The Regulation of An Invisible Enemy: The International Community's Response to Land Mine Proliferation

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INTRODUCTION: PROFILE OF A VICTIM

1993, Southern Angola.

It is a beautiful day in Mupa, Kunene and things seem normal at the village as the residents cautiously walk towards their houses. The latest war scare has passed and after several days of hiding in the bushes, it should be safe to return home. The children are excited and are trying to determine who will be the one to run the fastest to the foot of the village. Crezencia arrives first. Her prize was the excruciating pain of shrapnel shooting up the length of her body. “A land mine planted in the entrance of the living area exploded under the pressure of [her] foot,” causing fragments of bone to implant themselves throughout her body and face. At the time of the explosion, Crezencia was just fourteen years old.

Crezencia differs from most victims of land mines because she was lucky enough to receive medical treatment. She was transported by cart to an area hospital and then to a Catholic mission. With the help of charitable organizations, she underwent numerous operations that saved her life. Crezencia’s life, however, has been dramatically altered. Her face is permanently disfigured, and the explosion caused so much nerve damage that the doctors needed to amputate her leg. She now uses a prosthetic leg to walk. Additionally, she relies on charitable

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2 See id.
3 See id.
4 See id.
5 Id.
6 See The Mutilated Life of Crezencia, supra note 1.
7 See id.
8 See id.
9 See id.
10 See id.
11 See The Mutilated Life of Crezencia, supra note 1.
12 See id.
organizations to finish what seems like an endless course of reconstructive surgery.\textsuperscript{13} Due to her family's financial circumstances, Crezencia will rely on these organizations to continually update the prosthetic leg that her family can not possibly afford to replace.\textsuperscript{14}

Unfortunately, Crezencia's story is not uncommon in countries infested with land mines.\textsuperscript{15} The problem is so widespread that millions of mines are currently buried in over seventy countries in Africa, Asia, Europe, the Middle East and the Americas.\textsuperscript{16}

The International Committee of the Red Cross [hereinafter ICRC] reports that over the last fifty-five years, more casualties and injuries have resulted from anti-personnel land mines than from nuclear, biological and chemical weapons combined.\textsuperscript{17} "The ICRC [further] estimates that 800 people are killed by land mines every month, and another 1,200 are maimed: a total of 2,000 victims a month" or one victim every twenty minutes.\textsuperscript{18} The Canadian Department of Foreign Affairs and International Trade reports that 90\% of those victims are civilians, many of them children.\textsuperscript{19}

Part I of this note will explore the problems associated with land mines including who is affected, and what happens after land mines are laid. Part II will discuss the history of land mines over the past sixty years and international attempts to deal with their aftermath leading to the current international treaties signed. Part III will assess the effectiveness of the international response especially in light of the fact that several large users and producers of land mines have not committed themselves to the most recent effort—The Ottawa Treaty. This note concludes with a recommendation for the adoption of the Ottawa Process by the major international leaders who have not already ra-

\textsuperscript{13} See id.
\textsuperscript{14} See id.
\textsuperscript{16} See id. "The most severely affected countries are Afghanistan, Angola, Bosnia and Herzegovina, Cambodia, Croatia, Eritrea, Iraq (Kurdistan), Mozambique, Somalia, Sudan, and Viet Nam." Id.
\textsuperscript{17} See id. The Office on Global Education/CWSW defines anti-personnel land mines as "any munition placed under, on or near the ground or other surface area, designed to be exploded by the presence, proximity or contact of a person, and that will incapacitate, injure or kill one or more persons." Landmines: Fallout of War, CHURCH WORLD SERVICE, (visited Mar. 9, 1998) <http://www.ncccsusa.org.cws/minefs.html>.
\textsuperscript{18} See id.
tified the treaty. It also advocates using political and social pressure to convince nations to sign onto the treaty if they have not already done so. Furthermore, it encourages the use of international funds to help pay for removal efforts and reparations to injured victims with the funds to be paid primarily by the countries responsible for laying the land mines.

I. PROBLEMS ASSOCIATED WITH LAND MINES AND THOSE INDIVIDUALS MOST AT RISK

The use of land mines has expanded greatly in the past several decades, driven by improvements in land mine technology.20 Advancements, such as using plastics and ceramics, have dramatically reduced the cost of producing the mines.21 By reducing the metal content and consequently the price, land mine producers have greatly expanded the market for the weapon.22 As a result, land mines can be laid very easily, fairly quickly and in a variety of ways.23 For example, they can be placed by hand, artillery, mortar, or aircraft.24 The International Campaign to Ban Landmines [hereinafter ICBL] estimates that ten to twenty million land mines are currently being produced per year.25

The consequence of this mass production and resulting dissemination of land mines is astonishing.26 The U.S. State Department estimates that land mines injure or kill “an estimated five hundred people per week worldwide.”27 Many of those who fall victim to land mines die within the first few minutes of the explosion.28 Those who survive face massive scarring, the threat of amputation of a leg or an arm and whatever reconstructive surgery becomes necessary.29

The victim’s suffering is further exacerbated because access to medical care is limited.30 Many victims who are not killed immediately die.

21 See id.
22 See id.
23 See id.
24 See id.
25 See Landmines: Fallout of War, supra note 17.
26 See id.
27 Id.
28 See id.
29 See id.
on route to medical attention. \(^{31}\) Those who are fortunate enough to find medical attention may be receiving a limited quality of care since many victims do not possess adequate funds to pay for their treatment. \(^{32}\) Moreover, many land mine-ridden countries do not have the funds and technology necessary to provide medical care for their citizens, so whatever facilities are available are filled with victims who must rely on charities and other humanitarian aid to pay their medical costs. \(^{33}\) This puts a strain on scarce medical and financial resources and whatever technology exists. \(^{34}\)

A good number of victims affected today are civilians, such as farmers harvesting crops or tending to household chores and children. \(^{35}\) Children are at great risk because they are naturally curious and are less likely to recognize the danger that land mines possess. \(^{36}\) Governmental and humanitarian mine awareness programs in land mine-infested countries teach residents in those countries how to detect and avoid land mines. \(^{37}\) Additionally, these programs try to teach critical skills in avoidance of dangerous areas, notification to designated personnel charged with mine awareness and mine clearance activities, and noninterference with personnel conducting demining activity. \(^{38}\) However, often times the education they are given on the subject matter is not useful against the mines laid completely underground or against mines that are laid in overgrown fields since smaller children cannot see over the tall grass. \(^{39}\)

In addition to the toll land mines take in injury and death, land mine proliferation also creates social, physical and economic problems within the affected country. \(^{40}\) In 1993, the United States Department of State concluded that:

> Landmines pose a severe threat to the availability of land, water supplies and infrastructure. They render large tracts of agricultural land unusable, often causing malnutrition or

\(^{31}\) See id.

\(^{32}\) See id.

