other hand, has not used Ottawa-banned mines in any of its past three conflicts in Kosovo, Afghanistan, or Iraq.<sup>119</sup>

However, these successes do not satisfy critics.<sup>120</sup> According to Senator Leahy, George W. Bush’s administration wasted an opportunity during its tenure to take an active role in this area of

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115. *Id.* at n.62 (citing MAJOR FINDINGS, LANDMINE MONITOR REPORT 2006 (Landmine Monitor 2006) (reporting that worldwide stockpiles of landmines have declined from 260 million before the Convention to 180 million)).

With respect to clearing existing landmines, the overwhelming majority of parties had none to clear. Of the eighty-eight countries that had landmines to clear, approximately thirty-four, or 39%, refused to join the Convention. Of the fifty-one countries with landmines that did join the Convention, many—such as Bosnia,

international law.<sup>121</sup> Senator Leahy stated that President Bush's policies rolled back progress and that because the United States backed away from the pledge to "rid the world of these indiscriminate weapons, others will ask why [the signing nations], with their much weaker armies, should stop using them."<sup>122</sup>

### *C. Reconciling the Law and the Weapons*

Up until this point, this article has used the word "landmine" generically, to refer to any explosive device. However, now that the legal aspects of landmine warfare have been discussed it is important to parse the language and expound upon what is a "landmine" for purposes of international law. The provisions of Ottawa are simple, signing nations must destroy their APL stockpiles and clear and destroy all APLs within their territory.<sup>123</sup> An APL is a landmine that is designed to detonate by the presence, proximity, or contact of a person.<sup>124</sup>

As already discussed, command-detonated landmines are not landmines according to the Ottawa Treaty, which only covers proximity mines.<sup>125</sup> "There are two basic categories of landmine[s]. Anti-tank mines are powerful explosives designed to destroy tanks and other vehicles. [These types of mines are] laid along transport routes (and thus relatively easy to locate), they often kill people as

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121. *Id.*

122. *Id.* In conducting research for this article, the author contacted Senator Leahy's office concerning his efforts to have the United States join the Ottawa Treaty. In response to the question: "will America's experience in Iraq help shape its future on landmine treaty law," Senator Leahy's office responded that the Senator "has been active in the international effort to ban the production, export, and use of anti-personnel landmines," and will continue this effort. Email from Allison M. Carragher, Member or Senator Leahy's Staff, Office of Senator Leahy (Feb. 18, 2009) (on file with author). Senator Leahy has lobbied President Clinton, President Bush, and now President Obama on this topic. Press Release, Office of U.S. Senator Patrick Leahy, Anti-Personnel Mines: An American Problem (Mar. 1, 1999) (on file with author); Press Release, Office of U.S. Senator Patrick Leahy, Leahy Hits Bush Rollback Of U.S. Landmine Policy (Feb. 27, 2004) (on file with author); Press Release, Humanitarian, Faith, Medical and Veterans Groups Urge Obama to Review Landmine and Cluster Bomb Ban (Feb. 10, 2009), available at [http://fcnl.org/press/releases/2009/ppdc\\_021009/](http://fcnl.org/press/releases/2009/ppdc_021009/) ("Leaders from 67 national organizations representing a wide cross-section of American values and constituencies issued a strong call today for President Obama to reconsider U.S. opposition to global treaties prohibiting the use, transfer, and production of antipersonnel landmines and cluster munitions.").

123. *See supra* text Part II.B.ii

124. Ottawa Treaty, *supra* note 1.

125. *See* Ottawa Treaty, *supra* note 1, at art. 2.

well.”<sup>126</sup> The second category, and most relevant to this discussion, are APL landmines, which target individuals.<sup>127</sup>

In Iraq and Afghanistan, the enemy uses both APL and vehicle landmines.<sup>128</sup> APLs are typically referred to as “dismounted IEDs” and vehicle landmines are often called “roadside IEDs.”<sup>129</sup> It is interesting to note that the vast majority of IEDs in Iraq are vehicle borne—both proximity- and command-detonated—thus, according to Article II of the Ottawa Treaty they may be allowed.<sup>130</sup> This is a major defect in the Ottawa Treaty that, as argued later, must be



equipment and vehicles, and—perhaps most important—intelligence efforts to get inside the decision-making of an insurgency that is sophisticated, if largely low-tech.”<sup>139</sup>

