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The Landmines Bill

Bill 220 of 1997/98

The *Landmines Bill* would make changes to UK law to enable the Government to ratify the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, known as the Ottawa Convention. The Convention was opened for signature on 3 and 4 December 1997. This Paper discusses the background to the Ottawa Convention and the policy of the British and other governments on the issue, before concluding with an examination of the provisions of the Bill.

The *Landmines Bill* was presented to the House of Commons on 3 July and will have its debate on second reading on 10 July.

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I Introduction¹

The prohibition of anti-personnel mines (APMs) has been one of the most publicised security issues of the 1990s. It is estimated that between 85 and 110 million APMs remain in 68 countries.² The International Committee of the Red Cross (ICRC) believes that they are responsible for the death and injury of over 20,000 people, mainly civilians, every year.³

However, the APM has long been seen as an important area denial weapon, particularly in general conventional warfare. This military effectiveness explains why countries such as Finland and South Korea, both fearful of the numerically superior forces of their neighbours, have not signed an APM ban. Since the Second World War, the major problem of the conventional APM has been its utility, low cost and ease of manufacture or procurement. This has led forces, usually in the developing world, to use them in conflicts in which battle-lines may be constantly shifting, if they exist at all, and where mines may be laid, unmarked and in an indiscriminate manner, with such a disastrous impact on civilians. This impact may often last long after a conflict has ended and severely hamper efforts of civil and economic reconstruction.⁴ The self-neutralising or self-destructing APM offered at least a partial solution to the problem. However, its potential advantages on humanitarian grounds are offset by its inability to be absolutely reliable, the fact that it can be 'unsmartened' if necessary and that many of the countries in question would not be in a position to afford such weapons in any case. In these circumstances, most states have decided that the only way to treat APMs responsibly is to prohibit them altogether.

¹ This Paper is partially adapted from Paul Bowers and Tom Dodd, "Anti-Personnel Mines and the Policy of Two British Governments", *RUSI Journal*, February 1998.

² *SIPRI Yearbook 1997*, p 495.

³ ICRC and Colin King in *Jane's Mines and Mine Clearance 1997-98*.

⁴ C. Smith, *Do Anti-Personnel Mines still have a Military Utility?*, ISIS Briefing No. 52, May 1996.

II The Background

A. The Inhumane Weapons Convention

International efforts to regulate the use of APMs date back more than two decades and rested for many years on the 1981 *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons that May Be Deemed to be Excessively Injurious or to have Indiscriminate Effects*, more commonly known as the Certain Conventional Weapons Convention (CCW) or the Inhumane Weapons Convention (IWC).

Protocol II of the IWC prohibits the use of mines, booby traps and other devices in any settlement, or other area containing a concentration of civilians, in which combat between ground forces is not taking place or does not appear to be imminent, unless they are placed on or close to a military objective under the control of an adverse party. It also requires that all feasible precautions be taken to protect civilians from the effects of mines and booby traps. Precautionary measures might include posting warning signs and providing fences. Protocol II also stipulates that immediately after the cessation of active hostilities all information regarding minefields should be made publicly available. Finally, the parties to the conflict should endeavour to reach agreement amongst themselves and with other states and international organisations on steps either to remove or render ineffective minefields laid during a conflict.

However, the IWC did not prove an effective means of controlling the use of APMs and reducing the dangers they pose for civilians. By 1993 only 36 countries out of a total UN membership of over 180 had ratified the IWC, and its provisions regarding restrictions on the use of APMs were not generally adhered to. The question of implementation of the IWC or any further steps to control APMs went into abeyance until the early 1990s, when it was revived by a coalition of Non-Governmental Organisations (NGOs).

NGOs working in countries which had been mined in the course of civil wars found that the presence of APMs was a common obstruction to their activities, whether they be the promotion of human rights, humanitarian relief or longer-term development. A number of leading NGOs from the UK, USA, France and Germany came together in 1991 to study the problem.⁵ They later launched the International Campaign to Ban Landmines (ICBL), which called for an international ban on the use, production, stockpiling, sale, transfer and export of APMs. The ICBL subsequently expanded to comprise over 1,000 civic organisations from 60 countries.

⁵ Handicap International (France), Human Rights Watch (USA), Medico International (Germany), Mines Advisory Group (UK), Physicians for Human Rights (USA) and Vietnam Veterans of America Foundation (USA).

The NGOs were prominent in lobbying for an IWC review conference, which was convened in 1995. The IWC, unlike more recent arms control treaties, did not include provision for a timetabled review. The involvement of NGOs on such a large scale, and particularly their use of the media, had an impact on the development of policy at the national level.⁶

B. The Inhumane Weapons Convention Review Conference

The review conference opened in Vienna in September 1995 and convened three times before closing in Geneva in May 1996. The British position had been developing over the previous two years and continued to do so during the review conference.

The Conservative Government accepted the military advice that the proper use of APMs remained necessary,⁷ but it faced growing pressure over the humanitarian concerns which they raised. It drew a distinction between the indiscriminate laying of non-self-destructing or non-self-neutralising ('dumb') APMs, and the use of 'smart' APMs directed at military targets and properly marked or mapped. It regarded the former as having "terrible consequences for civilians" and the latter as "legitimate defensive weapons".⁸

In rejecting a moratorium on exports of APMs, proposed by the Clinton administration in late 1993, the British Government argued that if APMs were used in accordance with Protocol II of the IWC, and "particularly if they are fitted with a self-destructing or self-neutralising mechanism," they did not "pose grave dangers to civilian populations."⁹ The Government also argued that "it would be wrong if the possession of self-destructing or self-neutralising anti-personnel mines were restricted to countries with the capacity to manufacture them,"¹⁰ although it "strongly supported international action on the indiscriminate laying of non-self-destructing mines."¹¹

⁶ Ann Peters, *The Inhumane Weapons Convention and the 1995/96 Review Conference*, ISIS Briefing Note No.51, April 1996.

⁷ According to Smith "landmines have been unequivocally assimilated into [British] warfighting doctrine." C Smith (ed), *The Military Utility of Landmines ...?*, Centre for Defence Studies, June 1996, p 86.

⁸ HC Deb 15 March 1995, c863. This distinction was cited in the UN General Assembly's 1st Committee in late 1993. See A/C.1/48/SR.28, 7 January 1994. The term 'defensive', of course, is open to more than one interpretation.

⁹ Some questioned the reliability of self-destructing and self-neutralising technology. See eg, Smith, op cit, p24. Smith cites ICRC evidence on mines laid during the Gulf War, 1,700 of which failed to self-destruct within the times specified in their design. The Government maintained that its future procurements would comply with the time periods and reliability figures stipulated in revised Protocol II, but held that precise figures were classified. See eg, HC Deb 5 January 1996, c409W, & 30 October 1996, c174W.

¹⁰ HC Deb 3 February 1994, c858W.

¹¹ A/C.1/48/SR.28. The moratorium was embodied in part K of General Assembly Resolution 48/75.

In July 1994 the British Government announced a national moratorium on the export of non-self-destructing and non-self-neutralising APMs, again citing the indiscriminate effects on civilian populations, although the UK had not in fact manufactured or exported such landmines since 1982.¹² It also proposed a code of conduct to encourage other exporters to adopt a similar position and stressed its continuing support for mine clearance projects.

