Closing In On a Landmine Ban: The Ottawa Process and U.S. Interests

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When the new convention banning the production and use of antipersonnel landmines (APLs) is signed in Ottawa in early December, it will be more than a disarmament agreement achieved in record time. It will also be a victory for humanitarianism over military expedience and an unprecedented example of cooperation between governments and nongovernmental actors in the arms control arena. Dubbed the "Ottawa Process" because the drive for a ban convention was launched by the Canadian foreign minister, Lloyd Axworthy, in Ottawa in October 1996, there are now nearly a hundred countries pledged to complete the ban by December.

The latest step in the Ottawa Process was a meeting held June 24-27 in Brussels attended by representatives from 153 governments; the United Nations; international agencies including the International Committee of the Red Cross (ICRC); and 138 nongovernmental organizations (NGOs), including the International Campaign to Ban Landmines (ICBL), a coalition of more than 1,000 NGOs from 54 countries. This was the fourth meeting—after Ottawa in October 1996, Vienna in February and Bonn in April—where delegates worked toward producing a draft convention, referred to as the "Austrian Text" for the Austrian officials who have taken the lead in drafting the treaty. A draft convention is currently in its third revision, and states participating in the Ottawa Process will attempt to finalize the accord when they next meet in Oslo September 1-19.

At the Brussels meeting, 97 nations signed a declaration pledging themselves "to pursue an enduring solution to the urgent humanitarian crisis caused by antipersonnel landmines. They are convinced that this solution must include the early conclusion of a comprehensive ban on antipersonnel landmines . . . ." The delegates affirmed that the "essential elements" of such an agreement should include:

- a comprehensive ban on the use, stockpiling, production and transfer of antipersonnel landmines;
- the destruction of stockpiled and removed antipersonnel landmines; and
- international cooperation and assistance in the field of mine clearance in affected countries.

The signatories also "affirm[ed] their objective of concluding the negotiation and signing of such agreement banning antipersonnel landmines before the end of 1997 in Ottawa, [and] invit[ed] all other States to join them in their efforts towards such an agreement."
The 97 signatories in Brussels included most of the mine-infested states and the key European mine producers; 13 of NATO's 16 states signed. Conspicuously absent from the list of signatories, however, is the United States, the self-proclaimed leader in the international effort to negotiate a global ban on antipersonnel mines. Despite the strong support for a global ban from the American public, Congress and many in the executive branch, the Clinton administration is keeping the Ottawa Process at arm's length.

Although the United States has attended Ottawa Process meetings as an observer (meaning it cannot take part in the negotiations), the administration has continued to argue that the Geneva-based UN Conference on Disarmament (CD) is the appropriate forum for negotiating a global ban. Besides the United States, other key countries missing from the Ottawa Process include Russia (the Brussels meeting was the first it attended, as an observer), China (which has steered completely clear of the process), India, Pakistan, Greece, Turkey, South Korea, North Korea and most of the countries of the Middle East.

The Clinton administration is now trying to find a way to deal with a global campaign it can neither stop nor control. In July, the administration initiated a "bottom-up" policy review to help it decide how it will deal with the Ottawa Process. With the December signing deadline rapidly approaching, President Clinton must soon decide whether the United States will remain outside the process. If the United States is to assume a leading role in the final phase of the negotiations at Oslo in September, the administration will have to complete its review by the end of August.

Most observers believe that if the United States does not attend the Oslo conference as a participating state, that is, to negotiate the final draft of the convention, it will certainly not attend the Ottawa meeting to sign the treaty. Many pro-ban states and leading NGOs would, in fact, prefer that the United States not attend the Oslo meeting with the intention of substantially altering the letter or spirit of the current Austrian draft. Jody Williams, the coordinator of the ICBL, said at the Brussels meeting, "Our main objective is to have a true ban treaty, without exceptions, reservations or loopholes . . . . We do not think that concessions undermining the integrity of the treaty should be made for any government."

