

LEADERSHIP COMPETITION AND THE CREATION OF NORMS: A CROSS-
NATIONAL STUDY OF WEAPONS RESTRICTIONS

A Dissertation

Presented to the Faculty of the Graduate School

of Cornell University

in Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

by

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January 2007

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Cornell University 2007

The dissertation explores the processes through which new norms develop in the field of international humanitarian law. In contrast to most studies in International Relations that examine processes of norm diffusion and socialization, the current work focuses on the early stages of norm emergence. Based on the comparison of two cases of norms against weapons that have a severe negative impact on civilians – antipersonnel landmines and cluster munitions – and several country cases, including the US, France, Belgium, Norway and Canada, the thesis develops a model of the dynamics of norm development that emphasizes the linkages among domestic and international processes aimed at norm creation. The model involves scale shifts from the international level where consensus-decision making stalls progress toward adopting new prohibitory norms, to the domestic arena of different countries where nongovernmental organizations (NGOs) mobilize national support, and then back to the international level where national mobilizations help propel a new negotiating process out of the consensus-based forum.

Whereas most empirical studies on norm development and the literature on “new diplomacy” examine NGO activities and negotiation processes at the international level, the thesis pays particular attention to the domestic developments and NGO campaigns, which have been a precondition for a more robust international process. The study argues that the success of norm creation depends first on the initial framing of the problem by NGOs, and second on their ability to foster among states a dynamic called “leadership competition” in which a number of countries consecutively adopt

more progressive positions in support of weapons bans. The study emphasizes the important role of individual entrepreneurship and links between NGOs and state decision-makers in promoting new norms regarding weapons restrictions.

Whereas models of norm diffusion focus on the exertion of pressure on states to accept widely recognized norms through the “mobilization of shame,” in the current cases support for a newly emerging norm is generated through the “mobilization of pride” and appeals to state identity and ambitions to play important international roles. Thus, the study identifies new processes and dimensions in the creation of norms that have been neglected by the existing literature.

BIOGRAPHICAL SKETCH

Margarita Petrova has an MA degree in International Economic Relations from the University of National and World Economy, Sofia, Bulgaria and an MA from Cornell University. She pursued her PhD studies at the Department of Government, Cornell University with a major in International Relations and a minor in Comparative Politics.

ACKNOWLEDGMENTS

I would like to thank for their insightful comments, guidance, and support in carrying out this project Matthew Evangelista, Peter Katzenstein, Henry Shue, and Sidney Tarrow. I also thank all the people who agreed to be interviewed for this project and share with me their thoughts and first-hand knowledge. I also gratefully acknowledge the financial support of the Peace Studies Program at Cornell University, the German Marshall Fund of the United States, the Institute for European Studies at Cornell University, and the Landesstiftung Baden-Württemberg. The presented material and conclusions of the research as well as any omissions or mistakes are my sole responsibility.

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LIST OF ABBREVIATIONS

- APL Antipersonnel Landmine
AVM Anti-Vehicle Mines
ATACMS Army Tactical Missile System
CBU Cluster Bomb Unit
CCW - Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects
CD Conference on Disarmament
CINCs Commanders-in-Chief
CIP Center for International Policy
CJCS Chairman of the Joint Chiefs of Staff
CMC Cluster Munition Coalition
CSP Center for Security Policy
DoD US Department of Defense
DND Department of National Defense, Canada
DPICM Dual-Purpose Improved Conventional Munition
EP European Parliament
ERW Explosive Remnants of War
FCNL Friends Committee on National Legislation
GGE Group of Governmental Experts
GMLRS Guided Multiple Launch Rocket System
GOV interview coding for Government Official
GRIP Groupe de Recherche et d'Information sur la Paix et la Sécurité
HI Handicap International
HRW Human Right Watch
ICBL International Campaign to Ban Landmines
ICC International Criminal Court
ICRC International Committee of the Red Cross
IDA Institute for Defense Analyses
IHL International Humanitarian Law
IO International Organization
JCS Joint Chiefs of Staff
JDAM Joint Direct Attack Munitions
LMA Landmine Action, UK
MAC Mines Action Canada
MAG Mines Advisory Group
MCC Mennonite Central Committee
MEP Member of the European Parliament
MFA Ministry of Foreign Affairs
MIL interview coding for Military Official
MLRS Multiple Launch Rocket System
MoD Ministry of Defense
MP Member of Parliament
NSC - National Security Council

PDD Presidential Decision Directive
POW Prisoner of War
PHR Physicians for Human Rights
PM Prime Minister
PS Socialist Party
SOLIC - Office of Special Operations and Low Intensity Conflict, US Department of Defense
UN United Nations Organization
UNDP United Nations Development Program
UNGA United Nations General Assembly
UNICEF United Nations Children's Fund
UNIDIR UN Institute for Disarmament
UNMACC United Nations Mine Action Coordination Center
UNMAS United Nations Mine Action Service
USCBL US Campaign to Ban Landmines
UXO Unexploded Ordnance
VVAF Vietnam Veterans of America Foundation

CHAPTER ONE

Introduction: Development of International Norms and Weapons Restrictions

Nowadays, new types of conflict and uses of sophisticated weaponry have posed questions about the adequacy of existing international humanitarian law (IHL) to protect noncombatants and regulate the conduct of military operations. There is uncertainty among scholars, legal experts, and practitioners about the direction the laws would take and fear that they might be weakened.¹ However, while currently there are no prospects for further improvement of existing IHL provisions, there is one area within it that has steadily progressed in recent years and sought to provide better protection of civilians during and after war. In nearly 30 years the only new developments in IHL have been in the area of prohibiting or restricting the use of weapons that might cause unnecessary suffering or have indiscriminate effects on civilians (inhumane weapons).²

In my thesis I examine the processes of creating new norms prohibiting or restricting the use of weapons that have deleterious impact on the civilian population

¹ There is a wide-ranging debate going on about the adequacy, applicability, and future of IHL. See, for example, contributions to the Harvard Program on Humanitarian Policy and Conflict Research, International Humanitarian Law Research Initiative, “Reaffirmation and Development of IHL;” contributions to the Project on the Means of Intervention, Carr Center for Human Rights Policy, Harvard University; contributions to the Crimes of War Project; Brookings Institution Speakers Forum, March 2002, “Counterterrorism and the Laws of War: A Critique of the U.S. Approach”; Social Sciences Research Council, “After September 11: New War?”; ICRC (2003f); Wippman and Evangelista (eds) (2005); Roberts (2002, 2003); Brooks (2004); Herrmann and Palmieri (2003); Münker (2003); Kellenberger (2002); Butler (2002); Anderson (2003); Lavoyer (2004); PoKempner (2003); Wedgwood (2003).

² Of course, the 1998 Statute of the International Criminal Court is a major development in the field of IHL but not in the sense of establishing new IHL rules. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted in 2000 also comes within the IHL field, but does not include any new rules on the conduct of hostilities themselves. In 1995 another restriction on the use of an inhumane weapon was adopted – the CCW protocol IV prohibiting the use of blinding lasers. The 1993 Convention on Chemical Weapons is another example of development in this area, although the latter treaty made a bigger contribution to the development of arms control than of IHL.

from the 1970s when the Convention on Certain Conventional Weapons (CCW)³ was negotiated till the ongoing discussions on explosive remnants of war and cluster munitions within the same forum. I focus, in particular, on two weapon categories – antipersonnel landmines and cluster munitions – that are the two most recent cases of efforts to curb the use of weapons internationally. I highlight the factors that have influenced the course of international negotiations in these cases and pay attention, in particular, to the role of non-governmental organizations (NGOs) in stimulating interest in the humanitarian problems of weapons and shaping the course and outcome of state negotiations on the subject.

First, I will attend to the process of treaty making at the international level and make the case for the importance of several factors that facilitated or impeded the adoption of comprehensive restrictions on weapons use. Improved international climate, negotiations with clearly specified goals, majority voting procedures, and NGO participation translated in what has been termed “new diplomacy” after the end of the Cold War – a partnership between NGOs and like-minded states in moving humanitarian issues forward – best epitomized by the so-called Ottawa Process to ban landmines in the 1990s.⁴ Characteristic of this “new diplomacy” is the ability of leading states and NGOs to generate a bandwagon effect of states willing to join their ranks and thus provide quick solutions to pressing problems.

Given the unprecedented success of the NGO landmine campaign, scholars have often raised the question about its uniqueness and seen it as the result of a fortunate conjuncture of conditions that would hardly be repeated (e.g. Cameron, 2002). Others have tried to compare it with other NGO campaigns – on small arms (Brem and

³ The full name of the Convention is Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects.

⁴ One characterization of new diplomacy is “a new texture in the international system where negotiating tables have new players and shapes, where linkages and networks transcend state limits, and even perhaps, where moral sensibilities have a voice” (John English, quoted in Neumann, 2002: 107).

Rutherford, 2001; Hubert, 2000) or the negotiations of the statute of the International Criminal Court (e.g. Hampson and Reid, 2003; Hubert, 2000). However, such comparisons have remained focused on the international level, and given the diverse problems different campaigns are trying to address, often times authors have ended up with explanations that emphasize issue specificity and leave little room for generalizations. However, the international level developments of state negotiations are only the most visible part of the NGO campaigns and the process of new norm formation. In the case of the landmine movement, this is the story of what happened once the tipping point of state support had been nearly reached and an entrepreneurial individual, the Canadian Foreign Minister, Lloyd Axworthy gave it a push to start the snowball rolling.

An important aspect of the process that preceded the more spectacular developments on the international stage has received less sustained attention from International Relations (IR) scholars and students of “new diplomacy.” It is the process through which national support for the NGO cause is generated in different states and thus prepares the grounds from which an international process could be launched. In the second part of the thesis, I focus on the domestic processes that produce a dynamic of leadership competition on the respective issues and reinvigorate international negotiations after progress at this level has been stalled.

I argue that the exercise of individual entrepreneurship and leadership by state decision makers and NGO representatives, both domestically and internationally has been critical for the launching of the two processes toward prohibiting antipersonnel landmines and cluster munitions. In turn, the assumption of leadership positions on these issues has stemmed from shared outlooks and goals between the NGOs and state decision-makers, as well as the latter’s desire for status enhancement and greater political leverage whether in domestic or international politics. In this process NGOs

have both framed the problems in need of action (and thus provided the opportunities for the exercise of leadership on the part of decision-makers) and have worked together with their domestic and international partners toward overcoming opposition to the creation of the new norms. Thus NGOs have been key in setting the agenda of domestic and international norm making and indispensable allies in its practical achievement.

National and transnational dynamics of norm development in the social movements and International Relations literature

The landmine campaign reviewed

Most of the existing studies of the landmine campaign have focused on NGO activities and the processes of norm creation at the international level. Among those, three works have striven to provide a more theoretical account of the success of the NGO campaign – Price (1998a), Rutherford (2000), and Hubert (2000) – and attributed importance for the success of the NGO efforts to a number of factors.

First, each of the authors points out the importance of establishing a direct and simple cause and effect relation between the humanitarian problems and the practice, which is targeted for prohibition. Second, the ability of NGOs to shift the debate on landmines away from military, disarmament, or political concerns, and place it within a humanitarian framework is seen as key to their success. Third, Price and Rutherford underline two additional aspects of successful NGO campaigning – the creation of a sense of humanitarian crisis and an urgent need that it be addressed, and the use of

victim stories and graphic images to stir public attention and interest.⁵ Fourth, Rutherford (1999, 2000) and Hubert argue for the importance of the negotiating forum and the adoption of decisions by majority voting instead of consensus.

Finally, Price (1998a) argues that the adoption of the landmine ban was made possible by the existence of the chemical weapons taboo and the “grafting”⁶ of the new norm upon prior principles of international humanitarian law, and specifically, on the prohibition of chemical weapons. On the other hand, Rutherford (2000: 96) mentions the “grafting” of the landmine prohibition on human rights norms, and both he and Hubert focus on the importance of the IHL principle of proportionality and the prohibition of indiscriminate weapons for the creation of the new norm.

Whereas Price’s study is most theoretical and focuses on processes of norm creation and socialization, Rutherford (2000, 2003) and Hubert pay closer attention to the ability of NGOs to set the international agenda on this issue, the importance of partnership and coordination between NGOs and a group of like-minded countries, and the role of individuals in achieving the landmine treaty.

The importance of most of the above factors has also been highlighted in other IR works on norm development. For example, Nadelmann (1990), McElroy (1992), Adler (1992), Finnemore (1996a), Checkel (1997a), and Evangelista (1999) have pointed out the important role played by individuals as norm entrepreneurs. Legro (1995, 1997) and Finnemore and Sikkink (1998) have argued that norms with specific and well-defined behavioral injunctions have better chances of success. Crawford (1993, also 2002), Finnemore (1996b, also 2003), Cortell and Davis (1996, 2000), and Finnemore and Sikkink (1998) have highlighted the idea that new norms are more

⁵ Rutherford, for example, asserts that the use of victim stories was “perhaps the most significant reason that the movement to ban landmines garnered so much international political action and attention so fast” (p. 92).

⁶ “Grafting” as defined by Price (1998a: 617) refers to “the combination of active, manipulative persuasion and the contingency of genealogical heritage in norm germination.”

easily developed when they fit within the existing normative fabric and can draw upon the arguments and moral reasoning underpinning prior norms thus leading to the nesting of norms within certain moral discourses – what Price calls the “grafting” of new norms onto established ones. Finally, Keck and Sikkink (1998) have argued that norms about “bodily harm to vulnerable individuals” resonate better with public sensitivities and thus fare better – a notion underlined by Rutherford’s assertion that the landmine movement was successful because it gave voice to the victims to tell their personal stories and used graphic pictures of bodily mutilations caused by mines.

My comparison of the landmine and cluster bomb campaigns at the international level also confirms and adds more detailed evidence for the importance of certain factors such as the simplification of the problem and the proposal of a clear and easy solution to it, the framing of the debate in humanitarian terms, and the adoption of decisions by majority voting. I argue, however, that the focus on “bodily harm” to innocent victims has been less important for the success of the landmine campaign than the invocation of a simple and clear prohibition. I also take issue with Price’s core argument that the landmine prohibition was greatly facilitated by the “grafting” of the new norm upon the preexisting ban on chemical weapons. Whereas the landmine ban was certainly justified by and rooted in existing principles of IHL, especially the principle of proportionality and discrimination, the prohibition of chemical weapons has been less consequential for the development of the new norm. It is true that some of the campaigners, and especially Senator Leahy, have drawn parallels between chemical weapons and landmines and tried to make the argument that the latter should be banned in the same way the former were, but these arguments formed only a small part of the campaign.⁷

⁷ For example, a search of the ICBL reports on the main conferences from 1993 to 1997, including not only statements from NGO but also speeches of state representatives and many press articles, produces the following results. In 1993 there is no mention of chemical weapons; in 1994 there is one; in two conferences in 1995 there are respectively 6 and 2 mentions; in 1996 chemical weapons come up 6

Whereas in a broad sense the chemical ban might have opened up new opportunities for NGO mobilization and provided sources of argumentation, it is not clear that this was a necessary factor, let alone “of singular importance” (Price, 1998a: 629), for the success of the landmine campaign. According to Price, the “viable chemical weapons taboo” made it possible to “countenance a ban on mines – without it a ban could not have occurred” (Price, 1998a: 629). However, this argument is problematic from the point of view of timing. If one assumes that a really “viable” chemical weapons taboo emerged only after the adoption of the Chemical Weapons Convention (which also provided an immediate example for campaigning opportunities on landmines), there is a discrepancy, because the Convention was adopted only in the beginning of 1993 – about a year after the NGO campaign on landmines had already started.⁸ Tellingly, the first NGO conference in 1993 makes no mention of the parallel with the ban on chemical weapons and during the second one in 1994, the question only comes up once in a workshop strategizing about ways to counter opposition to the landmine campaign. The analogy with the chemical weapons ban has been employed most often by senators and officials in the State Department in the US – in fact, the country where the NGO campaign and the landmine ban met with less success compared to other countries where chemical weapons did not figure in the

times at the Geneva conference and once at the Ottawa meeting; in 1997 there is one mention at the conference in Mozambique, 4 in Brussels, 3 in a report on NGO activities in Oslo, and none in the report of the Oslo conference and in the report of the final conference in Ottawa. In comparison, arguments about the indiscriminateness of the weapons are encountered 4 to 12 times more often.

⁸ The Chemical Convention was adopted in December 1992 and opened for signature in January 1993, whereas the landmine campaign made its first steps in Sept-Oct 1991. It could be argued that the chemical weapons taboo had developed into an international norm with the adoption of the ban on the use of chemical weapons in 1925 and especially following their non-use in WWII, or that the negotiations on the Chemical Weapons Convention (CWC) from 1972 to 1992 have strengthened the taboo. However, this would not explain why exactly at this point in time NGOs decided to bring up the issue of a landmine ban, unless one accepts that they just wanted to emulate the success of the CWC after its negotiation was reinvigorated in the early 1990s. That is not the argument Price is making however, and it can still be questioned whether the prospects of success of the CWC were evident in 1991 when the landmine movement started. In addition, there had been bans on exploding and dum-dum bullets for the last hundred years, as well as, a restriction on the use of incendiary weapons since 1980, which could have also “allowed a [landmine] ban to be considered the art of the possible” (Price, 1998a: 640).

debate so often, if at all.⁹

Finally, where my study tries to add to and improve upon the existing literature is in focusing attention to the processes of norm formation at the domestic level that have largely been neglected in the reviewed works. Price looks exclusively at the international level and argues that processes of norm adoption there “have often overtaken the more idiosyncratic workings of domestic politics” (p. 616-17). In contrast, I argue that processes of norm creation at the domestic level have fed the developments on the international arena and without examining the “idiosyncratic workings of domestic politics” we could not fully understand how norms (or at least the norms studied here) emerge internationally.

On the other hand, although Hubert examines the landmine campaign at the international level, he does mention in passing that its greatest strength “lay in the dozens of well-coordinated country campaigns” (p. 33) without elaborating on this observation. In my study I explore exactly this issue – how the domestic campaigns on landmines and cluster munitions added up to a successful international campaign. In doing so I also develop another thread picked up by Rutherford – the importance of individuals and leadership in norm creation. Rutherford highlights the support for the landmine campaign provided by Senator Leahy, President Mandela, Foreign Minister Lloyd Axworthy, and Princess Diana in the USA, South Africa, Canada, and the UK, respectively. He also mentions the “leadership games” played at different levels of the landmine process but limits his attention to the contest between the US, opposing the new treaty, and the like-minded countries supporting it.

⁹ Indeed, as Price himself points out, framing the problem of landmines by analogy to the chemical weapons ban was a way to draw the debate into the field of arms control – an approach that was consciously avoided by Canada and the other likeminded countries (Price, 1998a: 629).

Individual and state leadership and the growing “NGO-ization” of politics

Following Tarrow (2005) I argue that the individuals who have played leadership roles in both the landmine and cluster munition campaigns are “rooted cosmopolitans” – individuals who are closely linked with their domestic environments and opportunities but could join transnational coalitions in the pursuit of common goals either domestically or at the international level.¹⁰ Importantly, these individuals not only happen to share the NGO goals but also their outlook and broader ideas. Some of them have had experience working in the NGO sector before moving to government and politics and/or had an academic background and training that predisposed them to working on issues that NGOs favored as well. Thus, the shared background of key individuals in policy-making positions and NGO activists facilitated communication between the two sides of the like-minded coalition. Importantly, this commonality in interests and ideas among policy-makers and NGOs was made possible by the opening of government positions to former NGO members. In certain countries, such as Norway, for example, the movement of NGO people to government, and vice versa, from government back into the NGO sector, is notable.¹¹ Whereas this interpenetration of certain domains of government, such as development, human rights, and more generally foreign policy, and the NGO community should not be exaggerated, it has nonetheless been a key factor in moving forward the campaigns on landmines and cluster munitions in several countries and thereafter internationally.

This narrowing of the gap between policy makers and NGO activists needs to

¹⁰ The complete original definition is: “individuals and groups who mobilize domestic and international resources and opportunities to advance claims on behalf of external actors, against external opponents, or in favor of goals they hold in common with transnational allies” (Tarrow, 2005: 29).

¹¹ This is also the case with the ICRC, whose president often times comes from a career in government and diplomacy. Even though the direction is always from government to the ICRC and not vice versa, this fact contributes to the good connections between the organization and the Swiss government.

be examined in more detail when evaluating arguments about the astonishing growth in the numbers of NGOs and their influence in world politics and “global governance” (Mathews, 1997a,b; Boli and Thomas, 1999; Edwards, 2000; Sikkink and Smith, 2002; Collingwood, 2006; Florini, 2000). Whereas the numerical increase of NGOs has been vastly documented (Smith, Chatfield and Pagnucco, 1997; Boli and Thomas, 1999; Sikkink and Smith, 2002),¹² fewer explanations accounting for this growth have been offered.

World-polity theory and social movements studies of NGO growth

At a general level, Boli and Thomas (1999) see NGOs as “enacting, codifying, modifying, and propagating world-culture structures and principles” (p.19). NGO proliferation is one aspect of the processes of “intellectual, technical, and economic rationalization” that unfold everywhere in the world (p.45). Thus, NGOs are the agents that both diffuse and create world-cultural values and the NGO growth is “part and parcel of the general development of the world polity” (p.26) and “the expansion of the nation-state system” (p.28). More specifically, the growth in the numbers of NGOs and international organizations (IOs) is closely linked, but causality goes both ways – NGOs give rise to IOs, and the establishment of IOs, and the UN in particular, has fostered the creation of NGOs. In addition, various interrelationships connect the two types of organizations and lead to a general process of mutual legitimization (pp. 29-30).¹³

Other authors, however, have found no unambiguous support for the impact of international institutions on the growth of “social change” international NGOs,

¹² For example, in the decade from 1973 to 1983 the number of transnational social movement organizations increased by 90%, in 1983-1993 by 104%, and in 1993-2000 by 35% (Smith, 2004: 266).

¹³ A volume chapter focusing on environmental organizations establishes a unidirectional relation and attributes the growth of NGOs in this sector to “the rise of rationalized scientific discourse” and the creation of environmental IOs (Frank et al., 1999). Mathews (1997a) on the other hand, links the growth of NGOs to technological changes and the spread of cheap and accessible communications.

measured by the entry into force of international treaties and the organization of major international conferences in the respective NGO areas of activities (Sikkink and Smith, 2002: 43). Where world-polity theory finds corroboration, according to Smith and Wiest (2005), is in the impact of IO membership and treaty ratification by individual countries on the growth of participation of national groups in transnational social movement organizations (also Ball, 2000; Reimann, 2002 on the effect of conference participation, cited in Smith and Wiest, 2005). That is, as countries become more tightly integrated into the world polity, the opportunities for NGO involvement and influence also increase. Thus based on the theory, one would expect that the numbers of NGOs would expand in pace with the speed with which world-culture values spread (given that NGOs are among the primary promoters and makers of those values), but possibly up to a point where the world polity becomes fully integrated and/or a degree of saturation of a certain area of activity is reached and NGOs working in it consolidate and expand, whereas the numbers of new comers dwindle (Frank et al. 1999; Smith, 2004: 267).¹⁴

Regarding the impact of international NGOs, Boli and Thomas assert that their effectiveness to “shape the agendas and behavior of states” derives from their “rational-voluntaristic authority.”¹⁵ However, they admit that the theory has little, if anything, to say about the conditions under which this effectiveness materializes and NGOs succeed in translating their authority into influence (Boli and Thomas, 1999: 46, 47; Boli, 1999: 294). Thus, whereas the increase of NGOs could be attributed to factors such as the creation of new international organizations, the increasing institutional density of world politics, new opportunities to engage in new kinds of

¹⁴ Thus, Smith (2004) documents that the rate of NGO growth from 1993 to 2000 has slowed down significantly compared to the earlier periods in the 1970s and 1980s, even though arguably this has been the period of their greatest influence in international politics.

¹⁵ “Rational-voluntaristic authority” refers to the authority of “freely exercised reason, in which fundamentally equal individuals reach collective decisions through rational deliberations that are open to all” (Boli, 1999: 273).

activities opened by the end of WWII and the Cold War, there are fewer explanations of the growth of NGO influence in world politics, which could neither be measured by nor simply attributed to their numerical increase.

The numerical increase per se may not be the best indicator of NGO influence. However, the latter could be explained by changes in the structural positions of NGOs that can vary during different time periods and across countries and regions.

It has been argued that what matters for the exercise of NGO influence are the links established among NGOs and among NGOs and international organizations (IOs) – a process in which international institutions play key roles as sites of networking and contestation among various actors (Tarrow, 2001, 2005; Jacobson, 2000:155-6; Sikkink and Smith, 2002:42). Thus the growth of NGO numbers and their increased impact internationally has been linked to the expanding opportunities for resource mobilization and political access those organizations came to enjoy at the international level. In addition, “the emergence and promotion by IGOs and certain activist states of a new pro-NGO *international norm* from the 1980s that [...] has put ‘top-down’ pressure on states to support and include NGOs in both international and national politics” has also strengthened NGO positions internationally (Reimann, 2006: 46). This new international norm legitimizing an enhanced role for NGOs was fed by increasing levels of funding for NGOs, expansion of the range of services and functions they perform, and particularly by a turn in the 1980s from a state-led model of development assistance toward a more neoliberal approach that placed the emphasis on “‘people participatory’ development and private sector actors” and which the NGOs could put into practice more efficiently than states and IOs.¹⁶ Hence, the greater role of NGOs developed from a symbiotic relationship among them, states, and IOs,

¹⁶ Another trend that contributed to the rise of NGOs in the 1990s was the promotion of democracy and civil society all over the world by NGOs funded by Western countries, which in turn pressed other governments to accept and facilitate the working of NGOs in their domestic settings as part of the process of becoming democracies (Reimann, 2006:60).

based on the “functional compatibilities arising from demands associated with the growth of international institutions of governance” (Reimann, 2006:63).¹⁷

Thus, the conclusion could be drawn that NGOs mattered in international politics because and when states and international organizations needed their service- and legitimacy-providing functions (Charnovitz, 1997; Reimann, 2006). NGOs have made inroads in international organizations by achieving observer status, delivering services on their behalf, serving as their consultants, and acquiring the right to participation in international conferences and treaty negotiations. Moreover, there has been an evolving interpenetration of the two types of organizations as staff increasingly circulates between NGOs and IOs (Boli, 1999: 292).

Individual leadership and new partnerships between decision-makers and NGOs

I argue that similar processes at the domestic level of certain countries have contributed significantly to the success of NGOs in furthering their agendas regarding landmines and cluster munitions. At different times, policy-makers in some branches of government in countries such as Canada, Norway, France and Belgium were more open to NGO demands because of the outlooks, and often times backgrounds they shared with NGO members. Not only were NGO representatives included in the delegations of like-minded countries negotiating the issue of landmines, for example, but government officials or parliamentarians active on landmines and cluster munitions in Norway, France and Belgium had actually previously worked for or together with NGOs. Thus, the openness of policy-making in some early-norm-adopter countries to input from the NGO community has been an important factor in

¹⁷ This symbiotic relationship between IOs and NGOs, in particular, has given rise to worries that it would lead to “global corporatism,” lack of real representation of social interests, and cooptation and bureaucratization of NGOs with the ensuing loss of their most valid assets of flexibility, networking and informality (Ottaway, 2001).

moving forward the campaigns on landmines and cluster munitions.¹⁸

The sector of international development has shown the greatest movement of members from the NGO community into national government and international agencies. Development assistance has also been the area where the goals of NGOs and government agencies have had a close correspondence, and thus one of the places where NGOs could find like-minded partners. Similarly, people working for the UN and its human rights, humanitarian and development agencies have often shared the NGO goals and provided a boost to their campaigning.¹⁹

To the extent that the interpenetration of the NGO and policy-making sectors in some countries represents a stable feature of their domestic politics, one could also expect longer-term NGO impact on domestic, and possibly, international policies.²⁰ Alternatively, if NGOs have more in common and better connections with certain parties on the left-right spectrum, one would expect that their role would fluctuate with change in government.

The NGO positions and their ability to establish good relationships with policy-makers in government vary from country to country,²¹ and even from one period to another within the same country. However, even when such coalitions

¹⁸ Even though openness to NGO input is necessary to promote the NGO campaign in at least some early adopters, it is not a necessary factor in all of the like-minded states. For example, domestic NGO input on landmines has been limited in Austria and Germany, but their state representatives have been influenced by NGOs at the international level.

¹⁹ For example, the cluster munition campaign found in UN Undersecretary for Humanitarian Affairs, Jan Egeland a helping voice on the problem of cluster munitions use during and after the conflict between Israel and Hezbollah in the summer of 2006. As the Norwegian junior foreign minister in the 1990s, Jan Egeland was also the moving force behind Norwegian leadership in the campaign against landmines.

²⁰ The increased NGO role in setting the agenda of and participation in treaty making bears similarities with the impact of the increased presence of lawyers in state delegations on the development of international law and norms regarding military intervention in case of state default (Finnemore, 2003: 24-51). Similarly, the literature on epistemic communities has focused on the increased role of knowledge-based communities and scientists in various issue areas, among which arms control and the environment (e.g. Haas, 1992; Adler, 1992; Benedick, 1991; Brenton, 1994; Evangelista, 1995, 1999).

²¹ For example, even though NGOs initially found supporters for a total landmine ban in the Pentagon, especially in the face of Timothy Connolly, the latter could not promote effectively their cause or strengthen his position vis-à-vis opponents in the DoD. On the contrary, he actually got dismissed at least in part due to his advocacy of the NGO views.

between NGOs and government officials are established, whether they will impact policy decisions also depends on the degree and kind of opposition they will meet from other societal or governmental actors, and in the case of weapons restrictions, in particular from the military establishment.

Military establishments and civil-military relations: “Mars vs. Venus”?

However, the opposition NGOs face from the military varies in different countries. Three main factors influence the degree of military opposition. On the one hand, different militaries have different perceptions of the military utility and necessity of weapons, and on the other, even when certain militaries share the same views of the weapons’ usefulness, they can have different institutional roles and propensity to engage in political actions to defend those views and oppose attempts at banning weapons. Finally, civil-military relations in different countries are structured differently and thus civilian leaders could attribute more or less weight to military views in the decision-making process.

Militaries enjoying higher prestige in society are also expected to be more vocal about their views and grievances (Boëne, 2001, 2006). In turn, the prestige and legitimacy of the military depends on their roles and effectiveness in providing national security against external threats, contributing to nation-making in their own state (e.g. through conscription), or performing certain non-traditional functions such as delivering domestic and international military assistance. In countries where the traditional national defense role of the military is waning because of reduced threat perceptions and has not been replaced by new roles, the legitimacy of the military would likely decline. On the other hand, when the traditional military role is reinforced or new roles, such as peacekeeping for example, are embraced, the legitimacy of the military would grow (Forster, 2006: 74-98).

Accordingly, the assertiveness and influence of the military would not only differ across countries, but also within the same country during different time periods. For example, a scandal or operational failures of the military forces could lead to the loss of military prestige and significantly weaken its ability to influence policy debates even on unrelated issues.²² Whereas such temporary shifts in the position of the military could account for the divergent degrees of its involvement in policy debates within countries, other factors are needed to explain the variation in the political assertiveness and influence of the military across countries and over time.

Kagan (2002, 2003) argues that there are fundamental differences between the US and Europe on “the all important question of power” – how, when, and why military force should be used, including “determining threats, defining challenges, and fashioning and implementing foreign and defense policies” (Kagan, 2003: 4). Put in another way, “Americans are from Mars and Europeans are from Venus: They agree on little and understand one another less and less” (Kagan, 2003:3). However, it has been shown that European countries still have different strategic cultures, have drawn different lessons from the same historical events, identify different threats (Hyde-Price, 2004; also Lindley-French, 2003; Rynning, 2003), and diverge in their military structures, ambitions and ability to use military force (Forster, 2006). Seen from this angle, differences within Europe abide and this for reasons other than power capabilities. While Kagan himself is also aware of those differences among European countries, he prefers to ignore them, asserting that they are much smaller than the chasm that separates Europe and the US.²³ However, I would argue that paying

²² For example, during the landmine campaign the Canadian military has been in a weaker position having to deal with the investigation of torture of a Somali boy by Canadian peacekeepers. For the impact on Canadian policy debates on peacekeeping, see for example, Hampson (2003: 143-7).

²³ This assertion is also questionable in view of the European Security Strategy that identified as key threats pretty much the same problems as the Bush administration – terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure, and organized crime (EU, 2003). In addition, in December 2003 the EU Council adopted the EU Strategy Against Proliferation of Weapons of Mass Destruction, which “embraced possible resort to coercive measures in the defense against proliferation,

attention to the differences as well as the commonalities among states could be a better way of understanding what drives their policies, and by extension, the processes of developing new norms regarding the proper use of force.

One could not speak of a sharp dividing line between the US, on the one hand, and all the European countries, on the other, regarding the concrete role the armed forces are expected to play. In their military planning, for example, the UK and France place an emphasis similar to that in the US on expeditionary warfare – sending mobile forces in major combat operations abroad. In contrast, the rest of the European countries could be placed in three different categories involving different degrees of concentration on territorial defense and peacekeeping operations of varying degrees of intensity (Forster, 2006: 44-71). Neither could public support for the military as an institution and profession be used as a measure of difference between the US and its European allies. As already mentioned, on both sides of the Atlantic public support for the military has varied together with perceptions of its combat performance, effectiveness, and legitimacy, and as a result of changes in the public image of other government institutions. Whereas in the US support has been relatively stable, except for the fall in the years following the Vietnam War, in France for example, it has fluctuated over the years after WWI, but reached a high point of 80% in the late 1990s (Moskos, 2000:19-20; Boëne and Martin, 2000:62).

