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**"THE GREAT PRETENSE -- THE CLINTON ADMINISTRATION
AND LAND MINES"**

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President Clinton to the United Nations General Assembly -- September, 1994

"And today I am proposing a first step toward the eventual elimination of a less visible but still deadly threat -- the world's 85 million anti-personnel land mines -- one for every 50 people on the face of the earth **I ask all nations to join with us and conclude an agreement to reduce the number and availability of those mines.** Ridding the world of those often hidden weapons will help to save the lives of tens of thousands of men and women and innocent children in the years to come "¹

President Clinton at the White House -- May, 1996

"Today **I am launching an international effort to ban anti-personnel land mines.** For decades, the world has been struck with horror at the devastation that land mines cause. Boys and girls at play, farmers tending their fields, ordinary travelers -- in all, more than 25,000 people a year are maimed or killed by mines left behind when wars ended. We must act so that the children of the world can walk without fear on the earth beneath them "²

President Clinton to the United Nations General Assembly -- September 1996

"Finally, we must end the carnage caused by anti-personnel land mines, the hidden killers that murder and maim more than 25,000 people a year. In May, I announced a series of actions the United States would take toward this goal. Today, **I renew my appeal for the swift negotiation of a worldwide ban on the use, stockpiling, production and transfer of anti-personnel land mines.** Our children deserve to walk the Earth in safety "³

Strong words! Or, are they? For the last decade people have watched as the world has struggled with the land mine problem. Concerned individuals have mounted a global campaign of immense proportions, diplomats have negotiated countless reams of text, and nations have contributed millions of dollars all to little or no effect -- land mines remain a global crisis.

Perhaps the rhetoric is much too strong, well out in front of political will. While President Clinton continues to espouse words linking the carnage of land mines to the safety of our children, at the same he time accepts the prevailing view of his senior military advisers, that

¹William J. Clinton, Speech before the United Nations General Assembly, 26 September 1994, Text provided by Bureau of Political Military Affairs, Department of State (emphasis added)

²"New U.S. Land Mine Policy," *Defense Issues*, Vol 11, Number 40, [article on-line], available from <http://www.dtic.mil/defense/links/pubs/di96/di1140.htm>, Internet, accessed 26 September 1996 (emphasis added)

³William J. Clinton, Speech before the United Nations General Assembly, 24 September 1996, [article on-line], available from <http://www.undp.org/missions/usa/clint1.htm>, Internet, accessed 21 March 1997 (emphasis added)

land mines remain an essential weapon of war and a ban would increase the risk to American uniformed men and women. It is time to drop the great pretense. It is time to openly and adequately debate the military necessity of land mines versus humanitarian concerns, and not limit the debate to a select few in the Department of Defense and the National Security Council.⁴ This paper is an attempt to re-open that debate. It will outline the issues and provide a bold policy prescription for a U.S. led solution to the global land mine crisis. Bold solutions are necessary because the U.S. cannot lead across the Bridge to the 21st Century by pretense. The U.S. must first lead by example, and then others will follow.

THE LAND MINE DEBATE

Today, and for the foreseeable future, the issue confronting the world community is the widespread illegitimate use of an otherwise legitimate, and as some believe, a necessary weapon that has caused unnecessary suffering of epidemic proportions to non-combatants. There are actually two separate problems. The first deals with the existing problem of laid mines, the second deals with the global trade in land mines -- the production, use, transfer, and stockpiling of land mines. Other than to describe the impact of land mines already in the ground, the problem of existing laid mines will not be addressed in this paper. Locating these mines poses a substantial technological challenge far different from current military breaching techniques through known mine fields. Instead, they require technologies to locate and destroy small numbers of mines left after a long-forgotten battle, set out on a perimeter by small patrols making camp, deliberately placed to drive civilians from an area, or even those washed from the

⁴When Ambassador Madeleine Albright traveled to Angola in early 1996, she was deeply moved by the large number of children she had seen who had lost limbs in land mine explosions. On her return, she wrote Secretary Perry, Secretary Christopher, and Tony Lake requesting that a Deputies Committee or Special Review Group be tasked with the responsibility of developing policy options and making recommendations. In the subsequent months, the debate occurred, but only between DoD and the NSC. Ambassador Albright was isolated from the military review.

steep hills of heavily guarded borders. Solutions to this problem can only be found through direct and concerted efforts in research and development.

THE MILITARY ARGUMENT

Requirements for Anti-Personnel Landmines

- 1 Protect other mines (anti-tank) or obstacles from dismounted forces
 - 2 Provide an economy of force
 - 3 Act as a protective obstacle
 - 4 Act as a psychological deterrent
-

Militaries argue that land mines are critical and legitimate battlefield weapons. In today's highly developed form of maneuver warfare, the U.S. military uses land mines to counter enemy mobility, shape the battlefield to its advantage, and protect exposed flanks from counterattacks and create defensive positions when deployed. Minefields have been an integral part of many phases of warfighting.

In Operation Desert Storm, for example, coalition forces used air-delivered anti-tank mines to protect the right flank of U.S. and British forces while they swung around Iraqi troops in Kuwait. These mines were indispensable to preventing a counter-attack on the exposed American/British flank.

Land mines are also inexpensive force multipliers and can often assist a small force in defending against a larger attacking force. Not only does this represent an important advantage to military forces that are downsizing, but also to those small groups engaged in local conflict throughout the world. This inexpensive, but greatly added tactical utility ensures that the land mine crisis first seen in Afghanistan, Cambodia, and Mozambique will most certainly continue, if not worsen.