In March 1995 the Government extended the moratorium to cover the export of all types of APMs to countries which had not ratified the IWC, and a total ban on the export of non-detectable APMs. This was intended to underline "a commitment to put an end to the trade in the types of anti-personnel land mines that are the most dangerous to civilians,"¹³ and was in line with a collective moratorium negotiated within the EU.¹⁴

According to the then Head of the Security Policy Department at the Foreign Office, the UK approached the IWC review conference seeking to strengthen "prohibitions and restrictions on the use and transfer of anti-personnel landmines on a global basis".¹⁵ In line with other countries, and NGOs, it sought to improve the definitions and standards for self-destructing APMs, to promote the marking and mapping of minefields, to extend the scope of the Convention to internal conflicts, to secure agreement on the provision of assistance to humanitarian agencies working in mined areas, and to ban non-detectable APMs. The UK intended that a revised Protocol II should be supported by a strengthened international consensus.¹⁶

There was disappointment over the unenthusiastic position adopted at the first session of the review conference in autumn 1995 by Russia, China and some other states. The UK reacted to this by arguing that "it is plain that a global ban on landmines is simply not achievable at this stage."¹⁷

The Government rejected a unilateral ban, citing the defence value of APMs as a means of protecting British forces, and arguing that unilateral action would have only marginal impact on the regions most affected by their indiscriminate use. It now envisaged a revised Protocol II which would cover the use and placement of APMs, and which would be complemented by a separate, politically binding code of conduct on production, stockpiling and transfer.

¹² Ibid.

¹³ HC Deb 15 March 1995, c864.

¹⁴ 95/170/CFSP, 12/5/95, in OJL 115, 22 May 1995.

¹⁵ A Bailes & Lord Deedes, "British Policy and the Landmine Debate", *RUSI Journal*, December 1995.

¹⁶ HC Deb 15 March 1995, c865.

¹⁷ Bailes & Deedes, op cit.

In April 1996 the Government announced a major revision of policy. According to Foreign Office Minister, David Davis:

In order to make greater progress in achieving international agreement on effective measures to reduce the dangers to civilians from land mines, we have taken a series of national decisions following a review of our policy, as follows:

The UK will work actively towards a total, world-wide ban on anti-personnel mines. Should such a ban be agreed, we would give up our anti-personnel land mine capability, and would destroy our stocks accordingly.

All our current anti-personnel mines are non-self-destructing. We intend to destroy almost half our current stockpile as soon as practicable. Until a world-wide ban on all anti-personnel mines is agreed, we shall also pursue current procurement plans to replace our existing mines with self-destructing ones.

We shall also pursue, as an interim step, early international agreement on the elimination of all non-self-destructing anti-personnel mines, which pose the greatest danger to civilians.

The UK's armed forces do not currently use anti-personnel mines operationally, anywhere in the world. Nor will they use our current stocks of non-self-destructing anti-personnel mines in future operations unless, in exceptional circumstances, Ministers are satisfied that their use is essential to ensure that British troops are properly protected and there are no alternative ways of achieving that end.

In such exceptional circumstances, we would use non-self-destructing anti-personnel mines only in marked, fenced or monitored areas; would clear them as soon as feasible; and any use would be strictly in accordance with the laws of armed conflict, including the strengthened Protocol II to the UN Weaponry Convention which we hope will be agreed shortly.

We shall also, as a matter of priority, pursue the development of alternatives to anti-personnel mines. Should viable alternatives emerge - none has yet - we would cease to use all anti-personnel mines, of any type, and would destroy all our stocks.

In addition, we shall with immediate effect extend the scope of our export moratorium, to prohibit the export of all types of anti-personnel mines to all destinations.¹⁸

An amended Protocol II was adopted at the concluding session of the IWC review conference. This extended provisions to non-international armed conflicts, banned all undetectable APMs, required stricter marking and monitoring of non-self-destructing

¹⁸ HC Deb 22 April 1996, c28W.

mines, placed responsibility for mine clearance on those who laid the fields, and imposed tighter restrictions on the transfer of APMs, including legal redress for serious violations. Critics still pointed to shortcomings such as the likely delays in entry into force, deferral periods within the Protocol, and the failure to conclude comprehensive bans on use and transfer.¹⁹

In October 1996 an EU Joint Action called for accession to the revised Protocol II of the IWC, as well as a moratorium on exports of all APMs to all destinations and continued support for mine clearance, the latter frequently being cited by the Conservative Government as evidence of its concern for the victims of indiscriminate mining and as a practical alternative while a comprehensive ban was still being sought.²⁰

The review conference, and the efforts of NGOs and other campaigners surrounding it, contributed to intensified public interest, and in particular the issue had become associated with the work of Diana, Princess of Wales. In the aftermath of the review conference states pursued two new routes towards a total international ban: the 'Ottawa process' and the Conference on Disarmament (CD).

¹⁹ A Peters, "New Approaches to a Comprehensive Global Ban on Anti-Personnel Land Mines", in *Verification 1997*, R Guthrie (ed), pp 72-6.

²⁰ Joint Action 96/588/CFSP, 1 October 1996, in OJL 260, 12 October 19/96. National spending on mine clearance projects was £3.15m in financial year 1993-4, £5.91m in 1994-5, and £3.65m from April 1995 to January 1996. £3.9m was committed to new mine clearance activities between 1 April 1996 and 12 March 1997. There was also a contribution of some £3.37m to EC activities in this field between 1992 and 1996, and nearly £7.5m for the calendar year 1996. See HC Deb 10 January 1996, c223W & HC Deb 12 March 1997, c231W.

III The Ottawa Process

A. Negotiations

The Ottawa process was somewhat unusual among arms control negotiations. Its central aim was the banning of APMs and it was driven by countries committed to achieving that end in the briefest possible time. Those involved were therefore able to achieve relatively rapid progress based on the broad consensus which they shared. At the same time, the process suffered from its inevitable exclusion of more sceptical states, many of whom are among the leading manufacturers and exporters of APMs.

The Canadians initiated the Ottawa process towards the end of the IWC review conference, with the aim of building on the conference's limited progress and concluding a comprehensive treaty banning APMs. The inaugural meeting in Ottawa in October 1996 was attended by the UK and the USA, but they did not form part of the 'core group' driving the process.²¹ The main result of this meeting was a surprise call by Canada for a comprehensive treaty to be signed by December 1997. The UK then adopted observer status in the Ottawa Process until after the 1997 general election.

Four further meetings were held after the initial Ottawa meeting. In February 1997 a meeting was held in Vienna to look at the proposed text of the treaty, which was based on an Austrian draft. In April 1997 a meeting of verification experts took place in Bonn, in June 1997 a general meeting took place in Brussels and there was a negotiating forum in Oslo in September 1997 to finalise the text. The main difficulties to emerge in the course of the process were the establishment of a verification regime, the definition of APMs and the question of exemptions.

By the time of the Oslo meeting the UK and USA were full participants. The USA sought a number of changes to the text, including an optional nine-year deferral of the prohibitions at the time of ratification, changes to the verification regime and the allowance of reservations from the treaty. The latter was intended to allow the USA to exempt its use of APMs in the Korean peninsula, which it regarded as central to its strategy there. These proposals were not accepted by the necessary two-thirds majority of participating states and the USA did not sign the treaty as a result.

The UK was one of over 100 states which adopted the final text of the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (the Ottawa Convention) at Oslo on 18 September 1997.²² The

²¹ The 'core group' initially included Austria, Belgium, Canada, Germany, Ireland, Mexico, the Netherlands, Norway, the Philippines, South Africa and Switzerland.

²² Cm 3990.

Convention was formally signed by the UK and 122 other states at Ottawa between 3 and 4 December 1997.²³ The UK thus found itself in the unusual position of being at odds with the USA on a major arms control issue.

