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LESSONS FROM IRAQ AND AFGHANISTAN: IS IT TIME FOR THE UNITED STATES TO SIGN THE OTTAWA TREATY AND END THE USE OF LANDMINES?

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LESSONS FROM IRAQ AND AFGHANISTAN: IS IT TIME FOR THE UNITED STATES TO SIGN THE OTTAWA TREATY AND END THE USE OF LANDMINES?

Arthur Rizer*

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I. INTRODUCTION

WWII: November 1944, France

In November of 1944, a young Army Officer was leading his Japanese American soldiers from the 442nd Infantry Regiment on a patrol in Southern France, when a soldier noticed a wire stretched across two trees over head. The soldier called over his Platoon Leader to show him the obvious anti-personal mine trap. However, as the young officer drew near, the soldier tripped a second wire near his feet. The explosion injured the soldier and seriously injured the leg of the officer. This Lieutenant was sent back to the United States and retired from the military due to his injury, from which he never fully recovered. The injured officer was First Lieutenant Arthur L. Rizer Sr.; he was awarded the Purple Heart for wounds received that day.

OIF: August 2005, Iraq

On August 22, 2008, a roadside bomb made up of two full propane tanks, two Russian designed 155mm artillery shells, old wire, and a soap-gasoline cocktail was placed inconspicuously on the side of a road in al Karmah, Iraq, a small town right outside of Fallujah proper. Because the locals often sold propane on the side of the road the bomb was not identified as a threat by the oncoming convoy made up of Iraqi Army and U.S. Forces. At 1830, the bomb’s pressure tube was activated which armed the bomb setting it to explode when the next vehicle passed over the rubber tube, the bomb exploded next to a Marine 7-ton troop carrier and an uparmored HMMWV. The blast ignited the homemade napalm made of soap

1 Letter from Helen Rizer, Author’s Grandmother (Feb. 13, 2009) (on file with author); Interview with Helen Rizer, Author’s Grandmother (Feb. 8, 2009).
2 Citation and Support of Bronze Star Medal, United States Army (Sep. 14, 2005) (on file with author), Citation and Support for Purple Heart Medal, (Sep. 14, 2005) (on file with author).
3 This is the best guess of how the device was ignited based on evidence that was left behind after the blast and resulting fire. A pressure tube, or pressure plate as it is sometimes called, was found and it is fairly clear that it activated the bomb. Because several HMMWVs traveled over the tube before it exploded it is assumed that the pressure tube was “turned on” after the last HMMWV crossed it targeting the 7-ton, which was their target because
and gasoline, which stuck to the 16 Iraqi soldiers that were in the back of the 7-ton, the two Marines driving the 7-ton were pelted with shrapnel from the 155mm shells. Also in the blast wave was the HMMWV. Fortunately the napalm did not ignite the truck, however, it received the bulk of the concussion waive, giving traumatic brain injuries to two service members. In addition to the Americans and Iraqi soldiers, children who were waiting for candy to be thrown from the American trucks were injured, as well as civilians who were simply watching the convoy pass by. In all twenty service members were either killed or injured and the perpetrators escaped. One of the injured Americans is the author of this article, Arthur L. Rizer III; he was awarded the Purple Heart for wounds received that day.

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If the United States is the military Goliath around the world, then improvised explosive devices (IEDs), homemade landmines,\(^4\) are the smooth stones that brought the giant to its knees. IEDs are responsible for 63-percent of all combat wounded in Iraq of all in Iraq and 53-percent of those wounded in Afghanistan.\(^5\) Thus out of the more than thirty thousand Americans that it carried the largest number of troops. It is possible that the tube was set to acquire a certain amount of weight and the 7-ton was heavy enough or the tube simply malfunctioned and started to work again when the 7-ton crossed it. However, because insurgents almost always take the path of least resistance when it comes to sophistication, the simple and likely answer is that the pressure system was remote activated by wire or radio, which activated the IED. The reason pressure systems are used is because it is very accurate there is almost no human risk involved.

\(^4\) It is noted that a term “landmine” has a specific legal significant that will be explained in subsequent sections. See Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211 [hereinafter Ottawa Treaty].

have been wounded in Iraq and fifteen thousand in Afghanistan approximately twenty-eight thousand were wounded and two thousand were killed by roadside landmines.6

This article begins with a short history of landmines, first describing early models that were simple spikes to the sophisticated designs seen in the cold war and ending with the patchwork mines that American and coalition forces are seeing in Iraq and Afghanistan today.

Next this article will survey the law of landmines, discussing the history of the movement to ban landmines, specifically focusing on the Ottawa Treaty and the Convention on Certain Conventional Weapons Treaty that govern the manufacturing and use of landmines today. This section will also examine the role that the United States has played in the development of landmine law.

Next this article advocates for the United States to take a new direction in landmine law by joining the Ottawa Treaty and leading a movement to improve its provisions. This article will argue that before the wars in Iraq and Afghanistan the United States was fairly inexperienced with the horrors of landmines at least on the levels that have been seen in Iraq and Afghanistan. The most recent war fought in the United States was the civil war, which took place well before the explosion in landmine technology – there are no landmines left buried on the hills of Gettysburg today.7

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7 It should be noted that mines were used in the Civil War and this experience, for the first time, “demonstrated the longevity of mines in the ground. In 1960 five landmines with Rains fuzes were recovered near Mobile Alabama. Nearly a hundred years after they were laid it was noted that the power was ‘still quite dangerous’”. MIKE CROLL, THE HISTORY OF LANDMINES 20 (Leo Cooper 1998). Yet these incidents in the United States are extremely rare, unlike other mine infested countries where in 1995, the height of incidents, there were an average of 24,000 landmine victims every year. Face the Victims, http://members.iinet.net.au/~pictim/mines/victims/victim.html (last visited May 5, 2009).
On the other hand, countries in Asia, Africa, and even Europe have seen the impact of leftover landmines making farmlands deadly years after the bloodshed. So too has the Middle East – IEDs in Iraq and Afghanistan are killing Americans but they are killing even more civilians. Americans are now confronting the devastation caused by the success of the IED strategy in Iraq and Afghanistan, both in terms of direct harm to American troops, and the way landmines, without discrimination, kill children, women, and other innocent civilians whose only crime was to be in the proximity of a soldier, or to just be unlucky. Hence, it is time for the United States to reconsider its position on landmine law and not only join the Ottawa Treaty but also campaign to improve it.

II. HISTORY

A. History of Landmines Warfare

i. The First Silent Killers

The word “mine” is a derivative of the work mina, which in Latin translates to vein of ore. The word was used by soldiers whose mission it was to dig mines in the ground to place explosives, which would cause the collapse of fortifications during a siege. However, while landmines today, by their very definition, explode, these weapons more accurately trace their lineage to ancient times in the form of spikes, stakes and other traps. One such device, known as a caltrop, was a four-spiked device fashioned from iron (however there were at one point

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8 Soldier is a term that is specific to a member of the Army. However in the interest of simplicity throughout this article, soldier is used to refer to all service members.
9 CROLL, supra note 7, at ix.
10 Id.
11 See id at 4-5.
made from bone), so that when thrown on the ground, one spike always points upward. This simple device has proved extremely reliable ensuring that the caltrop, “[w]ith an almost unchanged [design] in 2,500 years, [is possibly] the longest serving piece of military hardware in existence.”

It was only a matter of time before gunpowder would be used “in concealed weapons.” And in the nineteenth century mines became an effective tool of warfare.

The United States’ Civil War was a time of transition for the way armies deployed on the battlefield. It was during this war that mines were developed to be used both in the water and on land. “By the end of the war, landmines (or torpedoes as both land and water mines were termed during the period) had damaged fourteen and sunk twenty-nine Union ships; a greater tally than all the warships of the Confederate Navy.”

During the Civil War, the Confederate Army, in the face of a much larger force, found it necessary to enhance their defensive front in order to expose the Union troops to as much

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12 Id. at 5. The Romans used these devices extensively in defense operations, early American settlers used the weapon to fend off attacking Indians, and as late as the Vietnam War, caltrops were used by the Vietcong. See id at 6, 8.
13 Id. at 6. Mike Croll, the author of The History of Landmines personally found caltrops in Cambodia there were almost identical to those used by the Romans. Id.
14 Gunpowder was used by the Chinese starting in the twelfth century and by the thirteenth it was being deployed in the form of a landmine. Id. at 8.
15 Id. The design of this early device, called a fougasse was basic: a lance or flag stuck in the ground, something that would attract a passing horsemens looking for a trophy. Id. “The act of pulling a pole from the ground initiated an igniter attached to a buried gunpowder charge.” Id. Later other methods were used to ignite the mine – to include an observer pulling on a string when the enemy was in the blast zone. Id.
16 Id. at 10
17 See id.
18 Id. “The ability of a cheap mine to destroy an expensive warship was an irresistible economic argument for its employment.” Id.

Union troops were later to discover that an artillery bombardment on a suspected minefield could cut [ ] cables and disrupt the mines. This procedure, while generally effective, also added to the burden imposed by mines. More ammunition would have to be manufactured, transported and fired, and the ground assaulted would time more time to cross, having been churned up by a thorough bombardment. Thus the increase in time and resources imposed upon the attacker by landmines greatly multiplied their effectiveness.