The Austrian Text

The Ottawa Process was initiated in response to the widespread dissatisfaction, particularly among humanitarian organizations, with international efforts to address the global landmine crisis. Although antipersonnel mines are covered by the 1980 Convention on Conventional Weapons (CCW), advocates of a global ban have argued that the treaty, even after a new landmine protocol was approved during the 1996 CCW review conference, remains woefully inadequate to stem the continuing crisis. While the CCW negotiators did make some progress in strengthening the treaty's landmine protocol (such as an eventual ban on so-called "dumb" mines that do not have self-destruct and self-deactivation mechanisms, and extending the treaty's restrictions to include internal conflicts), many loopholes remain (such as leaving virtually untouched the deployment of "smart" mines with self-destruct and self-deactivating features). During the review conference only four states backed language that called for a comprehensive ban. (Although nearly 60 states are party to the CCW, only six countries have ratified the revised landmine protocol.)

The Austrian text represents an unprecedented openness and cooperation between governments and non-governmental bodies. The ICBL, for example, prepared its own draft convention and a number of its elements are in the current draft convention. Robert Lawson, a Canadian Foreign Ministry official working on the convention, said the Ottawa Process "breaks many of the rules of diplomacy" by bringing nongovernmental actors into the negotiations. Since this is a humanitarian issue as much as it is an arms control one, "there can be no secrets in this process," he said.

The current draft is relatively short for an arms control treaty—20 articles that could easily fit on less than 10 pages—and direct, as exceptions are not included for certain types of weapons or for their conditional use and reservations are not permitted. The Chemical Weapons Convention, in contrast, comprises 24 articles and three annexes on 172 pages while the Comprehensive Test Ban Treaty runs to nearly a hundred pages.
The landmine convention's first article, on "general obligations," is direct and thorough:

1. Each State Party undertakes never under any circumstances: To use antipersonnel mines; To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, antipersonnel mines; To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this convention.

2. Each State Party undertakes to destroy all antipersonnel mines in accordance with the provisions of this Convention.

Article 2 of the draft defines an antipersonnel landmine as:

. . . a mine designed to be exploded 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 antipersonnel mines as a result of being so equipped.

The controversial word "primarily" has been dropped from earlier drafts, reflecting the desire among participating states to create a comprehensive ban. Because many of the governments now on board would drop out if antitank mines were banned, the draft's definition clearly exempts antitank mines from the convention although the ICBL is concerned that this provision will weaken the convention. According to Stephen Goose, chairman of the steering committee of the U.S. Campaign to Ban Landmines, antitank mines "pose a very similar danger to the population as do antipersonnel mines. They are the functional equivalent of APLs." In addition, some critics of the definition worry that countries may simply play semantic tricks by reclassifying APLs as something else. Goose cited the example of Britain, whose government, before endorsing the Ottawa Process, had reclassified one APL model as "a runway denial mine."

As befitting a weapon whose numbers exceed 150 million, the draft convention is specific on the destruction of APLs. Under Article 4, all stockpiled mines (except for a small number needed for the development and teaching of mine detection, clearance and destruction techniques) a state-party "owns or possesses, or that are under its jurisdiction or control" are to be destroyed within three years of the convention entering into force for that state. Article 5 mandates that all mines laid within minefields under a state-party's jurisdiction or control are to be destroyed within 10 years of the treaty's entry into force for that state. Until these mines have been destroyed, the minefields must be "perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians." Convention Article 6 requires each state-party to destroy, "as soon as possible, all [mines] laid in areas under its jurisdiction or control outside minefields."

Under the transparency measures outlined in Article 8, each state-party must, within one year of the convention's entry into force for that state, submit to the UN secretary-general (the treaty depositary) information on the types and quantities of all stockpiled mines; the location of all minefields under its control or jurisdiction; and "to the extent possible," the location of all areas outside of minefields in which mines are known or suspected to be present. Each state-party must thereafter report this information to the secretarygeneral on an annual basis.

The article on compliance (Article 9) is probably the most unsettled, having changed drastically between the second and third drafts as the result of a technical experts meeting in Bonn in April. Most significantly, the terms "verification" and "on-site challenge inspection" have disappeared entirely from the text. In the case of an alleged violation, a special meeting of states-parties is now empowered to authorize a fact-finding mission, whereas previously a panel of experts appointed by the secretary-general would have authorized such inspections.

