Spring 1995

The United Nations Response to the Crisis of Landmines in the Developing World

Kenneth Anderson

VOLUME 36, NUMBER 2, SPRING 1995

The United Nations Response to the Crisis of Landmines in the Developing World

Kenneth Anderson*
Monica Schurtman**

I. INTRODUCTION

Although the United Nations has frequently been criticized for responding too slowly to problems in the developing world, it can take pride in having been among the first to recognize the crisis of antipersonnel landmines. Ever since the issue was first raised in 1992 by the International Committee of the Red Cross, key actors at the United Nations—including the Secretary General and other senior executives in the departments of Peacekeeping, Humanitarian Affairs, the High Commissioner on Refugees, and UNICEF—have been forthright on the need to take action against this problem.[1] The brief but specific mention of landmines in the Secretary General's 1992 *Agenda for Peace* served as an early—but hardly premature—wake-up call to the world that the problem of landmines was out of control.[2] These U.N. organs deserve credit for helping to identify and bring to public attention an issue of such importance to the developing world.

The United Nations' work has been undertaken in conjunction with the efforts of various governments and a worldwide campaign by a coalition of nongovernmental organizations. Still, it is too early to say if any of this will lead to effective controls on the spread of landmines,

* General counsel, Soros Foundations, New York, and John Harvey Gregory Lecturer on World Organization, Harvard Law School; formerly director of the Human Rights Watch Arms Project.

** Member, clinical law faculty, and co-director, Human Rights Clinic, St. Mary's University Law School, San Antonio, Texas; formerly counsel to the Human Rights Watch Arms Project. Mr. Anderson and Ms. Schurtman were two principal editors of HUMAN RIGHTS WATCH ARMS PROJECT AND PHYSICIANS FOR HUMAN RIGHTS, LANDMINES: A DEADLY LEGACY (Kenneth Anderson et al. eds., 1993).

1. As used in this discussion, the term "landmines" refers solely to antipersonnel landmines, rather than anti-vehicle and anti-tank landmines and sea mines. These non-antipersonnel mines pose risks of their own that are not addressed here.

2. *Report of the Secretary General: Agenda for Peace*, U.N. GAOR, 47th Sess., U.N. Doc. A/47/277 (1992).

or to widespread removal of mines already in place. Current discussions and proposals seem likely to result at best in half-measures that will salve the consciences of leading nations without actually doing anything about the problem. Yet the landmines issue has been raised in many diverse settings, including diplomatic conferences, U.N. bodies and agencies, legislative and executive branches of national governments, the world's militaries (both regular and irregular), arms exporters (both private and state-owned), the media, and the worldwide public. Landmines are, if nothing else, the subject of intense international discussion.

Policy proposals for solving the landmines crisis are equally wide-ranging. The major options include: doing nothing; attempting to remove mines from severely mined zones (without necessarily addressing the problem of supply); strengthening existing international law governing the "proper" use of mines in warfare; creating an international export control regime focused on supply; employing technological "fixes" to lessen the risk posed by mines by neutralizing their time delay mechanisms; and imposing a complete ban on production, stockpiling, transfer, and use of landmines.

The purpose of this Symposium Article is to show briefly how and why landmines are a crisis in the developing world, sketch out the various responses of the United Nations and other actors, and assess whether these responses are likely to alleviate the problem. Our reluctant conclusion, as participants in the non-governmental organizations' campaign on landmines, is that current "official" efforts to solve the problem—both by the U.N. and by various sovereign actors—will be largely unsuccessful, regardless of the many good intentions put down on paper. We urge, as does the Secretary General, that a complete ban on the production, stockpiling, transfer, and use of landmines be imposed as soon as practicable, and we hope to address in passing why this proposal does not partake of hopeless utopianism.

