

Background

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The Ottawa Mine Ban Convention: Unacceptable on Substance and Process

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Abstract: *By announcing a review of U.S. landmine policy, the Obama Administration has reopened the possibility that the U.S. could become a party to the fatally flawed Ottawa Convention, which bans the use of all anti-personnel landmines. Such a ban applied to the U.S. would seriously degrade the ability of the U.S. to defend itself and its allies, particularly in Korea. Furthermore, the very process by which the convention was created is objectionable because it undermines responsible diplomacy and the sovereignty of the United States and other nation-states. The U.S. should shun the Ottawa Convention and the associated process, and instead pursue reasonable arms control through serious diplomacy.*

In November 2009, the Obama Administration announced that it was conducting a review of U.S. landmine policy to decide whether the U.S. should become a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, otherwise known as the Ottawa Convention.

Current U.S. landmine policy stems from its obligations under the Convention on Certain Conventional Weapons (CCW) and Amended Protocol II of the CCW. U.S. policy seeks to strike a balance between maintaining the ability to use landmines in future military conflicts and addressing the humanitarian concerns raised by “persistent” landmines. Studies by NATO and the U.S. National Research Council (NRC) confirm that anti-personnel land-

Talking Points

- The Obama Administration is conducting a review of U.S. landmine policy, with a view of deciding whether the U.S. should sign the Ottawa Convention, which prohibits the use of all anti-personnel landmines.
- Current U.S. policy strikes an appropriate balance between maintaining the essential capabilities of anti-personnel landmines and the humanitarian concerns raised by “persistent” landmines, which the U.S. has pledged to stop using.
- The process that created the Ottawa Convention was avowedly intended to undermine the authority of sovereign democratic states in favor of unaccountable NGOs.
- If the U.S. ratified the Ottawa Convention, it would accede to the convention’s onerous obligations and endorse the destructive process that created it.
- The U.S. should not accede to the convention or change its policy on anti-personnel landmines.

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mines continue to provide essential capabilities to U.S. forces—capabilities that cannot be replaced by any proven alternative.

The military logic for retaining the current U.S. policy is compelling, particularly when compared with the rationale behind the Ottawa Convention, which was created by a process that was avowedly intended to undermine the authority of sovereign, democratic nation-states in favor of unaccountable nongovernmental organizations (NGOs). As a result, the Ottawa Convention mistakes moral fervor for verifiable commitments; dismisses time-tested lessons of arms control, thereby creating perverse incentives; and assumes that responsible nations, such as the U.S., should reduce their security by joining the convention to induce irresponsible nations to join. It mistakes the aspirational pursuit of “norms” for the serious commitments inherent in a treaty.

If the United States were to ratify the Ottawa Convention, it would not only accede to the convention’s onerous and unreasonable obligations, but also sanction and endorse the process that created it. That process itself is objectionable because it seriously threatens the practice of responsible diplomacy and the sovereignty of the United States and other nation-states.

Given the absence of proven alternatives to anti-personnel landmines, the Obama Administration should neither seek accession to the Ottawa Convention nor change U.S. landmine policy to comply with it. Even if fully effective alternatives to landmines are designed and proven, the Ottawa Convention and the process that created it raise serious questions that the U.S. should consider carefully before ratifying the convention.

U.S. Landmine Policy

The current U.S. landmine policy was pronounced on February 27, 2004, during the Admin-

istration of President George W. Bush.¹ The 2004 policy seeks to strike a balance between maintaining the ability to use landmines in future military conflict and addressing the humanitarian concerns raised by persistent landmines. U.S. policy is:

- To use persistent anti-vehicle landmines (i.e., mines that are not designed to self-destruct and self-deactivate) outside the Republic of Korea until the end of 2010 and afterwards only when authorized by the President;
- To end the use of all persistent mines (anti-vehicle and anti-personnel) everywhere after 2010;
- To eliminate all undetectable landmines from the U.S. arsenal by February 2005;
- To begin the destruction of all persistent mines not needed in Korea by February 2006 and ultimately eliminate all persistent mines from the U.S. arsenal;
- To seek a worldwide ban on the sale or export of persistent mines; and
- To continue to research and develop new and existing self-destructing and self-deactivating “smart” mines to lessen humanitarian threats, while preserving U.S. military capabilities.

In an effort to end the risk to noncombatants from unexploded landmines, the United States successfully developed anti-personnel landmines (APLs) and anti-vehicle landmines that self-destruct and self-deactivate. According to the U.S. Department of Defense, these smart landmines have a 99.99 percent self-destruct reliability rate and are designed to self-deactivate within 120 days with a reliability rate of 99.999 percent by irreversibly exhausting their batteries thereby rendering the mines inoperable.² The self-destruction and self-deactivation rates were calculated from proving ground tests involving approximately 67,000 smart landmines.³

1. U.S. Department of State, “U.S. Landmine Policy,” at <http://www.state.gov/t/pm/wra/c11735.htm> (September 28, 2010).

2. U.S. APL self-destruct times may be set between four hours and 15 days and are usually set at either four hours, 48 hours, or 15 days. The mines usually deactivate in approximately 60 days. National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines* (Washington, DC: National Academy Press, 2001), p. 28, at http://www.nap.edu/catalog.php?record_id=10071#toc (September 28, 2010).

U.S. Treaty Obligations Regarding APLs

The 2004 landmine policy comports with the international obligations undertaken by the United States on the manufacture and use of landmines. Specifically, on March 24, 1995, the United States ratified the Convention on Certain Conventional Weapons⁴ and Protocol II, which restricts the use of anti-personnel and anti-vehicle landmines, “booby-traps,” and “other devices.” Protocol II was amended in May 1996 to place additional restrictions on the use of landmines. The United States ratified Amended Protocol II on May 24, 1999.⁵

Amended Protocol II places a series of restrictions on the use of APLs and anti-vehicle landmines, differentiating between mines that are “remotely delivered” and those that are “non-remotely delivered.” Non-remotely delivered mines are either hand-emplaced or delivered from a land-based system at a distance of less than 500 meters. Remotely delivered mines are “not directly emplaced but delivered by artillery, missile, rocket, mortar, or similar means, or dropped from an aircraft” at a distance of more than 500 meters.⁶

Amended Protocol II requires that remotely and non-remotely delivered APLs be designed to self-

destruct and self-deactivate.⁷ Specifically, all APLs must be designed so that 90 percent will self-destruct within 30 days of placement. In addition, each APL must contain a “back-up self-deactivation feature” such that “no more than one in one thousand activated mines will function as a mine 120 days after emplacement.”⁸

The protocol requires that the location of non-remotely delivered mines be recorded, mapped, and accurately described so that they may later be detected and cleared.⁹ Since they are usually fired from a howitzer or dropped by aircraft, the estimated location of remotely delivered landmines “shall be specified by coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity.”¹⁰ In addition, the protocol requires that “effective advance warning shall be given of any delivery or dropping of remotely delivered mines which may affect the civilian population, unless circumstances do not permit.”¹¹

Finally, Amended Protocol II requires that all APLs be detectable, mandating each mine to contain at least eight grams of iron in a “single coherent

3. U.S. General Accounting Office, *Military Operations: Information on U.S. Use of Land Mines in the Persian Gulf War*, GAO-02-1003, September 2002, p. 5, note 4, at <http://www.gao.gov/new.items/d021003.pdf> (September 28, 2010).
4. 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 as Amended on 21 December 2001, at [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/40BDE99D98467348C12571DE0060141E/\\$file/CCW+text.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/40BDE99D98467348C12571DE0060141E/$file/CCW+text.pdf) (September 28, 2010). The convention is commonly referred to as the Convention on Certain Conventional Weapons (CCW).
5. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as Amended on 3 May 1996 (Amended Protocol II), at [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/8B3DCD52D33DCC59C12571DE005D8A28/\\$file/AMENDED+PROTOCOL+II.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/8B3DCD52D33DCC59C12571DE005D8A28/$file/AMENDED+PROTOCOL+II.pdf) (September 28, 2010).
6. *Ibid.*, art. 2(2), and National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, pp. 95 and 97. Examples of remotely delivered mines include the Gator, which is delivered in a munitions dispenser dropped by an aircraft, and the Area Denial Anti-personnel Mine (ADAM), which is delivered by a 155-mm howitzer.
7. Protocol on Prohibitions or Restrictions on the Use of Mines, arts. 5(2) and 6(2) and Technical Annex 3(a). The protocol permits the use of non-self-destructing, non-self-deactivating mines under highly prescribed circumstances in which “such weapons are placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area.” Protocol on Prohibitions or Restrictions on the Use of Mines, art. 5(2)(a). This provision is of less relevance to the United States because U.S. policy prohibits the use of persistent landmines after 2010.
8. *Ibid.*, Technical Annex 3(a).
9. *Ibid.*, Technical Annex 1(a)(i-iii).
10. *Ibid.*, art. 6(1) and Technical Annex 1(b).
11. *Ibid.*, art. 6(4).

mass.” This ensures that the mine will be detectable “by commonly-available technical mine detection equipment” and therefore enhances the ability of mine-clearing personnel to detect and remove mines after their military purpose has ceased.¹²

The CCW currently has 112 members, and 94 countries have ratified Amended Protocol II.¹³

The Ottawa Convention

For some nongovernmental organizations and Members of Congress, including Senator Patrick Leahy (D-VT), the 2004 landmine policy and U.S. membership in the CCW and Amended Protocol II are insufficient. The International Committee of the Red Cross, Amnesty International, Human Rights Watch, and an umbrella organization known as the International Campaign to Ban Landmines (ICBL) demand a total ban of all APLs worldwide, without regard for U.S. and other countries’ military requirements or advances in technology geared toward reducing civilian casualties.¹⁴ Specifically, these groups insist that the United States become a party to the Ottawa Convention.¹⁵

The Ottawa Convention bans the manufacture and use of all APLs, which it defines as “a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate,

injure or kill one or more persons.”¹⁶ The convention does not apply to anti-vehicle landmines.¹⁷

Membership in the Ottawa Convention would obligate the United States to cease the manufacture and use of all APLs regardless of circumstances. The entire U.S. stockpile of APLs would be banned, regardless of whether they are detectable, self-destructing, self-deactivating, or deployable pursuant to the requirements of Amended Protocol II.¹⁸ The United States would be required to destroy its entire stockpile of APLs within four years of acceding to the convention.¹⁹

The Ottawa Convention bans the manufacture and use of all APLs, which it defines as “a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.”