However, because states-parties are to meet annually or at a special meeting convened at the request of a party lodging a complaint (and approved by at least one-third of the states-parties), this provision would have the effect of slowing down the inspection process. One Western negotiator
called this an example of the disarmament-humanitarian hybrid. Because the landmine ban is designed to eliminate the humanitarian crisis caused by millions of indiscriminately laid mines, a "breakout" from the convention would not necessarily affect the overall humanitarian situation. Thus, the deployment of a few hundred mines is less critical to the viability of this arms control treaty than, say, a nuclear weapons test conducted in violation of the Comprehensive Test Ban Treaty. The Western negotiator described the issue as not involving "hot pursuit," rather "[it] is a question of how important hot pursuit is . . . . The focus is on use as the real problem and this points the finger of international opinion against widespread use."

Under draft Article 16, the convention would enter into force "on the first day of the sixth month after the month in which the 40th instrument of ratification . . . has been deposited." For a state that deposits its instrument of ratification after the date of the deposit of the 40th instrument of ratification, the convention will enter into force six months after the date of its deposit.

The Austrian text includes a relatively new provision for a multilateral treaty, which bars reservations to the convention (Article 17). Proponents of this provision argue that permitting reservations might permit a state to create a "national exception" that allows it to violate the spirit if not the letter of the treaty. Some observers believe this could be one of the most difficult provisions to keep in the final draft of the convention.

According to Article 18, the convention will be of unlimited duration, and each state-party will have the right to withdraw if it determines that "extraordinary events" jeopardize its "supreme interests." However, the provisions for withdrawal raise the bar for any party wishing to opt out of the convention. Rather than permitting withdrawal a few months after invoking "supreme national interests" (as does, for example, the nuclear NonProliferation Treaty—the NPT), the draft specifies that a year must pass before the withdrawal is effective, and if the withdrawing state-party is engaged in an armed conflict at the end of the one-year period, "the withdrawal shall not take effect before the end of the armed conflict." In other words, if the country is at war, it would have to play by the rules of the convention until the war ends. This provision was added to the third draft to reflect the fact that the scope of the convention includes internal armed conflict.

The CD Option

In contrast to the momentum with which states participating in the Ottawa process have produced a draft treaty, the Clinton administration's preferred venue for negotiations—the 61member CD—has still not agreed on an agenda for its 1997 meetings, blocking the establishment of a negotiating committee for a landmine ban. The CD did, however, take its first step toward talks on mines on June 26 when it appointed Ambassador John Campbell of Australia as special coordinator on the issue, with a brief "to conduct consultations on a possible mandate on the question of antipersonnel landmines." In other words, he will conduct talks about having talks. Even this modest progress did not come easy for the CD, which operates by consensus; the Syrian delegate, a proponent of the nonaligned states' proposal that nuclear disarmament negotiations be dealt with at the same time, had to leave the room during the vote so consensus could be achieved.

Because the CD concludes its 1997 session on September 10 and will not resume until January 1998, even if Campbell is able to develop a framework for negotiations, the conference will not be able to begin talks until more than a month after the signing ceremony in Ottawa. Despite the continuing stalemate at the CD and the endgame for the Ottawa Process clearly in sight, the United States appears determined to keep its focus on Geneva. In a July 31 address to the conference, Ralph Earle, deputy director of the Arms Control and Disarmament Agency (ACDA), said:

The value of negotiating an APL ban in the CD can be confirmed simply by looking around this chamber. As of June 27 more than half of the CD members, including the United States, had not associated themselves with the Brussels Declaration . . . . [T]hese countries make up half or more of the world's population and economic output and half or more of the world's historical activity with regard to antipersonnel landmines. Many of them have security concerns about eliminating their
landmines in the near future. We believe negotiations in the CD can take these concerns, including our own, into account. Thus, while the CD's task will take longer to accomplish than the Ottawa Process, the resulting treaty will, unlike the Ottawa Process, extend the reach of an APL ban to the major producers, stockpilers and exporters of APLs . . . . The only way to stop the irresponsible use of antipersonnel landmines is to eliminate the source of those mines. To accomplish that objective, an agreement must include the potential exporters. Many such exporters are far more likely to support an agreement negotiated by them, among others, in this Conference that, inter alia, would ban the export of antipersonnel landmines.