Land mines also provide an economical means to deter and raise the cost of aggression, to delay enemy forces in the event of an attack, and to counter the possibility of surprise. On the Korean de-militarized zone, the South Koreans use barrier minefields extensively. Similar

minefields exist around the world between hostile nations or opposing forces, such as the border between Kashmir and Pakistan, which is heavily mined. More recently, Peru laid 6,000 mines near its border with Ecuador.⁵

Despite the tactical advantages of land mines, the same maneuver requirements that take advantage of mines also demonstrate the downside of land mines -- their longevity. Forces cannot easily advance across terrain they have previously mined. U.S. ground forces are trained to bypass or breach their own minefields, creating lanes for follow-on forces to pass through. It is not easy, but it can be done. Consequently, the militaries of most industrialized countries have increasingly turned to sophisticated mines that self-destruct after a certain period of time, often within four to ten hours.

Anti-tank versus Anti-Personnel Mines

There is an important distinction between anti-tank mines and anti-personnel mines. "Anti-personnel (AP) mines are designed to kill or wound soldiers."⁶ "Anti-tank (AT) mines are designed to immobilize or destroy tracked and wheeled vehicles and the vehicles' crews and passengers."⁷ Today, most highly mechanized military forces deploy a mix of anti-personnel mines with anti-tank mines to protect the anti-tank mines from being easily disabled by enemy infantry soldiers.

Anti-tank mines are essential to highly maneuverable mechanized warfare. In June 1994, a well respected analyst for the Institute of Defense Analysis, Dr. Stephen Biddle, concluded a study on land mines that supported several observations.⁸ First, land mines have military utility

⁵"Peru Land Mines Blasting Jungle" *Toronto Star*, 27 December 1996, A30. This article reported that the Peruvian Army planted mines in an area that is the home to hundreds of natives. As a result, two people have died and many children have been injured and maimed.

⁶*United States Army Field Manual 20-32, Mine/Countermine Operations* (Washington, DC, Headquarters, Department of the Army, 30 September 1992), 1-8.

⁷*Ibid*, 1-5.

⁸Stephen D. Biddle, Dr., "The Military Utility of Landmines: Implications for Arms Control," Institute for Defense Analysis, IDA Document D-1559, Alexandria VA, June 1994, 69-70.

in high intensity mechanized land warfare and can have a significant effect on battlefield outcomes. Second, the balance of offense and defense has a major impact on the net military utility of land mines. For example, land mine use primarily benefits tactical defenders.⁹ With respect to types of mines, Dr. Biddle found

Anti-personnel mines are of substantially more restricted utility than anti-tank mines. For anti-personnel mines to have a decisive effect, a number of important preconditions must be met, among these being: (1) that the attacker reach the close-in positions where U S doctrine places most anti-personnel mines; (2) that the attacker's infantry dismounts and conducts the assault on foot, and (3) that the attacker maneuvers this dismounted infantry and its accompanying armored vehicles independently.¹⁰

Dr. Biddle's analysis supported military requirements for anti-tank mines, but in his conclusion he refrained from making a categorical statement regarding the continued use of anti-personnel land mines. Instead, he readily admitted that such a conclusion ultimately would require a value judgment to weigh military costs against the humanitarian benefits associated with limitations on anti-personnel land mines.

The Need for Anti-Personnel Land Mines

As the crux of the debate hinges partly on the military necessity of anti-personnel land mines, it is important to specifically address their importance. Realistically all militaries, including the U S, have continued requirements for anti-personnel land mines, and as already pointed out, may have greater requirements in the future.¹¹ In a recent article on anti-personnel mines in the U S Army's professional journal for engineers, Captain Bryan Green, an officer

⁹Dr. Biddle acknowledges potential exceptions such as the use of scatterable mines to defend an attacker's flanks, to interfere with the withdrawal of a tactical defender, and to interdict the movement of a defender's reserves in the deep rear.

¹⁰Ibid, 70

¹¹In some cases, these requirements have already been invalidated because of political considerations, such as the unilateral bans implemented by Australia, Belgium, Canada, and others.

from the Maneuver Support Battle Lab, U.S. Army Engineer School, reviewed U.S. Army requirements for anti-personnel mines ¹²

Protect other mines (anti-tank) or obstacles from dismounted forces,

Provide an economy of force by effectively denying terrain; they equate to an additional soldier or sentry on the battlefield,¹³

Act as a protective obstacle to defeat the enemy's final assault on a position, and,

- Act as a psychological deterrent

While the first three of these requirements could potentially be met by technologically advanced alternatives (i.e., increased use of anti-handling devices on anti-tank mines, and increased use of command detonated claymores), the fourth is more troublesome. Psychological deterrence is not just the impact on an enemy without mine clearing training, rather, it also represents an argument often embellished by infantry soldiers, that the real value of an anti-personnel mine is the horrific impact on the enemy from the cries of their friends who have been maimed. Sadly, Captain Green puts forth the argument so often heard before, that "any successful anti-personnel mine replacement or group of replacements must achieve these four functions," including the criteria for psychological deterrence. Abhorrent? Yes. But it is somewhat ironic that the psychological deterrent the Army finds so valuable also motivates those supporting the humanitarian side of the equation.