Furthermore, parties to the Ottawa Convention must never “assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.” This requirement would have major implications for the United States and the Republic of Korea in the Demilitarized Zone.²⁰

12. *Ibid.*, art. 4 and Technical Annex 2.

13. U.N. Office at Geneva, “The Convention on Certain Conventional Weapons: States Parties and Signatories,” at [http://www.unog.ch/80256EE600585943/\(httpPages\)/3CE7CFC0AA4A7548C12571C00039CB0C?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/3CE7CFC0AA4A7548C12571C00039CB0C?OpenDocument) (September 26, 2010).

14. International Committee of the Red Cross, “Weapons: ICRC Statement to the United Nations, 2009,” October 9, 2009, at <http://www.icrc.org/web/eng/siteeng0.nsf/html/united-nations-statement-091009> (November 10, 2010); Amnesty International, “International Campaigning and Mobilisation,” at <http://www.amnesty.org/en/human-rights-defenders/issues/international-campaigning> (September 30, 2010); Human Rights Watch, “Landmines,” at <http://www.hrw.org/en/category/topic/arms/landmines> (September 30, 2010); and International Campaign to Ban Landmines, Web site, at <http://www.icbl.org> (September 30, 2010).

15. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, September 18, 1997, at http://www.un.org/Depts/mine/UNDocs/ban_trty.htm (November 12, 2010). The convention is commonly referred to as the Ottawa Convention.

16. *Ibid.*, art. 2(1).

17. *Ibid.*

18. *Ibid.*, art. 1.

19. *Ibid.*, art. 4.

20. *Ibid.*, art. 1(1)(c). The specific military and legal consequences that U.S. accession to the Ottawa Convention would have in the Korean Demilitarized Zone are not addressed in this paper, but have been a major issue regarding U.S. membership since the convention was first drafted.

The Ottawa Convention currently has 133 members. U.N. Security Council members China and Russia are notably absent, as are other nations that rely on landmines for their national defense, including India, Pakistan, and the Republic of Korea.²¹

The Administration's Ongoing Review of Landmine Policy

There is some confusion regarding whether the Obama Administration intends to continue the U.S. landmine policy announced in 2004. At a press conference on November 24, 2009, U.S. State Department spokesman Ian Kelly announced that the Administration had undertaken a review of the 2004 landmine policy and “decided that our land mine policy remains in effect.” He stated that the Administration “made our policy review and we determined that we would not be able to meet our national defense needs, nor our security commitments to our friends and allies if we sign [the Ottawa Convention].” Kelly further stated that the United States planned to attend the upcoming review conference on the Ottawa Convention in Cartagena, Colombia, but only as an observer “because we haven’t signed the convention, nor do we plan to sign the convention.”²²

In a press release a week later, the Administration confirmed its decision to continue the 2004 landmine policy:

The United States is a party to the Convention on Certain Conventional Weapons (CCW), including the Amended Protocol II

(landmines) and Protocol V (explosive remnants of war). Additionally, [the] United States has not exported anti-personnel landmines since 1992; has ended the use of its non-detectable mines; will not use any persistent (non-self-destructing/self-deactivating) landmines, either anti-personnel or anti-vehicle, anywhere in the world after 2010; and continues to research and develop non-persistent (self-destructing/self-deactivating) landmines that do not pose a humanitarian threat after use in battle.²³

This seeming endorsement of the 2004 Bush Administration landmine policy caused considerable consternation among anti-landmine NGOs and Senator Leahy, a long-time proponent of the landmine ban.²⁴ In response, the Obama Administration initiated a “comprehensive review” of U.S. landmine policy, presumably to determine whether the United States will become a party to the Ottawa Convention.²⁵ That review is ongoing. The Administration’s review could result in the President deciding to join the Ottawa Convention by submitting it to the U.S. Senate for its consent to accession.²⁶

However, the United States should become a party to the Ottawa Convention only if it would advance U.S. national interests. If the Obama Administration maintains that membership in the Ottawa Convention advances U.S. national interests, it will have necessarily concluded that (1) U.S. military forces will not require an APL capability in any current or future combat missions and/or (2)

21. U.N. Office at Geneva, “Anti-Personnel Landmines Convention: States Parties and Signatories,” at [http://www.unog.ch/80256EE600585943/\(httpPages\)/6E65F97C9D695724C12571C0003D09EF](http://www.unog.ch/80256EE600585943/(httpPages)/6E65F97C9D695724C12571C0003D09EF) (September 30, 2010).

22. U.S. Department of State, “Daily Press Briefing,” November 24, 2009, at <http://www.state.gov/r/pa/prs/dpb/2009/nov/132362.htm> (September 30, 2010).

23. Press release, “The United States Is a World Leader in Humanitarian Mine Action,” U.S. Department of State, November 30, 2009, at <http://www.state.gov/r/pa/prs/ps/2009/nov/132591.htm> (September 30, 2010).

24. Mark Landler, “White House Is Being Pressed to Reverse Course and Join Land Mine Ban,” *The New York Times*, May 7, 2010, at <http://www.nytimes.com/2010/05/08/world/americas/08mine.html> (November 10, 2010), and press release, “On the Cartagena Landmine Ban Treaty Review Conference,” Office of U.S. Senator Patrick Leahy, December 1, 2009, at http://leahy.senate.gov/press/press_releases/release/?id=f8a408ba-67df-449d-8aa5-17bb9509b967 (September 30, 2010).

25. Associated Press, “U.S. Corrects Statement on Land Mine Policy,” *USA Today*, November 26, 2009, at http://www.usatoday.com/news/washington/2009-11-24-landmine-ban_N.htm (September 30, 2010).

26. Since the Ottawa Convention closed for signature on March 1999, the United States may only accede to its terms. Whether submission of the convention to the Senate for accession gives rise to an obligation not to violate the object and purpose of the convention is not treated here.

technological advances have produced a viable alternative to APLs such that acceding to the Ottawa Convention will not harm U.S. military capabilities.

Since no evidence supports either conclusion, a decision to accede to the Ottawa Convention would be premature and likely prove harmful to U.S. armed forces.

The Importance of Retaining an APL Capability

The current U.S. landmine policy recognizes the ongoing importance of retaining the ability to field APLs in future conflicts. As part of the pronouncement of the 2004 landmine policy, the U.S. Department of State said:

Landmines still have a valid and essential role protecting United States forces in military operations. Landmines enable a commander to shape the battlefield to his advantage. They deny the enemy freedom to maneuver; enhance effectiveness of other weapons (such as small arms, artillery or combat aircraft); allow us to fight with fewer forces against a larger enemy force; and protect our forces, *saving the lives of our men and women in uniform and of those civilians they defend*. No other weapon currently exists that provides all the capabilities provided by landmines.²⁷

U.S. military doctrine states that minefields may properly be used to produce a vulnerability on enemy maneuver that can be exploited by friendly forces, cause the enemy to piecemeal his forces,

Recent history indicates that U.S. forces will likely need to use APLs in future military conflicts.

interfere with enemy command and control, inflict damage to enemy personnel and equipment, exploit the capabilities of other weapon systems by delaying enemy forces in an engagement area, and protect friendly forces from enemy maneuver and infiltration.²⁸

Recent history indicates that U.S. forces will likely need to use APLs in future military conflicts. U.S. forces employed APLs in the first Persian Gulf War, in which Air Force, Navy, and Marine aircraft dropped approximately 118,000 self-destructing anti-vehicle and anti-personnel mines.²⁹ Other reports suggest that U.S. soldiers and special forces used APLs during Operation Enduring Freedom in Afghanistan.³⁰

The U.S. must retain the capabilities provided by APLs—an option that accession to the Ottawa Convention would preclude.

The NRC and NATO Studies

In anticipation of the Ottawa Convention entering into force in March 1999, two major studies were conducted on APLs. The National Research Council study was commissioned by the U.S. Department of Defense at the behest of the U.S. Congress.³¹ The NRC study sought to identify possible alternatives to APLs that would provide similar tactical advantages to U.S. forces and to describe

27. U.S. Department of State, Bureau of Political-Military Affairs, “New United States Policy on Landmines: Reducing Humanitarian Risk and Saving Lives of United States Soldiers,” February 27, 2004, at http://www.fas.org/asmp/campaigns/landmines/FactSheet_NewUSPolicy_2-27-04.htm (September 30, 2010) (original emphasis).