What has changed, however, is that even in European countries where the military retains and develops its traditional functions of state defense and engages in major combat operations abroad, its improved public image has become based in large part on its taking on functions such as peacekeeping and humanitarian missions. That

including ‘as appropriate, the use of force’” (Becher, 2004: 352). Already in 1999, under the influence of the UK and France, the EU also moved in the direction of developing rapid-reaction expeditionary forces and has since shown “a clear resolve to contribute militarily to international peace and security, including through high-intensity operations,” thus willing to back “soft” with “hard” power (Biscop, 2004: 510; also Menon, 2004: 645-6).

is, among the important sources of the military's legitimacy are the public perceptions of its being a "force for good" (Boëne and Martin, 2000; Pinch, 2000:163-4, Mingst, 2003).

Thus, one could argue that the military authority in most European countries and Canada increasingly rests on humanitarian instead of military values. Accordingly, the military would strive to preserve public support by fully embracing these humanitarian missions and values, including the renunciation of weapons that cause severe humanitarian harm to civilians. Nevertheless, even in these countries when the armed forces are engaged in major combat operations, the military could have greater leverage over policy-making regarding the conduct of operations and operational requirements and thus more successfully resist attempts at weapons restrictions. On the other hand, countries such as France and the UK, had not based their international image on performing "middle power" roles, but rather on great power status enshrined in their UN Security Council permanent membership. During the Cold War their militaries had limited involvement in peacekeeping operations (Boyer et al, 2003; Mingst, 2003) and those had been less constitutive of their organizational roles and identity. Thus, to the extent that the legitimacy of the military is not strictly dependent on the embrace of humanitarian values, one could expect that it would be more resistant to changes framed in humanitarian terms, and arguably, shifts toward policies that clash with its interests would be implemented with the active involvement of the government in power, and specifically, of left governments that share some of the goals pursued by NGOs. In contrast, not only does the military enjoy high levels of public support in the US, but this support also flows from the embrace of military values by society at large that has led scholars to talk about the "militarization" of American culture and society (Sherry, 1995; Bacevich, 2005). I

argue that this was a key factor for the inability of the NGOs to sway the US to join the Ottawa Treaty although personally President Clinton was in its favor.

In this light, the division that exists is between the great powers that emphasize the use of military power, and whose military institutions are influential and respected in society; middle and small powers whose societies and militaries embrace humanitarian values and limit the use of force to international humanitarian missions; and second-tier states, such as the UK and France, that engage in major military operations, even though their use of military force needs to be legitimated in view of international legal principles and values, and whose identity draws both on notions of military and civilian power. In great powers, such as the US the influence of the military would ensue from the public support of military values and institutions. In middle powers, societal attitudes would influence the military culture and the military would find it either difficult or unthinkable to defend the continued use of weapons stigmatized by public opinion. Finally, in the second-tier states the promotion of humanitarian norms restricting the use of certain weapons within the military would be facilitated by governments on the left of the political spectrum.

Norms development and transnational networks in IR

The study of transnational relations in IR has passed through different stages after Robert Keohane and Joseph Nye first focused on the role of transnational actors in their 1971 volume *Transnational Relations and World Politics*.²⁴ Whereas this body of literature highlighted the importance of non-state actors, it did not develop a

²⁴ For an overview of the field of IR in connection to the study of transnational relations, see for example, Tarrow (2001) and Risse (2002).

theoretical framework about the conditions under which they would be more or less influential. This shortcoming was addressed in the 1990s when the study of transnational processes was linked to a set of scholarly work on domestic structures and institutions, thus trying to delineate the channels through which NGOs influence state policy-making.²⁵ The theoretical framework about the constraining or enabling conditions of domestic structures or political opportunities was developed both by scholars in the field of IR (Risse-Kappen, 1991, 1995b,c; Evangelista, 1995, 1999; Checkel, 1997a) and comparative politics (Kitschelt, 1986; McAdam et al. eds, 1996; Tarrow, 1996, 1998).²⁶

The key concept in this new wave of studies on transnational relations – “domestic structure” is rather broad and encompasses “the organizational apparatus of political and societal institutions, their routines, the decision-making rules and procedures incorporated in law and custom, as well as the values and norms embedded in the political culture” (Risse-Kappen, 1995b: 20). However, three main variables carry the theoretical work – fragmentation of political institutions, polarization of societal structure, and type of the coalition-building processes – that in empirical studies are often times reduced to a single one, namely, openness of the political system and the opportunities for access to policymakers it provides to NGO actors.²⁷

²⁵ The earlier studies, upon which the new literature on transnational relations built up, were focused on the state and the role of different domestic structures in policy formulation and implementation (e.g. Katzenstein, 1976, 1977, 1978, 1985; Hall, 1983; Evans et al, 1985).

²⁶ Arguably, the social movements literature provided a richer understanding of the domestic factors that influenced social mobilization. It focused on four core concepts – political opportunity structure (“consistent – but not necessarily formal, permanent or national – dimensions of the political environment that either encourage or discourage people from using collective action,” Tarrow, 1998: 18, quoted in Tarrow, 2005: 23), mobilizing structures (formal movement organizations and the social networks of everyday life), collective action frames (the cultural constants that orient participants and those they themselves construct), and established repertoires of contention (Tarrow, 2005: 23).

²⁷ In terms of political institutions, states can be “centralized” (executive power is concentrated at the top of the political system and generally independent of the legislature) or “fragmented” (decision-making power is diffuse and shared among different branches of government, with the legislature exerting a considerable degree of control). In terms of societal structure, defined by the degree of polarization along ideological and/or class cleavages and the strength of societal organizations enabling mobilization for political causes, societies can be divided into “strong” and “weak”. In terms of the “coalition-building process in the policy networks linking the state and society,” polities can be divided

According to these criteria, states can be divided into several types, three of which are of particular interest to this project: “state-dominated” featuring centralized political institutions coupled with polarized societies, relatively strong intermediate organizations, and societal actors that play a limited role in the policy-making process; “society-dominated” domestic structures, characterized by fragmented political institutions and relatively strong societal interest pressures; and “corporatist” structures, characterized by strong intermediary organizations operating in a compromise-oriented decision making culture (Risse-Kappen, 1995a). Each domestic structure in this threefold typology implies differences in the ability of non-state actors to gain access to policy-makers, form coalitions with other domestic actors, and translate their goals into policy.

In a “state-dominated” domestic structure the policy making power rests with the executive, concentrated in a limited circle of officials, supported by a strong civil service apparatus. In contrast, the role of the parliament is minimal, especially when the governing party (or coalition of parties) enjoys a majority. Under these conditions, of power concentration at the top, NGO access to key policy-makers is difficult but once achieved, gives them a greater chance of conveying their concerns and eventually shaping the government position (Katzenstein, 1977; Risse-Kappen, 1991, 1995b,c; Evangelista, 1995, 1997, 1999; Checkel, 1997a).

In contrast, in “society-dominated” states with decentralized political institutions, NGOs have multiple points of access to policy-makers but have to compete with numerous actors for the attention of specific officials as well as direct their lobbying efforts at a wider range of officials that represent different institutional interests and are more or less accessible. Thus, even if NGOs manage to win the

into “consensual” (characterized by strong intermediary organizations operating in a compromise-oriented decision making culture) and “polarized” (characterized by distributive bargaining and dissent) (Risse-Kappen, 1991, 1995a).

support for their ideas of certain branches of government, or the executive itself, their success in translating this influence into policy is not assured, since other political forces might block their policy proposals.

In “corporatist” structures, societal interests are mediated through more powerful political organizations, and especially through the political parties that are the main conduit for aggregation and representation of societal demands. Under this structure, decision-making power is concentrated within consultative bodies that deal directly with the government and thus tend to eschew the involvement of the parliament that becomes a “rubber stamping machine” rather than being a real law making institution. Thus, NGOs have greatest chances of success if their efforts are directed at winning the support of the governing parties. The extent to which NGOs’ preferences will be adopted by parties will depend on the match between them and party orientation. In addition, ideas around which broad-based consensus can be built (i.e. moderate as opposed to more extreme ideas) will have better chances of adoption and success.

However, the problem with the “domestic structure” literature is that it presents a picture of domestic politics that is too static. Domestic structures are given and they determine both the channels through which societal demands can be conveyed into policy and the success of NGO or other actors’ attempts to influence policy without taking into consideration the role of actors themselves (Tarrow, 2001: 6-7; Keck and Sikkink, 1998: 202).

A new wave of scholarship sought to combine constructivist insights about the role of norms in IR²⁸ with a more sophisticated understanding of agency and the role

²⁸ The constructivist turn in IR focused scholarly attention to the role of ideas, culture, national identity, and norms. Initially, the focus of constructivism was on the systemic level (e.g. Wendt, 1992, 1994) and studied the broad effects of norms in international relations without paying enough attention to agency in the process of norm formation, diffusion, or compliance (e.g. Reus-Smit, 1999, Thomas, 2001). On the other hand, scholars studied the effects of national identity or domestic organizational cultures on

of domestic structures. Most of the IR scholarship on norms focused on the international level of norm creation (Price, 1997, 1998a,b), norm socialization (e.g. Checkel, 2005; International Organization, 59/4), and especially the promotion of human rights norms to societies and states that have been resistant to them (e.g. Keck and Sikkink, 1998; Risse, Ropp, and Sikkink, 1999).

The two most comprehensive models of the processes through which norm entrepreneurs influence state behavior and norm socialization – “the boomerang pattern” (Keck and Sikkink, 1998) and “the spiral model” (Risse, Ropp, and Sikkink, 1999) represent an extension of the domestic structure model to the international level where new opportunities for mobilization and coalition building are sought when the domestic structure is closed for local NGOs. The models involve the application of pressure from international organizations, NGOs, and foreign countries on recalcitrant states as a way to empower domestic groups advocating change. This process of external mobilization of support aims at overcoming the obstacles that national environments pose to the domestic promotion of norms. That is, when a government does not pay attention to the demands of certain segments of its society, it has to listen to their more powerful or more persuasive international allies.

Other scholars have focused on diametrically different processes of socialization whereby state elites, diplomats, or bureaucrats come to embrace new norms through social learning based on discussions and persuasion in institutionalized settings that are private and non-politicized (Checkel, 1999, 2001, 2002, 2005; Lewis, 2005; Risse, 2000).

state policies and interests (e.g. Katzenstein, 1996; Legro, 1995, Kier, 1997). The interest toward transnational relations also resurged and attention shifted from the predominantly political economy focus of earlier works toward environmental, human rights and security issues that also brought about interest in the study of norms in IR. Some of the early work studied the role of epistemic communities and scientists in international cooperation (Haas, 1992) and the nuclear arms control policies of the Cold War rivals (Adler 1992) but did not specify the conditions under which epistemic communities were likely to have an impact.

Finally, a more general framework that encompasses all of the above models is Sikkink's (2004) model of multilevel governance that incorporates insights about the effect of both domestic and international opportunity structures on the chances of social activism. Sikkink defines the domestic and international opportunity structures only in terms of activists' access to institutions (open or closed) and derives four possible opportunity subtypes with the respective predictions about the chances of successful activist action. When both domestic and international structures are closed, there are diminished chances for activism; when the domestic structure is closed but the international open, we have the above-mentioned "boomerang" and "spiral models"; when only the domestic structure is open and international institutions are closed to activists, the expected pattern is one of "defensive transnationalization" – activists either try to block the activities of international institutions or to exert pressure domestically with the goal of democratizing international institutions; finally, when both structures of opportunity are open, there is a chance for activists to form "insider-outsider coalitions", – while working mostly in their domestic political environment they also resort to international activism as a complementary and compensatory option (Sikkink, 2004: 165). Importantly, actors are not doomed to being imprisoned in one of the four situations. Through their work domestically and building transnational links activists can reshape the structures of opportunity and gradually make them more open.

The cases I study involve different stages at which NGO seek and reshape opportunities at different levels. Following Sikkink's line of argument, I will show that neither domestic nor international structures are immutable or deterministic of the ways in which NGOs can exert their influence. However, I will also try to go beyond the opportunities framework and instead pay attention to the domestic and international processes that worked within or around given structures and

concatenated in particular ways that led to successful norm creation. In this effort I will draw some insight from the recent turn in the social movements literature toward the study of mechanisms²⁹ and processes linking “the local and the global” arenas of contention (Tarrow, 2005: 24; McAdam, Tarrow and Tilly 2001). In particular, a set of processes that connect domestic and international contention identified as “scale shift” – the coordination of collective action at a level different from the one where it began, and “transnational coalition formation” – the horizontal formation of common networks among actors from different countries with similar claims – will be present at different phases of the processes I examine.³⁰

Argument: domestic support, chain reactions, and leadership competition in the creation of norms against inhumane weapons

The cases I study involve different processes, as well as different configurations of aspects of the “boomerang” and “spiral” models both at the micro psychological level and at the macro level of sequencing processes between the national and international arenas.

²⁹ Mechanisms are defined as “a delimited class of events that alter relations among specified elements in identical or closely similar ways over a variety of situations” (McAdam, Tarrow and Tilly 2001: 11).

³⁰ The fuller definition of scale shift is “a change in the number and level of coordinated contentious actions to a different focal point, involving a new range of actors, different objects, and broadened claims” (McAdam, Tarrow and Tilly, 2001: 331). Four additional processes are identified as: global framing – the mobilization of international symbols to frame domestic conflicts; internalization – a response to foreign or international pressures within domestic politics; diffusion – the transfer of claims or forms of contention from one site to another; and externalization – the vertical projection of domestic claims onto international institutions or foreign actors (Tarrow, 2005: 32).

Micro processes of norm creation

The main mechanism through which NGOs bring states to support a new norm is the “mobilization of pride” – praising states and appealing to them to assume new, leadership positions. In contrast, in the “boomerang” and “spiral” models, norm socialization is achieved through the “mobilization of shame” and pressuring states to join the already-established club of “civilized states”.

Leadership dividends: Domestically, finding partners in policy-making positions that would embrace the NGO goals has been a key factor for successful campaigning. In the process, NGO arguments have focused not only on the moral and legal grounds for banning certain weapons, but have also been oriented toward the international arena. NGOs have consistently projected a leadership image for the states whose early support they have sought and tried to create a dynamic of leadership competition among states as part of their campaigning both domestically and internationally.

Price asserts that “moral proselytism” is more important at the early phases of a campaign, since “few decision makers [...] are likely to embrace support for an incipient norm for instrumental reasons when its success is highly questionable” (Price, 1998a: 640). Whereas I do not question the moral motives of early norm supporters, I argue that even at this early stage, moral and instrumental reasons for support are tightly intertwined. Both for parliamentarians and government decision makers domestically and for states internationally, playing a leadership role on human rights and humanitarian issues has become an important political asset that yields added value in terms of enhanced prestige and leverage at the domestic and/or international arenas. Pursuing ethical policies has become for countries not only the “right” choice but also the wise choice that pays off. Eager to gain the assets of

international recognition as champions of humanitarian protection, countries have jockeyed for the leadership position on the issue of landmines (and have started doing so on cluster munitions) and thus have sustained the campaign in its initial phases and moved it forward to a successful completion.³¹

Then the question arises, exactly what advantages have different actors expected to gain in addition to the moral satisfaction of doing good? The following paragraphs outline some of the motivations that play into decisions to assume leadership in norm creation.

A/ Costs and dividends for parliamentarians

In general, for parliamentarians, and especially senators, taking the initiative in proposing new legislation is a relatively cheap action that entails no particular risks to the bill sponsors but could bring some benefits. This may be one of the reasons why members of parliament have been quite active in proposing bans on landmines and cluster munitions in different countries. Often times, members of the opposition parties would table such proposals without investing too much effort in their adoption and without much effect – the proposals would not even be discussed in the appropriate parliamentarian committees or would fail to garner the necessary support from the ruling parties. Thus, such proposals could only register the activeness of the sponsors and yield some political dividends against the ruling party that would be seen as blocking progressive legislation.

On the other hand, parliamentarians who are really committed to the proposed laws and sharing the cause of NGOs would actively work for garnering support among their fellow members of parliament (MPs) and expend precious political capital in

³¹ That instrumental reasoning is also at play in the process of early norm development is evidenced by the fact that often times parliamentarians pick up the issue domestically or states become more active on the international arena after NGOs succeed in generating media interest to the problems created by the use of landmines and cluster munitions.

convincing others to vote for their proposal. Moreover, if the legislation is controversial and meets with serious opposition from other societal interests (such as the arms industry and workers in the case of the cluster munition ban in Belgium), its sponsors could lose support among parts of their constituency. In that sense, the proposal would be costly to parliamentarians both in terms of the prestige and energy they have invested in passing it and in terms of losing votes and support in the next round of elections. Thus, in order to get engaged in fighting over the passage of a weapons ban proposal (which is not usually seen as benefiting the domestic constituency) a parliamentarian should be really committed to the cause and/or expect that the bill would be easily adopted.

Alternatively, because of the humanitarian character of a weapons ban, in certain countries sponsoring such a law could be seen as an attractive option due to its resonance with the values and attitudes of the domestic constituency.³² The benefits that a parliamentarian could expect from sponsoring the humanitarian legislation would come mainly in the form of increased prestige and visibility in the media, provided that the issue is popular with the public.

On balance, the potential benefits a parliamentarian could draw from advocating a national ban on the use of certain weapons are less than the costs such an action could entail. Hence, one could expect that only individuals strongly committed to the humanitarian cause promoted by NGOs would stake their political capital on passing the new domestic legislation. An additional, diffused dividend from stimulating parliamentarian action on issues where the government has lagged behind accrues to the parliament as a whole. In areas, such as foreign and security policy, on which the parliament has played only a marginal role (especially in corporatist

³² An early sign of such popular support could be discerned in the media coverage of NGO reporting on the problem and the readership reaction to it.

domestic settings), the partnership between parliamentarians and NGOs could lead to redrawing the balance between the two branches of government and the opening of new avenues for a greater parliamentarian role in the respective areas by the establishment of committees focused on the legislated issues (e.g. mine action and cluster munitions).

B/ Leadership and the foreign affairs ministries

The motivations behind the assumption of a leadership role in norm promotion by the foreign ministries of different countries, or by agencies such as those dealing with development assistance, are closely linked to the reasoning stimulating state leadership, which is described in the next section. In addition, a narrower set of motivations regarding the redistribution of funds and influence among the different governmental agencies could also contribute to a decision by policy-makers to assume a more active role in the creation of a new international norm. Taking on a leadership role and allying with NGOs in carrying it out can strengthen the positions of the foreign minister vis-à-vis those of the state development department (when the former plays a leading role) and draw some funding traditionally allotted to it to the foreign office. Alternatively, in cases where the development minister plays a more prominent role, it could result in increased funding of his or her agency. In either case, the foreign and development departments benefit from the partnership with NGOs during the debates and bargaining over the issues with the defense department. As a result they would obtain increased funding for their preferred activities and gain greater leverage in policy-making. The close association with NGOs, however, also carries some risks when it is perceived as providing the latter with undue and illegitimate influence on state policies.

However, whereas the above calculations might contribute to a decision by

parliamentarians or foreign affairs officials to assert a leading role on certain issues, they are equally applicable to any issue and thus the choice of staking one's political capital on the risky business of promoting new humanitarian norms cannot be explained without reference to the normative value attributed to the cause by the political actors.

C/ State leadership

The countries most likely and capable to assume leadership positions on developing new humanitarian norms are either great or middle powers. However, given the greater security responsibilities of great powers and the stronger opposition of their military to wholesale prohibitions on an entire class of weapons such as landmines and cluster munitions, those states have tended to support only partial measures aimed at curbing the negative weapons effects or have preferred no measures at all. In the face of such hesitancy or opposition to a more comprehensive solution of the humanitarian problems of those weapons, middle and even small states stepped forward and took the opportunity to lead two international processes toward banning landmines and restricting the use of cluster munitions. Moreover, these "middle powers" did not concentrate their efforts on searching for a consensual solution to the existing problems through multilateral forums, such as the UN, which they traditionally supported. Instead, they launched alternative processes for a selected number of countries willing to accept stronger weapons prohibitions despite great power opposition to their initiatives and no overwhelming support from the majority of states. What motivations prompted these unconventional initiatives? To shed some light on this question, the concept of "middle powers" (to which category the group of like-minded countries, led by Canada on landmines and Norway on cluster munitions,

is generally assigned) and the roles of the latter in connection with changes in the international system need to be examined.

The definition of “middle power” is very vague and ranges from indicators of economic power such as GNP and GNP per capita to behavioral patterns such as the states’ “tendency to pursue multilateral solutions to international problems, tendency to embrace compromise positions in international disputes, and tendency to embrace notions of ‘good international citizenship’ to guide their behavior” (Cooper et al. 1993: 19).³³ The concept originated after the end of WWII during the founding of the UN when states such as Canada, Australia, and the Netherlands sought recognition of their status as “middle powers” (not great powers but neither small ones) and the greater influence in international affairs such a status would bestow upon them (Stairs, 1998c; Chapnik, 2000).

Whereas the “middle power” status found no recognition in the UN, the Cold War years provided opportunities to the states claiming it to assume certain valuable roles as mediators and bridge builders between the East and the West or between the US and its European allies, or as conciliators and honest brokers defusing international conflict, for example. During those years, specific behavioral patterns characterizing different middle states emerged. According to Cooper (1997), both Canada and Norway engaged in routine (quiet, low-key, consensus-oriented) diplomacy, but whereas Canada was active on a wide range of issues, Norway limited its efforts to a few issue areas.

These roles were dictated both by self-interest and a desire to gain international prestige and distinguish themselves from the great powers (Neack, 2000; Roussel and

³³ For more detailed discussions on the concept of “middle power,” see for example, Chapnik (2000), Stairs (1998c), Royds (2000), Roussel and David (1998), Cooper (1997).

David, 1998).³⁴ As middle powers those states were affluent but militarily weak and thus had a vested interest in preserving a stable and peaceful world order.³⁵ Their dependency on the great powers, on the one hand, necessitated that the middle states follow policies that would not antagonize their more powerful ally. On the other, it meant that the only way in which they could influence the great power on whose policies they depended was by engaging it in multilateral institutions where they could form coalitions with other countries, or by performing functions valuable to the great power. However, in order to gain international prestige and be perceived as independent powers, middle states also had to find ways to distinguish themselves from the great powers.

Given that the security environment and the distribution of power in the system to a large extent defined the interests of middle powers and the roles they could play in the system, the end of the Cold War was seen as a watershed for the future of their role model. However, the Cold War's end was seen both as an opportunity for renewed middle power activism and greater influence, and as an end to the middle power concept as traditionally understood. The first argument was predicated on the notion that following the end of the Cold War the areas of traditional middle power expertise such as peacekeeping and peacebuilding, human rights and environmental protection expanded together with the increased role of international institutions and thus opened new opportunities for them. The second argument about the coming to an end of the

³⁴ The desire for establishing a recognized international identity and prestige has been seen in turn as a way of building a national identity and promoting national unity in Canada (Chapnik, 2000; also Mingst, 2003: 62).

³⁵ For example, in 1998 the Norwegian Foreign Minister Knut Vollebaek stated, that “[i]t is in the interest of a small state like Norway to maintain a strong UN and support the role of the UN and its ability to uphold a degree of peace and order in international relations”. His predecessor Bjorn Tore Godal had similarly argued in 1996 that “Norwegian society’s deep respect for humanitarian values had made the promotion of Human Rights a cornerstone of all our policy. This is of special importance to our work for peace, where it combines idealism and self-interest. *The more respect for Human Rights, the safer the World will be for all of us*” (quoted in Nustad and Thune, 2003: 170, 173, emphasis in original).

middle powers role rested on two different readings of the international system that followed bipolarity. On the one hand, it has been suggested that because of the new, improved international climate great powers would no longer need the mediating services performed by middle state and would become themselves more engaged in multilateral decision-making and move into traditional “middle power” areas of competence such as peacekeeping (Roussel and David, 1998).³⁶ That is, in an era of multipolarity, the great powers, and especially the US, would place more emphasis on working through international institutions and achieving peaceful conflict resolution, would gain in legitimacy and overtake the kind of roles previously played by the middle powers. On the other hand, in a unipolar world, the US would have no need for the kind of roles middle powers traditionally played and thus would curb their freedom of action and diplomatic initiatives when those run counter to its interests (Neack, 2000).

I would argue that even though the end of the Cold War did not relegate or constrain the freedom of action of middle powers, it did prompt a change in the roles they played. The end of the Cold War reduced the security threats to states in the international system and thus provided middle powers with a degree of independence from their great power allies. However, the change in the system did not alter the middle states’ desire for gaining international status and playing a visible role in international relations. If anything, it might have increased it. However, as pointed out by Roussel and David, the transitional period in the wake of the Cold War, characterized by a “multilateral moment” in US international policy, shrank the range of instances when middle powers could distinguish themselves from the great power and play a noticeable international role. Thus, I would argue a number of middle states

³⁶ In addition, the traditional prominence of Canada in peacekeeping, would be overshadowed by other smaller countries, such as Pakistan for example.

were eager to take up the niches where American leadership lagged behind. American hesitancy to lead the way on landmines combined with NGO prodding triggered a chain reaction of states bidding to take over the leadership position on this issue. Moreover, as I will argue later, the need to distinguish themselves from the US and form an identity in opposition to it, might have contributed to the absolutist positions about a total ban adopted by the likeminded states. Instead of serving as consensus-makers and mediators, Canada and Norway (and their group of like-minded middle and small states) chose to be true leaders, avoid the consensus-based forum of the CCW, and opt for an alternative negotiating process in defiance of the great power preferences. The undertaking of this more activist leadership role was made possible by the strong backing and cooperation provided by the NGOs.

In doing so Canada and Norway not only found new ways to reassert their identity as “good world citizens”. They also expected some short-, mid-, and long-term dividends from taking up the risks and costs of leadership.³⁷ The short-term dividends consist mainly in the ability of the leading states to steer the negotiations in their preferred direction and have greater influence of their final outcome. The mid-term dividends include the ability to translate the newly gained political capital and prestige into leverage in other issue areas. Finally, the long-term dividends that accrue to states come from their enhanced international status and their ability to redraw further the international agenda toward including issues in which middle power states have a comparative advantage and on which they have already asserted their leadership ambitions. Thus, the promotion of the “human security” agenda internationally by Canada, Norway and a number of other middle powers could be

³⁷ In addition to the financial costs associated with organizing international conferences on the issues of landmines and cluster munitions and expending resources on lobbying other states or contributing the lion’s share of funding to clearance operations in order to match their rhetorical and financial supports, the leading states also take the risk of loss of prestige in the case of failure of their initiative, and the risk of punishment by the great power for going against its interests.

seen as an attempt to solidify their authority and legitimize their greater role in international politics (Chapnik, 2000).

The swing in US policy toward more pronounced unilateralism with the coming to power of the George W. Bush administration and its subsequent emphasis on the preventive use of force and global war against terrorism have constrained to some extent the freedom of action of middle powers, but have also provided a clear foil against which they could distinguish and distance themselves from the great power. Both of these trends probably tempered the willingness of middle powers to launch high-profile initiatives antagonizing the US.³⁸ Thus, in the lack of strong NGO campaigning on cluster munitions and serious state leadership to address the issue, states have sought to deal with it in the consensus-based forum of the CCW and tried to engage the military powers in the process for more than five years. As NGO advocacy grew and spurred more national support for their cause, the risks of assuming leadership were lowered enough to convince Norway to head an alternative process toward restricting cluster munitions despite objections from a range of influential countries, including the US, Russia, the UK and France.

Thus, the constraining effects of the international system appear to have had less importance for the state decisions to assume high-profile leadership positions than the existence of mobilized NGO campaigning on the studied issues.

D/ NGO leadership dividends

Finally, leadership dividends accrue not only to the states and specific policy-makers involved in norm promotion but also to the NGOs that begin the respective campaigns. By getting engaged in campaigning NGOs increase their visibility in the

³⁸ Instead vocal opposition to US plans to attack Iraq, for example, has come from states such as France and Germany that are usually not considered middle powers but rather second-tier great powers.

media and among potential donors. A successful campaign is a sign of NGO effectiveness in bringing about change and a good indicator in the eyes of both foundations and individual donors that support them. In the overcrowded and competitive NGO sector such visibility provides palpable benefits to leading campaigners. By achieving an international treaty with provisions on clearance operations and humanitarian assistance, NGOs (especially in the service providing sector) are going to further benefit from an increased, and possibly, stable source of financing. Finally, in the process of campaigning and building partnerships with officials and administrations in like-minded countries, NGOs improve their positions and create networks that could pay off in their future activities and campaigns.

NGO brokerage and the fostering of common identity: An integral part of this process has been the NGO brokerage between different states and the creation of a common identity of like-mindedness or a “pro-ban identity” (NGO member quoted in Mathews, 1997b). NGOs not only tried to stimulate individual states to play leadership roles, but also functioned as brokers that brought together in a series of meetings different states and nourished the development of their distinct identity as vanguard norm promoters. As most processes of identity development, this one also entailed the juxtaposition with the “other” – with the backward norm opponents. In the case of the landmine campaign this involved the publication of the list of “the good, the bad and the ugly” states, and on cluster munitions, the issue of updates on the 2006 CCW Review Conference that focused on state positions and counted the numbers of supporters for an international instrument regulating those weapons.

This process of contrasting the “good” and the “bad” states, combined with the inconsistent or openly adversarial position of the US, resulted in painting the latter as the retrograde force supporting the use of inhumane weapons. That the US became the

“rogue state” on landmines despite its early leadership and much more progressive policies compared to other ban opponents, such as China and Russia, was the result of at least two factors. The US was a suitable target for NGO criticism because of its initial support for a mine ban and general embrace of humanitarian and human rights norms. It was also a good target because of the need of the like-minded countries to build an identity distinct from that of the US and play a leadership role.³⁹ Had the US joined the same camp of like-mindedness, leadership would have naturally gone to it and the NGO campaign would have lost some of its vigor and its rebellious character.⁴⁰

Macro processes of norm emergence

In contrast to the “boomerang” and “spiral” models, the processes I explore are not of norm socialization but are the initial stages of norm creation and exhibit the opposite dynamic of that postulated in the above two models. The process starts at the international level with a couple of NGOs (or the International Committee of the Red Cross and several states in the 1970s) advocating a new international norm against the use of inhumane weapons. They try to spur international negotiations on weapons

³⁹ The like-minded countries, including predominantly Canada and West-European states in good international standing could draw very few dividends from contrasting their leadership role to the backward positions of countries known for their weak support of international norms, such as China for example. In addition, it has been argued that identity formation is a process primarily of drawing dividing lines and distinguishing oneself from those who are similar rather than from those who are apparently different and thus pose no threat of diluting or blurring the sense of identity that might exist (Bering, 1998). An additional factor is that the US, in contrast to other opposing countries, tried to engage in some sort of dialog with the landmine campaigners and eventually sought to join the ban treaty through an attempt to change its terms, which in turn produced a barrage of NGO criticisms

⁴⁰ Indeed, according to some commentators, the success of the Ottawa Process was due to the initial lack of support for it among the permanent members of the UN Security Council. This fact enhanced the credibility of the landmine campaign among states from the South and thus increased their support for it (Maslen, 2004: fn. 214).

prohibitions, by working on the domestic, regional, and international levels, with certain NGOs exercising more leverage domestically, and the International Campaign to Ban Landmines (ICBL), the Cluster Munition Coalition (CMC), the International Committee of the Red Cross (ICRC), and Human Rights Watch (HRW) focusing on the other two levels. However, when obstacles are encountered on the international level, the mobilization of support for the incipient norm at the national levels becomes a key prerequisite for launching the process of norm development internationally.

Thus, at the macro level, the processes involve scale shifts from the international level where consensus-decision making becomes an obstacle to adopting new prohibitory norms, to the domestic arena of different countries where national support for the new norms is easier to achieve, and back to the international level where national mobilizations stimulate leadership among a few countries and propel a new negotiating process out of the consensus-based forum. I depict this process in the “chain reaction” model in Figure 1 to emphasize the linkages between processes at different levels and especially the dynamic of leadership competition that is triggered by the consecutive adoption of more progressive positions by a series of early-norm-supporter countries.

