



TOWARDS A COMPREHENSIVE BAN ON LAND MINES; THE OTTAWA TREATY IN PERSPECTIVE

1.0 INTRODUCTION

The convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction ("The Ottawa treaty") is part of the international concern over the widespread suffering caused by anti-personnel mines.¹ The convention is principally based on customary rules of international humanitarian law applicable to all states. These rules tacitly prohibit the use of weapons which by their very nature do not discriminate between civilians and combatants or which cause unnecessary suffering or superfluous injury.² The convention was opened for signature in Ottawa on 3 December 1997 and came into force on 1 March 1999.

Fundamentally, anti-personnel mines are essentially designed to be placed on or near the ground and to be 'detonated by the presence, proximity or contact of a person'.³ It was the understanding of the negotiators that "improvised" devices produced by adapting other munitions to function as anti-personnel mines were equally banned by the treaty. Note that the Ottawa treaty prohibits anti-personnel mines. It does not affect (a) anti-tank or anti-vehicle mines (regulated by the 1980 UN convention on certain conventional weapons and the general rules of international humanitarian law) (b) "anti-handling devices" attached to an anti-vehicle mine to prevent its removal or (c) "command detonated" munitions which can only be triggered manually by a combatant and cannot be detonated simply by "the presence, proximity or contact of a person".⁴

Note that the Ottawa treaty includes a variety of measures designed to promote confidence that its provisions are being respected and to deal with suspected violations.⁵ States are required to report/annually to the UN Secretary-general on all stockpiled anti-personnel mines, mined areas, mines retuned for training purposes, destruction of mines and measures taken to prevent civilians from entering mined areas. To facilitate mine clearance, states must also provide detailed technical information about mines they have produced in the past.

The treaty also required government to take national legal and administrative measures, including the imposition of penal sanctions, to ensure respect for its provisions within their territory and by persons under their jurisdiction or control. This may involve the adoption of criminal legislation. It may also require issuing administrative instructions to the armed forces and introducing changes in military planning.⁶

States wishing to adhere to the Ottawa treaty must express their consent to be bound by submitting a ratification (or similar) instrument to the UN Secretary-General, the treaty's depository. States that signed the treaty prior to its coming into force but that are not yet party to it must refrain from taking any action which would undermine its purpose. With its coming into force, the treaty was closed for signature but States may adhere to



it directly, without signing it by sending an instrument of accession to the depository. The convention becomes binding upon a State six month after it has deposited its ratification or accession (or similar) instrument with the UN Secretary General.

Earlier rules concerning the use of anti-personnel mines are contained in protocol II to the 1980 UN Convention on certain conventional weapons (CCW). The protocol which was amended on 3 May 1996, regulates the use of all types of mines and similar devices, including mines intended to destroy tanks and other vehicles.⁷ In addition to regulating weapons that are not covered by the Ottawa treaty, the protocol enables a state to invoke its provisions, such as the requiring a party which uses mines to remove them at the end of the hostilities. Such provisions can be invoked in any conflict with another State party to the amended protocol regardless of whether or not that State has adhered to the Ottawa treaty. States that become party to the Ottawa treaty are therefore encouraged to adhere also to Protocol II as amended.⁸

Every year, thousands of men, women and children are victims of anti-personnel mines. Landmines not only kill but mutilate horrendously, strike blindly at all human beings alike, and continue to spread terror for years or even decades after the hostilities have ended. The consequent effects of mines are invariably inconsistent with certain fundamental rules of international humanitarian law.⁹ (IHL) which require parties to the conflict to distinguish between civilians and combatants, prohibit the use of indiscriminate weapons, and also prohibit the use of weapons that are liable to cause excessive suffering.¹⁰

The dimension and magnitude of damage caused by anti-personnel mines, in terms of both human suffering and long-term socio-economic destabilisation as witnessed by the International Committee of the Red Cross (ICRC) delegates and medical teams, prompted the ICRC to hold the Montreux symposium on anti-personnel landmines in April 1993.

The symposium discussed in detail the difficulties of mine clearance, the actual military use of mines in different situations, the technical construction of mines and possible developments, the manufacture and trade in mines and of course, the present legal regulation of mines and its shortcomings.

Anti-personnel mines cannot distinguish between soldiers and civilians and usually kill or severely mutilate their victims. They are relatively cheap, small and easy to use thereby inflicting untold hardship on tens of millions of people throughout the world. Because they are far easier to lay than to remove, it becomes difficult or impossible in most conflicts to use these deadly weapons in accordance with the rules of international humanitarian law.