28. U.S. Department of the Army, *Mine/Countermining Operations*, Field Manual No. 20-32, October 1, 2002, p. 2-1, at http://www.globalsecurity.org/military/library/policy/army/fm/20-32_2002/fm20-32_change1_3.pdf (November 10, 2010).

29. U.S. General Accounting Office, *Military Operations: Information on U.S. Use of Land Mines in the Persian Gulf War*. U.S. armed forces reportedly used approximately 118,000 landmines during the war, 116,700 of which were dropped from aircraft in cluster bomb units and contained both anti-vehicle and anti-personnel mines.

30. Ted Gaulin and Richard A. Matthew, “Time to Sign the Mine Ban Treaty,” *Issues in Science and Technology*, Spring 2003, at <http://www.issues.org/19.3/matthew.htm> (September 30, 2010), and Michael Byers, “The Laws of War, US-Style,” *London Review of Books*, Vol. 25, No. 4 (February 20, 2003), at <http://www.lrb.co.uk/v25/n04/michael-byers/the-laws-of-war-us-style> (September 30, 2010).

31. National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, p. 17.

how any such alternatives could be consistently applied with current tactical and operational concepts. At the request of NATO Supreme Headquarters, NATO's Research and Technology Organisation also initiated a study to determine whether the loss of APL capability would harm NATO operations.³²

APLs are important weapons that provide crucial tactical advantages on the battlefield.

Both studies concluded that APLs are important weapons that provide crucial tactical advantages on the battlefield. They stressed the importance of landmines in land combat operations. The NRC report described the role of landmines as critical to the principles of economy of force, security, offense, and maneuver:

From a theoretical point of view, several "principles of war" underpin land combat operations. Landmines could be considered appropriate weapons in the execution of all of these principles but figure most often in the following four: economy of force (using all combat power available as effectively as possible; allocating minimum essential combat power to secondary efforts); security (never permitting the enemy to acquire an unexpected advantage); offense (seizing, retaining and exploiting the initiative); and maneuver (placing the enemy in a position of disadvantage through the flexible application of combat power).³³

The NRC report quoted General Wesley Clark, then Commander in Chief of the U.S. European Command, stating:

Self-destructing and self-deactivating APL, and anti-tank (AT)/APL mixed systems constitute a critical force protection and coun-

termobility asset. Our field commanders count on these systems to protect the force, influence maneuver, shape the battlespace, and mass combat power for decisive engagement. The requirement for such a capability is increasing in light of evolving and future operational concepts that envision our forces conducting dispersed operations over expanded battlespace.³⁴

Likewise, the NATO study described the tactical advantages provided by APLs:

In the tactical minefield role, APMs [anti-personnel mines] have been used to assist in shaping the battlefield to allow more effective friendly fire and maneuver. NATO doctrine and standards identify five tactical effects that landmines provide to shape the battlefield; block, turn, fix, disrupt, and deny. To dominate maneuver on the battlefield, the enemy's mobility must be countered by enhancing natural obstacles or by installing man-made obstacles. The inclusion of APMs in these obstacles and their cover by fire provided capabilities that assisted warfighters in accomplishing the objective of dominant maneuver. APMs have had application in the deep battle as well, providing protection to anti-tank minefields, interfering with ground activities, and aiding in economy of force and force multiplier roles.³⁵

The NRC study stated that, while U.S. APLs did not comply with the Ottawa Convention, the "current inventory of self-destructing and self-deactivating U.S. APL is militarily advantageous and safe. They achieve desired military objectives without endangering U.S. warfighters or noncombatants more than other weapons of war."³⁶ The study further concluded:

32. North Atlantic Treaty Organisation, "Alternatives to Anti-Personnel Landmines," Research and Technology Organisation *Technical Report* 40(I), May 2003, at <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA418691&Location=U2&doc=GetTRDoc.pdf> (September 30, 2010).

33. National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, p. 26.

34. *Ibid.*, p. 20.

35. North Atlantic Treaty Organisation, "Alternatives to Anti-Personnel Landmines," p. 31.

The self-destructing and self-deactivating capability of today's U.S. scatterable landmines, used in accordance with international law, is a desirable operational capability because it (1) increases maneuver options and (2) addresses humanitarian concerns by reducing residual explosive hazards.³⁷

Moreover, these smart landmines "do not create a significant humanitarian hazard."³⁸

The findings of the NATO study mirror the NRC study's findings of the utility of APLs, and likewise predict negative consequences for friendly forces if APL capabilities were no longer available:

Therefore, from both the quantitative and qualitative analyses and both the tactical and operational levels of conflict, the removal of APM from the NATO fighting forces inventories were viewed as presenting increased mission risk to the allies. The risks were measured in increased casualties, increased loss of military equipment, increased probability of loss of key battlefield terrain, and increased time to regain the initiative and accomplish mission objectives.³⁹

The NATO study's conclusions were based on computer models simulating the effects of using and not using APLs on casualty rates and outcomes on the battlefield. These simulations were conducted by several NATO members, including the United States, Canada, France, Germany, Hungary, the Netherlands, Norway, and the United Kingdom.⁴⁰

The NATO study drew on a number of other studies, including a series of simulations conducted between January 1999 and July 2001 at Lawrence Livermore National Laboratory in Livermore, California.⁴¹ The simulations' results were categorical: Friendly forces were victorious and suffered fewer casualties when protected by APLs,

but were overrun and slaughtered by enemy forces when not protected by APLs.

For example, one simulation pitted an isolated and dismounted U.S. infantry platoon defending a woodline position against two dismounted enemy infantry companies, which outnumbered U.S. forces by approximately 7:1. The simulation was conducted both with and without an APL minefield protecting U.S. forces. With the APL minefield, the enemy lost 94 percent of its forces compared with only 25 percent when APLs were not employed. Without APLs, enemy forces overran the U.S. position in every attack of the woodline, but never overran the U.S. position when APLs were used.⁴²

The study found that, at the tactical level, the loss of anti-personnel landmines to NATO forces, without an adequate alternative, would provide significant military benefits to the enemy in most operations.

The NATO study concluded that losing APL capability would negatively affect NATO forces and would provide significant military benefits to the enemy at both the tactical and operational levels:

The study found that, at the tactical level, the loss of APMs to NATO forces, without an adequate alternative, provides significant military benefits to the enemy in most operations. When APMs are not available: the tempo of enemy operations is unencumbered; the enemy is provided more freedom of action; the enemy enjoys reduced psychological stress; and friendly forces sustain more casualties....

At the operational level, the study found that the loss of APLs from NATO's inventory with no com-

36. National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, p. 77.

37. *Ibid.*, p. 79.

38. *Ibid.*, p. 28.

39. North Atlantic Treaty Organisation, "Alternatives to Anti-Personnel Landmines," p. 18.

40. *Ibid.*, pp. F1–F24.

41. *Ibid.*, pp. F18–F24.

42. *Ibid.*, pp. F19–F20.

parable replacement provides the enemy with significant advantages in all areas (rear, close, and deep) of the battlefield.⁴³

Based on the findings and conclusions of the NRC and NATO reports, U.S. armed forces should clearly retain the ability to field APLs in future conflicts, at least until viable, proven alternatives become available.

Proven Alternatives to APLs Have Not Been Developed

A major barrier to U.S. accession to the Ottawa Convention is that membership would deprive U.S. forces of the capabilities provided by remotely delivered APLs. Remotely delivered APLs are encased in an artillery shell, such as the Area Denial Artillery Munition (ADAM), and fired from a howitzer, or they are dropped from aircraft, such as the Gator mixed munitions dispenser. Each such munition scatters dozens of APLs across a wide area at considerable distance from U.S. forces in order to deny that particular area of the battlefield to enemy personnel and armor, pin down the enemy so that other weapons systems may be brought to bear, or otherwise shape the battlefield so that friendly forces gain the advantage.

Remotely delivered APLs inevitably violate the Ottawa Convention because they are not “man in the loop” (MITL) munitions. That is, they are not designed to be command detonated by U.S. forces. Moreover, the APLs emplaced by ADAM artillery shells and Gator munitions are generally hundreds

or thousands of yards if not miles away from the nearest U.S. ground troops—well out of their line of sight. Thus, even if remotely delivered APLs were designed to command detonate, it would be difficult if not impossible to determine when to detonate them.

In non-remotely delivered APLs, the United States has made some progress toward developing an alternative. Pursuant to the 2004 landmine policy, all non-self-destructing, hand-emplaced APLs (such as the M14 and M16) will be phased out by U.S. forces by the end of 2010.⁴⁴ In response to the resulting capability gap, the United States has been searching for alternatives to these persistent hand-emplaced mines. The Department of Defense has contracted with Textron Defense Systems and Alliant Techsystems to develop anti-personnel weapons systems that would comply with the Ottawa Convention.⁴⁵ Time and battlefield testing will ultimately determine whether any such Ottawa-compliant munitions can provide the force protection capabilities once provided by the M14 and M16.