B. The Ottawa Convention

Article 1 of the Convention is as follows:

1. 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 mines;
 - (c) To assist, encourage or induce in any way, anyone to engage in any activity prohibited to a State Party under this Convention

2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2 gives definitions of APMs, mined areas and other key terms. An APM is defined as one designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Anti-vehicle mine are not prohibited under the Convention, even those which are equipped with anti-handling devices. An anti-handling device is defined 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 if the mine is tampered with.

Under Article 3 States Parties are allowed to retain some APMs for training in mine clearance and for the development of clearance techniques. Critics have argued that the numbers of such mines should have been more tightly defined, but the Convention merely states that "the amount of such mines shall not exceed the minimum number absolutely necessary". Countries have indicated widely varying numbers for this necessary

²³ Although the negotiation of an international landmine ban in a fourteen-month period is a considerable achievement, the speed of agreement may have led to shortcomings, particularly in monitoring and enforcement. Substantial revisions may be required at a future review conference to be held five years after the Convention enters into force.

minimum: Canada suggested that 2,000 might be a widely acceptable compromise, while Italy suggested that it might retain 200,000 mines for training purposes.²⁴

Under Article 4 States Parties undertake to destroy their existing stocks of APMs "as soon as possible but not later than four years after the entry into force of this Convention for that State Party." Article 5 includes similar provision for the destruction of APMs within mined areas not later than ten years after entry into force. There is a further ten-year period for which countries may apply if they feel unable to destroy laid APMs within the initial ten years.

Article 6 commits those States Parties with the necessary capacity to assist in mine clearance and rehabilitation of victims of APMs.

Article 7 deals with transparency measures and commits each State Party to report to the Secretary-General of the UN not later than 180 days after the entry into force of the Convention on national implementation measures (legal changes such as the UK's *Landmines Bill*), the numbers and types of APMs in its stockpiles, the location of mined areas under its control, the numbers and types of APMs retained for training purposes, technical information on the APMs which it possesses or has produced, the progress of its programme to destroy existing stocks and laid mines, and the measures taken to give adequate warning to civilian populations of the presence of APMs. There will be annual update reports by 30 April each year thereafter.

Article 8 provides for a verification regime, but it is worded cautiously. States Parties may request "clarification" over the compliance of another party, but it is stipulated that care must be taken not to abuse this system, and only after documentary evidence has been considered will the matter be referred to the next Meeting of the States Parties. The state requesting clarification may also request, through the UN Secretary-General, a Special Meeting of the States Parties to consider the matter. This may be convened subject to agreement by one-third of States Parties and a quorum of a majority of States Parties. The Meeting or Special Meeting may then authorise a fact-finding mission to investigate the level of compliance. The Meeting or Special Meeting will then consider all relevant information, including the report of the fact-finding mission, and may request the State Party under consideration to take measures to address the compliance issue and may suggest to the States Parties concerned (ie the one under suspicion of a breach and the one complaining of the same) ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law.²⁵

²⁴ N Short, *A Review of the Ottawa Process to Ban Anti-Personnel Mines*, ISIS Briefing No 66, November 1997, p 6.

²⁵ Article 8 (19).

Under Article 11 there will be annual meetings of the States Parties until the first Review Conference. The Review Conferences are dealt with in Article 12. The first will be convened by the UN Secretary-General five years after entry into force of the Convention and thereafter at intervals of not less than five years at the request of one or more States Parties.

The Convention enters into force six months after the deposit of the 40th instrument of ratification or other agreement to be bound. The depositary is the UN Secretary-General.

The main objections to the Convention concern its inclusion of like-minded states with relatively similar national policies and its exclusion of many of the producers and/or exporters of APMs, such as China, India, Pakistan and Russia, the exemption for anti-handling devices on anti-vehicle mines, since "vehicle" is not defined and could conceivably cover vehicles not much heavier than a person on foot (eg a bicycle), the failure to enumerate a limit for the number of mines which may be retained for training purposes, the four-year grace period for the destruction of stockpiles and the possible twenty-year grace period for the destruction of laid mines, which clearly are the ones most likely to pose a threat to civilian populations.

IV The Conference on Disarmament

At the end of 1996 the British Government supported the American position that a comprehensive ban could be pursued in the UN Conference on Disarmament (CD).²⁶

Critics argued that this amounted to a delaying tactic, since the machinery of the CD is cumbersome, and since the CD includes the main dissenters on a comprehensive ban, who would be in a position to block radical progress. Those who supported moves in the CD stressed that they did not see their approach as competing with the Ottawa process. They felt that the inclusion of countries such as Russia and China was a strength of this forum, and that its conclusions would command greater support among the countries at which an effective ban would need to be targeted. Taking the issue to the CD also entailed a move from the *ad hoc* humanitarianism of Ottawa to established disarmament negotiations, and supporters may have felt that greater progress could be made on agreeing a verification regime in the CD, something which the British and Americans were unable to achieve in the IWC review conference, nor, in a manner satisfactory to the Americans, in the Ottawa Process.

The Conservative Government introduced a draft mandate in the CD in January 1997 for an Ad Hoc Committee "to negotiate, for conclusion at the earliest possible date, a universal, effectively verifiable and legally-binding international agreement to ban totally the use, stockpiling, production and transfer of anti-personnel landmines".²⁷ As a first step the Ad Hoc Committee would negotiate a universal, verifiable and binding agreement to ban the export, import or transfer of all types of APMs and their components and technology. This phased approach was seen as an effort to cover the ground in small achievable steps, again to avoid alienating those states still sensitive over the defence of extensive land borders.²⁸

A 'special co-ordinator' on APMs, Ambassador John Campbell of Australia, was appointed in June 1997 to choose between the British and other draft mandates. Since then no further substantive progress has been made: the third and final 1997 CD session, held in September, again failed to reach agreement on a way forward.²⁹

The 1998 session of the CD does not include APMs on the agenda, but there is an understanding that they may be discussed if there is a consensus to do so. The first part

²⁶ For the American position see *Statement by President Clinton for the Opening of the 1997 CD Session*, CD/1441, 22 January 1997; also CD/1442, 22 January 1997. France, Italy and Australia also supported this move.

²⁷ CD/1443, 30 January 1997.

²⁸ The *SIPRI Yearbook 1997*, p 499, notes Russian opinion in favour of gradualism.

²⁹ CD/1466, 26 June 1997 and *AFM* 9 September 1997. For Ambassador Campbell's interim reports see CD/PV.776, 28 August 1997, & CD/PV.774, 14 August 1997.

of the session in January to March 1998 agreed to reappoint the Special Co-ordinator, but did not agree on a suitable candidate.

The Russian position, which had become marginally more positive as the Ottawa Process drew to a conclusion, was to agree that the CD might seek a phased approach to the elimination of APMs.

China still rejected a global ban. Its Ambassador to the CD, Li Changhe, said that:

It is neither realistic nor possible to compel the non-signatories of the Ottawa Convention to accept it here in the CD,

and he went on to say that:

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.³⁰

³⁰ *Arms Control Reporter*, 1998, 708.B.39.