II. THE LANDMINES CRISIS

The developing world is beset with so many serious problems that it is fair to ask why landmines constitute a crisis of sufficient urgency to be placed ahead of other dilemmas in the affected regions.[3] Cambo-

3. The background discussion on landmines in this section is drawn from and consistent with the following standard sources on landmines: HUMAN RIGHTS WATCH AND PHYSICIANS FOR HUMAN RIGHTS, LANDMINES: A DEADLY LEGACY (Kenneth Anderson et al. eds., 1993) [hereinafter DEADLY LEGACY]; CLEARING THE FIELDS: SOLUTIONS TO THE GLOBAL LAND MINES CRISIS (Kevin M. Cahill ed., 1995) [hereinafter CLEARING THE FIELDS]; BUREAU OF POLITICAL-MILITARY AFFAIRS, U.S. DEP'T OF STATE, HIDDEN KILLERS: THE GLOBAL PROBLEM WITH UNCLEARED LANDMINES (1993) [hereinafter HIDDEN KILLERS I]; BUREAU OF POLITICAL-MILITARY AFFAIRS, U.S. DEP'T OF STATE, HIDDEN KILLERS: THE GLOBAL PROBLEM WITH UN-

dia and Afghanistan have become the best-known cases of landmine infestation, and it is sometimes thought that these two countries represent the bulk of the tragedy, but this is a grave misconception. Landmines are already a problem in about sixty countries, and a severe problem in about twenty of these, as measured by the extent of the threat they pose to daily activities.[4] These countries are located mostly in the developing world, and include some of the world's poorest nations. The region with the largest concentration of mines is Africa; eighteen countries in Africa have some 18–30 million mines.[5] The United Nations estimates that there may be as many as 200 million landmines emplaced in at least sixty-two countries worldwide.[6]

Moreover, landmines infestation is growing in many countries around the world, in some places at a frightening rate. Rwanda, for example, has witnessed the development of an extremely serious landmines problem in just the last few years.[7] In a newly updated survey of the extent of the landmines problem, appropriately titled *Hidden Killers*, the U.S. State Department has recently emphasized that the worldwide problem is getting worse.[8] Not only is the absolute number of emplaced landmines increasing, but some commentators believe (notwithstanding the difficulty in obtaining reliable data) that emplacement is occurring at an accelerating rate across an ever more diverse range of countries.[9] As the number of internal wars (where landmine use is often highly prevalent) increases around the globe, this trend is becoming more and more pronounced.[10]

Landmines kill and maim a significant number of people each year. In *Hidden Killers II*, the U.S. State Department estimated that 500

CLEARED LANDMINES (1994) [hereinafter HIDDEN KILLERS II]; and Boutros Boutros-Ghali, *The Landmine Crisis: A Humanitarian Disaster*, FOREIGN AFF., Sept.-Oct. 1994, at 8. Several of these publications, such as DEADLY LEGACY, contain extensive bibliographies of literature on landmines, both general and specialized.

4. The most severely affected countries and regions at present are: Afghanistan, Angola, Burma, Cambodia, Chad, Eritrea, Ethiopia, the Falkland Islands, Georgia, Iran, Iraq (especially Iraqi Kurdistan), Kuwait, Mozambique, Nagorno-Karabakh, Nicaragua, Rwanda, Somalia, Sudan, Thailand, Vietnam, Western Sahara, and the former Yugoslavia (Bosnia, Croatia, and Serbia). Kenneth Anderson, *An Overview of the Global Landmines Crisis*, *in* CLEARING THE FIELDS, *supra* note 3, at 17, 214 n.4. This list will certainly shift over time as mining activities change and as more information is gathered. It should be noted that as landmines studies have only systematically taken place since about 1992, figures of emplacement and injury, as well as production and export figures, are constantly being revised, generally upwards. Many of the research groups, such as Human Rights Watch, periodically will publish updates with more recent figures; it is more likely than not that figures in this Article that are current for 1995 will have been revised within one to two years.

5. *Id.* at 18.

6. DEADLY LEGACY, *supra* note 3, at 3 & n.2.

7. HIDDEN KILLERS II, *supra* note 3, at 16.

8. HIDDEN KILLERS II, *supra* note 3, at v.

9. HIDDEN KILLERS II, *supra* note 3, at 1.

10. Anderson, *supra* note 4, at 19.

people are killed or maimed each week by landmines.[11] It appears that a sizable majority of the victims are civilians, including many children.

Yet these 25,000 annual victims of landmine explosions, while disheartening, do not even represent the whole picture. The true crisis lies in the secondary effects of mines. Solving the landmines problem is often a precondition, sometimes a nearly insurmountable one, to solving many other problems of a developing country seeking to move forward in the aftermath of armed conflict.[12]

The social and economic cost to a developing country of having a large number of amputees and other disabled victims of landmines is staggering. Developing countries tend to be agricultural societies where life is already at the margin; landmine victims will rarely be economically productive, and the resulting drag on production and investment in societies seeking to promote ordinary economic activities after wartime is immense and debilitating.