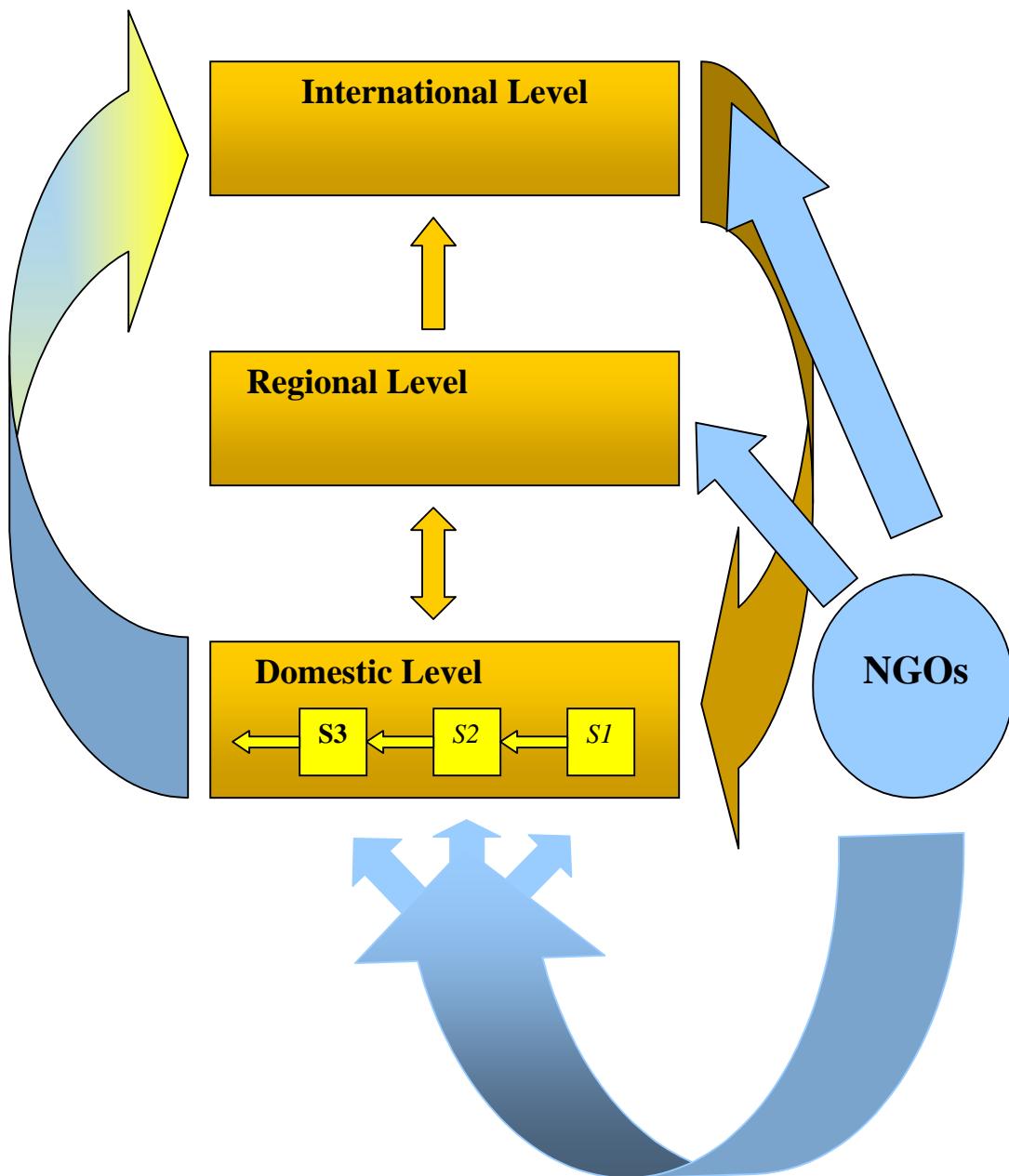


Figure 1 “Chain reaction” model of the dynamics of early norm creation

Where S1, S2, S3, etc. are the early states supporters

The framework of international negotiations on weapons restrictions within the CCW roughly approximates the conditions hypothesized as conducive to social learning through persuasion. Yet, within CCW the scope for creating strong new norms that would place restrictions on weapons use and have positive humanitarian impact has been limited. Overall, the CCW environment is non-political and until 2000 it had been closed to NGO participation, thus providing a degree of insulation to negotiators.⁴¹ The ICRC, in particular, has followed a low-profile negotiation style aimed at persuasion and incremental progress toward improvement of the laws regulating weapons restrictions within this forum. In addition, during the CCW negotiations states felt that there was a humanitarian landmine crisis and at least a very serious humanitarian problem with cluster munitions, which should have facilitated the acceptance of new ideas and adoption of measures to deal with those critical situations. However, those conditions, combined with the shared diplomatic culture and embrace of general IHL norms were not enough to generate a process of norm creation through persuasion. States started with positions that were far apart, and even if one could assume that all participants were prepared to change their own beliefs or interests in the process of arguing (Risse, 2000), that would have required a very long time of negotiation. Thus, persuasion in such settings might work but would require a prohibitively long period of time to have an effect if one assumes that participants are really committed to finding a good and quick humanitarian solution. Alternatively, the setting allows for marginal compromises and a lowest-common-denominator outcome achieved through rational, means-ends bargaining. In that sense, “normative suasion” behind closed-doors (Checkel, 2005) offers one way of normative evolution, but one which is slow and incremental at best.

⁴¹ Since 2000 NGOs can participate in the plenary sessions of the CCW meetings.

Thus, when at the international level consensual-decision making procedures impede progress toward a new and clear norm against use of weapons with severe humanitarian effects, NGOs focus on mobilizing support at the national level, as well as obtaining the endorsement of their cause from as many regional organizations as possible. This support then is channeled back to the international level. Whereas most previous work has described how opposing states become the targets of pressure coming from international NGOs, international organizations, and foreign states, this study focuses on the processes that generate initial support and prompt states to assume leadership in creating and promoting a new norm.⁴² That is, I am interested in the first stage of norm creation (Figure 2) before the tipping point is reached and a cascade of states joining the flow ensues (Finnemore and Sikkink, 1998: 896). Thus, I focus on what happens between point A in Figure 3 when a practice is commonly accepted by states and point B when a number of countries (in my cases around 30) come to deem this same practice as reprehensible and in need of prohibition and start working actively to win the support for prohibition from other states, thus triggering a “norm cascade.”⁴³

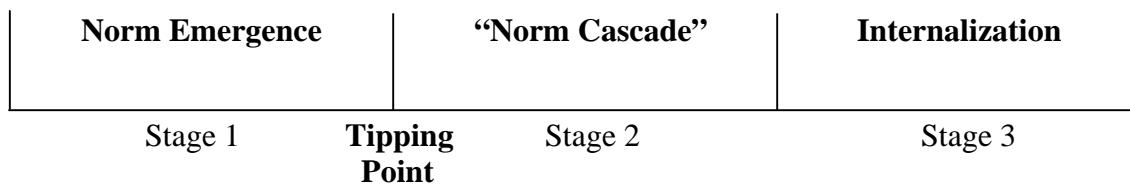


Figure 2 Norm life cycle in Finnemore and Sikkink, 1998

⁴² The boomerang effect comes into work against recalcitrant states as the process of norm development moves forward, but this phase will not receive particular attention as the dynamics have already been studied in detail.

⁴³ The way I define the tipping point is slightly different from Finnemore and Sikkink’s since it is a point where states decide to back an emerging norm and work actively to produce the “norm cascade”. In Finnemore and Sikkink it is a point that comes later in time when approximately 1/3 of the existing states embrace the new norm (Finnemore and Sikkink, 1998: 900-1).

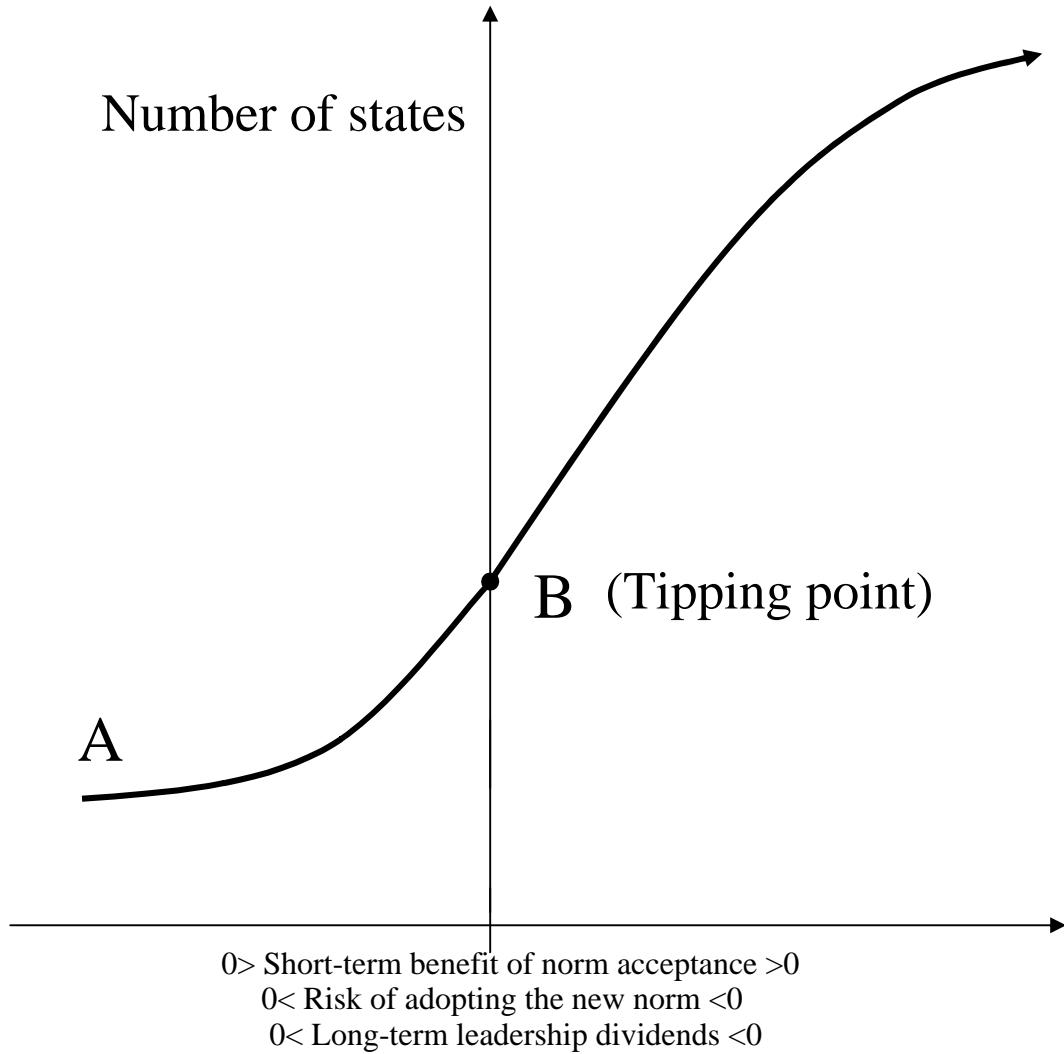


Figure 3 Norm emergence stage

I argue that the success of norm creation depends, first on the initial framing of the problem by NGOs, and second, on their ability to foster among states a dynamic that I call “leadership competition” through a combination of domestic and international approaches.

Leadership competition is the result of a chain-reaction dynamic among states started and fueled by NGOs. By playing upon the ambitions for leadership of states, be they small, middle or great powers, NGOs were able to generate support for banning landmines and cluster munitions. By appealing to the humanitarian traditions and national identities as “good world citizens,” especially of small and medium states, NGOs were further successful in setting in motion a process of leadership competition, even though the roles different states played were largely dictated by their diplomatic cultures and traditions. On landmines, the process started with the US leading the way domestically. Next, France was willing to show international leadership (at a moment when the US could not) by calling for a review conference of CCW to deal with landmines. Then Belgium unilaterally banned landmines with the first national law of this kind. Sweden called for an international ban at the CCW. Norway, eyeing its neighbor went further, adopted the second national legislation on landmines and became a driving force for an international ban. The Netherlands, Germany and Denmark followed with national bans. As progress at the CCW stalled, Austria quietly started drafting a treaty for a total landmine ban. At this point Canada realized there was a leadership opportunity not to be missed and it seized it fearing someone else would otherwise steal it. Then the group of leading countries worked as a team to trigger a norm cascade (Finnemore and Sikkink, 1998). The NGOs were there every step of the way to work with states on the treaty provisions in the negotiating halls, but

also to cheer and applaud them and – if one of them appeared to go astray – to boo it back into the pack.

Even though the process on cluster munitions is still evolving, it has reached a point where NGOs have been able to stimulate leadership among states, and it does confirm the importance of the domestic pathway to norm creation. Once it became clear that international negotiations on explosive remnants of war and cluster munitions within the traditional CCW forum could only yield partial and weak regulations, NGOs focused their efforts on pushing through parliaments domestic laws banning or placing a moratorium on the use of cluster munitions. They have secured the first national ban in Belgium, a moratorium in Norway and are energetically working on stimulating similar measures in several other countries including Austria, France, Germany, Italy, Luxembourg, Sweden, and Switzerland.⁴⁴ As national initiatives proliferated, a new war in the summer of 2006 between Israel and Hezbollah in Lebanon revealed once again the dangers cluster munitions use poses to civilians. This unfortunate occasion was seized by NGOs, the ICRC and supportive UN agencies as an opportunity to launch a renewed campaign against those weapons. At the CCW Review Conference that came in the fall, Sweden and Austria pushed for negotiations within the CCW on a legally-binding instrument addressing the humanitarian concerns posed by cluster munitions and drew the support of 30 countries in the 10 days of the Conference. However, opposition from other countries, including the US, Russia and China, blocked the process at this forum. Perceiving the growing state support and momentum of the campaign against cluster munitions, Norway decided to seize the moment and launch an alternative negotiating process outside of the CCW modeled on the Ottawa Process.

⁴⁴ In an attempt to spread the legislative process across Europe, the Senator who introduced the first law proposal in Belgium plans to organize a conference for fellow MPs from other European countries to discuss the issue and share experience in drafting appropriate legislation. This could also be seen as a sign of a trend toward reinvigoration of parliamentarian life in Europe (e.g. Costa et al. eds, 2004).

This pathway of norm creation through concerted efforts at the national levels of countries that are aimed at producing an international effect has been neglected in the recent literature on norm development and socialization. In a sense, this is an old pathway of diffusion of domestic norms internationally. The latter however, has been associated with the promotion of norms by hegemonic states unilaterally and mostly at the international level or in bilateral contacts.⁴⁵ In contrast, this process starts with an international effort from non-state actors that gets refocused on domestic action, when obstacles at the international stage are met, and then feeds back on the international level. Whereas it could be seen as a case of regional norm formation to the extent that a key phase of the mobilization around the new norms takes place in Europe, it is not limited to it. The initial formulation of the problems of landmines and cluster munitions actually originates with American NGOs and the US is first in recognizing the issues and responding to them in some limited ways. The ultimate success of the process rests on the support of a large number of countries especially in Africa and South America.⁴⁶

The role of NGOs is key at several stages of the processes of generating leadership and norm development. **First**, NGOs are the main agenda setters – they highlight the issue in need of action, its problematic aspects, and the appropriate ways in which they should be addressed, and move the issue higher on the international agenda. At these stages, issue framing is of utmost importance since the created perception of the problem, its urgency, and possible solutions in large part define subsequent state reactions. **Second**, when their efforts toward norm creation are blocked at the international level, they turn to the domestic level, publicize the issues,

⁴⁵ Britain's fight against slavery, in particular, was a case of internationalizing a norm originating in British society (e.g. Kaufmann and Pape 1999; Nadelmann 1990).

⁴⁶ The development of new norms first in the individual domestic contexts of different countries and then at the international level is characteristic of the women's rights movement (e.g. Berkovitch, 1999; Dubois, 1994 cited in Finnemore and Sikkink, 1998: 893).

and thus “create” specific opportunities for willing parliamentarians or government officials to play more visible roles in their respective domains. Thus, by stirring domestic debate in a number of countries and achieving the adoption of national bans or measures against the weapons, NGOs provide the grounds from which states willing to play a leadership role internationally could launch their initiative. That is, by domestic and international mobilization NGOs manage to change the risk calculations of assuming leadership by making the issue more prominent in the media and obtaining the endorsement of their goals from a number of states. Once that point is reached states with leadership ambitions could count on the support of a number of like-minded states and expect that others would follow. Without the NGO work this tipping point could not be reached easily.

Third, NGOs not only enable but also legitimize the role played by leading states. Without NGO involvement, the state willing to lead the way would have to shoulder the difficult task of convincing other countries to back its proposal – a process that would likely make the issue more politicized and incur a price if more powerful opponents decide to check the initiative. In addition, by asserting its leadership early, that state would deprive other countries from the possibility to play leading roles as well, and thus, diminish the incentives for their joining in the effort of norm creation. In contrast, by working within different countries and bringing supportive state representatives together in meetings to discuss the problems and strategize about the best ways to address them, NGOs foster among states a distinct identity of belonging to a team of leaders that can make a difference. NGOs also focus the attention of the media on the problems. By highlighting their humanitarian aspect, NGOs leave little space for politics and thus facilitate the role of their state partners as disinterested actors that try to address the humanitarian crises in the name of the common good. In this sense, NGOs are not only agenda setters, but also indispensable

allies for the likeminded countries in the joint effort to generate support for the new norms. Accordingly, funding from those countries has been very important for the activities of the ICBL (Short, 1999: 484, 491), and similarly, financing from sympathetic governments has allowed NGOs in the CMC to develop a range of activities, including the creation of a website, field missions to investigate the effects of the use of cluster munitions and prepare reports on them.

Finally, having helped create the conditions for state leadership in norm creation, defined the role those states should play and the goals they should pursue, NGOs also “police” state behavior and make sure that their partners would not deviate from the set up goal and would live up to their commitments to negotiate a strong treaty and create an unambiguous international norm.

Thus, in these cases we witness scale shifts of mobilization both downward and upward again, as well as a diffusion of a set of parliamentary initiatives among countries, and parliamentarians in one country copying the legislative proposals that had gained success in another. However, NGO work with MPs from different countries does not ensure the success of their efforts. Party configurations, role of the military establishment, and to some extent domestic structures do impose limits on their ability to achieve domestic policy change through this channel. Nevertheless, the NGOs contribute to the invigoration of parliamentarian initiatives and debate on the issue, which is a necessary precondition for further steps to be made nationally whether by the legislative or executive branch of government.

Hypotheses, case selection and methodology

Hypotheses

Two strands of **realist theory** furnish two contradictory explanations of the emergence and role of norms. On the one hand, hegemonic stability theories provide for the role of norms when a hegemonic power promotes them and accepts the costs of maintaining multilateral institutions and a normative order from which it profits most. On the other hand, it has been argued that hegemonic states are only constrained by multilateral arrangements, which suit best the interests of lesser, militarily weak states (Kagan, 2002, 2003). Applied to the case of weapon restrictions several hypotheses are derived:

Military necessity: Since realist theories of IR assert that states are concerned above all else with their security or power maximization, what would account for the different positions regarding weapons restrictions is the level of threat states face or their defensive or offensive intentions.

“Lilliputians try to pin down the giant”: An extension of the military necessity logic and Kagan’s argument implies that weaker states would use international agreements as a way to restrict the military might of more powerful states such as the US. Thus, weaker states should try to impose bans on the most effective, as well as most expensive weapons in the arsenal of great powers. The hypothesis also implies that such attempts at restraining militarily powerful states would fail unless a grand coalition of states is formed.

Soft balancing: Similarly, a new version of balance of power theory claims that states perceiving a threat from the accumulation of American power would take “measures that do not directly challenge U.S. military preponderance but use

international institutions, economic statecraft, and diplomatic arrangements to delay, frustrate, and undermine U.S. policies” (Pape, 2003, 2005; also Walt, 2005a,b). Whereas IR scholars have remained predominantly focused on the use of economic levers and coalition-making as instruments of soft-balancing (e.g. *IS*, Summer 2005), others have depicted European support for a host of international agreements including the Ottawa Mine Ban Treaty as “balancing-on-the-sly” (Joffe, 2003; 2002), “international legal imperialism” (Anderson, 2000), or even “lawfare” aimed against the US (Dunlap, 2001; also Rivkin, and Casey, 2003). Thus the negotiation and adoption of international weapons restrictions could be seen as a result of smaller states’ desire to reign in American power. Opinions differ on whether this pattern of balancing is the result of weakness (Kagan, 2002, 2003) or newly acquired assertiveness of the balancers (Cox, 2005), but in contrast to the above hypothesis, in this case the prediction is that soft balancing might actually succeed.

“Power gives away junk or disarms the Lilliputians”: The only weapons that have ever been successfully banned are those with very limited military uses or those that have been superseded by new technological developments. That is, the great powers would agree only to restrictions on obsolete and unnecessary weapons. Another nuance to the above thesis actually sees the rich and powerful states armed with high-tech weaponry as pushing for restrictions on low-cost, equalizer weapons that can to some extent redress the asymmetry of power between them and the poor countries (Price, 1998b).

From one **constructivist point of view**, the different approaches to the humanitarian problems of weapons may be attributable to the different social values embraced by different nations, i.e. the differences on these issues can reflect larger cultural differences among countries.

Both **liberal and instrumental Marxist theories** of IR look at the role of

domestic actors, and in the latter case, particularly at the role capital and big corporations play in defining state policies. Thus, it would be more difficult to restrict the use of profitable weapons in whose production large manufacturing companies have a considerable stake. States that do not have companies engaged in the production and export of landmines and cluster munitions, or states where the manufacturers have limited leverage over decision-making, would be more likely to support restrictions on these weapons.

The focus of this study will not be on testing which of the above hypotheses explains *why* new international norms against inhumane weapons are adopted. Rather, I will explore *how* such new norms come into being by proposing a model that combines insights from constructivism, liberal, and domestic structure theories. It highlights the interplay of national and international NGOs and domestic actors in the executive, the legislature, and the military establishment that unfolds within the particular domestic, international, or regional structures of different states and shapes state policies and practices. I show that state positions regarding weapons restrictions emerged out of a contest in coalition building and issue framing between the NGOs and the military establishments and I emphasize the decisive roles played by committed individuals in decision-making positions in furthering the process of norm development at the domestic and international level.

Country Case Selection

I will explore the processes of norm formation at the domestic and international levels within the context of five country case studies. The selected countries belong to the broad categories of “great powers” (the US), “second tier powers” (France), “middle

powers” (Canada and Norway) and “small powers” (Belgium), which allows the examination of the behavioral patterns and roles of states positioned differently in the international system and their impact on the development of international norms.

The countries have also been chosen as representative of the three broadly defined types of domestic structure – the “society-dominated” US, “state-dominated” France and Canada, and “corporatist” Belgium and Norway. Thus, the case selection allows testing the ability of the domestic structure model to predict the avenues most conducive to the translation of NGO influence into policy aimed at norm creation.

I will show, however, that NGOs were not entirely dependent for their success on domestic structures. Instead, NGOs through their campaigning and partnership with parliamentarians and government officials managed to circumvent the obstacles posed by domestic institutional structures in some of the studied countries. Pressure from and interactions with NGOs helped redefine and enhance the role played by parliaments and the Ministry of Foreign Affairs in different countries. For example, in the corporatist setting of Belgium where the parliament has traditionally played a minimal role in domestic policy making, and even less so in foreign policy, a coalition of NGOs and parliamentarians set the course not only of the country’s domestic but also foreign policy on landmines and cluster munitions. In a relation of mutual reinforcement, NGOs and parliamentarians broadened the scope of their opportunities for action and heightened their profile in the media and public opinion. Similarly, the alliance between NGOs and the Canadian Ministry of Foreign Affairs allowed the latter to increase its freedom of operation and funding resources in a highly centralized political system that concentrated the policy-making power in the hands of the prime minister.

Changes in the institutional roles of legislative or government bodies have largely been the result of the combined energies of NGOs and committed individuals

within the respective organizations. In either case, the partnership between NGOs and parliamentarians or foreign affairs officials has enhanced the leverage of both sides. In this sense, individuals, their personalities, beliefs and ambitions are key at many stages of both the landmine and cluster munition campaigns. They operated within their domestic and international structures but they also managed to go beyond them. There can be no leadership without leaders willing to take risks and step outside of their institutional limits. Yet this step might be easier to make in certain environments rather than others. In particular, support for a new norm is easier to garner where there is a foreign policy tradition that ranks high human rights promotion and development aid. Similarly, diplomatic initiative and leadership are practiced and better accepted in some Foreign Ministries than others. Middle powers such as Canada and Norway (in contrast to Belgium) had both the resources to engage in high-profile initiatives and occasionally the diplomats to carry them through.

In addition, the “resonance” of promoted norms with domestic culture matter (Checkel, 1997b; Cortell and Davis, 2000; Risse, 2002: 265; Price, 2003: 596). In cases, such as France, the US, and to some extent Norway, NGO efforts were channeled along the ways predicted by the domestic structure framework. But the model per se does not explain why certain national positions on landmines or cluster munitions were adopted. The actual results of NGO campaigning could be attributed to the choice of tactics and arguments NGOs made, which in turn were influenced by the broader political culture of the societies within which they were embedded.

Substantive cases and interdependence

The two selected cases are tightly linked since the development of the cluster munitions campaign was in many respects dependent upon the prior campaign against landmines, which both opened up new opportunities for NGO mobilization and created some obstacles for the new campaign. In particular, the landmine campaign could be viewed as a point of departure of two path-dependent trajectories that set the states that had opposed the landmine treaty on a different road compared to the one upon which certain landmine treaty supporters embarked.⁴⁷ On the one hand, the US military drew the lesson that they should oppose new weapons restrictions at their inception and prevent the launching of a negotiating process out of their control. On the other hand, the NGOs and some of their partners among the like-minded countries tried to emulate the steps of the landmine campaign in the case of cluster munitions. In both cases for example, NGOs worked together with Belgian senators to achieve the first national bans on the two types of weapons. Similarly, Norway was the second country to advance domestically a ban on mines and a moratorium on cluster munitions. Whereas the mine ban opponents learned the lesson that next time they should be more active in their efforts to thwart campaigns for weapons restrictions, ban supporters learned that it was possible to overcome the hurdles in their path and repeat success.

NGO assets from the landmine campaign

The success of the landmine campaign, the adoption of the Ottawa Convention, and in particular, the award of the 1997 Nobel Peace Prize jointly to the coordinator of the

⁴⁷ Whereas one could discern certain similarities and path-dependencies in the way the two campaigns evolved internationally and in certain countries domestically, this is not implied for every single country participating in the two processes.

ICBL campaign Jody Williams and the ICBBL became an important asset for the NGOs that had been working for the ban. Not only did little-known NGOs such as Handicap International, for example, become well-respected co-recipients of the Nobel Prize in their countries, but new umbrella NGOs such as Mines Action Canada, Landmine Action, UK, and the German Landmine Actiongroup were brought into existence for the purposes of the landmine campaign and continued working on mines and new issues such as cluster munitions thereafter. Thus the creation of the new norm against landmines constituted new actors with enhanced prestige and more clout in domestic politics and international negotiations in this issue area.⁴⁸ The NGOs were admitted to participate in the sessions of the CCW and their position was institutionalized through the Ottawa Convention itself – the annual meetings of the states parties to the Convention and the meetings of the Intersessional Standing Committees of the Convention, the 2004 review conference, the creation of the Landmine Monitor organized by the NGOs to follow state compliance with the treaty, the establishment of the UN Mine Action Service (UNMAS), as well as numerous national commissions and parliamentarian committees devoted to mine action, provided new settings within which NGOs could exert influence or find new partners to further their agendas. The new norm itself provided legal grounds to expand its scope of applicability to other classes of weapons with similar effects, such anti-tank mines with anti-handling devices and unexploded cluster munitions. Finally, enhancing the visibility of the mine issue on the international agenda and the adoption of the Ottawa Treaty contributed to

⁴⁸ Whereas the NGOs had gained a more institutionalized role in the area of mine action and the forums that dealt with the problem of landmines and inhumane weapons, with the coming to power of the new Bush administration in the US there was a backlash against the participation and enlarged role of NGOs in other international negotiations. This was most evident at the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects, where then-Under Secretary for Arms Control and International Security, John Bolton bluntly stated that the US didn't "support the promotion of international advocacy activity by international or non-governmental organizations, particularly when those political or policy views advocated are not consistent with the views of all member states" and argued for restricting NGO activities at the Conference (US Department of State, 2001).

an increase in the funding of mine clearance, victim assistance and mine education programs that to a large degree were channeled through the NGOs which were active in the campaign, thus providing a steady source of funding for them as well as for their cause.⁴⁹

Liabilities of the landmine campaign

Paradoxically, the main liability for the NGOs was the success of the landmine campaign itself. It was displayed in a couple of different ways.

First, initially the NGOs framed the problem of cluster munitions as a subset of the larger problem of unexploded ordnance and emphasized the fact that due to their failure rates, cluster submunitions often functioned as *de facto* landmines, thus obscuring the negative impact of the weapons during the time of their use. The drawing of close parallels to landmines resulted in a decision by governments to concentrate within the CCW on the post-conflict effects of unexploded munitions (including clusters). This decision then steered discussions away from the issue of cluster munitions and led to a weak protocol on clearing explosive remnants of war. Only after a renewed NGO mobilization domestically and internationally that focused on the problems of cluster munitions during and after conflict did the issue come back on the international agenda.

Second, NGOs found it more difficult to energize government support for a treaty prohibiting cluster munitions since diplomats were somewhat awed with the prior success of the landmine campaign and feared that if a similar process were launched on cluster munitions, even if it produced satisfactory results in dealing with

⁴⁹ Increased funding resulted, on the one hand, from the need that states that had taken on the leadership roles follow on their words with real deeds of financial support, and on the other, from the desire of state that had been left out of the process – most prominently the US – to compensate for their loss of prestige and prove their humanitarian credentials by augmenting their contribution to mine clearance and assistance.

the humanitarian problems of the weapons, it would still be viewed as a failure compared to the Ottawa Process.

Finally, having learned their lessons from the landmine campaign, the military opposition in most countries would be better prepared to meet the NGO challenge early on. Similarly, the US would act more shrewdly, get involved in discussion on explosive remnants of war (ERW) and agree to the adoption of the legally binding ERW Protocol in order to keep the process within the CCW and prevent it from taking a turn toward alternative fast-track negotiations. However, such tactical concessions to NGOs and the states supporting their demands could only temporarily slow down the NGO projects. If NGO mobilization persists and garners increasing support among a number of states, the tactical concessions either have to turn into a real norm-making process or else end and thus give rise to an alternative process when a number of like-minded states deem the moment propitious to launch it – as manifested in the Ottawa Process and the recent Norwegian initiative to negotiate a cluster munition ban.

Research methods and variable controls

Given the non-independence of the two cases, the “before and after comparison” research design, combined with within-case comparisons, and process tracing is the most suitable technique to uncover the factors contributing to the success of NGOs on different stages of campaigning and early norm development (George and Bennett, 2005: 166-7; 204-32).

The success or failure of NGO campaigning would be defined in each country case depending on the match between the demands NGOs make and the measures governments take as a response. According to this narrow definition of norm acceptance, regarding landmines the country cases that can be coded as success are Belgium, Canada, France and Norway, and failure – the US. In the cluster munition

case, we have success in Belgium and Norway, failure in Canada and France, and a mixed situation in the US. Since I am interested in the early stage of norm emergence, at the international level a campaign would be considered successful if it generates state leadership initiatives in promoting the adoption of international agreements addressing the problems of weapons along the lines of NGO demands. The final success of creating a new norm would be measured not only by the adoption of an international treaty prohibiting the weapons but also by the degree to which their use is stigmatized and the norm accepted even by states that refuse to become parties to the treaty.⁵⁰

Examining two cases within the same issue area of conventional weapon restrictions allows me to concentrate on the same range of actors involved in the negotiations on both landmines and cluster munitions and thus control the effect on the outcome of the particular types of organizations. On the other hand, landmines and cluster bombs are considerably different in terms of military utility, uses and profitability. This allows me to evaluate competing arguments focused on these issue-specific factors.

Studying two campaigns (even though similar) within the same country also offers a possibility to evaluate the importance of NGO strategies and strength of the campaign, given that the values of the domestic institutional variables will be relatively stable over the period separating the two campaigns, discounting the opportunities for NGO advocacy on cluster munitions created by the first landmine campaign. On the other hand, focusing on the same country and two interrelated campaigns helps assess the influence of the first campaign on the second, when the adoption of the Ottawa Treaty is defined as the break-off point in the “before and

⁵⁰ For example, even though the US is under no legal obligation to do so, it refrains from using, producing, and exporting landmines and there is evidence that people in the military consider them an illegal weapon.

“after” configuration. Again, the effect of the creation of the first norm on the chances of success of the second can only be discerned by controlling for the changes that may have occurred in the same period in other relevant variables in the domestic or international environment.

Finally, studying two cases each in the state-dominated and corporatist types of domestic structure also provides opportunity to assess the influence of national culture or individual factors, given that the institutional environment is approximately, even if not exactly, the same.

Whereas the case selection provides for variation in some of the factors whose influence has to be controlled for in order to prove or disprove the alternative hypotheses, I rely on process tracing, in-depth case studies, and interviews to uncover the causal relations between different factors and the dynamics through which weapons restrictions get adopted both at the domestic and international levels.⁵¹ In this sense, the bias toward selecting countries that have been instrumental in providing initial support for the norms (despite their divergent paths and final positions) is warranted by the goal of discovering how the process of norm creation is generated. The lack of independence among the two cases also is not an insurmountable problem, since I am interested in the general process of developing new norms in the area of weapons restrictions and the connections among the cases and examined factors could help delineate the causal chain that leads to norm creation. Thus, the current study does not systematically test existing theories of norm development. Rather, it identifies significant gaps in their coverage, especially at the early stage of norm creation, and discovers important processes that they have neglected. Future theoretical development will benefit from taking account of the processes of

⁵¹ Process tracing is defined as “the decision process by which various initial conditions are translated into outcomes,” (George and McKeown, 1985 quoted in Checkel, 2001: 565). The process involves tracing backwards the causal mechanism connecting the outcome to its cause (Van Evera, 1997: 70).

leadership competition and chain reaction if we are to understand how new norms emerge.

A potential problem in the research design is selection on the dependent variable. Even though in the two cases of landmines and cluster munitions, I examine stages of failure and success of NGO efforts to obtain their demands, both processes reach a tipping point when a state decides to take the lead and call for an alternative negotiating process out of the traditional consensus-based fora. This point could be defined as success at this early stage of norm emergence on which I focus. The lack of variation in the dependent variable poses the danger that the factors, which I identify as causally important for success, may also be present in cases where norm emergence has not followed. To address this problem, in the final chapter I include a short overview of two cases of problematic use of weapons and methods of war – depleted uranium weapons and attacks on dual-use targets – that so far have not resulted in successful norm development.