¹²Captain Bryan Green, "Alternatives to Antipersonnel Mines" *Engineer*, Vol 26, PB 5-96-4 (1996) 11-12

¹³It is interesting Captain Green would make this comment, as Army doctrine normally prohibits deploying an obstacle without coverage by direct or indirect fire

THE HUMANITARIAN ARGUMENT

The Impact of Land Mines

- 1 Refugees and internally displaced people cannot return home
 - 2 Famine can occur because farming and grazing lands are mined
 - 3 Recovery is impeded because infrastructure is mined
 - 4 Health care systems are overwhelmed
 - 5 Movements of relief supplies and peacekeeping forces are impeded
-

The land mine crisis has developed primarily because of the “long-lived” nature of the mines and the way they have been used during the last two decades. Long-lived mines are indiscriminate because “they are never defused, they cannot be targeted only on combatants, and they immobilize societies long after their military function is over”¹⁴ If used in strict accordance with international law (in marked and monitored mine fields, and removed after hostilities are over), land mines would pose no threat to non-combatants. However, because of gross misuse worldwide, and the fact that land mines cannot discriminate between a soldier or a noncombatant, more than 25,000 civilians are killed, wounded, or maimed each year.¹⁵

Land mines have become the weapon of choice in the most prevalent type of conflict today and that which is increasingly predicted for the future, conflict involving troubled states. This is conflict where primordial violence takes precedence over the rules of war, where the battlefield is defined by the presence of civilian populations. As recent events in Bosnia, Chechnya, and Zaire have proven, militaries, paramilitaries, and insurgents often use land mines indiscriminately as an offensive weapon, usually not in well-defined areas of operation or on specific battlefields, seldom mapping their location, and consequently not assuming responsibility for them after the conflict is over. Land mines are cheap, simple to use, and as explained earlier, have a tremendous psychological effect.

¹⁴J. Bryan Hehr, “Land Mines: A Political-Moral Assessment,” in *Clearing the Fields*, ed. Kevin M. Cahill, M.D. (New York: Basic Books), 104.

¹⁵Statement by the Press Secretary, “United States Announces Next Steps on Anti-Personnel Land Mines,” The White House, 17 January 1997, [article on-line], available from <http://www.whitehouse.gov>, Internet, accessed 16 March 1997.

Mines are used principally as area denial weapons, useful in overcoming the low force-to-space ratio typical of such conflicts. Consequently, in wars today, mines are frequently placed in areas of high civilian concentration rather than being confined to discrete battlefields of limited size. Mines are laid in vast quantities across whole zones, and are often aimed directly at civilians ¹⁶

Today, there are an estimated 100 million land mines in the ground, and there are probably another billion in military stockpiles around the world.¹⁷ More than 60 countries are afflicted by the land mine problem. The worst problems are in countries where millions of mines remain in the ground from prior conflicts, countries like Afghanistan, Angola, Cambodia, Iraq, Mozambique, Bosnia, Croatia and Somalia. Even at this writing, more land mines are being laid in Zaire, Peru and Ecuador ¹⁸ Within these countries, as many as 500 victims are injured or killed each week.

The process of clearing mines is painstaking and labor intensive. Unlike military breaching techniques, humanitarian deminers must locate every mine. State of the art technology is nothing more than a sophisticated metal detector or an explosive sniffing dog. More often than not, deminers must dangerously probe inch by inch, with a stick to locate the mines. According to the Vietnam Veterans of America Foundation, it takes 100 times as long to detect and remove a mine as to emplace it. Land mines are inexpensive. They cost as little as \$3 to \$5 apiece. Nevertheless, the cost of removing existing mines, using current techniques and technologies, is an estimated \$85 to \$300 billion.

Approximately 55 nations have produced and sold land mines at one time or another. Some of them use the revenues to finance other badly needed military force structure. For example, from the end of WWII until the late 1980's the top land mine exporters were Belgium, France, Hungary, Italy, Yugoslavia, Czechoslovakia, USSR, UK, and the U.S., with Italy and the

¹⁶ *Landmines: A Deadly Legacy* (New York: Human Rights Watch, Physicians for Human Rights, 1993), 3

¹⁷ Un-named sources at National Ground Intelligence Center, interview by author November 1995

¹⁸ *Global Humanitarian Emergencies 1995*, U.S. Mission to the UN, New York

USSR the largest exporters. Partially due to world opinion, that list has changed. Since 1990, the new export leaders have been China, North Korea, Egypt, Iran, Israel, and Pakistan.¹⁹

When conflicts are over, refugees and internally displaced people cannot return home because roads and the land they inhabited are mined. Often, they must remain in foreign countries, dependent on international relief. Widespread famine can also occur, as mining of farming and grazing land hinders a population's ability to feed itself. When faced with a choice between starvation and survival, many face the consequences of entering minefields to grow crops and graze their cattle. Recovery and stability are impeded because infrastructure has been heavily mined. In fact, the water, transportation, and utility infrastructures are usually the most heavily mined areas. In developing countries, health care systems simply cannot cope with the number and complexity of land mine injuries. They require treatment and follow-on care far different from injuries caused by other conventional weapons.

The tragedy does not just fall upon indigenous populations. Relief organizations, military forces, and other government organizations face difficulties in delivering food or other supplies. It is not uncommon to read of yet another relief worker or UN peacekeeper who has fallen victim to an undetected mine. The one non-accidental U.S. casualty in Bosnia was due to a land mine.

Perhaps the most significant impact is on a nation's ability to govern itself. The democracies the U.S. has shown so much interest in developing are the same democracies unable to cope with the overwhelming societal issues caused by land mines. It is difficult for a fledgling government to garner the trust and confidence of its people when it cannot solve their immediate problems.

THE ISSUE: Unnecessary Suffering and Noncombatant Immunity

The military utility versus humanitarian concerns debate quickly focuses on two issues, unnecessary suffering and noncombatant immunity.

