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**THE 1997 OTTAWA
CONVENTION AND THE USE OF
ANTI-PERSONNEL LANDMINES
IN THE UKRAINE WAR**

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Introduction

More than 26 years have passed since the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction of 1997, usually referred to as the Ottawa Convention, was signed. However, it has not reached its goal of eradicating such weapons since the conclusion of the agreement over 40 years ago. Indeed, it is estimated that landmines killed or maimed more than 5,500 people in 2021, mainly civilians, half of whom were children (UN News, 2023).

The presence of anti-personnel landmines is especially damaging in countries such as Angola or Cambodia, which have endured significant conflicts in recent years, causing millions of people to live with their risk daily (UN News, 2023). Nevertheless, they are still used today in conflicts such as the War in Ukraine. Indeed, since the beginning of the full-scale invasion of Ukraine in February 2022, there have been accusations of their use between Russia and Ukraine. The use of these types of landmines would have caused hundreds of deaths, both military and civilian (Waterhouse, 2023). Even so, this estimate could represent only the tip of the iceberg since UNICEF and Ukrainian officials warn that up to 30 per cent of the country may be mined because of the hostilities (The Kyiv Independent, 2022).

Considering the current use of these weapons, this Info Flash aims to overview the legality of using anti-personnel landmines and analyse the implications of their use by Ukraine and Russia in the ongoing war.

The Ottawa Convention: Its Content and Broad Consensus

By 1997, the Ottawa Convention became a reflection of the international consensus that aimed at ending 'the suffering and casualties caused by anti-personnel mines' (United Nations Anti-Personnel Landmines Convention, 1997). This limitation arises from the need to prohibit the devastating effects of these weapons, as they kill and maim indiscriminately and hamper economic development and reconstruction (United Nations Anti-Personnel Landmines Convention, 1997, Preamble). In concrete terms, this agreement reflected the broad consensus on banning anti-personnel mines globally and requiring the destruction of stocks, clearance of mined areas, and assistance to victims (HRW, 2023a). Yet, this ban does not apply to all types of landmines, such as antivehicle mines and command-detonated (remote-controlled) mines (Landmine and Cluster Munition Monitor, 2021).

The Conference, attended by up to 150 countries and which achieved the consensus of 121 to sign the Convention, was described as an achievement by world leaders. The Canadian Prime Minister qualified the conference as an 'achievement without precedent or parallel in either international disarmament or international humanitarian law' (JW, 2000). However, despite the echo it received, the international accord has not completely eradicated the use of landmines. A reason for its lack of effect is that not all countries have ratified it. As of 2023, only 164 countries are parties to the Convention (Anti-Personnel Mine Ban Convention, 2023).

Meanwhile, there are still 33 states that have not yet formally ratified it. Some crucial landmine producers, such as the United States, Russia, India and Pakistan, are not even signatories. (Arms Control Association, 2022). Despite not having endorsed the provisions of the Convention, some of these countries have agreed to move toward eventually eliminating the weapons (International Committee of the Red Cross, n.d.).

The Presence of Anti-Personnel Landmines in Ukraine

Ukraine, which ratified the Convention in 1999 (Anti-Personnel Mine Ban Convention, n.d.), has allegedly also used these weapons. According to international non-governmental organisations such as Human Rights Watch (HRW), Russia and Ukraine have been using landmines against each other since 2014 (HRW, 2023a). While they were first only used in Ukraine's Donbas region (Klain, 2022), further deployment has been reported since the full-scale invasion of the country. Human Rights Watch (2023b) documented the presence of landmines in eleven of Ukraine's twenty-seven regions. This includes regions under Russian control, such as Donetska or Luhanska, and those that are not, like Zaporizka and Dnipropetrovsk (HRW, 2023b).

HRW's Accusations Regarding Ukraine's Use of Anti-Personnel Landmine

In reference to Ukraine's alleged use of anti-personnel land mines, HRW has documented the use of rocket-delivered PFM anti-personnel blast mines or so-called butterfly mines by Ukrainian forces during the attacks on the city of Izium in the summer of 2022 (HRW, 2023b). After inheriting a substantial stockpile of anti-personnel mines after the breakup of the Soviet Union (Landmine & Cluster Munition Monitor), Ukraine destroyed many between 1999 and 2020, as stipulated under Article 4 of the Ottawa Convention (HRW, 2023b). However, the stockpile remains were yet to be dismantled in 2021, with Kyiv reporting to the UN Secretary-General that 3.3 million PFM mines still needed to be dismantled (HRW, 2023b).