Id. at 12.
attrition for as long as possible.\textsuperscript{19} This set the stage for advancement, as Mike Croll, author of \textit{The History of Landmines}, describes it: “It was perhaps inevitable that the inventive ability of the Americans, with their fascination for the automation, would produce a weapon that would kill its victim without the need for a trigger to be pulled.”\textsuperscript{20} According to Croll, the basic knowledge of a pressure activated landmine was around for many years before the Civil War, but “it is unlikely that the American citizen-soldier was aware of them. It is therefore reasonable to credit (or reproach) the Americans with the development of the first operational devices.”\textsuperscript{21}

Pressure landmines are deployed in much the same way that the caltrops were.\textsuperscript{22} However by using explosives instead of spikes, the product is far more devastating in its effects and the injuries that cause are not proportional to the weight acting upon them.\textsuperscript{23} This new triggering mechanism was developed first by Confederate Brigadier General Rains.\textsuperscript{24} While his 2,500 strong unit defended a garrison at Yorktown against McClellan’s 100,000 man army, Rains ordered his men to lay down his makeshift mines.\textsuperscript{25} Rains used the mines to facilitate his retreat to Richmond, and when the Union Army pursued the “Union cavalry hesitated, leaving Rains and his men to reach Richmond in safety.”\textsuperscript{26}

\begin{footnotesize}
\begin{enumerate}
\item Id. at 15.
\item Id.
\item Id. at 15-16.
\item Id. at 14.
\item Id. The ability to build these early pressure landmines existed since the sixteenth century, however they were not as reliable as the fougasse and cost considerably more than the caltrop. Id. Nevertheless “[t]he concept of the pressure-operated landmine remained on the drawing board for perhaps three centuries.” Id.
\item Id. at 16.
\item Id.
\end{enumerate}
\end{footnotesize}
The new tactic did not go unnoticed by either the North or the South. In the South, some of enlisted soldiers thought that the weapon was barbaric, and Rains’ commanding officer, General James Longstreet, ordered that the weapons not be used “declaring them neither a ‘proper nor effective method of war.’” The Confederate Secretary of War, Geoge W. Randolph, eventually had to weigh in on the subject, asserting that new weapon was appropriate in order to delay a pursuit, as part of a defensive line to repel an attack, and against warships in rivers. The North on the other hand, declared that practice “murder” and despite the Yorktown incident killing less than 36 men, the physiological damage was significant – “soldiers [ ] imagined every conceivable place to be booby-trapped. An atmosphere of fear [ ] pervaded the abandoned Yorktown and all other places subsequently attacked and occupied by Union troops.” The landmine wars had begun.

**ii. The Revolution of Landmines**

During World War I, the machine gun became the weapon of choice because the opposing nations took defensive postures, and the machine gun could fire 600 bullets per minute, making “any use of anti-personnel mines [the] military equivalent of gilding the lily.”

World War II, however, saw unprecedented advances in war-making technology, to include the modern landmine. In 1939, landmines were still a fairly rare weapon and not commonly known. However, by 1945 all major military forces considered them an important

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27 Id. at 16.
28 Id.
29 Id. at 17. “The total number of landmines used during the war was probably under 20,000 and they returned in total perhaps a few hundred casualties, which in a war that caused the death of 620,000 seems insignificant.” Id. at 18-20.
30 Id. It is noted that anti-tank mines were first used in WWI and were effective at stopping the new machines of war. The History of Landmines, http://members.iinet.net.au/~pictim/mines/history/history.html (last visited May 1, 2009).
31 Id. at 96.
32 Id.
component for defense and “over a hundred different types mine[s] had been used in combat.” 33 The famous German General Edwin Rommel at the battle El Alamein, during the North African Campaign, which was the watershed of mine warfare, laid a half a million mines in order to slow the allies. 34 The tactic worked – the allies who had a 2 to 1 advantage in tanks, got bogged down in Rommel’s mine field. 35 If it were not for Rommel’s error of attacking the allies, which weakened his forces, the allies may not have been able to break Rommel’s line, which eventually lead to his retreat from Africa. 36 It is estimated that roughly 300 million mines were deployed during World War II. 37

While WWII may have been the apex of mine warfare it was not the end – as demonstrated by the Vietnam War. 38 Vietnam burned the very soul of the American soldier and citizen, which, for all advanced military technology and tactics, it was unable to defeat its shadowy enemy. 39 A major factor for this defeat was the failure of the United Sates to effectively deal with the Vietcong’s offensive landmine operation, which at times paralyzed American forces. 40

The 1950s through 70s saw an increase in countries developing vehicles that could mechanically lay hundreds of mine within minutes. 41 For example, the United States developed

33 Id. “The massive increase in the number and types of mines during the Second World War, although largely German-led, was not the result of some particular characteristic of the German psyche. All armies engaged in mine warfare during the war but none mastered it like the Germans.” Id. at 51.
34 Id. at 61. The Soviets were also very active in mine development and fielding. Some reports put the number of Soviet mines fielding during the Second World War as high as 222 million, although clearly an exaggeration. Id. at 66. However, the Russians where know to lay massive field and on the Eastern Front they laid 3,200 mines for every mile of front. Id.
35 Id. at 61, 63.
36 See id. at 63.
38 CROLL, supra note 7, at 96.
39 CROLL, supra note 7, at 102.
40 Id.
41 See id. at 110-11.
a system where a single jet aircraft could field 564 mines at once covering an area of 200 meters by 300 meters. Later, the American military was able to deploy mines using artillery, called area-denial artillery munitions or ADAM. “By the 1980s mines had assimilated all aspects of modern technology and had become an integral part of fast-paced maneuver warfare.”

Throughout the past century, landmines gained a level of increased importance on the battlefield. While many argue that the greatest development in mine warfare was the ability to deploy large quantities of mines with very limited manpower, this author disagrees: the ability of a small guerilla force to bring a superpower to its knees as seen in Vietnam and, if not to a lesser extent, currently Iraq and Afghanistan, is arguably the most significant development in this area of war-fighting. This is especially true because of the unique way landmines can be made in caves and bedrooms, unlike other conventional weapons, such as rifles which need factories (that are easy to destroy).

**iii. With Sticks and Duct Tape: IEDs**

In actuality, all exploding landmines before the Second World War were improvised exploding devices. And while the Second World War may have been the zenith of the manufactured landmines, improvised landmines were the key force multiples used against the United States in Vietnam and are currently being used in Iraq and Afghanistan. It is likely that insurgents would definitely use manufactured landmines if they could obtain them, however, because improvised devices can be designed to meet the local battlefield requirements and they

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42 Id. at 112-13.
43 Id. at 114.
44 Id. at 123. “Its effect was never decisive, but always influential, subtle, but never insignificant.”
45 See id.
46 See generally id. at 8-36.
47 See infra Part III.A.i.
can be made in a basement, which is not easily detected and targeted, they have become the preferred weapon in insurgencies.\textsuperscript{48}

An IED maker can use commercial explosives in the device, use whatever old munitions he has on hand, or make the explosives from household goods.\textsuperscript{49} IEDs can employ numerous different triggering devices, from remote radio waves to a simple rubber hose that when stepped on or driven over, ignites the explosion using the change in air pressure in the hose as a trigger.\textsuperscript{50}

Moreover the types of IEDs vary greatly. The most common IED currently used in Iraq and is the 155 artillery shell which is wired to explode on the ground and is targeted at foot soldiers and vehicles, in Afghanistan insurgents are making most of their calcium ammonium nitrate (fertilizer produced in Pakistan), a tactic first seen in the First World War.\textsuperscript{51} The Iraqi insurgency also used and uses very sophisticated explosively formed penetrator (EFP) or shape charged IEDs.\textsuperscript{52} “The shape charge concentrates blast energy to punch through armor plating, and then propels the molten metal into the vehicle’s cabin.”

\textbf{B. History of the Law}

\textit{i. Convention on Certain Conventional Weapons}

\textsuperscript{48} Id. at 49.
\textsuperscript{50} Id.
\textsuperscript{51} See CJTF-7, OIF Smart Card 4 (Jan. 4, 2004) (on file with author), available at http://www.fas.org/irp/doddir/army/ied-smartcard.pdf; CROLL, \textit{supra} note 7, at 26. “Anti-personnel mines were adapted from artillery shells, although fuzes were manufactures specifically for use in this role. These were simple pressure fuzes which screwed into the nose of the shell.” \textit{Id.} Tom Vanden, \textit{Majority of IEDs are traced to Pakistan}, USA Today, http://www.usatoday.com/news/military/story/2011-10-02/ieds-traced-to-pakistan/50638686/1 (Oct. 2, 1011) (stating that 80% of IEDs seen in Afghanistan are homemade explosives using calcium ammonium nitrate that is imported from Pakistan).
\textsuperscript{52} Wilson, \textit{supra} note 49, at 3; the last American killed by an EFP was Raul Moncada on April 13, 2009 in Karbala Iraq. Icasualties.org, Iraq Coalition Casualties: Military Fatalities/IED attack EFP, http://icasualties.org/Iraq/Fatalities.aspx.
\textsuperscript{53} Wilson, \textit{supra} note 49, at 3.
There has been a fundamental shift in the way international law treats landmines. These weapons were never viewed as extraordinary, such as mustard gas, and thus in need of a special rule. Indeed, much like a rifle or an artillery barrage, landmines were considered conventional run of the mill weapons.

This was true until the late 1980s and early 1990s, when many started to notice the durable violence of landmines, long after the last soldier had left the battle field. A land mine fielded in 1954, will just as likely explode in 2012 as it would have in 1954. Thus a device that was once meant to stop an advancing army kills a child decades after the conflict ends. The first international attempt to limit landmines was the Convention on Certain Conventional Weapons (CCW), also known as the Inhumane Weapons Convention.

The CCW is an international convention with a purpose to ban or restrict the use of specific types of weapons that are considered to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately. The Convention itself only contains very broad provisions and leaves the specifics to its annexed Protocols. There were originally three Protocols adopted on October 10, 1980 and now there are five. The Amended Protocol II on

54 See CROLL, supra note 7, at 29-36.
55 See id.
56 See id.
57 See id.
58 Gino Strada, The Horror of Landmines, SCIENTIFIC AMERICAN, May 1996, at 45 (stating that “[m]any of the mines dropped decades ago may have effective lifetimes of centuries.”) This is strictly accurate – the detonators often deteriorate, making them safer in one way, but the nitroglycerin (or similar unstable components) used in some mines will “sweat” out and sometimes make them go off simply by being jolted.... Thus some mines might become inert and others become hyper-dangerous.
60 Id.
62 See Id; see also UNOG, supra note 59.
Anti-Personnel Land-Mines went into effect on December 3, 1998 and currently has 92 State parties.\textsuperscript{63}

The major difference between Protocol II and the Ottawa Treaty, which is discussed in the next section, is that it “regulates but does not ban the use of landmines and booby-traps.”\textsuperscript{64} Anti-personnel landmines (APL) under the CCW are permitted, but if deployed they must be kept in a clearly marked and protected field or equipped with a self-destruct and self-deactivation mechanism that will render the mine inoperable after a determined period of time.\textsuperscript{65} Moreover under the CCW, a mine must be detectable using conventional mine detecting equipment.\textsuperscript{66}


\textsuperscript{65} Id; Protocol II, supra note 63, at Art. 5.