Because the enemy has learned very quickly that a conventional attack against U.S. forces is the best way to get killed, insurgent leaders have adopted the landmine strategy as their main effort, which quickly became very effective.<sup>140</sup> In a Senate Armed Services committee hearing held in 2007, General John Abizaid, then-commander of U.S. Forces in the Middle East, said that IEDs were the “perfect asymmetric weapon—cheap, effect

what it is today.<sup>147</sup>

While the number of dead in Iraq and Afghanistan could be seen as relatively low considering the mission at hand and the sheer number of attacks, the number of wounded service members coming home is staggering.<sup>148</sup> Many of the wounded have severe disabilities, including missing limbs and traumatic brain injuries.<sup>149</sup> Indeed, the

landmines since World War I, but never before has a conflict been so defined by a single military tactic.<sup>154</sup>

Much like the Vietnam War, this war on terror has had some humbling lessons to teach the United States. Eastern Europeans, Africans and the people from Southeast Asia have long lived with the horrors of landmines. For years they have witnessed their children and farmers lose legs and their lives by these simple, cheap, and destructive devices. The American people do not personally witness the explosions that cause injuries in Iraq and Afghanistan; however, the nation as a whole feels the effects of such explosions with each and every injured or killed service member. American soldiers are coming home with not only their own injuries, but with stories of lost friends and the carnage these weap



have been spent on treating those who have been injured by IEDs.<sup>155</sup> More troubling is the fact that these numbers do not include the cost of treating this generation of soldiers for the years to come, which has been estimated to reach into the trillions of dollars.<sup>156</sup>

A few years ago the organization [STOPLANDMINES.ORG](http://STOPLANDMINES.ORG) released a powerful video dealing with this issue.<sup>157</sup> The video starts

The message of the video is simple and powerful: Americans would be much more concerned with the eradication of landmines if we were personally touched by them.<sup>161</sup> But America *has* been touched by mines. It may not be in our suburbs, but our sons and daughters face devices much like the one demonstrated in the video in Iraq and Afghanistan. The video is correct in assuming personal contact would change the American public's mentality toward landmines. Indeed, the IED threat has been on the minds of the media, politicians, and the military since the wars in Iraq and Afghanistan started.<sup>162</sup> These devices have been referred to as "cowardly"<sup>163</sup> and "barbaric."<sup>164</sup> Yet the United States still has failed to join the treaty that would ban these weapons.<sup>165</sup> This is true despite the fact that most experts in this area agree that to do so would provide significant moral legitimacy to the United States.<sup>166</sup>

lives because “[h]e saw the bigger picture, the long-term humanitarian implications, and thanks in part to his leadership, chemical weapons, which the War Department had called ‘the most effective weapon history has ever known,’ were stigmatized and have hardly been used since.”<sup>169</sup>





have to exist to prevent war.<sup>184</sup> Would the United States have fought a war with the Soviet Union if there was not a nuclear option? If the answer is “yes,” then beyond question the war would have had casualties in the millions. Thus nuclear weapons, from a certain point of view, through the doctrine of mutual destruction are necessary.<sup>185</sup>

James Barlow is the Director of the James Madison University Mine Action Information Center and was interviewed by this author on this subject.<sup>186</sup> According to Director Barlow, in order for a weapon system to be a “military necessity” in today’s war, the military benefit has to outweigh the negative humanitarian effects.<sup>187</sup> For instance, anti-tank mines are necessary because they allow the Army to “channel armored vehicles on the battle field, preventing them from overrunning smaller lighter [formations]—this is a strategic need.”<sup>188</sup> APLs, on the other hand, are really only effective at preventing very small elements, a platoon for example, from being overrun.<sup>189</sup> While this might seem like a necessity for the platoon leader on the ground, it is a tactical decision; landmines do not serve the larger need and are thus not “effective at serving the strategic need.”<sup>190</sup>

Director Barlow went on to cite Korea as an example of the faulty arguments underlying the claim that landmines are a “military necessity.”<sup>191</sup> Specifically, Director Barlow pointed out that when he was working at the Pentagon, there was some support for the Ottawa Treaty when the landmine debate started.<sup>192</sup> It was not until “the U.S.