The United States, however, is not standing alone in its support of the CD. Last fall Russia's ambassador to the United Nations, Sergey Lavrov, told the General Assembly's First Committee (which deals with disarmament issues) that Moscow considered the CD "the most suitable forum" for talks on landmines. He also praised the CCW as:

[being] based on a careful balance of interests of all participants at the Review Conference, which duly takes into account the existing situation, the real potential of the parties as well as their security and defense interests . . . . Any attempt to forcefully accelerate the banning of mines . . . is counterproductive. Furthermore, there is the danger of revising the agreement achieved in May in Geneva, which is totally unacceptable . . . . It is difficult to imagine that states who are major producers of [APLs] could become, in the future, parties to such an agreement—in the drafting of which they did not participate. Without their full participation, however, such an instrument would be senseless.

However, the eventual accession by China and France (as well as dozens of other countries) to the NPT, although nearly 25 years after the treaty opened for signature, suggests a precedent for key states joining a treaty they did not help draft.

Both the Ottawa Process and the CD have their limitations. In the CD, which operates on the basis of consensus, opposition to a ban is strong and originating from two directions: those states that do not want to discuss a ban at all and those that prefer the CD focus on nuclear disarmament as its primary responsibility (for example, Mexico). Therefore, both of these camps have to be satisfied before any meaningful progress can be made. Because many of the CD's nonaligned members will settle for nothing less than a mandate for negotiating nuclear disarmament (a move the United States strongly opposes), it is hard to see how this knot can be untangled quickly. Ottawa, on the other hand, is free of such complications.

In the CD's favor, its membership is far more relevant to the landmine crisis; it includes all the major producers of mines (the United States, Russia, China, India and Pakistan); those states that have recently renounced production (France, Britain and South Africa); and those countries that have led the campaign for a global ban (Canada and Sweden). Unfortunately, few of the mostly heavily mine-infested countries belong to the CD.

In contrast to the CD, any state actively participating in the Ottawa Process is already predisposed to a global ban. When pro-ban countries meet in Oslo to negotiate the final text of the convention, a twot-hirds majority will be necessary to approve any changes to the treaty. This requirement may dissuade some nonparticipating states that would like to see major changes in the Austrian text from joining at the 11th hour.

Even if China, Russia and Pakistan remain outside the Ottawa regime, it does not mean the convention is useless or that the humanitarian crisis is left unaddressed or that these three states will have the landmine market all to themselves. All three countries agreed to the revised landmine protocol to the CCW, which places certain restrictions on exports, in particular to non-state parties. Moreover, any country which signs the landmine convention in Ottawa in December will be pledging not to import, export (to states or non-state clients) or use APLs, thus further reducing the market. Therefore, these key landmine-producing states would eventually be largely restricted to domestic
use, and countries are generally more restrained in deploying mines on their own territory.

The U.S. Dilemma

The United States occupies a unique, and at times awkward, position in the debate over a global ban. At the same time it claims leadership in the campaign to ban mines, the United States maintains policies that seek to carve out exceptions to a ban. While it is the largest contributor of human and material resources to humanitarian demining, Washington insists its "smart" mines are not the ones contributing to the humanitarian disaster caused by the landmine crisis. Critics of the Ottawa Process may rightly ask how a global ban can be effective without the participation of the United States, Russia, China or Pakistan. While there appears to be no easy answer as to how to bring China, Russia and Pakistan on board in the near term, the sheer number of countries that support the Ottawa Process (including former producers) may help mitigate their absence. But the absence of those three and the United States would leave a large gap in the drive to make the ban comprehensive.

Therefore, for most of this year, supporters of the U.S. Campaign to Ban Landmines, a coalition of some 225 NGOs, have been lobbying executive branch officials as well as the U.S. military to convince the Clinton administration to endorse the Ottawa "fast track." Letters and reports focusing on the humanitarian disaster caused by mines and on the lack of valid military reasons for their use have been produced. Personalities not normally associated with arms control, including Elizabeth Dole and Norman Schwarzkopf, support a ban. The Department of Defense presents the only major obstacle to the United States joining a ban.