\(^{33}\) See id.

\(^{34}\) See id.

\(^{35}\) See Landmines: Fallout of War, supra note 17.

\(^{36}\) See id.


\(^{38}\) See id.

\(^{39}\) See Landmines: Fallout of War, supra note 17.

\(^{40}\) See Lord, supra note 20, at 311.
starvation among agrarian populations. In some countries, active mines have shifted, and were swept into community water supplies causing contamination and ultimately, a variety of water-borne diseases. Similarly, [land mines] hinder the construction of railways, roads, and bridges, which in turn disrupts the flow of trade and commerce necessary for development.41

Furthermore, the fact that land mines cut off water supplies and render land unfit for farming has led to the mass migrations of once agrarian people and the over-population of urban cities.42 Land mines are typically scattered throughout affected areas, thus frightening farmers and their families away from their fields43 and leaving otherwise fertile soil uncultivated for years.44 Accordingly, land mines have been criticized as one of the greatest public health hazards of the late twentieth century.45

Moreover, even though land mines are typically laid during times of unrest within or between countries, their proliferation may undermine reconstruction efforts years after the conflict has ended.46 Refugee repatriation becomes extremely difficult for those displaced to other countries during armed conflict.47 Land mine barriers erected at borders or even within the displaced territory make the trip from refugee camps back to the homeland difficult and treacherous.48 Many refugee lives are lost in the journey home, even after the conflict that drove them from their homes has long passed.49

Land mines pose an additional impediment to refugee and reconstruction efforts in desert areas.50 In affected lands, the shifting desert sands make removal efforts difficult since the sands further bury land mines making them almost impossible to locate with the naked eye or regular detection methods.51 This has resulted in the securing of large

42 See Lord, supra note 20, at 317.
43 See id.
44 See id.
45 See BUREAU OF POLITICAL-MILITARY AFFAIRS, supra note 37, at 13.
47 See BUREAU OF POLITICAL-MILITARY AFFAIRS, supra note 37 at 9.
48 See id.
49 See id.
50 See id. at 316.
51 See id.
tracts of land as inaccessible to ensure that civilians do not wander into such areas.  

Less developed countries seeking to rid their lands of this scourge are frequently hindered by insufficient resources and technology necessary to effectively demine their affected territories. These countries must rely heavily on international aid to help with removal and education efforts. The United Nations estimates that the average cost of clearing one mine ranges from U.S. $200–$1000 as compared to the U.S. $3.00–$30.00 it costs to produce a single device. Consequently, the cost of removing the mines far exceeds the cost of producing them. Very often the land mine infested country that receives no aid must choose economic development over land mine reduction. Hence, some of these countries are forced to leave the mines intact, increasing the potential for disaster on unsuspecting civilians and rendering the natural resource base unusable. With approximately 500 lives being injured or lost a week, and the concurrent damage to farming resources and water supplies, land mines have become a major problem facing infested countries. In addition to the toll on human life, the economic effects make life even more difficult for innocent civilians who are left to deal with the damage that land mines create.

II. HISTORY AND THE INTERNATIONAL RESPONSE TO THE PROLIFERATION OF LAND MINES

A. Early History

The first widespread use of land mines as a means of curtailing an enemy attack began during World War I. Land mines were a focal

52 See Lord, supra note 20, at 316.
53 See id. at 321–22.
54 See Bureau of Political-Military Affairs, supra note 37, at 32.
55 See id. at 14.
57 See id.
58 See Lord, supra note 20, at 322.
59 See id.
60 See Anti-Personnel Mines: An Overview, supra note 15.
61 See id.
point of the German strategy against the Allied powers, particularly France and Great Britain. The traditional military philosophy behind laying land mines was as a defensive, tactical battlefield weapon, "developed to impede the removal of antitank mines and to prevent enemy penetration of protective minefields." Moreover, they were "intended to protect open flanks, deny access to routes and strategic positions, restrict the enemy forces' ability to maneuver, and force them to deploy in areas where they are vulnerable or least likely to attack with success."

Today, in addition to defensive use, land mines are increasingly considered a strategic offensive weapon, despite the reality that many innocent parties, primarily farmers and children, are the actual victims of land mine explosions. With this strategy, land mines have developed into a means of permanently protecting areas regardless of the existence of an imminent threat.

The devastation caused by land mines has been a problem on the forefront of international policy since the 1970s. Studies conducted since that time have revealed the widespread damage land mines have created. For example, one 1993 U.S. State Department report showed that the number of civilian casualties caused by land mines had reached appalling proportions with approximately 150 people being injured per week. The figures showed that, at that time, between 65 and 100 million land mines were scattered throughout 62 countries with more being laid every day. More recent estimates point out that these figures may have been grossly underestimated. This begs the question of who should bear the responsibility of removing the land mines from areas where war or armed conflict is no longer an is-

63 See Levie, supra note 62, at 566. As a result, countries like Germany are still removing land mines left over from that period of history. See Bureau of Political-Military Affairs, supra note 37, at 25.
64 See Levie, supra note 62, at 566.
65 See Bureau of Political-Military Affairs, supra note 37, at 3.
67 See Landmines: Fallout of War, supra note 17.
68 See id.
70 See see generally Bureau of Political-Military Affairs, supra note 37.
71 See id. at 2.
72 See id. at 1.
73 See Landmines: Fallout of War, supra note 17.
sue. The world community has attempted to respond to this concern through international resolutions and treaties, but these measures have not definitively settled the question of whether the proposed solutions are workable.\textsuperscript{75}

The following sections will discuss what the international response has been to land mines.\textsuperscript{76} Many non-governmental organizations and concerned individuals campaigned to get this issue brought to the international community's attention.\textsuperscript{77} This effort has resulted in several international conferences being held and several treaties being signed over the past thirty years.\textsuperscript{78}


From World War I to the 1970s, land mines were largely unregulated.\textsuperscript{79} The first real international movement towards curbing the use of land mines occurred during the 1970's.\textsuperscript{80} That movement culminated in a United Nations response in 1980 when the world community ratified the United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons: Final Act [hereinafter CCW (1980)].\textsuperscript{81} Appendix C of the CCW specifically dealt with the issue of land mines [hereinafter Protocol II (1980)].\textsuperscript{82} The primary objective of the CCW (1980) and Protocol II (1980) was the protection of civilians.\textsuperscript{83} Specifically, Protocol II (1980) reiterated much of what international custom said about mine warfare.\textsuperscript{84} International custom

\textsuperscript{75} See \textit{Anti-Personnel Mines: An Overview,} supra note 15.
\textsuperscript{76} See infra notes 77–189 and accompanying text.
\textsuperscript{77} See \textit{Safe Lane, The Ottawa Process and Canada's Position,} supra note 19.
\textsuperscript{80} See id. at 230–31.
\textsuperscript{81} See CCW (1980), supra note 78.
\textsuperscript{84} See McCall, supra note 79, at 254.
requires that all measures be taken to protect the lives of civilians.\textsuperscript{85}\hspace{1em} This necessitates that all targets be military in nature and thus prohibits the use of land mines solely as a method of attacking civilians.\textsuperscript{86}