1.1 THE OTTAWA TREATY

The Ottawa treaty is by and large an international response to the humanitarian calamity caused by the global proliferation of anti-personnel mines. Millions of these deadly weapons are already contaminating more than 80 countries, creating one of the most serious man-made problems of our time. Their long-term impact upon individuals, communities, and entire societies is startling. Recognizing the seriousness of the problem some 90 countries from all the regions of the world voluntarily came together in 1997 and negotiated the Ottawa treaty.⁴ This treaty is an international agreement comprehensible banning the development, production, stockpiling, transfer and use of anti-personnel mines, and requiring their destruction.

This treaty is an outstanding achievement because it marks the first time that countries – through international humanitarian law have agree to ban completely a weapon already in widespread use. In setting a clear international standard against anti-personnel mines, the Ottawa treaty represents a decisive first step in the long-term goal of addressing the scourge of landmines and clearing the world of these horrific weapons.

1.2 THE NEED FOR A BAN TREATY

It is pertinent to note that landmines are powerful and unforgiving devices. Unlike other weapons of war, most of which must be aimed and fired, anti-personnel landmines are 'victim' actuated. That is they are designed to be detonated by a person stepping on or handling the device, or by disturbing a tripwire attached to it.⁵ Once emplaced, anti-personnel mines are indiscriminate in their effects and, unless removed or detonated, long lasting.

It is of great import to state that landmines laid during the Second World War continue to be discovered and, on occasion, to kill or wound, more than 50 years after the end of the conflict. Landmines cannot 'distinguish' between the soldier and the civilian.⁶ They kill or maim all protected persons as well as combatants fighting the war. While all war wounds are horrific the injuries inflicted by anti-personnel mines are particularly severe. These weapons are designed to kill, or, more often to disable permanently their victims.¹¹

The treaty is a comprehensive response to the landmine crisis. Not only are state parties prohibited from using anti-personnel mines, but those able to do so agree to provide assistance for mine clearance, mine-awareness programmes and the care and rehabilitation of mine victims.

Mine-affected states have a right to seek and receive such assistance directly from other parties to the treaty and through the United nations, regional or national organisations, components of the International Red Cross and Red Crescent movement or non-governmental organisations. These co-operation aspects of the convention should play as great a role as the ban it imposes in proving an effective international response



to the suffering causes by these weapons.

In addition to the devastating impact on individuals' lives, mines also have severe social and economic consequences, particularly for a country attempting to rebuild after the end of an armed conflict. The presence of mines can leave large portions of the national territory unusable. Farmland, grazing pastures and other food-producing areas may be rendered inaccessible and, as a result, the ability of a community to feed itself is impaired. Mined roads and railways make the movement of persons and goods, including the delivery of humanitarian aid, extremely difficult. Mines clearance, although essential, is a slow, dangerous and expensive process.¹²

1.3 THE EXISTING LAW

In 1990, the ICRC and other humanitarian organisations began to document a high percentage of civilians mine casualties during periods when no fighting was taking place or after the end of hostilities. Subsequently, the ICRC, National Red Cross and Red Crescent societies and the International Campaign to Ban Landmines (ICBL) – an international coalition of non-governmental organisations began efforts to raise awareness about the devastating effects of these weapons and press for an end to their use.

During the years leading up to the conclusion of the Ottawa treaty in 1997, these efforts were the dominant force in mobilizing public opinion, stimulating military and political debate, and ensuring that the plight of the victims and communities living under the threat of landmines was not left unaddressed.

The use of anti-personnel landmines is restricted by international law, specifically international humanitarian law, which contains several general rules applicable to these weapons. Two of the most important provisions are derived from the customary rules of warfare and are consequently binding on all sides in every situation of armed conflict.¹³

Parties to a conflict must always distinguish between civilians and combatants, and civilians must not be attacked. In accordance with this principle, any weapon that is inherently indiscriminate must never be used.

It is prohibited to use weapons which are “of a nature to cause superfluous injury or unnecessary suffering”. This means that any weapon designed to cause more injury than required to take a soldier “out of action” (i.e. one intended to inflict gratuitous suffering), even when directed solely against combatants, is unlawful and must not be used.¹⁴

In addition to these general customary rules, more detailed provisions specific to anti-personnel mines are contained in various international agreements. Note that prior to the conclusion of the Ottawa treaty, the principal agreement governing the use of landmines was the 1980 UN convention on Certain Conventional Weapons (CCW).



Protocol II of this treaty specifically regulates mines, booby-traps and other devices. Since this is an international legal agreement, it applies only to those countries which agree to be bound by its terms. It is a general principle of international law that treaties bind only those that are parties to it.

1.4 THE ELEMENTS OF A COMPREHENSIVE BAN TREATY

The Ottawa treaty is unique precisely because it seeks to eliminate the use of anti-personnel mines as a weapon from the arsenal of fighting forces. In order to achieve this goal, the treaty identifies and prohibits a wide range of activities, specifically the development, production, stockpiling, transfer and use of the weapon. This comprehensive approach is a welcome innovation in international humanitarian law. Specifically the treaty provides that.¹⁵

Each state/party undertakes never under any circumstances;¹⁶

To use anti-personnel mines;

To develop, produce, otherwise acquire, stockpile, retrain or transfer to anyone, directly or indirectly, anti-personnel landmines

To assist, encourage or induce, in anyway, anyone to engage in any activity prohibited to a State/party under this convention.

