HUMAN RIGHTS WATCH

New US Landmine Policy: Questions and Answers

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On June 27, 2014, the United States government announced a new policy foreswearing future production or acquisition of antipersonnel landmines. It said the Defense Department will conduct a detailed study of alternatives to antipersonnel mines and the impact of making no further use of the weapon. Finally, the US announced that it is "diligently pursuing other solutions that would be compliant" with the 1997 Mine Ban Treaty—also known as the Ottawa Convention—and "that would ultimately allow us to accede" to it.

The announcement was made in Maputo by the US ambassador to Mozambique on June 27, at the 1997 Mine Ban Treaty's Third Review Conference, which the US attended as an observer.[1] The policy was outlined in a White House fact sheet.[2] A number of US officials commented on the new policy, disclosing additional related information, including the Defense Department press secretary, Rear Adm. John Kirby; the Joint Chiefs of Staff; the National Security Council spokesperson, Caitlin Hayden; the State Department deputy spokesperson, Marie Harf; and the White House press secretary, Josh Earnest.[3]

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[1] Statement by Ambassador Douglas Griffiths, Mine Ban Treaty Third Review Conference, Maputo, June 27, 2014. http://www.maputoreviewconference.org/fileadmin/APMBC-RC3/friday/13_HIGH_LEVEL_SEGMENT_-_United_States.pdf.

[2] Office of the Press Secretary, The White House, "Fact Sheet: Changes to U.S. Anti-Personnel Landmine Policy," June 27, 2014, http://www.whitehouse.gov/the-press-office/2014/06/27/fact-sheet-changes-us-anti-personnel-landmine-policy (accessed July 2, 2014).

[3] US Department of Defense, "Department of Defense Press Briefing by Rear Adm. Kirby in the Pentagon Briefing Room," June 27, 2014, http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5455 (accessed July 2, 2014); Felicia Schwartz, "In New Land Mine Policy, U.S. Takes Step Toward Treaty Approval," *Wall Street Journal*, June 27, 2014, (accessed July 2, 2014), http://online.wsj.com/articles/obama-administration-sets-course-to-sign-land-mine-ban-1403870731; Office of the Press Secretary, The White House, "Statement by NSC Spokesperson Caitlin Hayden on U.S. Anti-Personnel Landmine Policy," June 27, 2014, http://www.whitehouse.gov/the-press-office/2014/06/27/statement-nsc-spokesperson-caitlin-hayden-us-anti-personnel-landmine-pol (accessed July 2, 2014); US Department of State, "Daily Press Briefing: June 27, 2014," June 27, 2014, http://www.state.gov/r/pa/prs/dpb/2014/06/228539.htm#MISCELLANEOUS (accessed July 2, 2014); Office of the Press Secretary, The White House, "Press Gaggle by Press Secretary Josh Earnest en route Joint Base Andrews, 6/27/2014," June 27, 2014, http://www.whitehouse.gov/the-press-office/2014/06/27/press-gaggle-press-secretary-josh-earnest-en-route-joint-base-andrews-62 (accessed July 2, 2014).

This review looks at the major elements of the new policy, drawing on the various statements made in association with the US policy announcement and other official information reviewed by Human Rights Watch.

1. What is new about this landmine policy?

The three new elements are 1) the ban on production and acquisition of antipersonnel mines; 2) a study of the alternatives; and 3) the statement that the US will rejoin the path toward accession to the Mine Ban Treaty.

The new policy declares that, "The United States will not produce or otherwise acquire any anti-personnel munitions that are not compliant with the Ottawa Convention in the future, including to replace such munitions as they expire in the coming years."

The shelf-life of existing antipersonnel mines stockpiled by the US decreases over time, including deterioration of batteries embedded inside mines as they age. The new policy precludes the US from extending or modifying the life of the batteries inside the existing stockpile. A US official confirmed to campaigners in Maputo that the US would not extend the shelf-life of existing systems, for example, by replacing their batteries.[4]

Under the new policy, the Defense Department has been tasked with conducting "a high fidelity modeling and simulation effort to ascertain how to mitigate the risks associated with the loss of anti-personnel landmines." In a statement about the new US policy, the Office of the Chairman of the Joint Chiefs of Staff said that landmines remain "a valuable tool in the arsenal of the United States," but expressed support for the new US policy, which it said "protects current capabilities while we work towards a reliable and effective substitute."[5]

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4 Meeting with US Delegation, Mine Ban Treaty Third Review Conference, Maputo, June 27, 2014. Unofficial notes by Human Rights Watch.