In areas that have some health care facilities, the burden of treating mine victims often swamps their capabilities. Indeed, the attention of the International Committee of the Red Cross was first drawn to landmines by its war surgeons operating in the field, who were becoming alarmed and disgusted by the ever-increasing number of civilian mine victims arriving in their field hospitals.[13] A mine amputation is expensive and difficult; the nature of the wound caused by stepping on a mine, which tends to drive infectious material high up into the leg, often requires not one, but a whole series of ever-higher amputations.[14] In an ideal setting, these operations would be followed by physical therapy and prosthetic devices. But in poorer countries, "rehabilitation for what?" remains a real question for those who must allocate scarce resources for social services.

Yet this is only the first ripple in the interconnected costs of landmines. Nearly all the wars of the developing world leave significant numbers of refugees, who must return home in order to make a functioning peace and a functioning post-war society. Emplacement of mines on their land can render this return impossible. But even when they do return home, refugees are often unable to recommence farming activities because of the risks of mines. Returning refugees thus become a drain on food supplies when they otherwise might soon become self-sufficient and be able to provide a surplus to help feed others.

---

11. HIDDEN KILLERS II, *supra* note 3, at 2.

12. *See generally* DEADLY LEGACY, *supra* note 3, at 117.

13. Interviews with International Committee of the Red Cross staff members, in Geneva, Switzerland (1992).

14. *See generally* Robin Coupland & A. Korver, *Injuries from Antipersonnel Landmines: The Experience of the International Committee of the Red Cross*, 303 BRIT. MED. J. 1509 (1991) *reprinted in* DEADLY LEGACY, *supra* note 3, at 433.

Experience by demining workers in the developing world has shown that it does not take very many landmines in agricultural zones to frighten farmers from bringing all but minimal acreage back into production.[15] Landmines, in this regard, are a perfect terror weapon: because they are unseen, they could be anywhere, even where they are not. Thus, even a few mines can have great effects; in military jargon, concealed mines become a "force multiplier."

Landmines have these effects because they are delayed-action weapons that do not require an operator to detonate. A landmine left by combatants remains live, often for decades; it does not cease operating just because the battle is over, or because combat is over in a given locality, or because the war is over. A landmine is a "silent sentinel" that never sleeps and is always on alert; unlike a rifleman, however, it "cannot distinguish between the footfall of a soldier and that of an old woman gathering firewood."[16]

These insidious features have always been characteristic of landmines, including those used in the First and Second World Wars. Since the 1970s, though, First World armies have developed the technological capability to deliver staggering amounts of landmines by such "remote delivery systems" as aircraft and artillery shell.[17] These systems permit landmines to be seeded over many kilometers in vast quantities—what might have taken a World War II platoon all day to emplace by hand can now be done from the air within seconds.[18] These mine-laying systems contaminate whole zones, and do not allow for mapping of individual mine locations.[19]

But the vast majority of mines used during the past fifteen years—accounting for most of the world's 100 million or so currently emplaced mines—have been ordinary mines hand-deployed by guerrilla and counterinsurgency armies.[20] These armies have found a cheap, reliable, endlessly available weapon and have recognized that it is ideal not only for perimeter control, but also as a weapon for attacking whole civilian populations. Mines have become useful for driving civilians off the land, for destroying agricultural infrastructure, and for creating flows of refugees—in effect, turning vast areas of countryside into battlefields where civilians are the targets.

---

15. *See* DEADLY LEGACY, *supra* note 3, at 132–34.

16. DEADLY LEGACY, *supra* note 3, at 3.

17. Richard H. Johnson, *Why Mines? A Military Perspective*, *in* CLEARING THE FIELDS, *supra* note 3, at 32–34; DEADLY LEGACY, *supra* note 3, at 26–27

18. *See* DEADLY LEGACY, *supra* note 3, at 26–27.

19. *See id.* at 26–27.

20. Paul J. Lightfoot, Comment, *Comment: The Impending Failure of the Landmine Review Conference*, 18 FORDHAM INT'L L.J. 1596, 1528–29 (1995).