It is expedient to state that each state/party adhering to the Ottawa treaty obliges itself "never, under any circumstances" to use anti-personnel landmines. This includes all situations of armed conflict – whether between countries (international armed conflict)' or a civil conflict (international conflict)' – as well as troubles of a lesser intensity commonly referred to as internal unrest or civil disturbances. All offensive and defensive usage is prohibited. Moreover, any resort to the weapon during peacetime is also prescribed.

In ratifying the Ottawa treaty, a country accepts that mines are no longer a legitimate weapon to be used either in peacetime or in time of war. There are no exceptions to this general rule. Note however, that a country is permitted to retain or transfer a limited quantity of mines for training in mine detection, mine-clearance, and mine-destruction techniques.

By proscribing the production, stockpiling, transfer and use of anti-personnel mines, the Ottawa treaty takes an important step in preventing the future development of these weapons. Yet, until the millions of antipersonnel mines already in the ground are cleared and destroyed, these devices will continue to pose a serious threat to populations in many regions of the world.

In addition to the prohibitions discussed above, each country agrees never under any circumstances to assist, encourage or induce anyone, whether or not they are bound by the treaty, to engage in any prohibited activities. This reinforces the effectiveness of the treaty's comprehensive ban on anti-personnel mines:



- In its Article 9, the Ottawa treaty sets out the duty of each state party to take all appropriate legal, administrative and other measures at the national level to prevent and suppression violations of the conventions. This invariably means that production, stockpiling, transfer or use of anti-personnel mines by individuals under the jurisdiction or control of state parties, including members of insurgent forces, are covered at least in theory.¹⁷

Moreover, one of the preamble paragraphs states that the agreement by the States parties is based on “the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited; on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants. These principles are elements of customary international law, which apply to all parties to any conflict.

1.5 ANTI-PERSONNEL VS ANTI-VEHICLE MINES

It is significant to note that the Ottawa treaty only prohibits anti-personnel mines.¹⁸ A Distinction is therefore made in the treaty between mines designed to kill or injure people – anti-personnel mines – and those designed to destroy tanks or vehicles – anti-vehicles mines, also referred to as anti-tank mines. Anti-personnel mines are generally small devices, containing between 10g and 250g of explosive substance that will detonate under 0.5kg to 50kg of pressure. Anti-vehicle mines, on the other hand, are larger than anti-personnel mines, containing between 2kg and 9kg of explosive and are normally activated by 100-300kg of pressure.

The definition of anti-personnel mine laid down in the Ottawa treaty covers all “person” activated mines irrespective of whether they are placed in the ground in marked minefields or remotely delivered over large areas. It encompass soc-called ‘smart’ anti-personnel mines – mines which have the capability to self destruct or self deactivate i.e. mines that are programme to automatically explode or become inert after a set period of time.

The definition of an anti-personnel mine contained in the Ottawa treaty is significant by stronger than the formulation found in amended Protocol II of the CCW. The protocol defines an anti-personnel mine as “a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons” (emphasis added).

It is pertinent to observe at this juncture, that the convention on the prohibition of the use, stockpiling, production and transfer of Anti-personnel Mines and on their destruction (“The Ottawa treaty”) is basically one of the most fundamental part of the



international response to the widespread suffering caused by anti-personnel mines. Note that the convention is essentially based on customary rules of international humanitarian law applicable to all states.

These rules prohibit the use of weapons which by their very nature do not discriminate between civilians and combatants or which cause unnecessary suffering or superfluous injury. The convention was opened for signature in Ottawa on 3 December 1997 and entered into force on 1st March 1999.

The unequivocal rationale underlying the Ottawa Treaty is by and large the fact that states adhering to this treaty must never under any circumstance, use, develop, produce, stockpile or transfer antipersonnel mines or help anyone else to do so. They must also destroy existing antipersonnel mines, whether in stockpiles or in the ground, within a fixed time period. Note that it is expedient to retain a small percentage of these mines for the sole purpose of developing mine – clearance and destruction techniques and training people in the use of these techniques.

The treaty is a comprehensive response to the Land mine crisis. Not only are states parties prohibited from using antipersonnel mines, but those able to do so agree to provide assistance for mine clearance, mine awareness programmes and the care and rehabilitation of mine victims. Note that mine affected states have a right to seek and receive such assistance directly from other parties to the treaty and through the United Nations, regional or national organisations, components of the International Red Crescent movement or non-governmental organisations. These co-operative aspects of the convention should play as a great a role as the ban it imposes in providing an effective international response to the suffering caused by these weapons. This is one very expedient provision which states parties to the convention should adhere to very seriously and with all commitment.