Yet at least one non-remotely delivered APL in the U.S. arsenal—the M86 Pursuit Deterrent Munition (PDM)—would violate the Ottawa Convention in all circumstances.⁴⁶ The PDM is a hand-emplaced mine specially designed for U.S. Special Forces to deter enemy pursuit during a withdrawal from an operational area if U.S. personnel are discovered and need to break contact.⁴⁷ It is a manually activated, hand-grenade-like munition that

43. *Ibid.*, p. 32.

44. For a description of the M14 and M16 mines, see National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, p. 92. The Claymore (M18) will be retained for use by U.S. forces. The Claymore may be command detonated, but it may also be rigged with a tripwire so that it is “victim activated” and thus non-compliant with the Ottawa Convention. It is considered Ottawa-compliant when rigged for command detonation.

45. Textron Defense Systems, “Intelligent Battlefield Systems,” at http://textrondefense.com/products/intelligent_battlefield.htm (September 30, 2010). Textron’s Spider and Scorpion systems are hand-emplaced, MITL weapons that provide anti-personnel and anti-vehicle capabilities, respectively.

46. As a condition to consenting to ratification of Amended Protocol II, the Senate required President Bill Clinton to agree to retain the PDM for use by U.S. forces “at least until January 1, 2003, unless an effective alternative to the munition becomes available.” *Amended Mines Protocol*, S. Rpt. 106–2, 106th Cong., 1st Sess., May 13, 1999, p. 13, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_reports&docid=f:er002.pdf (September 30, 2010).

47. National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, pp. 92–94, and GlobalSecurity.org, “M86 Pursuit Deterrent Munition (PDM),” at <http://www.globalsecurity.org/military/systems/munitions/pdm.htm> (September 30, 2010).

deploys trip wires and detonates when a target—presumably pursuing enemy personnel—makes contact with the trip wires. The PDM will self-destruct and self-deactivate after a short period of time, usually four hours. Because it is self-destructing, self-deactivating, and detectable, the PDM meets the requirements in Amended Protocol II, but the PDM would still violate the Ottawa Convention because it is “victim activated.”

Both the NRC and the NATO studies concluded that no viable, battle-tested alternatives to remotely or non-remotely delivered APLs exist or would soon be available to U.S. or NATO forces.

The NRC study concluded that neither APL alternatives nor changes in tactics or operational concepts would be viable options to replace current APL capabilities by 2006.⁴⁸ While the NRC study was hopeful that new Ottawa-compliant technologies

Both the NRC and the NATO studies concluded that no viable, battle-tested alternatives to remotely or non-remotely delivered APLs exist or would soon be available.

would emerge at some point after 2006 to replace the APL capabilities, the report recommended that “simply retaining the current self-destructing and self-deactivating mines would be the best course of action” until alternatives become available.⁴⁹ Indeed, the NRC study specifically recommended retaining ADAM in the U.S. inventory for use in conjunction with the Remote Anti-Armor Mine System (RAAMS), a remotely delivered anti-vehicle mine, at least until an alternative is developed.⁵⁰

The NATO study likewise concluded that no alternative existed that would satisfy the major

capabilities provided by APLs. In reaching that conclusion, the study defined the five top priority tactical situations in which APLs are employed:

1. Protecting key points, such as base camps and command and control installations,
2. Defending against mass infantry assaults,
3. Defending against infiltration by dismounted infantry,
4. Providing a tactical obstacle on the battlefield to delay and pin down the enemy, and
5. Protecting anti-tank minefields from being easily breached by enemy forces.⁵¹

While the NATO study identified APL alternatives that could “replace *some* of the capabilities” provided by APLs, it concluded that “not all the contributions of APMs can be replicated in a single system, nor does this capability appear obtainable in the foreseeable future.”⁵² Moreover, “[n]one of the alternatives could address as a primary mission all five studied APM tactical situations, each had strong points of their designs that optimized their military utility for some situations at the expense of effectiveness in all.”⁵³

The NATO study identified the key weakness of potential Ottawa-compliant alternatives: the requirement that they be activated by command detonation rather than by actual physical contact with the enemy. By its nature, the Ottawa Convention’s MITL requirement necessarily causes a delay between sensing the enemy and activation of the munition: “[T]he introduction of an MITL increases latency in the sensor-to-shooter response and adds complexity and vulnerability to the system.”⁵⁴

Even the International Committee of the Red Cross (ICRC), a major proponent of the Ottawa Convention, concedes that no alternatives to APLs

48. National Research Council, *Alternative Technologies to Replace Antipersonnel Landmines*, pp. 77–78.

49. *Ibid.*, p. 77.

50. *Ibid.*, p. 78.

51. North Atlantic Treaty Organisation, “Alternatives to Anti-Personnel Landmines,” pp. 11–12.

52. *Ibid.*, pp. 33–34 (original emphasis). The NATO report added that, in theory, material and non-material alternatives may be combined to provide a possible alternative to APLs, but that further study was needed.

53. *Ibid.*, p. 27.

54. *Ibid.*, p. 33.

currently exist. A 1996 report commissioned by the ICRC suggested a number of possible alternatives to APLs, but stated that such alternatives were not viable replacements for APLs: “Ditches, lights, spikes, slippery surfaces and foam are possible adjuncts to an obstacle system, but they have less of a deterrent effect than mines.”⁵⁵ The ICRC proposed other possible replacements for APL capabilities, such as increased use of remote surveillance, trip flares, night vision equipment, barbed wire, and soldier-activated munitions, such as the Claymore mine. Yet the ICRC report reached the same basic conclusion as the NRC and NATO studies on APL alternatives: “[Not] one of the above solutions fulfils all the purposes of an [anti-personnel] mine.”⁵⁶

The Ottawa Process Was Flawed and Dangerous

While the military reasons for the United States to refuse to join the Ottawa Convention are compelling, the convention is dangerous to American interests for another reason: The process that created the convention was flawed and threatens the practice of serious arms control diplomacy and the sovereignty of the United States and other nation-states.

Flawed Process. The convention, which entered into force in 1999, was not the result of traditional diplomatic processes. It was the result of a short, sharp crusade by a large number of NGOs and a few states. Most of these states were small, and none of them were major players in international security. The NGOs were dissatisfied by the pace of progress in the Convention on Certain Conventional Weapons (CCW) and believed that its goal of merely limiting the use of APLs was too narrow. The NGOs wanted a complete, rapid ban. To achieve this, they

sought to usurp the role of nation-states in the diplomatic process. They worked by applying relentless public pressure and by claiming to speak for the people of the world and therefore asserting an independent—and higher—claim to moral authority than any national government.⁵⁷

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As David Davenport has observed, the ICBL’s tactics, with the support of more than 1,000 NGOs from more than 60 countries, drove the “Ottawa Process,” which “took on more of the character of a marketing campaign than of a traditional treaty negotiation.”⁵⁸ Instead of treating APLs as weapons that could be controlled through a treaty process, the NGOs defined them as an offense against human rights and therefore a subject on which no compromise was possible. Instead of supporting lengthy negotiations that would carefully consider the advantages and disadvantages of an agreement, Canadian Foreign Minister Lloyd Axworthy, working “hand in hand with the NGOs,” demanded a treaty within 15 months.⁵⁹ Instead of proceeding by consensus, which would ensure that the resulting agreement was acceptable to all parties, the Ottawa Process required only a two-thirds majority vote to adopt a treaty text. When delegates to the initial meeting in Ottawa in October 1996 were surveyed after the convention was signed, they concluded that the pressure from the NGOs was the primary reason that states had decided to support the convention.⁶⁰

55. International Committee of the Red Cross, *Anti-personnel Landmines; Friend or Foe?* 1996, p. 68, at http://www.icrc.org/eng/assets/files/other/icrc_002_0654.pdf (November 30, 2010).

56. *Ibid.*, pp. 65–68. The ICRC report concluded that APLs should still be eliminated regardless of the unavailability of viable alternatives. That conclusion was based on the ICRC’s opinion that APLs had a “limited military utility,” which was “far outweighed by the appalling humanitarian consequences of their use in actual conflicts.” *Ibid.*, p. 73.

57. David Davenport, “The New Diplomacy,” Hoover Institution *Policy Review* No. 116, December 1, 2002, at <http://www.hoover.org/publications/policy-review/article/81102> (September 30, 2010).

58. *Ibid.*

59. *Ibid.*, and Isabelle Daoust, “Canada’s Role in the Ottawa Process,” speech to the Canadian Council on International Law, October 20, 2007, at <http://www.redcross.ca/article.asp?id=24621&tid=001> (September 30, 2010).

60. Davenport, “The New Diplomacy.”

While Canada tried to bring the United States into the Ottawa Process, the NGOs were explicitly hostile to the U.S., viewing it not as a major power with legitimate security concerns, but as an adversary to be defeated. The U.S. did circulate the substantive changes to the treaty text that it believed were necessary, but these were almost completely rejected.⁶¹ The process concluded in December 1997 and the resulting convention has since been signed by 122 states as of mid-2010. The U.S., Russia, and China—a majority of the U.N. Security Council—have not signed it, nor has India. South Korea, Israel, Georgia, and Finland—four states that need APLs to protect themselves from powerful and potentially dangerous neighbors—have also not signed the convention.⁶²

The Ottawa Process was far outside the mainstream and has thus far proven unacceptable to both the U.S. Senate and to successive U.S. Administrations. In the mid-1990s, the Clinton Administration found both the process and the substance of the Ottawa Convention unacceptable. When the Senate consented to the ratification of Amended Protocol II in 1999, it refused to adopt Ottawa's all-or-nothing vision and required the U.S. to retain the PDM for use by its forces. The Bush Administration was not called on to pass judgment on Ottawa's process, but it too rejected Ottawa's substance.