Specifications on self-destruction and self-deactivation:

(a) All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10\% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in one thousand activated mines will function as a mine 120 days after emplacement.

(b) All non-remotely delivered anti-personnel mines, used outside marked areas, as defined in Article 5 of this Protocol, shall comply with the requirements for self-destruction and self deactivation stated in sub-paragraph (a).

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraphs (a) and/or (b), it may declare at the time of its notification of consent to be bound by this Protocol, that it will, with respect to mines produced prior to the entry into force of this Protocol defer compliance with sub-paragraphs (a) and/or (b) for a period not to exceed 9 years from the entry into force of this Protocol. During this period of deferral, the High Contracting Party shall:

(i) undertake to minimize, to the extent feasible, the use of anti-personnel mines that do not so comply, and

(ii) with respect to remotely-delivered anti-personnel mines, comply with either the requirements for self-destruction or the requirements for self-deactivation and, with respect to other anti-personnel mines comply with at least the requirements for self deactivation.
However, because the CCW regulates how mines are used and does not ban them outright, many advocates for the ban of land mines concluded that the Convention was inadequate. The drafters of the Ottawa Treaty, attempted to remedy this flaw, specifically, the "rules [of the CCW] on use were considered too complex and too dependent on the acquisition of new technologies to have a reasonable chance of being implemented in most conflicts in the developing world where landmine casualties were most widespread."67 Indeed, when faced with the choice of a mine that would last for a generation or a mine that would self-destruct after only 30 days, the choice was "a predictable one for most poor armies and insurgent groups."68 The countries that signed the Ottawa Treaty say that the only way to eliminate the civilian cost of landmines is to ban all landmines, not just the low-tech versions.69 According to the Ottawa signers, because only wealthy countries will be able to afford the "smart" self-destructing mines as outlined in the CCW, poorer countries will argue that because they can only afford the dumb mines, and because the wealthy countries can purchase smart mines, they must have at least dumb mines.70

**ii. Ottawa Treaty**

As of March 2012 the Ottawa Treaty, formally known as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, had 159 parties.71 There are currently 35 countries that have not signed or

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66 Protocol II, supra note 63, at rt. 3(5).
67 Peter Herby & Eve La Hays, How Does it Stack Up? The Anti-Personnel Mine Ban Convention, ARMS CONTROL TODAY 7 (Dec. 2007).
68 Id.
69 See id.
70 See generally id.
71 States Parties, International Campaign to Ban Land mines, http://www.icbl.org/treaty/members [hereinafter States Parties.] The Treaty officially has 157 parties because two states Marshal Islands and Poland have signed the treaty
ratified the treaty including, the People’s Republic of China, Iran, Russia, and the United States of America.\(^{72}\)

The history of how the Ottawa Treaty came into existence is unique in international law. In the early 1990s the consequences of old landmines started to receive attention.\(^{73}\) Several groups joined forces with the goal to internationally ban the use, stockpiling and production of landmines.\(^{74}\) In four short years the movement recruited 1,400 religious and non-government organizations, with six such organizations forming the initial steering committee to put the goal of banning landmines into action.\(^{75}\) With the help of celebrities such as Princess Diana, the organization was able to organize quickly and generate media attention for their cause, which in turn yielded political capital.\(^{76}\)

In March of 1995 Belgium announced that it was domestically banning the use, production, and export of landmines.\(^{77}\) However, despite this small victory and the success that

but have not officially ratified it into law. States Not Parties, International Campaign to Ban Landmines, at http://www.icbl.org/treaty/snp [hereinafter States Not Parties].

\(^{72}\) States Not Parties, \textit{supra} note 71.

\(^{73}\) \textsc{AFRICA-ASIA}: The demonization of mines and the Ottawa Treaty: International Campaign to Ban Landmines, Integrated Regional Information Networks, United Nations Officer UN Office for the Coordination of Humanitarian Affairs at http://www.irinnews.org/InDepthMain.aspx?InDepthId=19&ReportId=62808 [hereinafter IRIN].

\(^{74}\) Ottawa Treaty, Red Cross at http://www.redcross.ca/article.asp?id=28546&tid=110 [hereinafter Red Cross].

Jody Williams won the Nobel Peace Prize in 1997. When she began, the thought of banning a universally accepted weapon was dismissed as a utopian fantasy. Besides, she occupied no position of authority and had no special standing on the matter that required decisions by presidents and national legislatures. Nonetheless, with seven colleagues and a fax machine, Williams carried out an unprecedented lobbying and publicity campaign, eventually attracting the support of more than one thousand organizations in over sixty countries, as well as the support of a wide range of celebrities, from Princess Diana to Nelson Mandela to General Norman Schwarzkopf. In less than a decade, that citizens’ initiative convinced 50 nations to renounce land mines, destroy current stock, and prohibit future manufacture of this weapon.

\textsc{GRAHAM ALLISON, NUCLEAR TERRORISM: THE ULTIMATE PREVENTABLE CATASTROPHE} 208 (Owl Books 2004).

\(^{75}\) IRIN, \textit{supra} note 73.

\(^{76}\) \textit{See id.} “Hundreds of civil society groups flooded to join the movement including major international agencies such as the International Committee of the Red Cross (ICRC) and different UN agencies.” \textit{Id.} This with the help of “people [like] Princess Diana to [brought] the matter into people’s living rooms and on their TV screen - to such an extent that governments began to think: ‘yes, why don’t we ban landmines’.” \textit{Id.}

\(^{77}\) \textit{Id.}
the movement had in bringing public attention to the issue “without direct governmental support, the movement found it difficult to elevate the issue to the international legislative level.” 78

One year later, in what is referred to as the “Ottawa Process” the Canadian government held a conference where 50 countries sent representatives in order to start the process on creating an international standard on the international legality of landmines. 79 The group set a goal to come back in one year “with an agreed international convention,” which they did. 80 “The speed and momentum of the movement was unprecedented, culminating in December 1997 with the Ottawa Convention where 122 nations signed the Convention. . .” 81 The Treaty was drafted to go into effect after it was ratified by 40 countries. 82 On March 1, 1999, Burkina Faso became the 40th country to ratify the treaty thus establishing it as international law. “This was the first time in history that some states agreed to ban completely a weapon in widespread use by most of the world’s armed forces.” 83

This principle of the Treaty is simple: “civilians should not be killed or maimed by weapons that strike blindly and senselessly, either during or after conflicts. . .” 84 To reach this goal the Treaty established that parties may not produce, transfer, and within a four year window, must destroy all landmine stockpiles, keeping only a small supply for the purpose of training in how to detect and disarm landmines. 85 Further, the Treaty states that within 10 years of joining, 

78 Id.
79 Id.
80 Id.
81 Id.
82 Red Cross, supra note 74.
83 Herby & Hays, supra note 67, at 6.
84 Id at 10.
85 Red Cross, supra note 74; Ottawa Treaty, supra note 4. The Treaty sets out that a country may request a small stock of landmines for training purposes. Id.
a country should clear and destroy all landmines within its territory.\textsuperscript{86} However, because some signing nations have a high proliferation level of landmines and do not have the financial capability to clear all of their emplaced mines within the 10 year window, they may seek help from the international community to help clear their mines.\textsuperscript{87}

According to the Treaty a mine is defined as “a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity, or contact of a person or vehicle.”\textsuperscript{88} The type of mine that the Ottawa Treaty is primed to eliminate are APLs.\textsuperscript{89} Conversely, remote detonated mines are not covered under the Treaty.\textsuperscript{90} This is true because, remote mines do not continue “killing and maiming after hostilities have ended.”\textsuperscript{91} Thus, because a remote mine is detonated by a triggerman and “aimed” at a particular target it does not have the generation killing effect of APLs and hence less “barbaric.”\textsuperscript{92}

In all, the Ottawa Treaty has been a success. While there are still a reported 15,000 to 20,000 new victims of APLs per year, this number is down from an average of 26,000 per year in

\begin{itemize}
\item \textsuperscript{86} Ottawa Treaty, supra note 4; “In a unique development for an international treaty on weapons, the convention contains not only prohibitions or regulations of certain weapons. It also contains positive commitments to international cooperation in mine clearance and in providing for the care, rehabilitation, and social and economic reintegration of mine victims.” Herby & Hays, supra note 67, at 6.
\item \textsuperscript{87} Ottawa Treaty, supra note 4. “The campaign pressed hard for the convention to legally bind signatories to act in positive ways in not only ending the use, production, stockpiling and transfer of mines but also to remove mines, promote mine awareness and assist victims of landmines.” IRIN, supra note 73.
\item \textsuperscript{88} Extensions are not automatic and should be for the minimum period to implement a well-prepared and adequately funded clearance operation. It is important that extensions requests be managed in a way that maintains the credibility of the treaty and creates maximum pressure for completion before and deadline or within a realistic and well-planned extension period.
\item \textsuperscript{89} Ottawa Treaty, supra note 4, at Art. 2(1). Anti-personnel mines are mines that are designed to explode by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.
\item \textsuperscript{90} See generally, Ottawa Treaty, supra note 4.
\item \textsuperscript{91} Herby & Hays, supra note 67, at 9.
\item \textsuperscript{92} See id.
\end{itemize}
the 1990s. Moreover, “[t]he international trade in these weapons has virtually ceased with a significant number of non-states-parties having export moratoria in place, including China, India, Pakistan, Russia Singapore, South Korea, and the United States.”

The Ottawa Treaty has 156 parties and the CCW, Protocol II has 88 parties. If the calculation of success is “how many” nations join a treaty, the total ban theory has more traction in the international community. However, if success is determined by “who” joins a treaty, the CCW has not only the world’s most powerful nations, but also the nations that have produced the most mines to include China, India, Israel, Pakistan, Russia, and the United States.

iii. The United States’ Role in Landmine Law

For many years The United States was seen as the leader in reducing the threat of landmines throughout the world. The United States lead a campaign and funded programs to train and equip countries with mine detectors. In 1992, the United States became the first country to unilaterally declare a moratorium exporting landmines through the Export Moratorium, which has been cited as a contributing factor in the decrease in landmine injuries.

