

# **The Inhumane Weapons Convention and the Question of Anti-personnel Land Mines**

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This paper examines aspects of the Inhumane Weapons Convention, with particular emphasis on the question of the regulated use of anti-personnel land mines.

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## Introduction

*Silent enim leges inter arma.....?*<sup>1</sup>

In October 1980 the United Nations General Assembly unanimously adopted the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, henceforth called the Inhumane Weapons Convention (IWC). The IWC, with its attached three Protocols, is aimed at protecting civilians and civilian objects from attack by means of incendiary weapons, land mines and booby traps. The Convention was opened for signature on 10 April 1981 and, in accordance with Article 5, the IWC entered into force on 2 December 1983.<sup>2</sup> So far, 41 countries have deposited their instruments of ratification with the United Nations and several signatories, including the United Kingdom, have signalled their intention to become states parties before the Review Conference which is due to take place in September 1995. The Inhumane Weapons Convention has received a significant degree of international attention in recent years, mainly due to growing concern about the indiscriminate effects of anti-personnel land mines, the use of which is regulated by Protocol II of the Convention.

## I Humanitarian Weapons Regulations before 1980

### A. The basic principles of international humanitarian law

Although there is a stark dichotomy between acts of warfare and humanitarian conduct, the two have co-existed within the regime of the law of war in some degree since the late 18th century and more overtly from the end of the 19th century. The concept of 'humanitarianism' in armed conflict goes back even further. Writing during the Thirty Years War (1618-1648), Grotius, a powerful advocate of restraint in war, set out a plea for the principle of humanity. This was embodied in the main principle that the laws of war bind all parties to hostilities, irrespective of the legality or illegality of the resort to war by any belligerent (*jus ad bellum*). Grotius' ideas had some impact on the customary law of war in the 18th century, which was also influenced by the writing of the Geneva-born philosopher Jean-Jacques Rousseau, who prepared the way for the humanitarian ideal in warfare in his philosophy of rationalism and sensibility.

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<sup>1</sup> *In war the law is silent*, Cicero, *Pro Milone*, IV xi.

<sup>2</sup> Article 5 stipulates that the Convention shall enter into force six months after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession. For a list of signatories and parties, see Annexes I and II.

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In the second half of the 19th century a number of factors combined to accelerate the humanitarian approach to war, visible in the conclusion by States of international Conventions seeking to codify in written form and develop the existing customary law of war<sup>3</sup>. One of these factors was the development during the nineteenth century of new conventional weapons which were considered to be particularly cruel in their effects, causing unnecessary suffering, injury or death among both military personnel and the civilian population. The first conventional undertaking to renounce the use in war of a specific category of weapons was the St. Petersburg Declaration, established under Czar Alexander II, which was signed on 11 December 1868. The St. Petersburg Declaration stated:

"... The only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy...That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable...The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which are either explosive or charged with fulminating or inflammable substances...The employment of such arms would, therefore, be contrary to the laws of humanity."<sup>4</sup>

Another landmark in the field of international humanitarian law was the holding of the Hague International Peace Conference in 1899 and 1907. The resulting 4th Hague Convention of 1907 reaffirmed the principles of the St. Petersburg Declaration and codified the existing customary law of war. The regulations of this Convention, which were operative during World Wars I and II, deal with combatant status, prisoners of war (POWs), hostile operations, pacific relations and the occupation of enemy territory. Much of the post-war international humanitarian law of armed conflict has been derived from the 4th Hague Convention, by developing its general principles to apply to means and methods of modern warfare. One such principle is codified in Article 22 of the Hague Regulations on Land Warfare, which states:

"The right of belligerents to adopt means of injuring the enemy is not unlimited."

This involves concepts of limitation and balance<sup>5</sup> and has been reflected in subsequent treaty law and UN resolutions. From this general principle a number of more specific principles have been deduced, which form the keystones of the customary law regime. These are the

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<sup>3</sup> International law consists both of treaty law and customary rules, the latter being automatically binding on states regardless of the extent of their obligations under the former. This was recognised during the latter half of the nineteenth century when customary rules were first systematically codified into treaty law.

<sup>4</sup> Jurisprudential Aspects of the Modern Law of Armed Conflicts by H. McCoubrey, in *Armed Conflict and the New Law*, Edited by Michael A. Meyer, British Institute of International and Comparative Law, 1989.

<sup>5</sup> Military necessity must be balanced against, and limited by, the requirements of humanity.

principle of distinction<sup>6</sup>, the principle of proportionality<sup>7</sup> and the prohibition of unnecessary suffering and superfluous injury<sup>8</sup>.

After the Second World War, one of the most noticeable defects in the existing law of war was the inadequacy of the rules governing the protection of *civilians* from the direct or incidental effects of hostilities<sup>9</sup>. The scale of loss of life and suffering among the civilian population during the Second World War was extensive, due to indiscriminate aerial and land bombardments, as well as the deliberate extermination of ethnic groups. At the time, Sir Hersch Lauterpacht argued, "we shall entirely fail to understand the true character of the law of war unless we realise that its purpose is almost entirely humanitarian in the literal sense of the word, namely, to prevent or mitigate suffering and in some cases, life, from the savagery of battle and passion. This, and not the regulation of hostilities, is its essential purpose. Rules of Warfare are not primarily rules governing the technicalities and artifices of a game. They are evolved or have been expressly enacted for the protection of actual or potential victims of war."<sup>10</sup>

## **B. The Geneva Conventions and additional protocols**

The response of the International Committee of the Red Cross (ICRC) to the deficiencies in civilian protection highlighted by the Second World War was to secure the adoption of the four Geneva Conventions of 12 August 1949. The purpose of the Geneva Conventions is the protection and securing of humane treatment for war victims in the following categories: the sick and wounded in the armed forces; the sick, wounded and shipwrecked of such forces at sea; POWs and civilians whether in occupied territory or in the territory of the enemy. For the first time in history, the Geneva Conventions introduced a system of obligatory penal repression of defined "grave breaches" (war crimes) of those instruments. Although many atrocities have been committed in armed conflicts since 1949, the International Tribunal in the Hague represents the first instance of individuals being brought to trial for the commission of war crimes (in connection with atrocities committed in the former Yugoslavia)<sup>11</sup>. The 1949 Geneva Conventions also contained the unprecedented application of their rules to "internal"

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<sup>6</sup> The law requires that belligerents distinguish between civilians and civilian objects on the one hand and military objectives on the other.