In accordance with these general prohibitions, Protocol II's Article 4 focused attention on the locations of military objectives by specifically prohibiting the use of land mines in civilian areas.\textsuperscript{87} The Protocol listed several exceptions which allowed the use of land mines near civilian populations if (a) the mines were placed near a likely military objective, or (b) adequate measures were taken to protect civilian lives.\textsuperscript{88} These measures included "the posting of warning signs, the posting of sentries, the issue of warnings or the provision of fences."\textsuperscript{89} Additionally, Article 5 banned the use of remotely delivered mines in certain situations.\textsuperscript{90} It also required that all mines be adequately recorded or designed with self-destruct features.\textsuperscript{91}

Despite the attempts Protocol II (1980) made towards protecting civilians from the indiscriminate use of land mines, many international groups and individual countries were nonetheless disappointed by the CCW (1980) because of its failure to ban land mines completely, and its perceived weakness in truly controlling the use of land mines.\textsuperscript{92} One major problem cited was that the restriction on the use of land mines had no effect on countries that were using the mines during times of internal conflicts; therefore, many of the trouble areas of the past two decades were unaffected by the treaty.\textsuperscript{93}

Secondly, Article 9 advocated joint mine removal efforts and the sharing of technological information by its signatories.\textsuperscript{94} However, a problem could ensue where a nation laying the land mines against an

\textsuperscript{85} See \textit{id.}. The CCW relied heavily on certain provisions of a 1977 Protocol established by the Geneva Convention. \textit{See id.} at 265 n.187. This Protocol, established a norm by "(1) prohibiting [the] starvation of civilians as a method of war and (2) prohibiting [the] attacking, destroying or removing [of] 'items indispensable to the survival of the civilian population . . . ." \textit{Id.} at 265 n.187. Therefore, using land mines as a tactic to cut off food and water supplies was off limits for those purposes. \textit{See id.}

\textsuperscript{86} See CCW (1980), \textit{supra} note 78, 19 I.L.M. at 1531, art. 4, app. C.

\textsuperscript{87} \textit{See id.}. This article states that "It is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent. . . . ." \textit{Id.}

\textsuperscript{88} \textit{See id.}

\textsuperscript{89} \textit{Id.}

\textsuperscript{90} \textit{See CCW (1980), supra note 78, 19 I.L.M. at 1531, art. 5.}

\textsuperscript{91} \textit{See id.}

\textsuperscript{92} \textit{See Levy, supra note 62, at 566-67.}

\textsuperscript{93} \textit{See McCall, supra note 79, at 264.}

\textsuperscript{94} \textit{See id.} at 262.
enemy will also be the nation with the greatest resources and information regarding land mines. If this occurs, it may be difficult for the nation requiring mine location information, mine removal assistance and reparations to receive that assistance. Article 9 presumes that such removal efforts between two nations would be easy to orchestrate, even though the parties were, up until quite recently, in armed conflict with one another.\textsuperscript{95} This is especially problematic if the information sought is seen as vital to the national defense to the nations that laid the land mines.\textsuperscript{96} Additionally, the CCW (1980) did not specify a time frame for when such efforts should occur.\textsuperscript{97} This left open the possibility that these efforts would not occur until years after the conflict had ceased.\textsuperscript{98} Such provisions have been denounced as illusory in the past both because of the ill feelings that exist between countries after armed conflict and also because of the lack of a real enforcement mechanism that accompanies the provision.\textsuperscript{99}

Moreover, many of the provisions contained in the CCW (1980) diluted its main focus, the preservation of the innocent civilian population.\textsuperscript{100} Although the CCW was adopted to protect civilians, the "general obligation of the parties . . . to 'remove or render harmless all mines' is established only to protect a UN force or mission performing peacekeeping, observation or similar functions in a given area if the head of the mission so requests."\textsuperscript{101}

Further contributing to the failure to curb the proliferation of land mines, the 1980 Protocol II did not make it incumbent on the placers of the mines to ensure responsibility for removal efforts nor for paying damages.\textsuperscript{102} The responsibility for mine removal remained with the country where the mine was placed.\textsuperscript{103} This completely ignored the fact that many of these countries did not have the resources, technology or money to deal with the problem.\textsuperscript{104}

\textsuperscript{95} See id.
\textsuperscript{96} See id.
\textsuperscript{97} See generally CCW (1980), supra note 78.
\textsuperscript{98} See McCall, supra note 79, at 262 n.173.
\textsuperscript{99} See id.
\textsuperscript{101} Id.
\textsuperscript{102} See id. at 392.
\textsuperscript{103} See id. at 391.
\textsuperscript{104} See generally Bureau of Political-Military Affairs, supra note 37, at 44–52.
Finally, the CCW did not address past actions since its restrictions and obligations were completely prospective.\textsuperscript{105} Therefore, past actions were essentially given a clean slate, and the land mine infested country was left to deal with its aftermath.\textsuperscript{106} After securing the CCW’s passage, the international community did not specifically address the land mines issue for years.

C. Measures Leading Up to the Review Conference

As the years ensued after the signing of the CCW (1980), the horrors of the land mines still existed.\textsuperscript{107} The shortcomings of the CCW (1980) had begun to be realized as more land mines were continually being placed every day in various countries around the world with more and more victims being claimed.\textsuperscript{108} As the death and injury toll mounted, non-governmental organizations opposed to the proliferation of land mines increased their campaign against these weapons.\textsuperscript{109} These non-governmental organizations and special interest groups employed the aid of major international figures to draw the international community’s attention to the horror of land mines.\textsuperscript{110} One such prominent figure was Diana, Princess of Wales.\textsuperscript{111}

Princess Diana’s highly publicized trips to land mine infested countries (such as Bosnia and Angola) and her visits with victims of land mines drew widespread public attention to the matter.\textsuperscript{112} Newspaper articles, radio broadcasts and TV news stories based on these meetings appeared all over the globe.\textsuperscript{113} Thanks in large part to her efforts, in 1997, after the Princess’ tragic death, the British government “an-

\textsuperscript{105} See Partsch, supra note 100, at 391.
\textsuperscript{106} See id.
\textsuperscript{107} See Landmines: Fallout of War, supra note 17.
\textsuperscript{108} See Matheson, supra note 83, at 159. The United Nations estimated that while 80,000 mines were cleared in 1995, 2.5 million were simultaneously being installed in various regions around the world. See American Chemical Society, Land Mines: Horrors Begging for Solutions, CHEMICAL & ENGINEERING NEWS, Mar. 10, 1997 (visited Jan. 15, 1998) <http://www.pubs.acs.org/hotarticle/cenear/970310/land.html>.
\textsuperscript{110} See id.
\textsuperscript{113} See Call for Land Mine Ban as Tribute to Diana, supra note 111.
nounced a complete ban on any British trade in landmines and a moratorium on their operation use with UK forces."\textsuperscript{114}