In 1993, the United States Senate, led by Patrick Leahy, the Senator from Vermont who is

Senator Leahy's export moratorium legislation became the basis for a US-initiated UNGA resolution urging states “to pursue an agreement to ban anti-personnel landmines.” This resolution passed 156-0. Indeed, in his September 26, 1994 UN General Assembly speech (written in part by Leahy but not cleared by the US Department of Defense), President Clinton forcefully endorsed the goal of an eventual elimination of landmines. This speech may have had the unintended consequence of helping to move the issue further and faster toward a ban than Clinton had imagined possible.

Id.
considered the American lion of the landmine debate, pushed to have the moratorium extended for three more years with a 100-0 vote, and has since made the moratorium permanent.\textsuperscript{100} In 1994, Senator Leahy, organized the first ever congressional hearing on landmines titled the Global Landmine Crisis.\textsuperscript{101} The very next year, Senator Leahy attempted to ban the use of landmines by the U.S. military through congressional legislation, an effort that was thwarted by President Clinton and the Pentagon.\textsuperscript{102} Three years later, in 1998, the State Department issued a report titled: \textit{Hidden Killers: The Global Landmine Crises}, that acted as a powerful impetus for action against landmines.\textsuperscript{103} Indeed, the introduction of the report, written by Secretary of State Madeleine K. Albright, notes that “[n]ear the start of this century, 90 percent of wartime casualties were soldiers. As the century wanes, 90 percent are civilians. . .” – a statistic largely due to landmines.\textsuperscript{104}

The United States also was one of the first countries to sign the CCW, which went into effect 19 months before the Ottawa Treaty.\textsuperscript{105} Despite this, the United States regularly faces condemnation for not joining the Ottawa Treaty.\textsuperscript{106} Critics cite this failure as proof of U.S. exceptionalism\textsuperscript{107} and “reflects the U.S. refusal to subscribe to ‘multilateralism of any kind that

\textsuperscript{100} Id.
\textsuperscript{101} Id.
\textsuperscript{102} See id.
\textsuperscript{104} Id.
\textsuperscript{105} Compare UNOG, supra note 59, with, Ottawa Treaty, supra note 4.
\textsuperscript{107} “American Exceptionalism” is a phrase credited to Alexis de Tocqueville, which refers to the United States' perception that it differs qualitatively from other nations due to its unique history, origins, and special political institutions, and that it serves as a beacon to other nations. Harold Hongju Koh, \textit{On American Exceptionalism}, 55 STAN. L. REV. 1479, 1485-87 (2003).
either defines or enforces basic values’ and evidences U.S. hostility to ‘the development of international law and institutions.’”

In defense of its position, the United States asserts that its stance on landmines comes not from its refusal to subscribe to multilateralism, but rather from its unique security obligations around the globe, specifically – South Korea. Indeed, the 38th parallel is virtually the only place where the United States uses mines that would be banned by the Ottawa Treaty. The mines are deployed across a 151-mile stretch of no-man’s land abutting a country “where a highly dangerous and unpredictable regime has put a million heavily armed troops within twenty-five miles of the South Korean capital.” Some argue that even with the massive mine field, the U.S. and Republic of Korea (R.O.K.) forces could not withstand an advance from North Korea.

Those who support the U.S. position have asked: “Would Canadians and Swedes, who have been most critical of the American deployment of mines, be willing to take up these responsibilities with their own forces (with or without landmines)?” During the Ottawa Treaty negotiations, the delegation from the United States attempted to include a provision in the final

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110 Id at 330; Safrin, supra note 106, at 1319.
111 Bobbit, supra note 109, at 330.
112 Id.
113 Id. Bobbit goes on to state:

Without U.S. extended deterrence, which is assured by the presence of U.S. ground forces, it is highly unlikely that South Korea would be content to remain a non-nuclear power in light of North Korea's acquisition of nuclear weapons, with all the consequences for nuclear proliferation to Japan. Surely this is not a step toward a safer and more humane world.

Id. It should be noted that North Korea has become a nuclear power, even with the landmines in place. See David E. Sanger, The North Korean Challenge, N.Y. Times, Oct. 10, 2006, at A1.
treaty that excluded the 38th parallel from the final proposal.\textsuperscript{114} This proposal was rejected in whole. The United States then attempted to obtain an additional nine years to remove mines in Korea beyond the 10 provided for in the Treaty; this provision also was rejected.\textsuperscript{115}

Therefore, the United States refrained from joining the Ottawa Treaty not because of its contempt for international law, but rather because the Treaty failed to address security obligations it was committed to and did not address its “perceived special military needs.”\textsuperscript{116} It has also been noted that the majority of the signing countries to the Ottawa Treaty “join the Convention without incurring a military cost of the kind identified by the United States and other nonparties. The Convention bans stockpiling, yet sixty-four of the parties never had such stockpiles.”\textsuperscript{117}

Despite the United States not joining the Ottawa Treaty – the world has seen a dramatic decrease in the use, production, and transfer of anti-personnel mines.\textsuperscript{118} Principally because of the treaty’s legal provisions, but also because landmines have been greatly stigmatized around the globe.\textsuperscript{119} Indeed, only Myanmar and Russia have confirmed that they have planted new

\begin{flushleft}
\textsuperscript{115} Safrin, \textit{supra} note 106, at 1319-20.
\textsuperscript{116} \textit{Id} at 1320.
\textsuperscript{117} \textit{Id} (citing Landmine Monitor, Major Findings, in Landmine Monitor Report 2006, \textit{supra} note 52 (reporting that worldwide stockpiles of landmines have declined from 260 million before the Convention to 180 million)).
\textsuperscript{118} Herby & Hays, \textit{supra} note 67, at 7.
\textsuperscript{119} \textit{Id.}
\end{flushleft}
“Ottawa banned” mines between 2006 and 2007. The United States, on the other hand, has not used these types of mines in any of its past three conflicts in Kosovo, Afghanistan, and Iraq.

However, these successes do not satisfy the critics. According to Senator Leahy, the Bush administration wasted an opportunity during its tenure to take an active role in this area of international law. The Senator stated that President Bush’s policies rolled back progress in backing away from the pledge to “rid the world of these indiscriminate weapons, others will ask why [the singing nations], with their much weaker armies, should stop using them.”

C. Reconciling the Law and the Weapons

Up until this point, this article has used the word “landmine” generically, to refer to any exploding device. However, now that the legal aspects of landmine warfare have been discussed

120 Id (citing International Campaign to Ban Landmines (ICBL), Landmines Monitor Report 2007, Towards a Mine-Free World, p. 1. Other uses for anti-personnel mines were reported by armed nonstate actors in Myanmar and Colombia, for example.) “There have been allegations of use of antipersonnel mines by both Georgia and Russia during the fighting in August 2008, but each side denies it Landmine Monitor Report, Ban Policy, http://www.icbl.org/lm/2008/es/ban.html (last visited May 1, 2009). [hereinafter Ban Policy].
121 Id.
123 Id.
124 Id. In conducting research for this article, the author contacted Senator Leahy’s office concerning his efforts to have the United States join the Ottawa Treaty. In response to the question: “will America’s experience in Iraq help shape its future on landmine treaty law,” Senator Leahy’s office responded that the Senator “has been active in the international effort to ban the production, export, and use of anti-personnel landmines” and will continue this effort – new President, new efforts. Email from Allison M. Carragher, Member or Senator Leahy’s Staff, Office of Senator Leahy (Mar. 22, 2009, 14:43 EST) (on file with author); Senator Leahy has lobbied President Clinton, President Bush, and now President Obama on this topic. Press Release, Office of U.S. Senator Patrick Leahy, Anti-Personnel Mines; An American Problem (Mar. 1, 1999), available at, http://leahy.senate.gov/press/199903/990301.html; Press Release, Office of U.S. Senator Patrick Leahy, Leahy Hits Bush Rollback Of U.S. Landmine Policy (Feb. 27, 2004), available at http://leahy.senate.gov/press/200402/022704.html; Press Release, Humanitarian, Faith, Medical and Veterans Groups Urge Obama to Review Landmine and Cluster Bomb Ban (Feb. 10, 2009), available at, http://www.fcnl.org/press/releases/cluster021009.htm (Leaders from 67 national organizations representing a wide cross-section of American values and constituencies issued a strong call today for President Obama to reconsider U.S. opposition to global treaties prohibiting the use, transfer, and production of antipersonnel landmines and cluster munitions.)
it is important to parse the language and expound upon what is a “landmine” for purposes of international law.

As already discussed, command detonated landmines are not landmines according to the Ottawa Treaty, which only covers proximity mines.125 “There are two basic categories of landmines. Anti-tank mines are powerful explosives designed to destroy tanks and other vehicles.126 These types of mines are laid along transport routes (and thus relatively easy to locate), they often kill people as well.”127 The second category, and most relevant to this discussion, are APL landmines, which target individuals.128

In Iraq and Afghanistan, which is the impetus for this article, the enemy uses both APL and vehicle landmines. APLs are typically referred to as dismounted IEDs and vehicle landmines are often called roadside IEDs. It is interesting to note that the vast majority of IEDs in Iraq are vehicle borne (both proximity and command detonated) – thus according to Article II of the Ottawa Treaty they may be allowed.129 This is a major defect in the Ottawa Treaty that, as argued later, must be corrected.130 However this point does not take away from the thesis of the argument herein – regardless of the fact that many IEDs used against American forces may be technically legal (or legal for American forces to use against the enemy for that matter), facing these landmines in Iraq and Afghanistan has (or should have) given the United States a different perspective on the issue.

III. A NEW DIRECTION: SECURITY PRAGMATISM

125 See Ottawa Treaty, supra note 4, at Art. II.
126 Matthew & Rutherford, supra note 97, at 2.
127 Id.
128 Id.
129 Ottawa Treaty, supra note 4 at, Art. II.
130 See infra Part IILC.
If the United States joined the Ottawa Treaty and gave up APLs tomorrow, would it impact the rest of the world? Would North Korea also dismantle their mine fields on the 38th parallel and would the insurgents in Iraq and Afghanistan stop using IED landmines to kill and injure American and Iraqi service members? The answer to these questions is almost certainly not immediately, and probably not at all. Consequently, why should the United States change course on landmine law? More specifically, what is the end state – how would a major shift in international policy such as this make America safer?

