

# **BANNING ANTI-PERSONNEL MINES**

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## **THE OTTAWA TREATY<sup>1</sup> EXPLAINED**

The International Committee of the Red Cross (ICRC) acts to help all victims of war and internal violence, attempting to ensure implementation of humanitarian rules restricting armed violence. The ICRC is committed to a worldwide ban on the production, stockpiling, transfer and use of all anti-personnel mines

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*The official title is the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction*

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# INTRODUCTION

The Ottawa treaty is part of the international response to the humanitarian crisis caused by the global proliferation of anti-personnel mines. Millions of these deadly weapons are already contaminating more than 70 countries, creating one of the most serious man-made problems of our time. Their long-term impact upon individuals, communities, and entire societies is startling. Recognizing the seriousness of the problem, countries from all regions of the world voluntarily came together in 1997 and negotiated the Ottawa treaty, an international agreement comprehensively banning the development, production, stockpiling, transfer and use of anti-personnel mines, and requiring their destruction. This treaty is an outstanding achievement because it marks the first time that countries – through international humanitarian law – have agreed to ban completely a weapon already in widespread use. In setting a clear

international standard against anti-personnel mines, the Ottawa treaty represents a decisive first step in the long-term goal of addressing the scourge of landmines and clearing the world of these horrific weapons.

This paper provides a brief overview of the landmine problem, the “Ottawa process” and the content of the Ottawa treaty. It is not intended to be a record of the negotiating history or a commentary on the legal aspects or implications of the treaty. Rather, it presents and explains the treaty’s major elements and accomplishments. It has been written with the non-specialist in mind and is therefore not overly burdened with international legal terminology. Where use of such terminology has been unavoidable, the specific word or phrase is underlined and is explained in a glossary at the end. A copy of the treaty is also attached for information.

# 1. THE LANDMINE PROBLEM AND PROGRESS TOWARDS A BAN TREATY

## 1.1 The need for a ban treaty

Landmines are powerful and unforgiving devices. Unlike other weapons of war, most of which must be aimed and fired, anti-personnel landmines are "victim" actuated. That is, they are designed to be detonated by a person stepping on or handling the device, or by disturbing a tripwire attached to it.<sup>2</sup> Once emplaced, anti-personnel mines are indiscriminate in their effects and, unless removed or detonated, long lasting. Even today, landmines laid during the Second World War continue to be discovered and, on occasion, to kill or wound, more than 50 years after the end of the conflict. Landmines cannot "distinguish" between the soldier and the civilian. They kill or maim a child playing football just as readily as a soldier on patrol. Especially in post-conflict societies, it is most often the civilian going about his or her daily activities that is the unfortunate victim.

While all war wounds are horrific, the injuries inflicted by anti-personnel mines are particularly severe. These weapons are designed to kill, or, more often, to disable permanently their victims. They are specifically constructed to shatter limbs and lives beyond repair. The detonation of a buried anti-personnel "blast" mine rips off one or both legs of the victim and drives soil, grass, gravel, metal, the plastic fragments of the mine casing, pieces of the shoe, and shattered bone up into the muscles and lower parts of the body. Thus, in addition to the traumatic amputation of the limb, there is a serious threat of secondary infection. As wounds such as these are not often seen by civilian doctors, treating a mine-injured patient can be a challenge to the most competent surgeon.

If they survive a landmine blast, the victims typically require multiple operations and prolonged rehabilitative treatment. Unfortunately, most mine accidents occur in countries with limited medical and rehabilitative resources. Access to proper treatment and care is thus difficult or impossible. Moreover, transportation to a medical facility immediately following an accident is often arduous. In some countries it may take victims between six and 24 hours to get to a hospital capable of treating them. Many die before reaching any medical facility.

Following the provision of medical care, most mine victims will require extensive rehabilitative treatment. Not only must amputees be fitted with artificial limbs

to ensure mobility, but their loss of dignity and their psychological distress must also be addressed. Few survivors have access to such long-term care and assistance programmes. Even if rehabilitated, many victims are disabled, cannot work or provide for their families, and are likely to suffer intense anxiety, with little hope of improving their situation.