The Obama Administration has also rejected similar processes. While it has unwisely agreed to negotiate an arms trade treaty through the United Nations, it has, by seeking to exempt hunting weapons, specifically rejected a treaty-making process that applies to all arms. It has repeatedly urged delegates to avoid negotiating an overly broad treaty that would inevitably be filled with loopholes. In an effort to avoid being railroaded by the NGOs, national delegates to the July 2010 meeting of the

Preparatory Committee for the arms trade treaty kicked them out of the room for the majority of the session.⁶³ In the clearest rejection of the Ottawa precedent, the U.S. refused to join the arms trade treaty negotiating process unless that process was based on consensus. None of these measures will produce an arms trade treaty that is acceptable to the U.S., but together they point out that the Ottawa Process embodies practices that even the Obama Administration with its avowed internationalism found completely unacceptable.⁶⁴

If the United States joined the Ottawa Convention, it would not only accede to the convention's onerous and unreasonable obligations, but also sanction and endorse the process that created it. That process is objectionable in part because it is inherently flawed. By substituting moral fervor for careful diplomacy, it creates broad, rushed, and unsatisfactory treaties. This is clearly bad for arms control because it mistakes the signature on a treaty for the reality of arms control. It therefore gives bad actors an institution behind which they can hide and discourages good actors with legitimate concerns from negotiating treaties that impose genuine controls, but that are compatible with their concerns. It is also bad for U.S. security, because it creates an illusion of effective arms control and increases pressure to abandon weapons that the U.S. uses responsibly to secure its vital interests and those of its allies.

Rejection of State Sovereignty. The Ottawa Process's rejection of state sovereignty is even more objectionable. Advocates of the process are not shy about admitting that their objective is to subvert sovereignty. Isabelle Daoust, a senior international humanitarian law adviser to the Canadian Red Cross, explained that the backdrop to Ottawa was based on "gently pushing aside the central feature of

61. *Ibid.*

62. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines.

63. United Nations, "Spokesperson's Noon Briefing," July 15, 2010, at <http://www.un.org/News/briefings/docs/2010/db100715.doc.htm> (September 30, 2010).

64. Theodore Bromund and David Koppel, "As the U.N. Arms Trade Treaty Process Begins, U.N.'s 'Programme of Action' on Small Arms Shows Dangers," Heritage Foundation *WebMemo* No. 2969, July 20, 2010, at <http://www.heritage.org/Research/Reports/2010/07/As-the-UNs-Arms-Trade-Treaty-Process-Begins-UNs-Programme-of-Action-on-Small-Arms-Shows-Its-Dangers>.

state sovereignty as the guide for all international relations.” As Daoust states, the process’s advocates want the concept of “human security” to replace the concept of state sovereignty.⁶⁵

The essence of “human security” and the Ottawa Process is the denigration of the democratic, sovereign, limited state and its replacement by a transnational network of unaccountable NGOs.

The United States was founded on the belief that the people create government and that the state’s sovereignty derives ultimately from the sovereignty of the people. In the realm of diplomacy, the state acts on behalf of the people, while remaining subject to their democratic control. By contrast, advocates of human security believe that state representation of individuals through diplomacy is inadequate, at best, or even undesirable because it gives primacy to the state instead of the individual. Therefore, the wants and needs of the people—advocates of human security define these wants and needs very broadly—must be represented directly in the realm of international politics, with national governments participating as only one of the many players responsible for the conduct of diplomacy.⁶⁶ Negotiations predicated on human security usually feature, as in the Ottawa Process, personal testimony from victims.⁶⁷ This tactic is nothing more than crude emotional blackmail.

The doctrine of human security is fallacious. By pulling many desirable things (e.g., food, water, health care, housing, and income) into the concept of “security,” it implies that these things must be provided by the state instead of by private individuals using their own abilities and freedoms. It is therefore a statist, even a socialist vision.

Not surprisingly, the Ottawa negotiations did not hear from individuals whose lives or well-being

were protected by APLs, such as citizens of South Korea or members of the U.S. Special Forces. Human security invariably underplays the achievements of traditional state-based security. By downplaying the role of representative governments as the agents for diplomacy, the doctrine denies the fundamental right of self-government.

Lastly, the doctrine is an impossibility because all the world’s people cannot in fact represent themselves directly. Thus, in practice, human security legitimizes unelected and self-nominated NGOs at the expense of elected governments. NGOs’ preference for this theory is unsurprising, but that is no reason for the United States to adopt it. The essence of human security and the Ottawa Process is the denigration of the democratic, sovereign, limited state and its replacement by a transnational network of unaccountable NGOs that claim moral superiority precisely because they are not checked by a democratic political process.

The Ottawa Convention Is Flawed and Dangerous

While the process that created the Ottawa Convention is new and dangerous, the convention itself is also flawed. Beyond blithely ignoring the reality that the U.S. and other countries continue to need APLs for legitimate military reasons, the convention contains serious defects as a diplomatic instrument.

When the U.S. Senate gives its advice and consent to a treaty, it commonly attaches reservations, understandings, and declarations (RUDs) to its resolution of ratification. This practice enables the Senate to do its duty to uphold the U.S. Constitution by conducting a quality-control check on the treaty and rejecting or placing conditions on its acceptance of portions of the treaty. In the RUDs the Senate states for the legal record which obligations it is and is not accepting. Reservations, in particular, are a well-known part of the diplomatic process around

65. Daoust, “Canada’s Role in the Ottawa Process.”

66. James Jay Carafano and Janice A. Smith, “The Muddled Notion of ‘Human Security’ at the U.N.,” in Margaret Thatcher Center for Freedom, “Reclaiming the Language of Freedom at the United Nations,” Heritage Foundation *Special Report* No. 8, September 6, 2006, at <http://www.heritage.org/research/reports/2006/09/reclaiming-the-language-of-freedom-at-the-united-nations>.

67. *Ibid.*

the world and are accepted as such in the 1969 Vienna Convention on the Law of Treaties.⁶⁸ The Vienna Convention states that treaties can ban particular reservations or specify acceptable reservations. It also states that reservations that are fundamentally incompatible with the treaty in question are not acceptable. However, it does not state that a treaty can ban all reservations.⁶⁹

Yet Article 19 of the Ottawa Convention flatly prohibits all reservations to any part of the treaty.⁷⁰ The Ottawa Convention is therefore an all-or-nothing instrument, which is exactly the original intent of its design. Its supporters argue that APLs are such an egregious violation of human rights that the convention cannot allow any exceptions to a complete ban or any reservations to any part of the treaty.⁷¹ However, the result is that the convention claims to be exempt from, instead of subject to, a central part of the Senate's advice and consent responsibilities: the statement of reservations. It is not in the interests of the United States to ratify a treaty that asserts a right to tell the Senate how to interpret these responsibilities, and thereby a right to participate in a process that claims the Senate must simply accept a treaty exactly as written.

The all-or-nothing nature of the Ottawa Convention is the result of its creation by a transnational coalition of NGOs that did not like what the CCW was seeking to deliver and therefore ran away from the CCW process to set up their own process, which they claim is morally superior.⁷² However, the fact that the CCW process was housed within the U.N. system does not entitle it to automatic respect. Indeed, many U.N. institutions are profoundly dys-

functional and should be fundamentally reformed or abandoned.⁷³

Exclusion of Serious Players. Any sincere effort to control a particular kind of weapon must obviously proceed through negotiations with the states that hold stockpiles of that weapon, such as the CCW process. A treaty to ban a weapon among states that have, for whatever reason, already decided to forsake it serves no purpose. It amounts to nothing more than self-congratulations. Just as the states that actually respect human rights should be the ones that run international institutions concerned with human rights, so the states that actually possess or use APLs should be the ones that negotiate treaties about APLs. Instead, the Ottawa Process sought a quick, easy win by setting the bar so high that it excluded the states that were actually relevant to the issue.

The resulting convention was thus the work of the NGOs and a small number of states. Most of the states are not serious players in international security, and many rely on the U.S. for their defense. The fact that it is an all-or-nothing treaty and prohibits reservations reflects the reality that it is simply an agreement among those who had already decided to agree. As Daoust acknowledges, "governments could only attend [Ottawa] treaty conferences if they were in agreement with the agenda items."⁷⁴ The Ottawa Convention is clearly based on the rejection of traditional arms control diplomacy and is transparently concerned with achieving the appearance of moral superiority at the expense of national security, democratic processes, and U.S. alliance commitments. These flaws make its refusal to allow reservations particularly obnoxious.

68. U.S. Department of State, "Vienna Convention on the Law of Treaties," at <http://www.state.gov/s/l/treaty/faqs/70139.htm> (October 1, 2010). The U.S. is not a party of the Vienna Convention, but considers many of its provisions to constitute customary international law.

69. Vienna Convention on the Law of the Treaties, art. 19, May 23, 1969, at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (October 1, 2010).

70. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines.

71. International Campaign to Ban Landmines, "Making the Landmine Treaty Universal," at <http://www.icbl.org/index.php/icbl/Universal/MBT/Making-the-MBT-Universal> (October 1, 2010).