Organization

The thesis will proceed as follows. In chapter 2, I will provide a historical study of the development of regulations on certain conventional weapons with deleterious effects during the Cold War and delineate the factors that prevented the adoption of more ambitious restrictions advocated by a number of countries. In chapter 3, I will outline the major points in the international level campaigns on landmines and cluster munitions, focusing on the role of the ICRC and the two international NGO coalitions – the ICBL and the Cluster Munition Coalition, and outline the factors facilitating or blocking the success of international negotiations. In the next three chapters I will

focus on the domestic campaigns that were key in generating support for the creation of the international norms (the US – chapter 4, France, Belgium, and Norway – chapter 5, and Canada – chapter 6). Finally, chapter 7 will conclude with an overview of the study findings and their implications for further research.

PART ONE
INTERNATIONAL PROCESSES OF NORM FORMATION

CHAPTER TWO

Weapons Restrictions during the Cold War

Historical origins and development of International Humanitarian Law

The origins of the principles that inform the laws regulating the conduct of warfare are millennia old and their formulation in a comprehensive doctrine dates back at least to the 4th century and the work of St. Augustine.⁵² Their codification in written law agreed by a community of states is much more recent, however. In 1864, the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted and in 1868 several states signed the St. Petersburg Declaration that prohibited the use of a very specific weapon – a recently invented explosive bullet that could cause extremely severe wounds. The ways in which these two first international agreements were initiated were very different but both were animated by the desire to prevent and alleviate human suffering.

The 1864 Geneva Convention resulted from the efforts of Henry Dunant, a Genevan businessman who had witnessed and tried to alleviate the suffering of wounded soldiers left on the battlefield of Solferino in 1859. He later wrote a book about his experience and ideas to create relief societies to provide care to soldiers wounded in battle. His book became a success and soon he was joined by several fellow citizens to form the first relief society in Geneva and then promote in European state capitals the idea of international rules that would regulate the conduct of war and stipulate the rights and duties of the relief societies (Bugnion, 2004). This was the

⁵² For an extensive and insightful examination of the origins of just war principles and the laws of war, see for example, Johnson (1975, 1981).

beginning of the International Committee of the Red Cross (ICRC) and international humanitarian law (IHL) – a remarkable achievement that started as the private initiative of Dunant and a number of Genevans, whose cause captured the interest of civil society and of the rulers of some countries and got translated in an international agreement.⁵³

The St. Petersburg Declaration was also the result of the initiative of a single individual intent on limiting suffering on the battlefield, but the process through which it came about was the opposite. The Russian tsar Alexander II proposed the banning of a bullet invented by the Russian army in 1867 that exploded on impact with a soft substance and could be extremely deadly. The prohibition of the bullet in the Russian view was dictated by the customary rule according to which the use of arms, projectiles and materials of a nature to cause unnecessary suffering was prohibited. Thus the first codification of a general principle for the conduct of war was the prohibition of a concrete weapon.⁵⁴ It was deemed necessary to translate a general principle into a ban of a rigorously defined weapon to avoid any misunderstandings or loopholes for state compliance. Similarly, the next round of codification of the rules of armed conflict came about with the 1899 Hague Peace Conference convened on the initiative of Tsar Nicholas II, “with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace.” In addition to elaborating general principles, the Conference also adopted two Declarations banning the use of projectiles diffusing asphyxiating gases and expanding bullets (the so-called dum-dum bullets). The objective of the two Declarations was again to give concrete expression of existing customary principles against the use of materials causing

⁵³ Sixteen states agreed to the 1864 Geneva Convention that included provisions for the protection of wounded soldiers, the inviolability of medical personnel, the protective symbol of the Red Cross, and the establishment of voluntary relief societies.

⁵⁴ The prohibited weapon was defined as “any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.”

unnecessary suffering.

In this sense, the early development of IHL has been tightly linked to weapons prohibitions as a way of clarifying the meaning of principles and ensuring proper compliance with them. The other notable features of the process of law development at the time were the humanitarian impulses driving the process (whether coming from civil society or the top of states) and the adoption of the regulations not with consensus but based on the agreement of the majority. This majoritarian principle did not prevent the adopted provisions from becoming customary law over time, even though the US, for example, never signed the above two declarations, and the major military power at the time, Britain, never accepted the declaration on expanding bullets and only joined the one on asphyxiating gases eight years after its adoption. The other milestone treaties of IHL – the 1949 Geneva Conventions and their 1977 Additional Protocols were initiated again by the ICRC with the purpose of ameliorating the conditions of civilians in occupied territories and reaffirming and developing general principles of civilian protection during armed conflict, respectively. As with the prior IHL agreements, their negotiation was based on rules of procedure that provided for majority voting whenever consensus could not be achieved.⁵⁵

The traditional majority-based treaty making in the area of IHL is both curious and intrinsically logical. It is curious when looked upon from the perspective of military interests and state security that can be significantly affected by rules limiting the use of military force and employment of weapons. It is also curious seen in the light of arms control and disarmament negotiations during the Cold War when security stakes were high and the bipolar system necessitated the agreement of the two bloc

⁵⁵ At the negotiations of the Additional Protocols, “[a]ll decisions on matters of substance taken by the plenary Assembly, and particularly the definitive adoption of articles, were subject to a two-thirds majority whenever there was no consensus. In the Committees only a simple majority was required” (Pictet, 1987b).

leaders before a treaty could be adopted. On the other hand, from a humanitarian perspective, no significant progress (or only a very slow one) could ever be expected in the development of new societal norms, including those regarding warfare, if the consent of all interested parties were required. As has been argued, the process of norm formation has a “tipping point” and the support of a critical mass of states is a necessary condition for a norm to claim international status (Finnemore and Sikkink, 1998).⁵⁶

This chapter will examine the attempts by the ICRC and a number of neutral countries led by Sweden to achieve international restrictions on the use of certain weapons with severe humanitarian effects in the context of bipolarity during the Cold War. It will be argued that several factors combined in making possible modest progress toward restricting the use and negative effects of such conventional weapons. At a practical level, a number of conflicts in the period after WWII, and especially the Vietnam War, had demonstrated the inadequacies and the need for improvement of the laws of war regarding the conduct of hostilities. The ICRC, an organization with the mandate to monitor and work for the development of international humanitarian law (IHL), has persistently pointed out the need to enhance civilian protection and regulate the conduct of hostilities since the time when the Geneva branch of the laws of war dealing with the protection of the wounded and sick, prisoners of war and civilians was updated with the Geneva Conventions of 1949.⁵⁷

⁵⁶ Formal treaties are not indispensable for the creation of new norms, but they enable the process. To the extent that a new legal norm regulating warfare requires states’ approval, there is a great chance that it would never pass the “tipping point” and get institutionalized if the consent of all states involved is needed.

⁵⁷ Traditionally, the laws of war have been divided into two branches – the Hague laws, codified in 1899 and 1907 at the Hague Conferences that regulate the conduct of hostilities, and the Geneva laws dealing with the protection of victims of war (the wounded and sick, prisoners of war, and civilians) that were initiated by the International Red Cross and written into the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, updated several times, and especially in the 1949 Geneva Conventions. Since the 1970s the separation between the two branches is less clear-cut as the 1977 Additional Protocols of the Geneva Conventions comprise provisions both on the conduct of military operations and victim protection. Rather, there is a nuance in the usage of the

However, the ICRC appeals were only heeded after changes in the normative and security climate took place in the late 1960s and the 1970s. The normative change came with the institutionalization of human rights norms at the UN, whose influence then spilled over to the laws of war. The security change came with the easing of tensions between the two superpowers during the years of détente, which opened a window of opportunity for nonaligned and small neutral states to play a more assertive role in the international arena. In particular, using the UN General Assembly as a platform from which to voice their concerns, a number of active states led by Sweden sought to “humanize” the laws of war to ensure basic human rights on the battlefield and shield both civilians and combatants from the excessive cruelty and suffering caused by war and certain weapons. However, their efforts were faced with opposition from the USA and most NATO countries, which resented any restrictions on their military assets and strategies that some of the Swedish proposals entailed. The ICRC tried to find a middle ground between these opposing positions and come up with practical solutions that would improve civilian protection without losing sight of military requirements. It might be argued, however, that in the process of seeking compromise, a lot of the initial momentum was lost and the public stigmatization and legal prohibition of weapons such as napalm and cluster bombs sought by the proponents of restrictions was muffled down in technical discussions and long negotiations. Similarly, along the way, the emphasis put by the UN on the protection of the human rights of both civilians and combatants during armed conflict was replaced by a more limited focus on the protection of civilians against the pernicious effects of weapons that animated the ICRC initiative on IHL development as a whole.

terms “laws of war” or “laws of armed conflict” and “international humanitarian law” – the latter generally preferred by NGOs and the former by military officers. The difference is based on the respective actors’ tendency to see the laws regulating the conduct of warfare as the product of either humanitarian impulses or codification of military practices (Evangelista, 2006; Dunlap, 2001). In fact, these two aspects of IHL treaty-making are not mutually exclusive but inseparable parts of the process of customary international law formation and will be used interchangeably in this work.

Whereas public concern over the Vietnam War and the crisis of legitimacy suffered by the US, coupled with détente allowed the neutral countries to place the issue of weapons restrictions on the international agenda, the decision-making procedure based on consensus ensured that the outcome of negotiations would be heavily influenced by the major military powers. The question remains, however, to what extent could the major powers be swayed by the arguments of the restriction proponents and make some concessions? Thus, this chapter will explore the factors that shaped the results of international negotiations on weapons and the degree to which human rights and humanitarian concerns played a role in the process of reaching them.

1950s: the troubled beginnings

The ICRC has been preoccupied with the problem of inhumane weapons that cause unnecessary suffering or can endanger the civilian population, including landmines, since the 1950s. Initially, its foremost preoccupation was with the looming danger of nuclear war. Thus in April 1950 it made an appeal to states parties to the 1949 Geneva Conventions to prohibit nuclear weapons and indiscriminate weapons in general. In 1956, in preparation of the 19th International Conference of the Red Cross to be held in New Delhi in 1957, the ICRC published a draft of fairly specific rules of warfare under the title “Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War” (Kalshoven, 1971: 69).

The use of conventional weapons was not the focus of the Draft Rules but their chapter on “Weapons with uncontrollable effects” addressed some of their negative effects. It suggested, among other things that minefields be charted and upon the end

of hostilities information about their location be handed over to the authorities responsible for the safety of the civilian population. In addition, the text stipulated that “weapons capable of causing serious damage to the civilian population shall, so far as possible, be equipped with a safety device which renders them harmless when they escape from the control of those who employ them” (ICRC, 1956; SIPRI, 1978: 221-2).⁵⁸

Thus, as far back as 1956 the ICRC had raised and sought to address some of the humanitarian problems caused by conventional weapons and the Draft Rules can be seen as the basis from which future discussions of incendiary weapons, landmines and other delayed-action weapons would start in the 1970s and eventually end with the adoption of restrictions on their use in the 1980 Convention on Certain Conventional Weapons (CCW). However, at the time when they were presented to the attention of governments, the Draft Rules did not generate interest. Most states were unwilling to commit themselves to rules of civilian protection that would have prohibited the use of nuclear weapons and severely restricted area bombing at a time when conventional and counter city nuclear bombardment were key in the military strategies of major powers (Baxter, 1975: 3, 1977b: 178; Kalshoven, 1971).

Obviously, in the 1950s the time still was not ripe for developing more comprehensive rules for the conduct of hostilities and use of weapons. This was a period when the Cold War was just starting, the Soviet Union had embarked upon producing nuclear weapons, and states from both the Western and the Eastern block were insecure and suspicious of the intentions of their adversaries. The issues of conduct of military operations and aerial bombardment had been avoided in the

⁵⁸ Article 14 of the Draft Rules stated that, “the use is prohibited of weapons whose harmful effects -- resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents -- could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population. This prohibition also applies to delayed-action weapons, the dangerous effects of which are liable to be felt by the civilian population.”

recently concluded Geneva Conventions and major powers such as the US were not ready to begin a new round of negotiations that would place restrictions on their preferred military strategies. In addition, no support was forthcoming from the UN, which at that time had no interest in developing laws for waging war, but aimed at outlawing war itself.

The 1960s: New wars, new human rights regimes, and a new role for the UN

The ICRC initiatives

The issue of indiscriminate weapons was brought up again by the ICRC in 1965 at the 20th International Red Cross Conference that adopted a resolution, pointing out that “indiscriminate war constitutes a danger to the civilian population” (Sandoz, 1981, as reprinted in Maresca and Maslen: 92-3), although its wording lacked the specificity of the 1956 Draft Rules (Baxter, 1975). Following upon that in 1967, in a Memorandum to governments regarding the protection of civilians against the dangers of indiscriminate warfare, the ICRC posed the question “whether ‘such new weapons as napalm and high velocity rockets’ should not be regarded as ‘weapons inflicting unnecessary suffering’” (Kalshoven, 1989:255). Continuing with its efforts to upgrade the laws of war with a view to enhancing civilian protection, in February 1969 it convened a meeting of experts to get their opinions on its initiatives for IHL development, which included among other things, questions about the use of napalm, fléchettes (high speed barbed missiles) and fragmentation bombs.⁵⁹

⁵⁹ The expert views on whether the use of napalm was permissible were sharply divided and a number of experts cautioned the ICRC not to work toward the prohibition of specific weapons but rather remind governments of the general principles regulating their use (Kalshoven, 1989:255).

The period since the 1950s had shown that nuclear deterrence might work but at the same it did not prevent conventional wars, and especially internal wars and guerrilla warfare that exposed the civilian population to more dangers than ever before. Thus, in 1969 ICRC issued a report with a broader scope, also reflected in its title – “Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts” (Kalshoven, 1971: 70). The issue of nuclear weapons remained a concern but it was toned down given the previous failures to get governments deal with it. Weapons regulations as a whole were not the focus of the report, but it nevertheless included a statement declaring that “belligerents should abstain from using weapons likely to cause unnecessary suffering; which because of their lack of precision or their effects, affect civilians and combatants without distinction; whose harmful effects were beyond the control, in time or space, of those employing them” (Sandoz, 1981: 92-3).

The UN initiatives on humanitarian law

Two developments in particular spurred interest in the development of the laws of armed conflict in this period and gave further impetus to the ICRC efforts as well – the institutionalization of human rights norms internationally and the Vietnam War.

The 1960s saw the expansion of human rights norms worldwide and the active engagement of the UN in their development and promotion (Draper, 1989:4, 1988:82; Cerna, 1989:39; Meron, 2000). After the two major Covenants on civil and political, and economic and social rights were adopted in 1966, the UN Human Rights bodies

turned their attention to the problem of human rights in armed conflict.⁶⁰ This expansion of interest toward warfare at the UN was occasioned not only by the institutionalization of human rights in the organization and the completion of its work on the two Covenants, but also by the realization that war had not been banished by the adoption of the UN Charter and kept taking an ever heavier toll on the civilian population due to the changed nature of armed conflicts and the development of new weapons technologies (International Conference on Human Rights, Teheran, 12 May 1968, Resolution XXIII; Reed, 1977:18).

During that period, the Vietnam War loomed large and prompted increasing concern about civilian protection and the use of weapons causing excessive injury and having indiscriminate effects (Gasser, 1989). The 1967 International War Crimes Tribunal initiated by Bertrand Russell to investigate war crimes during the Vietnam War generated attention to the use of inhumane weapons. It declared illegal the use of antipersonnel fragmentation (cluster) bombs, whose purpose, according to the evidence gathered at the Tribunal, was to injure the civilian population (SIPRI, 1978: 222-3). Amnesty International and other human rights organizations have also protested the use of certain weapons in conflicts during that period (Salmon, 1980: 85), but did not undertake a consistent campaign on the issue. In the US, public interest in the use of anti-personnel weapons was stirred by the American Friends Service Committee and grassroots anti-war organizations took up local campaigns against producers of anti-personnel cluster bombs but these activities remained focused mainly locally and did not generate a lot of public or media interest (Prokosch, 1995). Whereas these civil society initiatives may have brought some public attention to the issue of controversial weapons use in Vietnam, they remained

⁶⁰ In particular, the UN Human Rights Commission, the Third Committee, the Human Rights Division of the Secretariat, and the General Assembly were concerned with human rights in armed conflict (Baxter, 1973a, 1975).

within the context of the anti-war movement and did not aim to influence the development of new legal weapons restrictions. Thus, at that point in time NGO mobilization transnationally or at the international level did not exist and except for the UN no international organizations or negotiating fora existed that could serve as focal points of NGO efforts to outlaw the use of inhumane weapons.

The concerns over the effects of weapons use in Vietnam, nevertheless were taken up by a number of neutral and nonaligned countries, and found reflection in the work of the UN General Assembly (UNGA). In 1968, the International Conference on Human Rights in Teheran adopted a resolution requesting the UNGA to invite the Secretary General to study steps which could be taken to secure the better application of existing humanitarian rules and “the need for new international conventions” to ensure the protection of civilians, prisoners and combatants in war (Baxter, 1975:5), as well as “the need for additional humanitarian international conventions . . . to ensure the prohibition and limitation of the use of certain methods and means of warfare” (International Conference on Human Rights, Teheran, 12 May 1968, Resolution XXIII). Subsequently, in December 1968, the UNGA adopted a resolution on “Respect for Human Rights in Armed Conflicts” that affirmed the principles laid out in the 1965 Conference of the Red Cross and charged the Secretary General to undertake the studies requested at the Teheran Conference in consultation with the ICRC (UNGA, Resolution 2444 (XXIII)).

As a result, in 1969 and 1970 the Human Rights Division of the UN Secretariat produced two reports on “Respect for Human Rights in Armed Conflicts” that identified the areas where the laws of war required further development or clarification.⁶¹ A section in the first report reviewed previous efforts at introducing

⁶¹ A third report followed in 1971 but it largely summarized the work at the 1971 Conference of government experts convened by the ICRC (Baxter, 1973a: 101; Kalshoven, 1972:19).

weapons restrictions and made a suggestion that a study examining the legality of the use of napalm be conducted – a suggestion repeated in the second report which saw such a study of napalm and other incendiary weapons as a first step that would “facilitate subsequent action by the United Nations with a view to curtailing or abolishing such uses of the weapons in question as might be established as inhumane” (quoted in Roach, 1984:7-8).

Competition between the ICRC and the UN about IHL development

Thus, a sort of competition regarding the promotion of new IHL rules developed between the ICRC and the UNGA that was stoked by countries such as Sweden and Mexico active on these issues. The interest at the UN contributed to the work of the ICRC, and indeed, it has been argued, motivated it to keep the pace, concerned that if it failed to produce results, the UNGA might get more actively involved and take the lead in the field of special ICRC expertise (Baxter, 1973a, 1975, 1977a,b). This concern was felt particularly strongly in the area of weapons restrictions where the ICRC was hesitant to push hard for concrete weapon prohibitions, despite its inclination to do so, since it was aware that due to their sensitive character, such proposals would face strong opposition from the majority of states and might slow down the progress of the upcoming diplomatic conference on humanitarian law. On the other hand, the ICRC was reluctant to let those issues be dealt with at the UN where they would have inevitably got tangled in politicized discussions (Kalshoven, 1989:256).⁶²

⁶² On the different approaches of the ICRC and the UNGA to developing IHL, see also, Forsythe (1975) focusing, in particular, on the issue of recognition of national liberation wars as international conflicts and the conflicting perspectives of the Western states and Third World and Socialist Countries.

In its neutral, legal approach to these issues, the ICRC was supported by most Western states that dominated the legalistic discourse (Forsythe, 1975). Delegates from the USA, for example, appreciated the “beneficial aegis” of the ICRC and its ability to steer the process of developing the humanitarian law in an expert and non-political way (Aldrich, 1984:135). On the other hand, the Third World countries and a couple of neutral states such as Sweden sought more public participation in the discussions of the laws of war and tried to promote their humanitarian, and in certain respects, political agenda at the UN General Assembly. Possibly, the prospect of more UNGA involvement with the concomitant politicization of the problems and influence of new, developing states in this forum, might have also motivated some countries to make concessions that would allow progress at the diplomatic conferences and thus preserve the development of humanitarian laws within the ambit of the impartial and non-politicized ICRC (Baxter, 1973a: 111). The ICRC for its part tried to isolate the valid humanitarian arguments from the influence of short-term political motivations and work for the adoption of balanced rules that would provide a degree of protection to the civilian population even if not completely shielding it from the dangers of war.

1970s: Détente and a window of opportunity for non-aligned and neutral states

The period of détente roughly coincided with the time when the initiatives to reaffirm and develop international humanitarian law (IHL) were undertaken. As already mentioned, several factors combined in allowing for and catalyzing these developments – an impetus coming from the human rights community in the UN and the persistent interest on the part of the ICRC. The Vietnam War was also a driving force in two respects. First, the war together with several other armed conflicts in

Africa and the Middle East demonstrated the inadequacy or incompleteness of existing rules of IHL, their frequent violation, and the terrible effects of new methods and means of warfare on combatants, civilians, and the environment. Second, in the eyes of many the justification for and the conduct of the Vietnam War undermined the authority of the US as a world power and its legitimacy as a force promoting democracy, liberty, and human rights.

It is not clear, however, if those developments by themselves would have been enough to trigger and sustain the process that led to the adoption of two cornerstone treaties in IHL – the 1977 Additional Protocols of the Geneva Conventions and the 1980 Convention on Certain Conventional Weapons. It will be argued that détente was also a necessary condition for the conclusion of these international agreements. By easing the tension between the two superpowers and lowering the security threats in the international environment, détente opened a window of opportunity for smaller, neutral and non-aligned states to have their voices heard on the international arena.

In addition, at that point the developing countries were gaining in strength and numbers at the UN and sought an opportunity to assert their role in world politics as well. This made possible the formation of a coalition of non-aligned and West European neutral countries led by Sweden. The latter countries seized the occasion to emerge from the shadow of the Cold War and enhance their image as forces for good in international politics – “civil” powers in contrast to the two military blocks in which the world was divided. This humanitarian zeal motivated the active Swedish policies in developing IHL, but it also overlapped with the military interests of developing countries (as well as its own interests as a weak military state), especially regarding weapons restrictions.

However, at the same time that détente opened a window of opportunity for non-aligned states to raise their demands and achieve some of them with the help of

the socialist countries despite opposition from the Western states, it also made possible closer relations between the Cold War rivals and cooperation between the major Western and Eastern military powers (Aldrich, 1977, 1984) in defending their mutual interests in the case of weapons restrictions. Thus, Sweden, together with a couple of other countries, among which Austria, Mexico, and Egypt, forged a coalition of like-minded states and used the propitious conjuncture of circumstances to raise the issue of the need for prohibitions or restrictions on weapons that might cause unnecessary suffering or have indiscriminate effects. But even though this group of countries managed to bring up and keep the issue alive at the UN and the Diplomatic Conference on IHL for almost ten years, after the initial breakthrough their initiatives met with only varying degrees of success, as will be shown in the following sections.

1971 Conference of Government Experts on Reaffirmation and Development of IHL

Amidst the growing concern about the need of better regulation of warfare among certain states and at the UN, after consultation with the UN Secretary General, the ICRC decided to convene a conference of government experts to discuss proposals for the development and reaffirmation of IHL. Following a preparatory meeting in March 1971, the conference took place from 24 May to 12 June 1971 in Geneva. The ICRC prepared for discussion eight documents that contained measures regarding protection of the civilian population against the dangers of hostilities, rules on the conduct of combatants, rules applicable in guerrilla warfare, and on protection of the sick and wounded, among others (Kalshoven, 1971).⁶³

⁶³ The 1969 and 1970 reports of the UN Secretary General on “Respect for Human Rights in Armed Conflicts” were also tabled for discussion.

The ICRC did not include a separate document on possible weapons restrictions – a sensitive issue, which it feared might stall progress in other areas – but in the chapter dealing with guerrilla warfare it raised the question of “whether weapons such as ‘fragmentation bombs’, ‘certain ultra rapid darts,’ certain new types of rifle ammunition, ‘mines filled with glass splinters or rusted nails’ and indeed the entire range of so called ‘anti-personnel’ weapons should not be made the subject of a critical examination” (Kalshoven, 1989: 255). However, a group of experts from several countries led by the Swedes were of the opinion that the Conference should undertake a study of all weapons that were not discussed at other fora at the time. Elaborating upon the ICRC’s initial proposals, this group of experts⁶⁴ suggested that delayed action weapons with indiscriminate effects likely to cause suffering to the civilian population, the use of incendiary weapons “in circumstances where they may affect the civilian population,” and “bombs which for their effect depend upon fragmentation into great numbers of small calibrated pieces or the release of great numbers of small calibrated pellets” should be banned (quoted in Kalshoven, 1975: 80).

A second session of the conference of government experts was scheduled for 1972 to expand and systematize the work begun on new humanitarian rules and provide for better state representation after critiques that only a small number of experts from Third World countries participated in the first session.⁶⁵

In the meantime, the UNGA was watching closely the ICRC initiatives and at its 1971 session expressed hope that the second conference of government experts would produce recommendations for subsequent action by governments⁶⁶ and

⁶⁴ The experts were from Egypt, Mexico, the Netherlands, Sweden and Switzerland.

⁶⁵ In the first session participated experts from about 40 countries, whereas the ICRC invited all states parties to the 1949 Geneva Conventions to the second session (Baxter, 1973a: 101).

⁶⁶ Resolution 2853(XXVI), introduced by the USA and sponsored by Japan and New Zealand (Kalshoven, 1972: 19).

requested again the Secretary General to present a report on the use of napalm and other incendiary weapons.⁶⁷ The latter report was finally submitted to the 27th session of the UNGA in October 1972 and recommended controls on the use of incendiary weapons. These recommendations were supported by 22 countries,⁶⁸ although their views regarding the appropriate body to develop such controls varied from the Conference of the Committee on Disarmament, the Diplomatic Conference on Humanitarian Law, to the ICRC (Roach, 1984: 9-10).

1972 Conference of Government Experts on Reaffirmation and Development of IHL

In preparation for the second conference of government experts, the ICRC conducted numerous consultations with officials, experts and various organizations and distributed two Draft Additional Protocols to the Geneva Conventions on international and non-international armed conflicts. The second session of the Conference of Government Experts took place from 3 May to 2 June 1972 and was attended by delegations from 76 states – almost twice the number of states present at its first session.

However, despite the encouragement received from government experts at the first session, the ICRC had not included any specific weapons prohibitions in the drafted protocols. Instead, it had chosen to reaffirm the principles laid down in the 1899 and 1907 Hague Regulations that belligerents do not have unlimited rights in the

⁶⁷ This Resolution 2852 (XXVI) also stressed the need “to evolve norms designed to increase the protection of persons struggling against colonial and alien domination, foreign occupation and racist regimes” and disseminate the “principles of respect for human rights applicable to armed conflicts” and was sponsored by 12 states: Austria, Chile, Ecuador, Egypt, Ireland, Kenya, Mexico, Morocco, Norway, Peru, Sweden, and Yugoslavia (Kalshoven, 1972: 19).

⁶⁸ The countries were Australia, Barbados, Byelorussian S.S.R., Cyprus, Czechoslovakia, Denmark, Finland, Guatemala, India, Iran, Kuwait, Mexico, Mongolia, Netherlands, Norway, Poland, Sweden, Syria, the Soviet Union, United Kingdom, United States, and Canada.

choice of weapons and weapons calculated to cause unnecessary suffering are prohibited. Thus the ICRC hoped to regulate the use of weapons through general rules of IHL that would provide for the protection of the civilian population and combatants. It argued that if specific weapons bans were to be enacted, that task was within the purview of other fora such as the UN or the Conference of the Committee on Disarmament.⁶⁹

This view was shared by most NATO countries, which were of the opinion that if the issue had to be addressed, the most appropriate forum to do so was the Conference on Disarmament. Other states, however, thought that the ICRC proposals were not sufficient in dealing with the problem of inhumane weapons and sought to broaden their scope. A number of neutral and socialist countries suggested the general prohibition of “means and methods which affect military objectives and protected persons or civilian objects indiscriminately.”⁷⁰ Several neutral and non-aligned countries led by Sweden and Mexico favored more comprehensive weapons prohibitions and tabled a proposal for a ban of delayed-action, incendiary weapons containing napalm or phosphorous, and fragmentation bombs (Kalshoven, 1972:29-30, 1975:80; Mathews, 2001; Mathews and McCormack, 1999).⁷¹ In contrast to their proposal at the first session of the conference, this time the ban was not limited to the use of incendiaries “in circumstances where they may affect the civilian population,” but aimed at a wholesale prohibition.⁷² The latter countries also argued that the prohibition of cruel weapons was entirely within the mandate of the diplomatic

⁶⁹ If no other body would take up the weapons issue, the ICRC declared that it “would then be prepared to consider how it could contribute to the studies to be carried out” (quoted in Kalshoven, 1975:81).

⁷⁰ This proposal was supported by Poland, GDR, Hungary, Czechoslovakia, Romania, Egypt, Finland, Mexico, Norway, Sweden, Switzerland, Yugoslavia, Jordan and Spain. Another proposal envisioning the express prohibition of nuclear, bacteriological, and chemical weapons was made by Romania and Jordan (Kalshoven, 1972:29).

⁷¹ The proposal was made by Egypt, Finland, Mexico, Norway, Sweden, Switzerland, and Yugoslavia.

⁷² Due to this change in the proposal, the Netherlands withdrew its support for it because its air force possessed napalm weapons and it was feared that a total ban might affect NATO tactics (Kalshoven, 1975: 82).

conference on the development and reaffirmation of humanitarian law and should not be left to disarmament talks where strategic arguments prevailed. Finally, Sweden together with experts from 18 other governments⁷³ asked the ICRC to gather further information on weapons and convene a meeting of experts in preparation for the Diplomatic Conference to examine “the question of express prohibitions or limitations of use of such conventional weapons as may cause unnecessary suffering or may be indiscriminate in their effect” (quoted in Kalshoven, 1972: 30; Maresca and Maslen, 2000: 19).

Not entirely satisfied by the pace of progress being made by the ICRC on weapons, the Swedish government also brought up the issue at the UNGA, and after some lobbying on its part, in December 1972, the UNGA adopted Resolution 3032 (XXVII), which expressed concern, *inter alia*, over the lack of agreement among government experts on the prohibition of weapons that cause unnecessary suffering or have indiscriminate effects, and requested the Secretary General to prepare a “survey of the existing rules of international law concerning the prohibition or restriction of use of specific weapons” (Baxter, 1973b: 44).⁷⁴ Thus, the UNGA interest in the weapons issue was demonstrated once again after a resolution from November, which made clear that the General Assembly “deplored the use of napalm and other incendiary weapons in all armed conflicts” and stressed the need for new rules prohibiting the use of certain weapons, and if possible, their elimination through disarmament measures (Res. 2932A (XXVII); Kalshoven, 1974:5).

⁷³ The experts were from Argentina, Austria, Brazil, Denmark, Egypt, Finland, FR Germany, Iraq, Kuwait, Lebanon, Libya, Mexico, the Netherlands, Norway, Spain, Sweden, Switzerland, Syria, and Yugoslavia (Kalshoven, 1975: 82).

⁷⁴ The latter survey was prepared by the Secretariat based on work by R.R. Baxter of the US and Igor Blishchenko of the USSR and was submitted to the UNGA in November 1973 (Kalshoven, 1975, fn.28). The report of the existing international rules on weapons concluded that “[t]he law was, to put the matter bluntly, an ineffective instrument for establishing some control on the use of weapons, even if a good-faith effort were made to apply it” (Baxter, 1977a: 47).

1973 ICRC Expert Meetings: a limited victory for Sweden and the non-aligned countries

In carrying out the request to organize an expert meeting on weapons, the ICRC convened two sessions (26 February – 2 March and 12-15 June 1973), which focused on providing a general overview of the technical characteristics and military uses of several types of weapons, including mines and fragmentation cluster bombs, without analyzing, however, these issues in relation to IHL rules (Maresca and Maslen, 20-1). The meetings paid a lot of attention to the antipersonnel effects of weapons liable to cause severe injuries and unnecessary suffering to combatants, as well as, to weapons that by nature could not be directed at specific targets (Kalshoven, 1974:19).

Landmines did not draw particular attention and the report from the meeting noted that, “casualties from mines [among both combatants and noncombatants] ...have normally been quite low in proportion to casualties from other weapons” (ICRC Report on the work of experts, 1973, reprinted in Maresca and Maslen, 41). Moreover, in its conclusion the report suggested that state review and action might be appropriate regarding incendiaries, high-velocity small arms ammunition, and certain fragmentation weapons, but did not mention landmines (Maresca and Maslen, 43).

However, a problem of the expert meeting, whose influence would be felt later in the process of negotiating weapons restrictions, was that experts from states favoring prohibitions were over-represented, while military experts from the major powers and most Western states did not contribute to its discussions.⁷⁵ Sweden was

⁷⁵ The same had been a problem with the study group on incendiaries convened by the UN Secretary General to which only Sweden from the Western countries sent an expert (Kalshoven, 1975:83). The other experts came from Czechoslovakia, Mexico, Peru, Nigeria, Romania and the USSR (Blix, 1973:156; Kalshoven, 1974, fn.5).

particularly engaged in the problem of weapon prohibitions⁷⁶ and its representative Hans Blix influenced the conclusions of the report that the gathered information provided good reasons for “restrictions upon [the] operational use or even prohibition” of the above weapons. The ICRC, concerned that such statements were too rash, cautioned in the introduction of the report that it was “purely documentary in character” and offered to continue the inquiries and convene another conference with a view to promoting IHL with regard to weapons use (quoted in Kalshoven, 1975:83, 1974:19-20).