5 Email from Cindy Fields, Public Affairs Officer, Office of the Chairman Joint Chiefs of Staff, July 2, 2014. The email enclosed this statement from Col. Ed Thomas (June 27): "The Chairman believes this decision on anti-personnel landmines, given our current stockpiles, protects current capabilities while we work towards a reliable and effective substitute. As he has said, landmines, used responsibly, are a valuable tool in the arsenal of the United States which can save US and allied lives." Col. Ed Thomas, spokesman for the Chairman, Joint Chiefs of Staff.

Over the past 20 years, the US has spent more than $1 billion on the development and production of systems that could be considered alternatives to antipersonnel mines.[6] During this time it has fought a wide range of conflicts, both high- and low-intensity in a variety of environments, and has demonstrated that it can employ alternative strategies, tactics, and weaponry without having to resort to antipersonnel mines.

The new policy marks a return to the track toward accession to the Mine Ban Treaty, which prohibits antipersonnel landmines, requires the destruction of stockpiled mines within four years, and requires the clearance of mine-affected land and assistance to victims.[7] The White House press secretary told the media the new US policy "means … we were signaling our clear aspiration to eventually accede to the Ottawa Convention." He described the "notable adjustment of U.S. policy that we are now articulating our desire to be able to accede to the Ottawa Convention."[8]

Bill Clinton, when he was president, was the first world leader to call for the "eventual elimination" of antipersonnel mines, in September 1994. The US participated in the Ottawa Process, which led to the creation of the Mine Ban Treaty, but did not sign when the treaty was opened for signature in December 1997. The Clinton administration set the goal of joining in 2006. However, in 2004 the Bush administration announced a new policy that rejected both the treaty and the goal of the US ever joining. The 2014 policy by the Obama administration once again sets the goal of joining the Mine Ban Treaty, but provides no time frame.

2. How does the US policy affect US use of antipersonnel mines?

The new US policy does not address use of antipersonnel mines, which means the US still reserves the right to use its stockpiled antipersonnel mines anywhere in the world until

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[6] In May 1996, the US began a search for alternatives to antipersonnel landmines and a year later, a target date of 2006 was established for fielding alternatives. A serious effort was undertaken with significant funding, but the effort was abandoned by the George W. Bush administration's landmine policy review in February 2004. See Human Rights Watch, *Clinton's Landmine Legacy,* Vol 12, No. 3, July 2000. http://www.hrw.org/reports/2000/07/09/clintons-landmine-legacy. See also, US entry in International Campaign to Ban Landmines, *Landmine Monitor Report 2009* (Ottawa: Mines Action Canada, 2009), http://bit.ly/1wAJOma.

[7] The full title is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and On Their Destruction. See: http://www.apminebanconvention.org/

[8] Office of the Press Secretary, The White House, "Press Gaggle by Press Secretary Josh Earnest en route Joint Base Andrews, 6/27/2014," June 27, 2014, http://www.whitehouse.gov/the-press-office/2014/06/27/press-gaggle-press-secretary-josh-earnest-en-route-joint-base-andrews-62 (accessed July 2, 2014).

they expire within the next two decades. The 2004 landmine policy by President George W. Bush prohibited US use of the most common types of antipersonnel mines, those that are buried in the ground ("dumb" or "persistent" antipersonnel landmines, which lack a self-destruct feature), and since January 1, 2011, the US has been permitted to use only antipersonnel mines that self-destruct and self-deactivate anywhere in the world. These are remotely delivered mines, scattered over wide areas by aircraft, artillery, or rockets, and equipped with a self-destruct feature designed to blow the mine up after a pre-set period of time.

During the 1997 negotiations of the Mine Ban Treaty, the US sought unsuccessfully to exempt self-destructing mines from the ban. The US was rebuffed by its closet military allies, which concluded that the humanitarian dangers of such mines outweighed any military utility.