V Anti-Personnel Mines and The Labour Government

A. The Evolution of Labour Policy in Opposition

In Opposition Labour seems to have been slow initially in responding to the APM issue. Perhaps in a reflection of their lower international profile at that time, APMs received no mention in the 1992 Labour election manifesto. It was another two years before APMs were referred to by a Labour front-bencher on the floor of the House of Commons. During the annual debate on the *Statement on the Defence Estimates* in October 1994, Dr David Clark, then Shadow Defence Secretary, spoke of landmines being “recognised as a major global problem” and criticised Government leadership on the issue as “lacking”. He stated the Labour policy of banning the export of all types of APMs, including those with self-destruct mechanisms.³¹ Still, an export moratorium does not appear to have been a major facet of Labour defence policy. APMs received no mention in a major policy speech given by Dr Clark to the Royal United Services Institute (RUSI) in March 1995,³² although support for a worldwide ban was voiced on the Labour back-benches in the same month.³³ It was not until the following autumn that the landmines issue was raised for the first time on the floor of the Labour Party Conference. The 1995 Conference carried Composite Motion 64 on the arms trade, calling on the next Labour government to “ensure that no anti-personnel mines are manufactured or exported from this country, and press internationally for a worldwide ban”.³⁴ Official Labour Party policy still appears to have been more cautious at this stage, being confined to supporting a ban on the trade in APMs.³⁵ However, by mid-1996 a pre-manifesto document declared that “Labour in government will ban the import, export and transfer of all forms of anti-personnel mines and their component parts, and we will press internationally for more support for de-mining operations”.³⁶

On other points, the Labour position was less clear. In October 1996 the Party supported international efforts to negotiate a ban on anti-personnel mines and opposed the procurement of a new generation of ‘smart’ mines, in contrast to the Conservative position of that time. Labour, however, gave no commitment to a moratorium on the *use* of existing APMs by British forces.³⁷ A policy statement on the arms trade, released in February 1997 on the first anniversary of the publication of the Scott Report, thus represented a new departure when it called for a ban on “the import, export, transfer and manufacture of all forms of anti-personnel landmines and their component parts”, *and an*

³¹ HC Deb 17 October 1994, cc59-60.

³² Reproduced as “The Labour Party’s Defence and Security Policy”, *RUSI Journal*, April 1995.

³³ See adjournment debate obtained by Harry Cohen, HC Deb 15 March 1995, c 858.

³⁴ *Labour Party Conference Reports*, 1995.

³⁵ HC Deb 16 October 1995, c63.

³⁶ *Road to the Manifesto, A Fresh Start for Britain: Labour’s Strategy for Britain in the Modern World*, June 1996, p. 15 Labour called on NATO to devote a portion of its science budget to develop de-mining techniques (*The Guardian*, 22 April 1996).

³⁷ HC Deb 24 October 1996, c 217.

“immediate moratorium on their use” as well as “more rapid progress in de-mining operations”.³⁸ Similar language appeared in the Labour election manifesto.³⁹ This redefinition of Labour policy occurred in the context of diplomatic efforts to secure a comprehensive ban (particularly through the Ottawa Process), greater public awareness of the APM issue, pressure from NGOs and the ‘firming’ of positions in advance of the general election.

B. The May 1997 Policy Statement

One of the first foreign policy acts of the new Labour Government in May 1997 was a tri-lateral statement, issued together with France and Germany, promising “to give particular priority to the early conclusion of an effective, legally-binding international agreement to ban world-wide the use, stockpiling, production and transfer of anti-personnel landmines”.⁴⁰ Later that month Labour announced that it would implement its manifesto commitment to ban the import, export, transfer and manufacture of all forms of anti-personnel land mines.⁴¹ In a Parliamentary written answer, Robin Cook, the new Secretary of State for Foreign and Commonwealth Affairs said:

We will accelerate the phasing out of our stocks of anti-personnel land mines and complete it by 2005 or when an effective international agreement to ban their use enters into force, whichever comes first. In the meantime, we have introduced a complete moratorium on their operational use, while we participate constructively in the Ottawa Process and push in the Conference on Disarmament in Geneva for a wider ban.

That moratorium will be suspended only if we judge that for a specific operation the security of our Armed Forces would be jeopardised without the possibility of the use of anti-personnel land mines. In such an exceptional case we would report to Parliament the decision and the circumstances which led to it.

We shall also examine how we can make progress in removing mines already laid across the world.⁴²

The Labour Government’s new position, a change from that of its Conservative predecessor, could also be regarded as a feature of its ‘ethical’ approach to foreign policy. However, like that of the Conservative Government during the 1990s, Labour policy on APMs had altered during its years out of office.

³⁸ *Labour’s Policy Pledges for a Responsible Arms Trade: Eight steps to stop the arms-to-Iraq scandal happening again*, Labour Party PR, 13 February 1997.

³⁹ *New Labour: Because Britain Deserves Better*, April 1997, p. 38.

⁴⁰ FCO PR, 8 May 1997.

⁴¹ FCO PR, 21 May 1997.

⁴² HC Deb 21 May 1997, c72W.

C. The Ministry of Defence

1. De-mining Assistance

New MOD assistance in de-mining was announced at the 1997 Labour Party Conference. Full details were revealed by the Defence Secretary, George Robertson, during a visit to a minefield in Bosnia later in October. As part of a five-point plan, he announced that a new military post would be created in the MOD to lead inter-departmental co-ordination on landmines and that an inter-departmental (MOD/FCO/DFID) working group on the issue would be formed. He also stated that the Defence Evaluation and Research Agency (DERA) would examine the suitability of commercial 'off-the-shelf' equipment for de-mining and would publicise its findings.⁴³ Additional service manpower would be assigned to assist with de-mining programmes in Bosnia, Africa and other areas of the world affected by landmines. Finally, a new Mine Information and Training Centre would be established.⁴⁴ The MITC would provide "training and information to those involved in humanitarian demining worldwide ... [it] will be the UK focus for the provision of relevant training and the exchange of information between military establishments, other government departments and sponsored non-governmental organisations both within the UK and worldwide".⁴⁵ Located at the Royal Engineers Battlefield Engineering Wing at Minley in Surrey, the MITC became operational in January 1998.⁴⁶ The MITC has a small permanent staff consisting of one captain, one warrant officer and one senior NCO, but is able to draw on expertise from elsewhere in the Army and MOD. The additional annual cost to the defence budget will be £125,000.⁴⁷ In April 1998, the MOD gifted 10 mine clearance tractors to the HALO Trust, a mine clearance charity.⁴⁸

2. New Weapons Systems

In 1997, as it was no longer to procure any anti-personnel mines, the MOD cancelled the Future Anti-Personnel Scatterable ('smart') Mine (FAPSM) project.⁴⁹ However, APMs have played a role in British doctrine in the past, being used, for example, in Borneo in the 1960s and Oman in the 1970s. Although the APM has now been relinquished, the

⁴³ Under contract to DFID, DERA has examined the Uni-Sift mineclearing system developed by Ground Clearance International (see "UK agency multiplies its minefield research", *Jane's Defence Weekly*, 30 July 1997).

⁴⁴ MOD PR, 21 October 1997. Between 1992 and October 1997, 6 British soldiers were killed and 27 seriously injured by landmines in the Former Yugoslavia. Ordnance disposal experts of the Royal Engineers only remove APMs, which pose a threat to military operations. Training and Supervision is given to others engaged in removing mines for humanitarian reasons. 12,000 Bosnian children were given training in mine awareness by the British Army in the 12 months to October 1997.

⁴⁵ MOD PR, 10 November 1997.

⁴⁶ MOD PR, 31 December 1997.

⁴⁷ HC Deb 6 November 1997, c318W.

⁴⁸ MOD PR, 9 April 1998.