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

Although international humanitarian law and traditional military doctrine have set clear requirements for the "responsible" use of anti-personnel mines, too often these rules have not been implemented. Research conducted on behalf of the International Committee of the Red Cross (ICRC) by military experts has shown that in 26 conflicts since the beginning of the Second World War, anti-personnel mines have only rarely been deployed in accordance with the existing legal and military requirements. Even well-trained professional armies have found it extremely difficult to use mines correctly in combat situations. Furthermore, mines have increasingly been used as part of a brutal and systematic war against civilians, especially in the bitter internal conflicts that have come to characterize warfare in the late twentieth century.

It is these tragic realities which make the anti-personnel mine a particularly abhorrent weapon and which have led the ICRC and many other organizations and individuals to call for its prohibition and stigmatization. The use of poison gas and exploding bullets has already been stigmatized and condemned by the international community. Both are weapons of war that are considered as violating the most basic principles of humanity *however and whenever they are used*. Now, with the adoption of the Ottawa treaty, anti-personnel mines will also be

<sup>2</sup> Anti-vehicle mines, on the other hand, are designed to be detonated by the weight of a vehicle. When left on roadways that are not used solely by military personnel, they also take their toll on civilian lives and injuries. Anti-vehicle mines are discussed further below, see p. 6.

considered as a weapon which carries a level of humanitarian costs that far outweighs their limited military value.

## 1.2 The existing law

In 1990, the ICRC and other humanitarian organizations began to document a dramatically high number of civilian mine casualties. Many of the victims were wounded during periods when no fighting was taking place or after the end of hostilities. Subsequently, the ICRC, National Red Cross and Red Crescent Societies and the International Campaign to Ban Landmines (ICBL) – an international coalition of non-governmental organizations – began efforts to raise awareness about the devastating effects of these weapons and press for an end to their use. During the years leading up to the conclusion of the Ottawa treaty in 1997, these efforts were the dominant force in mobilizing public opinion, stimulating military and political debate, and ensuring that the plight of the victims and communities living under the threat of landmines was not forgotten.

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

- a) Parties to a conflict must always distinguish between civilians and combatants, and civilians must not be attacked. In accordance with this principle, any weapon that is inherently indiscriminate must never be used.
- b) It is prohibited to use weapons which are “of a nature to cause superfluous injury or unnecessary suffering”. This means that any weapon designed to cause more injury than required to take a soldier “out of action” (i.e. one intended to inflict gratuitous suffering), even when directed solely against combatants, is unlawful and must not be used

In addition to these general customary rules, more detailed provisions specific to anti-personnel mines are contained in various international agreements. Prior to the conclusion of the Ottawa treaty, the principal agreement governing the use of landmines

was the 1980 UN Convention on Certain Conventional Weapons (CCW)<sup>3</sup> Protocol II of this treaty specifically regulates mines, booby-traps and other devices. Since this is an international legal agreement, as opposed to international customary law, it applies only to those countries which agree to be bound by its terms.

As the civilian impact of landmines grew more apparent, it became evident that existing provisions of the CCW were too weak and were not being adequately followed in many of the recent conflicts where mines were being used. Following a formal request by France in 1993, governments agreed to meet and review the treaty and, in particular, to strengthen the provisions of Protocol II dealing with anti-personnel mines. Following two years of meetings of government experts in Geneva, the Review Conference of the CCW opened in Vienna in September 1995. Hopes were high that substantial and meaningful prohibitions and restrictions on landmines would be agreed by the governments taking part in the negotiations. However, although the Conference successfully adopted a new protocol banning the use and transfer of blinding laser weapons, talks to prohibit or strictly limit the production, transfer and use of anti-personnel mines became deadlocked and the conference was adjourned without any new limitations being placed on these weapons.

The Review Conference was reconvened in Geneva for two sessions in 1996. Although this time changes to the mines protocol were agreed upon, the ICRC, the ICBL and many governments considered the results disappointing and inadequate. The provisions drafted were extremely complex and many doubted whether they would or even could be effectively implemented in most situations of armed conflict. Few believed that the amended protocol would be sufficient to stem the proliferation of the weapon and consequently to reduce the number of civilian landmine casualties. At the closing session of the Review Conference, the Canadian government announced its intention to invite pro-ban countries and interested organizations and agencies to attend a conference later in the year convened to develop strategies aimed at effectively ending the affliction caused by landmines. The scene was set for the beginning of what would be termed the “Ottawa process”.