¹⁹Un-named sources at National Ground Intelligence Center, interview by author March 1997

The "moral traces" left by the presumption against the use of force include the criterion that weapons should not inflict unnecessary suffering upon the human person, whether a combatant or a civilian. This restraint is reflected in both legal and moral policies about warfare. In the twelfth century, an effort was made to ban the crossbow, while the nineteenth century focused its attention on the dum-dum bullet. In both instances, the argument was based not on a weapons' indiscriminateness, but on the suffering they caused even if used with discrimination.²⁰

An outspoken senior defense legal advisor, W. Hays Parks, renounces the applicability of international law prohibiting superfluous injury or unnecessary suffering by comparing land mines to other weapons in common use today.²¹ He argues that injuries are similar to those caused by small arms, artillery, armor, and aviation-delivered ordnance, and as such are a necessary cost of war, not mere unnecessary suffering. Naturally, this "similarity" logic appeals to those favoring continued use of land mines by the military. But, however sound Mr. Parks' logic, it defies the logic put forth in Captain Green's article -- the capability to act as a psychological deterrent (from maiming) is so overwhelming it becomes a mandatory requirement for any "successful" future alternative.²² Death is not the object, rather, the object is to inflict intentional superfluous injury to exploit the effects of deliberate and necessary suffering, even when used with discrimination.

When arguing the issue of noncombatants, Mr. Parks sheds the tear of the innocents, that noncombatants have suffered from the indiscriminate use of land mines! However, he quickly points out the problem is not a result of land mine use in conflicts between responsible (innocent) nations. Instead, the present problem is a result of use, or more appropriately misuse, of an otherwise legal weapon "by insurgent groups or developing nations with poor human rights records."²³ Predictably, the U.S. military has steadfastly held to its "innocence," and in

²⁰Hehir, "Land Mines: A Political-Moral Assessment," 106

²¹W. Hays Parks, "The Humanitarian Law Outlook," in *Clearing the Fields*, ed. Kevin M. Cahill, M.D. (New York: Basic Books, 1995), 47

²²Green, "Alternatives to Antipersonnel Mines," *Engineer*, 12

²³Parks, "The Humanitarian Law Outlook," *Clearing the Fields*, 48

responsible fashion has supported proposals to place global restrictions on the use of land mines, particularly when those use restrictions do not circumscribe current U S doctrine

ATTEMPTED SOLUTIONS

Solutions imply there is an ultimate objective, perhaps an arguable assumption with respect to existing U S policy regarding land mines Rhetoric supports a humanitarian solution -- the banning of landmines -- but action has not supported the rhetoric

Summary of Existing Limitations	
Leahy Amendment	Unilateral Export Ban on APL
Leahy Use Moratorium	1 yr Unilateral Use Moratorium on APL in 1999
CCW	Worldwide Use Restrictions on APL
U S Policy	Decision to Use Long-Lived Mines only in Korea

U.S. Legislation

Since 1992, Senator Patrick J. Leahy (D-VT) and Congressman Lane Evans (D-IL) have introduced legislation annually in support of solutions to the global land mine crisis. Both Senator Leahy and Congressman Evans have been touched by the harsh reality of seeing civilian victims of land mines during their travels in the developing world and have urged unilateral measures by the United States to "set an example for strong, international action to stop this carnage"²⁴ In 1992, Senator Leahy sponsored a bill outlawing the export of U.S made anti-personnel mines for one year Later, he succeeded in extending the law through the year 2000 This January, President Clinton capitalized on Senator Leahy's efforts and announced that the U S will observe a permanent ban on the export and transfer of anti-personnel land mines, and urged other nations to join the U S in stopping the export and transfer of land mines in order

²⁴Patrick J Leahy to William J Clinton, 23 December 1993, copy provided by the Office of the Deputy Assistant Secretary of Defense for Policy and Missions, Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, Pentagon, Washington DC

to hasten the completion of a comprehensive ban ²⁵ This amounted to nothing more than a declaratory policy restating the obvious

In 1995, Senator Leahy also won the votes for a one-year ban on the use of all anti-personnel mines, except along international borders and in demilitarized zones, to take effect in February 1999. This moratorium, signed into law by President Clinton on February 12, 1996, in effect raised the stakes for the U S military, putting their entire inventory of anti-personnel land mines and the bulk of anti-tank mines at risk ²⁶ Senator Leahy intended the bill to spur the development of Army doctrine and operations which do not rely on anti-personnel land mines, so that the U.S administration might throw its support behind a global ban on such mines ²⁷

U.S. Sponsored Resolutions in the United Nations General Assembly

Each year, from 1993 to 1995, the U S has introduced a resolution in the General Assembly calling on states to adopt moratoria on the export of anti-personnel land mines In 1994 and 1995, the resolution also established the international goal of the "eventual elimination" of anti-personnel land mines In each instance, the resolution was adopted by consensus, with the list of co-sponsors increasing each year (66, 75, and 111, respectively) Last fall, the 1996 U S. resolution called on states to pursue an international agreement to ban anti-personnel land mines, with a view to completing the negotiations as soon as possible This resolution passed in December, by a unanimous vote of 155-0 A careful read of these resolutions, available on-line from the UN, demonstrates a continued pattern of rhetoric against anti-personnel land mines, exploits Senator Leahy's legislation regarding export and transfers,

²⁵17 January 1996 White House Press Statement.

²⁶An unintended consequence of this bill was to effectively prohibit the use of most scatterable anti-tank mines in the U S inventory U S scatterable mine canisters contain a mix of anti-tank mines with a few anti-personnel mines included to protect the anti-tank minefields from dismounted infantry breaching tactics DoD is quickly purchasing a small number of anti-tank only canisters to hedge their options

²⁷"Landmines Use Moratorium Act of 1995," [article on line], available from <http://www.fas.org/pub/gen/atwg/landmine/>, Internet, accessed 26 November 1996

but at the same time is careful to not constrain in any way the full range of options for continued use of anti-personnel land mines by U S military forces

Convention on Conventional Weapons

To date, the most extensive international effort to restrict the use of land mines has been to strengthen applicable international law. This law is embodied primarily in the 1980 Convention on Conventional Weapons (CCW) -- a treaty negotiated by the Carter administration in the aftermath of the Vietnam War. The intent of the 1980 CCW was to limit the use of conventional weapons that present special risks of causing unnecessary suffering or indiscriminate effects. The 1980 Convention contained three Protocols, each of which regulated the use of a specific weapon. Protocol I prohibited the use of weapons which rely on non-detectable wounding fragments. Protocol II regulated the use of land mines and booby-traps, and Protocol III dealt with the use of incendiary weapons. After an extensive delay, the United States ratified the Convention, together with Protocols I and II, in March 1995. Because the treaty was universally recognized to be weak, in 1995 through 1996 nations convened in Vienna and later Geneva to negotiate provisions to strengthen it, primarily the provisions regarding land mines.