Despite the ICRC’s caution and opposition from most Western states and the US, which till that moment had refused to participate in the expert meetings on weapons, Sweden and a number of non-aligned countries kept pushing for a study of possible weapons prohibitions both at the UN and within the Red Cross Movement. Whereas Sweden was seeking prohibitions on certain weapons not only because of their adverse impact on the civilian population but also because of their cruel antipersonnel effects on combatants, the US and most NATO countries⁷⁷ were only willing to discuss the use of weapons in connection to their impact on civilians but not the use of certain weapons as a whole.

⁷⁶ Shortly after the Secretary General study on napalm was prepared, in 1972 the Stockholm International Peace Research Institute (SIPRI) came up with an *Interim Report on Napalm and other Incendiary Weapons: Legal and Humanitarian Aspects*. In 1973 after convening a study group of military and medical experts, the Swedish Ministry of Foreign Affairs published another report entitled “Conventional weapons, their deployment and effects from a humanitarian aspect” that recommended prohibitions and restrictions on the use of small-calibre high velocity projectiles, fragmentation warheads, fléchette warheads, landmines, booby traps, and incendiary weapons (Prokosch, 1995:148; Roach, 1984: 11). That report included very detailed weapons descriptions and recommendations. For example, regarding fragmentation weapons, the rules, aimed at limiting wounding effects and suffering, prohibited the employment of substances that had serious toxic effects and fragments non-detectable by X-ray. In addition, they included instructions about weapon construction that would ensure that “only a limited percentage of the persons affected by the explosion will be hit by four or more segments with a certain energy.” To limit the indiscriminateness of cluster bombs, additional rules were stipulated: “use only against well-localized military targets within an area of no more than one square kilometer; no dropping of certain clusterbombs from airplanes or helicopters nor launching of such weapons by missiles or unguided heavy rockets; prohibition of the use of clusterbombs which eject a great number of small fragments” (Kalshoven, 1974:20).

⁷⁷ Norway made an exception in the NATO camp, favoring instead the position of Sweden and the non-aligned countries.

The two groups of countries also placed different weight on strategic military considerations and humanitarian concerns in formulating their arguments, and respectively, favored different forums for discussion – the non-aligned wanted the Diplomatic Conference on humanitarian law to deal with the weapons issue and were trying to get more public involvement on those questions, whereas the Western states preferred the route of quiet diplomacy within an arms control forum such as the Conference on Disarmament (Kalshoven, 1975:84-5; Blix, 1973: 149, 155; Cassese, 1979b: 476). The position of the socialist countries fell somewhere in between – whereas publicly they supported far-reaching restrictions on conventional weapons and the demands of the Third World countries, they preferred that the Conference on Disarmament tackle those issues (Fenrick, 1981:239; Cassese, 1975, fn.57).⁷⁸

Eventually, the non-aligned group managed to get through its proposal for a weapons study after negotiations between the representatives of the two major positions – George Aldrich of the US and Hans Blix of Sweden. The agreement was reached at the 22nd International Conference of Red Cross, which passed a resolution inviting the upcoming Diplomatic Conference to “to begin consideration at its 1974 session of the question of prohibition or restriction of the use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects” and requesting

⁷⁸ In the course of discussions at the First and Sixth Committees of the UNGA in 1973, the USSR declared that “it was necessary to prohibit certain particularly cruel methods of warfare, and the USSR had always supported the United Nations efforts to that end. However, the question of deciding which types of weapons should be prohibited on the grounds that they caused unnecessary suffering... should be resolved within the framework of the question of arms limitations and disarmament” (quoted in Cassese, 1975: 33, fn. 56). Despite such public pronouncements in favor of weapons prohibitions, most commentators doubt their sincerity and see the Soviet Union and most socialist states as sharing the same interests with the western countries and thus their positions as equally obstructionist or simply a subterfuge to blame the lack of progress on the more outspoken Western countries. See for, example, Cassese, 1979a: 184, 1979b: 476; Condorelli, 1979:395-6, Ciobanu, 1979:400, 422-27; Baxter, 1977a: 51-3; the views expressed by Cassese and Obradovic in Cassese (ed.) (1980), p. 77 and p.82-3. Romania took a different position from the rest of the Warsaw Pact countries, favoring the study by the Diplomatic Conference not only of the effects of “conventional weapons, but also all weapons which might cause unnecessary suffering or have indiscriminate effects, including *nuclear weapons*” (quoted in Ciobanu, 423, emphasis in original).

the ICRC to convene a conference of government experts to study in depth the same question (Kalshoven, 1974:23). Simultaneously, the UNGA adopted a resolution to the same effect, but with a slightly stronger message – it asked the Diplomatic Conference not only to consider these questions, but also “to seek agreement on rules prohibiting or restricting the use of such weapons” (Kalshoven, 1974:24, emphasis added; Res. 3076 (XXVIII)).

After more negotiations between the representatives of Sweden, the USA and Canada, the mandate of the ICRC meeting of government experts on conventional weapons was agreed and it was scheduled for the fall of 1974 (Kalshoven, 1975:84). In addition, although a separate committee on weapons was not envisioned for the Diplomatic Conference, at the insistence of the Swedish group, it was decided that the Conference would also discuss weapons issues and an *Ad Hoc* Committee on Conventional Weapons was established to consider the question of prohibiting or restricting the use of certain weapons, including antipersonnel landmines and fragmentation (cluster) bombs (Kalshoven, 1974:29; Mathews, 2001; Maresca and Maslen, 19-89).

One of the reasons why the USA finally relented to the idea of a study of conventional weapons appears to have been the result of a change in tactics. Previously, the USA had opposed the discussions of weapons issues and refused to participate in the 1973 expert meetings.⁷⁹ However, this boycott did not prevent the

⁷⁹ The US saw the weapons issue through the lens of strategic considerations – states that relied predominantly on manpower would favor restrictions on weapons possessed by technologically developed states such as the US. In addition, it held that any weapon can be used indiscriminately and even WMD could be used indiscriminately. Thus, efforts to impose prohibitions on specific weapons based on the criterion that they caused unnecessary suffering or were indiscriminate were in the US view misconceived and could hardly produce but an “embarrassingly brief” list of prohibited weapons. A better approach in this view was the institution of legal reviews of newly developed weapons (e.g. Aldrich, 1973: 148). Understandably, the US opposition to specific weapon bans flowed also from the fact that most of the weapons, which were being targeted for prohibitions, were employed by it in the Vietnam War and their eventual prohibition would have meant that the US had used (and was still using at the time of the talks) illegal and inhumane weapons. Due to the same considerations, the US was

meeting from taking place. Instead, the result was that representatives of states supporting comprehensive weapons restrictions dominated it and the issue didn't go away but was kept by the non-aligned states in the focus of the UNGA and within the Red Cross. Thus, the US change of mind seems to have come from a realization that it was better to participate in and influence the course of the talks instead of remaining aloof and letting the weapons issue gather more momentum.⁸⁰ Indeed, there were grounds for concern that if the issue was not addressed under the aegis of the ICRC and within the framework of the Diplomatic Conference, the UN General Assembly might proceed on its own and only politicize the issue further. In addition, the fallout from the Vietnam War had already undermined the prestige of the US and its military and the US use of controversial weapons, and particularly napalm, was very much in the focus of public opinion. Thus it has been argued that the US was motivated to participate in the talks for IHL development not only to see its parts dealing with POW protection and the status of protecting powers strengthened (since in Vietnam US soldiers had suffered from non-observation of these rules) (Reed, 1978: 9), but also to clear the tarnished image of its military by demonstrating that they had acted in Vietnam in accordance with the laws of war and had even followed restrictions not required by international law (Aldrich, 1984:132).

1974 Lucerne Conference: the US and the Western states turn the tables

When the Conference of Government Experts on the Use of Certain Conventional

careful to point out that provisions discussed for inclusion in the 1980 CCW did not codify customary law but were contractual agreements (e.g., Matheson, 1979:158).

⁸⁰ Similarly, Roach (1984:4) states that even though in the 1970s the US was “not particularly desirous of concluding a weapons agreement,” “ultimately participated fully in the weapons negotiations with a view to shaping the results” and entered the CCW negotiations as a “holding action.”

Weapons convened in Lucerne (28 September – 18 October 1974),⁸¹ the participation of Western experts shifted the balance between states favoring and opposing weapons restrictions and changed the terms of the debate. The Conference had two major tasks: to clarify the criteria that determine the legality or illegality of weapons, and examine several weapon categories from military and medical perspectives with a view to assessing their compliance with the general legal principles and the desirability of introducing specific weapon prohibitions or restrictions.⁸²

Regarding general legal principles, differences of opinion existed between the Swedish and the Western groups of states. In clarifying the meaning of the concept of “unnecessary suffering,” the Swedish representative defended a limited understanding of the military necessity that does not render suffering unnecessary, whereas the US and a number of Western states argued that the suffering caused by military force would be justified by a much larger set of factors.⁸³ Similarly, there was a division regarding the concept of indiscriminateness. The western experts claimed that there were no conventional weapons that by their nature were indiscriminate. Instead, the effects of weapons depended on their mode of employment, and thus, rules should be elaborated with a view to placing restrictions on methods of use and not on categories of weapons as a whole. In contrast, the group of experts led by Sweden argued that intrinsically indiscriminate weapons existed and both these and weapons “whose normal or typical use would be one which had indiscriminate effects” should be banned (quoted in Kalshoven, 1975:91).

⁸¹ The Conference was attended by some 150 experts from 49 countries (Kalshoven, 1975: 89).

⁸² The weapons under consideration were incendiary weapons, small-calibre projectiles, blast and fragmentation weapons, delayed action and treacherous weapons, future weapons (Kalshoven, 1975: 94).

⁸³ For details on the US position on military necessity, see Kalshoven (1989:261), Robblee (1976:118-19), Aldrich (1973: 148), Prugh (1974:266), Paust (1974: 230). On the Swedish position, see Blix (1988:138). For a general treatment of the concept of unnecessary suffering, see Dienstein (2004:59), for its interpretation and application to weapons restrictions, Cassese (1975), and Clark (1998) for a more recent examination of the principle in connection with the debates during the drafting of the ICC statute.

Despite these different points of departure, the discussion of specific weapons might have yielded some results if the basic information about their functioning and effects was agreed. In fact, the states favoring restrictions expected that the Conference would proceed based on the data contained in the study of napalm and other incendiary weapons by the UN Secretary General, the 1973 report of the ICRC expert meeting, and a Swedish working paper submitted to the Diplomatic Conference in February 1974. These reports, however, had been written without input from Western states, which at that point took the occasion to challenge their factual findings and accuracy. Thus the talks on specific weapons degenerated into highly technical disputes about the type of wounds small-calibre projectiles cause and the factors that determine their effects on the human body, the precision of incendiary weapons, and the precision, area coverage and wounding effects of cluster munitions. The merits of the arguments US and other western experts put forward regarding the functioning and effects of weapons were difficult to assess, since for the most part these weapons were stocked and used only by the same Western states. Whereas some of the factual information in the 1973 ICRC report regarding small-calibre weapons might have been exaggerated or based on insufficient testing, the claims of western experts regarding cluster munitions, for example, aimed at discrediting data provided by the Swedish experts that were actually accurate.⁸⁴

Regarding fragmentation weapons, the Swedish experts were of the view that antipersonnel cluster bombs and fléchette weapons, which caused unnecessary suffering and had indiscriminate effects, should be prohibited, and together with a

⁸⁴ The US experts claimed that cluster bomblets were not that deadly and their footprints were not as large as claimed by the Swedish experts (approximately, 300 by 900 meters), which in fact was less than their real area coverage. Similarly, the UK experts asserted that the footprint of the newly developed BL755 cluster bomb had area coverage of less than 100 by 100 meters, whereas more recent data showed that it actually was 100 times larger (Wiebe, 2000, p.152 -55; Prokosch, 1995: 151-2).

number of countries tabled a proposal to discuss the issue.⁸⁵ However, the Western representatives sought to debunk by all means the accuracy of the assertions underlying the Swedish ban proposal.

In the case of landmines, proposals were made regarding the marking and clearance of minefields after the end of hostilities. Scatterable mines, in particular, were perceived as posing a more serious danger to both friendly forces and civilians and some experts called for their prohibition, whereas others proposed that they be fitted with self-destruct mechanisms (Maresca and Maslen, 54-60).

Thus at the Lucerne Conference, partly as a result of the influence of Western states, more attention shifted toward the mine problem and its impact on civilians, and arguments about weapons restrictions as a whole began emphasizing the protection of civilians against the dangerous effects of weapons at the expense of limiting the suffering inflicted upon combatants.⁸⁶

1976 Lugano Conference: change in focus from unnecessary suffering to civilian protection

In contrast to the general discussions at Lucerne, the task before the second session of the Conference was to identify a list on weapons, which might become the subject of prohibitions or restrictions on their use and formulate the substantive form, which such prohibitions could possibly take. However, at this important stage when actual restrictions had to be worked out, the attendance of the conference was lower

⁸⁵ The proposal to address the issue of submunitions initially came from Sweden supported by Egypt, Mexico, Norway, Sudan, Switzerland and Yugoslavia, later to be joined by Algeria, Austria, Lebanon, Mali, Mauritania, and Venezuela (Herby and Nuitjen, 2001).

⁸⁶ In fact, in the debate about mines at Lucerne, the principle of unnecessary suffering was not even brought up. Instead arguments focused on the perfidy and indiscriminateness of mines (Kalshoven, 1984:384).

compared to that at Lucerne and representatives from only about 10 Third World countries participated.⁸⁷ On the other hand, this time the Western countries not only participated, but also put forward written proposals for discussion. Their proposals featured much more limited restrictions compared with the Swedish working paper that had been the basis for deliberations at the previous session and thus the referent points in the debate in Lugano changed. For example, the Swedish group aimed at a comprehensive ban on the use of incendiary weapons (except for anti-materiel munitions combining incendiary and penetration or fragmentation effects), whereas the Western proposal sought only to limit the use of incendiaries in areas of civilian concentrations, which was still allowed against military targets in such areas as long as “all feasible precautions” were taken to confine their effects to the military objective and avoid incidental civilian damage (Kalshoven, 1976:199-200).⁸⁸

The question of landmines emerged as a major issue for the first time at Lugano. The interest in landmines and other delayed action weapons resulted in large measure from two factors – on the one hand, booby traps and time bombs were widely used by terrorists in the 1960s and 1970s and were a problem in the Vietnam War, in particular, and on the other, the development of remotely delivered mines during the same period led to concerns that they could be used indiscriminately as an offensive weapon (Carnahan, 1984: 75).

The most watered-down proposal came from the Western camp and envisioned

⁸⁷ Experts from 40 as against 49 states at Lucerne participated. However, representatives from the World Health Organizations and SIPRI also attended and took active part in the work of the Conference (Kalshoven, 1976:198).

⁸⁸ Other proposals at the Conference included a wholesale prohibition of incendiaries by Mexico, a prohibition of the use of incendiaries against personnel targets, but not against military objects by Norway, and a proposal from the Netherlands, cosponsored by Denmark and Australia, which sought to reconcile the Swedish and Western positions by suggesting that “it is prohibited to make any city, town, or other area containing a concentration of civilians the object of attack by means of any incendiary munition” (quoted in Baxter, 1977a: 54). However, the Dutch proposal did not go farther than the general prohibition against attacks of civilian objects and thus did not succeed in bridging the two opposite views, even though it gathered more support at the 1976 session of the Ad Hoc Committee of the Diplomatic Conference (Kalshoven, 1976: 200).

some weak restrictions on the use of landmines in civilian areas or technical measures to make remotely delivered mines detectable and self-destructing after a set period of time. 82).⁸⁹ On the other hand, Sweden and 12 other countries⁹⁰ suggested that the delivery of anti-personnel landmines by aircraft be banned altogether (Maresca and Maslen, 86-7).

Thus, the difference between the Western and the Swedish approaches became manifest with regard to this problem as well.⁹¹ The Western states proposed only limited restrictions on the use of landmines with a view to enhancing civilian protection to the extent allowable by military requirements. In contrast, Sweden aimed at more comprehensive prohibitions that would ban a whole class of new, militarily important mines, thus enhancing the protection of both civilians and combatants from their negative effects at the expense of military interests, especially those of the major, technologically developed powers that possessed those weapons.

With regard to cluster bombs, Sweden and another 12 countries⁹² made a proposal to ban the use of antipersonnel (as against anti-materiel and combined effects) bombs⁹³ because they “tend to have both indiscriminate effects and to cause unnecessary suffering” (quoted in Mennonite Central Committee, 2001) and their use

⁸⁹ The proposal was made by the UK, the Netherlands, and France, and suggested that if mines were used in population areas where combat was not taking place, they should be “placed on or in the close vicinity of a military objective; or due precautions are taken to protect civilians from their effects” (Maresca and Maslen, 85). The proposal also (somewhat unrealistically) envisaged that it “would be possible to mark the location of remotely delivered mines through the use of markers such as flags or pyrotechnic flares, delivered simultaneously with the mines;” alternatively such mines could incorporate a self-destruct or neutralization mechanism (Maresca and Maslen, 82).

⁹⁰ The countries were Algeria, Austria, Egypt, Lebanon, Mali, Mauritania, Mexico, Norway, Sudan, Switzerland, Venezuela and Yugoslavia.

⁹¹ The Western and the Swedish groups of states were the only actively engaged in the weapons discussions at this point.

⁹² The proposal was made by Algeria, Austria, Egypt, Lebanon, Mali, Mauritania, Mexico, Norway, Sudan, Sweden, Switzerland, Venezuela, and Yugoslavia, as a part of a comprehensive document submitted to the conference (Wiebe, 2000: fn.313).

⁹³ The definition of the cluster bombs prohibited for use was “Anti-personnel cluster warheads or other devices with many bomblets which act through the ejection of a great number of small-calibred fragments or pellets” (quoted in Baxter, 1977a: 58).

aroused “public concern” (Wiebe, 2000:154).⁹⁴ However, delegates opposed to a prohibition of fragmentation cluster bombs not only disputed the figures about their area coverage, but also argued that these weapons “represented an improvement from the humanitarian point of view over weapons with random fragmentation,” and were particularly useful in defensive situations (Wiebe, 2000:155).

Thus, what transpired at Lugano in the end, was that the widest gap between the positions of the two groups existed regarding weapons with the highest military value and unclear status regarding either the principle of indiscriminateness or unnecessary suffering. Given the positions of the Western countries, it became clear that the greatest chances of adopting restrictions existed for weapons with limited military utility and the most severe impact on civilians. Thus, even though Sweden was intent on placing restrictions on the use of small calibre projectiles, their high military value, precision and questionable degree of inhumane wounding effects, made them an easy target for the counterarguments of Western states. Similar was the situation with fuel air explosives and fragmentation cluster bombs, whose employment was much more problematic on account of both their indiscriminateness and the suffering they caused, but their real effects were surrounded by even more uncertainty and lack of information than those of small calibre projectiles. Where the effects of militarily valuable weapons such as incendiaries were both graphic, better documented and strongly opposed by public opinion, there was at least some common ground on

⁹⁴ The supporters of the cluster bomb ban elaborated further: “At detonation a vast number of small fragments or pellets are dispersed evenly covering a large area with a high degree of probability of hitting any person in the area. The effect of such a detonation on unprotected persons - military or civilian - in the comparatively large target area is almost certain to be severe with multiple injuries caused by many tiny fragments. Multiple injuries considerably raise the level of pain and suffering. They often call for prolonged and difficult medical treatment and the cumulative effect of the many injuries increases the mortality risk. . . . It has been suggested that cluster bomb units may have indiscriminate effects not because of their construction but rather because of their operational use. However, when the normal weapon effect is so extensive as to cover areas of several square kilometers in an attack by a single aircraft, these weapons are hardly capable of use anywhere without hitting civilians incidentally” (quoted in Wiebe, 2000:155).

restricting their use in areas where civilians could be injured. In view of the more limited military utility of landmines, some restrictions on their use were achievable even without pressure from public opinion. At that point, a proposal from Sweden and Switzerland for a ban on the use of weapons dispersing fragments that could not be detected in the human body by the usual medical methods stood to garner most wide-ranging support (Kalshoven, 1976:23) given the very low military utility and the superfluous injuries such weapons were bound to cause.⁹⁵

1974-1977 Sessions of the Diplomatic Conference and provisions on means and methods of warfare

Most of the discussions in the Ad Hoc Committee on conventional weapons, as well as those in the other Committees dealing with the general principles applicable to means of warfare (unnecessary suffering and indiscriminate attacks), followed closely the debates that had unfolded in the two conferences of government experts in Lucerne and Lugano.⁹⁶ The sessions of the Ad Hoc Committee were often occupied by lengthy statements by the Swedish representative, Hans Blix, which did not, however, provoke reactions from most of the other delegates (Kalshoven, 1989:266; Baxter: 1977a: 51). Thus, after four sessions, the Committee had not adopted any specific texts. Nevertheless, it was noted that there was “agreement” about a prohibition of non-detectable fragments, “a wide area of agreement” with regard to land-mines and booby-traps, and need to further narrow down the divergent views existing about the

⁹⁵ Although at the time of the proposal it was believed that US forces had used such weapons in Vietnam, in fact they had not been either employed or produced (Cassese, 1986: 269; Burke, 1981: fn.4).

⁹⁶ For a summary of the debates in Committee III (rules on the conduct of warfare) and provisions on means and methods of warfare in Additional Protocol I, see Kalshoven (1978:146-53) and Pictet (1987a: 387-410, 421-28).

desirability of prohibitions or restrictions on the use of incendiary weapons. It was further mentioned that the effects of small calibre projectiles and certain blast and fragmentation weapons had been examined and considerations had begun on the possibility of prohibiting or restricting the use of those weapons (Kalshoven, 1978:153-4).

More controversy arose over the possibility of instituting an international review mechanism for the legality of newly developed weapons. Committee III of the Conference had settled down on Article 36 of Protocol I, which stipulated that the development of weapons should be examined by the respective national authorities to make sure that new weapons don't violate any applicable rules of international law.⁹⁷ However, at the second session of the Diplomatic Conference, some states, among which, Pakistan and Sweden, argued that national legal reviews "should be supplemented by *international machinery*" (Kalshoven, 1978:156-7, emphasis in original).⁹⁸ Then in April 1977 when the text of Protocol I had already been worked out, Mexico tabled a proposal in Committee I for a new Article 86bis, which provided for the establishment of a Committee of States Parties, which would "consider and adopt recommendations regarding any proposal that one or more States Parties may submit concerning the prohibition or restriction of the use of conventional weapons that may cause superfluous injuries or have indiscriminate effects" (Kalshoven, 1978:158). The Western group was strongly opposed to the proposal, attacked it on a couple of procedural grounds and finally countered it by a proposal of its own – to delete the proposed article and instead include a recommendation that a conference be

⁹⁷ Protocol I, Article 36: "In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party."

⁹⁸ A number of other proposals circulated both at the Lugano Conference and in the 1976 Session of the Ad Hoc Committee that envisioned setting up a mechanism for review conferences on conventional weapons by a clause in the Additional Protocol or the creation of a separate institute which would gather information about weapon effects (Kalshoven, 1978:157).

convened to search for agreements on restrictions or prohibitions on the use of specific weapons. Whereas the original proposal made its way into the plenary meeting, there it failed to muster the required support of two-thirds of the votes (Kalshoven, 1978:160; Pictet, 1987a: 422).

Nevertheless, some compromise was reached, as reflected in the adoption of Resolution 22, “Follow-up regarding prohibition or restriction of use of certain conventional weapons,” which recommended that a Conference of Governments should be convened no later than 1979 “with a view to reaching agreements on prohibitions or restrictions on the use of specific conventional weapons” and “agreement on a mechanism for the review of any such agreements and for the consideration of proposals for further such agreements” (Diplomatic Conference of Geneva, Resolution 22; Kalshoven, 1978:154; Sandoz, 1981: 94; SIPRI, 1978: 254-5). Thus, even though neither weapons restrictions nor the article setting up an international committee to develop such restrictions in the future were included in Protocol I, the issue was not transferred to the Conference on Disarmament or just left to die. The UNGA supported the establishment of a separate UN Conference on Conventional Weapons that not only was tasked with reaching agreement on concrete restrictions, but also with creating a mechanism through which future problems arising from the use of certain weapons could be discussed and addressed.

1978-1980 Negotiations of the Convention on Certain Conventional Weapons (CCW)

Two preparatory sessions for the UN Conference on conventional weapons took place in September 1978 and March-April 1979, but delegates failed to agree on any substantive issues and devoted most of their time to procedural questions – the major

among those the adoption of a voting procedure. Resolution 22 urged that in its work the Conference “should, in each case, seek the broadest possible agreement.” In the opinion of the Western states that meant that all decisions should be made by consensus, if the achieved agreements were to have any real importance. In contrast, the states seeking more comprehensive restrictions argued that consensus voting would be “tantamount to bowing to the will of an erring minority” (Kalshoven, 1978:155). The two groups did not agree on the decision-making rules, and as a result, no votes were taken at the Preparatory Conference and the main Conference that followed it. Instead, “decisions were reached on the basis of an unofficial, and undefined, consensus,” which in practice favored the Western position and allowed a small group or even single states to block consensus on issues supported by the majority (Fenrick, 1981:238-9; Szasz, 1980:212).

As in the preceding conferences of government expert and the preparatory sessions of the Conference, wide disagreement existed on a series of issues between the Western states and the group of countries supporting the Swedish positions. Apart from the prohibition of non-detectable fragments, some overlap between the positions of the two groups existed only regarding restrictions on landmines. After dropping its proposal to ban antipersonnel cluster bombs, Sweden concentrated its efforts on securing prohibitions on the use of incendiary weapons and small-calibre, high-velocity projectiles. With respect to incendiaries, however, the Western states were only willing to accept restrictions on their use in civilian areas and the USA was objecting even to that point till very late in the negotiations. In the face of the adamant Western opposition and unclear stance of the socialist countries, the proponents of restrictions persisted in calling for more negotiations, which lasted as long as they did mainly due to the perseverance of the Swedes, who according to Fenrick (1981:240), “expected to gain more concessions by prolonging the agony.” Indeed, the US

concession on the provision prohibiting the use of incendiary weapons in populated areas came in only in the last week of the second session of the Conference, immediately followed by consent from the Soviet Union as well (Kalshoven, 1989: 268; Roach, 1984:39).

In the course of the Conference it was not even possible to achieve an agreement on whether the adopted restrictions on non-detectable fragments, landmines, and incendiaries were accepted because these weapons “may be deemed to be excessively injurious or to have indiscriminate effects,” as the title of the Convention, adopted after long debates, suggests. The US argued against this proposition and maintained that the Convention was just a contractual agreement whose provisions did not codify customary law, as the opposite view would have implied that in the past states had used illegal weapons or employed them in an illegal manner (Fenrick, 1981:240; Roach, 1984:16-17).

The final issues over which the positions of the nonaligned, the Western countries, and in this case, also of the Socialist states, clashed were the procedures for review and amendment, and for the entry into force of the Convention. Given the limited progress achieved on their major proposals, the nonaligned states were vigorously promoting the establishment of a review mechanism that would allow the reopening of discussions in the near future with a view to taking up the unresolved issues of restrictions on the antipersonnel use of incendiaries and small-calibre projectiles. To achieve this goal, the Swedish group was opposed to having the Committee on Disarmament deal with the problem of conventional weapons. It was also trying to set the requirement for the entry into force of the Convention at a small number of ratifications in order to ensure that a review conference would take place as soon as possible. In contrast, the Western states and the USA preferred to settle the question of conventional weapons once and for all, and short of that, push any new

considerations far in the future, and retain control over their outcomes.⁹⁹ Both the Socialist and Western countries wanted to transfer the matter of future discussions to the Committee on Disarmament where they could exert most leverage and argued for procedures that would delay the entry into force of the Convention and hold off the time of a future review conference.¹⁰⁰

The compromise decision was a mixed bag. Whereas it was agreed that amendments and new protocols would be considered by review conferences within the same framework as the original Convention, instead of the Conference on Disarmament, consensus would be required for their adoption (Roach: 40), which gave states opposed to new developments the power to block them. The interests of the major powers were also served by the provisions regarding entry into force: it was agreed that the Convention would enter into force six months after the 20th ratification and a review conference to consider amendments or new protocols “could not meet unless and until requested by a majority of the States parties, including at least 18 States.” If ten years after the Convention’s entry into force no review conference had been convened, it could be called on the request of any party (Roach: 53-54).

Despite these provisions pushed through by the Western states to ensure that no changes or additions to the Convention could be made in the nearby future – and as it was believed at the time, not before the mid-1990s at the earliest (Roach: 40) – it has been argued that the establishment of the review mechanism was one of the most significant results of the CCW (Fenrick, 1981:155). In view of the role this

⁹⁹ For example, the US delegation report from the Conference states that “Since the incendiaries and other weapons protocols were deemed to be significant, the review and amendment procedures were designed to be difficult to activate in the near future and unlikely to produce any significant changes” (quoted in Roach, 39-40).

¹⁰⁰ The Western states also aimed at a high number of ratifications for the entry into force, the agreement of the majority of states parties to a review conference, and the passing of considerable time before it could be convened. The socialist countries even had a proposal that the ratification of all permanent members of the Security Council be required for the entry into force of the Convention (Roach, 1984: 39-43, 53-55).

meachanism played as a catalyst for the ban on antipersonnel landmines and blinding lasers in the 1990s and the continous work of the Conference regarding explosive remnants of war and anti-vehicle mines, it could be said that the accuracy of Fenrick's assessment has been born out by the time, especially against the background of the otherwise modest influence of the Convention in restricting the use of landmines, incendiaries or other weapons that "may be deemed to be excessively injurious or to have indiscriminate effects."¹⁰¹

Summary: obstacles to achieving weapons regulations in the 1970s

The proponents of strengthening IHL who had argued for more encompassing weapons regulations deemed the adopted protocols very weak, upholding military interests at the expense of humanitarian considerations and leaving the military ample opportunity for evasion of even the partial limitations that were agreed (Mathews, 2001: 994-6). Sweden and its group of supporters had sought prohibitions on the use of incendiary weapons, air-delivered mines, small calibre projectiles, and fragmentation cluster bombs but only got some restrictions on the first two categories of weapons. Even so, the problem with antipersonnel landmines was not adequately dealt with and was only aggravated following the 1970s as new production methods and trade made landmines smaller, cheaper and readily available, while new delivery platforms scattered them in greater numbers and made them harder to detect (Mathews, R. 2001: fn.18). All of this was coupled by higher demand for mines in numerous conflicts stoked by the great powers during this period of the Cold War. The issue of restrictions on small calibre projectiles was entirely sidelined and instead of

¹⁰¹ For comments on the three CCW Protocols, see, Roach (1984), Carnahan (1984) and Levie (1994).

finding place in the Convention, in September 1979 states only adopted a non-binding resolution highlighting the issue.¹⁰² Finally, the consideration of fragmentation weapons was limited to those producing undetectable fragments, thus leaving aside the real problems resulting from the use of cluster munitions.

Apart from the opposition from the USA and the Western states, one of the reasons why attempts to attract attention to the problem of cluster bombs and regulate it by international agreement was that the use of cluster bombs in Vietnam was shrouded in secrecy and didn't generate widespread public discussion, despite occasional press reports of cluster bomb attacks in civilian areas in Vietnam and Laos (Prokosch, 1995: 98-9). Nonetheless, grassroots anti-war organizations built up local campaigns against producers of anti-personnel cluster bombs. In particular, the Honeywell Project organization protested for years the production of military fuzes and cluster bombs by the Honeywell Corporation based in Minnesota, but its activities remained focused locally and largely unnoticeable.¹⁰³

Thus the attempts both nationally and internationally to restrict the use of cluster bombs in the 1970s failed for a number of reasons. On the whole, NGOs and peace organizations lacked sufficient information on the use of cluster bombs in Indochina, had no skills and resources to engage in nation-wide, transnational, or international campaigning against cluster bombs, and focused their efforts instead on local producers. In addition, the protests that existed against the production of cluster munitions and napalm bombs were closely linked with the Vietnam anti-war movement, and as the Vietnam War ended so did these initiatives without being

¹⁰² The Resolution invited "Governments to carry out further research, jointly or individually on the wounding effects of small-calibre weapon systems" and appealed to "all Governments to exercise the utmost care in the development of small-calibre weapon systems, so as to avoid an unnecessary escalation of the injurious effects of such systems" (UN Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons, 1979; also Granat, 1993: 156-7).

¹⁰³ For the grassroots protests in the US against the production and use of cluster munitions during the Vietnam War, see Prokosch (1995:138-45).

carried on into efforts to improve the laws of war.¹⁰⁴

States such as Sweden that would have liked to use public sentiment against the use of napalm and cluster bombs were not able to do so. There were no NGOs that could be their allies in the effort at weapons prohibitions. Sweden pushed the ICRC to become more active on the issue, but the organization remained faithful to its principles of impartiality and neutrality that prevented it from taking a more activist stance on weapons. The only forum where Sweden and the non-aligned states could focus attention on the issue was the UN General Assembly but as the weapons problems were taken up at the ICRC meetings of government experts and the Ad Hoc Committee set up by the Diplomatic Conference, the involvement of the UNGA gradually diminished. The regulation of weapons through the consensus-based CCW proved difficult as the countries possessing the weapons, the best information about their use and effects, and the veto power in the negotiations were not willing to accept any meaningful restrictions.

1980s: the window of opportunity shuts down

As a whole, the position of Western governments and a certain overlap of interests between the major powers the US and the USSR in preventing the adoption of comprehensive weapons restrictions limited the scope and importance of the CCW. Thus, whereas the climate of détente made possible the negotiations on IHL in the first place, it also allowed for collaboration between the great powers, which in the case of weapons restrictions blocked the progress sought by small and medium-sized states.

¹⁰⁴ Certainly, improving the laws of war had never been on the mind of the protesters even if they were to continue with their opposition to weapons production.