72. Davenport, "The New Diplomacy," and Daoust, "Canada's Role in the Ottawa Process."

73. Brett Schaefer, ed., *ConUNdrum: The Limits of the United Nations and the Search for Alternatives* (New York: Rowman and Littlefield Publishers, 2009).

74. Daoust, "Canada's Role in the Ottawa Process."

“The End of History.” In the broader picture, the Ottawa Convention is a child of the liberal belief in the “end of history” that prevailed in the 1990s. After the end of the Cold War and before 9/11, there was a widespread if profoundly mistaken view that arms control—and indeed diplomacy, security, and the entire international state system—needed to be and could be transformed. This mindset produced the concept of “human security”; institutions that are based on the rejection of state sovereignty, such as the International Criminal Court; and the belief that arms control is fundamentally about fulfilling human rights.⁷⁵ Many states were basically uninterested in these beliefs, but in each case a few were willing to go along, in part so they could claim the credit of being out in front on the advance into this brave new world.

In the 1990s, more and more institutions and treaties were created on a narrow base of states. Yet even judged by the low bar set by comparably broad and contemporaneous treaties, the Ottawa Convention required very few ratifications. The Kyoto Protocol (1997) required 55 ratifications. The Ottawa Convention (1997) entered into force after only 40 ratifications, only one-fifth of the world’s states. The Rome Statute (1998) that created the ICC required 60 ratifications. Each time, advocates claimed that the new institution or treaty constituted a step forward for the world, a new source of moral suasion, and a new source of customary international law that would ultimately bind even non-signatories—a profoundly political argument that is based on their contempt for sovereign, democratic states.

The reality is that when these institutions came into being, they represented only a minority of the world. While many states signed later, many fewer altered their behavior or believed that the treaties they were signing would ever apply to them. The Ottawa Convention illustrates the decay, not the growth, of international institutions because the new institutions are not created by serious, verifi-

able, treaty commitments among responsible democratic nation-states. This decay derives ultimately from the transnational attack on sovereignty, the refusal of transnational activists to accept that signing a treaty is not the same as solving a problem, and their desire to use the treaty process to circumvent domestic political processes to achieve their political objectives.

Lack of Enforcement. It therefore comes as no surprise that the convention does not take enforcement seriously. Instead of recognizing the wisdom of President Ronald Reagan’s dictum of “trust, but verify,” the convention relies on trust—though, given the number of states party to it, verification is effectively impossible no matter what the convention requires. In practice, the convention imposes two requirements related to enforcement. The first requirement, the “Transparency Measures” under Article 7, relies entirely on the signatories honestly self-reporting their stockpiles of APLs, their implementation measures, and other information. The second requirement, “Facilitation and Clarification of Compliance” under Article 8, defines a complicated process for calling special meetings and creating fact-finding missions, through the U.N. Secretary-General, to investigate alleged violations.⁷⁶

Such processes place considerable power in the hands of the U.N., which has little incentive to take violations seriously. If it did, it might be called on to condemn a member state, which would start a crisis that could ultimately lead to sanctions or even an armed conflict. The U.N.’s reluctance to seriously confront Iran’s covert nuclear program implies that, when dealing with the much less pressing subject of APLs, the compliance process of the Ottawa Convention will never produce results in cases in which a signatory does not comply freely. The convention will weigh heavily on the United States if the U.S. ratifies it, but will have virtually no effect on less responsible states.

75. Brett Schaefer and Steven Groves, “The ICC Review Conference: A Threat to U.S. Interests,” Heritage Foundation *Backgrounder* No. 2416, May 28, 2010, at <http://www.heritage.org/research/reports/2010/05/the-icc-review-conference-a-threat-to-us-interests>, and Theodore Bromund and Steven Groves, “The U.N.’s Arms Trade Treaty: A Dangerous Multilateral Mistake in the Making,” Heritage Foundation *WebMemo* No. 2309, August 21, 2009, at <http://www.heritage.org/Research/Reports/2009/08/The-UNs-Arms-Trade-Treaty-A-Dangerous-Multilateral-Mistake-in-the-Making>.

76. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines.

The convention will weigh heavily on the United States if the U.S. ratifies it, but will have virtually no effect on less responsible states.

The convention is therefore ultimately an exercise in moral suasion, not an enforceable diplomatic instrument. The ICBL concedes this by stating that its own Landmine & Cluster Munition Monitor is “the de facto monitoring regime” for the convention. Serious treaties are monitored by their signatories, not by an NGO.⁷⁷ There is nothing wrong in the abstract with moral suasion. Indeed, there are excellent reasons to argue that states should only use APLs responsibly, as in the case of the U.S., but suasion and treaties are not the same. It diminishes the significance and value of treaties, diplomacy, and the international state system to transform treaties from a way for serious and responsible states to make verifiable commitments to each other into a forum for imprudent advocacy and moral grandstanding by unaccountable NGOs. Nor will signing the convention alleviate the pressure applied on the U.S. by the activists: It will simply encourage them to shift to their next target.

The Next Targets. Indeed, they have already done so. From the Ottawa Convention, the activists have moved on to condemning the arms trade and demanding a treaty to limit or entirely end it. The Obama Administration has needed to invest considerable effort to instill even a minimum of rationality into that negotiating process.⁷⁸ The activist focus has simultaneously shifted to other weapons that they consider violations of human rights, including

cluster munitions, which are being attacked on the same grounds as APLs, namely that their impact on civilians makes them morally unacceptable.

In fact, the ICBL is also campaigning for a cluster munitions ban, based on the Cluster Bomb Ban Treaty.⁷⁹ More than 100 states have already signed the treaty banning cluster bombs.⁸⁰ Next, the activists will likely move against the use of unmanned aerial vehicles for lethal operations. Indeed, a U.N. independent investigator has already criticized this program. The Obama Administration viewed this criticism as sufficiently serious as to require a reply from Harold Koh, the State Department’s Legal Adviser.⁸¹

Flawed Assumptions About the Nature of War. The activists’ actions are based on the underlying assumption that the nature of war has permanently changed. If wars today were fought between regular armies and not within civilian populations, the case against APLs would be even weaker, because only soldiers would be affected by mines. However, while the Ottawa Convention’s ban is forever, it is not certain that future conflicts will always be counterinsurgencies, guerrilla wars, or irregular wars. The idea that wars between states are over or that borders between states will no longer need to be protected is another example of the “end of history” fantasy of the 1990s.

Even today in the context of counterinsurgencies, the case against APLs does not accord with the traditional understanding of the laws of war. Targeting civilians is clearly not acceptable, but taking responsible and militarily legitimate actions that nonetheless unintentionally affect, injure, or kill civilians is acceptable, and it always has been.⁸²

77. Landmine and Cluster Munition Monitor, “About Us: What Is the Monitor?” at <http://www.the-monitor.org/index.php/LM/About-Us/What-is-the-Monitor> (November 12, 2010).

78. Theodore Bromund, “The Obama Administration Makes the Wrong Call on the U.N. Arms Trade Treaty,” Heritage Foundation WebMemo No. 2653, October 15, 2009, at <http://www.heritage.org/Research/Reports/2009/10/The-Obama-Administration-Makes-the-Wrong-Call-on-the-UNs-Arms-Trade-Treaty>.

79. International Campaign to Ban Landmines, Web site, at <http://www.icbl.org/intro.php> (October 1, 2010), and Daoust, “Canada’s Role in the Ottawa Process.”

80. BBC, “Cluster Bomb Ban Treaty Approved,” May 28, 2008, at <http://news.bbc.co.uk/2/hi/7423714.stm> (October 1, 2010).

81. Harold Hongju Koh, “The Obama Administration and International Law,” speech at the Annual Meeting of the American Society of International Law, Washington, D.C., March 25, 2010, at <http://www.state.gov/s/l/releases/remarks/139119.htm> (October 1, 2010), and Eli Lake, “U.S. Drone Strikes Come Under U.N. Fire,” *The Washington Times*, June 2, 2010, at <http://www.washingtontimes.com/news/2010/jun/2/us-drone-strikes-come-under-un-fire> (October 1, 2010).

The Ottawa Convention is out of step with the broad history of arms control, which—leaving aside bilateral arms control treaties between states, such as the U.S. and Russia—has long focused on two dangers:

- Weapons or practices deemed inherently irresponsible or perfidious, such as the use of poison, attacks on medical personnel, or the use of booby traps.
- Weapons or practices that are deemed to have both responsible and irresponsible uses, such as air power.

In these cases, the irresponsible use has been controlled, creating the obligation that signatory states employ them for only responsible uses.

The CCW clearly demonstrates that responsible uses of APLs can be separated from irresponsible uses. Nonetheless, the Ottawa Convention seeks a total ban. It is premised on the argument that armed forces that use APLs will use them irresponsibly; therefore, APLs must be banned. This unwarranted presumption of irresponsibility is dangerous because the convention seeks to disarm and weaken the responsible parties by applying a complete ban to the responsible and irresponsible alike. However, the case against APLs on which the convention rests is fundamentally misconceived. The problem is not APLs: the problem is their irresponsible use.