On the initiative of the U S , the self-destruct mine became the cornerstone for the amended protocol. Many believed (and still do) that short of a total ban, the self-destructing land mine provided an answer to the indiscriminate characteristic of land mines. The self-destruct mechanism ensures that the mine will not only be disabled, but also that it cannot be re-used. As the mine is powered by a battery, a natural back-up feature exists that will ensure self-deactivation of the mine, even if the self-destruct mechanism fails to work. As batteries deplete eventually, these mines are guaranteed to become harmless to innocent civilians at some point. A similar technologically advanced mine, the self-neutralizing mine renders the firing

mechanism inoperative, but does not destroy the mine. Consequently, it must still be treated as a live mine

Unfortunately, many countries do not yet have the technology to develop and field self-destructing mines. If such technology were available, the cost of replacing existing stockpiles with self-destructing mines would be prohibitive. The purchase cost of a self-destructing mine ranges from \$50 to \$100 per land mine.²⁸ Instead, delegations retained the right to use mines other than self-destructing mines, but restricted their use (long-lived mines) to marked and monitored areas. But, even this met with difficulty, and countries either refused to agree to the provision or required lengthy phase-in periods for compliance. In the end, the amended protocol provided for

Clear and distinct requirements for the marking, monitoring, and clearing of minefields or mined areas

Requirements that anti-personnel land mines used outside marked and monitored areas must self-destruct within 30 days and include a reliable self-deactivation back-up feature designed to render the mine harmless within 120 days (subject to an optional deferral period of up to nine years)

As widespread illegitimate use of mines is found primarily in internal conflict, many delegations supported widening the scope, which previously applied only to conflicts between nation-states. Expectedly, this proposal was initially met with a great deal of opposition from a number of non-western states who saw it as an assault on their sovereignty and an attempt by western countries to impinge on their domestic affairs. Nevertheless, the amended protocol included language to

Extend the scope from international armed conflicts to include internal conflicts. At the final plenary session, the United States joined a number of other States Parties in declaring its intent to apply the amended protocol at all times, including peacetime

²⁸At the final negotiating session of the CCW in April 1996, an official from the Czech Republic pointed out to me that to replace 1 million mines would cost upwards of \$50 to \$100 million, a cost most developing nations or those nations transitioning to democracy could ill afford

For similar reasons, the conference worked to limit transfer of mines to non-state actors.

The amended Protocol prohibits the transfer of land mines the use of which is prohibited. States Parties also agreed not to transfer mines to any recipient other than a State

Because the protocol did not ban the use of land mines, the conference aggressively pursued requirements to make them detectable, especially once a conflict was over. But again, even this provision met considerable resistance. Many countries could not afford the cost of modifying existing stockpiles or replacing them with new mines, and in the end, agreed to a phase-in approach.

The amended Protocol prohibits the use of non-detectable anti-personnel land mines (subject to an optional deferral period of up to nine years)

Delegations also agreed to hold annual consultative meetings to review the operation and implementation status of the Protocol, and to convene the next Review Conference not later than 2001

In general, the conference provoked widespread criticism because it "allowed nations to use mines in certain situations and gave them at least nine years to use up existing stocks of so-called "dumb" mines that were difficult to detect"²⁹ In addition, the Protocol had no enforcement provisions or methods of verification. Senator Leahy called the agreement "a deplorable failure"³⁰ With the exception of requiring modifications to some older non-detectable mines, the amended protocol posed no significant challenge to continued U.S. use of land mines

²⁹"Pact on Land Mines Stops Short of Total Ban" *The New York Times*, Late Edition, 4 May 1996, 4. This quote is not entirely correct, as the Protocol allows countries nine years to use up non-detectable stockpiles or make their mines detectable

³⁰*Ibid*

U.S. Policy

When President Clinton took office in 1992, groups opposed to land mines expected him to assume a leadership role in building widespread support for an international agreement toward a total ban on the production, stockpiling, transfer, and export of land mines. Instead, issues such as homosexuals in the military resulted in rapidly falling opinion polls and moved the President to accept the prevailing view of his senior military advisers, that land mines were an essential weapon of war and that a ban would "increase the risk to American uniformed men and women."³¹ In September 1994, the President publicly unveiled a politically sympathetic, but also a somewhat ambiguous policy statement calling for the "eventual elimination" of land mines in a speech before the United Nations General Assembly. This policy was neither absolute nor definitive, and consequently, the next two years witnessed a campaign of immense proportions as Western governments, leading non-governmental organizations, and prominent individuals in and outside of government pressured the Clinton administration to support a comprehensive ban on land mines.

