

# Proceed With Caution: U.S. Policy Toward a Global Ban on Landmines

by Anne Theodore Briggs\*

70,402. The ominous counter of the U.S. Campaign to Ban Landmines increases once every 22 minutes, mirroring the number of landmine casualties worldwide since May 16, 1996, the date U.S. President William J. Clinton announced that the United States would “lead a global effort to eliminate [anti-personnel landmines] and to stop the enormous loss of human life.” Since this statement, however, the United States has refused to sign the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Landmine Treaty). The treaty entered into force on March 1, 1999, binding its signatories “never under any circumstances” to utilize anti-personnel landmines.

There is irony in the current U.S. position on the Landmine Treaty, as the United States is credited with introducing the concept of a worldwide landmine ban. In 1992, Senator Patrick Leahy (D-VT) sponsored an amendment prohibiting U.S. exports of anti-personnel landmines, which became permanent U.S. policy in 1997. Inspired by this legislation, President Clinton called for the elimination of such mines at the UN General Assembly meeting on September 26, 1994. This encouraged other world leaders to consider the issue, and the resulting Landmine Treaty was submitted for signature in Ottawa, Canada, in December 1997.

## Substance of the Landmine Treaty

Article 1 of the Landmine Treaty prohibits the use, production, stockpiling, or transfer of anti-personnel mines and obligates each State Party to destroy all anti-personnel mines in its possession. Article 3 sets out limited exceptions to this rule, including permission for countries to retain a small number of mines for mine clearance training. Article 4 requires that each State Party destroy all stockpiled mines in its possession not later than four years after the treaty enters into force for that country. Article 5 requires each State Party to mark, monitor, protect by fencing, and destroy within ten years all anti-personnel mines in mined areas. Countries that are unable to comply with this requirement may apply for an extension of up to ten additional years.

Article 6 provides for the United Nations and State Parties to engage in international cooperation and assistance measures, such as technology and information exchanges, mine victim rehabilitation, and mine clearance assistance. Article 8 sets out treaty compliance and monitoring procedures. If a country is suspected of not complying with the treaty, a majority of signatories can call for a “fact-finding mission” in the suspect country. The fact-finding mission must be granted access “to all areas and installations . . . where facts relevant to the compliance issue could be expected to be collected,” to determine the country’s level of compliance. Article 19 prohibits all reservations to the Landmine Treaty.

## U.S. Objections

The United States is noticeably absent from the list of signatories to the Landmine Treaty. Its refusal to sign is based

primarily on military concerns, namely the need to maintain minefields in the Korean Peninsula to deter North Korean aggression. The United States views the Landmine Treaty as being overly broad in its prohibitions due to its ban on technologically advanced “smart” landmines, which the U.S. government claims pose minimal risk to non-combatants.

Landmines are of two types: anti-personnel and anti-tank. The Landmine Treaty bans only anti-personnel landmines, defining them as “mine[s] designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.” Anti-tank mines are mines that are designed to destroy vehicles and tanks and are usually detonated by great pressure on the mine. The distinction, however, between anti-personnel and anti-tank mines is not always clear, especially in U.S. mixed-mine systems, which combine anti-tank and anti-personnel mines. As a result, many U.S. mines fall under the category of anti-personnel mines banned by the Landmine Treaty.

Landmines can also be characterized as either “smart” or “dumb.” President Clinton, in his May 16, 1996, speech, defined “dumb” mines as “[t]hose which remain active until detonated or cleared.” “Smart” landmines are those which are programmed to self-destruct after a certain period of time. Because “smart” mines are designed to self-destruct and

thus do not require removal, the United States views their use as more humane. The Landmine Treaty, nonetheless, does not recognize the distinction between “smart” and “dumb” landmines, prohibiting signatories from using either type.

## U.S. Efforts Against Landmines

Although the United States has not signed the Landmine Treaty, it has not ignored the landmine problem. Aware that its refusal to sign the Landmine Treaty is unpopular internationally, it clarified its support of landmine ban efforts. On September 17, 1997, during the drafting of the Landmine Treaty, the White House released a statement that “by 2003 we will no longer use anti-personnel landmines outside Korea, and, within Korea, our objective is to have alternatives to anti-personnel landmines ready by 2006.” A month later Secretary of State Madeleine Albright announced Clinton’s “Demining 2010” initiative, which pledged U.S. support in “eliminating, by 2010, the threat to civilians posed by landmines already in the ground.”