Given these accusations, Ukrainian Deputy Defence Minister Oleksandr Polishchuk responded that 'Ukrainian authorities cannot comment on the types of weapons used during the armed conflict before the end of the war and the restoration of our sovereignty and territorial integrity' (HRW, 2023a). At the end of January 2023, the Ministry of Foreign Affairs stated that Human Rights Watch's findings 'will be duly studied by the competent authorities of Ukraine' (Government of Ukraine, 2023). If these allegations are confirmed, Ukraine would violate the 1997 accord to which it is a party.

Russia's Anti-Personnel Landmine Use

Despite Russia not being a signatory of the Ottawa Convention, officials told the United Nations General Assembly in November 2020 that they share 'the goals of the treaty and supports a world free of mines' (HRW, 2023b). Nonetheless, they clarified that it 'views anti-personnel mines as an effective way of ensuring the security of Russia's borders' (HRW, 2023b).

Notwithstanding this statement, the presence of Russian-made MON-50, POM-2, POM-2R, and PMN-2 antipersonnel landmines has been catalogued not only along its borders but also in more than 30 countries, according to HRW, including Syria, Libya, and Ukraine, coinciding with the Russian military presence in these conflicts (Hiznay, 2021). Currently, in the case of Ukraine, the use of anti-personnel mines marks a rare circumstance, though, in which a country not party to the 1997 Ottawa Convention uses the weapon on the territory of a party to the international agreement (Hiznay, 2021). Moreover, Russia and Ukraine have allegedly also used at least thirteen types of anti-vehicle mines, referred to as anti-tank mines. These have also been transferred to military assistance packages to Ukraine provided by countries such as Estonia, Sweden, and the United States. (HRW, 2023b)

Implications Regarding Ukraine's Violation of the Ban

Ukraine's use also has other consequences beyond the deadly effects of this type of weapon. As the country is a signatory to the Ottawa Convention, using these weapons would entail a violation. Even though at the twentieth meeting of the State Parties on 24 November 2022, Ukraine affirmed that it is a 'responsible party' to the accord and has not considered using its stockpiled anti-personnel mines for defensive purposes (HRW, 2023a). Nonetheless, it appears that the full-scale invasion of the country led the Ukrainian military to use such weapons.

Despite the proclaimed necessity of using these weapons for defensive purposes, Article 19 of the Ottawa Convention does not allow for any reservations, rejecting legality under any circumstance (United Nations Anti-Personnel Landmines Convention, 1997). While Ukraine could withdraw from the accord under Article 20, this possibility is contingent upon the party not being engaged in an armed conflict (United Nations Anti-Personnel Landmines Convention, 1997). For this reason, the use of such weapons for defence would entail a violation of the Convention's provisions.

If it were confirmed that Ukraine has been using this type of weapon, it is expected there would be limited consequences. In that scenario, any state party of the Convention could still start steps to address possible cases of non-compliance based on Article 8 (United Nations Anti-Personnel Landmines Convention, 1997). This would include requests for clarification, fact-finding missions, and Special Meetings of States Parties (ICBL, n.d.). However, only the collaborative and informal systems regarding compliance foreseen in Article 8.1 have been used (ICBL, n.d.).

Conclusion

The Ottawa Convention is a milestone in the fight against the anti-personnel landmines, which have severe consequences for people and land for decades. However, their use has not been completely eradicated. These weapons are still involved in conflicts today, such as in the war in Ukraine, where both sides of the war are accused of using them.

If the use of such weapons by the Ukrainian government is confirmed, it would be interpreted as a violation of the Ottawa Convention. In this scenario, it is to be seen whether the other signatory states would be willing to take action against Ukraine to ensure its compliance with the provisions of the Convention, considering the context of Russia's invasion. Likewise, it is uncertain whether they would do so by following the informal mechanisms under Article 8.1 or the formal mechanisms under Article 8 of the Convention, which have not been used so far.

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