<sup>7</sup> The possible impact on civilians of an attack against a military objective must be proportionate in relation to the concrete and direct military advantage achieved.

<sup>8</sup> Where an attack would cause disproportionate casualties among civilians, it could be said that their suffering is unnecessary and their injury superfluous.

<sup>9</sup> In as far as this was possible, given the increasingly indiscriminate effects of modern weapons systems.

<sup>10</sup> Humanitarianism in the Modern Law of Armed Conflicts, G.I.A.D Draper, in *Armed Conflict and the New Law*, Edited by Michael A. Meyer, British Institute of International and Comparative Law, 1989.

<sup>11</sup> An International Tribunal was established by the United Nations Security Council (UN Security Council Resolution 827 of 25 May 1993) to prosecute 'persons alleged to have committed or ordered the commission of grave breaches of the Geneva Convention of 1949, violations of law or custom of war, crimes against humanity and the crime of genocide. The International Tribunal began work on 17 November 1993 and it was only in November 1994 that the first trial began.

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armed conflicts, which since this time have greatly exceeded the number of international armed conflicts. This principle is contained in common Article 3 of the Geneva Conventions, but is in fact modest in content and difficult to monitor.

The turning point in humanitarian law in relation to the protection afforded to civilians can be said to have begun in 1965 when the International Committee of the Red Cross adopted a resolution prohibiting the launching of attacks against the civilian population<sup>12</sup>. It was at this time too that the United Nations began to take an interest in this field.<sup>13</sup> In 1968 the UN International Conference on Human Rights meeting in Teheran passed a resolution stating the need for "additional humanitarian international conventions... to ensure the better protection of civilians."<sup>14</sup> The same year, the UN General Assembly unanimously passed a resolution stating that "it is prohibited to launch attacks against the civilian population as such" and that a "distinction must be made at all times between persons taking part in hostilities and members of the civilian population to the effect that the latter be spared as much as possible."<sup>15</sup>

The 21st International Conference of the Red Cross meeting in Istanbul in 1969 requested the ICRC to propose "concrete rules which would supplement the existing humanitarian law".<sup>16</sup> In 1971 the ICRC called to Geneva a number of government experts who assisted the ICRC in preparing two Draft Protocols additional to the four Geneva Conventions and to reaffirm and modernise the law of hostilities of 1907. The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts finally adopted by consensus the additional Protocols on 8 June 1977.<sup>17</sup> The Protocols were signed by 120 States, including for the first time, three 'liberation movements'.<sup>18</sup>

Protocol I, which is confined to international armed conflicts, extends previously accepted general principles of the law of war to meet modern conditions of combat. The main achievement of Protocol I was to secure a more extensive and precise legal protection for civilians from the effects of modern weaponry by providing a narrow definition of military objects and prohibiting attacks against civilians. Probably the most valuable contribution of the 1977 Additional Protocols was the codification of the principle of distinction between

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<sup>12</sup> *Resolution XXVIII* of the 20th Conference of the Red Cross, October 1965.

<sup>13</sup> The United Nations had previously taken no interest in humanitarian law, on the basis that it was contradictory to the prohibition of the use of force enshrined in its Charter. The wars of the 1960s (Vietnam, Nigeria, the Middle East) and the confrontations which characterized the period of decolonisation, however, encouraged governments to take a real interest in the further development of international humanitarian law.

<sup>14</sup> *Resolution XXIII*, 12 May 1968.

<sup>15</sup> *UN General Assembly Resolution 2444 (XXIII)*, 19 December 1968.

<sup>16</sup> *Resolution XIII*.

<sup>17</sup> The British government has signalled its intention to ratify the two additional protocols when parliamentary time permits. (*HC Deb*, 16 January 1995, c.284W)

<sup>18</sup> The PLO, SWAPO and the ANC.

civilians and combatants during the conduct of hostilities<sup>19</sup>. The principle of distinction is most clearly expressed in Article 48, which stipulates:

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

Protocol I also makes it clear that "the principle of distinction applies to all types of conflict, including guerrilla warfare".<sup>20</sup>

Probably the most effective humanitarian achievement of Protocol I was the stipulation that all wounded (members of the armed forces or civilians) must be treated humanely and receive such medical treatment as can be given, swiftly and without distinction, other than medical urgency. Article 35 reiterates the humanitarian principles that the means of injuring the enemy are not unlimited and that weapons causing superfluous injury or unnecessary suffering are prohibited.

Protocol II, which deals exclusively with internal armed conflicts, nearly failed to secure adoption and finally emerged in a somewhat debilitated form. The original intention was that it should echo as many of the provisions of Protocol I as possible, but newly emerging states were not prepared to extend rights to rebels<sup>21</sup>. It did not, therefore, introduce any major innovation into international law, as Article 3 common to the Geneva Conventions already deals with the humanitarian aspects of civil wars. Protocol II therefore merely develops and strengthens the rules by making the general principles of Article 3 more specific and more operational.

### **C. The adoption of the Inhumane Weapons Convention**

The first call for the international regulation of excessively injurious weapons came from the International Conference on Human Rights held in Teheran in 1968 under the auspices of the United Nations. There followed years of discussion, starting in the UN General Assembly in 1971, on the issue of prohibitions or restrictions for humanitarian reasons on the use of specific conventional weapons. As to what constitutes an 'inhumane' weapon, an expert study carried out by the ICRC concluded that all incendiary weapons, as well as a number of other

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<sup>19</sup> Part IV of Protocol I, comprising 31 articles, is devoted to the protection of the civilian population.

<sup>20</sup> Customary Law Status of the 1977 Geneva protocols, Christopher Greenwood in *Humanitarian Law in Armed Conflict: Challenges Ahead*, Martinus Nijhoff, 1991,93.