In the contest between the military weak and neutral “have-nots” led by Sweden and Mexico, the military strong “haves” managed to avoid any serious limitations on the use of important weapons, and by extension, on their military strategies.¹⁰⁵ Even the weak provisions of the Convention, which were consensually agreed and in large part shaped by the Western states, were not accepted by them. Nevertheless, the Convention entered into force in December 1983, six months after its 20th ratification (Mathews, R. 2001: 996) with the support of the Swedish group of states that had pushed for weapons prohibitions and most of the socialist countries.¹⁰⁶ However, the support for it was so weak when it was concluded that it was doubted that a significant number of countries would ever ratify it (Cassese, 1986:269). Indeed, by 1992 only thirty countries had ratified the Convention and it was only at that point that it was brought back into the focus of state attention when the NGO campaign against landmines pushed for a review conference.

Despite the greater importance of the Additional Protocol I in developing IHL and hopes for its wide acceptance and impact on the conduct of war, its fate in the 1980s was not very different from that of the CCW – by the end of 1983, more than six years after its adoption, only 36 states had ratified it, among which none of the major military powers.¹⁰⁷

As the years of détente gave way to a new round of Cold War rivalry, in the

¹⁰⁵ Most authors see the opposing sides on the issue of weapon restrictions in those terms – e.g., Cassese (1979a,b), Aldrich (1973:148), Baxter (1997a: 51-2; 1977b: 181), Ciobanu (1979:426-7).

¹⁰⁶ The first 20 ratifications were of Austria, Belarus, Bulgaria, China, Czechoslovakia, Denmark, Ecuador, Finland, German Democratic Republic, Hungary, Japan, Lao People’s Democratic Republic, Mexico, Mongolia, Norway, Poland, Sweden, Switzerland, Ukraine, and the USSR (CCW ratifications at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=500&ps=P> and Roach, fn. 127)

¹⁰⁷ An exceptional early ratification by a major military power was that of China. Importantly, none of the Warsaw Pact states ratified Protocol I and only two NATO states – Denmark and Norway did so. The states that ratified the Protocol by the end of 1983 are: Austria, Bahamas, Bangladesh, Bolivia, Botswana, China, Congo, Congo (Dem. Rep.), Costa Rica, Cuba, Cyprus, Denmark, Ecuador, El Salvador, Finland, Gabon, Ghana, Jordan, Korea, Lao People’s Dem. Rep., Libya, Mauritania, Mauritius, Mexico, Mozambique, Niger, Norway, St. Lucia, St. Vincent Grenadines, Sweden, Switzerland, Syria, Tanzania, Tunisia, United Arab Emirates, Vietnam (data at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P>).

US the new humanitarian treaties faced tough opposition. The US had actively participated in the drafting of Additional Protocol I and the CCW and at the time they were deemed largely uncontroversial and reflecting US interests and influence (Aldrich, 1981, 1986, 1991; Baxter, 1977b; Reed, 1978; Burke, 1981).¹⁰⁸ Thus, it was expected that the ratification of the Additional Protocols would be readily forthcoming in the very near future.¹⁰⁹ However, the US perspective sharply shifted with the coming to power of the Reagan Administration, which was also accompanied by personnel changes among the people who had negotiated the two treaties and who could have influenced the positions of the Administration and the prospects for ratification of the Protocols and the Convention by the US Senate (Aldrich, 1997).

The main considerations behind the Reagan's rejection of the Additional Protocols were political and not military, even though the given arguments were couched in military terms. In the words of the main US negotiator in the 1970s, “[the] administration clearly welcomed the opportunity to assert its toughness and to contrast itself with the alleged weakness of its predecessors by denouncing the Protocol” (Aldrich, 1991:4). Nevertheless, the position of the Administration found support in the Department of Defense, where junior officers from the Vietnam War that had “chafed at the political restrictions imposed upon them there” had risen to rank (Aldrich, 1997: fn.4) and opposed the adoption by the US of new international agreements limiting their freedom of action.¹¹⁰

¹⁰⁸ At the closure of the Diplomatic Conference, the US head of delegation George Aldrich stated that, “[t]he United States welcomes the adoption of Protocol I. We are satisfied that this Protocol represents a major advance in international humanitarian law, an advance of which this Conference can be proud.” Moreover, this statement did not represent only the view of negotiators from the State Department but was backed by the Defense Department and Joint Chiefs of Staff as well (Aldrich, 1991:2).

¹⁰⁹ In the words of one of the members of the US negotiating team: “the Protocols will now have to be submitted to the Senate for its advice and consent prior to ratification. This procedure will probably move quickly and before long the two new Protocols will be in force for the US” (Baxter, 1977b: 182).

¹¹⁰ Among the arguments the Administration gave for its rejection of Protocol I were: “the Protocol grants guerrillas a legal status that often is superior to that accorded to regular forces; [i]t also unreasonably restricts attacks against certain objects [unidentified] that traditionally have been considered legitimate military targets; [i]t fails to improve substantially the compliance and verification

The end of détente and the Soviet invasion in Afghanistan with its massive use of conventional weapons of the types discussed and even restricted by the CCW (which the USSR had ratified in 1982) only added to the skepticism in the US that the Convention would work and states would comply with its terms (Roach, 1984:5). Finally, Ronald Reagan's decision to escalate the arms race with the Soviet Union also ran counter to the spirit and aims of the Weapons Convention.

Opposition to the Additional Protocols gradually toned down in the late 1980s as relations between the West and the East and between Israel and the Arab countries improved (Kosirnik, 1997).¹¹¹ Military interventions in the 1990s proved that the Protocol provisions did not hamper military operations and even countries such as the US, which had not ratified it, declared their adherence to its provisions. Interest in the CCW, on the other hand, resurfaced in the early 1990s as a result of an ICRC initiative to prohibit the use of blinding lasers, and in particular, from the efforts of a group of NGOs to ban antipersonnel landmines.

Conclusion

Two factors worked to make the adoption of new IHL agreements possible – the Vietnam War that revealed the need to regulate a number of questionable war practices and the détente years, which eased perceptions of security threats among the

mechanisms of the 1949 Geneva Conventions; eliminates an important sanction against violations of those Conventions; and is too ambiguous and complicated to use as a practical guide for military operations" (Secretary of State's letter of submittal, attached to President Reagan's letter of transmittal, quoted in Aldrich, 1991:11). See also, Reagan (1987). For arguments against ratification in the 1980s, see for example, Roberts, 1985; Feith, 1985; Sofaer, 1986; for recent criticisms against the Protocol, see, Rabkin, 2003.

¹¹¹ From the beginning of 1984 till the end of 1989, 54 countries became parties to Protocol I, among which NATO members Belgium, Italy, Iceland, Greece, Netherlands, Spain, and the socialist states Belarus, Bulgaria, Hungary, and the USSR, followed by Romania and Ukraine in 1990.

non-aligned countries and provided some space for international negotiations.

This opportunity was used by neutral and non-aligned states led by Sweden to place the question of weapons restrictions on the table of international negotiations. The committed work of the Swedish negotiator Hans Blix was also critical for keeping the issue on the international agenda. However, state leadership and individual activism on the issue helped move the issue of weapons restrictions only up to a point. When the US perceived a threat that momentum was gathering behind proposals for bans on weapons in its arsenal, it began participating in the discussions and challenged the factual grounds for weapons prohibitions, thus making impossible to establish clear evidence about the negative weapons effects on which ban proponents were basing their arguments. The lack of solid proof of cause-and-effect relationships, combined with the excessive technicality of the debates took away a lot of the momentum that Sweden and its allies had been able to generate prior to the US joining the talks.

From that point on the major point of contention became the forum where weapons issues would be discussed and the procedure of decision-making. In a way presaging the debates surrounding the landmine campaign, Sweden wanted to keep the issue within the ambit of humanitarian law, whereas the US and the USSR preferred to move it into the area of arms control and the Conference on Disarmament; Sweden argued for making decisions by majority voting, the US insisted on consensus. Even though Sweden managed to keep discussions within the IHL framework, the US and its NATO allies prevailed on consensus-based decision-making. In the context of the Cold War and with no support forthcoming from the ICRC or any major NGOs, Sweden and its non-aligned partners tried to achieve the best they could within the consensus-based negotiating forum but this amounted only to weak and inconsequential restrictions on landmines and incendiary weapons. The major

achievement, as it turned out, was the establishment of the CCW as an institution where discussions on weapons with serious humanitarian effects could be reopened and where interested parties could focus their efforts at further development of IHL.

CHAPTER THREE

The End of the Cold War, New Demands and Opportunities for IHL Development

The ICRC and landmines: from quiet diplomacy to public advocacy

As outlined in the previous chapter, the ICRC had been closely involved in the regulation of weapons, including landmines since the 1950s. Its approach throughout the period of the Cold War was cautious, trying to avoid politicization of the issue at the UN General Assembly and find a compromise solution that would bridge the divide between strong supporters and opponents of weapons restrictions. The result was the 1980 Convention on Certain Conventional Weapons (CCW) and its Protocol II on landmines that included provisions prohibiting the use of the weapons against civilians and restricting their use in areas of civilian concentration.¹¹² However, a limited number of countries ratified the protocol and its provisions were often unknown or ignored by belligerents in the subsequent years (Maslen, 1998: 84; Mathews, R., 2001: 997).

The end of the Cold War and the increase of humanitarian NGOs

The end of the Cold War changed the environment in which the ICRC operated in a

¹¹² The Protocol also established criteria for the use of remotely delivered mines in terms of marking the area where they were used or including a self-destruct or neutralization mechanism.

couple of important ways. On the one hand, since the 1970s, but especially since the end of the Cold War, there has been a proliferation of NGOs actively engaged not only in humanitarian relief, but also on IHL issues.¹¹³ These organizations that were “aggressive, vocal, and highly competitive” (including for funding) (Moorehead, 1999: 693) resented, questioned, and challenged the previously unrivaled position the ICRC held in those fields (Forsythe, 2005: 264). It was depicted by newcomers as secretive, uncooperative, and receiving most of the funding for humanitarian action. The ICRC was not oblivious to those trends and in 1993 it commissioned a survey of perceptions of the organization within the Red Cross movement, among the humanitarian community and donors to help it devise an “effective communications strategy” (Moorehead, 1999: 693-4). The ICRC President Cornelio Sommaruga was particularly attuned to the problem of the need to improve the ICRC relations with international organizations, NGOs, and the media and in 1995 argued that, “humanitarian action must be in parallel with political action” (Berry, 1997: 31). On the other hand, the end of the Cold War also lifted a number of constraints on ICRC action. Whereas during the Cold War years ICRC activism or promotion of a wider range of human rights would have been seen as taking sides, there was no such (or less) danger in the 1990s. Thus, these years saw a certain “coming out” of the ICRC that included a more public approach and better relations with the media,¹¹⁴ cooperation with UN agencies and NGOs, and “willingness to broaden its activities to help enable populations and victims not just to meet their immediate relief needs but

¹¹³ This NGO growth was also linked to the increase in development programs established to help reconstruction efforts in the wake of several conflicts that pestered out together with end of the Cold War.

¹¹⁴ In comparison to the period 1946-1987 when the ICRC made 74 public appeals, only between 1989 and 1996 it made 104. In addition, public announcements in the past were made “without fanfare and attracted little interest” in sharp contrast to Sommaruga’s public statements that were made forcefully and commanded attention. The shift in approach under Sommaruga is also reflected in the expansion of the ICRC information department that received generous funding and produced numerous new publications (including a large number on landmines). An ICRC website was also created with the goal to make ICRC work as transparent as possible (Moorehead, 1999: 699-700).

also to prepare themselves to recover their productive lives” (Cornelio Sommaruga preface to the ICRC Report, quoted in Berry, 1997: 116).¹¹⁵ This was the context within which the landmine issue came to the fore and out of which came a change in the ICRC approach to IHL development from low-key and compromise-seeking diplomacy to public and unwavering advocacy of a total ban on landmines.

The end of the Cold War also helped reveal the scale of the problem of antipersonnel landmines. After peace agreements in a number of developing countries were brokered by the UN and peacekeeping forces entered, they found millions of landmines (Cameron, 1998: 431). The ICRC was again the organization to witness their destructive impact and struggle to alleviate the civilian suffering caused by them.

The early ICRC approach: information provision and expert consultations as usual

In the late 1980s surgeons working for the ICRC were faced with the large number of amputations and serious medical challenges posed by them as a result of mine proliferation. In the early 1990s the ICRC started collecting data about the injuries suffered by the people treated in its hospitals and it soon became clear that the large majority were victims of landmines (Maslen, 2004:17-18). The ICRC tried to bring attention to the problem first by publishing *Mines: A Perverse Use of Technology*, which detailed the horrible reality of the “mine epidemic” (Maslen, 1998: 84).¹¹⁶

In response to prompting from its newly created Medical Division, in 1992 the

¹¹⁵ Sommaruga also wrote, “The 1990s have marked the “coming out” of the organization in many senses: [...] in its willingness to cooperate with other humanitarian players in the interest of the victims [...]; to collaborate more closely with human rights and other specialist lawyers as the relevance to them of international humanitarian law grows; to be more public about its concern – whether regarding the security of civilian populations or, for example, on the health effects of weapons such as anti-personnel landmines” (1995 ICRC Report, Challenges of the Nineties, quoted in Berry, 1997: 115).

¹¹⁶ This was followed by another publication in 1993, *The Worldwide Epidemic of Landmine Injuries: The ICRC’s Health Oriented Approach*.

ICRC began consultations with military commanders, diplomats, legal and medical experts in order to develop a view of what could be done about the problem of landmines on the legal level (Sommaruga, 1996). Thus it decided to convene a symposium on the issue in Montreux in April 1993 that brought together legal and military experts, deminers, surgeons, and campaigners (Dormann and Maresca, 2004). At the symposium, the ICRC was still following its traditionally cautious approach and only called for the incorporation of self-destruct mechanisms in APLs, even though the ICBL had already issued its call for a total ban in October 1992. Other participants thought that the ICBL goal was unrealistic and achievable only if the states' militaries would agree to it. There was common agreement, however, that existing IHL rules on landmines were inadequate and had to be strengthened (Maslen, 1998: 85) and the meeting was successful in spurring new research on the topic, including a study on the economic impact of mines by VVAF and research by HRW of the global production and trade in landmines (Maslen, 2004: 19). The symposium also "recognized the crucial importance of alerting public opinion in order to increase awareness among the military and governments" – a conclusion that influenced the future thinking of the ICRC on the subject (ICRC, 1994).

Individual entrepreneurship: Sommaruga and the ICRC's new public approach

As a follow-up of the Montreux Symposium, in January 1994 the ICRC organized a meeting of military experts to sound out their opinions on the military utility of APLs. Even though views were divided again, the predominant feeling was that the military utility of antipersonnel mines warranted their continued use until alternatives were made available (ICRC, 1994; Maslen, 2004: 19; Maresca and Maslen, 257-63; ICBL,

1995a:102). Nevertheless, ICRC President Cornelio Sommaruga who was personally in favor of a ban and complaining about “the excessive discussion, consultation, and slowness in ICRC policy making” (Forsythe, 2005: 217),¹¹⁷ decided to use the opportunity of a press conference ahead of the start of the preparatory meetings for the CCW Review conference to announce on 24 February 1994 that, “‘from a humanitarian point of view,’ a ‘worldwide ban on anti-personnel landmines’ was ‘the only truly effective solution’” (Maslen, 2004:20).¹¹⁸ He did so despite the fact that the ICRC Assembly had not met to discuss the decision, the Directorate had not finalized its position, and the Legal Department cautioned against abandoning the ICRC policy of not expressing views on issues that do not concern the Geneva Conventions and questioned the feasibility of a landmine ban. Only people at the Medical Department were supporting Sommaruga’s decision enthusiastically (Forsythe, 2005: 217; Lorenzi, 1998: 96; interview 41 NGO).

This was an unusual move for an ICRC President to make, but one that was pivotal in charting the course of the organization on landmines.¹¹⁹ In his words, after describing the gruesome picture of the humanitarian disaster caused by mines, Sommaruga could not simply say that, “the international society should seriously deal with that matter;” he wanted to open a relatively new niche for the ICRC to get engaged in weapons-related issues and have it stake a public position in favor of a landmine ban (Lorenzi, 1998: 95-6). His active personal engagement with the cause of banning landmines was not only important in prompting the ICRC to take a bolder

¹¹⁷ In Sommaruga’s opinion, many people at the ICRC were intellectuals with ideas who loved to debate and discuss things at length, whereas he preferred to act, especially when victims in the field required rapid responses. He particularly disliked the fact that even after a decision was made, the ICRC continued to deliberate on it (Lorenzi, 1998: 88, 94).

¹¹⁸ It was believed that the ICRC president was personally in favor of a ban already at the time of the Montreux symposium (Maslen, 2004: fn.99). In its presentation at the London NGO Conference in May 1993, the ICRC also mentioned the possibility of working toward a total landmine ban (ICRC, 1993).

¹¹⁹ Sommaruga then contacted the Canadian Prime Minister Chrétien with a request that Canada raise the issue of landmines at the 1994 G-7 meeting in Naples, which was received favorably.

position on the issue but also greatly contributed to the success of the whole process that led to the Ottawa Convention.

The ICRC reiterated its support for a total ban on APLs in its 1994 report prepared for the CCW Review Conference and actively participated in the four preparatory meetings for the Conference in 1994-1995. In contrast to the NGOs which were banned from attending the CCW meetings due to opposition from China, in particular, the ICRC had an observer status and was closely involved in the negotiations on the landmine protocol amendment in the fall of 1995 and the two sessions of the CCW Review Conference in January and April-May 1996 (Maresca and Maslen, 2000).

This time, however, the ICRC did not confine its activities to the conference hall and low-key contacts with diplomats. Faced with the lack of progress in the CCW negotiations that failed to achieve agreement on any substantive measures (the only decision made was to reconvene next year to continue talks), in November 1995, for the first time in its history the ICRC decided to launch a public and media campaign in support of a call for a total ban on landmines.¹²⁰ The idea behind the campaign was that “[a]nti-personnel mines must not only be outlawed, but their use must also be stigmatized, so that whatever their understanding of the law combatants will choose not to use them because they are considered abhorrent to the societies in which they operate” (Sommaruga, 1996). The campaign message was “Landmines Must be Stopped” and combined a number of advertising tools such as TV spots and print announcements placed free of charge in national and international media throughout

¹²⁰ Another instance when the ICRC got publicly involved in advocacy, though on a far smaller scale, was in the case of poisonous gas in 1918 when it issued an appeal against its use. The appeal has been credited as one of the motivations for the adoption of the 1925 Geneva Protocol banning the use of chemical weapons (ICRC, 1918; ICRC, 1997, Durand, 1984: 90-6). In February 1938, the ICRC also launched an appeal to belligerents against aerial bombardment, followed by a second one in March after Japanese bombing caused large-scale destruction. In view of the intensification of the aerial war, ICRC launched multiple appeals, among which the one of 12 March 1940, in which it underlined the necessity of distinguishing between military objectives and civilian populations (Harouel, 1999: 71, 79).

the world, videos, and numerous publications for specialists and the general public on the humanitarian, legal, military, and medical aspects of the landmine problem (Dormann and Maresca, 2004).

When in May 1996 the Amended Protocol II of the CCW was finalized, the ICRC called its restrictions on the use of landmines “woefully inadequate” and pointed out that the Protocol itself was “unlikely to significantly reduce the level of landmine casualties” (Maslen, 2004: 22; 1998:87). From that point on the ICRC became a key player together with the ICBL and the core group of governments in what would become the Ottawa Process and its 1997 campaign, specifically focused on promoting the Ottawa Treaty, was a major contributor to its success.

The second element in the ICRC campaign was to provide a sound study of the military utility of landmines and work to get the support of the military for a ban. To that end it commissioned a retired brigadier, Patrick Blagden, assisted by a military historian, to study the military use and effectiveness of APLs in 26 conflicts starting with WWII. In February 1996, the ICRC convened a meeting with senior military experts from 8 countries to discuss the Blagden study. The experts unanimously concluded that, “[t]he limited military utility of AP mines is far outweighed by the appalling humanitarian consequences of their use in actual conflicts. On this basis their prohibition and elimination should be pursued as a matter of utmost urgency by governments and the entire international community” (ICRC, 1996) – a conclusion that has subsequently been endorsed by 55 senior military commanders from 19 countries in their personal capacity. The ICRC widened its efforts to engage the military in a dialogue on the problem of landmines by organizing two more meetings of military experts. In April 1997 in Harare, Zimbabwe, it sponsored a meeting of defense and foreign ministry officials from the 12 countries of the Southern African Development Community, followed by a meeting organized in July 1997 in Manila

together with the Philippines government that brought together Asian military and strategic experts from 14 countries. Importantly, at these meetings the military value of APLs was considered in “the context of [their] long-term human, social, and economic costs” (Maslen, 1998:89), instead of limiting attention to the military aspects of their use, which would have shifted the debate away from its primary focus.

The final element of the ICRC strategy on landmines was to encourage national and regional steps toward banning them. Already in 1995, recognizing the fact that the African continent was most severely affected by landmines, the ICRC together with the Organization for African Unity organized four regional seminars on the subject.¹²¹ These were followed in April 1997 by the above-mentioned meeting of military experts in Harare, and the First Continental Conference of African Experts on Landmines, organized by the Organization for African Unity. Within the context of the Conference, the ICRC organized a meeting of 12 national societies to discuss their role in moving the region toward a landmine ban, which issued a declaration “calling upon their governments to support the Ottawa Process, to prohibit anti-personnel mines at national level, and to work together to establish an anti-personnel mine-free zone in the region” (Maslen, 2004:32). This consolidation of African support for the Ottawa Treaty under the leadership of South Africa, in particular, would be crucial during the final negotiating conference in Oslo in the fall of 1997 when the US lobbied hard to have the treaty provisions changed.¹²²

The ICRC actively participated during the Ottawa Process conferences that started with the Ottawa meeting in October 1996. At this meeting the ICRC President

¹²¹ There were two seminars in Addis Ababa, Ethiopia, and one each in Harare, Zimbabwe and Yaounde, Cameroon.

¹²² The ICRC also focused attention on landmines in another mine-infested region and hosted with the cooperation of the Nicaraguan Foreign Ministry a regional seminar in Managua in May 1996. The meeting was attended by officials from Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama and concluded with the idea of creating a mine-free area in Central America, which was endorsed by the Organization of American States a month later (Maslen, 1998: 90).

Sommaruga was one of the very few people informed about the Canadian decision to launch a challenge for a fast-track negotiation of a total ban and the one to give a congratulatory speech right after the announcement.¹²³ Over the course of 1997 the Ottawa Process proceeded with a series of conferences focusing on the treaty text and provisions in Vienna (February), Bonn (April), Brussels (June) and the final negotiations in Oslo in September. The ICRC took part in all of them and advocated several core provisions for inclusion in the treaty – a better definition of landmines that would remove the word “primarily” from the CCW definition; a comprehensive and immediate ban on production, transfer and use of APLs, accompanied by a phased destruction of stockpiles and clearance of existing mines with a clearly specified deadline; as strong as possible verification measures but without allowing this issue to block progress toward establishing the humanitarian norm; and finally, an important goal for the ICRC was the universality of the treaty. As a result of efforts by the ICRC and the ICBL, the definition of landmines was strengthened and the principles the ICRC supported were reflected in the final treaty text (Maslen, 1998: 91-93). ICRC support for the treaty was also important in the final negotiating hours of the Oslo Conference when the US was exerting pressure on many states to accommodate its demands and “lobbied the ICRC directly to back off from its commitment to a total ban.” However, President Sommaruga’s firm support on the issue was key in keeping the ICRC firmly behind the integrity of the treaty and its ultimate success (Forsythe, 2005: 265).

Thus, the ICRC carried out an unprecedented public campaign on landmines to which it harnessed its financial resources, international prestige and presence, legal expertise and connections with the military services of countries around the world. It was an invaluable ally to both core governments in the Ottawa Process, such as

¹²³ The other speech of support came from Jody Williams of the ICBL (Maslen, 2004: 26).

Canada that was money strapped in the wake of deep budget cuts (English, 2000: 31) and NGOs, most of which didn't have the same level of legal expertise or access to military circles (Maslen and Herby, 1998). The ICRC public campaign was the first of this kind for the organization and initially there were concerns that it would compromise its principles of neutrality and impartiality. These concerns were overcome, however, since in practice, the campaign was waged in favor of the victims of landmines without the ICRC taking a position vis-à-vis parties in a conflict and without openly criticizing any government not joining the landmine ban – a job that was reserved for the ICBL (Maslen, 1998; Forsythe, 2005: 265).¹²⁴ Nevertheless, the landmine campaign repositioned the ICRC toward the public domain. The step was made as a result of internal advocacy from the ICRC medical personnel who were confronted with the landmine disaster first-hand and the backing of ICRC president Cornelio Sommaruga. The strong personality and dynamism of the latter were very important in shaping ICRC policy and moving the landmine campaign to a successful end. During his years at the helm of the ICRC, Sommaruga often engaged in personal diplomacy and raised the visibility of the ICRC and its causes on the international scene and in diplomatic circles (Forsythe, 2005: 217-18). His initiatives, however, have to be seen as a response to the new situation in which the ICRC found itself after the end of the Cold War created new opportunities and demands for action on the organization, as well as challenges to its unique status the field of humanitarian relief and IHL development.

¹²⁴ Despite this fact, the ICRC has been criticized by opponents of the ban for its spending on the campaign and using money coming from US contributions against American interests (e.g. Center for Security Policy, 1997a; Gaffney, 1997).

The ICBL: from the streets to the negotiating halls and in between

The end of the Cold War, the landmine problem, and a few good people with a good idea

The end of the Cold War was the permissive factor that opened up opportunities for increased humanitarian action and shifting the focus from the Cold War security concerns and nuclear weapons issues to new kinds of threats to individuals, or the so-called “human security”.¹²⁵ In Jody Williams’ words: “[w]ith the end of the Cold War and the accompanying perception of decreased nuclear threat, there has been growing attention to other weapons which have, in fact, inflicted far more casualties in the wars of the past few decades than nuclear and chemical weapons combined” (quoted in Larrinaga and Sjolander, 1998: 372). The mitigated threat perceptions and the toning down of the all-encompassing security preoccupations characteristic of the Cold War years also allowed a discursive change in the depiction of landmines as an essential and legitimate part of state defense to an enemy of innocent civilians and soldiers alike – a change that was effected as a result of the hard work, reporting and campaigning of non-governmental organizations. The end of the Cold War also relieved some of the

¹²⁵ “Human security” represents a conceptual shift from traditional military issues to a focus on the security and well being of the individual, initially brought up by the UN and advocated by Canada, in particular. The human security agenda includes a whole range of issues from job security and unemployment, to health, and family violence (e.g. UN Human Development Report, quoted in Hay, 1999: 228) but its core comprises the issues of landmines, the International Criminal Court, small arms, women and children in conflict, child soldiers, human rights. In Canada itself the concept started with a focus on sustainable development and later was refocused on the above mentioned core issues. In 1998 Canada and Norway signed an agreement for cooperation on the promotion and implementation of the human security agenda, which in 1999 was extended to include other interested countries, and was named the “Human Security Network” (Axworthy and Vollebaek, 1998; Hampson et al., 1999:19; Hillmer and Chapnick, 2001:81; Small, 2001). For the development of the concept in Canada, see, Hay (1999); Hillmer and Chapnick (2001); for other works focusing on the issue, see, for example, McRae and Hubert (2001), Matthew et al. (2004).

constraints imposed on states as a result of the two-block rivalry, which allowed the formation of new coalitions of like-minded states and cooperation between them and members of the NGO community (Larrinaga and Sjolander, 1998: 372; Lawson, 1997; Axworthy, 1998: 451-52; Price, 1998b: 340-41; Mathews, J., 1997a; Gwozdecky and Sinclair, 2001:30). Finally, with the end of the Cold War conflicts in regions of previous East-West rivalry petered out at the same time that new fires of internal strife broke out. As the UN and Western governments funded new development programs and peacekeeping operations, an increasing number of NGOs moved in these regions and discovered the reality of life and death in mine-infested lands (Cameron, 1998:431; Dolan and Hunt, 1998: 400).

The beginnings of the International Campaign to Ban Landmines (ICBL) are to be found in this encounter of NGOs with the dangers of landmines in their humanitarian work in places such as Angola, Cambodia, Afghanistan, Mozambique, and Somalia. Not only were landmines killing about 20,000 people a year but they were severely impeding the work of NGOs on the ground and post-war economic and social development.

In September 1991 Human Rights Watch (HRW) and Physicians for Human Rights (PHR) published the first report on the landmine crisis in Cambodia, *Landmines in Cambodia: The Coward's War* and were among the first to call for a ban. The same year, the Vietnam Veterans of America Foundation (VVAF) opened a prosthetics clinic in Cambodia and in November contacted Medico International, Germany with the idea of organizing an international campaign to ban antipersonnel landmines (Wareham, 1998:212-3). In 1992 Handicap International (HI), France decided for the first time to move beyond its traditional mandate to help victims of armed conflict and engage in a public campaign against the indiscriminate effects of

landmines. HI worked together with Mines Advisory Group (MAG), UK in Cambodia and translated of *The Coward's War* report in French. In May 1992 at a conference in Paris to present the French version of the report, the two organizations along with PHR also came to the idea of an international campaign and launched a signature call in support of a landmine ban (Chabasse, 1998: 60). Finally, in October 1992, six organizations – HI, HRW, PHR, MAG, Medico International, and VVAF – came together and issued a “Joint Call to Ban Antipersonnel Landmines.” These organizations laid the foundations of the ICBL, which was formally launched in May 1993 in London at a conference attended by approximately 70 representatives from 40 NGOs (Williams and Goose, 1998: 28). Jody Williams, hired by VVAF in 1991 to work on building the landmine campaign, became the coordinator of the ICBL, and her exceptional determination and character greatly contributed to its success.

The call for a landmine ban: a simple and effective solution

Whereas these NGOs had an interest in creating public attention to the landmine crisis and securing more funding for demining, victim assistance programs and humanitarian aid, they saw a total ban on the export, production and use of landmines as the only solution to the problem. The call for a ban had the advantage of sending a simple, strong message to governments and the ability to unite around it a diverse group of humanitarian service NGOs, demining NGOs, human rights and advocacy NGOs, as well as a wide range of development, women’s and religious groups.¹²⁶

The initial NGO approach to the problem of landmines focused on raising

¹²⁶ There was no absolute unanimity on the issue, however. Some demining organizations, such as HALO Trust, for example, argued that advocating a ban would only divert resources from the real task of clearing mines on the ground and contribute nothing to solving the problem of landmines (interview 8 NGO; Jefferson, 1997a,b; Flynn, 2004).

awareness and providing data about its scale. HRW was the organization that contributed most to this effort. After publishing together with PHR *The Coward's War* in September 1991, in October 1992 Rae McGrath of MAG wrote for it another report on the landmine situation in Iraqi Kurdistan, *Hidden Death*, followed by reports on Angola in 1993 and Mozambique in 1994, as well as by another publication together with PHR on the global landmine crisis in 1993, *Landmines: A Deadly Legacy*. Other reports were issued by PHR, *Hidden Enemies* (1992), MAG and African Rights, *Violent Deeds Live On* (1993), and VVAF, *After the Guns Fall Silent* (1995). All the publications portrayed stories of horrific suffering of innocent victims (most often women and children)¹²⁷ and impediments to reconstruction efforts in war-torn societies inflicted by landmines. Thus the human and humanitarian consequences of landmines were highlighted at the expense of their military utility.

As the NGO advocated a simple solution to the problem – a total ban, they also had to play down the complexities and different proximate causes of the landmine crisis by limiting their focus on the weapon itself as the major culprit – landmines were the hidden killers and enemies that had to be stopped once and for all (Larrinaga and Sjolander, 1998, see also Rappert, 2006: 170-185 on issue simplification). Only after the NGOs had managed to define the discourse in those terms (at least at the international level and in the leading states on the issue), did they direct their critiques to manufacturers of landmines,¹²⁸ and tried to show that not only were there humanitarian reasons to ban landmines, but these also outweighed the limited military utility of the weapons by far – arguments aimed at audiences in the countries which

¹²⁷ Even though the estimates were that women and children comprised about 30, maximum 40% of the landmine victims, the NGOs always placed the emphasis on them and occasionally claimed that they made 90% of the victims (Larrinaga and Sjolander, 1998: 376-7).

¹²⁸ See, for example HRW (1997a) report on US producers of landmines and Handicap International (1997) on French producers, *Le Complexe Français de Production des Mines et Systèmes Associés*. The delay in targeting the industry has to do with the fact that many countries had already stopped producing landmines anyways. In contrast, in Italy where Valsella Meccanotecnica was a major mine-producer, the Italian campaign focus was largely on it.

persisted in their belief that landmines could be used responsibly and discriminately.

The USA and initial boost for the landmine campaign

One, sometimes forgotten, factor that gave impetus to the early NGO efforts to build their landmine campaign was the concern shown for the problem in the US Congress and government. In October 1992 the US Senate passed a bill placing a one-year moratorium on the export of landmines “that galvanized the imagination of the international community” and made activists believe that progress toward elimination of these weapons was possible (Williams and Goose, 1998:26; also Axworthy, 2003: 128; Muller, 1998). This was followed in August 1993 by an influential report by the US State Department, *Hidden Killers: The Global Problem with Un-cleared Mines*, which called landmines “weapons of mass destruction into slow motion,” and the introduction of a resolution on the problem by Senator Leahy at the UN General Assembly in November 1993, which urged states to agree to and implement a moratorium on export (Hubert, 2000). In September 1994 in a speech to the UN General Assembly President Clinton declared the goal of the “eventual elimination” of anti-personnel mines and the need for international efforts toward achieving it,¹²⁹ and in December 1995, the USA proposed again a UN Assembly resolution calling for “further immediate international efforts to seek solutions to the problems caused by anti-personnel landmines, with a view to the eventual elimination of anti-personnel landmines” (quoted in Maslen, 2004: 30).