Additionally, the British government announced at the same time that the country would "destroy all its stocks of anti-personnel landmines by 2005 [or until such time that an international ban treaty had been adopted] and look at ways to speed up their destruction." The concept of replacing some of the stocks with 'smart mines' which self-destruct after a set period [had] been dropped."\textsuperscript{115} This proclamation came forth despite concerns from government conservatives who opposed a member of the Royal family publicly delving into a political issue\textsuperscript{116} and specifically, an issue that had amounted to a lucrative export for that nation.\textsuperscript{117}

In addition to Princess Diana's advocacy throughout the 1990s, other nations in the world community were concurrently responding to the land mines crisis with similar action. In 1993, the UN General Assembly passed the Moratorium on the Export of Anti-Personnel Land Mines Resolution.\textsuperscript{118} "In December 1994, the UN General Assembly adopted resolution (49/75D) calling for the 'eventual elimination' of land mines."\textsuperscript{119} While this resolution did nothing immediate to resolve the issue of land mines, it was a mandate for the United Nation participants to come forth with a solution.\textsuperscript{120} Various countries also responded by taking individual stands to curb the use of land mines.\textsuperscript{121}

The U.S., for example, used its export control policies to restrict the number of land mines being sold abroad.\textsuperscript{122} "Under the United States' International Traffic in Arms Regulations (ITAR), which is managed by the State Department's Office of Defense Trade Controls, all exports or re-exports of 'defense articles and services' (i.e., all goods or services that are inherently military in character) must be licensed by United States government before being sold abroad."\textsuperscript{123} Land mines were


\textsuperscript{115} See id.

\textsuperscript{116} Championing the Anti-Landmine Cause, supra note 112.

\textsuperscript{117} See id.


\textsuperscript{119} Landmines: Fallout of War, supra note 17.

\textsuperscript{120} See id.

\textsuperscript{121} See McCall, supra note 79, at 268–69.

\textsuperscript{122} See id.

\textsuperscript{123} Id.
specifically included under the rubric of ITAR.\textsuperscript{124} The results from that inclusion were remarkable, since the U.S. "approved only ten licenses for commercial export of mines worth $980,000 and sales of 108,852 antipersonnel mines."\textsuperscript{125}

Moreover, the 1992 Defense Appropriation Act which provided for a one year moratorium on all land exports was extended to a total of four years.\textsuperscript{126} The moratorium included a ban on the use of land mines, "except along internationally recognized borders and demilitarized zones."\textsuperscript{127} Some time later, President Clinton had called for the destruction of four million "dumb" land mines by 1999.\textsuperscript{128} He excluded the use of mines for training purposes and those necessary to protect demilitarized areas such as South Korea.\textsuperscript{129} This moratorium was part of the U.S.' larger goal of completely prohibiting the manufacture and sale of land mines.\textsuperscript{130} France and the European Community followed suit with similar moratoriums of their own.\textsuperscript{131}

In 1995, the effort to amend the CCW, and specifically Protocol II (1980), to make it a stronger treaty in the fight against land mines and other such weapons of indiscriminate destruction culminated in the 1996 Conference that amended the CCW (1980) and Protocol II (1980).\textsuperscript{132} The new CCW and specifically, the amended Protocol II, addressed what were perceived to be some of the biggest problems with the 1980 CCW.\textsuperscript{133} Among the commonly cited problems during the CCW Review discussions were the fact that "the CCW covered only international armed conflicts (those between states), and it did not provide for verification or compliance."\textsuperscript{134} The final product was a treaty that restricted some types of land mine use and created guidelines for how and where land mines should be laid.\textsuperscript{135} These new guidelines applied to the proliferation of all land mines in all situations—not just conflicts that occurred between nations.\textsuperscript{136}

\begin{footnotesize}
\textsuperscript{124} See id. at 269.
\textsuperscript{125} McCall, supra note 79, at 269.
\textsuperscript{126} Landmines: Fallout of War, supra note 17.
\textsuperscript{127} Id.
\textsuperscript{128} See id. Dumb land mines are mines that are incapable of self-destruction. See id.
\textsuperscript{129} See id.
\textsuperscript{130} See McCall, supra note 79, at 270.
\textsuperscript{131} See id.
\textsuperscript{132} See CCW (1996), supra note 78.
\textsuperscript{133} See Matheson, supra note 83, at 159.
\textsuperscript{134} Id.
\textsuperscript{135} See generally CCW (1996), supra note 78.
\textsuperscript{136} See Matheson, supra note 83, at 161.
\end{footnotesize}
The U.S., a supporter of the Review Conference, opposed a total prohibition on the use of land mines.\textsuperscript{137} However, the U.S. became active in shaping its own goals for the new treaty that would effectively restrict the use of the weapon.\textsuperscript{138} These goals included:

(A) An expansion of the scope [of the Protocol] . . . to include internal armed conflicts.
(B) A requirement that all remotely delivered mines shall be equipped with self-destruct devices.
(C) A requirement that manually emplaced antipersonnel mines without self-destruct devices or backup self-deactivation features shall be used only within controlled, marked, and monitored minefields.
(D) A requirement that all mines shall be detectable using commonly available technology.
(E) A requirement that the party laying mines assumes responsibility for them.
(F) The establishment of an effective mechanism to verify compliance.\textsuperscript{139}

This framework was significant because, among other things, it emphasized placing responsibility for the laying of land mines.\textsuperscript{140} Thus, the framework also reflected the need to make someone accountable for damage caused by land mines.\textsuperscript{141}

Aside from expanding the scope of the CCW to include internal armed conflicts, the 1996 Protocol II also protected humanitarian workers stationed in areas where there is conflict; placed responsibility on the nation laying land mines to remove the weapons as soon as the conflict is over; created guidelines for prospectively using land mines with self-destruct features; made some prohibitions on transfers; and scheduled a follow up conference meeting in 2001 to discuss the results of the new Protocol.\textsuperscript{142} Protocol II's attention to many of the issues

\textsuperscript{138} See Matheson, \textit{supra} note 83, at 160.
\textsuperscript{139} See id.
\textsuperscript{140} See id.
\textsuperscript{141} See id.
considered deficient with the 1980 CCW, led to the 1996 Protocol being adopted in Geneva in May, 1996.\textsuperscript{143}