<sup>21</sup> Although Article 3 common to the Geneva Conventions had already made it clear that a government's respect of humanitarian obligations in an internal conflict does not amount to recognition of insurgents or of their claims.



specific conventional weapons, tended to cause excessive suffering or have indiscriminate effects.

In 1977 the United Nations General Assembly adopted resolution 32/152 entitled "Incendiary and other specific conventional weapons which may be the subject of prohibitions or restrictions of use for humanitarian reasons", the preamble to which stated that "the suffering of civilian populations and combatants could be significantly reduced if general agreement can be attained on the prohibition or restriction for humanitarian reasons of the use of specific conventional weapons, including any which may be deemed to be excessively injurious or have indiscriminate effects." On the basis of this resolution, the General Assembly decided to convene a conference and preparatory committee on the subject<sup>22</sup>, which was the first major international conference on the prohibition or restriction of specific conventional weapons since the Hague Conferences. At the conclusion of its second session on 10 October 1980, the conference adopted the text of the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, or the Inhumane Weapons Convention (IWC).

It has been maintained that the adoption of the Inhumane Weapons Convention marked the completion of a significant phase in the evolution of international humanitarian law, since in regulating the use of certain weapons it gave precedence to humanitarian imperatives over military considerations. It is founded upon the principle that the means and methods of warfare are not unlimited and that such means and methods "of a nature to cause superfluous injury or unnecessary suffering" or "widespread long-term and severe damage to the natural environment" are prohibited. The Inhumane Weapons Convention is an umbrella treaty, under which specific agreements can be concluded in the form of protocols. The Convention itself is largely procedural and is stated to apply in the circumstances set out in Common Article 2 of the 1949 Geneva Conventions and in Article 1(4) of the 1977 Additional Protocol.<sup>23</sup> The substantive provisions are made in the three annexed Protocols which deal with fragments incapable of detection in the human body by x-ray; mines, booby traps and other devices; and incendiary weapons respectively. The first category of weapons is banned outright. The other two, however, although imposing some general restrictions, emphasise the protection of civilian populations from the use of the weapons concerned.<sup>24</sup>

Discussion of the indiscriminate and "excessively injurious" effect of certain conventional weapons on civilians in the context of the international laws of war inevitably prompts questions about the consequences of the use of nuclear weapons. International treaty law has already been used extensively to regulate the possession and deployment of nuclear weapons

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<sup>22</sup> The preparatory process began in 1978 in the framework of a preparatory conference, during which proposals for the content and the structure of the provisions of a draft convention to be considered at the Conference were discussed.

<sup>23</sup> See Annex III.

<sup>24</sup> A copy of the Inhumane Weapons Convention, is available for consultation at the International Affairs and Defence desk in the Library.

(for example, the Non-Proliferation Treaty, the SALT, INF and START treaties and the regional nuclear-free zone treaties applying to Antarctica, South America and the South Pacific), but the five states which are internationally acknowledged as possessing nuclear weapons, including the UK, have resisted attempts to have the use of nuclear weapons declared illegal because this would undermine nuclear deterrence theory.

It is possible to argue that almost any conceivable use of nuclear weapons on land would be contrary to existing international law, including the Genocide Convention of 1948, but there has been no definitive ruling on this point and there is a contrary pragmatic argument that legal considerations are unlikely to constrain a potential user of nuclear weapons, whereas a credible deterrence posture might. In 1993 the World Health Organisation decided to ask the International Court of Justice for an advisory ruling on the legality of the use or threat of use of nuclear weapons and the ICJ has begun its consideration of the issue during 1994 by seeking the views of governments. There has been a further campaign by the Non-Aligned Movement to have the reference to the ICJ endorsed by the UN General Assembly, but it remains to be seen whether or not the Court will be able to reach a clear conclusion.<sup>25</sup>

## II The issue of anti-personnel land mines

In a report of the UN Secretary-General in September 1994 it was asserted that:

"Of all of the forms of debris left in the aftermath of conflict, land mines are the most widespread and pernicious....Land mines may be one of the most..lethal and long-lasting forms of pollution we have yet encountered and we are currently losing the battle to protect innocent civilians from their effects."<sup>26</sup>

Land mines are the most familiar example of time-delay weapons and fall into one of two general categories: anti-tank (or anti-vehicle) devices, which are generally blast weapons containing an explosive charge of perhaps 5-10 kilograms which is set off by pressure or such other means as a change in the magnetic field; and anti-personnel devices, which are general fragmentation weapons containing an explosive charge of somewhat less than 0.5 kilogram which is set off by pressure, by disturbing a trip wire, or in some cases by vibration or other means. There are four categories of anti-personnel mines - blast, fragmentation, directional and bounding devices, of which the blast mine is the most common.<sup>27</sup> Anti-personnel land mines were originally used as a means of defending larger anti-tank mines. As their effectiveness became apparent, however, they came to be regarded in the inter-war period as a weapon in their own right, primarily designed as counter-mobility and area denial devices.

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<sup>25</sup> HC Debates 1 February 1994, Vol 236, c.605w and 3 November 1994, Vol 248, 1380w; HL Debates 20 April 1994, Vol 554, WA 13

<sup>26</sup> A/49/357, 6 September 1994, p.2

<sup>27</sup> Blast mines are usually hidden underground and designed to activate when someone steps on the mine. While not necessarily deadly, blast mines usually destroy limbs.

There is a military argument that land mines have several clearly defined and acceptable roles in combat: to protect military bases and key installations; to channel or divert the enemy forces and to deny routes and strategic positions to the enemy. At an ICRC Symposium on anti-personnel mines in April 1993, however, the Director of the Mines Advisory Group<sup>28</sup>, Rae McGrath, maintained that military strategy demands more of the land mine as a weapon in the modern theatre of war than these basic deployment strategies. McGrath subdivided the military use of mines into two categories of deployment philosophy - the conventional war scenario (such as the second Gulf war and the Falklands conflict) and the counter-insurgency campaign (such as the Afghan conflict). In both scenarios, McGrath contends, mines are deployed using strategies that target enemy forces in such a manner as to ensure that a long-term humanitarian problem will exist in the post-combat period. McGrath concluded that, in modern conflict, mines cannot be said to be targeted at military formations in any reasonable definition of the word, since the very design of a great proportion of the mines in use and their method of dissemination is such that civilian casualties are *inevitable* rather than coincidental.