<sup>3</sup> The full title is the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

### 1.3 The Ottawa process

The Canadian-sponsored strategy conference, Towards a Global Ban on Anti-Personnel Mines, took place in Ottawa in October 1996 with the active support of 50 governments, the ICRC, the ICBL and the United Nations. On 5 October 1996, the conference adopted the Ottawa Declaration, which committed the participants to carrying out a plan of action intended to increase resources for mine clearance and victim assistance and to working to ensure that a ban treaty was concluded at the earliest possible date. At the closing of this Conference, the Canadian government once again seized the initiative by inviting all governments to come to Ottawa in December 1997 to sign a treaty prohibiting the production, stockpiling, transfer and use of anti-personnel mines. The "Ottawa process" had been officially launched.

International support for a ban on landmines continued to build. In December 1996, the UN General Assembly passed Resolution 51/45S, which called upon all countries to conclude a new international agreement totally prohibiting anti-personnel mines "as soon as possible". A total of 157 countries voted in favour of this resolution, none opposed it, and only 10 abstained from the voting. To support the Ottawa process, the Austrian government prepared a draft text of the ban treaty and circulated it to interested governments and organizations. This draft, which was subsequently revised a number of times, was the basis of the ban treaty concluded in Oslo in September 1997.

International discussion on the draft text began in Vienna in February 1997 at a meeting hosted by the Austrian government. In its address to the meeting, the ICRC called for a comprehensive ban treaty based on an unambiguous definition of an anti-personnel mine. In April 1997, the German government hosted a special meeting to discuss possible verification measures to be included in a total ban treaty. Views were divided between those who stressed the central importance of establishing a humanitarian norm

against anti-personnel mines and others who considered effective verification mechanisms to be essential to the success of the treaty.

The formal follow-up to the 1996 Ottawa conference took place in Brussels from 24-27 June 1997. The Brussels International Conference for a Global Ban on Anti-Personnel Mines was attended by representatives of 154 countries. It was the largest gathering of governments to date for a conference devoted specifically to the issue of landmines. On the closing day, 97 governments signed the Brussels Declaration, launching formal negotiations on a comprehensive landmine ban treaty, greater international cooperation and assistance for mine clearance and the destruction of all stockpiled and cleared anti-personnel mines. The Declaration called for the convening of a diplomatic conference in Oslo to negotiate such a treaty on the basis of the draft prepared by the Austrian government.

In accordance with the Brussels Declaration, which by now had been signed by 107 countries, formal treaty negotiations took place from 1 to 18 September 1997 at the Oslo Diplomatic Conference on an International Total Ban on Anti-Personnel Land Mines, hosted by the Norwegian government. Ninety-one countries took part in the negotiations as full participants and 38 countries were present as observers, as were the ICRC, the ICBL and the UN.

The Oslo Diplomatic Conference proved to be a tremendous success. Propelled by its South African Chairman, Ambassador Jakob Selebi, on 18 September the Conference solemnly adopted the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction – the "Ottawa treaty". The treaty was opened for signature at a ceremony on 3 and 4 December 1997, when representatives from a total of 121 countries signed it on behalf of their governments. It came into force on 1 March 1999, the fastest entry into force ever for a multilateral arms-related treaty. An overview of the content of the treaty is set out in the pages that follow.

## 2. THE OTTAWA TREATY

While the security of those living in mine-contaminated regions will remain threatened until the mines are destroyed or removed from the ground, ending the use of anti-personnel mines is central to efforts to spare future generations from the horror of these weapons. The Ottawa treaty is an important step towards this goal because it establishes a *comprehensive* ban on the devices. That is, it not only prohibits the use of anti-personnel landmines in all situations, it also forbids their development, production, stockpiling, and transfer. In addition, it requires the destruction of such mines, whether held in stockpiles or already emplaced in the ground.