Thus, landmines are no longer limited to tactical use on the battlefield; in developing countries, they have come to be employed more as strategic weapons in the classic sense—not unlike better-known weapons of mass destruction like nuclear arms. If key features of such weapons include devastating large areas, targeting civilian populations, and damaging the land for long periods of time, then landmines can be regarded essentially as weapons of mass destruction that work *in slow motion*.[21]

The conversion of landmines from tactical uses to quasi-strategic uses has largely resulted from their increased *commodification*. Although mines can be manufactured with relatively low technology, only a small percentage of the mines in use in the world today are built locally.[22] Recent research into landmine production and trade indicates that the increase in the number of emplaced mines over the last fifteen years has depended crucially on the availability of ample stocks on the open market at prices low enough that combatants need not worry much about supply or cost when deciding to deploy them.[23] The landmines crisis, in other words, is created as much by supply and export as it is by use. Indeed, it has become apparent that no solution on the "consumption" or "user" side alone—whether international legal rules on "proper" use of mines by combatants, or de-mining operations after the fact—can conceivably substitute for the controls needed on the "supply" side.

Thus, the use of landmines has become a crisis in the developing world for several interlocking reasons. First, they are widespread and increasing in both absolute number and rate of emplacement. Second, they are an obstacle to solving many other agricultural, refugee, resettlement, economic, health, and environmental problems in developing countries affected by armed conflict. Third, removing these mines is an expensive precondition of development: though an average, low-technology mine costs between three and twenty dollars, the removal of such mines, according to current United Nations estimates, runs from 300 to 1,000 dollars *per mine*.[24] At such costs, entire foreign aid

---

21. DEADLY LEGACY, *supra* note 3, at 11–12.

22. *See* Anderson, *supra* note 4, at 21 ("While it is true that unsophisticated mines can be made locally by virtually any combatant, . . . [f]ew of the combatants in today's wars make their own mines in any but minor circumstances . . . .").

23. *See* DEADLY LEGACY, *supra* note 3, at 35–106.

24. HIDDEN KILLERS II, *supra* note 3, at 1; DEADLY LEGACY, *supra* note 3, at 251. If the above figure seems as astonishing as it is alarming, it should be borne in mind that it is based on the full cost of U.N. demining programs in Afghanistan and Cambodia, and is intended to capture the full indirect costs of mine clearance. These include transportation, training, at least rudimentary medivac operations, and a host of other "hidden" costs. These costs must be internalized to produce an accurate estimate of clearance costs. It is likely that if clearance were undertaken on a much broader basis worldwide, certain recurring costs, particularly in centralized

budgets could be eaten up without even beginning to solve the problem.

Demining is slow and dangerous, because it usually requires a person with a prod to move centimeter by centimeter through the soil.[25] Few experts believe that technological advances will drastically improve the pace of de-mining efforts anytime soon, though there are surely improvements to be made in mine detection technology. Most mine detection has progressed little beyond the basic metal detector, which has become less useful as mines are made with lower and lower metal content. The costs of de-mining are likely to remain huge, when such operations are undertaken at all, because progress is measured not in square kilometers, but in square meters.

III. CURRENT EFFORTS TO SOLVE THE LANDMINES PROBLEM

Efforts to deal with the calamity of landmines can be divided into "front-end" or "supply-side" proposals, which attempt to regulate the supply, availability, and cost of mines, and "back-end" or "end-user" proposals concerned both with the ways mines are used in conflict zones, and with post-conflict demining.

A. Humanitarian Mine Clearance

With regard to the roughly 100 million mines already emplaced, there is no alternative to undertaking the process of demining, especially in places that are infested with them, such as Cambodia, Afghanistan, Angola, or Iraqi Kurdistan. One immediate difficulty, of course, is that in several of these places, armed conflict continues, and areas that have been demined at vast cost are often remined by combatants. Even when there exists a reasonable certainty that fighting is over for the time being, cost and the limitations of equipment ensure that demining will be a long-running activity. Calls have been made in the United Nations for the establishment of an international fund for humanitarian mine clearance, and the United States in the past has shown some willingness to contribute unilaterally to such efforts,[26]

---

infrastructure, would fall. On the other hand, the possibilities for bringing costs down through economies of scale are relatively limited, because "production"—i.e., mine clearance—is never a centrally located activity: it always takes place in vastly varied conditions, each with its own special "cost centers." The economics of mine clearance has been an unfortunately understudied topic to date.