Even if land mines are originally deployed in accordance with the stipulations of humanitarian law, unless they are subsequently removed or destroyed, their effects will be indiscriminate. Physicians for Human Rights has said of land mines, "They are indiscriminate, delayed-action weapons that cannot distinguish between the boot of a soldier and the footfall of a child."<sup>29</sup> The United Nations estimates that, today, there are approximately 100 million land mines, mostly anti-personnel mines scattered in 62 countries around the world.<sup>30</sup> These mines have been placed not only in combat zones, but also in areas of purely civilian and commercial activity. Although figures must be treated with caution, it is believed that land mines have killed and injured one million people since 1975.<sup>31</sup>

### **A. Aspects of international humanitarian law governing the use of land mines**

Land mines are explicitly referred to in the existing rules of international law. Their use has been regulated by the general principles of international customary law, which have been supplemented by specific norms of the conventional humanitarian law of armed conflict. The relevant basic principles of customary law are those prohibiting the use of weapons which indiscriminately affect both combatants and non-combatants, as well as the resort to methods of warfare that cause superfluous injury or unnecessary suffering. Especially relevant in this context are the principles regarding the protection of the civilian population, including those prohibiting action expected to cause incidental losses or injuries.

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<sup>28</sup> A British non-governmental organisation.

<sup>29</sup> *ibid.*

<sup>30</sup> The Land Mine Crisis: A Humanitarian Disaster, by Boutros Boutros-Ghali in *Foreign Affairs*, September/October 1994.

<sup>31</sup> Anti-personnel land mines: a plague on children, UNICEF, 21 February 1994.

The use of land mines is regulated by international multilateral treaties. The provisions of the Hague Convention VIII of 1907 refer to "automatic contact mines", one of the two types in existence at the turn of the century. According to Jozef Goldblat of the Stockholm International Peace Research Institute (SIPRI), "...considering the motives of self-interest of the belligerents which lay behind the adoption of this convention, there is no good reason why the subsequently developed acoustic and magnetic mines, which can be set off by noise or by changes in the magnetic field, should not fall under the same restrictions."<sup>32</sup>

The Inhumane Weapons Convention is the cornerstone of international control over the use of land mines. Protocol II of the Inhumane Weapons Convention of 1981 relates to the use of land mines, booby traps and "other devices" (defined collectively as manually emplaced munitions activated by remote control or automatically after a certain lapse of time). Protocol II makes a distinction between "mine" and "remotely delivered mine": the first means any munition placed under, on, or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity, or contact of a person or vehicle; and the second means any mine delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft.

Protocol II prohibits the use of mines, booby traps and other devices in any city, town, village, or other area containing a similar concentration of civilians, in which combat between ground forces is not taking place or does not appear to be imminent, unless they are placed on or close to a military objective under the control of an adverse party. Protocol II also requires that all "feasible" precautions should be taken to protect civilians from the effects of mines and booby traps. Such precautionary measures could include, for example, posting warning signs, posting sentries, issuing warnings or providing fences.

Protocol II also stipulates that "immediately" after the cessation of active hostilities, all information concerning the location of minefields, mines and booby traps must be made available in order to protect civilians. The locations are to be recorded by the parties during the hostilities in conformity with the agreed guidelines. Special protection from the effects of mines and booby traps is to be provided by a United Nations force or mission performing the functions of peace-keeping or observation. Finally, the parties should "endeavour" to reach agreement, both amongst themselves and with other states and international organisations, on providing information and technical and material assistance necessary to remove or otherwise render ineffective minefields, mines and booby traps placed in position during the conflict. An example of a negotiated commitment to mine clearance is the Vietnam-US Protocols of 1973 concerning the removal of mines accompanying the Paris Agreement ending the Second Indochina War, under which the USA undertook *inter alia* to remove, deactivate or destroy all the mines in the territorial waters, ports, harbours and waterways of North Vietnam.

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<sup>32</sup> *Explosive Remnants of War*, SIPRI and UNEP, edited by Arthur H. Westing, 1985.

### **B. International efforts to control the use of anti-personnel land mines**

Despite the threat posed by land mines, the stipulations of Protocol II have largely gone unheeded and until recently there had been no international attempt to control the use of anti-personnel land mines more strictly. When the United Nations established an arms register in 1991, for example, land mines were not one of the categories of weapons listed. In the past, most non-governmental organisations (NGOs) had tackled the issue of land mines only when it overlapped with their primary work. For example, the ICRC dealt with the medical consequences of land mines; Human Rights Watch identified the laying of mines as a violation of human rights and the Vietnam Veterans of America Foundation (VVAFA) considered mines in the overall context of its work in southeast Asia.

Now, however, NGOs have begun pooling their specialised skills and launching a number of campaigns against land mines. Six prominent NGOs<sup>33</sup> came together in 1991 to form a steering committee to examine the question of land mines. This steering committee subsequently issued a joint call for an international ban on the use, production, stockpiling and sale, transfer or export of anti-personnel land mines. It also called for the establishment of an international fund, administered by the United Nations, to promote and finance land mine awareness, clearance and eradication programmes worldwide and asked that countries responsible for the production and dissemination of anti-personnel mines contribute to this fund.

International attention was drawn to the export of anti-personnel mines by a campaign launched by an ICRC symposium on 21 April 1993, aimed at focusing arms control efforts on land mines. The ICRC assembled military, medical and legal experts to assess the dangers posed by "the indiscriminate and persistent use of anti-personnel land mines". The symposium urged that measures be taken to limit and control the production, availability and use of mines, and to strengthen the existing rules of international humanitarian law controlling the use of these weapons. The aim was to build up pressure on governments ahead of a review of the 1981 Inhumane Weapons Convention, which is due to be held in September 1995.<sup>34</sup>

On 16 December 1993 the UN General Assembly unanimously approved a US sponsored resolution calling for a moratorium on the export of land mines (48/75 K). US Ambassador to the UN, Madeleine Albright, called the resolution 'a first step' in the Clinton administration's campaign against land mines. The resolution, which is non-binding, was adopted by consensus without a vote. The United States followed up the resolution by writing to the 44 mine-producing countries, asking them to institute a unilateral three to five year ban not only on the export, but also on the sales and transfer of anti-personnel mines and work out a new worldwide regime to stop the spread of mines. The United Kingdom said it would

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<sup>33</sup> Handicap International (France), Human Rights Watch (United States), Medico International (Germany), Mines Advisory Group (United Kingdom), Physicians for Human Rights (United States) and Vietnam Veterans of America Foundation (United States).