The Treaty, however, was still seen as a disappointment to those who supported a total ban on land mines.\textsuperscript{144} Most countries, however, realized that, like the 1980 CCW, the 1996 Protocol II was a compromise measure to ensure that the world community would accept the obligations the new Protocol placed on them.\textsuperscript{145} Although many hoped for a stronger agreement, Protocol II's (1996) shortcomings were the result of political compromises that needed to take place to ensure the passage of the treaty.\textsuperscript{146} "Like most international conferences, the Review Conference operated on the basis of consensus."\textsuperscript{147} The CCW drafters knew that they would never be able to muster enough support for a total ban since countries such as Russia, China, India and Pakistan refused to consider that result.\textsuperscript{148} The drafters therefore sought to do as much as they could in writing the amendment to assure its passage.\textsuperscript{149}

President Clinton, in his January 7th, 1997 letter of transmittal to Congress regarding Protocol II reflected this sentiment.\textsuperscript{150} The letter stated:

\begin{quote}
[t]he amended Mines Protocol was not as strong as we would have preferred. In particular, its provision on verification and compliance are not as rigorous as we had proposed, and the transition periods allowed for the conversion or elimination of certain non-compliant mines are longer than we thought necessary. We shall pursue these issues in the regular meetings that the amended Protocol provides for review of its operation.\textsuperscript{151}
\end{quote}

President Clinton concluded this transmission with his belief that the 1996 Protocol II would help save thousands of lives.\textsuperscript{152}

\begin{footnotes}
\textsuperscript{143} See id.
\textsuperscript{144} See id.
\textsuperscript{145} See Matheson, supra note 83, at 159.
\textsuperscript{146} See id.
\textsuperscript{147} Id. at 160.
\textsuperscript{148} See id. at 159.
\textsuperscript{149} See id.
\textsuperscript{151} Id.
\textsuperscript{152} See id. at 326.
\end{footnotes}
In reality, the amended Protocol was a necessary compromise approach to the complex problems surrounding the use of land mines.\footnote{153 See Matheson, supra note 83, at 159.} As mentioned earlier, many countries such as Russia, China, India and Pakistan opposed the ban for various reasons.\footnote{154 See id.} A key reason for failing to support a ban was national security.\footnote{155 See id.} Other countries had strongly objected to the amended Protocol probably because they feared intervention in its domestic affairs and policies.\footnote{156 See id.} Protocol II’s drafting committee won acceptance by reaffirming the Geneva Convention’s principle that “this extension may not be used as an excuse for unlawful intervention into domestic conflicts.”\footnote{157 See id.}

Despite the criticisms of Protocol II (1996), it is significant because it was the first international agreement signed that fully emphasized civilian life and addressed key problems with the 1980 CCW.\footnote{158 See Matheson, supra note 83, at 159.} Buoyed by a victory, the international community challenged the world to meet again to discuss a measure that would completely ban the use of land mines. The result was the Ottawa Process and the United Nations Convention on the Prohibition of the Use, Stockpiling Production and Transfer of Anti-Personnel Mines and on Their Destruction [hereinafter Ottawa Treaty].\footnote{159 Ottawa Treaty, supra note 78.}

D. \textit{The Ottawa Process}

Following the negotiations which led to the signing of the 1996 Protocol II, a group of countries disappointed that the amended Protocol did not result with a ban of land mines met in Geneva to discuss what other action could be taken to reduce the consequences associated with land mine use.\footnote{160 See Safe Lane, The Ottawa Process and Canada’s Position, supra note 19.} The group meeting attendees concluded that the only solution to the damage created by land mines was a complete ban on their manufacture, stockpiling, sale and use.\footnote{161 See id.} The rationale was that only through a total ban could the international community ensure safety from the indiscriminate use of land mines.\footnote{162 See Safe Lane, Frequently Asked Questions, DEP’T FOREIGN AFF. & INT’L TRADE (visited Mar. 3, 1998) <http://www.mines.gc.ca/faq-e.html>.
Additionally, history had already proven how effective bans on unpopular weapons could be.\textsuperscript{163} For example, bans on the use of poison gas, bacteriological warfare and dum-dum bullets have been very effective over the past 60 years in preventing their use against foreign military and the civilian population during conflict.\textsuperscript{164}

The next step was an October 1996 meeting held in Canada with ICRC, the ICBL, seventy-four countries, the UN, UNICEF, the UN Department of Humanitarian Affairs, the Federation of Red Cross Societies, and representatives of other non-governmental organizations interested in banning the use of land mines.\textsuperscript{165} By the end of this initial meeting, all of the conference representatives were challenged to complete the negotiations process in a year and at the end of that period to return to Ottawa to complete the work by signing the end product.\textsuperscript{166} These series of meetings and the procedure developed to ensure that the drafting of the agreement to ban land mines would be complete by the end of the stated time frame is known as the Ottawa Process.\textsuperscript{167}

The Process included several follow-up conferences and working meetings scheduled in various host countries around the world signifying world support for the work being performed.\textsuperscript{168} The Brussels Conference held in June, 1997, brought 155 countries and more than 100 representatives together to discuss several dimensions of antipersonnel mines and their consequences: the ban, assistance for victims, and the clearance of mines.\textsuperscript{169} This was a high profile conference and many international leaders, "such as UN Secretary-General Kofi Annan, Archbishop Desmond Tutu and former US President Jimmy Carter all offered statements of support of the Ottawa Process."\textsuperscript{170}

Several months later, in Oslo, Norway, formal diplomatic negotiations began.\textsuperscript{171} Before sitting down in Oslo, the treaty drafters circulated revisions of drafts and summaries of the work done in order to receive the widest possible range of comments.\textsuperscript{172} The Oslo Conference

\textsuperscript{163} See McCall, \textit{supra} note 79, at 277.
\textsuperscript{164} See id.
\textsuperscript{165} See Safe Lane, \textit{The Ottawa Process and Canada's Position}, \textit{supra} note 19.
\textsuperscript{166} See id.
\textsuperscript{167} See id.
\textsuperscript{168} See id. Host countries included Mozambique, South Africa, Sweden, Turkmenistan, Australia, India, Japan, Austria and Germany. See id.
\textsuperscript{169} See Safe Lane, \textit{The Ottawa Process and Canada's Position}, \textit{supra} note 19.
\textsuperscript{170} Id.
\textsuperscript{171} See id.
\textsuperscript{172} See id.
was attended by more than 100 countries with eighty-nine countries extending their endorsement of the work produced.\textsuperscript{173}

In December 1997, 125 nations signed the Ottawa Treaty signifying the first official international ban.\textsuperscript{174} The treaty gave the United Nations a big role in helping to effectuate its terms.\textsuperscript{175} Specifically, Article 7 made each State Party responsible for reporting their implementation progress to the UN Secretary General within 180 days after the Treaty enters into force.\textsuperscript{176} Moreover, the parties are required to accurately account to the Secretary General all stockpiled land mines complete with a breakdown of where the stockpiled land mines are placed and how many of each type exist.\textsuperscript{177} The parties are also responsible for mapping out the location of all stockpiled and currently placed land mines\textsuperscript{178} and accounting for any stockpiled land mines that are retained for training purposes.\textsuperscript{179}