25. DEADLY LEGACY, *supra* note 3, at 237.

26. Thomas E. McNamara, *The U.S. Approach Toward Land Mines*, *in* CLEARING THE FIELDS, *supra* note 3, at 60, 62–63, Cyrus Vance & Herbert S. Okun, *Eliminating the Threat of Landmines*, *in id.* at 198, 202–05.

though future contributions are in doubt given the 1994 U.S. Congressional election results. But the general consensus is that demining, while vitally necessary, can never be enough to control an expanding problem.

B. New Restraints on Use and the Landmines Protocol

Another focus of attempts to control the spread of mines through end-use restrictions is the so-called "Landmines Protocol"—Protocol II of the 1980 Convention on Conventional Weapons.[27] This is the only international treaty specifically addressing landmines, and it has never been widely accepted (the United States, for example, has failed to ratify it). The Landmines Protocol by its terms came up for review on its tenth anniversary, and an international conference is being planned for this autumn at which various amendments to the Protocol (as well as to the Convention as a whole) will be debated. The formal review conference is being preceded by a series of experts' meetings during 1994 and 1995.[28]

The current Landmines Protocol is widely acknowledged to be a very weak document.[29] Parts of it appear to give even less protection to civilians than the general laws of war as contained in, for example, 1977 Additional Protocol I.[30] The Landmines Protocol attempts to provide modest guidance to military forces in the "responsible" use of landmines, but even this is almost completely swallowed up by its deference to military necessity. Also, by its terms the Protocol does not apply to internal wars, but only to international armed conflicts.[31]

Despite widespread agreement that the Landmines Protocol has been a resounding failure, the upcoming Review Conference seems to be

---

27. Protocol on Prohibitions or Restrictions on the use of Mines, Booby-Traps and Other Devices (Protocol II) of 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, *opened for signature* April 10, 1981, 1342 U.N.T.S. 137, 19 I.L.M. 1523.

28. For a comprehensive examination of the Review Conference and its limitations, see generally Lightfoot, *supra* note 20.

29. *See, e.g.*, W. Hays Parks, *The Humanitarian Law Outlook*, *in* CLEARING THE FIELDS, *supra* note 3, at 45, 58 ("much can be done to make the Landmines Protocol better").

30. For example, the Landmines Protocol's limitations on indiscriminate use of landmines appear to be inconsistent with and far weaker than the general prohibition on indiscriminate attack found in article 51 of 1977 Additional Protocol I, which (unlike the Landmines Protocol) makes clear that an "attack" by landmines includes accidental detonations by civilians after the immediate battle is ended. *See* discussion in DEADLY LEGACY, *supra* note 3, at 286–91. Understood in this way, article 51's prohibition on indiscriminate attacks include a prohibition on such accidental, post-war "attacks" on civilians, whereas nothing in the Landmines Protocol contemplates such. *See* DEADLY LEGACY, *supra* note 3, at 306–10.

31. *See* 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, art. 1. DEADLY LEGACY, *supra* note 3, app. 3. The Landmines Protocol, Protocol II, is covered by the Convention's "scope of application."

headed down a similar road, judging by the proceedings of its experts' meetings. The Review Conference appears to be repeating many of the same mistakes that the original drafters of the Landmines Protocol committed in the 1970s. Chief among these is the notion that the landmines crisis can be overcome through legal measures prescribing "proper" and "improper" uses of mines. Ten years after the Landmines Protocol entered into force, the inadequacy of this regulatory approach is plain. Nevertheless, under pressure from the world's militaries, who repeatedly claim that they cannot function without mines, the Review Conference appears unwilling at this date to contemplate anything beyond tinkering with the rules for landmine use.[32] Given its current trajectory, the Conference will likely do little more than extend an inadequate and unworkable set of rules to cover internal wars. Ten years from now, when the revised Landmines Protocol again comes up for review, the landmines crisis could well be beyond any real control, for the sheer accumulation of mines in the developing world may dwarf any attempts at cleanup.