<sup>34</sup> For further information on the review conference, see page 17.

support the resolution, but declined to join the more than 70 sponsors, maintaining that the wording of the resolution was too inclusive (see below).

Following this General Assembly resolution, a number of states announced a moratorium. These included Argentina, Canada, Germany, Greece, Israel and Spain. France and Belgium had both declared an export moratorium before the adoption of resolution 48/75 K (in February and July 1993 respectively). At the Western European Union (WEU) assembly in Paris on 1 December 1994, Russian foreign minister Andrei Kozyrev announced Russia's imposition of a three year moratorium on the export of anti-personnel land mines which are not equipped with a self-destruct mechanism.<sup>35</sup> Various other countries are preparing national measures to introduce a moratorium on the export of anti-personnel land mines. These include Ukraine, Cambodia, the Czech Republic and Italy. The Netherlands has had in effect since September 1993 a selective moratorium on the export of anti-personnel land mines to those states that are not parties to the Convention and its Protocol II and South Africa has declared an indefinite moratorium on the marketing, export and transit of all types of land mines.

### **C. The UK position on land mines and the Inhumane Weapons Convention**

The United Kingdom declined to join a general moratorium on the export of land mines initiated by the UN General Assembly in November 1993, submitting the following explanation of its position:

"In voting for this Resolution the UK wishes to emphasise its strong support for international action aimed at dealing with the indiscriminate laying of non self-destructing or non self-neutralising mines, which has had such terrible consequences for civilians in several countries. I should also like to state our view that anti-personnel mines directed at military targets are a legitimate form of self-defence. If used in accordance with Protocol II of the UN Weaponry Convention, and particularly if self-destructing or self-neutralising, they do not pose grave dangers to civilian populations. Accordingly, we think it would be wrong that possession of self-destructing or self-neutralising anti-personnel mines should be restricted only to countries with the capacity to manufacture them and, therefore, we do not consider that such mines fall within the scope of this resolution."<sup>36</sup>

The criticism has been levelled against the British Government that it opposes a global ban on the export of land mines because it does not want to lose its share of a valuable export market. It is the UK's view, however, that it is possible to calibrate land mines in such a way as to make them harmless after their military purpose has been served and that self-neutralising and self-destructing mines therefore constitute a legitimate means of self-defence. The rationale behind this argument was explained by Jeremy Hanley, M.P., then a Minister of State in the Ministry of Defence, on 28 January 1994:

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<sup>35</sup> TASS, 1 December 1994

<sup>36</sup> A/C. 1/48/L. 42.

"Anti-personnel mines are inherently dangerous to civilians. However, they are legitimate defensive military weapons if used properly and in accordance with the laws of war, as our armed forces are trained to do. The extra controls provided by self-destructing or self-neutralising mechanisms help to ensure that mines with such capabilities are likely to be less dangerous to civilians than those with them."<sup>37</sup>

On 27 July 1994 the United Kingdom announced that it was imposing an indefinite moratorium on the export of non self-destructing or self-neutralising land mines. Announcing that the moratorium will take immediate effect the Foreign and Commonwealth Office statement read:

"There is increasing evidence of the terrible effects on civilians caused by the indiscriminate use of anti-personnel land mines which do not self-destruct or self-neutralise. HMG have therefore now decided to implement a moratorium on the export of these mines from the UK...

HMG are also proposing international measures to curb the export of these mines by means of a 'Code of Conduct' which would oblige supplier states to follow the UK's example and adopt a responsible attitude to land mine exports. All states would be able to subscribe to the code whether or not they have ratified Protocol II of the UN Weaponry Convention.

Meanwhile, we will continue, both unilaterally and as part of our contribution to European Union aid, to support mine clearance projects in those countries which are worst affected by land mines."<sup>38</sup>

This merely formalised the *de facto* situation since, according to a written answer by Douglas Hogg to a parliamentary question on 3 February 1994, the UK has not manufactured or exported conventional anti-personnel land mines since 1982.<sup>39</sup> Again, however, for the reasons outlined above, high tech, self-neutralising or self-destructing mines were exempt from the ban.

As far as ratification of the Inhumane Weapons Convention is concerned, Mr. Freeman said in a recent statement of government policy:

"We continue to work actively towards ratification of the UN weaponry convention...and intend to complete the process so as to be a full state party for next year's weaponry convention review conference. Meanwhile, we do, of course, adhere strictly to the provisions of the convention."<sup>40</sup>

In January 1994, Douglas Hogg pointed out that ratification of the Inhumane Weapons Convention would not have any direct effects on the Government's policy regarding mine

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<sup>37</sup> *HC Deb*, 28 January 1994, c. 423W.

<sup>38</sup> FCO statement, 27 July 1994.

<sup>39</sup> *HC Deb*, 3 February 1994, c. 859W.

<sup>40</sup> *HC Deb*, 21 November 1994, c. 62W

exports, since the IWC relates to the *use* of mines, booby traps and other incendiary devices, not to their export. In a previous answer, he had maintained:

"We are not contemplating separate legislation to cover the export of land mines from the United Kingdom. We believe that our current stringent controls on the export of defence equipment, which includes controls on all mines, are sufficient to stop the sales of these weapons to countries which may use them in an irresponsible manner."<sup>41</sup>

The British Government is expecting to ratify the Inhumane Weapons Convention by the end of February 1995. No enabling legislation will be required for this as there was, for example, for the Biological Weapons Convention of 1972. The difference between the two is that the Biological Weapons Convention clearly specified that "Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery...within the territory of such State, under its jurisdiction or under its control anywhere."<sup>42</sup> The subsequent Biological Weapons Bill (1974) was introduced to meet those requirements. The Inhumane Weapons Convention, which prohibits only one category of weapons and seeks to *control* the others, has no enforcement provisions, although this is one of the subjects which will be discussed at the review conference later in the year. The absence of an enforcement regime means that there is no requirement to make violations of the Convention a crime in British law, but the British Government will be bound in international law to ensure that British armed forces comply with the Convention.