This pressure sparked a well-publicized internal debate and on May 16, 1996, President Clinton introduced a new land mine policy that ended U.S. use of "long-lived" mines except in Korea, and those necessary to train personnel for demining and countermining operations.³² The policy also allowed the continued use of self-destructing "smart" mines until the U.S. could solidify an international agreement for a comprehensive ban. According to Senator Leahy, the new policy was in fact "essentially an extension of current policy."³³

As in the amended protocol to the CCW, the President's policy pronouncement did little to constrain future military use of land mines. Although "long-lived" anti-personnel mines were

³¹William J. Clinton to Patrick J. Leahy, 22 February 1994, copy provided by the Office of the Deputy Assistant Secretary of Defense for Policy and Missions, Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, Pentagon, Washington DC

³²General Shalikashvili was not present. He was represented by the VCJCS and the Service Chiefs

³³"Clinton decision on Landmines disappoints Leahy" *Gannet News Service*, 15 May 1996

presumably part of the operational plans in most theaters, most believe the only serious consideration for their use was in Korea, where the military still retains the ability to use them. Even in the Gulf War, against the world's fourth largest land army, U.S. military forces did not use "long-lived" anti-personnel land mines. Despite the rhetoric, with no real alternatives in development, and no comprehensive negotiations taking place, the administration appears to have chosen U.S. military interests over humanitarian considerations.

Ottawa Conference

Frustrated with the slow pace of international negotiations, in 1996 Canada initiated the so-called Ottawa Process, a free-standing forum to achieve a legally-binding agreement by the end of 1997 to ban the production, stockpiling, export and use of land mines. The intent of the Ottawa Process was to "group the committed and a definite community of like-minded nations to sign very quickly."³⁴ At the initial conference in Ottawa in October 1996, fifty countries issued a declaration calling for "the earliest possible conclusion" of a treaty banning anti-personnel land mines, but they failed to agree on a deadline or a negotiating forum. In a moment of complete diplomatic surprise, Canadian Foreign Minister Lloyd Axworthy attempted to salvage the outcome by stating "if the will is there" Canada would host a conference in December 1997 to sign a treaty banning anti-personnel land mines by the year 2000. The thought is that regardless of how few or how many, the treaty will establish a norm that land mines are bad.

Austria hosted a second meeting February 12-14, 1996, where they introduced a draft text outlining a total ban on anti-personnel land mines. At this meeting 111 states participated (China was absent, Russia, India and Pakistan were observers). Interested parties intend to meet again in Brussels this June in preparation for the final meeting in Ottawa next December.

The U.S. has decided not to support the Ottawa process. Although some would say this proves U.S. hypocrisy on the issue, President Clinton has decided to support the UN Conference

³⁴"Canada Snubs UN Bid to Ban Landmines" *Financial Post*, 18 February 1997, Daily Ed, 2

on Disarmament as a more appropriate forum for negotiating a comprehensive ban. Although he stated the Ottawa Process served a useful purpose by providing momentum, the Conference on Disarmament was a more practical forum because it included the key states (Russia, China, India, and Pakistan) necessary to negotiate a truly worldwide comprehensive ban

Conference on Disarmament

Even before the President's new policy was announced in May 1996, there was an ongoing dialogue within the interagency as to the appropriate venue to initiate the negotiations integral to the policy. Key to the debate was how to include those countries with the largest stockpiles, Russia and China. In January 1997, the debate ended when President Clinton called on the UN Conference on Disarmament in Geneva to initiate negotiations on a worldwide treaty banning the use, production, stockpiling, and transfer of anti-personnel land mines.³⁵ There are three issues before the Conference: nuclear disarmament, fissile material cut-off, and a comprehensive ban on land mines. As the first two are unlikely to achieve consensus for a mandate, negotiations on land mines appear to be the natural default. There is apparently support for a mandate within the Conference, but as the Conference is a 61-nation body that operates by consensus, any country can block movement on the issue. Realistically, the members (especially Russia and China) may be more open to negotiate interim steps, such as a ban on exports and transfers of land mines. This could prove politically troublesome for the Clinton administration, as interim steps would challenge its commitment to aggressively pursue negotiations for a comprehensive ban.

That concludes the brief discourse on current U.S. strategies. Is there a definite answer to the question regarding ends, ways, and means? Yes, there were carefully crafted ambiguous

³⁵"Clinton Urges CD Action on Fissile Material, Landmines," (Ledogar reads statement to Conference on Disarmament) [article on-line], available from <http://www.fas.org/spp/starwars/offdocs/clinton7/msg00c28c.htm>, Internet, accessed 16 March 1997

phrases such as “eventual elimination” and “the aggressive pursuit of an international agreement to ban use, stockpiling, production, and transfer of anti-personnel land mines with a view toward completing the negotiations as soon as possible” But, despite the rhetoric, current U S policies are not convincing of U.S. commitment, or of U S plans to achieve the eventual elimination of anti-personnel land mines This ambiguity is rational only in the perspective that there is no immediate resolve to solve this problem within the current administration Instead, U S policy exemplifies the ultimate win-win compromise -- the military continues to use anti-personnel land mines and the President is committed to an eventual goal Sadly, in the time it took you to read this far, land mines have claimed two more lives The global crisis is real

REAL SOLUTIONS

A Policy Prescription

- 1 Initiate open debate regarding military necessity versus humanitarian considerations
 - 2 Implement an immediate unilateral ban on long-lived anti-personnel land mines
 - 3 Negotiate a comprehensive global ban with an exception for borders and fixed installations
-

Enough rhetoric First, the Clinton administration must decide whether or not it is serious about solving the land mine crisis This means the administration must immediately undertake an open and honest debate about military necessity versus humanitarian considerations Second, if the administration decides to play a leading role in solving the crisis, then it must lead by example, and that entails an immediate unilateral ban to any future use of “long-lived” anti-personnel land mines This would protect mines already in place, especially those necessary for the defense of Korea Finally, the administration should undertake to form a center of gravity for negotiations toward a comprehensive global ban on anti-personnel land mines