The U.S. Record Is Responsible

One irony of the ongoing campaign to urge the U.S. to ratify the Ottawa Convention is that the U.S. is not responsible for the abuses that led to the demand for the convention. It is not responsible for the landmines in Afghanistan, which were laid by Soviet forces. It is not responsible for the landmines

in Cambodia, which were laid by all sides in a decades-long conflict.⁸³ It is not responsible for the landmines in Iraq, which were laid by Saddam

One irony of the ongoing campaign to urge the U.S. to ratify the Ottawa Convention is that the U.S. is not responsible for the abuses that led to the demand for the convention.

Hussein's regime, or the landmines in the former Yugoslavia, where all sides used mines, but especially Serbian loyalists.

U.S. Demining Efforts. While the U.S. is not responsible for these abuses, it has generously provided financial and technical assistance to remove mines. Since 1993, the U.S. has provided humanitarian assistance to almost 50 countries, 19 of which are now clear of mines or have developed sufficient indigenous capability to handle any remaining problems. From 1993 through 2010, U.S. humanitarian mine action program funding totaled \$1.792 billion, an average of almost \$100 million per year.⁸⁴ According to the ICBL, total international support for 1992 to 2008 was \$4.27 billion, which means that the U.S. provided one-third of worldwide funding.⁸⁵

Unlike the Ottawa Convention, this program is well conceived. It is genuinely humanitarian in that it actually removes mines. It builds capacity in states affected by mines and has a track record of graduating countries from the program. Unlike the convention, which permanently assesses costs to support its implementation, it is not an endless, automatic commitment of American resources. Above all, it is based on voluntary collaboration among willing

82. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, at <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> (November 12, 2010). Article 51 of the Geneva Convention Additional Protocol 1 (1977) prohibits "indiscriminate" attacks. The U.S. has signed, but not ratified, this protocol.

83. Stuart Hughes, "Cambodia's Landmine Victims," BBC, November 11, 2003, at <http://news.bbc.co.uk/2/hi/asia-pacific/3259891.stm> (October 1, 2010).

84. U.S. Department of State, "To Walk the Earth in Safety," July 2010, at <http://www.state.gov/documents/organization/145116.pdf> (October 1, 2010).

85. International Campaign to Ban Landmines, *Landmine Monitor Report: Toward a Mine-Free World*, October 2009, p. 1, at http://www.the-monitor.org/lm/2009/res/Landmines_Report_2009.pdf (October 1, 2010).

partners, which precludes any serious concerns about enforcement. The U.S.'s concerns about the Ottawa Convention do not reflect a callous disregard for the genuine dangers of APLs. Rather, they reflect its desire to provide effective, meaningful humanitarian relief while protecting its sovereignty and fulfilling its alliance and security commitments.

The Convention Has Not Worked in Practice

The convention that resulted from the Ottawa Process has frequently been breached in practice and is not a serious diplomatic instrument.

An Incomplete Ban. The convention's supporters argue that the convention was the result of "a successfully humanitarian journey with the aim of securing a complete and global ban on anti-personnel landmines."⁸⁶ However, the ban is neither complete nor global. Many major powers continue to retain the right to use APLs, including China, India, Pakistan, and Russia. Chinese landmines, in particular, have reportedly been deployed across South Asia, the Middle East, and Africa, and China continues to use landmines along its borders with Russia, India, and Vietnam. China stated its position on the Ottawa Convention in 1998:

Landmines remain an indispensable defensive weapon for many countries. China cannot but reserve its legitimate right to use anti-personnel landmines on its own territories to establish defensive capabilities before alternative means can be found. China understands and respects the sovereign choice of those countries which have signed the Ottawa Convention on the Prohibition of Landmines. However, it is neither realistic nor possible to compel the non-signatories of the Ottawa Convention to accept it here in the [Conference on Disarmament].⁸⁷

The Russian position is similar, and Russia acknowledged in 2006 that Russian military units maintain mine stockpiles in Tajikistan and the Abkhazia region of Georgia. Russia has used mines since 1999 in Chechnya, Dagestan, and Tajikistan and on its border with Georgia.⁸⁸ The significant difference between the U.S., on one hand, and Russia and China on the other, is that while all three states are unwilling to accede to the Ottawa Convention, the Chinese and Russians have long records of irresponsibly exporting and using APLs. The argument that the U.S. should ratify the convention because other states have been irresponsible and need a U.S. signature to inspire them to act responsibly amounts to a claim that the U.S. should restrict its responsible pursuit of security because of the irresponsibility of others.

Recent APL Use. The convention has thus not succeeded in achieving a global and complete ban on APLs. The convention's supporters, led by the ICBL, assert that APL use has decreased since 1999 and argue that this has occurred because the convention has stigmatized their use.⁸⁹ Yet this is a correlation, not a causal relationship. The ICBL pays little attention to the developments since the end of the Cold War that have decreased the incentives for governments to use landmines and that have made signing the convention a costless gesture, especially in cases in which their security is provided by the United States.

For example, the ICBL names 21 countries that have used or are suspected of having used APLs since 1999.⁹⁰ Almost all of these governments were involved in civil wars, international conflicts, or both during the past decade. However, as of 2009, many of these conflicts had ended, although they had not necessarily been fully resolved, which made the governments concerned less likely to use APLs. This is a welcome development, but one for which the convention can claim no credit. Furthermore,

86. Daoust, "Canada's Role in the Ottawa Process."

87. Nuclear Threat Initiative, "China and Anti-Personnel Landmines (APLs)," updated October 24, 2003, at <http://www.nti.org/db/china/aplorg.htm> (October 1, 2010).

88. Landmine and Cluster Munition Monitor, "Russian Federation," at <http://www.the-monitor.org/index.php/publications/display?url=lm/2006/russia.html> (October 1, 2010).

89. International Campaign to Ban Landmines, *Landmine Monitor Report*, p. 9.

six of the governments named by the ICBL—Angola, Burundi, Ethiopia, Rwanda, Sudan, and Uganda—were charter signers of the Ottawa Convention and used APLs after they signed, which does not inspire confidence in the practical effects of the convention’s moral appeal.

While the ICBL focuses its criticism on states that use APLs, including three democracies that have not signed the convention, and on non-signatories more broadly, the evidence compiled by the ICBL strongly suggests that APL use is concentrated among nondemocratic states. Of the 21 governments cited by the ICBL, only India and Israel were

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fully democratic throughout the 10-year period surveyed by the ICBL. Therefore, the ICBL is not actually tracking the effects of the convention, but the ending of various regional and civil conflicts and the creation of more democratic governments in several countries, such as Iraq. Ratifications of the convention and genuine acceptance of its obligations correlate with these developments, but do not cause them.

Nonstate Actors. Indeed, use of improvised explosive devices (IEDs), one form of APL, has risen substantially since the convention came into existence. Not all IEDs are APLs under the terms of the convention: Contact-activated IEDs qualify, but command-detonated IEDs do not.⁹¹ Precise information on the numbers of each type of IED attack are not available. However, an authoritative study by the Center for Strategic and International Studies found that IED attacks in Afghanistan killed 134 and wounded 1061 coalition forces in the first five months of 2010. The ICBL has acknowledged,

“Insurgent and rebel groups have used improvised explosive devices (IEDs) in increasing numbers.”⁹²

On behalf of the NGO community, the ICBL has responded to this unwelcome development in two ways. First, it has encouraged “non-state armed groups” to sign a formal Deed of Commitment, which commits them to ban APLs. Of course, the deed does not prohibit the insurgent or rebel groups from seeking to overthrow elected governments, imposing barbarous punishments on civilians, or using any other form of violence against civilians and governments. A commitment to ban APLs, which cannot be verified or enforced, made by a group lacking democratic legitimacy, is thus a relatively low-cost and insignificant way for an insurgent group to win the NGO community’s recognition as a supposedly good actor.

Nevertheless, as with the Ottawa Convention, the Deed of Commitment mistakes the symptom for the disease. The problem is not the Marxist-Leninist or Islamist terrorists’ reliance on APLs, but their commitment to totalitarian and violent ideologies.

The Deed of Commitment is also problematic because it is a step toward recognizing insurgents as equally legitimate and on par with sovereign democratic states. While the insurgents are not allowed to sign the Ottawa Convention, the NGO community is treating them as organizations that can and should subscribe to formal international commitments that place them on a moral par with the states that have signed the convention.

This is a profoundly undesirable step, although not a surprising one given the activists’ hostility to state sovereignty. The NGO community is failing yet again to recognize that sovereignty is a manifestation of the right of self-government through the democratic process and that totalitarian insurgent groups, by definition, lack the democratic legitimacy necessary to engage in sovereign acts, such as subscribing to international commitments. By

90. *Ibid.* The governments of Afghanistan, Angola, Burma, the Democratic Republic of the Congo, Eritrea, Ethiopia, India, Iraq, Israel, Kyrgyzstan, Nepal, Pakistan, Russia, Sri Lanka, Uzbekistan, and the Federal Republic of Yugoslavia have used APLs since 1999. Burundi, Georgia, Rwanda, Sudan, and Uganda are suspected of having used APLs, but this has not been confirmed. Many of these states are not party to the Ottawa Convention.

91. Some IEDs would qualify as booby-traps, many uses of which are banned under Amended Protocol II.

92. *Ibid.*

granting legitimacy to terrorists in this way, the ICBL is defining them as simply another species of NGO that has the right to speak on behalf of the people of the world.