C. Technological "Fixes" and Self-Neutralizing Mines

Many military technologists, including those who genuinely desire a solution to the mines crisis, have urged that because (1) militaries, regular and irregular, will not give up mines and (2) no rules on use will constrain illegal use, the best solution to the crisis is a change in technology to alter the nature of mines. If the main problem of mines is that they remain live in the field year after year, decade after decade, then an obvious option is to furnish the market with mines that contain devices to either "self-destruct" the mine or "self-neutralize" it after a given amount of time has passed.[33]

This proposal has attractive features, and the world would likely be better off if the mines deployed had these features. On the other hand, there are several reasons why the "self-neutralizing" option alone cannot solve the mines crisis. First, it has not yet been persuasively shown that the self-neutralizing mechanisms work sufficiently well to relieve

---

32. For the attitudes of the world's militaries towards mines, see International Committee of the Red Cross, *Report of the International Committee of the Red Cross for the Review Conference of 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* (I.C.R.C.: Geneva 1994) [hereinafter *ICRC Review Conference Report*], Annex II, summarizing meetings held with military experts to obtain their views on the military necessity of mines. The conventional wisdom that landmines are vital to military forces has been challenged repeatedly, including by a U.S. study conducted by outside consultants. *See* Lightfoot, *supra* note 20, at 1531 n.42.

33. *See* DEADLY LEGACY, *supra* note 3, at 344–46.

the problem; this point is hotly debated between military engineers and demining experts.[34]

Second, and probably more important, it is far from clear that developing world countries are interested in self-neutralizing landmines; many of them want long-emplaced mines for a variety of military reasons. Many developing world countries are engaged in long-term counterinsurgency wars in which landmines are purposely deployed for use over years. Moreover, many developing world countries use landmines as permanent defensive fields for military installations in the field. They have little interest in, for example, NATO military doctrine in which landmines are deemed hazardous rather than useful after just a few days.

Third and most important, self-neutralizing mines are more expensive than ordinary mines, as they often contain sophisticated microchip technology. Developing countries naturally worry about increased costs; also, many countries with local arms industries see the attempt to impose a global standard of self-neutralizing mines as a way for the First World to undercut their arms markets. In this view, the First World will likely seek to use the new standard as a ploy to regain market share, exploiting its advantage in technology to overcome the developing world's advantage of cheap labor in the market for landmines.[35]

D. National Moratoria on Production or Export

A gradually increasing number of countries are seeking to get ahead of the slow pace of multilateral processes by enacting national moratoria on the production of landmines, the export of landmines, or both. This approach has the virtue of recognizing the need to attack the landmines problem from the "supply" end as well as the "use" end. The United States was one of the first to adopt an export moratorium in 1992; other countries, such as Belgium, have gone further and enacted bans on production.[36]

These national moratoria are of great importance, even though in most cases they have been undertaken by countries that were not active players in the export market to begin with. (Italy and South Africa are two prominent exceptions to this rule.) The fact that NATO states have voluntarily restricted flows of the weapon gives them far greater

34. *Id.*

35. *Id.* at 346.

36. DEADLY LEGACY, *supra* note 3, at 319–31. Since publication of DEADLY LEGACY, other countries such as Italy, Sweden, and South Africa have undertaken moratoria of one kind or the other; Human Rights Watch serves as a clearing house for information on these measures on a current basis.

moral status to encourage international measures to do the same. On the other hand, developing countries that do have significant mines exports—among them, Brazil, Chile, Egypt, Pakistan, and Singapore—have shown little appetite so far for curbing exports through national moratoria.[37]

E. International Export Control

Another supply side approach to the problem would be to seek an international export control regime, modelled to some degree on the relatively successful missile technology export control regime. The United States has been a particular champion of this approach; many of its chief actors on landmines questions, both in the State Department and the Pentagon, believe that this and other arms control approaches will ultimately bear far greater fruit than the existing laws-of-war approaches that emphasize controls on use.[38]

This attention to supply-side measures is certainly welcome. It is doubtful, however, that an international export control regime can be successfully modelled on the missile technology regime. Unlike missile technology, landmine technology is freely and widely available. The missile technology control regime has succeeded because only the members of the "club" possess the requisite technology to build missiles. These countries can admonish others to "Do as I say, not as I do," since they control the necessary means. The regime can only function because of the difficulties of acquiring the technology to join the missile "club."