The US does not have minefields in place anywhere in the world. As part of the policy announcement, the Pentagon confirmed that, "There are no anti-personnel landmines that the U.S. has deployed anywhere," and that, "We don't have any minefields of landmines anywhere deployed in the world."[9]

3. How does the US policy affect the situation on the Korean peninsula?

In commenting on the new US landmine policy, a State Department spokesperson said that the situation on the Korean Peninsula presents "unique challenges" and: "We've been working very closely with our South Korean ally on this. This announcement does not in any way affect the defense of the Korean Peninsula."[10]

Two concerns regarding Korea are thought to have emerged as sticking points during the US policy review. One relates to the arrangement for a joint combined command structure that would put a US general in charge of South Korean military forces in the event of active hostilities, and the potential problems that might cause if the US was party to the Mine Ban Treaty but South Korea was not. A second concern is the possible need for the US to use antipersonnel mines in the event of an invasion by North Korea.

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[9] US Department of Defense, "Department of Defense Press Briefing by Rear Adm. Kirby in the Pentagon Briefing Room," June 27, 2014, http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5455 (accessed July 2, 2014).

[10] US Department of State, "Daily Press Briefing: June 27, 2014," June 27, 2014, http://www.state.gov/r/pa/prs/dpb/2014/06/228539.htm#MISCELLANEOUS (accessed July 2, 2014).

The landmines already laid in and near the Demilitarized Zone between North and South Korea are the responsibility of South Korean forces and not the US.

Numerous retired military officers have questioned the utility of both antipersonnel landmines in South Korea and elsewhere, citing the overwhelming technological superiority of other weapons in the US-South Korean arsenal in comparison to North Korea as sufficient to compensate for not using mines.[11] In addition, a former commander of US forces in Korea, the late Lt. Gen. James Hollingsworth, said in 1997 that antipersonnel landmines' "minimal" utility to US forces is "offset by the difficulty …[they] pose to our brand of mobile warfare… Not only civilians, but US armed forces, will benefit from a ban on landmines. U.S. forces in Korea are no exception."

4. When did the United States last use antipersonnel mines?

At the same time as the policy announcement, the US acknowledged for the first time that since 1991, it has used only one antipersonnel mine. A US State Department official said the US is aware of only one confirmed "operational employment" of an antipersonnel landmine by US military forces since 1991, "a single munition in Afghanistan in 2002."[12]

Previously, the last US use of antipersonnel mines was believed to have been during the 1991 Persian Gulf War, when the US scattered 117,634 self-destructing/self-deactivating landmines, mostly from airplanes, in Kuwait and Iraq. Retired Lt. Gen. Robert G. Gard, Jr. has said that use of the high-tech mines was "counter-productive" because the mines "impeded the maneuverability of our attacking units, slowed their operational tempo and inflicted casualties on our own troops."[13] A September 2002 report by the US General Accounting Office (GAO) said that some US commanders were reluctant to use mines because of their impact on mobility, fratricide potential, and safety concerns. The report also found that the Defense Department did not provide any data to indicate, either

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[11] See, for example, Human Rights Watch and the Vietnam Veterans of America Foundation, *In Its Own Words: The U.S. Army and Antipersonnel Mines in the Korean and Vietnam Wars*, Vol. 9, No. 3, July 1997. http://www.hrw.org/sites/default/files/reports/general977.pdf.

[12] "And since the Ottawa Convention came into force in 1999, we are – or since 1991, excuse me – we are aware of only one confirmed operational employment by U.S. military forces, a single munition in Afghanistan in 2002." US Department of State, "Daily Press Briefing: June 27, 2014," June 27, 2014, http://www.state.gov/r/pa/prs/dpb/2014/06/228539.htm#MISCELLANEOUS (accessed July 2, 2014).

[13] Lt. Gen. Robert G. Gard Jr. (USA, Ret.), "Disappointing U.S. Statement on Anti-Personnel Land Mines," July 9, 2014. http://www.huffingtonpost.com/lt-general-robert-g-gard-jr-/disappointing-us-statemen_b_5568273.html.

directly or indirectly, that the US landmine use caused any enemy casualties, equipment loss, or maneuver limitations.