⁴⁹ HC Deb 19 December 1997, c383W.

requirement for a comparable area denial weapon remains. Britain has evolved an expeditionary strategy, developing a Joint Rapid Deployment Force for this purpose. The main units of the JRDF are currently fairly lightly equipped and might find themselves in circumstances abroad, where previously APMs would have been used to defend exposed positions against or deny routes to an enemy. Without the use of APMs in this role, units in the JRDF have apparently been issued with more heavy machine guns as a short-term expedient and work progresses on a rapid fire New Support Weapon (NSW), but this will not enter service until 2004.⁵⁰

Separately, the Army continues to deploy Anti-Tank Mines (ATMs) and is proceeding with plans for the procurement of a new generation of these weapons. The latter, a scatterable system, known as the Shielder, was first ordered in January 1996 and will enter service in 1999 at a cost of £62m.⁵¹ ATMs, including those with anti-handling devices, are not covered by the Ottawa Convention, although they can pose a threat to civilians, while obviously on a lesser scale than APMs. The magnetic influence fuse on the mine used by the Shielder is apparently highly sensitive.⁵²

⁵⁰ N. Vinson, "The Demise of the Anti-Personnel Mine: A Military Perspective", *RUSI Journal*, February 1998.

⁵¹ *Jane's Defence Weekly* 10 January 1996, *MOD Performance Report 1996/97*, Cm 3781, p 32 and *The Sunday Telegraph* 5 April 1998.

⁵² *The Sunday Telegraph*, 5 April 1998.

VI Humanitarian De-mining and Support for Mine Victims

Article 6 of the Ottawa Convention covers the need to tackle the global humanitarian impact of mines by providing technical and financial assistance to programmes for humanitarian mine clearance, victim assistance and general rehabilitation. However, it was recognised that there was a need to co-ordinate the plethora of governmental and non-governmental initiatives dedicated to aspects of de-mining and victim support. Therefore, a process known as 'Ottawa II' was conceived, involving a series of conferences to co-ordinate mechanisms for implementing these components. On 24-25 March 1998 Canada hosted a Mine Action Workshop:

...to discuss how the international community might best manage the humanitarian demining and victim assistance agendas during the coming months and years, and to seek agreement on a coordinated global approach to utilizing the resources and energy committed, with maximum results and cost effectiveness.⁵³

A further conference was held in Washington on 21-22 May for donors, recipient nations, international de-mining organisations and NGOs to make firm commitments for additional de-mining support. The United States has proposed a 'De-mining 2010 Initiative' to develop a global strategy for removing the landmine threat to civilians by the year 2010, believing that the goal of "zero victims" can be achieved in "years, not decades".⁵⁴ Additional conferences are planned during 1998 and 1999, including a number of regional workshops and an International Symposium and Exhibition on de-mining technology to be hosted by the EU in Italy during September 1998.

At Ottawa, when signing the anti-mines convention, Clare Short confirmed that the UK would double its contribution to the costs of de-mining operations around the world run by NGOs and the UN to £10m a year over the next three years.⁵⁵ At present, the UK is directly supporting mine clearance projects in Afghanistan, Cambodia, Laos, Northern Iraq and Mozambique. Contributions are made to de-mining in other countries via the EU and UN.⁵⁶

⁵³ Department of Foreign Affairs and International Trade, Canada, from the Safe Lane web site: <http://www.mines.gc.ca>

⁵⁴ Washington Conference on Global Humanitarian Demining, Chairman's Report, 22 May 1998.

⁵⁵ *DFID PR*, 3 December 1997.

⁵⁶ HC Deb 2 February 1998, c 470W.

Other countries have also pledged money to support humanitarian de-mining projects. Canada, for example, has pledged around £45m, Japan around £50m and Norway around £75m to de-mining over the next five years, although these sums come from proportionately larger overseas aid budgets.⁵⁷ The United States is contributing approximately £45m for de-mining operations in 1998.⁵⁸

⁵⁷ Norway US\$120m, Japan US\$80m and Canada US\$73m, *Jane's Defence Weekly* 10 December 1997 and *British Aid Statistics 1991/92-1995/96*.

⁵⁸ United States US\$68m, *White House PR*, 17 September 1997.

VII UK Ratification of the Ottawa Convention and Criticisms of the Government Policy of May 1997

Despite NGOs' welcome for Labour's support of the Ottawa Convention and its various de-mining initiatives, the Government has been the subject of criticism on two separate points: firstly on the question of the use and timing of the destruction of Britain's stocks of landmines, and secondly on when it would ratify the Convention.

A. UK Landmine Use and the Timing of UK Landmine Destruction

Labour's May 1997 policy statement represented a change at least in as far as the British Government's attitude to the Ottawa Convention was concerned. However, the fact that it reserved the right to use APMs in exceptional circumstances and that it did not plan, the Convention allowing, to destroy all its current APM stocks until 2005, was the subject of some criticism.⁵⁹ Indeed, the essence of this policy, an export ban and use only in exceptional circumstances, could be said to be not altogether different from that reached by the Conservative Government in April 1996.

The new Government's position may have emerged as part of a compromise within Whitehall. The military advice on the utility of APMs, which underpinned the Conservative Government's position, is unlikely to have changed overnight in May 1997, despite the opposition voiced against the military effectiveness of APMs by some ex-Servicemen.⁶⁰ Any compromise on APMs may have related, in part, to the continued RAF deployment of the JP233 airfield denial weapon, which includes an APM sub-munition, the HB876. In 1996 the MOD ordered a JP233 replacement, the Conventional Armed Stand-Off Missile (CASOM), but this will only begin to enter service in 2001 and full production may take some years thereafter. This still leaves the Army's APMs, which in current scenarios might be used for area defence or route denial. The decision to delay destruction of Army APMs until whenever the Convention entered force or 2005, whichever was earlier, may have been taken in order to allow sufficient time for research on and procurement of replacements to take place.

Whatever the reasoning of May 1997, in January 1998 the Defence Secretary wrote to certain Members of Parliament announcing that the Army's stocks of one million APMs would now be destroyed by the year 2000. However, in keeping with the provisions of the

⁵⁹ HC Deb 21 May 1997, c72W, and see, for example, "Britain must commit to a total ban on landmines", *The Observer*, 12 October 1997.

⁶⁰ See, for example, the widely endorsed ICRC study, *Anti-Personnel Mines: Friend or Foe*, March 1996, and "Army chiefs resist pledge to end making of landmines", *The Guardian*, 12 May 1997.

Convention, 4,000 would be retained for training purposes.⁶¹ This would leave the HB 876 anti-personnel sub-munition contained in the RAF's JP233 anti-airfield weapon as the only APM in front-line British service. In June 1998 the MOD announced that this APM, too, would be destroyed by 1 January 2000.⁶² It seems that the Government still retains the right to use APMs up until this date in line with the statement of May 1997, i.e. if the security of British forces is jeopardised without their use. It is also unclear whether the APMs to be destroyed include all of the British Army's Claymore mines, which can be fired either by trip wire (banned by the Convention) or command wire (legal under the Convention).⁶³

B. Ratification of the Ottawa Convention

The Government has also been under pressure to proceed speedily with ratification of the Ottawa Convention to help to bring about its entry into force as soon as possible. In December 1997 the International Campaign to Ban Landmines suggested December 1998 as a target.⁶⁴ Given that this required 40 Ottawa signatories to complete their often laborious ratification procedures by June 1998, this perhaps seemed optimistic. In fact, as of 24 June 1998 only 20 states had ratified the Convention. These were Belize, Bolivia, Canada, Croatia, Denmark, Djibouti, Fiji, The Holy See, Ireland, Hungary, Mali, Mauritius, Mexico, Niue (a Protectorate of New Zealand), Peru, San Marino, Switzerland, Trinidad and Tobago, Turkmenistan and Zimbabwe.⁶⁵

In contrast to most democracies, parliamentary procedures for treaty ratification in the UK can be perfunctory.⁶⁶ However, in this case enforcement of various provisions of the Ottawa Convention, such as banning the use, production and retention of APMs, as well as those for a fact-finding missions regime, need to be translated into (primary) UK legislation. Such a move is also mandated by Article 9 of the Convention. A *Landmines*

⁶¹ HC Deb 9 March 1998, c10.