With landmines, no such exclusive "club" is possible, because most countries already have the technology needed to produce landmines. The United States is, in effect, proposing that it and its allies should be allowed to have landmines, because they will use them "responsibly," whereas other armies will not, and therefore should not have landmines. But the "Do as I say, not as I do" maxim cannot serve here, because everyone already has the weapons and the ability to make them.

To break this impasse, the United States should take the moral high ground by halting landmine production and divesting itself of its remaining stocks. A resolute stand of this kind would demonstrate moral leadership, and convince other countries to join the ban. Without such a measure, it is doubtful that any export control regime can hope to succeed.

---

37. *See* DEADLY LEGACY, *supra* note 3, at 104.
38. *See* CLEARING THE FIELDS, *supra* note 3, at 60–65, 87–96.

F. An International Ban

The international campaign to ban landmines advocates a complete ban on use as well as supply—in other words, an absolute prohibition on production, stockpiling, transfer and use.[39] This has been endorsed as an ultimate goal by the International Committee of the Red Cross, the Secretary General of the United Nations, and numerous editorialists. It has not, however, gathered significant momentum among states, either because they consider it unrealistic, or because of opposition from their own militaries.

The call to ban landmines outright can be criticized as utopian in the worst possible way, as an exercise that diverts attention from more serious and realistic attempts at control. This is not an unreasonable criticism; reform initiatives in international law have often turned out to be purely paper exercises. Nonetheless, in the case of landmines, the push for a comprehensive ban is by far the most sensible policy alternative.

First, it is apparent that the other extant approaches, whether supply-side or user-side, each have serious weaknesses. Whether singly or together they are capable of resolving the crisis is at best a serious question.

Second, seeking a comprehensive ban is not inconsistent with any of the other approaches if they are treated as interim measures toward a total ban. Indeed, they are worthy avenues to pursue in and of themselves.

Third, the nature of landmines is such that it is unlikely that they will be taken seriously in relation to the damage they cause unless the entire weapon is treated as *non grata*—stigmatized as a morally unacceptable weapon for all parties. It is not possible to morally stigmatize a whole weapon if it is considered acceptable for some combatants and not for others. Landmines should be treated like chemical and biological weapons, with the same moral disapproval attached, but this cannot happen except by means of a complete ban for all parties.

Fourth, the idea of a ban is not proposed as part of some utopian fantasy that landmines will no longer be made or traded or used in the world. Proponents of a total ban understand that even in the face of the best efforts to delegitimate the weapon, rogue countries will still sell and use landmines. But total compliance is not the issue. It is, instead, a matter of how most effectively to raise the cost of landmines to end-users in the field. A large part of what constitutes the "crisis" in landmines arises from the fact that they are a pure

39. *See* HANDICAP INTERNATIONAL, HUMAN RIGHTS WATCH ET AL., A JOINT CALL TO BAN ANTIPERSONNEL LANDMINES, *reprinted in* DEADLY LEGACY, *supra* note 3, at 361.

commodity—cheap and available to any combatant in limitless supply. Raising the price of landmines in order to force combatants to think about scarcity of resources is the realistic point of a ban.

No one knows how many participants can be persuaded out of the market for landmines. No one knows how many participants must drop out of the market in order that the remaining rogue participants will charge a perverse but critical premium for the product—one that monetizes the political cost of continuing to engage in a politically disapproved business and that begins to capture a quasi-monopoly premium. No one knows how high that premium must rise in order sufficiently to affect the price of mines so as to affect behavior of combatants. But that is just the point—no one knows the answers to these basic questions of how to affect the market for end-users of mines.

Whereas what is known is this: that raising the cost to end-users depends crucially on creating an international atmosphere of universal ill-will toward those who produce, stockpile, transfer, and use landmines. It is a proposition of morality, and the only way to make that clear and convincing to the world is to express it as a complete ban. measures short of that, although perhaps useful interim steps, cannot give a sufficiently strong moral and political message, and hence have no chance of imposing a sufficiently high cost to alter combatant behavior. This is not the counsel of utopianism, but realism.[40]

40. It is evident from the above where the authors' sympathies lie. We wish to acknowledge and thank our friends in the landmines ban campaign (many of whom are responsible for researching the most basic facts on landmines, their use, spread, cost, and market) and especially Stephen D. Goose, Aryeh Neier, and Jody Williams.