The US military has refrained from using antipersonnel landmines in part because the broadly ratified Mine Ban Treaty has stigmatized these weapons. Most US allies are party to the Mine Ban Treaty, including all European Union member states and all other NATO members as well as Australia and Japan. The treaty's prohibition on assistance with activities banned by the treaty means that interoperability considerations have most likely helped to contribute to the lack of US antipersonnel mine use.

The US does not maintain any minefields globally after removing its mines from around Guantanamo Naval Base in Cuba from 1996-1999.

5. When did the US last produce antipersonnel mines?

The US has not produced antipersonnel mines since 1997, and budget documents indicate no plans to produce them in the future. That led Senator Patrick Leahy, the leading Senate proponent of the Mine Ban Treaty, to describe the new US ban on production as an "incremental" but "significant" step because it "finally makes official policy what has been informal fact for a decade and a half."[14]

The last US antipersonnel mines were produced in 1997.[15] The last non-self-destructing antipersonnel mines were procured in 1990, when the US Army bought nearly 80,000 M16A1 antipersonnel mines for $1.9 million, while the last self-destructing/self-deactivating antipersonnel mines were 450,000 ADAM and 13,200 CBU-89/B Gator mines produced between 1992 and 1997 for $120 million.

No victim-activated munitions are being funded in the procurement or the research and development budgets of the US Armed Services or Defense Department, but two related programs are being funded: the XM-7 Spider Networked Munition and the IMS Scorpion. These once had the potential for victim-activated features (thereby making them

[14] Office of Senator Patrick Leahy, "Reaction Of Senator Patrick Leahy To The White House Announcement Of Changes To U.S. Landmine Policy," June 27, 2014, http://www.leahy.senate.gov/press/reaction-of-senator-patrick-leahy-to-the-white-house-announcement-of-changes-to-us-landmine-policy (accessed July 2, 2014).

[15] Human Rights Watch, *Exposing the Source: U.S Companies and the Production of Antipersonnel Mines*, Vol. 9, No. 2, July 1997. http://www.hrw.org/reports/1997/04/01/exposing-source.

antipersonnel mines as defined by the Mine Ban Treaty), but they are now both strictly "man-in-the-loop" or command-detonated and therefore permissible under the treaty.

With the new US pledge to no longer produce or acquire antipersonnel mines, there are now just 11 countries left in the world that either still actively produce the weapons or reserve the right to do so: Burma, China, Cuba, India, Iran, North Korea, Pakistan, Russia, Singapore, South Korea, and Vietnam. Of these, four are thought to be actively producing these mines (Burma, India, Pakistan, and South Korea).

6. How many landmines does the United States stockpile?

As part of the policy announcement the Pentagon has disclosed that the US has an "active stockpile of just over 3 million anti-personnel mines in the inventory."[16] This represents a significant reduction from the previous total reported in 2002 of approximately 10.4 million antipersonnel mines.[17]

The active stockpile consists of self-destructing and self-deactivating antipersonnel mines, including the following types: Artillery Delivered Antipersonnel Mine (ADAM), Ground Emplaced Mine Scattering System (GEMSS), GATOR, Volcano (in M87 dispenser only), Pursuit Deterrent Munition (PDM), and Modular Pack Mine System (MOPMS).

Stockpiled landmines that are in an unusable condition or declared excess to war fighting requirements fall under the "inactive" category and are awaiting physical destruction and cannot be used or transferred back to the active inventory.

In response to a journalist's question about the shelf-life of existing antipersonnel mines, the Defense Department spokesperson stated that, "We anticipate that they will start to decline in their ability to be used about -- starting in about 10 years. And in 10 years after that, they'll be completely unusable."[18]

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[16] "We have an active stockpile of just over 3 million anti-personnel mines in the inventory." US Department of Defense, "Department of Defense Press Briefing by Rear Adm. Kirby in the Pentagon Briefing Room," June 27, 2014, http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5455 (accessed July 2, 2014).

[17] Information provided by the US Armed Services in Spring/Summer 2002, cited in US General Accounting Office, "GAO-02-1003: MILITARY OPERATIONS: Information on U.S. use of Land Mines in the Persian Gulf War," September 2002, Appendix I, pp. 39–43. See also: US entry in International Campaign to Ban Landmines, *Landmine Monitor Report 2009* (Ottawa: Mines Action Canada, 2009), http://bit.ly/1wAJOma.