In Iraq and Afghanistan, the IED strategy has not only been devastating to our troops, creating approximately 28,000 casualties, but this strategy has been key to preventing American forces from completing its tactical and strategic goals in the Middle East, which makes the United States less safe.\textsuperscript{131} Simply having a front row seat to the horrors of landmines in Iraq and Afghanistan is not necessarily enough for a major policy change on landmine policy. Nonetheless, the landmine experience from these two wars could, and as argued her, should, be the impetus for a new discussion on landmines. This discussion should revolve around the argument that the joining of the Ottawa Treaty would increase the United States’ national security and the proposition that joining the Ottawa Treaty is the correct moral decision. Ultimately, the United States will do what is in its strategic interest, and while the experiences that this nation’s soldiers’ endure will shape the American posture, it is recognized that soldiers are expected to experience terrible things – they are, after all, warriors. Hence, the critical question to ask is: would joining the Ottawa Treaty make the United States safer?

\textsuperscript{131} Casualty Summary, supra note 5.
A. Morality is Not Relative

To put things in perspective, during World War II, 4.4 percent of American casualties were caused by landmines. In the Gulf War out of 1,364 casualties, 6 percent were caused by landmines. Conversely, Operation Iraqi Freedom has seen an IED casualty rate of 60 percent or a nearly 1300 percent increase.

Over 4,804 Americans have died in Iraq as of March 28, 2012. As mentioned, roadside landmines have been the number one killer, more than rifle fire or mortar attacks combined. The IED threat is a danger that has bedeviled military leaders since the invasion. The Pentagon has responded with “a high-level task force headed by a retired four-star general, $6.7 billion in research and development, new high-tech equipment and vehicles, and, perhaps most importantly, intelligence efforts to get inside the decision-making of an insurgency that is sophisticated, if largely low-tech."

Because the enemy has learned very quickly that a conventional attack against U.S. forces is the best way to get killed, insurgent leaders have adopted the landmine strategy as their main effort, which quickly became very effective. In a Senate Armed Services committee hearing held in 2007, General John Abizaid, then the commander of U.S. Forces in the Middle East, said that IEDs were the “perfect asymmetric weapon - cheap, effective, and anonymous.”

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132 Matthew & Rutherford, supra note 97, at 2.
134 Casualty Summary, supra note 5. The increase from 4.4 percent to 60 percent is 1272 percent.
135 AntiWar, supra note 6.
137 Knickerbocker, supra note 136. “Besides the 3,000 US military fatalities in Iraq (perhaps more than that if those who died sometime after being evacuated from the war zone are included), the number of troops wounded due to hostile action now approaches 23,000 - about half of those from IEDs.” Id.
138 Id.
139 See id.
140 Id.
The former Army’s Vice Chief of Staff, General Richard Cody, called them the “poor man’s cruise missile.”

In 2007, at the peak of the IED incidents, U.S. forces were attacked by IEDs 1,000 times per month – a four-fold increase from 2004. In addition to the number or IEDs, soldiers saw a tremendous advance in bomb-making sophistication, as well as tactics on placement and detonation. It is true that roadside landmines are not a new phenomenon in war, however, what is new about the insurgent’s IED strategy in Iraq is the scope and scale of their use.

The United States has not been stagnant in responding to the IED threat. At one point, more than three billion dollars a year was being spent on countermeasures, including more armor on military vehicles and jammers to prevent radio signals from triggering remotely activated devices; in its Fiscal Year 2011 and 2012 request, the Pentagon requested nearly 500-million dollars for the Joint Improvised Explosive Device Defeat Organization. To a large extent these countermeasures have been effective. Indeed, some estimate that without this equipment, the casualty rate in Iraq could have been more than double of what it is today.

While the number of dead in Iraq and Afghanistan could be seen as relatively low, considering the mission at hand and the sheer number of attacks, the number of wounded service members coming home is staggering. And many of the returning wounded service members

\[\text{\textsuperscript{141 Id.}}\]
\[\text{\textsuperscript{142 Id. This number represents both anti personnel landmines and remote detonated mines. Id.}}\]
\[\text{\textsuperscript{143 See id.}}\]
\[\text{\textsuperscript{144 Id.}}\]
\[\text{\textsuperscript{146 See Knickerbocker, supra note 136.}}\]
\[\text{\textsuperscript{147 From March 19, 2003 through February 28, 2009 there has been 4,245 killed and 31,102 American combat casualties in Iraq for a total of 35,347. Defense Manpower Data Center, Operation Iraqi Freedom, http://siadapp.dmdc.osd.mil/personnel/CASUALTY/OIF-Total.pdf (last visited May 5, 2009). This is out of 870,000 soldiers who have served there in the 6 year period (an average of 145,000 soldiers serve in Iraq at any time, thus there has been roughly 870,000 tours in Iraq) this is a 4 percent casualty rate. David Cloud, Number of}}\]
have severe disabilities, including missing limbs and traumatic brain injuries.\textsuperscript{148} Indeed, the injuries seen in Iraq and Afghanistan would have likely been fatalities in past wars.\textsuperscript{149} In all likelihood, the IED attack recounted at the beginning of this article, would have resulted in many more deaths, (including the author of this article) if it was not for advanced vehicle armor.\textsuperscript{150} Hence, the military is bringing “war home” at a much higher rate than previous conflicts. This is quite likely why Iraq and Afghanistan veterans are experiencing a much higher rate of Post Traumatic Stress Disorder – they are surviving their traumatic experiences to suffer from the stress at a later date.\textsuperscript{151} It is true that the use of IEDs in Iraq and Afghanistan has waned in the past couple of years, however, despite this drop in IED attacks, Iraq, and to an lesser extent Afghanistan, will forever be known as America’s IED war.\textsuperscript{152} American soldiers have faced the threat of


\textsuperscript{148} Knickerbocker, \textit{supra} note 136.


\textsuperscript{150} The HMMVV that was caught in the blast radius of the August 22, 2005 IED, was hit with hundreds of pieces of shrapnel, if the armor would not have stopped the shrapnel the personnel in the vehicle would have been killed or seriously wounded.


\textsuperscript{152} This is primarily due to the indiscriminate use of the IEDs by al Qaeda operatives killing civilians in mass numbers, which started a rebellion against the insurgents. In 2007, many Sunni areas started to fight back against both al Qaeda terrorists and local insurgency groups; this is often referred to as the Sunni Awakening. Hoda Jasim & Rahma al Salem, The Awakening Council: Iraq's Anti-al-Qaeda Sunni Militias, Asharq Al-Awsat, http://www.asharqalawsat.com/english/news.asp?section=1&id=15777 (last visited February 23, 2009). The awakening started in Baghdad when the imam and preacher of Imam Abu Hanifa al Nu’man mosque called upon his people to form small militias to stamp out the violence caused by the insurgents. \textit{Id.} This call to arms spread throughout the country in the Sunni communities, which are concentrated in the al Anbar Providence. \textit{Id.} The insurgents, in return focused their efforts against the rebelling Sunni groups and the Iraqi Army. \textit{Id.} In December 2007, “a suicide bomber drove through a checkpoint in the northern city of Baiji where elements of the Al-Sahwa forces and Iraqi army were stationed. The blast killed 25 people and injured 80 others, some of whom were civilians.” \textit{Id.} Targeting civilians in an attempt to scare them back into submission had the opposite effect, which increased the efforts by the civilian militias to target insurgent forces. \textit{See id.} The use of IEDs fell further in 2008, with reports of roadside landmines falling almost 90 percent. Tom Vanden Brook, \textit{Iraq IED Deaths Down 90 percent in a Year}, MARINE CORPS TIMES, available at, http://www.marinecorpstimes.com/news/2008/06/gns_ied_iraq_062308/. “In May [2008], 11 U.S. troops were killed by blasts from improvised explosive devices, compared with 92 in May 2007, records show. That’s an 88
landmines since the First World War but never before has a conflict been so defined by a single military tactic. 153

Much like the Vietnam War was to the previous generation, this war on terror has had some humbling lessons to teach the United States. East Europeans, Africans and the people from Southeast Asia have long lived with the horrors of landmines. They have witnessed their children and farmers lose legs and their lives by these simple, cheap, but destructive devices for years. In Iraq and Afghanistan, the American people did not personally witness the explosion that caused an injury; however, the nation as a whole is feeling its effects with each and every injured and killed service member. American soldiers are coming home with not only their own injuries, but with stories of lost friends and the carnage these weapons have inflicted upon civilians – after all a child is a child.

Moreover, the IEDs in Iraq and Afghanistan are inflicting economic damage to the United States. Tens of billions of dollars have been spent on IED countermeasures and tens of billions more have been spent on treating those who have been injured by IEDs. 154 These

percent decrease.” Id. The reason for this drop include an increased amount of civilian intelligence being obtained (partly a result of the Sunni awaking), improved surveillance, and the deployment of the Mine Resistant Ambush Protected vehicle or MRAP, because the MRAP has better armor the insurgents have to spend more time making more powerful bombs, thus they can not deploy them as fast. Id. Almost 7,000 MRAPs have been deployed to Iraq in 2008, the vehicles’ have “taken hits — many, many hits that would have killed soldiers and Marines in up-armored HMMVW…” Id. Iraqi assistance forces such as the ad hoc group, the Sons of Iraq, “have provided on-the-ground intelligence to U.S. forces looking for IEDs…” Id. U.S. forces have installed “new security cameras that could see bomb builders up to five miles away. “If they’re out there planting an IED, we can go whack them before they finish,” says Maj. Gen. Rick Lynch, who commanded a division in Baghdad from February 2007 until May 2008. Id.