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184. Peter Weiss, *Nuclear Weapons and Preventive War*, GLOBAL POL’Y

commander in Korea declared ‘I need them,’ that both the White House and the Pentagon backed off” because the administration did not want to look like it was overruling an on-the-ground commander.<sup>193</sup> Since then, the Pentagon has argued strenuously that these weapons are a “military necessity,” and as Director Barlow illustrated above, the U.S. position is that APLs can be used for force projection of small units.<sup>194</sup> Specifically,

a small American unit is on an objective. They are facing an aggressor, a large-sized aggressor, and there are no reinforcements yet. You can place a minefield . . . between our people and the aggressor to slow [them] down . . . . If you have smaller forces, reduced forces, you can use mines to protect [the] flank in the absence of another battalion . . . You can also use them to shape the battlefield.<sup>195</sup>

However, that APLs are effective at the small-unit tactical level is the very reason they are used primarily used in civil conflicts by guerrilla, insurgent, and terrorist groups.<sup>196</sup> Therefore, just as Director Barlow argued, “[m]any analysts believe that, in fact, landmines do not win wars and are not at all essential to national security [because] their micro-utility [cannot] be justified in light of their macro-costs.”<sup>197</sup>

Senator Leahy has argued for twenty years that the military-necessity argument is without merit. Leahy contends that, as seen in the United States’ two wars in Iraq and Afghanistan, civilians are often the victims of landmines.<sup>198</sup> Furthermore, these civilians do not

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193. *Id.*

194. Matthew & Rutherford, *supra* note 95, at 27.

195. *Id.*

196. *Id.* at 29. “A 1996 study by the ICRC, for example, concluded that APLs have some tactical value but provide no strategic advantage.” *Id.* Press Release, Office of U.S. Senator Patrick Leahy, Statement Of Sen. Patrick Leahy On The Victim-Activated Landmine Abolition Act Of 2006 (Aug. 1, 2006), *available at* <http://leahy.senate.gov/press/200608/080106a.html> (stating that “mines continue to be a

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our own mines.”<sup>204</sup> The primary reason that he did not sign the Treaty was because it was “unfair to the United States and to our Korean allies in meeting our responsibilities along the DMZ in South Korea.”<sup>205</sup> At the same time it must have been understood by the Clinton administration that while the United States was supporting one ally by not joining the Treaty, it was also alienating many more.<sup>206</sup>

Particularly in Iraq and Afghanistan, would joining the treaty today make soldiers safer tomorrow? If the way to measure safety is the number of IED attacks, the answer is probably “no.” However, there has been much turmoil concerning the lack of international support for war in Iraq, and this lack of support was a major contributing factor to difficulties seen there.<sup>207</sup> This might seem like a disingenuous question because one can never know if the United States would have received more international support in Iraq, and even Afghanistan, if it had joined the Ottawa Treaty or other popular international treaties for that matter. Traditionally, the United States of America has been viewed among its allies as a virtuous country, but we have lost some of our prestige because of our position on landmines.<sup>208</sup>

Moreover, one provision of the Treaty provides that “[e]ach State Party undertakes never under any circumstances [to] . . . assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.” Consequently, many signing states have

Director Barlow, when describing the allies of the United States and their reaction to the U.S. refusal to join the Treaty, said that “[w]e have dismayed our allies with this, and maybe we deserve the criticism a little. However, we have been demonized on this issue—accus[ed] of exclusivity, exceptionalism, typical American superiority, and just being indifferent.”<sup>210</sup> As a result of the United States’ refusal, some nations have “been downright rude” to American representatives.<sup>211</sup> Director Barlow recounted an incident where the American Ambassador was forced to leave the floor of a review conference by the Norwegian Ambassador—the latter accusing the United States of not paying for the right to be there.<sup>212</sup> Yet national security decisions should not be made based on whether other nations will have opportunities to embarrass us. Director Barlow believes the United States, having “left ourselves out of the discussion,” has thus limited its influence in this area.<sup>213</sup> “We were the leaders in this area, [but now

military value outweighs humanitarian implications.<sup>215</sup> Critics argue that this position is undermined by the very fact that the only place the United States deploys mines is in Korea.<sup>216</sup> The current landmines in the United States' arsenal were designed with the Soviet tank and infantry in mind,<sup>217</sup> a military scenario that is now unlikely to occur. Thus, proponents of the landmine ban argue that, apart from the Korean peninsula, the United States' policy not to join the ban is based on Cold War doctrine.<sup>218</sup>