[18] Ibid.

Previously, in 2010, the Defense Department indicated that the batteries in self-destructing and self-deactivating mines have a shelf-life of 36 years and estimated that the shelf-life of batteries in the existing stockpile of antipersonnel mines would expire between 2014 and 2033.[19]

During the Maputo Review Conference, a Chinese official informed representatives of the International Campaign to Ban Landmines that China's stockpile consists of "less than five million" antipersonnel mines, significantly fewer than the 110 million mines estimate made back in the mid-1990s.[20] With the reduced US stockpile number, Russia may now hold the world's largest stockpile of antipersonnel mines. In 2004, Russia for the first time released official information on its stockpile, citing a total of 26.5 million landmines, but this number is likely to be significantly lower following stockpile destruction efforts.[21]

7. When did the United States last export antipersonnel mines?

US law has prohibited all antipersonnel mine exports since October 23, 1992, through a comprehensive moratorium enacted at the initiative of Senator Leahy.[22]

The US is one of at least 34 countries that exported antipersonnel landmines in the past. The US exported over 5.6 million antipersonnel mines to 38 countries between 1969 and 1992. Deminers in at least 28 mine-affected countries have reported the presence of US-manufactured antipersonnel mines, including non-self-destructing and self-destructing/self-deactivating types.

Due in part to the US export moratorium, there has been a de facto global ban on the transfer of antipersonnel mines in effect since the mid-1990s, while a low level of illicit trade and of unacknowledged or denied trade has continued.

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[19] According to a 2010 Department of Defense document on file at Human Rights Watch.

[20] Rick Gladstone, "U.S. Chided for Delays Over Treaty on Weapons," *New York Times*, June 25, 2014. http://www.nytimes.com/2014/06/26/world/us-chided-for-delays-over-treaty-on-weapons.html.

[21] In 2010, Russia informed Mine Ban Treaty states parties that it has destroyed 10 million landmines, including an unspecified number of antipersonnel mines.

[22] The US export moratorium on antipersonnel mines was last extended on December 26, 2007, for six years, until 2014.

8. Does the new US policy affect its mine clearance contributions?

In commenting on the policy announcement, the National Security Council said that the US shares the humanitarian goals of the Mine Ban Treaty and is the world's single largest financial supporter of humanitarian mine action. The US has committed to "continue to support this important work" and said it remains committed to "a continuing partnership" with Mine Ban Treaty states parties and nongovernmental organizations in addressing the humanitarian impact of antipersonnel mines. So the important role that the US has played as the leading funder of mine clearance programs around the world does not appear to be affected by the US policy announcement.

The US has also provided assistive devices and other rehabilitation services to over 250,000 people with disabilities in 35 countries through the US Agency for International Development-managed Leahy War Victims Fund. The US signed the Convention on the Rights of Persons with Disabilities on July 30, 2009, but has yet to ratify the treaty.

9. Does the new landmine policy mark the end of the administration's policy review?

According to US officials, the new policy announced June 27 is not the final outcome of the policy review the Obama administration initiated in 2009, but is an interim or initial policy. In its statement to the Mine Ban Treaty's Third Review Conference, the US said that "other aspects of our landmine policy remain under consideration, and we will share outcomes from that process as we are in a position to do so."

The US has participated as an observer in every meeting of the Mine Ban Treaty since the Second Review Conference in Cartagena, Colombia in December 2009. It is expected that this observer participation will continue until the policy review is finally concluded.

Two-thirds of the US Senate must approve US accession to the Mine Ban Treaty. In a May 2010 sign-on letter to President Barack Obama, 68 senators expressed their support for the Mine Ban Treaty. The letter expressed "strong support" for the decision to review US landmine policy and expressed confidence that the administration "can identify any obstacles to joining the Convention and develop a plan to overcome them as soon as possible."[23]

[23] "US: Two-Thirds in Senate Back Landmine Ban," Human Rights Watch news release, May 8, 2010, http://www.hrw.org/news/2010/05/08/us-two-thirds-senate-back-landmine-ban.

Relevant Publications

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