A May 1997 U.S. Department of Defense Report stated that the U.S. military is committed to “achieving a global ban as soon as possible” and that the Department of Defense was engaged in an “aggressive . . . program to provide effective [anti-personnel landmine] alternatives.” Senator Leahy was instrumental in holding the United States to its promise to develop mine alternatives by 2006, introducing an amendment to the fiscal year 1999 Department of Defense appropriations to include \$17.2 million for research into anti-personnel landmine alternatives. The amendment was modified to increase this amount to \$19.2 million. President

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Clinton signed the bill into law on October 17, 1998. In addition, the U.S. military is revising its wartime strategy to avoid the use of anti-personnel landmines and is expanding funding for humanitarian de-mining operations. According to the U.S. State Department, the United States has invested almost \$250 million in humanitarian de-mining efforts since 1993, including \$82 million in fiscal year 1998.

### Conclusion

Because of its financial, technological, and military advantages, the United States has greater capability than any other country to find alternatives to landmines. Although the United States has legitimate concerns about protecting U.S. soldiers on the Korean Peninsula, a number of U.S. military

strategists have concluded that anti-personnel landmines are not essential to U.S. defense in that region. Critics of the U.S. landmine policy suggest that the U.S. decision, therefore, is not based on military concerns but on U.S. aversion to intrusions on its national sovereignty. Even though the United States has contributed significantly to the elimination of landmines, its failure to become part of a unified international effort by signing the Landmine Treaty signals a lack of commitment to the rest of the world. Signing the Landmine Treaty would send a message of good faith and reaffirm the integrity of U.S. anti-mine efforts. ☉

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NNTT negotiation proceedings with leaseholders. Most Aborigines agree that negotiations are preferable to costly court proceedings that may provide results unsatisfactory to both parties. Second, the NTAA returns considerable power to the states, which are considered less receptive than the federal government to native title claims. For example, state governments may now require that negotiations be conducted by state tribunals, which the states may develop in lieu of the NNTT. Aborigines argue that, given their history of biased treatment by state governments, these local tribunals may not be as impartial as the NNTT. Several state governments, in particular the governments of Western Australia and Queensland, are now scrambling to develop local tribunals to replace the NNTT.

### The Role of International Law

The role of international law is not always clear as it applies to aboriginal native title rights or indigenous rights in general. Traditionally, indigenous rights fell under more general areas of human rights law. There has been increasing recognition, however, that indigenous rights merit consideration as a unique branch of human rights. The United Nations, for example, has adopted the Draft Declaration on the Rights of Indigenous Peoples. The Draft Declaration includes a number of key indigenous land rights, about which the Aborigines were consulted, including the right to preserve "archaeological and historical sites" (Article 12) and "indigenous sacred places" (Article 13). It also provides for the right to restitution of traditional lands that have been "confiscated, occupied, used or damaged" without indigenous peoples' "free and informed consent" (Article 27).

International law is important to the Aborigines' cases because, although native title legal action takes place under Australian national law, Australian courts and lawmakers have received significant input from international sources. For example, the RDA represented a legislative incorporation of principles established in the UN International Convention on the Elimination of All Forms of Racial Discrimination (Convention), which Australia ratified in 1975. In addition, both the *Mabo* and *Wik* decisions cited the importance of Australia's commitment to international treaties.

Moreover, international human rights organizations, using international law, have challenged provisions in Australian

domestic land rights law. For example, in September 1998, the UN Committee on the Elimination of Racial Discrimination (Committee) asked the federal government to explain how the NTAA meets the Convention's requirements. On March 19, 1999, the Committee issued a report calling on the Australian government to delay implementation of the NTAA pending further discussion with aboriginal representatives. The Committee issued findings that several provisions of the NTAA, including restricted negotiation rights for Aborigines, conflict with Australia's obligations under the Convention. Unfortunately, the Australian government responded by rejecting the Committee's non-binding findings.

### Conclusion

Given the recalcitrance of politicians and a substantial portion of the public against native title rights, Aborigines face a difficult struggle for full recognition of their claims to native lands. For example, in October 1998, the *Jawoyn* Association, representing a group of Aborigines in the Northern Territory, gave up a claim brought under the 1993 NTA to approximately 2,500 acres of land, in exchange for the Northern Territory government's agreement to provide a renal dialysis facility and an alcohol rehabilitation center. Critics of this settlement argue that the government already is obligated to provide these services under the national health-care system, and they allege that this case is an example of how state governments are pressuring Aborigines into trading their land claims for essential services.

According to the *Native Title Newsletter*, published by the Australian Institute of Aboriginal and Torres Strait Islander Studies, Australian indigenous leaders plan to fight the NTAA on three fronts: a case-by-case attack in Australian courts, submissions to international organizations, and an Australian High Court challenge to the constitutionality of the NTAA. In this atmosphere of uncertainty and mistrust, it remains to be seen to what extent Aborigines and their supporters will be able to secure additional native title rights under the NTAA and preserve the enjoyment and protection of their traditional lands. ☉

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