### **III Countries most affected by land mines and attendant problems**

Apart from the threat to civilian populations, land mines pose serious problems to post-war rehabilitation and land utilization. The mining of roads, for example, prevents or endangers the repatriation of refugees and impedes the circulation of goods and labour within a post-conflict economy. The mining of agricultural land leads to increased malnutrition and can even, as in Angola, lead to starvation and famine. In a statement issued in October 1992, the ICRC, after reviewing Protocol II, noted that malpractice involving mines is far from restricted to a few isolated cases:

"We have seen such a massive indiscriminate use of mines that there are now millions of mines strewn in countries that have been involved in armed conflict. These mines, and those who have been responsible for their use, have blindly killed or injured countless innocent victims and they continue to do so after the conflicts are over. Huge expanses of land are now uncultivable, preventing people from returning to their homes. The full extent of this

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<sup>41</sup> *HC Deb*, 22 October 1993, c. 402W.

<sup>42</sup> Article IV of the Biological Weapons Convention, 1972.



scourge has become apparent in countries where mine clearance teams are presently facing an unbelievably slow and dangerous task."<sup>43</sup>

The obstacles to sustainable development and particularly to agricultural production are reinforced by environmental damage. In many of the poorer countries of the developing world mines are not merely instrumental in denying vital land to farmers and returning refugees, but have covered large tracts of the earth's surface with non-biodegradable and toxic waste. The United Nations Environment Programme (UNEP) found that land mines, as one of the most prevalent material remnants of war, can affect ecological balances by disturbing the soil, destroying vegetation, killing fauna and introducing poisonous substances into the environment. A study of the impacts of the Iraq-Kuwait conflict on territorial ecosystems, for example, found that land mines had caused both direct and indirect damage to the environment, some of which was irreversible<sup>44</sup>. Mine casualties themselves also place a significant burden on war-ravaged societies, since the medical infrastructure in these countries is often rudimentary and trained medical personnel and facilities are scarce.

### A. Afghanistan

Afghanistan is the most heavily mined country in the world with 10 to 15 million land mines.<sup>45</sup> The case of Afghanistan shows the special role anti-personnel mines have to play in a counter-insurgency campaign. The Soviet Union used the fact that the enemy was hiding in the community to justify the mining campaign and, as a result, in some areas virtually all mountain grazing land was remotely mined and the whole agricultural infrastructure brought to a halt by the widespread mining of fields and surface-irrigation systems. Due to their overall scale, mines have been a major obstacle to the repatriation and rehabilitation of rural Afghanistan. Even the best estimates indicate that it will take a minimum of six years at a funding level of \$17m per annum to clear priority community areas.<sup>46</sup>

### B. Angola

The second largest concentration of land mines is in Angola. Angola's first mines were laid by the Portuguese army in 1961, since which time mine-laying has also been carried out by the Angolan army, FNLA/UNITA, Cuban troops (fighting alongside the MPLA) and South African troops. One study found that mine explosions had claimed a total of 6,728 lives between 1975 and 1991, more than any other single war-related cause of death.<sup>47</sup> Angola has an estimated nine million mines and hospitals report up to 25 casualties from land mines every day.<sup>48</sup> In April and May 1992, a joint mission to Angola by Human Rights Watch and

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<sup>43</sup> *War of the Mines: Cambodia, Land mines and the Impoverishment of a nation*, by Paul Davies, Pluto Press, 1994.

<sup>44</sup> UNEP, *A Rapid Assessment of the impacts of the Iraq-Kuwait Conflict on Territorial Ecosystems*, 1991 in *Anti-personnel land mines: a plague on children*, UNICEF report, 21 February 1994.

<sup>45</sup> Figures from UN Office for the Coordination of Humanitarian Assistance to Afghanistan, Geneva in *Anti-personnel land mines: a plague on children*, UNICEF, 21 February 1994.

<sup>46</sup> *War of the Mines: Cambodia, Land mines and the Impoverishment of a Nation*, by Paul Davies, Pluto Press, 1994.

<sup>47</sup> *Sustainable Peace - Angola's Recovery*, Southern African Research & Documentation Centre, 1992.

<sup>48</sup> *Anti-personnel land mines: A plague on children*, UNICEF, 21 February 1994.

the Mines Advisory Group reported a very serious situation: most mines had been laid without markings or warning to the civilian population and a large proportion of the mines had been laid in such a way that their victims were almost guaranteed to be civilians.

### **C. Cambodia**

The contemporary Cambodian mine problem has been growing for nearly 30 years. The first anti-personnel mines were laid during the Vietnam War period. US special forces teams laid mines in covert operations which lasted from 1969 to 1973, which were never systematically cleared. When the Vietnamese troops withdrew from Cambodia following the Paris Peace Accords in 1973, the Khmer Rouge continued the policy of laying mines in its war against the Lon Nol regime. As the war neared its conclusion, both sides increasingly came to rely on mines to enhance defences at key installations and strategic points, such as bridges. The Khmer Rouge, in particular, used land mines as an instrument of terror for social and economic control over civilian populations.