Additionally, the Ottawa Treaty imposes requirements for reporting on the status of programs designed to convert or destroy land mines\textsuperscript{180} and requires that each producer of land mines report the technical characteristics of each type of land mine produced.\textsuperscript{181} Any party who places land mines must also report on the "measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of Article 5."\textsuperscript{182}

Among the countries who refused to sign without more negotiations or drafting were the U.S., Russia, China, Israel, Iran, Iraq, North and South Korea.\textsuperscript{183} These nations comprise some of the heaviest users of land mines with Russia, China and Iraq producing the bulk of them.\textsuperscript{184}

The countries that did not ratify the Ottawa Treaty rely heavily on land mines to protect their territories from aggressors.\textsuperscript{185} The main

\textsuperscript{173} See id.
\textsuperscript{175} See \textit{Ottawa Treaty}, supra note 78, art. 6, 36 I.L.M. at 1512.
\textsuperscript{176} See \textit{id.} art. 7(a).
\textsuperscript{177} See \textit{id.} art. 7(b).
\textsuperscript{178} See \textit{id.} at 1513, art. 7(c).
\textsuperscript{179} See \textit{id.} art. 7(d).
\textsuperscript{180} See \textit{Ottawa Treaty}, supra note 78, arts. 7(e)-(f), 36 I.L.M. at 1513.
\textsuperscript{181} See \textit{id.} art. 7(h).
\textsuperscript{182} See \textit{id.} art. 7(i).
\textsuperscript{183} See \textit{CNN Future Watch}, supra note 174.
\textsuperscript{185} See \textit{Landmines: Treaty Endorsed by 100 Countries but not United States}, supra note 184.
reason that land mines are used by the military is because they are an extremely effective means of protection against enemies.\textsuperscript{186} Land mines can be placed strategically to stop the enemy from advancing over borders or protected areas.\textsuperscript{187} The ICRC refers to land mines as "sentries that never sleep: alert 24 hours a day [who] perform consistently in all weather conditions."\textsuperscript{188} They are forever on guard and their low price make them the weapon of choice of poor countries who need to be able to protect themselves in an efficient, relatively inexpensive way.\textsuperscript{189}

Advancements in land mine technology—the ability to place them through remote delivery systems or through air rather than hand placement—has also made land mines a popular choice among more developed military forces who value the land mines for the relative speed and ease with which they can secure an area.\textsuperscript{190}

The remote-delivery systems [are] aimed at severing enemy communications, cutting off the enemy’s routes of retreat and causing chaos in enemy headquarters and resupply centres behind the lines. The development of the remotely delivered mine is held in some quarters to have radically altered the nature of mine warfare. In many armies mines are not integrated into doctrine as weapons of attack. Accurate mapping and recording of remotely delivered mines, usually strewn on a massive scale, are virtually impossible . . . .\textsuperscript{191}

Land mines' efficacy in achieving military goals make them a highly effective tool in times of conflict. Hence, Russia, China and India did not even participate in the Ottawa Process.\textsuperscript{192}

The U.S. did not initially support the Ottawa Process but eventually participated in negotiations due to the growing political pressure from within the country.\textsuperscript{193} President Clinton’s initial position on the matter was that the U.S. would negotiate a treaty through the UN Conference on Disarmament in Geneva rather than through the Ottawa Process.\textsuperscript{194}

\textsuperscript{186} See Anti-Personnel Mines: An Overview, supra note 15.
\textsuperscript{187} See id.
\textsuperscript{188} See id.
\textsuperscript{189} See id.
\textsuperscript{190} See id.
\textsuperscript{191} Anti-Personnel Mines: An Overview, supra note 15.
\textsuperscript{192} See Landmines: Treaty Endorsed by 100 Countries but not United States, supra note 184.
\textsuperscript{193} See Lobe, supra note 137.
\textsuperscript{194} See American Chemical Society, supra note 108.
He felt that the issue of an international ban should be held within the rubric of the Geneva Conference.\textsuperscript{195}

The Geneva Conference, however, was not seen as a viable option since any measure adopted must undergo a lengthy negotiation process, and it was understood that a total ban could not gain universal acceptance by all parties.\textsuperscript{196} The Ottawa Treaty, by comparison, was designed to be an expedited process.\textsuperscript{197} At the end of the Ottawa planning meeting in October, 1996, the meeting participants were challenged to draft the ban treaty and ratify it by the following year, signifying an urgency to put in place a measure to ban land mines.\textsuperscript{198}

When the negotiations had resulted in a final treaty, President Clinton opted not to sign because he could not secure certain exemptions to the ban.\textsuperscript{199} The President unsuccessfully sought an exception for U.S. forces in Korea stating that land mines were necessary to "protect South Korea and the 37,000 U.S. troops stationed there from a possible land invasion by North Korea across the 1953 armistice line . . . ."\textsuperscript{200} Clinton also sought an exemption for land mines that are used to deter enemy tanks.\textsuperscript{201} The President argued that these types of mines were capable of self-destruction and did little damage to the civilian population.\textsuperscript{202} He stated that "as commander-in-chief, [he would] not send our soldiers to defend the freedom of our people and the freedom of others without doing everything we can to make them as secure as possible."\textsuperscript{203}

The position President Clinton has taken has evoked sharp criticism from home and abroad.\textsuperscript{204} The ban on land mines gained bipartisan support in Congress with more than 60 members of the U.S. Senate alone sponsoring legislation to ban land mines.\textsuperscript{205} Congressmen supporting the ban include Senators Patrick Leahy and Lane Evans, in addition to every Senator who was a veteran of combat in the Vietnam

\textsuperscript{195} See id.
\textsuperscript{196} See Matheson, \textit{supra} note 88, at 159-60.
\textsuperscript{197} See Safe Lane, \textit{The Ottawa Process and Canada's Position}, \textit{supra} note 19.
\textsuperscript{198} See id.
\textsuperscript{199} See Lobe, \textit{supra} note 137.
\textsuperscript{200} Id.
\textsuperscript{202} See id.
\textsuperscript{203} See id.
\textsuperscript{204} See id.
\textsuperscript{205} See id.
Additionally, the Vietnam Veterans of America Foundation has been very active in speaking out against land mines and advocating a total ban on their use by the U.S. These ban supporters argue that land mines are unnecessary to defend U.S. troops in South Korea. They cite the strength of the American military, the lack of technology possessed by the Korean forces and a recent study by the Pentagon which stated that land mines were not necessary to defend troops abroad.

Despite the inability to get the support of nations such as the U.S., Russia and China, several countries that have ratified the Ottawa Treaty are now looking into measures to help expedite their commitments to the treaty. For example, as mentioned earlier, Great Britain is so committed to the obligations imposed on it by treaty that it has promised to speed up the time frame for completely banning the use of land mines.