153 See supra Part II.A.
154 E.g., Wilson, supra note 49, at 3 (stating that from 2004 to 2006 the United States spent $6.1 billion on to defeat the threat from IEDs.) Just treating the brain injuries caused by IED is expected to cost over $14 billion. Brain Injury Association of America, http://www.biausa.org/elements/pdfs/abc_bulletpoints.pdf (last visited May 2, 2009) [hereinafter BIAA]
numbers do not even include the cost of treating this generation of soldiers for the years to come, which has been estimated to reach in the trillions of dollars.\textsuperscript{155}

A few years ago the organization stoplandmines.org released a powerful video dealing with this issue.\textsuperscript{156} The video starts off with young American girls running out to a soccer field, the sun is shining and the parents are cheering for their daughter, Stacy, as she dribbles a soccer ball down the field and scores a goal.\textsuperscript{157} As Stacy and her team celebrate her goal she steps on a landmine and disappears in a cloud of smoke – the other girls start to scream, Stacy’s father screams her name as he runs to her lifeless body, other players with chunks of flesh missing from their legs are in complete shock.\textsuperscript{158} The screen fades to black with Stacy’s mother is screaming “Oh my God somebody help us.” The video concludes with the simple words “[i]f there were landmines here. Would you stand for them anymore? . . .”\textsuperscript{159}

\textsuperscript{155} See e.g., Bryan Bender, \textit{US: Economists Say Cost of Iraq War Could Top $2 Trillion}, \textit{BOSTON GLOBE}, Jan. 8, 2006, available at http://www.corpwatch.org/article.php?id=13057; see also Matthew & Rutherford, \textit{supra} note 97, at 2. “In over 60 countries, an estimated 110 million landmines are currently active. After hostilities have ceased or the mines otherwise have outlived their original purpose, they are often left behind, because they are extremely expensive to clear (from $100-$1000 each). . . The long-term public health costs are enormous (an estimated $3000 per victim)--and many countries are simply unable to provide adequate care or rehabilitation services.” \textit{Id.} The United State is also the largest contributor to humanitarian efforts to combat those injured by landmines and it is not cost effective. Press Release, Office of U.S. Senator Patrick Leahy, \textit{The Victim-Activated Landmine Abolition Act Of 2006} (Aug. 1, 2006), available at http://leahy.senate.gov/press/200608/080106a.html.


\textsuperscript{157} \textit{Id.}

\textsuperscript{158} \textit{Id.}

\textsuperscript{159} \textit{Id.} On their web site the organization states:

What would you do if you had to worry about landmines every time you went to the store, took a drive in the countryside or went to see your doctor?

That’s the reality for millions of people in about 80 countries. With such large numbers of people affected by landmines in countries that may seem very far away, it’s sometimes easy to forget about the problem.

Landmines may not be in your backyard, but they’re in the backyards of people all over the world. The United Nations is helping dozens of countries end the threat of landmines. You can help too by donating to have a minefield cleared.

The fight against landmines is a fight for the rights of people to live free from fear, in a safe environment conducive to development and peace.

\textit{Id.}
The message of the video is simple and powerful: Americans would be much more concerned with the eradication of landmines if our people were personally touched by them.\textsuperscript{160} But America has been touched by mines. It may not be in our suburbs, but our sons and daughters are facing devices much like the one demonstrated in the video in Iraq and Afghanistan. The video is correct in its assumption that this personal contact would change the mentality toward landmines. Indeed, the IED threat has been on the minds of the media, politicians, and the military since the wars in Iraq and Afghanistan started.\textsuperscript{161} The use of these devices has been referred to as “cowardly”\textsuperscript{162} and “barbaric.”\textsuperscript{163} Yet, the United States has still failed to join the treaty that would ban these weapons.\textsuperscript{164} This is true despite the fact that most experts in this area agree that to do so would provide a certain amount of moral legitimacy to the United States.\textsuperscript{165}

During the apex of the fighting in the Pacific during the Second World War the United States military, because of the shocking level of casualties it was taking routing the Japanese from the Pacific islands requested permission from the President to use chemical weapons.\textsuperscript{166} President Roosevelt sent back a one sentence response: “All previous endorsements denied. Signed: Franklin D. Roosevelt, Commander in Chief.” President Roosevelt refused to use chemical weapons despite the fact his military was telling him it would save American lives –

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\textsuperscript{160}See id.
\textsuperscript{161}See e.g., Rick Atkinson, ‘The single most effective weapon against our deployed forces’, WASH. POST, Sept. 30, 2007 at A01.
\textsuperscript{162}See e.g., Press Release, Multi-National Corps – Iraq, INPs respond to IED, provide medical assistance (Baghdad) (Nov. 19, 2008), available at, http://www.mnf-iraq.com/index.php?option=com_content&task=view&id=23856&Itemid=128
\textsuperscript{164}See supra Part II.B.iii.
\textsuperscript{165}See e.g., Interview with Dennis Barlow, Director of James Madison University Mine Action Information Center, March 6, 2009 (stating that we have lost the moral high ground with our allies over this issue.) [hereinafter Barlow].
\textsuperscript{167}Id.
\end{flushleft}
“[h]e saw the bigger picture, the long-term humanitarian implications, and thanks in part to his leadership, chemical weapons, which the War Department had called ‘the most effective weapon history has ever known,’ were stigmatized and have hardly been used since.”168

It is true, chemical weapons are very “useful.”169 They not only have the potential to kill a great number of the enemy, but they also instill fear in the enemy.170 In World War I, in which chemical weapons were used extensively, there were over one million casualties caused by the attacks, however the number of fatalities due to poisonous gas was relatively small at just under 90,000.171 Yet, despite the fact that victims of a gas attack had a relatively high chance of survival, with only about 3 percent of its victims dying, gas still commanded the greatest fear from soldiers, making it an extremely effective military tool.172 Nevertheless, after the war, steps were taken to ban the use of chemical weapons, first with the treaty of Versailles of 1919, which focused on Germany,173 and then with the Geneva Protocol.174

Even Hitler, one of the greatest mass murders of all time, who in WWI was temporarily blinded by a gas attack, refused to use these types of weapons because he ironically believed them to be immoral (yet obviously not immoral against his victims in the concentration

168 Id.
169 See id.
170 See generally id.
172 See id.
173 Treaty of Peace with Germany (Treaty of Versailles), June 28, 1919, art. 171, 2 Bevans 43, 119 (“The use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices being prohibited, their manufacture and importation are strictly forbidden in Germany. The same applies to materials specially intended for the manufacture, storage and use of the said products or devices.”).
camps.) The United States also saw the horrors of chemical warfare in WWI and consequently vowed not to use chemical weapons, partly because they were deemed immoral.

In Iraq and Afghanistan, the enemy has taped-captured American soldiers being tortured and have even released tapes of Americans having their heads cut off while they pleaded for mercy. This “tactic” is effective in some respects; the greatest fear of an American soldier in Iraq or Afghanistan is being captured, and, soldiers do not make the best tactical decisions when they make them out of fear. Moreover, if the United States started to cut off the heads of insurgents when they were captured, it would be reasonable to conclude that people would think twice about becoming an insurgent. To take it a step further, the United States military could kill every single male in Iraq – the U.S. has enough bullets to carry out this mission and this would drastically reduce the insurgency. Yet we do not use these methods, not because they do not achieve results, but because they are illegal, and they are illegal because the international community, including the United States, has deemed them morally wrong.

A basic canon of military tactics, observed in Sun-Tzu’s *The Art of War* is to always take the high ground. From the high ground you can better observe the enemy coming and attack the enemy at a greater distance. For this discussion, the high ground is the moral high ground. The U.S. could gain goodwill in the global community by making some concessions to international opinion. The United States has been at the forefront of criticizing despotic regimes.

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177 See e.g., YouTube, *American gets his head cut off by Islam terrorist*, http://www.youtube.com/watch?v=B8uNwQB_0 (last visited May 2, 2009) (note that the video ends right before the head is cut off but the video provides a link to the full horrific video.)
178 This is based on the author’s experiences in Iraq as well conversations will fellow veterans.
such as China, Iran, Burma, supported the regime change in Libya and Egypt, and supports a
change in Syria but ironically the United States shares the distinction of maintaining the use of
landmines with the very countries we accuse of engaging in cruel military tactics.\textsuperscript{181} It is
remarkable to look at many of the other 35 countries that haven’t joined the Ottawa Protocol and
to realize that The United States is a member of this gang of infamy.

In many ways the United States has painted itself into a corner. The attitude of many
other countries could be expressed as “how dare you lecture us on morality when you will not
join something as simple as the Ottawa Treaty.” Indeed, many believe that this credibility gap is
hurting the United States on strategic levels, making the lost moral high ground more powerful
than the landmines themselves.\textsuperscript{182}

There should be no illusion that joining the treaty would result in an idyllic world, with
elimination of IEDs in Iraq and Afghanistan or a reduced threat from North Korea. However,
The United States stands little chance of persuading the world to act more morally if we refuse to
act in this area ourselves. As Senator Leahy stated, the United States should lead in stigmatizing
these indiscriminate weapons so “the political price of using them serves as a deterrent. Will
some rebel groups or rogue nations continue to defy the international norm? Undoubtedly the
answer is yes. But by setting an example and using our influence we can reduce their numbers
significantly to the benefit of our troops and the innocent.”

\textbf{B. Military Effectiveness}

One question often asked in support of the United States’ current position is what will
China and Russia do with their APLs if America joins the treaty? If the U.S. joins and the other
two countries refuse, would gaining this moral superiority give the U.S. a strategic advantage? It

\textsuperscript{181} See States Not Parties, supra note 71.
\textsuperscript{182} See Barlow, supra note 165.
should be noted that China, as of 2008 reported “that facilities to produce antipersonnel mine are idle, have shut down, or have been converted for production of other products such as plastic materials.”\textsuperscript{183} However it is assumed that if the United States refuses to join the Ottawa Treaty, it is almost certain that the Chinese and Russians will also refuse. If however, the United States could persuade China or Russia to join the Treaty, there would be enormous pressure on the third to join or else be the only major power to not have joined the Treaty.

But first, the question of whether APLs give the United States a strategic advantage must be answered – this is critical in order to determine their “necessity.” Some argue that nuclear weapons are the most necessary and even moral weapons of all, because they only have to exist to prevent war.\textsuperscript{184} Would the United States have fought a war with the Soviet Union if there was not a nuclear option? If the answer is yes, then beyond question, the war would have had causalities in the millions – thus nuclear weapons, from a certain point of view, through the doctrine of mutual destruction are necessary and.