⁶² HC Deb 8 June 1998, c 423W.

⁶³ Claymore can apparently be easily adapted to be fired in ways contrary to the Convention (*The Sunday Telegraph* 5 April 1998).

⁶⁴ *The Independent*, 19 December 1997.

⁶⁵ UN Treaty Database. It is important to make a distinction between the number of Parliaments which have passed legislation enacting the Ottawa Convention in their domestic law and those states which have then actually deposited their instruments of ratification. 126 states have now signed the Convention.

⁶⁶ Under the Ponsonby Rule treaties requiring ratification are laid (in the form of command papers) before both Houses of Parliament for a period of 21 sitting days to allow the opportunity for questions to be tabled on them or for debate. A treaty does not require the positive approval of Parliament as a whole or of any particular committee convened for this purpose. If Parliament has not expressed an opinion against a measure, then after the 21-day period, the Government may proceed to deposit its instrument of ratification. However, if a treaty requires British legislation then this must be approved by Parliament in the normal way.

Bill must be given Royal Assent before the UK Government is able to deposit its instrument of ratification with the Depository, in this case the UN Secretary-General.

Tony Lloyd, the Foreign Office Minister responsible for landmine control, first stated that the Government position on ratification in December 1997: -

“We attach the greatest importance to the Ottawa Convention, signed by my right hon. Friend the Secretary of State for International Development on 3 December. We intend to ratify it as soon as possible. The timing of the legislation necessary for ratification will depend on our legislative programme. We intend to introduce the legislation as soon as the parliamentary timetable allows.”⁶⁷

This remained the Government’s position up until at the end of June, although, separately, it had accelerated its own programme of APM destruction.⁶⁸ Mr Lloyd’s reference to the “parliamentary timetable” was widely believed to allow for the fact that the *Landmines Bill*, which in any case needed to be drafted, had arisen too late to be introduced in the already cramped 1997-8 legislative session. More realistically, it seemed a Bill would be presented to one or other House of Parliament at the beginning of the next session in November 1998. Allowing for the normal passage of primary legislation, it appeared that the Government would not be in a position to ratify the Ottawa Convention before spring 1999 at the earliest.

The above refers to the normal train of events but in exceptional circumstances legislation can be rushed through the House, usually only with the consent of the major Opposition parties. In recent months there has been growing public, Opposition and Labour back-bench pressure for UK ratification of the Ottawa Convention to proceed as quickly as possible, linked with the impending anniversary of the death of Diana, Princess of Wales, on 31 August.

In business questions on 25 June, the Shadow Leader of the House, Sir George Young, indicated the Official Opposition’s support for the Landmines Bill. He stated that, “We have given a commitment to assist that legislation” and added, “Legislation should have been introduced earlier in the Session.”⁶⁹ For the Liberal Democrats, Mr Tyler “offered our fullest co-operation to achieve ratification of the Ottawa Convention” and stated his belief that “the matter is uncontroversial.”⁷⁰ Earlier in the week, Mr Dalyell had declared, “what sort of figure does our country cut in the outside world when we wring our hands and say that we cannot ratify because of a shortage of parliamentary time?”⁷¹

⁶⁷ HC Deb 9 December 1997, c497W.

⁶⁸ HC Deb 22 June 1998 c 684.

⁶⁹ HC Deb 25 June 1998 c 1187.

⁷⁰ HC Deb 25 June 1998 c1189.

⁷¹ HC Deb 22 June 1998 c 685.

In reply to Sir George Young, Mrs Taylor, the Leader of the House, stated: -

“... we have been saying all along that we would like to find time to ratify the Ottawa Convention as soon as possible. It has been difficult to find time, not least because of the important progress which has been made on Northern Ireland, which I think we all welcome.

The Bill on land mines has not yet been introduced. It is being drafted, and I expect that it will be ready for introduction in the near future.”

On 1 July the Prime Minister announced that the Government intended to publish a *Landmines Bill* in the following week and “if legislation is completed in July, as we wish it to be, we will be among the first 40 nations to ratify, as indeed we promised to do”.⁷² Thus, after consultations between the Government and the Opposition benches, the House will consider all stages of the *Landmines Bill* on 10 July, previously a non-sitting Friday.

⁷² HC Deb 1 July 1998, cc 349-350.

VIII US Policy and NATO

Although there are many major non-signatories to the Ottawa Convention, including China, India, Pakistan and Russia, perhaps most significant is the USA. This is not only because the USA has a major influence in world affairs but also because it is the only major power to deploy APMs beyond its borders.

The US government first called for the elimination of APMs in 1994, but in a position similar to that of the UK at the time, it favoured the Conference on Disarmament as the best forum for negotiating a ban. It announced, in May 1996, steps to eliminate the bulk of its non-self-destructing APMs by 1999 and subsequently, in January 1997, declared a permanent export ban. However, the USA only assumed observer status in the Ottawa Process and did not sign the resulting Convention in Oslo in September 1997. There were two main sticking points for the US representatives, firstly the question of the inter-Korean border and secondly that of mixed mines. The border between Communist North Korea and capitalist South Korea is one of high tension and one of the world's most heavily defended. The South Korean army, on the border under tactical US command, is supported by 37,000 US troops. It has been Pentagon advice that APMs are essential for the defence of this frontier, and of the resident US division against a possible cross-border offensive by the numerically superior forces of the North. US forces also possess the air-deployed Gator mixed mine system, which was used during the Gulf War. Like many militaries, they see the ATM as an essential weapon of war.⁷³ However, this system, when laid, comprises a number of ATMs surrounded by separate non-linked APMs. Efforts by the US government to work exemptions for the mines on the Korean border and the Gator system into the Ottawa Convention proved abortive and as a consequence it did not sign.⁷⁴

Despite this, the US continues to destroy its existing stockpiles of APMs. It has stated that by 2003 it aims no longer to use APMs outside Korea and by 2006 these mines will also be removed. These deadlines will allow sufficient time for alternative systems to be developed. In September 1997 it announced that it would double the amount it spent on de-mining projects.⁷⁵ Still, although the US government will have removed its APM stocks from overseas by 2006, it will retain the use of the Gator system and may continue to maintain APM stockpiles in the USA thereafter.⁷⁶ In May 1998, in a slight change of policy, President Clinton indicated that the US government might be prepared to sign the

⁷³ White House Factsheet, *US Efforts to Address the Problems of Anti-Personnel Landmines*, 17 September 1997.

⁷⁴ N. Vinson, "The Demise of the Anti-Personnel Mine: A Military Perspective", *RUSI Journal*, February 1998.

⁷⁵ Ibid and K. Inderfurth, "Deminig 2010 Initiative: Coordination of resources for mine action", *RUSI Journal*, February 1998.

⁷⁶ *The Washington Post* 31 October 1997.

Ottawa Convention in 2006, but only if alternatives to all its existing APMs had been developed by then.⁷⁷ Given that he will no longer be office in 2006, this statement may be purely declaratory. In the meantime, a law passed by Congress and approved by President Clinton in 1996 will introduce a moratorium on US APM use for one year from February 1999. The legislation explicitly exempts international borders and thus US mines laid between North and South Korea. The Pentagon has been seeking to overturn this moratorium.⁷⁸

The US opposition to the APM ban has caused difficulties within NATO, where, apart from Turkey, it is the only non-signatory of the Ottawa Convention. The US army has stockpiles of APMs in Britain, Germany, Italy and Norway. A US delegation visited Europe in January 1998 in order to discuss with other Member States how these stockpiles should be treated.⁷⁹ Separately, discussions are proceeding within NATO on the impact of the Ottawa Convention.⁸⁰ The Norwegian Government, for example, has insisted that all US APMs must leave Norwegian soil by the time the Convention enters into force.⁸¹ The British position on US stockpiles is unclear. There is, however, a more profound operational problem, in that the forces of NATO Ottawa signatories will be working alongside those of the USA and Turkey in military operations where the former may be prevented from having any form of contact with the APMs possessed by the latter. Canada, the only NATO Member to have ratified the Ottawa Convention so far, has made legislative provision for this contingency in its enabling legislation. Similar provision is made in Clause 5 of the *Landmines Bill*, which is discussed in the next Section.