By treaty, the 125 signers have pledged themselves to some very lofty goals. The preamble to the treaty welcomes the adoption of the treaty in order to:

put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced [people], and have other severe consequences for years after emplacement . . .

It also places on the signers a responsibility to do "their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction" while doing "their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration, of mine victims . . ."
III. Analysis

Despite what appears to be a striking victory in the effort against the proliferation of land mines, upon closer inspection, it seems highly unlikely that the Ottawa Treaty will be very effective in achieving a world-wide ban. Several deterrents stand in the way of that goal. The initial problem is that several large military powers have not accepted the treaty. Additionally, the Treaty itself, although a very good start to taking care of a serious problem, does not adequately address the fact that many land mine-infested countries lack the financial resources necessary for removal efforts and for reparations to victims, nor does it provide concrete sanctions for member states who do not comply with the provisions of the treaty.

A. Lack of Support for a Land Mine Ban from Major Military Powers

As noted earlier, the failure to get countries like the U.S., Russia, and China to ratify the Ottawa Treaty, was seen as a big disappointment to ban supporters. Consequently, much needs to be done to ensure that these countries gain acceptance of the Ottawa Treaty. The fact that the U.S. did not commit itself to the treaty has been especially criticized both at home and abroad. Domestically, criticism has been so sharp that bipartisan ban supporters in Congress put together proposed legislation that, if adopted, would ban the use of land mines altogether. But even if this legislation is eventually ratified within the U.S. (a situation that does not seem very likely given the political divide this issue seems to elicit within the country), it may not do much towards solving the land mine issue world-wide. Due to the lack of global commitment to the banning of land mines completely, it seems very unlikely that even with U.S. support, the advocates of a ban will be able to gain acceptance from non-signer nations who rely on land mines to protect against aggressors.

Republican Senator Jesse Helms echoed this concern by remarking "[t]he absence from the negotiating table of countries such as Russia, China, Iran, India and Vietnam suggests that any treaty produced in Oslo will do little to end the indiscriminate carnage and devastation".

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215 See Brown, supra note 174.
216 See Landmines: Treaty Endorsed by 100 Countries but not United States, supra note 184.
217 See id.
218 See Brown, supra note 174.
caused by anti-personnel land mines . . . "219 This bleak assessment is probably correct in light of the fact that these nations comprise both the heaviest users and the heaviest producers of land mines. 220

B. Who Will Pay to Remove the Land Mines and Who Will Provide Damages to Those Who Are Injured or Killed?

In addition to the lack of global support for a land mine ban, the Ottawa Treaty suffers from additional problems that make it unlikely that a successful ban effort will take place. One such issue is culpability. Article 5 of the Ottawa Treaty places responsibility on all parties to:

1. [d]estroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control as soon as possible but not later than ten years after the entry into forces of this Convention for that State Party.

2. [m]ake every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspect to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians until all anti-personnel mines contained therein have been destroyed . . . 221

The article provides for who shall take responsibility but ignores the reality that many land mine affected countries do not have the technological means or money necessary to "demine" their land mines. For those countries who cannot meet the Treaty deadlines, Article 5 includes a process for requesting an extension of the deadline for completing the destruction of the land mines,222 but the extension of the deadline can only be effective if the requesting party can convince other treaty signers to help the mined country in achieving its mission.223 Art. 5, paragraph 5 states that the "Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority

219 See Lobe, supra note 201.
220 See Landmines: Fallout of War, supra note 17; Landmines: Treaty Endorsed by 100 Countries but not United States, supra note 184.
221 See Ottawa Treaty, supra note 78, 36 I.L.M. at 1510, art. 5.
222 See id. at 1511.
223 See id. at 1512, art. 6(3).
of votes of States Parties who are present and who vote whether to grant
the request for an extension period.224 However, the provision does
not give any concrete guidelines on how the party is to achieve its treaty
responsibilities even if an extension is granted.

Article 6, entitled "International Cooperation and Assistance," pro-
vides for assistance to those parties who are unable to achieve their
treaty responsibilities.225 The article states that all party members have
"the right to seek and receive assistance, where feasible" from the other
state parties.226 The article also states that parties have the right to
engage in a technological exchange to fulfill the mission of the treaty227
but it does not require each party to do so. Paragraph 2 of this article,
however, states that the parties shall not "impose undue restrictions on
the provision of mine clearance equipment and related technological
information for humanitarian purposes"228 indicating that when a party
is asked for such information, that party will provide the information
freely and completely.

Paragraphs 3–5 of Article 5 state that each party in a position to do
so shall: "provide assistance for the care and rehabilitation, and social
and economic reintegration, of mine victims and for mine awareness
programs"; provide assistance in clearing mines; and provide assistance
in destroying stockpiled land mines.229 The treaty, however, does not
establish a method for determining who can provide assistance and
does not state what kind of assistance must be provided.

Paragraph 5 states that the parties can ask the U.N. or other com-
petent third party, such as a non-governmental organization, to assist
the party in developing a program that will ensure the removal of land
mines.230 The third party would assist in determining the scope of the
land mine problem, what resources are currently available within the
infested nation to deal with the problem, the amount of time necessary
to adequately deal with the problem, assistance to victims, and what
programs should be put in place to educate the public.231 However, in
making a third party responsible for crafting a solution, the requesting
nation lacks the support of treaty parties who can help realize the

224 See id. at 1511, art. 5, para. 5.
225 See id. at 1511–12.
226 Ottawa Treaty, supra note 78, 36 I.L.M. at 1511–12, art. 6, para. 1.
227 See id. at 1512, art. 6, para. 2.
228 See id.
229 See id. at art. 6, paras. 3–5.
230 See id. at art. 6, para. 7.
231 See Ottawa Treaty, supra note 78, 36 I.L.M. at 1512, art. 6, para. 7.
program through financial resources and through their placing pressure on non-complying countries.