Honest and Open Debate

Within the U S Government, the bureaucratic process literally churned from February through May 1996 to develop a policy regarding anti-personnel land mines ³⁶ In the end, the Administration announced a new policy which basically stated "do as we would have you do, not as we do " As Father J Bryan Hehir has so eloquently described, "it is difficult to generate support for the idea that a certain weapon is so destructive or uncontrollable that it should be placed in a special classification, beyond possibility of use, while maintaining the right to use it on an interim basis."³⁷

The interagency process did not answer the question of military necessity versus humanitarian concerns, and yet, in the end the Administration defaulted to military necessity The troublesome aspect is how the Administration arrived at this pro-military policy Although the process was clouded in secrecy, it was readily known the Joint Staff had the "power of the pen" and worked quietly to ensure its' position was adequately supported ³⁸ Some have even coined it as an "unholy alliance between the National Security Council and the Joint Staff "³⁹ The overriding factor, however, was the shape of the debate -- the issue became whether or not the Department of Defense could forego continued use of land mines, not military necessity versus humanitarian considerations This was significant, as the land mine issue then became the sole purview of senior defense officials and senior military leaders When Ambassador Madeleine Albright criticized her counterparts for failing to take action on the President's goal, she was effectively isolated from the military review Even President Clinton was isolated on the

³⁶Jerald L Folkerts, Col , "The Land Mine Policy Debate, A Case Study in Bureaucratic Politics," Core Course 5603 Essay, National Defense University, National War College, Ft McNair, Washington, DC, Class of 1997 This paper provides an excellent reference source for the interagency process that led up to the May 1996 policy pronouncement by the President on landmines

³⁷*Clearing the Fields, Solutions to the Global Land Mines Crisis*, 111

³⁸LTC Mike Thumb, USMC, Joint Staff, International Negotiations Division, J-5, Interview by author, 9 December 1996

³⁹Mr Steve Costner, Department of State, Bureau of Political-Military Affairs, Interview by author, 9 December 1996

issue. The night before he planned to announce the new policy, he acknowledged his personal disgust with land mines, but explained the Joint Chiefs' had put an enormous amount of pressure on him and he couldn't go against his Chiefs.⁴⁰

This was a classic case of the civil-military relationship gone awry. By changing the focus of the debate solely to military utility or necessity, the senior military leadership successfully removed the land mine debate from its political context. It became just another military requirements issue. Samuel P. Huntington cautions against military officers imposing their views on statesmen, "even if it is a decision which runs violently counter to his military judgement."⁴¹ In those circumstances, "...considerations of strategy must then give way to considerations of policy."⁴²

Land mines must be considered in perspective, military necessity versus the overwhelming cost to society. Consequently, **it is imperative that the Administration conduct an in-depth analysis of the military utility and necessity of land mines versus their long-term costs and effects on civilian society as soon as possible.** This is a political matter, and as such will require a political decision. The debate is also necessary to quiet competing factions within the Administration, and toward that end, it is essential the debate include the entire interagency, as well as the views of Congressional leaders.

An Immediate Unilateral Ban

If the U.S. is serious about solutions to the land mine crisis, then it must also **seriously consider a unilateral ban to any future use of "long-lived" anti-personnel land mines** by the U.S. military. Effective leadership must abandon self-serving interests and provide global

⁴⁰Mr. Steve Goose, Human Rights Watch, Washington, DC, Interview by the author, 9 December 1996 and Mr. Bobby Muller, Vietnam Veterans of America Foundation, Washington, DC, 12 December 1996. Bobby Muller spoke with the President that evening at a Democratic National Committee fund-raiser.

⁴¹Samuel P. Huntington, *The Soldier and the State, the Theory of Politics and Civil-Military Relations* (Cambridge Belknap Press of Harvard University Press, 1985), 72.

⁴²Ibid, 73.

solutions, often leading by example. Rodney Dangerfield, an American comedian, was fond of saying "I don't get no respect." In this post Cold War environment, the U S cannot assume respect. Rather, it must earn it. "The price should be paid, the role of leadership should be creatively and energetically assumed because the "deadly legacy" of land mines is an affront to a humane order of politics. It should not be allowed to threaten yet another generation of children and civilians."⁴³

In order to limit the additional risk from a unilateral ban, the military should move quickly to aggressively pursue alternative technologies, but not hold a unilateral ban hostage to fielding alternatives. Different approaches may include replacing anti-personnel land mines with an area denial system, or to have a "man-in-the-loop" that can control the system, an element that is missing from anti-personnel land mines. There is some evidence to indicate that alternatives should not be linear one-for-one replacements, instead they should create the same end-state the land mines were intended to produce, i.e. channeling enemy forces. In the Institute for Defense Analysis study referenced earlier, Dr. Biddle suggested that symmetrical alternatives, such as increased artillery fire or non-explosive obstacles, did not offer as much potential as asymmetrical alternatives. He concluded that increased numbers of direct fire systems or improved artillery fire effectiveness provided opportunities to compensate for the effects of land mines at lower costs, even if the effects did not resemble those of a minefield.

Perhaps one of the more difficult decisions will be whether or not to make alternative technologies available to other countries as they are developed. Depending on the technology, there may be concerns regarding technology transfers as well as concerns regarding weapons proliferation. Any transfer of alternatives would have to be made available worldwide, otherwise it would inflame the rationale for continued use of cheap land mines throughout the developing world. There is already a transfer issue -- should the U S freely export its family of self-destructing land mines or self-destructing technologies in order that other countries could

⁴³Hehir, "Land Mines: A Political-Moral Assessment," 111

replace their stockpiles of long-lived mines? This is probably not acceptable because anti-personnel land mines, both long-lived and self-destructing, have been severely stigmatized by the international community. However, if non-linear alternatives are not restricted by technology transfer issues, they may provide a necessary incentive for others to implement bans on long-lived anti-personnel land mines. Consequently, as the U.S. develops alternatives, it should consider including an operational requirement that they be made available worldwide.