James Barlow, the Director of the James Madison University Mine Action Information Center was interview by this author on this subject.\textsuperscript{185} According to Director Barlow in order for a weapon system to be a “military necessity” in today’s war, the military benefit has to outweigh the humanitarian effects.\textsuperscript{186} For instance, anti-tank mines are necessary because they allow the Army to “channel armored vehicles on the battle field, preventing them from overrunning smaller lighter [formations] – this is a strategic need”\textsuperscript{187} APLs on the other hand are really only

\textsuperscript{183} Ban Policy, supra note 120.
\textsuperscript{185} Barlow, supra note 165.
\textsuperscript{186} Id. It should be noted that under the Laws of Armed Conflict the doctrine of “military necessity” requires combat forces to engage in acts that are necessary to accomplish a legitimate military mission. FREDERIC DE MULINEN, HANDBOOK ON THE LAW OF WAR FOR ARMED FORCES 82-83 (Int'l Comm. of the Red Cross 1987).
\textsuperscript{187} Barlow, supra note 165.
effective at preventing very small elements, a platoon for example, from being overrun.  

While this might seem like a necessity for the platoon leader on the ground, it is a tactical decision – it does not serve the bigger need and is thus not “effective at serving the strategic need.”

Director Barlow went on to say that using Korea as an example on why landmines are a military necessity is a red hearing. Specifically, he asserted that the landmines deployed in Korea do not belong to the United States and in fact are R.O.K. landmines. Moreover, Director Barlow stated that he was working at the Pentagon when this debate started. His observations of what transpired were that there was some support for the Ottawa Treaty within the Pentagon. It was not until “the U.S. commander in Korea, declared ‘I need them’ that both the White House and the Pentagon backed off,” because the administration did not want to look like it was overruling an on the ground commander. Since this point, the Pentagon has argued strenuously for the military necessity of these weapons, much as Director Barlow illustrated above, the U.S. position is that APLs can be used for force projection of small units. Specifically if

a small American unit is on an objective. They are facing an aggressor, a large-sized aggressor, and there are no reinforcements yet. You can place a minefield [ ] between our people and the aggressor to slow [them] down . . . . If you have smaller forces, reduced forces, you can use mines to protect [the] flank in the absence of another battalion . . . . You can also use them to shape the battlefield.

However, for the very reason that they are effective at the small unit tactical level is the reason they are used primarily used in civil conflicts by guerrilla, insurgent, and terrorist

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188 Id.
189 Id.
190 Id.
191 Id.
192 Id.
193 Matthew & Rutherford, supra note 97, at 2.-3 (citing U.S. Department of Defense Background Briefing Subject: Landmines/Thursday, May 16, 1996, 2:00p.m.))
194 Id.
groups. Therefore, just as Director Barlow argued, “[m]any analysts believe that, in fact, landmines do not win wars and are not at all essential to national security, . . . [because] their micro-utility [cannot] be justified in light of their macro-costs.”

Senator Leahy has also been arguing that the military necessity argument is without merit for two decades. Leahy contends that as seen in the United States’ two wars in Iraq and Afghanistan, civilians are often the victims of landmines. Furthermore, these civilians do not have the body armor and armored vehicles as the U.S. Forces do. “They are routinely caught in the cross fire. At any moment they are at risk of being killed or maimed by a landmine or other improvised explosive that lies in wait until triggered by whoever steps on it or drives over it.”

Moreover, Senator Leahy challenges the military’s claim of necessity when the military has not thought it necessary to export a APL since 1992, produce a APL since 1997, or even use a mine, save for Korea since 1991 in the Gulf war – where there “is no evidence those mines had any effect or that the Iraqis even knew they were there.” Senator Leahy also maintains that the

\[195\] Id. at 2-4. “A 1996 study by the ICRC, for example, concluded that APLs have some tactical value but provide no strategic advantage.” Id; Press Release, Office of U.S. Senator Patrick Leahy, Statement Of Sen. Patrick Leahy On The Victim-Activated Landmine Abolition Act Of 2006 (Aug. 1, 2006), available at, http://leahy.senate.gov/press/200608/080106a.html (stating that “ mines continue to be a weapon of choice, especially for rebel groups such as the FARC in Colombia and Hezbollah in Lebanon.)

\[196\] Matthew & Rutherford, supra note 97, at 2-4.

\[197\] See Press Release, Office of U.S. Senator Patrick Leahy, The Victim-Activated Landmine Abolition Act Of 2006 (Aug. 1, 2006), available at http://leahy.senate.gov/press/200608/080106a.html. Anti-personnel landmines have only limited military utility, while their proliferation around the world has been a plague on civilian populations and also for U.S. troops. Many combat veterans oppose using landmines because they have seen this. They continue to kill or maim our soldiers in Iraq and Afghanistan. Ending this scourge not only is the right thing to do, it is the smart thing to do. The Bush Administration has wasted this opportunity to move the world toward banning these indiscriminate weapons.


\[199\] Id.

military’s argument is undermined by the fact that it has been developing alternatives to
landmines for the past two decades and has “produced man-in-the-loop technology that is ready
to be deployed in a new generation of mines that are not victim-activated” – thus making APLs
unnecessary.  

C. Power in Numbers

President Clinton stated that one of his biggest disappointments was that he could not
sign the Ottawa Treaty. He went on to lament that the United States has done more “to get rid
of landmines than any country in the world by far. We spend half of the money the world spends
on de-mining [and w]e have destroyed over a million of our own mines.” The primary reason
that he did not sign the Treaty was because it was “unfair to the United States and to our Korean
allies in meeting our responsibilities along the DMZ in South Korea” At the same time it must
have been understood by the Clinton administration that while the United States was supporting
one ally by not joining the Treaty, it was also alienating many more.

Particularly in Iraq and Afghanistan, which is the nucleus of this article, would joining
the treaty today make soldiers safer tomorrow? If the way to measure safety is the number of
IED attacks, the answer is probably no. However there has been much turmoil concerning the
lack of international support for war in Iraq, and this lack of support was a major contributing

203 Id.
204 Id.
factor to difficulties seen there. This might seem like a disingenuous question because one can never know if the United States would have received more international support in Iraq (and even Afghanistan) if it had joined the Ottawa Treaty or other popular international treaties for that matter. However, traditionally, America has been viewed among its allies as a virtuous country, but we have lost some of our prestige because of our position on landmines, especially since countries such as Rwanda, whose governments have less moral legitimacy, are signatories of the Treaty.

Moreover, one provision of the Treaty provides that “[e]ach State Party undertakes never under any circumstances [to] . . . assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.” Consequently, many signing states have expressed concern with participating with the United States in military operations because of the chance that the United States would use APLs and they are seen as accepting and even benefiting from the action, thus violating the treaty.

Director Barlow, when speaking on the allies of the United States and their reaction to the U.S. refusal to join the Treaty said: “We have dismayed our allies with this – and maybe we deserve the criticism a little. However, we have been demonized on this issue, accusing us of

207 States Parties, supra note 71.

The use of APLs during joint operations is possibly the most controversial aspect of the Ottawa Treaty. . . . The crux of the matter results from a context in which the Ottawa Treaty undertakes a joint military operations with another state that is a nonsignatory. In practice, from the European perspective, this dilemma involves the United States . . . On one end of the spectrum stands France. . . . France has sought to formulate a [policy that refuses to participate with the United States in any action involving APLs’ or more significantly any action where the rules of engagement does not promise not to use APLs and] encompass all NATO missions [with such a policy.]

Id.
exclusivity, exceptionalism, typical American superiority, and just being indifferent.”\textsuperscript{209} Some nations have “been downright rude” says Director Barlow recounting an incident where the American Ambassador from the United States was forced to leave the floor of a review conference by the Ambassador from Norway – accusing the United States of not paying for the right to be there.\textsuperscript{210} Yet national security decisions should not be made based on giving nations opportunities to “embarrass us.” The United States has limited its influence in this area by not joining the Treaty because “we have left ourselves out of the discussion,” says Director Barlow. “We were the leaders in this area, there are review conferences and expert committees that we cannot participate in – we could be part of the solution but instead we have locked ourselves out and hurt our national security by alienating our allies over a weapon we don’t even use.”\textsuperscript{211}

Ultimately, it is true that the security that will be acquired from joining the Ottawa Treaty will not manifest itself immediately – it is highly unlikely that a terrorist organization will discontinue plotting against America simply because the United States has forsaken landmines. However, by amplifying our reputation with our allies the United States will reap security benefits in the future.

**IV. The Other Side: Counterarguments**

The United States’ official position on landmines is that the military value outweighs humanitarian implications.\textsuperscript{212} Critics argue that this position is undermined by the very fact that

\begin{footnotesize}
\begin{enumerate}
\item Barlow, \textit{supra} note 165.
\item Id.
\item Id. Director Barlow contends that we don’t really use landmines at all because the mines in Korea are actually deployed by the R.O.K. \textit{Id.}
\item DANIEL ROBERT DECHAINE, GLOBAL HUMANITARIANISM: NGOS AND THE CRAFTING OF COMMUNITY 135 (Lexington Books 2005). Ultimately that use of landmines is based on the belief that these weapons are essential and of a high military value, which outweighs their human cost. \textit{Id.} “The U.S. government, for example, continues to
\end{enumerate}
\end{footnotesize}
the only place the United States deploys mines is in Korea.\textsuperscript{213} The current landmines in the United States’ arsenal were designed with the Soviet tank and infantry in mind,\textsuperscript{214} a military scenario that is now unlikely to occur. Thus, proponents of the landmine ban argue that, apart from the Korean peninsula, the United States’ policy not to join the ban is based on cold war doctrine.\textsuperscript{215}

However, what this argument totally fails to recognize is that while it is true that landmines have very little utility in today’s environment, it is the next war that planners at the Pentagon are worried about. It has only been in the past few years that the United States moved away from basing its plans on Soviet hordes and started to transform the military to fight “low intensity” peace keeping conflicts.\textsuperscript{216} It was not until September 11, 2001, and two wars later that the military prepared for the “new types” of wars.\textsuperscript{217} This will be true in the future as well—the United States will not be able to predict what type of wars it will be fighting in the future. According to some military experts, banning mines in front lines or in border wars would be imprudent.\textsuperscript{218} Some experts predict that mine technology will actually become more important as nations attempt to move faster, over larger distances, with fewer men.\textsuperscript{219}

On President Clinton’s last day in office he urged the incoming President, George W. Bush to take the necessary steps “to enable the United States to eventually join the Ottawa

\textsuperscript{213} See generally id.
\textsuperscript{215} See generally id.
\textsuperscript{217} See id.
\textsuperscript{218} Barlow, supra note 165.
\textsuperscript{219} CROLL, supra note 7, at 152.
The word “enable” was used because President Clinton supported Ottawa Protocol but ultimately could not join the Treaty. Specifically, the Clinton administration pledged to join the Treaty if the Pentagon could field an alternative to the anti-personnel mines that are currently protecting the South Korean border.