It is not just the Khmer Rouge who are to blame for the current burden of mines in Cambodia, however. Since 1979 the Vietnamese and their clients in Phnom Penh, as well as the two 'non-communist' resistance factions (the NCR) have also relied very heavily on land mines. As a result, there are an estimated 4-10 million mines in Cambodia. There are no precise figures available, since records were not kept at the time the mines were laid. Nor, indeed, are there any maps available showing the location of mined areas. Cambodia has the highest ratio of mine amputees in the world. According to the Cambodian Mine Action Centre (CMAC) there may be as many as 41,000 casualties who have been the victim of at least 28 different varieties of anti-personnel mines, the vast majority of which were manufactured in the former Soviet Union, China and Vietnam. More people have been killed by land mines than any other weapon and alongside malaria and tuberculosis, land mines rank as one of Cambodia's three most serious public health hazards.<sup>49</sup> The problem of unexploded mines has become a major cause of concern, with large numbers of refugees returning to the land in search of a permanent home and subsistence agriculture now that a political solution to the civil war seems to have been reached. The problem has been recognised as a serious obstacle to Cambodia's reconstruction and development. Mine clearance is a critical problem since mines are strewn haphazardly around the country in areas earmarked for agriculture, industry and tourism. There are currently around 1,400 mine clearers deployed in Cambodia. More have been trained, but donor nations have not been able to supply the supervisory staff required while Cambodian managers and supervisors gain experience.

### **D. Mozambique**

During nine years of liberation war against the Portuguese, followed by 16 years of civil war, about 50 types of mines from 15 countries have been laid across Mozambique. They are buried everywhere, rendering many areas inaccessible by road. The threat of mines has also

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<sup>49</sup> *Land mines in Cambodia*, Asia Watch and Physicians for Human Rights, 1991.

slowed the repatriation of 1.7 million refugees who are afraid to return to their villages in case their fields are mined. Mines have claimed the lives of 10,000 people and maimed many more. About 300 mine clearers are deployed in a UN programme overseen by a Norwegian non-governmental organisation.<sup>50</sup> The NPA started training mine clearers in August 1993, taking advantage of the peace agreement signed in October 1992 between government forces and Renamo rebels.

As well as the above, other countries infested with mines laid in recent conflicts include Chad, Eritrea, Ethiopia, Malawi, Rwanda, Somalia, Sudan, Zimbabwe, Laos, Iran, Iraq<sup>51</sup>, Burma, Nicaragua, Sri Lanka, Sudan, Azerbaijan, Chad, Columbia, Cuba, El Salvador, Guatemala, Honduras, Tajikistan, Uzbekistan and Vietnam. Although the greatest concentrations of mines are within Asia and Africa, it is thought that more mines are currently being laid in central and eastern Europe, particularly in the republics of the former Yugoslavia (Bosnia and Croatia), than in any other region of the world.

## IV Mine Clearance

Mine clearance is essential, but extremely costly. An anti-personnel land mine can cost less than US \$3 to manufacture, but it is estimated that the costs of humanitarian mine clearance average between US \$300 and US \$1,000 per mine using indigenous deminers.<sup>52</sup> The neutralisation of land mines and other unexploded munitions requires specialised training and remains a tedious and dangerous process. Mines are often specifically designed and usually specifically emplaced so as to make detection impossible. Advances in technology are exacerbating the problem of mine detection and clearance: nowadays, most mines are made of plastic, which makes them difficult to detect. There is also an increasing number of mines which contain sophisticated electronic fuses that make them more hazardous to find and remove, particularly since mine clearance technology (usually involving someone lying on their stomach and prodding the earth in front of them with a stick) has not changed much since the 1940s.

The United Nations funds most mine clearance programmes and the UN Department of Humanitarian Affairs, working closely with the Department of Peace-keeping Operations, has been assigned to co-ordinate mine clearance. The United Nations has three approaches to demining: as part of integrated humanitarian and peace-keeping operations; as part of solely humanitarian operations; and demining as part of post-conflict peace-building. In a statement submitted to a Congressional sub-committee hearing on the global land mine crisis, UN Secretary-General Dr. Boutros Boutros-Ghali maintained that primary responsibility for demining must lie with the country affected and that the UN's chief objective is to build indigenous capacity to clear mines.

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<sup>50</sup> Norwegian People's Aid (NPA).

<sup>51</sup> Hundreds of minefields straddle the border between Iran and Iraq. It has been estimated that civilian mine injuries tie up 50% of the regions's healthcare resources.

<sup>52</sup> UNICEF, 21 February 1994.

One of the problems affecting mine clearance is the lack of donor funding for clearance projects. Boutros Boutros-Ghali maintains that mine clearance could be doubled using existing management and training resources, but donor funding cannot be found to support the increase. As a result, on 8 October 1993 the UN General Assembly adopted a resolution entitled Assistance in Mine Clearance, which calls for a strengthening of the contribution of UN member states to demining efforts. The resolution also called on UN agencies to include mine clearance in their programmes and a for a voluntary trust fund to finance training and technology for this purpose.

The UN has information on mine placement, clearance and injuries in areas where its peacekeeping mission operate or have operated in the past (eg, Kuwait and Cambodia), but there has been no worldwide systematic collection of information. According to a UN official in the UN Working Group on Mines and Munitions Clearance, an *ad hoc* group involving the Departments of Peacekeeping Operations and Humanitarian Affairs, the working group is beginning to prepare a strategy for demining.<sup>53</sup> The same official stressed that creating a database covering de-mining techniques and de-mining experts, mine technology and information about production is a priority. Responding to a request by the UN Environment Programme, the Stockholm International Peace Research Institute (SIPRI) recommended ways the UN could deal with this issue. SIPRI suggested a register of information on mines and other explosive remnants of war, including location, magnitude and destructive capacities of mines and other munitions and said that there was an urgent need to create a database on mine clearance technologies.

## V The 1995 Review Conference

Article 8 of the Inhumane Weapons Convention stipulates that a review conference may be convened 10 years after its entry into force. The perceived weaknesses of the Convention, the proliferation of land mines and the number of civilian deaths spurred the international community to address the problem and in December 1993 France submitted an official request for a review conference to be held, with a view to strengthening Protocol II. Preparatory work began on 28 February 1994 and the review conference is expected to be held in September 1995. According to UN Secretary-General Boutros Boutros-Ghali, the review conference must "...address the shifting role of mines from a tactical battlefield weapon to a theatre-wide weapon of mass civilian destruction."<sup>54</sup>

There is a general view that Protocol II has several loopholes which must be filled. A paper by the Medical Educational Trust noted:

"...much of Protocol II appears to provide civilians with protection, but suffers from 'get out' clauses which prioritise military needs over civilian protection."<sup>55</sup>

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<sup>53</sup> *The Bulletin of the Atomic Scientists*, July/August 1993.