The ICBL's second response has been to double down on its dangerous bet by promoting ratification of the convention with even more fervor. As of September 2010, it claims: "Universalization of the Mine Ban Treaty is key to ensure that the goal of 'ending the suffering caused by landmines' can be achieved and that the emerging international norm of a total ban on antipersonnel landmines continues to take hold."⁹³ However, IED use since 9/11 suggests that universalization of the convention would not end the use of APLs, even if every state in the world ratified the convention and—even more improbably—lived up to its commitments.

Yet the ICBL remains largely focused on stigmatizing states, such as the U.S., that have not signed the convention, regardless of how responsible they are and regardless of how many casualties their armed forces have suffered from IEDs that qualify as APLs. Only rarely, and honorably, does an NGO that supports the convention condemn the insurgents' use of IEDs in Afghanistan, as the International Committee of the Red Cross did in March.⁹⁴

Perverse Incentives. Instead, because the ICBL regards the convention as a way to promote a "norm," it prioritizes the collection of signatures, whether of states or insurgents. Since states are easier to pressure than terrorists, the non-signatories, particularly the U.S., receive most of the blame. Yet as the rise of the IED reveals, norms apply only to those who accept them voluntarily. The ICBL's emphasis on the Ottawa Convention as central to an emerging norm points out yet again that it is an instrument of moral exhortation, not of arms control.

The problem with confusing the two is that it results in bad arms control. A basic principle of arms control is that it should not decrease the security of the parties involved. If it does, it is bad arms control because the states parties will be tempted to

forsake their treaty commitments to improve their security. Serious arms control diplomacy seeks to avoid creating perverse incentives, which in this case tempt states to sign the convention to obtain the public relations benefits, but to continue to use APLs. This is already occurring according to evidence from the ICBL that the six charter signatories of Ottawa have since used APLs.

This dynamic also encourages states to use APLs in secret so that they will not lose the public relations benefits of signing, but secret use will likely be

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irresponsible. That is particularly true with APLs because responsible use requires the marking of minefields. The ICBL also provides evidence that this is occurring, stating that charter signatories Burundi, Rwanda, Sudan, and Uganda have likely used APLs after signing the convention. The implication is that the APL cannot be confirmed because the states in question are concealing their activities by not marking their minefields. Yet none of the states that signed and then broke Ottawa have paid any obvious price for failing to uphold their obligations. The fact of signature was and is treated as far more important than the realities behind it.

This is the inevitable consequence of an arms control treaty that is treated as a moral imperative and pays no serious attention to verification. It incentivizes treaty breaking, concealment of treaty breaking, and irresponsible use. As for the U.S., responsible authorities have found that APLs continue to contribute to U.S. security and to the security of its allies. If the U.S. signs and ratifies the convention, it must give up APLs, regardless of what other states and terrorist groups do. This is bad for U.S. security, bad for the security of U.S. allies, bad

93. International Campaign to Ban Landmines, "Making the Landmine Treaty Universal."

94. Lynne O'Donnell, "Red Cross Condemns Taliban Use of Booby Trap Bombs," Google News, March 5, 2005, at <http://www.google.com/hostednews/afp/article/ALeqM5jtquc-ZcuAUpzIVuD50UkGprUEQ> (October 1, 2010).

for the treaty-making process, and therefore a classic illustration of bad arms control diplomacy.

Regrettably, many NATO members have engaged in this kind of irresponsible posturing. Canada, a founding member of NATO, took the leading national role in creating the Ottawa Convention, and many other NATO members participated in the process and signed the convention. NATO then commissioned its 2003 study, which revealed that APLs continued to be important to U.S. forces and to the alliance. NATO members enjoy U.S. protection and can therefore afford to make costless gestures, such as signing the convention, while the U.S. does the alliance's hard work and is stigmatized as an offender of the supposedly emerging international norm against APLs.

The problem with APLs is not APLs. It is the irresponsible users of a weapon that can and should be used responsibly to enhance security. Similarly, the problem with the Ottawa Convention is that it is irresponsible. It creates perverse incentives, is unenforceable, and is the result of a process that was openly based on elevating unelected, transnational NGOs at the expense of legitimately sovereign states. The world needs more responsible, democratic states, not more treaties like the Ottawa Convention. Nation-states are the only entities that have the legitimacy to negotiate enduring, successful treaties. In the absence of such treaties, the U.S. should not reduce its own capabilities in a misguided effort to induce the irresponsible to become responsible.

The Obama Administration Should Not Seek Accession to Ottawa

The Obama Administration should neither seek accession to the Ottawa Convention nor change U.S. landmine policy to comply with the conven-

tion.⁹⁵ Accession at present would be at best premature and potentially dangerous to U.S. armed forces. NRC and NATO studies confirm that anti-personnel landmines remain an important option for shaping the battlefield and protecting U.S. military forces. Both studies also confirm that viable alternatives to APLs do not yet exist.

Therefore, the U.S. should:

- **Retain the ability to use APLs.** Until alternatives do exist, the Administration should not forsake the use of APLs under any circumstances. Until an APL alternative is battle-tested and demonstrated to be effective in various terrains and tactical scenarios, its viability as a bona fide alternative is unproven. Therefore, even if potential alternatives are developed, the United States should maintain its arsenal of detectable, self-destructing, self-deactivating APLs. Because the Ottawa Convention prohibits even the possession of APLs, the United States should not consider accession or adherence until battle-tested alternatives to APLs are available to U.S. forces.
- **Continue to operate through the Conference on Disarmament.** The United States is already party to the Convention on Certain Conventional Weapons and Amended Protocol II, which place reasonable restrictions on the design and use of landmines. Any future international obligations undertaken by the United States regarding APLs should be pursued through those mechanisms and under the auspices of the Conference on Disarmament, rather than through the Ottawa Convention's all-or-nothing approach.
- **Develop more smart APLs.** Under Amended Protocol II, the United States may develop self-destructing, self-deactivating APLs to replace the "dumb" M14 and M16 hand-emplaced APLs, which are being phased out. The Department of

95. In addition to the negative effect on U.S. national security interests that would be caused by a total ban of APLs, there are other potential problems with U.S. accession to the Ottawa Convention not addressed in this paper. These include (1) the full implications to U.S. forces operating in the Korean Demilitarized Zone that would be caused by Article 1(c), which prohibits assisting, encouraging, or inducing "anyone to engage in any activity prohibited to a State Party under this Convention"; (2) the obligations in Article 6(3), (4), and (5) mandating foreign assistance for mine clearance, destruction of mine stockpiles, and "care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs"; and (3) the Article 14 assessment of costs for fact-finding missions, meetings of the states parties, review conferences, and other meetings related to the convention.

Defense should develop a smart replacement to the M14 and M16 that could supplement the capabilities of Ottawa-compliant “man in the loop” munitions, such as those developed by Textron Defense Systems and Alliant Techsystems.

- **Shun the Ottawa Convention’s all-or-nothing approach.** Even if effective alternatives to APLs are designed and proven, the Ottawa Convention and the process that created it raise very serious questions. The U.S. should consider carefully before joining it. The convention’s all-or-nothing approach challenges a fundamental responsibility of the U.S. Senate under the Constitution, creates perverse incentives, and contains no serious enforcement provisions. It is therefore a textbook illustration of bad arms control diplomacy and an irresponsible treaty that mistakes the aspirational pursuit of norms for serious treaty commitments.
- **Not support the Ottawa Process.** The flaws of the convention exist because it was produced by a process designed and driven by unelected and unaccountable NGOs, which continue to seek a place at the diplomatic table to advance their transnational vision at the expense of the sovereignty of democratic states.⁹⁶ This process and this vision continue to pose a serious threat to the practice of responsible diplomacy and U.S. sovereignty. If the U.S. were to become a party to the Ottawa Convention, it would reward that process and recognize the legitimacy of that vision. The convention’s proudest advocates clearly state that the convention represents a new kind of diplomacy. Regardless of the status of research into APL alternatives, this claim

alone is sufficient reason for the U.S. to regard it with caution.

Conclusion

The Ottawa Convention and the process that created it are both flawed and dangerous. The Ottawa Process was based on the denigration of state sovereignty and the elevation of unelected and unaccountable NGOs to a central role in arms control diplomacy. No U.S. Administration has endorsed this process. The convention that resulted from the process is an unverifiable, unenforceable, all-or-nothing exercise in moral suasion that has frequently been breached in practice and is not a serious diplomatic instrument.

The current U.S. landmine policy is responsible, and a series of studies—and recent experience—has confirmed that APLs continue to be important weapons that provide crucial tactical advantages to U.S. forces on the battlefield. To sign and ratify the convention would deny these advantages to the U.S. and signal U.S. acceptance of the Ottawa Process. That would be an unwise, even revolutionary, step for lawmakers who value the lives of U.S. forces and the serious conduct of responsible arms control diplomacy by nation-states.

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96. Baker Spring, “Restoring the Role of the Nation-State System in Arms Control and Disarmament,” Chap. 9, in Schaefer, *ConUNdrum*, pp. 263–290. Available also as Heritage Foundation *Special Report* No. 84, at <http://www.heritage.org/research/reports/2010/09/restoring-the-role-of-the-nation-state-system-in-arms-control-and-disarmament?query=Restoring+the+Role+of+the+Nation-State+System+in+Arms+Control+and+Disarmament>.