The military has spent well over $100 million on finding an alternative, focusing on a Remote Area Denial Artillery Munition (RADAM), which may not even technically comply with the treaty because the artillery salvo was designed to be triggered by the proximity of the enemy. The other alternative system was build around a Man-in-the-Loop concept “which is a mine triggered by [a gunner with a] remote control and thereby permitted under the treaty.”

Making an alternative to simple APLs is proving to be very difficult and expensive. This is especially frustrating for the United States when one considers that its currently stocked mines are effective and cheap. Also the United States’ military does not use mines in the method that has caused the most concern – laying them in civilian areas or not recovering them after the conflict is over. Accordingly, the United States argues that it is being labeled as the “bad guy,” when it actually has a long track record of being very responsible in this area. This is particularly true because the United States currently uses self neutrality mines that disarm

221 See id.
222 Id.
223 Id (the Man-in-the-Loop system man not comply with the treaty because it “can be modified so that it is target activated. . .”)
224 Id.
225 See id.
226 This assertion is based on the author’s 15 years of military service.
themselves, thus not contributing to the humanitarian issue, which is at the center of the Ottawa Treaty.\textsuperscript{227}

As mentioned, United States keeps bad company when it comes to refusal to join the Ottawa Treaty.\textsuperscript{228} Many argue that this line of reasoning is without merit. Like the United States, China, and Israel also are the nations who did not ratify the treaty, and who can identify a specific security threat where landmines are particularly valuable to national security.\textsuperscript{229} The United States’ “refusal to join thus remains unexceptional even when assessed within the confines of the Convention itself. Of the thirty-nine countries that have not joined the Convention, most could identify a particular border which they believed necessitated the use of landmines.”\textsuperscript{230} Conversely, the states that have joined the Treaty had to give up very little in terms of military concessions.\textsuperscript{231} Director Barlow echoes this sentiment remarking that “it is easy for Denmark and Norway to join this treaty, they don’t have the military responsibility that we do – it is our job, whether they like it or not. These countries complain about us not joining but are very content under the U.S. umbrella of protection that we provide.”\textsuperscript{232} Thus, the “pro- and the anti-countries are being divided into those which consider hostilities possible in the future and those that feel secure.”\textsuperscript{233} Consequently, critics of the Ottawa Treaty claim that while its goals are laudable the agreement represents a mere parchment of pacification.\textsuperscript{234} These critics

\begin{itemize}
\item \textsuperscript{228} See supra Part II.B.
\item \textsuperscript{229} Safrin, supra note 106, at 1320.
\item \textsuperscript{230} Id at 1320-21. “These include Russia, India and Pakistan, Israel, Egypt, Syria and Lebanon, the Koreas, Finland, and Iran.” Id.
\item \textsuperscript{231} See id.
\item \textsuperscript{232} Barlow, supra note 165.
\item \textsuperscript{233} See CROLL, supra note 7, at 151.
\item \textsuperscript{234} Id. at 136
\end{itemize}
argue that the Treaty encourages a “false sense of security” and the claim that the Ottawa Treaty has reduced landmine injuries is exaggerated.  

In addition, the United States argues that – it has a legal obligation to protect Korea pursuant to the 1953 Mutual Defense Treaty, if landmines are the most effective way to carry out that mission is it “legal” to give up those weapons? In addition, is it “moral” to give up a weapon that is effective at protecting an ally? 

These arguments make a certain amount of sense to Americans, because of the special role the U.S. plays in the world. Many title this attitude exceptionalism and attribute it to American arrogance. The United States responses that as the world’s only superpower, the United States is “subject to demands and challenges that other countries never face and cannot understand. Because of this the US expects at times to stand apart from the rest of the world. This image might actually have a potent unifying function in a country that is increasingly diverse and complex.” Ultimately, though opinions can differ on whether the United States practices exceptionalism, it is undisputable that the United States has unique responsibilities in the world. The question of whether the U.S. needs APLs in Korea or elsewhere is one that cannot be definitively answered because no one can totally predict the future, but Americans feel that “if any country has reason to keep these in its arsenal, it must be the U.S.. Indeed, any

235 See Id. 
236 U.S. State Department, South Korea, http://www.state.gov/r/pa/ei/bgn/2800.htm (last visited May 4, 2009). Under the guise of the “1953 U.S.-R.O.K. Mutual Defense Treaty, the United States agreed to help the Republic of Korea defend itself against external aggression. Since that time in support of this commitment, the United States has maintained military personnel in Korea, including the Army’s Second Infantry Division and several Air Force tactical squadrons.” Id. 
237 Matthew & Rutherford, supra note 97, at 5. 
238 See generally id. 
239 Id.
departure from the status quo—in which the US is the world’s only superpower—must be considered very carefully and usually rejected.”

Lastly, some argue that the Ottawa Treaty is largely redundant. Specifically, the Law of War, provides the principle of discrimination (only targeting valid targets), and proportionality (preventing excessive collectable damage and using too much force). Therefore, the thrust of the Ottawa treaty, to prevent civilian losses to landmines, is superfluous because there is already a body of international law that prevents this (discrimination). Thus, the United States, who only currently uses these weapons on the 38th Parallel, and removes mines after a conflict has finished, already meets the Law of War threshold.

V. OTTAWA WITH A TWIST

When addressing how the Obama administration should address this issue, Director Barlow stated that while he has no doubt that President Obama “wants to sign the Treaty, he may resist, as to not look weak to the Russians and Chinese – that he is bending to the will of the peace-nick countries.”

It is the position of this article that President Obama has an opportunity not only to change the direction of the United States with respect to landmine law but the world’s view as a whole. This President certainly has more credibility with the international community than his

\[240 Id.\]
\[241 Id.\]
\[242 This assertion is based on the author’s 15 years of military service.\]
\[243 Barlow, supra note 165.\]
predecessor and he should spend that capital to help mold a smarter direction on landmines that helps both the United States and the world.\textsuperscript{244}

The first thing that must be changed is the loophole on anti-tampering devices. Specifically, under Article II of the Treaty “Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.”\textsuperscript{245} Coupled with the definition of Anti-handling devices are devices “intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine,” the Treaty has basically allowed free reign on APLs so long as they are “designed” to be detonated by a vehicle or by a person who is deemed by “the mine” to be disturbing it – such as placing pressure on it (just like a normal APL.)\textsuperscript{246} Essentially this clause allows APLs, but fictionally calls them anti-tampering devices. Director Barlow suggested that if the United States wants to comply with the Ottawa Treaty, yet keep the APLs in Korea, it could simply “tweak the mines, attach them to tank mines and call them anti-tampering devices of the tank mine.”\textsuperscript{247}

At the same time, the language of Article II, allows for any type of proximity mine targeted at vehicles. It appears that the intent of this language was to allow anti-tank mines, which as discussed above have more than a tactical importance and provide strategic security to a nation.\textsuperscript{248} Thus, with the way that the Treaty is drafted, any proximity mine, “designed” to attack vehicles would be exempt from the ban. In Iraq, most of the IEDs are “designed” to attack

\textsuperscript{245} Ottawa Treaty, supra note 4, at Art. II.
\textsuperscript{246} See id.
\textsuperscript{247} Barlow, supra note 165.
\textsuperscript{248} See id.
U.S. HMMVWs, yet a pressure IED will explode if a civilian vehicle runs over the pressure tube as well. Thus, the standard should not be what the device is “meant” for, this leaves open a gaping loophole. Rather the test on whether a mine is lawful should be based on what would actually detonate the mine – if it is a tank or an armored troop carrier, then it is legal – if a civilian truck can set it off, then it is not sufficiently designed as a tank mine. The United States should join the Ottawa Treaty and lead the charge to close the anti-tampering and anti-vehicle loopholes.

VI. CONCLUSION

General Sherman, the same who infamously marched a Union Army through the South carving a sixty-mile wide swath of destruction, claimed that the use of landmines was not war, but murder.249

Colonel Lambert, a notable British officer wrote of landmines:

Minewarefare is an unpleasant business. It is foreign to our character to set traps, when you yourself are out of harm’s way; and most [ ] soldiers who have experienced it will own a rooted dislike of mine warfare in principle and in practice. There is too, something faintly derogatory about becoming a casualty from a mine; as a weapon of war it lacks the distinction of a shell or bullet. If one has to lose a foot (or one’s life) it seems more respectable somehow for it to be done by a shell rather than a mine.”250

In Iraq and Afghanistan, modern Americans have now experienced this unpleasant business of mine-warfare, they now understand how these devices are “laid without relish and contemplated with fear.”251 Not only are APL mines one “of the most insidious weapons ever

249 CROLL, supra note 7, at 18. Sherman, being the pragmatist that he was, eventually saw the benefit of landmines and changed course on the weapon stating “I now decide the torpedo is justifiable in war in advance of an enemy. But [only] after the adversary has gained the country by warlike means.” Id.
250 Id. at x.
251 Id.
developed,252 the fact that they are in the American arsenal has hurt the national security. The United States has alienated its allies over a weapon that is not effective as a strategic weapon and is only used in one country. Maintaining a stockpile of these weapons has lost the United States a certain amount of moral prestige and credibility as a principled nation, as John McCain said concerning torture, “it is not about who they are, it is about who we are.”253 It should not be about how the enemy is using landmines in Iraq and Afghanistan, but rather, as a people, what standards does the United States maintain.

Unlike the David and Goliath story at the introduction of this article, in Iraq and Afghanistan the smooth stone may have brought the giant to its knees, but it certainly has not slain him. Thus, the United States may use the experiences in these wars to change direction on landmines. Indeed, there are many lessens to take away from Iraq and Afghanistan, one of them should be that as a great nation, sometimes doing what is right even when it makes winning harder is the best road, thus the United States should disavow the used of APLs and join the Ottawa Treaty. In addition, more then just joining, the United States should lead a movement to fix the Treaty’s shortcomings so that the world can truly begin to realize the goal of becoming landmine free.

252 Id. at xi.