<sup>54</sup> *Foreign Affairs*, Vol. 73, No. 5, September/October 1994.

<sup>55</sup> Evidence submitted to the Senate Subcommittee of the Committee on Appropriations, 1994.

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One of the main shortcomings is that Protocol II only regulates the use of land mines in international conflicts. Since most of the problems with the use of land mines today are being caused in internal conflicts by combatant groups not party to the Inhumane Weapons Convention, there is an increasing groundswell of support for extending the formal application of Protocol II to include internal armed conflicts.

Other shortcomings of Protocol II include the fact that there are no enforcement provisions, a lack of verification procedures, no designated venue for lodging allegations of breaches and no sanctions for non-compliance. France, in particular, expressed reservations about the lack of enforcement procedures at the time of signature:

"...The French Government...regrets that thus far it has not been possible for the States who participated in the negotiation of the Convention to reach agreement on the provisions concerning the verification of facts which might be alleged and which might constitute violations of other undertaking subscribed to. It therefore reserves the right to submit...proposals aimed at filling that gap at the first conference to be held...and to utilize, as appropriate, procedures that would make it possible to bring before the international community facts and information which, if verified, could constitute violations of the provisions of the Convention and the protocols annexed thereto."<sup>56</sup>

Suggestions for strengthening Protocol II include the addition of strong enforcement provisions; mandatory registration with the UN of the number and type of land mines produced, mandatory reports to the UN on any transfers of land mines, obligatory agreement to permit appropriate inspections to determine compliance and appropriate sanctions for non-compliance. A report of the UN Secretary-General in July 1994 suggested that "A revised Protocol II...could include a comprehensive compliance and verification regime based on the principle of co-operative implementation, i.e., the joint commitment of the States parties to co-operate actively for the gradual implementation of the Protocol."<sup>57</sup>

Other proposals for the review conference and the British Government's attitude to these were announced in a written answer on 6 February 1995 by Mr Soames.<sup>58</sup>

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<sup>56</sup> *Documents on the Laws of War*, Edited by Adam Roberts and Richard Guelff, 1989, p. 488.

<sup>57</sup> *A/49/275*, 27 July 1994, p. 17

<sup>58</sup> *HC Deb*, 6 February 1995, c.39W.

In preparation for the review conference, intergovernmental meetings of experts have already met to consider possible changes to the Convention. Discussion seems to be focusing on the above concerns: monitoring of compliance; enforcement; provisions for the destruction of stockpiles of unlawful weapons; restrictions on the export, sale or transfer of mines and mine technology and extension of the scope of the Convention to cover non-international conflicts. The United Kingdom is actively participating in the preparations for the review conference. In a written answer to a parliamentary question on 24 October, Mr. Davis maintained:

"We continue to regard land mines as a legitimate defensive weapon when used responsibly in accordance with the laws of war. We are, however, working with like-minded countries to establish a viable and effective international control regime to ensure the responsible use of anti-personnel land mines."<sup>59</sup>

Multilateral initiatives are also taking shape to contribute to the review conference. One such example is the proposal by the United Kingdom within the Conference on Disarmament to apply a code of conduct to the transfer of anti-personnel land mines. The unilateral or multilateral implementation of this proposal would not permit the export of anti-personnel land mines to states which are not parties to the Convention and Protocol II. In the Group of Experts<sup>60</sup>, Australia, Sweden and the Netherlands proposed that a new article be introduced in any revised version of Protocol II with the aim of denying access to anti-personnel land mines by states not adhering to the Protocol and allowing exports and transfers of mines which have a self-neutralising or self-destructing capability.

## VI Conclusion

There are some countries which would like to use the review conference to impose a global blanket ban on the production, export and stockpiling of anti-personnel mines. The prospects of a global ban on anti-personnel land mines coming out of the review conference are slim, however. The United Kingdom, supported by China and the United States maintain that the review conference is not the place for a discussion on disarmament. The UK, in particular, feels that a global ban would be counter-productive and would trigger the proliferation of low-technology mines, which cause the worst civilian injuries. Given how easy land mines are to make and the fact that they have been a part of modern combat since the Second World War, defence analysts also believe that a ban on mines would be impractical, since they constitute too useful a tool of modern warfare and any ban would be impossible to verify.<sup>61</sup>

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<sup>59</sup> *HC Deb*, 24 October 1994, c. 435W.

<sup>60</sup> Created by the UN Secretary-General pursuant to General Assembly Resolution 48/79, 16 December 1993, which called for a review conference to be held.

<sup>61</sup> *Reuters*, 27 September 1994.

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## Annex I

### List of parties to the Inhumane Weapons Convention

So far only 41 states have ratified the Inhumane Weapons Convention. These are:

Australia  
Austria  
Belarus  
Benin  
Bosnia and Herzegovina  
Bulgaria  
China  
Croatia  
Cuba  
Cyprus  
Czech Republic  
Denmark  
Ecuador  
Federal Republic of Yugoslavia  
Finland  
France  
Germany  
Greece  
Guatemala  
Hungary  
India  
Japan  
Lao People's Democratic Republic  
Latvia  
Liechtenstein  
Mexico  
Mongolia  
the Netherlands  
New Zealand  
Niger  
Norway  
Pakistan  
Poland  
the Russian Federation  
Slovakia  
Slovenia  
Spain  
Sweden  
Switzerland  
Tunisia  
Ukraine



## **Annex II**

### **Signatories to the Inhumane Weapons Convention**

There remain a large number of states which have not yet ratified the Inhumane Weapons Convention. These are:

Afghanistan  
Argentina  
Belgium  
Canada  
Egypt  
Iceland  
Republic of Ireland  
Italy  
Luxembourg  
Morocco  
Nicaragua  
Nigeria  
Philippines  
Portugal  
Romania  
Sierra Leone  
Sudan  
Togo  
Turkey  
United Kingdom  
United States of America  
Vietnam

## Annex III

Common Article 2 of the 1949 Geneva Conventions:

"In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even in the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in the conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

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