### 2.1 What is an anti-personnel mine?

The Ottawa treaty only prohibits anti-personnel mines. A distinction is therefore made in the treaty between mines designed to kill or injure people – anti-personnel mines – and those designed to destroy tanks or vehicles – anti-vehicle mines, also commonly referred to as anti-tank mines. Anti-personnel mines are generally small devices, containing between 10 g and 250 g of explosive substance, that will detonate under 0.5 kg to 50 kg of pressure. Anti-vehicle mines, on the other hand, are larger than anti-personnel mines, containing between 2 kg and 9 kg of explosive, and are normally activated by 100-300 kg of pressure. Generally, the large amount of pressure needed to activate anti-vehicle mines, combined with the fact that they are used in smaller numbers and are easier to locate, has made them less of a threat to the civilian population. However, in many areas anti-vehicle mines placed on roadways used by civilians still pose a serious threat to the civilian population.

The definition of an anti-personnel mine laid down in the Ottawa treaty (see Art. 2, paras 1 and 2) covers all “person”-activated mines irrespective of whether they are placed in the ground in marked minefields or remotely delivered over large areas. It also includes so-called “smart” anti-personnel mines—mines which have the capacity to self-destruct or self-deactivate (i.e. mines that are programmed to automatically explode or become inert after a set period of time).

However, owing to recent developments in landmine technology, the traditional distinction between anti-personnel mines and anti-vehicle mines is becoming blurred. Several types of mines have been developed which can be considered to have a “dual purpose”.

That is, they are designed to be detonated by both people and vehicles. The treaty prohibits any dual-purpose mine or any anti-vehicle mine if one of its functions is to be detonated by a person. The sole exception to this is an anti-vehicle mine equipped with an anti-handling device. An anti-handling device is a mechanism attached to the mine which causes the mine to explode when a person attempts to remove, disturb or tamper with it.<sup>4</sup> These mechanisms are increasingly being fitted to anti-vehicle mines to prevent their removal or clearance and are a particular danger to soldiers and deminers.

The definition of an anti-personnel mine contained in the Ottawa treaty is significantly stronger than the formulation found in amended Protocol II to the CCW. The Protocol defines an anti-personnel mine as “a mine **primarily** designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons” (emphasis added). The use here of the word “primarily” is one of the Protocol’s significant weaknesses. It creates a major ambiguity in the definition, which could thus be interpreted as excluding “dual-purpose” munitions even if one of the purposes is to serve as an anti-personnel mine. The absence of the word “primarily” in the Ottawa treaty definition removes this undesirable ambiguity. The new definition is indeed an important accomplishment of the Ottawa process: a clear definition of the weapon being prohibited is the foundation of a comprehensive ban treaty.

Although not within the ambit of the Ottawa treaty, all anti-vehicle mines capable of detonation only by vehicles or tanks are nonetheless covered by the rules established by customary law and Protocol II to the 1980 CCW. Governments must ensure that such mines, especially when remotely delivered and equipped with anti-handling devices, are used responsibly in accordance with international humanitarian law and established military doctrine.

### 2.2 The elements of a comprehensive ban treaty

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

<sup>4</sup> Art. 2, para. 3, of the Ottawa treaty defines an anti-handling device as “a device 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”.

international humanitarian law. Specifically, the treaty provides that:

*Each State Party undertakes never under any circumstances:*

- (a) to use anti-personnel mines;*
- (b) to develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel landmines;*
- (c) to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention (see Art. 1, para. 1).*

Each of these elements is briefly explained below.

#### *2.2.1 An end to use*

Each country adhering to the Ottawa treaty obliges itself “**never, under any circumstances**” (emphasis added) to use anti-personnel landmines. This includes all situations of armed conflict – whether between countries (international armed conflict) or a civil conflict (internal armed conflict) – as well as troubles of a lesser intensity commonly referred to as internal unrest or civil disturbances. All offensive and defensive usage is prohibited. Moreover, any resort to the weapon during peacetime is also proscribed. A country cannot deploy anti-personnel mines to fortify its borders as a means of preventing unwanted persons from entering its territory or to protect important military or other installations. In ratifying the Ottawa treaty, a country accepts that mines are no longer a legitimate weapon to be used either in peacetime or in time of war. There are no exceptions to this rule.