⁷⁷ *The International Herald Tribune*, 23 May 1998.

⁷⁸ *AP*, 5 May 1998.

⁷⁹ "US: Critics say US lobbying NATO nations to maintain mine stockpiles", *API*, 27 February 1998.

⁸⁰ *NATO Luxembourg Declaration*, May 1998, Para 16.

⁸¹ "Four more years with landmines", *Norway Now*, 1 June 1998.

IX The Landmines Bill

The Bill can broadly be divided into five parts: the first defines APMs and offences relating to them; the second introduces defences to these offences, with specific reference to British military operations with the forces of those countries which have not banned APMs; the third refers to the destruction of APMs; the fourth to fact-finding missions under the Ottawa Convention; and the fifth to information and records necessary to meet obligations under the Convention.

The Convention itself confers obligations on states. The purpose of the Bill is to confer obligations on individuals which allow those states to meet their obligations under the Convention. Whereas a breach of the obligations under the Convention would be subject to international law, the offences created in the Bill would provoke criminal prosecutions of individuals.

Clauses 1-6 define APMs and offences relating to them. **Clause 1** includes a list of definitions used in the Bill, reproducing the definitions contained in Article 2 of the Ottawa Convention. Article 2 and Clause 1 make an important distinction between landmines “designed to be detonated by the presence, proximity or contact of an individual”, ie APMs (which are prohibited by Article 1 of the Convention), and landmines “designed to be detonated by the presence, proximity of contact of a vehicle” ie Anti-Tank Mines (which are not). ATMs are also not prohibited if they are fitted with anti-handling devices which are intended to prevent them from being intentionally neutralised or tampered with. A directional weapon, such as the US Claymore mine, is not prohibited by the Convention or the Bill if it is detonated by deliberate human command, either by an attached cable or by another form of signal.

Clause 2, in line with Article 1 of the Convention, prohibits the use, development and production, acquisition, possession and transfer (including export) of an APM. It also makes it an offence, to assist, encourage or induce any other person to do such things. Contravention is punishable by a maximum term of 14 years' imprisonment. Under **Clause 3**, Clause 2 applies to acts done in the UK and to those done by UK nationals abroad. Implementing Article 3 of the Convention, **Clause 4** allows for exemption from Clause 2 if the possession or transfer of APMs is for the purpose of their destruction or for use in developing mine clearance techniques or training.

Clauses 5 and 6 introduce defences under Clause 2.

Clause 5 allows exemptions from prosecution under Clause 2 for British troops involved in joint operations with non-States Parties. The operation must take place "wholly or mainly outside the United Kingdom"⁸² and must be one in which APMs have been or may be deployed by non-States Parties, but in which APMs are not to be laid in contravention of the Convention (ie by a State Party).

British personnel would not in these circumstances be allowed to lay APMs, under Clause 5 (2)(b) and 5 (5). However, other conduct which would otherwise be an offence is allowed if it "takes place in the course of, or for the purposes of, [such] a military operation ... or the planning of such an operation."⁸³

The Clause is designed to remove any potential legal difficulty arising from the co-operation of British forces with those of other countries, which are not parties to the Convention and still include APMs in their arsenals. Within NATO, this includes Turkey and the USA. British forces might, for example, escort US military convoys containing APMs or build bridges over which such convoys are driven.

Clause 5 does appear to allow British personnel to be involved in **planning** a joint operation with a partner which is not a party to the Convention, provided that British forces will not be involved in carrying out any mining. Similarly, other conduct short of direct involvement in mine laying would be allowed. The clause would operate only if the military operation in question fell within the definition of sub-clause 5 (3). Examples might be a US-led force such as was deployed in the Gulf War, or joint operations in the Korean peninsula.

Two alternative defences are allowed. The first, in sub-clause 5 (1), would cover the situation where APMs had not in fact been laid by a party to the Convention. The second defence, in sub-clause 5 (2), could be invoked in a situation where APMs had been laid illegally but this had been unknown to the accused and could not have been suspected.

Canada, in its attempt to resolve the issue of joint operations with the USA, made a distinction in its legislation implementing the Ottawa Convention between active and non-active assistance to the forces of other countries engaged in activity prohibited by the

⁸² Clause 5 (3)(a).

⁸³ Clause 5 (1)(a).

Convention.⁸⁴ The Canadian Government then appended a Declaration to its instrument of ratification clarifying its position, which is reproduced in Cm 3990.

The main purpose of the Canadian Declaration and Clause 5 of the *Landmines Bill* seems to be to distinguish between participation in a joint operation with the USA or other non-party, in which APMs have been or may be deployed, and the assistance, encouragement or inducement to engage in activities covered by the Convention which is prohibited under Article 1 (1)(c).

Critics have argued that Clause 5 "amounts to an exemption or reservation from the Ottawa Convention which allows no reservations (in it Article 19)."⁸⁵ It is open to question whether other States Parties would view the matter in these terms, and whether Clause 5 would be seen as either inconsistent with the UK's obligations under the Convention or, more generally, inconsistent with the spirit of the Convention.

If it is intended merely to facilitate co-operation by allowing British personnel to 'turn a blind eye' to American policy on APMs, then this might not be seen as contradicting the obligation on the British Government to discourage the use of APMs and to promote accession to the Convention. This might be the case in particular if, at the diplomatic level, the UK actively supported the Convention and urged the USA to become party to it. If it led to greater involvement, then problems might arise. Other States Parties might take up the procedures for verification of compliance and settlement of disputes as set out in Articles 8, 10 and 11 of the Convention. A definitive opinion might then be sought from the International Court of Justice. If this were to go against the UK, then the Government would have the choice of amending domestic legislation or withdrawing from or seeking to amend the Convention.

Clause 6 introduces a general defence to the effect that if a person lacks knowledge or does not suspect that he is engaged in conduct illegal under Clause 2, i.e. manufacturing components for or exporting landmines, then he may not necessarily be guilty of an offence under the same Section.

Clauses 7-12 relate to the destruction of APMs. Under **Clause 7**, if the Secretary of State has grounds to suspect that an object is an APM or an APM component, other than that permitted for training or research under Clause 4, and is considering its destruction, he may then serve a notice on the person possessing the object or objects, preventing them from being relinquished while further enquiries are made. Under **Clause 8**, provided that

⁸⁴ Canadian Landmines Act, Section 6 (3) (d)

⁸⁵ *Britain's Landmines Bill is Flawed*, Mines Advisory Group, Briefing Paper, 7 July 1998.

there is reasonable cause and, if necessary, without notice under Clause 7, warrants may be issued to persons authorised by the Secretary of State to enter and search premises and to remove or warn for destruction the prohibited object or objects in question. Within six months of any removal, the Secretary of State, under **Clause 9**, may serve notice on their former possessor that the APMs or APM components will be destroyed but that objections can be made to their destruction. After the six month period, he may order the objects' destruction but they must be returned if this has not occurred within a year of their original removal. **Clause 10** allows, within six months of an original warning being issued, for notices to be served that objects marked for destruction under Clause 8 will be destroyed, but that objections can be made. Warrants may then be issued for persons to enter premises and destroy *in situ* such objects marked for destruction in the following six months. **Clause 11** allows for compensation to be paid to any person suffering loss arising from destruction under Clauses 9 and 10 if the correct procedures were not followed and a Court believes that the objects in question were not prohibited. **Clause 12** creates various offences, such as wilful obstruction of an authorised person or giving false information. The punishments for these offences are a fine, two years imprisonment or both.