Congress is also becoming more active in the debate. On June 12, 164 members of the House of Representatives addressed a public letter to President Clinton asking him to endorse the Ottawa Process. "While we agree that ultimately it would be preferable for the handful of countries, like China, which oppose a ban, to join a treaty," the lawmakers wrote, "we do not believe they are indispensable to an effective treaty nor that [CD negotiations are] the best approach to win their support."

In the Senate, Patrick Leahy (D-VT) and Chuck Hagel (R-NE) have 57 cosponsors for a bill called "The Landmines Elimination Act of 1997," which would ban new deployments of antipersonnel mines by the United States after January 2000. Leahy, the leading ban advocate in Congress, has sponsored legislation that has stopped the export of U.S. mines since 1992. The Leahy-Hagel bill has not been attached to any pending legislation; a companion House bill is circulating for cosponsors. Mary Wareham, the coordinator of the U.S. Campaign to Ban Landmines, said, "In the past year the U.S. has taken few steps domestically toward a ban and has shown no leadership internationally. The legislation fills the gap left by the Clinton administration in creating a policy which is strong and unambiguous in its meaning."

Not surprisingly, the Clinton administration does not agree that it has abdicated its leadership role. During an early July press briefing on the landmine issue, two Department of Defense officials claimed the administration's policy "commits this country to a course without landmines." One official said, "Regardless of what happens in Geneva or regardless of what happens in Ottawa, we are unilaterally taking . . . steps right now to do without landmines." As to opposition by the military to the United States joining a ban, the briefers pointed to Clinton's May 1996 policy statement that renounced the use of "dumb" mines (except on the Korean Peninsula), committed the United States to the destruction those mines by 1999, but "reserve[d] the right to use . . . self-destructing mines as necessary} until a global ban is negotiated. "That policy was written with the advice and the full support of the Department of Defense," the official said, adding, "We are willing—unilaterally—to ban the high-tech self-destructing type landmine that we have and few other nations have, even though this landmine does not contribute to the humanitarian problem." According to one official, "We have already unilaterally forsworn operational use of the type of [APLs] that are the cause of the humanitarian problem, and that is the non-self-destruct devices."
The dilemma presented by "smart" vs. "dumb" mines is probably the most important problem for the United States. While the country is rich enough and technologically advanced enough to painlessly eliminate "dumb" mines, banning "smart" mines (meaning banning all antipersonnel mines) would have a direct effect on tactical planning. Importantly, the Austrian draft convention makes no distinction between "smart" and "dumb" mines.

Another stumbling block is the U.S. insistence that mines on the Korean Peninsula be exempt, at least for the foreseeable future. During the July briefing, the Department of Defense official said landmines "are integral to the defense of the Republic of Korea . . . . They're used for valid tactical reasons." A landmine convention that does not allow for some geographic exception would be a hard sell to some conservative members of Congress, who have used the Korean argument to attack the ban as a move that would endanger U.S. troops on the peninsula. The Leahy-Hagel bill makes an exception for Korea.

The Pentagon is also opposed to the absence of the word "primarily" in the definition of antipersonnel mines both in the Leahy bill and the Austrian draft text. According to the Department of Defense briefers, without "primarily" qualifying the intended design of the weapon, "this definition [could] be stretched if someone chose to do that." They said a study of the legal ramifications showed that "not only do they capture four or five [types of] landmines that we expected, it caught a total of 35 systems, some as far afield as ATTACMs, various types of bombs and many munitions that have nothing to do with land mines . . . . If we're going to ban landmines, we are, in fact, banning landmines and we're not banning a number of high-tech systems that our military is really depending upon with our reduced forces." Although the list has not been made public, the systems reportedly include 155millimeter howitzer projectiles, cluster bombs with delayed activation submunitions, and grenade launchers for the Multiple Launch Rocket System. The inclusion of the word "primarily" in the revised landmine protocol to the CCW was one of the key weaknesses ban advocates saw in the new accord.