#### *2.2.2 A prohibition on development and production*

The Ottawa treaty prohibits the development and production of anti-personnel mines (see Art 1, para. 1 (b)). A country cannot manufacture the devices, nor can it initiate any projects intended to improve current models, develop new models, or generate any such weapons in the future

#### *2.2.3 A prohibition on stockpiling*

In addition to prohibiting the development, production and use of anti-personnel mines, the Ottawa treaty precludes a country from stockpiling them (see Art 1, para 1 (b)). A country is not allowed to purchase, procure, or otherwise obtain the devices.

Furthermore, any existing stocks must be destroyed within four years of the date on which the treaty enters into force for a given country (see Art. 4). States requiring assistance in order to ensure the destruction of anti-personnel mines within the specified time period may apply to other States Parties to the treaty for such assistance (see Art. 6).

However, a country is permitted to retain or transfer a limited quantity of mines for training in mine-detection, mine-clearance, and mine-destruction techniques. The number of mines kept shall not exceed the minimum number absolutely necessary for such purposes (see Art. 3, para. 1). At the time of the adoption of the treaty in Oslo, a number of governments declared they would retain no more than a few thousand mines.

#### *2.2.4 A prohibition on transfer*

The final component of the comprehensive ban established by the Ottawa treaty is a prohibition on transferring anti-personnel mines. A country is not allowed, in any way or under any circumstances, to transfer anti-personnel mines either directly or indirectly. According to the treaty, the term “‘transfer’ involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines” (see Art 2, para. 4).

The prohibition on transfer covers import and export as well as transfer of ownership of mines. In order to facilitate mine detection, destruction and clearance, there are, however, a small number of narrow exceptions to this prohibition. First, countries are permitted to transfer anti-personnel mines for the purpose of destruction. Second, they may transfer the limited number of mines allowed to be retained for training purposes. Any other exchange of anti-personnel mines beyond these exceptions is forbidden. As the definition above makes clear, the transfer of territory containing anti-personnel mines does not constitute a “transfer” of those mines for the purposes of the treaty

#### *2.2.5 Other prohibited activities*

In addition to the prohibitions discussed above, each country agrees never under any circumstances to assist, encourage or induce anyone, whether or not they are bound by the treaty, to engage in any prohibited activity. This reinforces the effectiveness of



the treaty's comprehensive ban on anti-personnel mines.

### **2.3 Addressing the problem: mine clearance and assistance to victims**

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

#### *2.3.1 Clearing mined areas*

The Ottawa treaty obliges each State Party to clear all anti-personnel mines already in the ground within a period of 10 years following its entry into force for that country. Specifically, the State must destroy all anti-personnel mines in "mined areas" under its jurisdiction or control. This covers not only a country's own territory but also territory which it may be occupying. The treaty defines a mined area as:

*an area which is dangerous due to the presence or suspected presence of mines (see Art. 2, para. 5).*

This includes all territory known to contain mines, such as minefields, which are defined areas where these weapons have been systematically laid in such places as national borders and tracts around military installations. It also includes all other public or private land known or believed to contain the devices. A mine may travel long distances owing to floods or the movement of desert sands. It is irrelevant how the mines came to be in a particular area, and a country assumes responsibility for clearance whether the mines were laid by its own military units or by other forces.

An area is considered to be "mined" if it is thought to contain *either* anti-personnel or anti-vehicle/anti-tank mines. Since anti-personnel mines are often used to prevent the removal or deactivation of anti-vehicle mines, if an area is suspected of containing anti-vehicle mines it will often also contain anti-personnel mines. If this is found to be the case, all anti-personnel mines in the area must be destroyed. There is no obligation in the Ottawa treaty to remove or destroy the anti-vehicle mines. However, they remain regulated by the relevant provisions of Protocol II to the CCW, which require that as soon as possible after the cessation of active hostilities all mined areas be either

cleared, or marked, fenced and monitored to ensure the effective exclusion of civilians.

The treaty recognizes that some mine-affected countries may not be in a position to clear and destroy all anti-personnel mines in areas under their jurisdiction or control within 10 years. Such countries may therefore request that the other States Parties accord them an extension period of up to 10 years (see Art. 5, para. 3). Requests are to be made at a meeting or review conference of the States Parties and the decision to grant or reject a request for additional time is to be made by a majority of those countries present and voting (see Art. 5, para. 5). An extension period may be granted more than once. This offers an opportunity for States requiring assistance to present their case and to seek appropriate help, whether in terms of financing, human resources or technical aid, in their mine-clearance efforts. This opportunity is reinforced by the obligation on States able to do so to provide international cooperation and assistance for mine clearance (see Art. 6).