Clauses 13-16 concern fact-finding missions and fulfil UK obligations under Article 8 of the Ottawa Convention. If a State Party reasonably suspects that another State Party is not complying with the Convention, then it may request clarification via the UN Secretary-General. If no reply is given or the requesting State Party deems the reply to be unsatisfactory, a Special Meeting of all States Parties may be convened to consider the matter. This can only occur if a third of the States Parties give their approval. The Special Meeting may, by simple majority, decide to send a fact-finding mission of internationally-approved experts to the country in question, although at any time the requested State Party may invite such a mission onto its territory. The mission will report back to the Special Meeting or Meeting of State Parties which may take further action.

Clause 13 provides for the Secretary of State to authorise that a fact-finding team shall, within a specified area, have such rights of access, entry and unobstructed inspection as are conferred by Article 8 of the Convention. **Clause 14** creates offences of refusing to co-operate with or wilful obstruction of a member of the fact-finding team, subject to a fine. **Clause 15** confers the same privileges and immunities (such as immunity from prosecution) on members of fact-finding teams as are enjoyed by diplomatic agents in accordance with the Articles set out in Schedule 1 of the *Diplomatic Privileges Act 1964*. Similar privileges and immunities have already been conferred on inspectors and observers for other arms control agreements. **Clause 16** authorises the Secretary of State to reimburse any person for expenditure incurred in connection with an inspection. Generally the fact-finding provisions of the Bill are similar to those of Acts implementing other arms control verification regimes, such as *The Chemical Weapons Act 1996* and *Nuclear Explosions (Prohibitions and Inspections) Act 1998*.

Clauses 17-19 relate to information and records. **Clause 17** gives the Secretary of State the power to require persons to keep records and such information as is needed to comply with the Convention. Under Article 7 of the latter, States Parties are required to provide annual APM reports to the UN Secretary-General from no later than six months after the Convention has entered into force. These reports must state, *inter alia*, the size of the State Party's remaining stockpile of APMs, the number of mines used for mine clearance training or for perfecting mine detection equipment, and the location of all mined areas under its jurisdiction or control. Under Clause 17, a person failing to keep the required records may be guilty of an offence, subject to a fine. Those culpable of false or misleading statements in this regard may be subject to a fine, two years imprisonment or both. Under **Clause 18** warrants may be issued to persons authorised by the Secretary of State to enter and search premises and to obtain evidence if offences are suspected. **Clause 19** provides for confidentiality of the information obtained, subject to certain exceptions, and provides for penalties for disclosing information. Broadly speaking, information may only be disclosed if it is connected to the Bill or the Ottawa Convention or relates to an illegitimate activity.

Clauses 20-23 apply to criminal proceedings. Under **Clause 20** the consent of the Attorney General (in Northern Ireland, the Attorney General for Northern Ireland) is required for prosecutions under Clause 2, although under **Clause 21** an officer of the Customs and Excise may begin a prosecution if the offence appears to involve the actual, proposed or attempted import or export of an APM or related object. **Clause 22** allows, on conviction, for the forfeiture and possible destruction of anything relating to the offence. Under **Clause 23**, where an offence under the Act is committed by a body corporate or a Scottish partnership, individual officers of bodies corporate and partners are also guilty of an offence.

Clauses 24-29 are supplemental. **Clause 24** empowers the Secretary of State to amend the Act by Order in Council in order to apply future amendments of the Treaty. Amendments will require a statutory instrument subject to the affirmative procedure i.e. it will need to be approved in draft by both Houses of Parliament. **Clause 25** provides for any expenses incurred by the Secretary of State to be paid out of money provided by Parliament and for any sums received by the Secretary of State in consequence of the Act to be paid into the Consolidated Fund. **Clause 26** states how notices under the Bill should be served. **Clause 27** includes a list of interpretations, including the fact that an APM "shall be taken as destroyed if it is permanently prevented ... from being capable of incapacitating, killing or injuring a person". **Clause 28** binds the Crown, subject to certain qualifications. Ministers, acting in the name of the Crown, have immunity from prosecution, however the courts can declare unlawful any act or omission on their part which constitutes a contravention of the Act. **Clause 29** provides for the Act to enter into force "on such day as the Secretary of State may appoint by order made by statutory instrument", declares that the Act extends to Northern Ireland and provides for provision, through Order in Council, to be made to extend its provisions to any Crown Dependency or colony. It finally provides for the Act to be cited as the *Landmines Act 1998*.

Clause 29, on the face of it, appears perfectly innocuous, but the UK is responsible for enforcing the Ottawa Convention in its dependent territories. For the UK there may be a particular problem in the Falkland Islands where 14-40,000 APMs remain as leftovers from the war of 1982. Often laid indiscriminately, they result in 20 square kilometres of the Falklands being fenced off as being potentially dangerous.⁸⁶ Under Article 5 of the Ottawa Convention, Britain must find and destroy these mines within 10 years of the Convention entering into force. The UK may apply to extend this period if it encounters problems in meeting this commitment, but this could prove diplomatically embarrassing and perhaps would not set a good example to other States Parties to Convention.

⁸⁶ *The Independent* 30 March 1998.

X Conclusion

The Ottawa Convention will come into force six months after 40 states have ratified it, which may occur by 1999.⁸⁷ Thereafter, States Parties will have four years to destroy mine stocks and ten years to clear minefields on their territory, with a further extension of ten years if this can be justified. This means that, notwithstanding the commitment to destroy its APMs by 2000, the UK would be unlikely to be forced to destroy its anti-personnel mines until 2003.

Although the negotiation of an international landmine ban in a fourteen-month period is a considerable achievement, the speed of agreement may have led to shortcomings, particularly in monitoring and enforcement. Substantial revisions may be required at a future review conference to be held five years after the Convention enters into force. Whatever its humanitarian intent, the Ottawa Convention's main flaw is that at least a quarter of the world's states have been unwilling to sign it. As has been pointed out, the Convention has generally been signed by those states which exercise firm control over the conduct of their armed forces and of their arms industries. Many of the non-signatories are precisely the opposite, and the indiscriminate use and export of APMs will only be countered by a truly universal APM ban, perhaps to be negotiated via the Conference on Disarmament. Despite this, there are guerrillas and other non-state actors, who, not bound by the Ottawa Convention, could still use APMs without scruple.⁸⁸

Even though APMs may become less widely available as a consequence of the Ottawa Convention entering into force, there remains the continuing presence of at least 85 million APMs laid across the world. In one estimate, only 100,000 APMs were lifted in 1995.⁸⁹ Although de-mining initiatives have been stepped up, particularly since last year, it may take many decades, with existing technology, to remove even a fraction of the APMs which have been dispersed.

⁸⁷ By contrast it took nearly four years to acquire the 60 ratifications necessary to allow the Chemical Weapons Convention to enter into force.

⁸⁸ On this point, Britain has apparently been resistant to classifying APMs as prohibited weapons during negotiations in Rome on the establishment of an International Criminal Court ("Britain opposes war crime status for landmines", *The Times* 6 July 1998).

⁸⁹ N. Vinson, "The Demise of the Anti-Personnel Mine: A Military Perspective", *RUSI Journal*, February 1998.