Moreover, subsection 5 charges "each state party in a position to do so shall provide assistance for the destruction of stockpiled mines" but again, it does not provide a mechanism for determining which parties are implicated and how much assistance will be necessary to satisfy their obligation.\textsuperscript{232}

Despite the amount of detail these articles provide, the treaty relies on non-specific compliance measures and leaves it up to the individual parties to ask for and offer help to nations who cannot achieve the treaty's goals themselves.\textsuperscript{233} The treaty provides a general mandate for each state party "giving and receiving assistance under the provisions of this Article [to] cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.\textsuperscript{234} However, history has shown that voluntary measures such as these, especially in light of the fact that many major countries have not agreed to the obligations of the treaty, have fallen short of their goal.\textsuperscript{235}

C. What Is the Sanction for Not Following the Mandates of the Treaty?

Another deficiency of the Treaty is its self-enforcement mechanism for ensuring compliance with the obligations of the Treaty. The self-enforcement mechanisms do not provide concrete procedures. For example, Article 9 discusses the National Implementation Measures required, by stating:"\textsuperscript{236} "Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control."\textsuperscript{237} However, if a nation does not pass laws prohibiting that nation's use of land mines or if the nation continues to use land mines after signing the treaty, it is unclear what measures can be enacted by the other Treaty members and even if those measures will be respected by the sanctioned nation.\textsuperscript{238}

\textsuperscript{232} See id. at 1512.
\textsuperscript{233} See id.
\textsuperscript{234} See id. at 1511-12.
\textsuperscript{235} See Partsch, supra note 100, at 325.
\textsuperscript{236} See Ottawa Treaty, supra note 78, 36 I.L.M. at 1515, art. 9.
\textsuperscript{237} See id.
\textsuperscript{238} It appears this fear has already come to fruition. The Human Rights Watch reports that "[t]he government of Angola—a treaty signatory—is once again laying mines . . . ." See Human
The treaty supporters might consider creating embargoes or financial penalties for breaking the provisions of the treaty. Such a measure requires the parties to formulate some type of hearing procedure to hear charges of non-compliance before imposing sanctions but currently, the Treaty does not provide that kind of specificity.

Similarly, Article 10, entitled "Settlement of Disputes" provides that the State Parties will work together to settle disputes that arise through the Treaty. The Treaty suggests each country offer "its good offices in calling upon the States [sic] parties" not in compliance. Presumably, such diplomacy measures will help remedy any problem which may arise from the obligations of the treaty. Again, despite this suggestion, the Treaty does not provide a more concrete procedure for how such matters will be resolved.

A mitigating provision provides that the state parties will meet regularly to "consider any matter with regard to the application or implementation of this Convention . . . " This provision will perhaps be the forum for which many of these issues will be worked out. Only time will tell what further work may be necessary to make this a truly strong, enforceable treaty.

D. Possible Solutions

Although the Ottawa Treaty suffers from problems which make its probability for success unlikely, there are some concrete measures Treaty supporters can take to correct some of the treaty's deficiencies. These ideas center around shedding more worldwide media exposure on the problem, putting a committee together to help tighten up and make recommendations for how to achieve the treaty's goals, and creating a committee to deal with how non-compliance with the treaty's mandates will be handled.

One of the most effective ways to ensure that more countries ratify the Ottawa Treaty is to constantly shed more media attention on the matter. A good example of this is the media attention the anti-land mine campaign received after Princess Diana's involvement with the


See Ottawa Treaty, supra note 78, 36 I.L.M. at 1516, art. 10.

Id.

Id.

See id.

See id.
issue. Princess Diana’s highly publicized trips to land mine-infested countries did much to focus the world’s attention on the devastation caused to human life.

Additionally, in the U.S., the activities of ban supporters created political heat for President Clinton after he declined to sign the Ottawa Treaty.\(^{244}\) Such political backlash ensued that legislation was proposed in Congress to create an independent ban for the U.S. Moreover, more recently, President Clinton, spurred by active criticism by land mine ban supporters promised that the U.S. would stop using anti-personnel mines by 2006 if a suitable alternative to land mines is found.\(^{245}\) While getting the U.S. to sign alone will not solve the larger issue of convincing the heaviest users and producers of land mines to ratify the Treaty, strong U.S. support might convince some of the hold-out nations to reconsider their position on the matter. Additionally, the United States and other Treaty supporters can exert international pressure on the non-complying nations to either support the ban or at least to comply with some of the Treaty’s provisions.

To combat the problem of lack of specificity in achieving Treaty goals and the lack of culpability regarding who is to act and in what instance, the Treaty signers must convene a subcommittee responsible for clarifying Treaty requirements and offering guidelines for the Treaty supporters to follow in complying with the mission of the Treaty.

For example, this subcommittee can be responsible for pairing member states that need financial and technological assistance with nations and organizations that can provide those resources. Currently, the Treaty only provides for those countries in a position to do so to contribute financial and technological resources. The subcommittee might determine which countries would be able to provide financial and technological help and then pair those nations with countries most affected by land mines and who need assistance. In this way, the requirement to act becomes more specific rather than just a generalized requirement to assist.

Additionally, the Treaty subcommittee can also be responsible for maintaining a fund where requesting nations can receive financial resources to help pay for demining efforts and to help pay reparations to innocent victims of land mines. Such a fund would be administered

\(^{244}\) Landmines: Treaty Endorsed by 100 Countries but not United States, supra note 184.

\(^{245}\) See Human Rights Watch, supra note 238. However, many doubt that the U.S. is serious about this goal especially in light of the fact that Congress has designated $50 million for a new mine system which would be prohibited if the U.S. ratifies the ban treaty. See id.
by the Treaty signers and would be in addition to already existing fund programs set up by independent worldwide organizations. The fund itself could have two features—a voluntary participation mechanism for those countries who would like to contribute resources in the effort to make reparations to victims and help clear mined areas, and the fund can include a compulsory mechanism that requires those countries who insist on using land mines to provide a fund to make sure land mines are cleared after a specific military objective is achieved. The subcommittee can also make recommendations for how specific objectives within the Ottawa Treaty could be achieved.

In order to ensure that compliance with the Treaty’s mandates occurs, the Treaty members can create another subcommittee specifically convened to deal with nations who violate the terms of the treaty. A hearing mechanism or some combined investigation procedure action with the United Nations might be required to ensure that charges of non-compliance are brought before a legitimate tribunal to lend credibility to the sanctions imposed. If a nation brought before a hearing process is found to have violated the terms of the treaty, the subcommittee should have a prescribed list of remedies and sanctions to use against the non-conforming nation. The hearing should have the majority support of all Treaty members and the United Nations.

**Conclusion**

The ratification of the Ottawa Treaty has been a significant advance towards stopping the proliferation of land mines. Despite the strong step in the right direction, much work must now be done to convince those nations who have not ratified the Treaty to come forth to do so. The Treaty will never be truly effective until the major international powers that produce land mines or who heavily rely on their use also agree to the Treaty’s provisions. Measures such as strong public support of a ban and sanctions to control nations who disregard the mandates of existing treaties should be employed to persuade the entire international community to ban the use of land mines.

Additionally, the Ottawa Treaty should explicitly revise the Treaty to clearly define expectations and responsibilities of the parties. For example, a more specific plan for providing assistance to land mine infested nations and victims of land mines should be developed including a system for pairing less developed nations with nations equipped to provide assistance and/or a fund from which the less developed nation or victims can draw. Similarly, work needs to be done to ensure
that a subcommittee of the Treaty supporters is able to enforce the treaty by providing sanctions against non-complying nations. With more attention to the matter and the continued efforts of the supporters of a land mine ban, universal acceptance may be achieved within the next several years.

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