Pending the clearance of mined areas and irrespective of any extension granted, each country "shall make every effort" to identify all areas under its control known or suspected to contain anti-personnel mines. Once an area has been identified as possibly containing such weapons, action must be taken to ensure that civilians are prevented from entering it. The perimeter must be marked, monitored and protected, by fencing or other means. The method chosen must ensure the effective exclusion of civilians. A country has a responsibility not only to close off the area, but also to make certain that the barriers remain in good condition and do not deteriorate, become damaged, or otherwise disintegrate. The protections put up are to remain in place until all of the anti-personnel mines have been destroyed. In marking an area, certain minimum standards set out in the amended version of Protocol II of the CCW must be met. These standards include but are not limited to the following:

- signs should be used to mark mined areas and should be placed at a distance sufficient to ensure their visibility at any point by a civilian approaching the areas;
- the marking should be of a distinct and durable character;
- all feasible steps should be taken to ensure that the means used to establish the perimeter of a

mined area are not removed, concealed or destroyed.

### 2.3.2 Assisting the victims

Regrettably, for thousands of men, women and children killed or injured by mines, the Ottawa treaty comes too late. The mine-injured, especially amputees, face a difficult future in many countries. They are often ostracized by a community unable to shoulder the burden of caring for them, and they are distressed by their own inability to contribute effectively to improving the conditions of life of their family and society. Perhaps one of the greatest challenges now facing the international community with respect to mines is how adequately to address the needs of the mine-injured in general, and specifically amputees, who form a significant percentage of the war-wounded.

Recognizing this challenge, the treaty calls upon all countries able to help to do their utmost to ensure the care, rehabilitation and reintegration of mine victims. A specific role in this process is accorded to the International Red Cross and Red Crescent Movement:

*Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis (see Art. 6, para. 3).*

The ICRC, for its part, will continue to work with its partners to improve the assistance rendered to all war-wounded people and particularly mine victims, who both need and deserve a lifetime of care and assistance.<sup>5</sup>

### 2.4 Entry into force

The Ottawa treaty entered into force, that is, became binding international law, on 1 March 1999. For that to happen, 40 States had to deposit an instrument of ratification with the Secretary-General of the United Nations as notification of their consent to be bound by the treaty. The 40th ratification was submitted by

Burkina Faso in September 1998 and, in accordance with Article 17, the treaty entered into force six months later and will apply indefinitely.

States which have the treaty signed but not yet submitted an instrument of ratification to the UN Secretary-General are not bound by its provisions. A State's signature is not of itself enough to bind the signatory to respect all of its provisions. Signing a treaty does, however, signal the intention to adhere formally at a later date (through ratification, approval or acceptance) and international law requires that a signatory must not do anything that undermines the "object and purpose" of the treaty. The two-stage process of signature followed by formal adherence is intended, for instance, to allow national parliaments or legislatures to debate the treaty and its implications for the country before a final decision is made whether or not to become bound by its provisions.

Following its entry into force on 1 March, the Ottawa treaty is no longer open for signature. Nonetheless, countries which have not signed it may still formally adhere to it by a one stage process called accession. Any State may accede directly to the treaty in place of signature and ratification, thereby binding itself to respect its provisions.

### 2.5 Ensuring compliance with the treaty

Regrettably, even formal adherence to a treaty in force is not always enough to guarantee that all of its provisions will be fully respected. For this reason, the Ottawa treaty provides for a number of mechanisms to promote implementation and resolve disputes. These include a requirement for each country to report regularly on action taken to implement the obligations laid down in the treaty: a duty to cooperate in settling disputes; legal, administrative and other measures to be taken nationally to prevent violations; and regular meetings to review the effectiveness of the treaty and its implementation (see Arts 7 to 13)

#### 2.5.1 Reporting on implementation

In order to promote openness and confidence that the treaty is being implemented, each country adhering to it must provide the UN Secretary-General with an annual report concerning the action it has taken to comply with its provisions (see Art. 7). This report must include the following information:

<sup>5</sup> For an overview describing the medical and rehabilitative needs of mine victims and the difficulties in providing care, see Assistance for victims of anti-personnel mines: needs, constraints and strategy, ICRC, Geneva, 1997

- the total number and the types of anti-personnel mines it has stockpiled;
- the progress of its mine-destruction programmes, including the total number and the types of mines destroyed;
- the total number and the types of mines kept for training purposes;
- the technical characteristics of each type of mine it has produced in the past;
- the location of all mined areas under its jurisdiction or control; information on the type, quantity and age of the mines laid there (to the extent known); and the measures taken to warn the civilian population;
- the national measures, such as legislation or administrative regulations, taken to prevent and suppress violations of the treaty

The first report must be submitted as soon as practicable, but no later than 180 days after the date on which a country becomes a State Party to the treaty.

#### *2.5.2 Settling disputes*

Furthermore, countries are encouraged to consult and cooperate with each other in order to settle any disputes which may arise (see Art. 10, para 1). In addition to issues of compliance, any disputes concerning the application or interpretation of the treaty may also be brought before the meeting of States Parties. A country participating in the meeting can offer its services to mediate or States Parties may recommend ways to resolve the disagreement (see Art. 10, para. 2).

#### *2.5.3 Resolving doubts about compliance*

Another mechanism established by the Ottawa treaty to promote confidence in its implementation is an enquiry process to be used in the event that a State Party is suspected by another State Party of having failed to respect the provisions of the treaty (see Art. 8). The process begins with a "request for clarification", which is passed on to the country under suspicion through the UN Secretary-General. Once the request has been received, that country has 28 days within which to respond to the allegation (see Art 8, para. 2)

If no response is received within that time period, or if the response is deemed unsatisfactory, the issue may be presented to the next meeting of States Parties. If, however, the issue is considered urgent, a "special meeting of States Parties" may be convened to

consider the matter (see Art. 8, paras 3 and 5). In both instances, the countries attending the meeting will examine the information submitted and decide by a majority vote if further action is necessary (see Art. 8, para. 6).

If additional information is required, a fact-finding mission may be sent to the country (see Art. 8, para. 8). The fact-finding team will consist of up to nine experts whose task is to collect information directly related to the allegation. Its members are appointed by the UN Secretary-General and drawn from a pool of previously submitted names. The country that is the object of the inquiry is consulted on the selection of the experts. The nationals of the country requesting the fact-finding mission or any country directly affected by it cannot participate in the mission (see Art. 8, paras 9 and 10).

The country under examination is obliged to accommodate the fact-finding mission and ensure that it is given the opportunity to speak with all persons and visit all areas relevant to the inquiry (see Art. 8, paras 11 to 14). Such access, however, may be subject to arrangements made by the country to protect its national security, the safety of fact-finding personnel, and the proprietary and constitutional rights of its citizens. Unless otherwise agreed, the fact-finding mission will not remain in the country for more than 14 days nor stay at any particular site for more than seven days (see Art. 8, para 15).

The fact-finding mission reports the information it has gathered to the UN Secretary-General who will forward it to the meeting, or special meeting of States Parties (see Art. 8, para. 17). After reviewing the report, countries may suggest ways to resolve the issues. In extreme cases this could include referring the matter to the UN Security Council or adopting other enforcement measures provided for by the UN Charter. Any decision taken at this stage is made by consensus or, if that is not possible, by a two-thirds majority of the countries present and voting (see Art 8, para. 20).

#### *2.5.4 National efforts to prevent violations*

A State Party must do all it can to prevent and put an end to violations of the treaty on territory over which it has jurisdiction or control, or by persons over whom it has jurisdiction or control (i.e. not only its own citizens but also those of other countries present on its territory) (see Art. 9). It is also required to adopt national laws or enact other administrative or regulatory measures to prevent and punish prohibited

activities. Such action should, where appropriate, include criminal penalties for violation.