While the negotiation of the Ottawa treaty is an historic landmark in the battle against the scourge of landmines, a tremendous amount of work remains to be done before the threat of these weapons and their applying humanitarian consequences are effectively tackled. Countries must be encouraged to adhere to the treaty and implements its provisions, and to increase their support for mine clearance and victim assistance programmes.

As has been seen, the Ottawa treaty requires a state party to undertake a wide range of activities. Among other things, the country must ensure that anti-personnel mines are no longer used as weapons by its armed forces, end the development and production of these devices, destroy any stock piles, and identify, mark and unclear mined areas. It may be noted that in many counties, implementing these obligations will require significant technical, legal and financial assistance.



CONCLUSION

It is of great import to note that the fundamental concepts of the laws of war have remained essentially unchanged and are still base don the balance between military necessity and humanity. The major characteristic, of humanitarian law which first tends to strike a human rights lawyer is the fact that the law-makers allowance in it supervision for actions necessary for military purposes.

“measures of regulated force not forbidden by intentional law which are indispensable for securing the prompt submission of the enemy, with the least possible expenditure of economic and human resources:”

The Libeor-code describes military necessity as follows:

“Military necessity admits of all direct destruction of life or limb of armed enemies, and of other person whose destruction is incidentally unavoidable in the armed contests of the war.

It is expedient to note that most countries from all regions of the world supported the Ottawa process, come of the world’s major landmine producers, exporters and users did not actively participate in the negotiation of the Ottawa treaty and have not signed it. Every effort muse be made to encourage these countries to join ranks with the rest of the international community and prohibit anti-personnel landmines so that the Ottawa treaty will be universally respected in the near future.

The Ottawa treaty is only one of the essential measures required to address the disrobing landmine contamination question. Vast numbers of people continue to live in mine-affected areas under daily threat from these deadly weapons. Ultimately, the solutions to this epidemic lie in our own hands. The Ottawa treaty is an important step, but only a first one. States must do everything possible to comply with the terms of the treaty with respect to implementation.



ENDNOTES AND REFERENCES

- By J. I. Shehu, LLB, LLM, BL, *Lecturer, Faculty of Law, Ahmadu Bello University, Zaria.*
- See the general introduction and the preamble to the convention on the prohibition of the use, stock piling, production and transfer of anti-personnel mines and on their destruction.
- The full title is the 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 of 10th October 1980.
- The definition of anti-personnel mine laid down in the Ottawa treaty (see Art 2 paras. 1 and 2)
- Ibid
- See Francis Lieber, "Instructions for the Governments of Armies of the United States" in the field of 24th April 1863, ordering that soldiers guilty of breaches of the law of war should be prosecuted.
- See Michael Bothe, 'The Role of National law in the implementation of international humanitarian law and the red cross principles', in honour of Jean Pictet Geneva/The Hague 1984, p. 301
- Ibid at page 102
- Protocol on prohibits ions or restrictions on the use of mines, booby-traps and other devices as amended on 3rd May 1996 (Protocol (ii). As Amended on 3rd May 1996), annexed to the CCW, Supra note 2.
- See Geneva convention (iv), art. 27, p.1, art. 75, 76, protocol (i), article 48
- The only rule explicitly based on protocol (i), article 35(2) is the prohibition of the use of "any booby-trap which is designed to cause superfluous injury or unnecessary suffering", a provision set forth in article 6(2) of protocol (ii.) annexed to the convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects of 10th October 1980.
- Article (ii), para 3, of protocol (ii) as amended defines an anti-personnel mine as one "primarily designed to be exploded by the presence, proximity or contact of a person".
- For this. see the article by Philippe Antoine, "International Humanitarian law and the protection of the environment in time of armed conflict". published in the review of the Red Cross. pp. 517-537 see also Bothe, M. "The protection of the Environment in Time of Armed Conflicts", legal rules uncertainty, deficiencies and possible developments in the report on the work of the meeting of experts on the protection of the environment in time of armed conflict, ICRC, Geneva, September, 1992.
- See the provisions of article 48 of additional protocol (i) and the provisions of article 35 of the same protocol (i) dealing with the methods and means of warfare of 8th June 1977. additional to the Geneva Conventions of 12th August, 1949
- Ibid. same page
- See the original text of the treaty: banning antipersonnel mines, The Ottawa treaty explained produced by International committee of the Red Cross. Geneva, 1998.
- See the provisions of article (i), which deals with general obligations
- See the provisions of article 9 of the Ottawa treaty
- see the provisions of article (ii) of the Ottawa Treaty, which relates to definitions for more in depth explanation.
- See Kalshoven Frits: Constraints on the waging of war: an introduction to international humanitarian law, 3rd Edition, Geneva, 2001.