In the spring of 1996 there were still high expectations among NGOs and states

¹²⁹ The “eventual elimination” for which Clinton called for, was premised on the development of “viable and humane alternatives” (Wareham, 1998:221) but this detail may have not registered with most countries.

that the landmine policy review undertaken by the Administration would result in bold measures in support of a total ban. In March 1996 their hopes seemed to have been confirmed – in a statement published in the New York Times, the Chairman of the Joint Chiefs of Staff, Gen. John Shalikashvili, indicated that he was “inclined to eliminate all antipersonnel land-mines.” This announcement then prompted the Netherlands, Austria and Germany to declare national bans on landmine use in “anticipation of a bold new policy from the US,” even though the latter never materialized (ICBL, 1996a).

The US momentum gradually ground to a halt in the second half of 1996 as the military mobilized against the perceived threat to be denied a weapon they argued they were using responsibly without causing any civilian suffering. Nonetheless, even after the Ottawa meeting in October 1996, which launched fast-track negotiations for a total APL ban in an ad-hoc process outside of the traditional UN channels, the US position remained unclear. Whereas the US insisted that the Conference on Disarmament, known for its slow, consensus-based decision-making, was the appropriate forum for negotiations on a comprehensive ban, in November 1996 it introduced a resolution in the UNGA calling on states to “pursue vigorously” an international agreement to ban use, stockpiling, production, and transfer of antipersonnel mines “with a view to completing the negotiations as soon as possible,” which many countries interpreted as tacit support for the Ottawa Process (Dolan and Hunt, 1998: 403-04).

These actions made the USA appear early on as a strong proponent of landmine restrictions and a leader to whose actions NGOs could point when urging other governments to adopt similar measures. This initial active stance and, I would argue, the later ambiguous US positions on landmines and a commonly shared belief that President Clinton supported the landmine cause, served, first, as a catalyst of the NGO campaign, and second, as a permissive factor that allowed support for a ban to

grow among other countries and let negotiations of the Ottawa Treaty itself be completed without strong American opposition.¹³⁰

Reinforcement from international organizations

Parallel to the NGO campaign, and certainly reinforcing it, concern about the issue of landmines grew in the UN, and in particular the UNICEF. In October 1992 the UN Departments of Humanitarian Affairs and Peace-Keeping Operations hosted the first in a series of meetings with UN agencies and NGOs to share information on mine clearance and legal controls over the use of mines. In September 1993 UNICEF, Geneva decided to give priority attention to the issue of land mines and asked the National Committees to seriously consider advocacy for the cessation of production of landmines. In January 1994, it followed up with a consultative meeting on the problem of landmines. In December 1993 the UN General Assembly adopted a resolution, introduced by the US, calling for a moratorium on the export of landmines (ICBL, 2004). In March 1994 the Executive Director of UNICEF, Jim Grant, called for a landmine ban and in May 1994 UNICEF gave its support to and co-hosted the second NGO landmine conference in Geneva. Some 110 representatives from 74 NGOs gathered in Geneva and in his opening remarks sent to the Conference, the Secretary General of the UN, Boutros Boutros Ghali called for a worldwide ban on landmines (ICBL, 1994a: 11). The same month UNICEF and the UN High Commissioner for Refugees called for a total landmine ban at the second preparatory session for the

¹³⁰ For example, after the Vienna CCW conference in Sept 1995 the USA had not yet emerged on the list of “obstructionist” states compiled by the ICBL (Landmine Update #12, Dec 1995). Regarding later US policies on landmines, a senior governmental official argued, that the low-profile approach toward presenting US views on the Ottawa Process and the Leahy initiatives “helped to create an impression overseas that the United States was going to ban mines very soon’ when, in fact, the reality was quite the opposite” (quoted in Wareham, 1998:235).

CCW review conference. Further, on the initiative of the UN Secretary General, a UN Voluntary Trust Fund for Mine Clearance was established in November 1994 and the next month the UNGA passed a resolution, which called for more states to enact export moratoria and for the eventual elimination of antipersonnel landmines.

This institutional support greatly enhanced the credibility, and arguably, popularity of the international campaign at this early stage (Williams and Goose, 1998: 28) in a dynamic of mutual reinforcement of initiatives undertaken by the ICBL and the UN. Even after Canada moved the negotiating process on landmines away from the UN auspices, it had the backing of the Secretary General Boutros-Ghali, who was informed of the Canadian decision to launch the fast-track process and sent in his congratulations and expressed full support of the initiative (ICBL, 1996c: 57).

Similarly, NGOs received support for their efforts from the European Parliament (EP). After in November 1992 Handicap International and Mines Advisory Group distributed to the members of the EP the *Coward's War* report on the landmine situation in Cambodia, accompanied by a letter of support from the EP President Simone Veil, the Parliament responded to the NGO concerns immediately. In December 1992, it passed a resolution calling on member states to declare a five-year moratorium on the export of landmines, as well as to ratify the 1980 CCW and allocate more funding for mine clearance (HI, 1997: 48; ICBL, 1995a). In February 1995, the EP passed another resolution asking the EU to "instantly enact a law to prohibit the production and trade of antipersonnel landmines". In March, on the initiative of the EP President Bernard Kouchner (who had close links to French NGOs, being the founder of Médecins sans Frontières and later Médecins du Monde) the Parliament organized an unprecedented two-day public hearing on APLs to which

several NGOs were invited to present their views.¹³¹ Following the hearings, in June 1995 the EP adopted two resolutions asking for a total ban on APLs and calling on all Member States to unilaterally ban the production and use of APLs and destroy existing stocks (HI, 1997: 49). By its initiatives, the European Parliament contributed to the transnational anti-landmine campaign because it acted as a venue for NGO campaigners to voice their views and as an amplifier for the anti-landmine position. Its resolutions also stirred discussions of the common EU position on landmines and helped create a climate of European opinion against landmines, even though they were not enough to set the common EU position on the issue, for which a consensual decision was needed (Long, 2002: 440-41).

Thus, NGOs were able to muster support for their campaign in international and regional institutions where their voices could make an impact without being held hostage to consensus decision-making. This symbolic political support could then be used as an additional tool in their domestic and international campaigns against landmines.

International fora as focal points of mobilization

The international NGO campaign became more focused, and importantly, gained significant media attention during the Review Conference of the CCW in the fall of 1995, that was convened as a result of the successful lobbying of the French government by Handicap International. Ahead of the Conference, the ICBL sent a team of organizers to prepare the NGO campaign in Vienna, which eventually brought

¹³¹ Representatives from Medico International, Germany, Mines Advisory Group, UK, VVAF, and Handicap International France and Belgium participated in the hearings.

together 350 organizations from 23 countries (ICBL, 1995a:18). Even though the working sessions of the Review Conference were closed to NGOs, the ICBL employed a wide range of tactics to influence the course of the negotiations – from insider lobbying, information distribution, to public advocacy. NGO members lobbied delegates of the state negotiating teams, provided them with information on different aspects of the landmine problem, made statements at a CCW plenary session, and invited delegates from different countries to present their views at several NGO briefings. In a demonstration of global support for the issue, they presented the President of the Review Conference, Ambassador Johan Molander of Sweden, 1.7 million signatures from 53 countries under the call for a ban. The ICBL also coordinated an extensive media campaign¹³² – it published twice a week and made available to the media and state delegates a newsletter, *CCW News*, providing information on the landmine crisis and on state positions at the Conference.¹³³

Whereas the NGO pressure did not produce any significant progress in the Review Conference, their criticism of the negotiation and its weak results produced a deadlock and led to the decision to prolong the conference with two additional sessions in January and April-May 1996 in Geneva. Still, the conference was important because it attracted a large number of NGOs that pledged support to the cause of banning landmines and brought the ICBL in the spotlight of media attention. In the course of the conference the NGOs also learned more about different state positions, which allowed them to better direct their lobbying and public activities. The upcoming conference in Geneva provided another opportunity for NGO involvement and helped them better plan their activities and draft a common set of future demands

¹³² For the first time the ICBL hired a media consultant to organize the media campaign during the Vienna Review Conference (interview 8 NGO).

¹³³ The public advocacy activities included among others, showing a film, “Silent Sentinels: Cowards’ War,” creating a 6-ton shoe pyramid in front of the Austrian Parliament, emplacing a simulated minefield in a busy walkway in the center of Vienna, and setting up a photo exhibit (ICBL, 1995a).

and tactics – a matter that so far had been left to the discretion of individual organizations.¹³⁴

As the issue gained in prominence, more and more organizations came to support it and 450 of them gathered in Geneva for the second round of negotiations of the CCW Review Conference (ICBL, 1996b: 145). This conference, and especially its failure, turned out to be the turning point in relations between NGOs and governments and the one that showed the way ahead to get out of the CCW deadlock. In the words of Ambassador Molander, the President of the Review Conference, “the cumbersome diplomatic process, based on universality and consensus, set in motion a chain reaction that was difficult to foresee,” the contrast between “the haggling over seemingly unimportant details and procedure in comfortable Geneva” and “the nameless suffering of children, women, and men torn to pieces in the rice paddies of Cambodia, the valleys of Afghanistan or the fields of Angola” was so stark and brutal that it could not be ignored by governments willing to do something about this human tragedy (Molander, 2000).

NGO brokerage and the formation of a vanguard team of state supporters

The CCW conferences also served as a focal point of contact between NGOs and like-minded countries and helped forge connections between the two (Williams and Goose, 1998: 31-2).

As NGOs watched states “haggle” over details and procedure in Geneva, they realized that no agreement reached by consensus at the CCW would satisfy their

¹³⁴ While it was still up to the individual NGOs to choose their tactics and demands, now they were presented with a more structured range of activities both for the Geneva Conference and for the future (ICBL, 1995a: 4-8).

demands for a total ban and started thinking about other possible ways to advance their cause. Several states, pushed by national legislative action and domestic NGO campaigning, had already mentioned the need for a total ban on landmines in their CCW statements and in August 1994 Sweden had officially proposed an amendment to prohibit the use, development, production, stockpiling, and transfer of APLs.¹³⁵ Encouraged by these positive developments, during the January 1996 session of the CCW, the coordinator of the Dutch campaign suggested that the NGOs invite those countries to a meeting to discuss what could be done to keep the issue alive and going.

The idea was not only to talk about possible further steps toward international measures on landmines, but also to bring together and create among government officials from different countries a common “pro-ban identity” (NGO member quoted in Mathews, 1997b). The result was a first NGO-government meeting with the participation of officials from seven invited states (Austria, Belgium, Denmark, Ireland, Mexico, Norway, and Switzerland) and the unexpected showing up of a member from the Canadian delegation, Bob Lawson, who had heard of the meeting even though Canada was not among the invited because it had not voiced support for a total ban. As it turned out, Canada was to play the key role in the events that followed. A second NGO-government meeting was organized at the April CCW session and observing NGO mobilization and the growing state support for a total ban,¹³⁶ after the CCW failed to adopt anything significant, the Canadians decided to host a follow up

¹³⁵ Among those states were Austria, Denmark, Germany, Ireland, Mexico, and Norway (Dolan and Hunt, 1998: 401).

¹³⁶ By May 1996 at the closing session of the CCW conference, 40 states had publicly expressed support for a total international ban on APLs, 25 states had renounced the use of APLs by their own forces, and 11 were already destroying their stockpiles. In addition, Werner Ehrlich of the Austrian Ministry of Foreign Affairs had drafted the text for a treaty banning APLs in April 1996. The scale of support for a ban was significant, given that in the CCW meeting participated 33 States Parties and 33 states non-parties to the Convention. The problem was, however, that CCW decisions had to be consensual. It has been argued that this level of support for a total ban was mostly responsible for the Canadian decision to step in and lead on the issue (Maslen, 2004: 23-24; fn. 127).

meeting on the problem to strategize with other supportive countries about ways to achieve a comprehensive prohibition of landmines.

At the end of the strategy meeting in October 1996, Canadian Foreign Minister Lloyd Axworthy evaluated the degree of support among states, as well as the willingness of the most active among them to assume the leadership role if Canada was slow to take it, and decided to take the chance and launch an unprecedented challenge to the states gathered in Ottawa – to come back and sign a treaty by December 1997 (Axworthy, 1997). Thus NGOs were quite successful not only in stimulating among different countries leadership ambitions to lead the way on landmines. They were also successful as brokers between those countries (Tarrow, 2005) – NGOs brought together state representatives to think about common goals and welded them in a team to work toward their achievement. Despite some bitterness that Canada had snatched the leadership position in Ottawa, the core group of states remained united and during the months that followed, the created sense of belonging to a like-minded group was so strong among government officials that some of them admitted that they felt more loyal to its goals than to the interests of their own states (interview 38 NGO).

The fast-track Ottawa Process: “bandwagon” or “left behind” effects

This was the beginning of the so-called Ottawa Process that proceeded with a whirlwind of conferences – three conferences in Europe to negotiate the treaty text, a final negotiating conference in Oslo in September 1997, and several regional conferences aimed at generating support for the treaty in Africa, Asia, the Baltic

region, and the Middle East that were organized by the ICBL and the ICRC.¹³⁷ The whole process was based on self-selection – only countries that endorsed the goal of a total ban were invited to the first meeting in Ottawa and thereafter, only those states which associated themselves with the final declarations of the subsequent conferences would be allowed to participate in the next round. Thus, from the very beginning consensus was not sought and the rules ensured that only countries that were generally in tune with the idea of a comprehensive ban on landmines could join and have a say in shaping the treaty text.

The other distinctive feature of the Ottawa Process was the active participation of NGOs not only by stimulating support for it through public campaigning, letter writing, reporting on the problem and organizing conferences, but also in the actual negotiation of the treaty. The NGOs closely cooperated with the governments of the core group of states (usually identified as Austria, Belgium, Canada, Ireland, Mexico, the Netherlands, Norway, the Philippines, South Africa, and Switzerland) (Lawson et al., 1998: 167), were allowed to attend the plenary sessions of the negotiating conferences, and had open access to the closed sessions through the numerous NGO representatives sitting on official state delegations.¹³⁸ Thus NGO participation in the negotiations was almost on an equal footing with that of state delegations; the ICBL had its own draft proposal and made sure that most of its provisions were reflected in the final treaty (Maslen, 2004: 29).

¹³⁷ In addition to the European conferences in Vienna (February), Bonn (April), Brussels (June) and Oslo (September), over the course of 1997, meetings to help build political will for the treaty were organized either by the ICBL and the ICRC or co-sponsored by governments in Maputo, Harare, Kempton Park, Manila, Tokyo, Stockholm, Sydney, New Delhi, Ashgabat, Senegal, and Sanaa (see, Williams and Goose, 1998: 36-42).

¹³⁸ States that included NGO representatives on their delegations included, for example, Austria, Australia, Belgium, Canada, France, Germany, the Netherlands, and Norway. In addition, the ICRC and the UN were also invited to participate in the closed conference meetings, so NGOs did not lack information about any of the discussions taking place.

The partnership forged between NGOs and sympathetic governments came to be known as a “new diplomacy”¹³⁹ and was highly effective in the context of the landmine campaign. As NGOs and diplomats from the core group of countries circled around the world to promote the treaty, they triggered a real “snowballing” effect in state support for it. The number of countries that attended and signed on the declarations of the treaty conferences steadily grew from 74 attending the 1996 meeting and 50 of them supporting its declaration, to 111 attending the Vienna meeting in February, 121 participating in Bonn in April, to 156 attending the Brussels conference in June with 97 of them pledging support to its declaration. After a slight drop in attendance of the final treaty negotiation conference in Oslo to 120 states, in December, 122 states signed the Mine Ban Treaty in Ottawa (Lawson et al., 1998; Maslen, 2004).

Despite this close engagement in the negotiation of the treaty, and their becoming part of the official teams of more than a couple of countries, NGOs were not co-opted by states nor did they lose sight of their ultimate goal of a strong treaty with “no exceptions, no reservations, no loopholes.” As soon as they saw a threat to their objectives, the NGOs were back in the streets, protesting with full vigor. Their actions were crucial for preserving the integrity of the treaty, when after rejecting the Ottawa Process, the US decided to join it for the final conference in Oslo, determined to make other states accommodate its demands. Benefiting from insider information about state discussions of the US proposals and witnessing signs of yielding to American pressure, the NGOs went public with their protest against any weakening of the treaty which both propped up the position of their governmental allies and constrained the

¹³⁹ The term “new diplomacy,” or more broadly, “new multilateralism” has been used to denote the diplomatic processes or international relations characterized by openness and transparency, public engagement and larger role for civil society actors, the creation of new partnerships among small and medium-sized states and NGOs that take place out of the traditional diplomatic forums and often pursue principled goals. See, for example, Axworthy and Vollebaek (1998), Axworthy (1998), Dolan and Hunt (1998), McRae and Hubert (2001), Cooper et al. (2002).

freedom of action of those among them who were contemplating compromises in order to bring the US on board. At that phase of the negotiations there was no room for accommodations, and arguably it would have been difficult for the US to change some core principles regarding the definition of APLs even if it had joined the process earlier. The US was left behind, while most states jumped on the bandwagon and accepted the strong treaty. In December 1997, 122 states gathered in Ottawa and signed the Mine Ban Treaty or the Ottawa Convention, as it has become generally known.

The Campaign against Cluster Munitions

After the 1970s the problem of cluster munitions had been raised again in the context of the negotiations on landmines.¹⁴⁰ In May-June 1994, the ICRC convened an expert meeting regarding certain weapons systems and implementation mechanisms in international law, at which the Australian representative submitted a Non-Paper¹⁴¹ recommending that the CCW be amended by including a requirement for a self-destruction mechanism in all cluster bomblets (Herby and Nuitjen, 2001; ICRC, 2000a: 9). Even though the proposal was discussed at the meeting and some NGO representatives were interested in it,¹⁴² on the whole, states were not prepared to

¹⁴⁰ The question of submunitions and explosive remnants of war was also raised in December 1983 in a UN General Assembly Resolution, which endorsed the recommendations of a report to the UN Environment Program on explosive remnants of conventional war. The report called for cooperation between States in the area of collection, classification, dissemination of information on ERW and for the promotion of technical assistance and cooperation in clearing. In addition, the report recommended that “[h]igh explosives should be designed to have built-in mechanisms that render the munitions harmless in due course” and that “[t]he important issues of responsibility for damage and compensation should not be minimised or neglected.” (quoted in Herby and Nuitjen, 2001).

¹⁴¹ an off-the-record and/or unofficial presentation of policy

¹⁴² Following the proposal by the Australian representative, a non-governmental expert elaborated on further proposals, including banning fragmentation cluster munitions, attacks with multiple cluster munitions where area coverage is above a certain limit; requiring self-destruct or self-neutralizing

address the problem, while the NGO community preferred to focus its efforts on the more urgent and widespread problem of landmines. In 1995 the ICBL rejected the idea to include cluster bombs in the call for a ban on antipersonnel landmines, even though the Mennonite Central Committee was arguing for it and some people both in the NGO community and the military thought that unexploded submunitions might be captured by the effect-based definition of APLs (Wiebe, 2000: 158).¹⁴³ The NGOs preferred to concentrate their efforts where the perceived humanitarian problems were most severe and there were chances that they be adequately addressed. Thus the suggestion to demand a ban on cluster munitions (and anti-vehicle mines) fell by the wayside and was not incorporated in the talks of the First Review Conference of the CCW in 1995-96 or in the following campaign to ban antipersonnel landmines.

The Kosovo intervention as a window of opportunity

In 1999, however, the problems of cluster munitions and their deadly impact on civilians were highlighted again during the NATO bombing campaign against the Former Republic of Yugoslavia. The NATO use of force in this case was proclaimed as a “humanitarian intervention” to save the lives of Kosovars persecuted by Serb forces. A central point of the intervention was the utmost care NATO forces were

mechanisms on bomblets; setting a maximum permitted delay time for time delay fuzes on bomblets; and banning cluster munitions attacks where there is a high likelihood of civilian casualties (Wiebe, 2000: 158)

¹⁴³ The APL definition in the Ottawa Treaty, “a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons,” was not intended to cover cluster munitions. The major difference with the definition in CCW Amended Protocol II is the lack of the work “primarily” before “designed”. This omission worried US military officials who stated in July 1997 that, “Ninety-five percent of that problem [in Laos] is unexploded ordnance dropped there during the '60's and '70's. These were old cluster bomb type units. And under some circumstances, if you took the existing land mine ban definition, without that primarily in there it could be, in fact, stretched to include this high unexploded ordnance rate” (quoted in Mennonite Central Committee, 1999).

taking to minimize civilian casualties. Yet, as the bombing continued, civilian casualties mounted and a large number of those were attributed to the use of cluster bombs. This unfortunate result, however, opened a window of opportunity for NGOs to bring attention to the problems of cluster munitions and demand a moratorium on their use. Moreover, as the bombing ended and UN peacekeepers and humanitarian organizations went back in the Kosovo province they discovered that the numbers of victims of cluster bombs kept rising, this time as a result of explosions of unexploded submunitions lying on the ground and in the woods where NATO planes had dropped them during the bombing campaign.

Thus, there was a serious humanitarian problem caused by the NATO military, especially the US, British, and Dutch air forces, which opened them to NGO criticism for not living up to their pledges to do everything possible to save civilian lives, and indeed, that they had traded civilian lives for greater security of their own forces bombing from a safe distance, which exacerbated the problems of cluster munitions in terms of increased failure rates and greater imprecision and area coverage (Amnesty International, 2000, HRW, 2000). In addition, after the conflict ended the NGOs, and HRW in particular, were able to do field research and meticulously gather data about civilian casualties and their causes – credible information that was key to convincing military and governmental officials that there was a pressing problem that had to be addressed.

The ICRC and the CCW negotiations on explosive remnants of war (ERW)

Compared to the landmine case, the ICRC response to the problem of cluster munitions was more subdued and in tune with its traditional role in IHL development.

Nevertheless, in September 2000, the ICRC called for suspension of the use of cluster munitions “until an international agreement on their use and clearance has been achieved” and its appeal registered with the media as well (ICBL, 2000; Kaban, 2000; Doole, 2000). The ICRC started by compiling statistics about the victims of unexploded cluster munitions and landmines in Kosovo and gathering evidence about the humanitarian problems of cluster munitions. Then it issued two reports based on the data and expert research, and in September 2000, organized a meeting of governmental and military experts and NGO representatives to discuss their findings and recommendations in Nyon, Switzerland, very much the way it proceeded initially with the Montreux symposium on landmines in 1993.¹⁴⁴ The idea of the Nyon meeting was to sound out opinion about the inclusion of a new protocol on explosive remnants of war (ERW) in the CCW.

The ICRC proposal in this regard was informed by its reading of IHL and based, in particular, on already existing provisions in CCW protocols regulating the use of incendiary weapons and landmine clearance. The ICRC recommended: that the use of submunitions against military objectives located in concentrations of civilians be prohibited; that in order to reduce the risk to civilians in future conflicts, cluster bomblets and other submunitions be fitted with mechanisms which will ensure their self-destruction immediately after the device fails to explode upon impact as designed; that responsibility for the clearance of all unexploded ordnance be assigned to those who have used them; warnings of the threat posed by explosive “remnants of war” be provided to the civilian population immediately after their use in a given area; and finally, that all necessary technical information concerning the location, dangers,

¹⁴⁴ The first report, which had not been widely circulated, was *Explosive Remnants of War: A Study of Submunitions and other Unexploded Ordnance*, written by Colin King, the editor for Jane’s Mines and Mine Clearance and consultant on explosive ordnance disposal for the British Ministry of Defense and DoD. The second was written by Stuart Maslen (Beach, 2001).

detection and destruction of cluster bombs and other munitions be made available to the United Nations and demining bodies immediately after the end of hostilities (ICRC, 2000a: 37).

The proposal was fully supported by representatives of Human Rights Watch and Landmine Action, UK (LMA), the latter calling in addition for “compensation to civilian victims for death, injury, and economic disadvantage for the inability to use land” (Wiebe, 2000: 164). State responses were split, however. Whereas everyone present agreed that there was a humanitarian problem caused by cluster munitions and ERW, opinions were divided as to what needed to be done and how. The ICRC and the NGO community together with government experts from several countries envisioned the possibility of rapid process eventually leading to a new protocol of the CCW on ERW.¹⁴⁵ Others thought that it would not be possible to address the issue adequately before the CCW review conference in 2006, whereas US experts did not even think that a legally binding instrument was the only possible solution when states could take measures to address the problem individually (interview 12 GOV).

Based on the outcome of the meeting, the ICRC went on and formally presented its proposal on ERW at the first preparatory meeting of the Second Review Conference of the CCW in December 2000 (interview 5 NGO; Kaye and Solomon: 2002). The Netherlands, motivated by the criticism against its use of cluster munitions in Kosovo, called together with 23 other countries for discussions of ERW during the preparatory meetings for the 2001 Review Conference and its proposal was unanimously adopted (interview 30 GOV). Thus, the issue of ERW was inserted into the CCW agenda, as the ICRC and several NGOs had requested. The choice of the CCW as the forum to discuss the issue was warranted by the desire to have the major

¹⁴⁵ Experts from Norway, Sweden, the Netherlands, Canada, and Switzerland favored the speedy negotiation of a new protocol (interview 5 NGO).

users of cluster munitions such as the USA and Russia subscribe to any future negotiated instrument. On the other hand, if consensus on a meaningful protocol that would really address the humanitarian problems of the weapons could not be reached at the CCW, this could provide a springboard for the NGO campaign the way it had happened after its failure on landmines in 1996.

Whereas NGO participation at the CCW meetings was limited and contributions minimal except for statements and briefings from HRW, Landmine Action, UK and Mines Action Canada,¹⁴⁶ the ICRC was actively involved in the discussions on ERW, but the focus of its recommendations shifted from cluster munitions to ERW more generally, due to the fact that the latter issue had gained some traction in discussions during 2001. Except for the insistence on a prohibition on the use of cluster munitions in civilian areas, the rest of the ICRC proposals were dealing with the aftereffects of unexploded munitions and envisioned less categorical obligations for states than its earlier recommendations.¹⁴⁷ Even though the ICRC remained committed to its earlier call for a moratorium on cluster munition use until an agreement on use and clearance had been achieved, it did not promote publicly this position, nor did it push the issue during the CCW negotiations on ERW, preferring instead to leave room for discussions on the topic and await their results (interview 41

¹⁴⁶ The Mennonite Central Committee had been working for years on the problem of cluster munitions and was active at the CCW sessions initially, issued several studies on cluster munitions (e.g. MCC, 1994, 1999a,b, 2000) but stopped attending the CCW meetings in 2003.

¹⁴⁷ In December 2001, ICRC stated that the ERW protocol would: “[1] establish a responsibility for those who use explosive munitions to clear those which remain following the end of hostilities or providing the technical and material assistance needed to ensure such clearance. This responsibility could be supported by a variety of technical measures including, for example, a requirement that munitions (including submunitions) be equipped with self-destruction mechanisms and a requirement that they be made detectable; [2] require the rapid provision of technical information to the UN and demining bodies to facilitate swift clearance and minimize risk to clearance personnel; [3] require those who use munitions likely to have long term effects to provide information to organizations conducting mine/UXO awareness and provide effective advance warning to the civilian population about the delivery of such munitions; [4] prohibit the use of submunitions against any military objective located within a concentration of civilians” (ICRC, 2001). The ICRC did not push for measures on munition reliability since at the time Switzerland had a formal proposal to stipulate a 98% reliability rate for submunitions, which the ICRC supported (interview 41 NGO).

NGO).¹⁴⁸

At the Second Review Conference in December 2001 states decided to establish a Group of Governmental Experts (GGE) with a broad mandate to discuss both preventive and post-conflict measures to alleviate the problem of ERW (Maresca, 2002a,b).¹⁴⁹ At that point the only basis for discussions at the CCW was the ICRC proposal from December 2001. However, discussions throughout 2002 made clear that no consensus could be reached at this point regarding the inclusion of provisions on technical improvements for cluster submunitions or more stringent rules on their use.¹⁵⁰ Instead of prolonging the talks indefinitely in search for consensus on a broader range of issues, the coordinator of the GGE on ERW, Ambassador Chris Sanders of the Netherlands, decided to form two tracks for discussion – the first focused on post-conflict measures, for which in December 2002 a negotiating mandate was adopted, whereas the second one envisioned only talks on other means to lessen the impact of ERW (interviews 34 and 5 NGO).¹⁵¹

¹⁴⁸ However, the call for a moratorium had disappeared not only from the ICRC statements and papers for the CCW, but also from the only ICRC publication on ERW since 2000, which aimed at increasing public awareness of ERW and popularizing the newly adopted Protocol. The brochure in fact distanced the ICRC from NGO calls for a moratorium: “the ICRC has called for a prohibition on the use of submunitions against military objects located in or near populated areas. Some non-governmental organizations have also called for a moratorium on the use of these weapons until stricter international regulations are in place.” (ICRC, 2004: 18).

¹⁴⁹ The draft mandate included for consideration the types of munitions that cause civilian casualties after a conflict; possible technical improvements to reduce the risk of munitions becoming ERW; adequacy of existing IHL in minimizing post-conflict risks of ERW; warnings to the civilian population in or close to ERW affected areas, clearance of ERW, rapid provision of information to facilitate early and safe clearance of ERW; and whether a legally binding instrument would be appropriate to regulate the issue (CCW, 2001).

¹⁵⁰ Switzerland, for example, had proposed that the technical changes should be implemented so as to guarantee that the dud rate would be no more than 2 % (Matheson, 2001). VVAF (2001) had also made a detailed proposal on the need to increase munition reliability. Even though the USA and the EU were generally favorable to such proposals, other countries (among which Russia and China were most active), opposed them due to the increase in cost of munitions they would entail. See, for example (Russia and China, 2002).

¹⁵¹ The adopted mandate for the GGE on ERW advise it to: 1) “negotiate an instrument on post-conflict remedial measures of a generic nature, which would reduce the risk of ERW,” including questions of “responsibility for clearance, existing ERW, the provision of information to facilitate clearance and risk education, warnings to civilian populations, assistance and cooperation” and 2) explore whether these negotiations could successfully address preventive generic measures for improving the reliability of munitions “through voluntary best practices concerning the management of manufacturing, quality

After initial negotiations in March, a Draft Proposal for an Instrument on ERW was produced in May 2003. The ICRC studied the proposal and promptly distributed to the states parties, as well as to ICRC delegations in the respective states, its comments on the draft together with proposals for changes in its text.¹⁵² The ICRC argued for a substantial strengthening of the protocol provisions, especially regarding cooperation of users of explosive ordnance in the clearance of ERW in territory not under their control, and recording and transmission of information about the used explosive ordnance – two points on which it succeeded in improving the relevant texts (ICRC, 2003a,c). However, attempts by the ICRC to strengthen the provisions in the protocol by substituting clear obligations, reflected in terms such as “states shall,” for more vague language such as “states are encouraged,” “as far as possible,” or “where feasible” were less successful. The ICRC also strongly insisted on the need for a legally binding ERW protocol and argued against the US position, favoring a political, non-binding agreement (ICRC, 2002, 2003b). Given that most states shared the ICRC position on this point, the US decided not to block consensus and CCW Protocol V on Explosive Remnants of War was adopted in November 2003.¹⁵³

After the adoption of the Protocol, the ICRC prepared a ratification kit to enable early ratification of the Protocol by states and kept working in the context of discussions about the implementation and adequacy of IHL in relation to munitions use. It prepared together with several countries a questionnaire aiming to identify state

control, handling and storage of munitions.” Separate from the negotiations the states parties agreed to “continue to consider the implementation of existing principles of international humanitarian law and to further study, on an open-ended basis, possible preventive measures aimed at improving design of certain specific types of munitions, including submunitions, with a view to minimise the humanitarian risk of these munitions becoming ERW” (CCW, 2002).

¹⁵² Representatives of the ICRC delegations had to meet with state officials to discuss the draft, convey the ICRC’s position and eventually garner their support for it at the upcoming session of GGE. The ICRC followed the same tactics again after the revised draft proposal for an instrument was distributed in September before the November 2003 meeting of states parties (Interview 21 Apr 2004).

¹⁵³ The Protocol entered into force in November 2006 after the required number of 20 ratifications was finally reached in May 2006.

understandings of IHL principles applicable to the use of munitions that may become ERW and the way they are being implemented.¹⁵⁴ The ICRC had emphasized that in view of the divergence in state interpretations and implementation of IHL principles, new rules specifically designed to regulate the use of cluster munitions were necessary.

Thus after the very public campaign on landmines, the ICRC reverted back to its primary advisory role in IHL negotiations. Even though the two studies it commissioned on cluster munitions and explosive remnants of war in 2000 and the Nyon meeting that followed them were of key importance for launching the ERW initiative and including the issue on the CCW agenda, the ICRC did not publish or distribute a lot of additional studies on the problem, except for a short brochure on ERW printed in 2003 and 2004 and a film on ERW and the adopted Protocol V issued in 2005. Since 2000 and after the adoption of the ERW Protocol, the ICRC has kept calling for a prohibition on the use of cluster munitions, irrespective of their precision or reliability rate in civilian populated areas. More recently it has also argued that no transfer of unreliable and imprecise cluster munitions should be allowed and that these munitions should be destroyed (interview 40 NGO). It also kept consulting with NGOs and attending the meetings organized by them aimed at discussing possible avenues for action on cluster munitions with a forming group of like-minded government officials.