#### *2.5.5 Reviewing implementation of the treaty*

The treaty also provides for a series of regular meetings of States Parties that will enable the countries concerned to discuss its implementation. There are four types of meetings referred to in the treaty: meetings of the States Parties (see Art. 11), special meetings of the States Parties (see Art. 8), review conferences (see Art. 12) and amendment conferences (see Art. 13). In summary, the **meeting of States Parties** is convened to review the status of the treaty's application and implementation. Such a meeting will be held annually for, at least, the first four years after the treaty enters into force. There, countries can raise issues concerning implementation of the treaty and try to resolve any disputes on its interpretation. As outlined above in the section on "Resolving doubts about compliance", the **special meeting of States Parties** is an extraordinary measure to examine a specific concern about possible non-compliance. Five years after the treaty's entry into force, probably around the year 2004, a full **review conference** will be held. In addition to providing a forum to discuss treaty implementation, it may also determine how often meetings of States Parties will be held in the future. Further review conferences may be convened at the request of any State Party at intervals of, at a minimum, five years (see Art. 12, para. 1).

#### *2.5.6 Strengthening and updating the treaty*

Although the Ottawa treaty is a very strong legal instrument, certain refinements may in future need to be made. To ensure that the treaty can be adapted to address a changing world situation and evolving technologies, there is a specific provision for its amendment at any time after it enters into force (see Art. 13). Proposals for amendments may be submitted by any State Party. They must be sent to the UN Secretary-General, who will circulate them to all the States Parties. These countries must, within 30 days, indicate if they support discussing the proposals further. If a majority of countries respond favourably,

the Secretary-General will convene an Amendment Conference to which all States Parties will be invited.

At the amendment conference, the proposed amendments will be discussed and voted upon, and then adopted if approved by at least two-thirds of the States Parties present and voting. However, support for the proposals at the conference is not enough for them to become binding on the States Parties. Following the conference, countries must inform the UN Secretary-General that they agree to be bound by the amendments, which only come into effect once a majority of State Parties have made this notification and then only for those States (see Art. 13, para. 5). Once in force, the amendments do not apply to any country that has not ratified them. Nonetheless, these States will remain bound by the original text.

#### **2.6 Reservations**

No reservations are possible to any of the treaty's provisions (see Art. 19). This means that at the moment of signature or subsequent adherence, a government is not entitled to make a unilateral declaration that it will not respect one or more of these provisions. In the negotiations, it was felt that the option of making reservations would inevitably create confusion and frustrate the object and purpose of the treaty, which is to impose a total ban on anti-personnel mines. Prohibitions on reservations are unusual in international humanitarian law, although they are included in some arms-control agreements.

#### **2.7 Withdrawal**

As is the case with many other international legal agreements, a country is permitted to withdraw from the Ottawa treaty. To do so, it must give notice of its withdrawal to the UN Secretary-General, other States Parties and the UN Security Council. However, the withdrawal does not take effect until six months after such notice is received. If, however, at the end of this six-month period the country is involved in an armed conflict, the withdrawal is not effective until after the *end* of the armed conflict. Without a prohibition on withdrawal during armed conflicts, the treaty's protections would risk expiring just at the moment they are most needed (i.e. in wartime).

### 3. BEYOND THE OTTAWA TREATY

While the negotiation of the Ottawa treaty is an historic landmark in the battle against the scourge of landmines, a tremendous amount of work remains to be done before the threat of these weapons and their appalling humanitarian consequences are effectively tackled. Countries must be encouraged (1) to adhere to the treaty and implement its provisions, and (2) to increase their support for mine-clearance and victim-assistance programmes. As has been seen, the Ottawa treaty requires a State Party to undertake a wide range of activities. Among other things, the country must ensure that anti-personnel mines are no longer used as weapons by its armed forces, end the development and production of these devices, destroy any stock-piles, and identify, mark, and clear mined areas. In many countries, implementing these obligations will require significant technical, legal and financial assistance.

On 9 December, the UN General Assembly adopted Resolution 52/38A, which urged all States to sign and ratify the Convention and to contribute towards its full realization and effective implementation

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

The Ottawa treaty is only one of the essential measures needed to address the landmine contamination problem. Vast numbers of people continue to live in mine-affected areas under daily threat from these weapons. Most landmine victims continue to have unmet medical, rehabilitative, social, and economic needs which must be dealt with effectively. Landmines are a man-made epidemic. Similarly, the solutions to this epidemic lie in our own hands. The Ottawa treaty is an important step, but only a first one.