Negotiating a Comprehensive Global Ban

As a unilateral ban serves only to placate the conscience of the innocent, it becomes imperative to develop a solution that also accommodates global concerns. Today, there is no clear center of gravity on which to proceed, especially within the Ottawa Process or the Conference on Disarmament. At the recent Ottawa Process meeting in Vienna, there were clearly three separate groups: those opposed to a ban (i.e., Korea and Israel); those who could support potential incremental steps (i.e., UK and France), and; a group rallied around the moral imperative -- an immediate unconditional ban (i.e., Canada, Belgium, and Austria). This produces a three way split with only two ongoing alternatives, the Ottawa Process and the Conference on Disarmament. Although the Ottawa Process will persist, it will not be successful without participation of the U.S., Russia, China, India, and Pakistan. To date, there is also no mandate within the Conference on Disarmament, and it does not include all the countries necessary to implement a truly effective global ban.⁴⁴ It is possible that the first opportunity for a potential equilibrium point to develop may be the next CCW review conference scheduled in 2001. In fact, preparatory meetings may begin as early as 1998. But why CCW and not the Ottawa Process or the Conference on Disarmament? The CCW forum has several clear

⁴⁴Mr. Steve Solomon, Department of State, Bureau of Political Military Affairs, Interview by author, 25 February 1997 and Lt Col John Zahrt, Office of the Deputy Assistant Secretary of Defense for Policy and Missions, Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, Pentagon, Interview by author, 19 February 1997.

advantages First, countries essential to any truly effective global solution, such as China and Russia, will have more control within a CCW framework Second, it is a Geneva process, where the rice bowl interests of those whose locus springs from Geneva will be accommodated Finally, the CCW has already demonstrated it can accommodate aspects of arms control, and has already crossed the barrier from humanitarian law to arms control ⁴⁵

Once the U S ratifies the 1996 amended protocol to the CCW, momentum will build as other states also ratify the protocol, moving the community of states toward a robust CCW process In order to adequately capture that momentum, the U S should begin now to develop a framework for consideration During the 1996 CCW negotiations, the Australia delegation tabled a proposal that could potentially form the basis for such a framework The premise of this proposal was that unconditional tactical use of long-lived mines was unsustainable, and that militaries should convert to self-destructing mines with a short self-destruct period The proposal allowed for two exceptions First, countries could retain long-lived mines "for the strategic defense of borders and other boundaries, and for the protection of fixed installations of importance for national security" ⁴⁶ Second, the proposal recognized the need for a phase-in period to convert existing stocks to self-destructing mines Although sound in principle, the Australian proposal was tabled too early, as many delegations had not yet exposed their negotiating positions This proposal offers several advantages First, it recognizes the importance of border issues, and without accommodations for use on borders, there will most certainly be no near term agreement. Second, it will provide an opportunity to bring Russia, China, India, and Pakistan into the dialogue, as it addresses their legitimate military requirements Third, it is also consistent with U S domestic law (the Leahy use moratorium)

⁴⁵This was evidenced by the transfer provisions in the 1996 amended Protocol

⁴⁶"Introductory Statement by the Australian Delegation for an Additional Paragraph in Article 4, Main Committee II, CCW, 25 September 1996 Copy provided by the Office of the Deputy Assistant Secretary of Defense for Policy and Missions, Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, Pentagon, Washington DC

Absent an immediate U S ban, the Leahy use moratorium goes a long way toward underscoring the viability of the proposal, specifically by accommodating borders. After an agreement has been reached on a ban and the exceptions for continued use on borders is locked in, then the negotiating forum can begin to discuss a phase-out of long-lived anti-personnel land mines over a ten or fifteen year period.

It is not necessary to wait until the CCW process begins to forge a consensus on the land mine issue. For example, the Conference on Disarmament should be able to negotiate a thorough ban on transfers prior to the next CCW review conference. This is easily doable and allows states to demonstrate concern and improvement in the interim. The Conference on Disarmament also poses no immediate threat to Russian or Chinese military considerations, and keeps them engaged in the process. Anyone who believes Russia and China can be convinced to adopt a ban in the near term should recall the tremendous pressure brought to bear on India during negotiations for the Non-Proliferation Treaty and Comprehensive Test Ban Treaty negotiations -- it resisted the pressure. Second, there will also need to be a build-down on existing levels of production and stockpiling. This is more difficult and perhaps would be more easily drafted after a CCW is amended to include a ban on use of long-lived mines. Finally, verification at reasonable cost is essential for an effective treaty, and will most certainly require some sort of international fact-finding mechanism. To be effective, it cannot be voluntary, but should build in safeguards for military and constitutional requirements.

CONCLUSION

What this policy prescription offers is a means to an end. No more pretense. It recognizes the reality of the humanitarian tragedy and poses real answers to the land mine crisis. Answers that include bold unilateral action as well as a complex range of diplomatic efforts to engage others toward shared interests and values. But, if the U S truly represents the bastion of the innocents with respect to use of land mines, why then should the Clinton Administration

care? First, the global land mine crisis is real and current strategies are not working. Second, the ability to create real solutions to the land mine crisis is basically a litmus test as to whether or not the U S can lead in a world that has significantly changed. How the U S proceeds on the land mine debate, both internally and in addressing the global crisis, will be indicative of whether or not the U S has recognized and is willing to step up to its role as a leader, pursuing shared interests and values. Yes, the land mine crisis is representative of the complex issues facing the U S as it prepares to cross the bridge to the next century. There is no single, simple solution to the land mine issue -- only difficult choices.

(7,282 Words)

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