However, what this argument totally fails to recognize is that while it is true that landmines have very little utility in today's environment, it is the next war that planners at the Pentagon are worried about. It has only been in the past few years that the United States moved away from basing its plans on Soviet hordes and started to transform the military to fight "low intensity" peace keeping conflicts.<sup>219</sup> It was not until September 11, 2001, and the subsequent wars, that the military prepared for the "new types" of wars.<sup>220</sup> This will be true in the future as well—the United States will not be able to predict type of war it will have to fight. According to some military experts, banning mines in front lines or in border wars would be imprudent.<sup>221</sup> Some experts predict that mine technology will actually become more important as nations attempt to move faster, over larger distances, with fewer men.<sup>222</sup>

On President Clinton's last day in office he urged the incoming President, George W. Bush, to take the necessary steps "to enable the United States to eventually join the Ottawa Convention. . . ."<sup>223</sup> The

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215. See DANIEL ROBERT DECHAIINE, *GLOBAL HUMANITARIANISM: NGOs AND THE CRAFTING OF COMMUNITY* 135 (2005). Ultimately that use of landmines is based on the belief that these weapons are essential and of a high military value, which outweighs their human cost. *Id.* "The U.S. government, for example, continues to frame the issue as one of political strategy, basing its refusal to sign the Min40.1(e)-13.7(-12.3(i)n Tr)-5.2(i)gy.1(e)-1y e Mgo.1(e)-1m0.1(e)-13.7.125gy.1(e)-1 APter

word “enable” was used because President Clinton supported Ottawa Protocol but ultimately could not join the Treaty.<sup>224</sup> Specifically, the Clinton administration pledged to join the Treaty if the Pentagon could identify an alternative to the anti-personnel mines that are currently protecting the South Korean border.<sup>225</sup>

The military has spent well over \$100 million on finding an alternative, focusing on a Remote Area Denial Artillery Munition (RADAM), which may not even technically comply with the treaty because the artillery salvo was designed to be triggered by the proximity of the enemy.<sup>226</sup> The other alternative system was built around a Man-in-the-Loop concept, “which is a mine triggered by [a gunner with a] remote control and thereby permitted under the treaty.”<sup>227</sup> Making an alternative to simple APLs is proving to be very difficult and expensive.<sup>228</sup> This is especially frustrating for the United States when one considers that its currently stocked mines are effective and cheap. Also, the United States’ military does not use mines in the method that has caused the most concern—laying them in civilian areas or not recovering them after the conflict is over.

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where landmines are particularly valuable to national security.<sup>231</sup> The United States' "refusal to join thus remains unexceptional even when assessed within the confines of the Convention itself. Of the thirty-nine countries that have not joined the Convention, most could identify a particular border which they believed necessitated the use of landmines."<sup>232</sup> Conversely, the states that have joined the Treaty had to give up very little in terms of military concessions.<sup>233</sup> Director Barlow echoes this sentiment, remarking that "it is easy for Denmark and Norway to join this treaty, they don't have the military responsibility that we do—it is our job, whether they like it or not. These countries complain about us not joining but are very content under the U.S. umbrella of protection that we provide."<sup>234</sup> Thus, the "pro- and the anti-countries are being divided into those which consider hostilities possible in the future and those that feel secure."<sup>235</sup> Consequently, critics of the Ottawa Treaty claim that while its goals are laudable, the agreement represents a mere parchment of pacification.<sup>236</sup> These critics argue that the Treaty encourages a "false sense of security" and also that claims that the Ottawa Treaty has reduced landmine injuries are exaggerated.<sup>237</sup>

In addition, the United States argues that it has a legal obligation to protect Korea pursuant to the 1953 Mutual Defense Treaty, and question whether, if landmines are the most effective waaaar, a

arrogance.<sup>240</sup> The United States responds that as the world's only superpower, the United States is "subject to demands and challenges that other countries never face and cannot understand. Because of this the US expects at times to stand apart from the rest of the world."<sup>241</sup> In fact "[t]his image might actually have a potent unifying

eyes by leading on this issue and advocating for changes in the Treaty that make it more consistent with its underlying goals.

The first thing that must be changed is the loophole on anti-tampering devices. Specifically, under Article II of the Ottawa Treaty “[m]ines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”<sup>246</sup> Coupled with the definition of anti-handling devices are devices “intended to protect a mine and which is part of, linked to, attached to, or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.” The Treaty has allowed free reign on APLs so long as they are “designed” to detonate when a vehicle or person disturbs it—by, for example, exerting pressure on it, just like a normal APL.<sup>247</sup> Essentially, this clause allows APLs by labeling them anti-tampering devices. Director Barlow suggested that if the United