Despite the Pentagon's insistence on the need to keep open the option of using mines on the Korean Peninsula, there is open disagreement among military officers. In an open letter published in April 1996, 15 retired senior military officers (including General Norman Schwarzkopf and former commanders of NATO and U.S. forces in Korea) said, APLs "are not essential. Thus banning them would not undermine the military effectiveness or safety of our forces, nor those of other nations." The 15 also said, "We view such a ban as not only humane, but also militarily responsible." An ICRC report came out at the same time in which 55 former military personnel from 19 countries endorsed the findings that the use of APLs to be of "questionable" value. "The material which is available on the use of AP landmines does not substantiate claims that AP mines are indispensable weapons of high military value," the report said.

In July, following up on the April letter and ICRC report and obviously timed to influence the administration's policy review, two pro-ban NGOs—Human Rights Watch Arms Project and the Vietnam Veterans of America Foundation—produced a report drawn from the U.S. Army's records of the Korean and Vietnam wars to argue that mines, both "smart" and "dumb," not only were not useful in those conflicts, but seriously endangered U.S. military personnel. The report also details the extent of U.S. involvement in the landmines trade. It says there are currently stocks of 14 million mines (10 million "smart" mines and 4 million "dumb" mines). Of the 4 million "dumb" mines, 1 million are reserved for use on the Korean Peninsula and the rest are to be destroyed. According to Human Rights Watch, the Pentagon's last order for mines was completed in
November 1996 and no new orders have been placed. On the export side, the report says between 1969 and 1992, the United States exported 4.4 million mines to at least 32 countries. In 1992, President Bush signed into law the first U.S. moratorium on exports; additional legislation (largely the work of Leahy) has kept the moratorium in place.

The Bandwagon

The changes in national policies have been dramatic. At the time of the CCW review conference, only four nations supported language calling for a comprehensive ban. By the time of the first meeting in Ottawa in September, 74 governments sent representatives. There were 111 governments at the Vienna meeting (more than attended the CCW review conference) and 153 at Brussels.

According to the ICBL, more than 50 nations have moratoria on the export of APLs, 15 countries have begun or completed destruction of stockpiles, 30 countries have banned or suspended their use and 20 have announced they have stopped production of all APLs. In addition, several countries not involved in Ottawa, including Russia and Singapore, have announced moratoria on exporting "dumb" mines. The ICBL identifies 35 nations as past producers of mines which have not declared the end of production.

Outside of the Ottawa Process, national and regional initiatives have proliferated:

In what is arguably the most dramatic change in policy for a NATO state on this issue, one of the first major foreign policy initiatives of the new Labor government in Britain was to drop the Tories' heavily qualified landmine ban. On May 21, the government announced that it "will accelerate the phasing out of stocks of antipersonnel land mines, and complete it by 2005 or when an effective international agreement to ban their use enters into force, whichever comes first. In the meantime, the [United Kingdom] has introduced a complete moratorium on their operational use." The previous government's policy had already banned the export of mines, but left open the option of retaining some of its stocks and importing smart mines.

In September 1996, the Central American states declared their intention to ban APLs, thus making Central America the world's first official mine-free zone. In December, the Caribbean nations of CARICOM declared they would join the mainland nations' zone and the Organization of American States called for the creation of a mine-free zone for the entire Western hemisphere. In Africa, which has more mine-infested territory than any other continent, a conference of Southern Africa states in May endorsed the Ottawa Process, called for the creation of a mine-free Africa and developed strategies for coordinated land mine clearance and assistance to victims.

Five central Asian states—Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan—held a conference in June to consider the ban and ways to improve mine clearance. Representatives of Afghanistan, India, Iran, Pakistan, Russia and Turkey also attended.

Conclusion

This is an extraordinary moment for both governmental and nongovernmental arms control proponents. What started as a grassroots campaign of a handful of NGOs in 1991 is now a certifiable global movement. By framing the issue as a humanitarian disaster as well as a disarmament
imperative, APL opponents have constructed a cross-disciplinary, inclusive movement never before seen in an arms control campaign. Thus, it places the United States in the unusual position of playing catch-up rather than defining the parameters of the debate. A landmine ban will be signed in Ottawa in December, if the United States is not there, it will ultimately be more of a problem for the United States than for the landmine convention.

NOTES


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