However, the call from a total ban on cluster munitions from Handicap International and the adoption of a legislative ban on those weapons in Belgium in

¹⁵⁴ Observing the lack of consensus regarding the relevant IHL principles and rules to be considered during the planning, targeting, weapons selection and weapons use phases of military operations, the GGE coordinator steered the work of the Group in a three-step approach that sought, first, to identify relevant IHL principles, second, to establish the status of their implementation by the various States Parties, and third, examine the adequacy of the implementation mechanisms as required by IHL. The questionnaire prepared by several states in consultation with the ICRC was an attempt to facilitate work on this three-step approach and stimulate some progress in this direction.

early 2006 spurred further discussions within the ICRC about the position it should take on the issue. Then in the summer of 2006, the conflict between Israel and Hezbollah in Lebanon revealed once again the dangers of cluster munitions. Israel used a large number of cluster munitions with devastating consequences for civilians in Lebanon and reports surfaced that Hezbollah had also employed such weapons. The war became a rallying point for NGO mobilization, provoked sharp criticism of the Israeli weapons use from the UN, and resulted in constant reports on cluster munition problems from the UN mine action teams in Lebanon, all of which stirred enormous media interest in the issue.

Finally, the war and its consequences prompted a redefinition of the ICRC's position on cluster munitions as well. On 6 November 2006, just ahead of the opening of the CCW Review Conference, the ICRC went public with its call for "for strong international action to end the predictable pattern of human tragedy associated with cluster munitions." The call emphasized as previously the need to take national steps to "immediately end the use of inaccurate and unreliable cluster munitions; to prohibit the targeting of cluster munitions against any military objective located in a populated area; [and] to eliminate stocks of inaccurate and unreliable cluster munitions and [...] not to transfer such weapons." However, it also underscored the need for "a new international humanitarian law agreement which will effectively address the problem of cluster munitions" and announced the ICRC's intention to hold an expert meeting to identify the elements of such an agreement in early 2007 (ICRC, 2006). Even though the substance of the ICRC demands was not very different from what it had insisted upon before and it stopped short of calling for a ban on cluster munitions, what mattered was the public nature of its announcement at a press conference that translated into press articles that actually trumpeted "Red Cross Urges Ban on Cluster

Bombs” (New York Times, 2006; Washington Post, 2006; also International Herald Tribune, 2006).

Thus for several years the ICRC had maintained a low-key approach to cluster munitions. It was generally satisfied with the work at the CCW and the outcome of negotiations on ERW. Even though it thought the provisions of Protocol V could have been stronger (interview 5 NGO), it welcomed its adoption as “an important addition to the fabric of international humanitarian law” and “recognition that States are responsible for eliminating this serious threat to civilians in the aftermath of war” (ICRC, 2003d,e).¹⁵⁵ After the Protocol adoption, the organization continued working within the CCW framework for further clarification and development of IHL principles applicable to the use of explosive munitions, including clusters. However, other NGOs, such as Handicap International, characterized Protocol V as “privileging the military interests at the expense of humanitarian consequences” (HI, 2003b) and later decided to push for a total ban and seek solutions to address the problem out of the CCW. Their position reshaped the tactics of other organizations that prior to the Belgian legislation had dragged their feet and been reluctant to go for a total ban. States such as Norway also became more actively engaged in the issue and gave support to NGO activities. Finally, the Israel-Hezbollah war gave strong impetus to NGO reporting and criticism. The ensuing NGO mobilization and media attention to the problem pushed the ICRC to make another step forward and stake public support for stronger measures on cluster munitions even though it remained cautious not to call for a total ban. Thus, as in the landmine campaign before it, NGO advocacy on cluster munitions prompted the ICRC to upgrade its position to keep pace with the more activist organizations and add to the momentum of their mobilization.

¹⁵⁵ For a balanced and detailed overview and commentary on Protocol V, see Maresca (2004).

NGO responses to the problems of cluster munitions

As already pointed out, the Kosovo bombing campaign opened a window of opportunity for NGOs to gather reliable data on the problems of cluster munitions and bring them to the attention of the media in the context of general concerns about civilian casualties caused by NATO's "humanitarian intervention." HRW's press releases and reports on NATO's use of cluster bombs were especially instrumental in stirring media interest in the problem (e.g. HRW, 1999a,b,c,d) and soon critiques of the weapons use were also voiced by the UN High Commissioner for Human Rights, Mary Robinson and former US President Jimmy Carter (BBC, 1999; Carter, 1999). Finally, HRW, the Mennonite Central Committee (MCC), and Landmine Action, UK issued calls for a moratorium on the use of cluster munitions until their humanitarian problems were resolved.

Even after the bombing ended the issue did not disappear since NGOs started issuing "after action reports" scrutinizing the conduct of the NATO intervention for violations of IHL and "unlawful" civilian deaths (HRW, 2000a; Amnesty International, 2000). In its report on the bombing campaign, questioning the legality of certain NATO practices, means and methods of attack, Amnesty International concluded, for example, that, "NATO failed to meet its obligations to take necessary precautions by using cluster weapons in the vicinity of civilian concentrations, thereby violating the prohibition of indiscriminate attacks," and thus, "may have contributed to causing unlawful deaths" (Amnesty International, 2000). Not only NGOs were questioning the legality of the use of cluster munitions. A draft report of NATO's Civilian Affairs Committee recognized that "one of the most controversial aspects of NATO's intervention in Kosovo was the use of certain types of weapons, in particular

cluster bombs.” Acknowledging the arguments made by HRW before, the report went further to state that, “cluster bombs may represent a breach of IHL because … of [their] high ‘dud rate’ or ratio of unexploded ordnance,” claiming, “it is possible that cluster bombs would fall under the definition of anti-personnel mines in their effects. In any case, even if cluster bombs cannot be considered mines, Articles 35, 51 and 57 of Protocol I would protect civilians from their effects, which could be judged as unable to discriminate between civilian and military objects” (Kroening, 1999).

Campaign foci and issue framing: what are the problems, what is to be done?

The controversy over the use of cluster munitions in the Kosovo campaign focused both on the immediate dangers to civilians caused by the imprecision and wide area coverage of the weapons, as well as by the high percentage of unexploded cluster munitions that were left in the wake of strikes and claimed civilian lives days and months after the bombs were dropped. However, in the aftermath of the bombing, the problem of unexploded cluster submunitions (or duds) became the dominant theme in NGO reports and concerns about the weapons that emphasized that cluster duds were *de facto* landmines.

The shift in NGO focus is explicable by obvious circumstances – the end of hostilities opened the Kosovo province to relief organizations that were faced with the dud problem in the field.¹⁵⁶ Moreover, many NGOs were involved in demining operations and unexploded submunitions presented for them the same or even greater

¹⁵⁶ The devastating consequences of the use of cluster munitions could be identified in the aftermath of hostilities and the cause of casualties ascertained in contrast to the case of immediate attacks and collateral damage in the context of indiscriminate attacks during combat when information is more difficult to obtain and causes of the casualties attributed to particular weapons (interview 31 NGO).

problems than landmines. Another factor was the legacy of the successful landmine campaign and the fact that most of the organizations that got involved in the cluster issue were very active in the ICBL; some of them were even specifically created to work on campaigns to put an end to the landmine threat. The mandates of many organizations included working for the elimination not only of landmines, but also of victim-activated weapons that functioned as landmines. Thus, to a large degree, NGOs took up the issue of cluster munitions because it could be argued that unexploded submunitions fell under their mandates (e.g. Mines Action Canada, 2001; interview 32 NGO).¹⁵⁷ Whereas NGOs were aware of the other problems cluster munitions posed in terms of indiscriminateness at the time of attack, the high dud rates of cluster submunitions became the natural focus of their work.

Thus, in their campaigning NGOs referred to cluster bombs as “de facto mines” both because of the effects of unexploded duds and because this provided a clear link to the successful landmine campaign and a host of arguments that could be applied by analogy to cluster munitions. In the early phase of their work during 2000-2002, NGOs did not have a clear idea of what their goals should be and those that took on the initiative to create an NGO network on the problem of cluster munitions (Mines Action Canada and Landmine Action, UK) tended to address it within the wider context of explosive remnants of war. For example, in 2002 the goals of Mines Action Canada (MAC) included:

- [1] Obtain a moratorium on production, sale, transfer and use of cluster munitions until the humanitarian concerns associated with their use is addressed either by new international humanitarian law (IHL) or through effective application of existing IHL;
- [2] Encourage Canada and other states to adopt a comprehensive approach to ERW by making it clear that AV mines with antihandling devices or sensitive fuses, directional fragmentation (Claymore-type) mines and cluster munitions *are part of much broader problem with*

¹⁵⁷ The ICBL itself decided not to get involved in the issue of cluster munitions and keep its focus on landmines even though it called for a moratorium on the use of cluster bombs (ICBL, 2001).

unexploded ordnance and explosive remnants of war. [3] Advocate for new IHL to minimise the effects of *cluster munitions and other ERW* on civilian populations and places the responsibility on the users of explosive munitions, including cluster submunitions, to ensure clearance of unexploded ordnance, or provision of financial assistance to ensure its clearance, without delay; allocation of more resources to clear ordnance & explosive remnants of war and to help survivors (Tuttle, 2002, emphasis added).

There was no clear sense of whether the problem of cluster munitions could be solved by IHL implementation or whether it was actually the result of gaps in existing IHL provisions.¹⁵⁸ And as the second point in the above objectives indicates, MAC was seeing and trying to present the problem of cluster munitions as part of the larger problem of explosive remnants of war. Many NGO statements from the time and up until recent writings in 2006 (including the Cluster Munition Coalition call)¹⁵⁹ refer to “cluster munitions and other explosive remnants of war” that inevitably led to mixing the two issues and obscuring the other problematic aspects of cluster munitions, such as indiscriminateness during use, which NGOs have been trying to highlight in their more recent work.

In 2000-2003 the NGOs active on cluster munitions directed their attention almost entirely to the international level,¹⁶⁰ but they did not share a set of clear, common objectives. The MCC had called for an immediate moratorium on cluster munitions, while insisting that they should be banned; HRW had focused on cluster munitions as a whole and called for restrictions on their use in populated areas, as well

¹⁵⁸ Similarly, even though Handicap International was defending a more radical approach to the problem of cluster munitions, in 2004 it still called for suspension of their use, production and transfer “until their humanitarian problems have been resolved,” without specifying how this should be done (HI, 2004b). Landmine Action UK, on the other hand, after an initial focus on cluster munitions in 2000, campaigned primarily about ERW and in 2002 called for “[a] legally binding obligation on the users of explosive weapons to clear unexploded ordnance, or fund its clearance, and to provide warnings to civilians; [and a] moratorium on the manufacture and use of cluster bombs until this new international humanitarian law is in place (Landmine Action, 2002).

¹⁵⁹ Point 2 of the three-point CMC call demands, “Increased resources to communities and individuals affected by unexploded cluster munitions and all other explosive remnants of war” (CMC, 2003).

¹⁶⁰ An exception is the “Clear Up! Campaign” in the United Kingdom launched by Landmine Action and the Diana, Princess of Wales Memorial Fund in February 2003 (Cave, 2006; LMA, 2003a).

as, preventive measures to improve reliability rates and post-conflict measures to reduce the threats to civilians from unexploded munitions. MAC and Landmine Action, UK (LMA) on the other hand, had split their attention between cluster munitions and ERW with a heavier emphasis on the latter.

Since in 2000 states agreed to discuss, and at the end of 2002, to negotiate an instrument dealing with ERW at the CCW, this further moved the focus away from cluster munitions and LMA, MAC, and the German Actiongroup Landmine worked to develop global surveys of explosive remnants of war, which contributed to understanding the problems and informed the discussions at the CCW (LMA, 2003b; LMA et al., 2005).

However, cluster munitions were also kept on the radar screens of NGOs and the media as a result of the US-led wars in Afghanistan in 2001 and Iraq in 2003, when cluster munitions were used again. A lot of new valuable information about the problems of these weapons was acquired thanks to HRW's fact-finding missions and field research on the impact of the use of cluster munitions in these two military campaigns. In particular, the need for change in focus and greater mobilization of NGO efforts became apparent after the Iraq War in 2003, when the use of ground-launched cluster munitions by the US and British forces in and near populated centers revealed the gravity of the immediate effects of the weapons.¹⁶¹ At the same time, talks at the CCW indicated that these problems of indiscriminate use would not be tackled by the new protocol discussed in Geneva. Developments at the CCW also made clear that it was not enough to try to negotiate an international agreement and

¹⁶¹ The cases of cluster munition use, investigated by NGOs up until the 2003 war in Iraq, consisted primarily of air-dropped cluster bombs and the dangers posed by use of ground-launched munitions in populated areas became well-understood only at that point. Thus, the initial NGO focus on unexploded submunition was in large part a result of their field experience and the lack of sufficient, well-documented evidence about the other humanitarian problems of their use (interviews 29, 31, 34 NGO). As information accumulated, the NGOs were able to make stronger arguments about the need of more comprehensive restrictions on the use of cluster munitions or even of their prohibition.

expect that it would answer the humanitarian concerns of NGOs if there were no concomitant domestic pressure on recalcitrant governments to engage in serious negotiations and not enough domestic or NGO support for sympathetic government officials to strengthen their position internationally.

Thus, the first step NGOs made toward a more focused and sustained action on cluster munitions was to form a coalition working on the problem. Feeding on dissatisfaction with the limited scope and progress of discussions at the CCW, a number of NGOs supported by several governments advocating a stronger position on ERW met in the spring of 2003. In April 2003 Pax Christi Ireland and the Department of Foreign Affairs of Ireland organized an International Conference on Explosive Remnants of War and Development in Dublin that provided a forum for governments, international organizations, NGOs, researchers, representatives of the media and other experts to exchange views on the subject.¹⁶² After the conference, a core group of NGOs decided to coordinate their efforts in a joint campaign on cluster munitions.¹⁶³ After the CCW negotiations in June 2003 when it became clear that a consensus on restrictions on use of cluster munitions would not be reached, it was decided to launch the campaign in November before the meeting of CCW States Parties (Hollestelle, 2003).

The Cluster Munition Coalition (CMC) was launched on 13 November 2003 in The Hague by issuing a call, endorsed by 85 NGOs for:

- 1) No use, production or trade of cluster munitions until their humanitarian problems have been resolved;
- 2) Increased resources for assistance to communities and individuals affected

¹⁶² The conference was funded by the Irish Government in conjunction with the Governments of Austria, Canada, The Netherlands, Norway and Sweden (Irish Parliament, 2003).

¹⁶³ Among these NGOs were the Austrian Aid For Mine Victims, Handicap International Belgium, Handicap International France, Human Rights Watch, Landmine Action UK, Landmine Struggle Unit (Egypt), Mine Action Canada, Mennonite Central Committee, Nepal Campaign to Ban Landmines, Pax Christi Ireland, Pax Christi Netherlands, IPPNW Russia/Russian Campaign to Ban Landmines.

- by unexploded cluster munitions and all other explosive remnants of war;
- 3) Users of cluster munitions and other munitions that become ERW to accept special responsibility for clearance, warnings, risk education, provision of information and victim assistance.

The call was a compromise formula on which all the NGOs could agree and it obviously lacked the simplicity and power of the landmine call for a total ban. Even though the name of the NGO coalition is a “Cluster Munition Coalition,” and it was arguably created to push forward the issue of regulating the use of cluster munitions, the call itself continued to mix this problem with ERW, because of continuing disagreements among NGOs about where the focus of their activities should lie (Cave, 2006: 66).¹⁶⁴ Opinions on the value and efficacy of IHL to address the problem also diverged (interview 23 NGO), which prevented the adoption of a stronger call.

Lacking a single and clear common objective and bedeviled by want of sufficient funding, for several years the CMC had not been able to play a role similar to that of the ICBL on landmines even though in many respects it was fashioned after it.¹⁶⁵ A CMC coordinator was finally appointed toward the end of 2004 but in the summer of 2005 it still wasn’t clear exactly what functions NGOs expected the CMC to perform, what the role of its coordinator should be, and whether changes in the CMC call were necessary. NGOs remained divided over the desirability of calling for a ban and unclear about where their efforts should be directed (Rappert, 2005b). HRW, in particular, did not think that a ban was justifiable under IHL, even though the detailed restrictions it was calling for in terms of use and technical characteristics of submunitions could be seen as amounting to a ban in practice. Other organizations also preferred a moratorium call because they didn’t think a ban was achievable and

¹⁶⁴ Mines Action Canada and Landmine Action UK were the two organizations that insisted that the ERW problem remain central to the CMC call, because of the mandate of the organizations to work on it (interview 34 NGO).

¹⁶⁵ For example, it took one and a half years after it was created before the CMC managed to even set up a functioning website in June 2005.

were careful about the legal soundness and credibility of the claims they were making. Handicap International, on the other hand, had decided in 2004 to strengthen its call and since February 2005 to call for a total ban on cluster munitions in order to be able to mobilize public opinion and avoid being drawn into discussions of potential technical solutions. It undertook a campaign in support of its allies in the Belgian Senate who had introduced a law proposal for a total ban on cluster munitions. During debates in the Senate, opponents of the comprehensive ban proposal actually used the CMC call to argue that even the CMC and civil society were not asking for a total prohibition (Rappert, 2005a,b).

Thus, the CMC call had not been particularly helpful to the campaigning efforts of its members. It either was not used by the organizations most active on cluster munitions that had their own specific demands, or even hampered their activities. The utility of the Coalition had also been confined mostly to providing information and some direction to NGOs that were short on resources and didn't campaign domestically, and lending additional weight and credibility to domestic campaigners who could argue that there was an international movement active on the issue.¹⁶⁶

"The train starts moving:" domestic mobilization and the repercussions of war

However, two key developments changed the course of NGO campaigning on cluster munitions in 2006. First, as already mentioned, the success of the Belgian campaign in passing a national law banning cluster munitions in early 2006 helped energize the work of certain NGOs domestically¹⁶⁷ and internationally in hopes that it could serve

¹⁶⁶ The lack of common purpose and direction among the NGOs making up the CMC also prompted Pax Christi Netherlands to commission a study of possible campaigning strategies in 2005.

¹⁶⁷ For example, Landmine Action UK has decided to switch from a call for a moratorium to a ban and became more active in domestic campaigning by working with parliamentarians and developing an ad campaign against cluster munitions (interviews 23 NGO, 30 GOV). It also published in November 2005 two reports on the problem of old cluster submunitions in Lebanon and a detailed analysis on the

as a catalyst of other national and international measures against cluster munitions in the same way the first Belgian law prohibiting landmines had worked in the 1990s. Even though differences at the CMC level still persisted, unofficially there has been a move toward agreeing on a ban of all old, unreliable and imprecise cluster munitions, or alternatively, a call for a total ban on cluster munitions, from which more advanced systems with fewer humanitarian effects could be excluded in the process of working out the details of concrete national or international actions. Handicap International's success in Belgium contributed most to this trend, since it changed the playing field and made it more difficult for NGOs to call for anything less than what has already been banned by a country (interview 17).

Meetings between NGOs, the ICRC, UN agencies, and a small number of countries interested in the issue (and eventually in working on an international agreement on cluster munitions) also intensified and Norway displayed its willingness to assume a leadership position internationally.¹⁶⁸ Prior to that, the Netherlands had been the leading state on the ERW issue and since 2002 it had been gathering people from NGOs, the ICRC, and state officials in their personal capacity at annual meetings in Garderen, Netherlands to discuss the issue ahead of the CCW spring meetings (interviews 27 and 41 NGO). During that period, HRW, MAC, and LMA had also

position of the UK government on cluster munitions and its lack of effort to gather information on the effects of cluster munitions on civilians as well as their military effectiveness. The two reports were part of a two-prong approach that tries to shift the burden of justifying the use of cluster munitions and proving that it is in compliance with international law to the military and governments using them. The two reports try to show that government positions are unsustainable in view of the lack of any efforts to gather the necessary information that could help determine whether the military advantages gained from the use of cluster munitions are proportionate to the civilian damage caused, and the fact that since the problems of cluster munitions had been highlighted in the 1970s, nothing has been done to resolve them for more than 30 years and people still suffer from the effects of cluster bombs used in Lebanon in the 1980s (Rappert, 2005b, LMA, 2005a,b).

¹⁶⁸ There were two NGO-government meetings in March 2006 organized by the Geneva Forum and LMA in Geneva and London, respectively, to discuss the exact nature of the problem of cluster munitions and possible ways to address it at the international level. Canada, the Netherlands, Norway, and Sweden participated in the first meeting in Geneva, whereas representatives from Belgium, Ireland, Lithuania, the Netherlands, Norway, Sweden, and Switzerland were present at the London meeting (interviews 17, 40 NGO).

been organizing meetings with government officials at the margins of the CCW and the Mine Ban Treaty sessions but no clear vision on how to proceed with the question of cluster munitions had emerged from them.¹⁶⁹ Many differences persisted among the NGOs, as well as, among states about the possible avenues for action and the likelihood of their success. The only point on which everyone agreed until the summer of 2006 was that much stronger domestic campaigns and pressure from the legislatures were needed before sympathetic government officials could effectively argue for the need of more radical action that could take place out of the CCW framework.

As NGOs worked to stimulate new legislative initiatives in several European countries, including Austria, France, Germany, Italy, Luxembourg, Sweden, and Switzerland, a new war broke out between Israel and Hezbollah in Lebanon in July 2006. After issuing appeals that the warring parties not use cluster munitions, several NGOs, among which HRW, HI, and LMA rushed to the region to monitor compliance with IHL during the operations and watch for the signs of cluster munitions use.¹⁷⁰ HRW first sounded the alarm that Israel had used cluster munitions in July (HRW, 2006d), but it was just three days ahead of the ceasefire when Israel unleashed numerous cluster attacks that carpeted with submunitions large civilian areas in Lebanon. Outcry came not only from the NGOs working on cluster munitions but also from the UN as well as Amnesty International, which had not been particularly engaged on the issue of cluster munitions before (Amnesty International, 2006a,b). Finally, the US State Department opened an inquiry whether the use of US-made cluster munitions by Israel violated an agreement dating back to the 1970s that posed

¹⁶⁹ Austria, Canada, Netherlands, New Zealand, Norway, Sweden and Switzerland were regularly participating in those meetings, with Belgium and Ireland showing interest, but to a lesser degree (Cave, 2006: 59, fn.36)

¹⁷⁰ The NGO reaction was indeed remarkably prompt (probably because they already had some personnel in the combat area), whereas in previous armed conflicts NGO field researchers usually went on their missions after the end of major operations.

limitations on the employment of US-sold cluster munitions.¹⁷¹

At the August meeting of the CCW, the CMC called states to introduce individually national measures “to prohibit or place a moratorium on the use of cluster munitions” and launch new negotiations on “a prohibition on cluster munitions, whose inaccuracy and unreliability make them unacceptable weapons” at the November CCW Review Conference for which everyone was preparing (CMC, 2006d).

Just ahead of the Conference, Landmine Action, UK issued a report on the cluster munition situation in Lebanon and Handicap International (HI) a global survey of cluster munition use and casualties, both of which made possible by support from the Norwegian Foreign Ministry that was preparing to lead a process for international prohibitions (LMA, 2006b; HI, 2006j).¹⁷² The HI report in particular provided solid grounds for advocating a ban on cluster munitions and countering the arguments of opponents that they were no different than any other type of employed munitions – according to its preliminary findings 98% of the victims of cluster munitions were civilians and the total number of confirmed casualties amounted to over 11,000. The other line of NGO arguments focused on the threat of proliferation of cluster munitions through their potential use by states stockpiling large quantities of them and their actual use by non-state actors such as Hezbollah. In this way NGOs sought to create a sense of urgency to address the problem before the “looming disaster” or “humanitarian crisis in waiting” materializes (HRW, 2006g; also LMA, 2006c).

As the Review Conference opened in November, CMC members also devoted some efforts to public campaigning – they greeted the CCW delegates in front of the UN building in T-shirts saying “Stop Cluster Munitions. Start a New Treaty” and set

¹⁷¹ The same agreement had been the focus of controversy for its violation by Israel already in the 1980s. For details, see for example, Mohr (1982), Smith (1982), Gwertzman (1982), Cloud (2006), Kessler (2006).

¹⁷² Another report, *Cluster Munitions in Albania and Lao PDR: The Humanitarian and Socio-Economic Impact* was issued in September 2006 by UNIDIR.

up at the UN an exhibition on cluster munitions entitled “Civilian harm from Laos to Lebanon” (CMC, 2006e). CMC campaigners also placed an emphasis on bringing activists from affected countries and victims of cluster munitions to bear witness at the Conference of the difficulties people in their countries experience in their daily lives as a result of cluster munitions contamination or injuries and call on delegates to take action to put an end to the use of those weapons (HI, 2006l).

Thus, on a smaller scale, the CMC campaigners tried for the first time to recreate some aspects of the public campaigning the ICBL had undertaken at the CCW conferences in 1995 and 1996. What they did not try to recreate was the slogan of the ICBL for a total ban “with no exceptions.” Recognizing the complexity of the cluster munition problem, differences among NGOs on what the right solution should be, and the limits to which supportive states were willing go in their advocacy for a new treaty, the CMC chose instead to campaign just for a treaty and the establishment of a CCW negotiating mandate to prepare it, and if the CCW failed to do so, for an alternative fast-track negotiating process. If anything, it was admitted that that would be a treaty “with exceptions” – exceptions for those weapons that did not pose a threat to civilians either during or after their use. Nevertheless, Handicap International continued to call for a prohibition of cluster munitions – a position that came to be shared by LMA as well (HI, 2006k; LMA, 2006c).

After in September six states (Austria, Holy See, Ireland, Mexico, New Zealand, and Sweden) had proposed a CCW negotiating mandate for “a legally-binding instrument that addresses the humanitarian concerns posed by cluster munitions” (CCW, 2006), on 7 November when the Review Conference opened, the UN Secretary General Kofi Annan called for a freeze on the use of cluster munitions. In just a few days, the number of states that supported the proposal for a negotiating mandate rose to 18 and HRW proclaimed “We have reached a tipping point on cluster munitions

[...] It's no longer a small group of isolated states calling for a new treaty. Many countries – realizing that negotiations not only should happen, but will happen – want to be on board from the start" (HRW, 2006h). Soon the number of supporters became 24, and on the final day of the Review Conference reached thirty.¹⁷³

Sweden was portrayed in the press as the leading state behind the initiative to ban cluster munitions.¹⁷⁴ Even though Norway was actually the state most intent on seeing international negotiations on cluster munitions start, it did not believe the CCW was the forum where meaningful negotiations could take place. Thus, it stayed in the wings and only joined the group supporting the negotiating mandate on the last day of the Conference. It was just biding its time and as the negotiating mandate failed to garner support at the CCW due to opposition from a number of countries (including Australia, China, India, Japan, Pakistan, Russia, Britain, and the United States),¹⁷⁵ Norway announced its decision to launch an alternative negotiating process to ban cluster munitions "that have unacceptable humanitarian consequences" (CMC, 2006f; Norwegian Ministry of Foreign Affairs, 2006). Thus events unfolded similar to the developments in the landmine campaign back in 1996. When the number of countries supporting a treaty prohibiting the respective weapons reached about 30, a leading state took up the initiative and decided to launch an alternative process toward formulating a new norm out of the CCW where consensus decision-making prevented progress.¹⁷⁶

¹⁷³ The countries supporting the negotiating mandate were Argentina, Austria, Belgium, Bosnia and Herzegovina, Chile, Costa Rica, Croatia, Czech Republic, Denmark, Germany, Guatemala, Holy See, Hungary, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, New Zealand, Norway, Peru, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden and Switzerland.

¹⁷⁴ E.g. Whitaker (2006a,b), Reuters (2006). In fact, the formal submission of the proposal for a negotiating mandate was made by Austria.

¹⁷⁵ Those countries were not staunch opponents on any talks on cluster munitions. Instead, they supported a mandate proposed by the UK that envisioned discussions on "explosive remnants of war, with a particular focus on cluster munitions" (CMC, 2006f).

¹⁷⁶ In addition, there is a large overlap between the countries that first supported a treaty on cluster munitions and those that pledged support for a mine ban in 1996 (11 of the early 15 supporters of a cluster treaty were also present among the early mine-ban supporters).

Support from international and regional institutions

The United Nations

The UN, in particular, has shown interest in the problem of cluster munitions since the UN humanitarian and demining agencies shared many of the NGO concerns with these weapons. The UN Mine Action Service (UNMAS) has been closely involved in the negotiations on ERW at the CCW and based on its field experience in Kosovo it argued that, “[t]o simply include cluster bombs as part of a generic UXO [unexploded ordnance] threat was not sufficient, given the threat that they posed” (UNMAS, 2002). In 2003 UNICEF urged the UN Inter-Agency Standing Committee coordinating UN humanitarian assistance to pay attention to the issue of cluster munitions and at the CCW meeting in November 2003, the Committee threw its support behind the demands of NGOs and the ICRC for a moratorium and called for “a freeze on the use of cluster munitions until effective legal instruments that resolve humanitarian concerns are in place” (Laurie, 2006) – a call, which was reiterated in July 2004 (UNMAS, 2004).

In January 2005, the UN Inter-Agency Coordination Group for Mine Action¹⁷⁷ established a Working Group to consider developing a position on cluster munitions and in February it invited the CMC coordinator and representatives from HRW and

¹⁷⁷ The United Nations Inter-Agency Coordination Group on Mine Action (IACG-MA) comprises 14 UN departments and agencies involved in mine action including: UNMAS, UNICEF, the United Nations Development Program, the United Nations Office for Project Services, the Office for the Coordination of Humanitarian Affairs, the United Nations High Commission for Refugees, the United Nations High Commission for Human Rights, the United Nations Department for Peacekeeping Operations, the United Nations Department for Disarmament Affairs, the World Health Organization, the Food and Agriculture Organization, the World Food Program, the World Bank, and the Office of the Special Adviser on Gender Issues.

the ICRC for consultations on the issue (CALM Newsletter, 2005: 5).¹⁷⁸ Thus, the UN agencies were not directly prompted to work on the issue by NGOs (and the other way around, have sought their advice), but were responding to the problems encountered in their field work and the need to develop a coherent position, possibly not to be overtaken by developments at a later stage. Whereas NGOs deemed a UN position in favor of cluster restrictions an added asset for their campaign, they had neither looked nor pushed for it (interview 34 NGO).

The two options considered for a UN position were a call for international and national legal regulations restricting the design and use of cluster munitions, or a call for a complete ban on these weapons, but no consensus could be reached on either and it was decided that further research on the problems and impact of cluster munitions was needed. The UN Institute for Disarmament (UNIDIR) was commissioned to carry out such a study.

In the meantime, at the CCW meeting in March 2005, UNMAS, UNICEF and the UN Development Program (UNDP) declared in a joint statement that, “UN agencies are concerned with the hazards that cluster munitions pose as ERW, but also with the immediate threat posed to the lives of civilians during cluster munitions strikes.” They also reiterated their previous call for a freeze on the use of cluster munitions and asserted that addressing the problems of cluster munitions would require “strengthening of the international humanitarian law that currently governs their use” and “[a]n additional legal instrument within the CCW framework could achieve this aim” (UNMAS, 2005). In the same presentation UNMAS provided a working definition of cluster munitions, which was a first step toward defining what a

¹⁷⁸ In March 2005, the UN Executive Committee for Peace and Security also initiated a series of discussions on cluster munitions led by the Department of Disarmament Affairs but it was decided that the Inter-Agency Coordination Group for Mine Action should play the leading role in the process (Laurie, 2006).

cluster munition is for the purpose of regulating the weapon.¹⁷⁹

The commissioned UNIDIR report was ready in October 2005 and even though it concluded that, “it could be argued that cluster munitions are prone to indiscriminate effect” and “the poorest sectors of society suffer the greatest humanitarian impact from cluster munitions and bear the heaviest socio-economic burden in post-conflict development terms,” it could not reach a definitive conclusion as to whether regulations or a complete prohibition of the weapons were needed (Laurie, 2006). Thus, the UN agencies apparently ran into the same difficulty as NGOs in the CMC that were struggling with the question, “to ban or not to ban?”.

In a further effort to clarify the extent of the cluster munition problem, the UN Working Group on cluster munitions distributed a questionnaire to the UN national mine action programs asking that data on submunitions be separated from other UXO and that positions on the issue be developed. Nevertheless, at the CCW meeting in November 2005, 11 of the members of the UN Inter-Agency Coordination Group for Mine Action, except for the Department of Disarmament Affairs, agreed on the position that, “[r]educing failure rates through more stringent technical specifications can reduce the danger posed by cluster munitions, but will not resolve the problem,” and called for the inclusion of the question of cluster munitions in the 2006 agenda of the CCW Group of Governmental Experts (Laurie, 2006) – a call the UN Secretary General repeated in his statement to the CCW in November 2005 (UN Department of Public Information, 2005).

The breakthrough in the UN position on cluster munitions came with the Israel-Hezbollah war in the summer of 2006. It was primarily the UN Mine Action Coordination Center in Lebanon (UNMACC) that had to deal with the consequences

¹⁷⁹ The UNMAS definition of cluster munitions proved useful for national legislative action in Belgium in July 2005.

of the Israeli use of cluster munitions in Lebanon. UNMACC South Lebanon and its coordinator Chris Clark became one of the most vocal critics of the munitions use and generated a large number of media articles on the issue by gathering daily information about the number of cluster munition strike locations, the number of submunitions discovered and destroyed, the failure rates, as well as the number of victims of those weapons (e.g. UNMACC South Lebanon, 2006; Boustany, 2006; Shadid, 2006; Russell, 2006, Yahmour, 2006).

The Israeli use of cluster munitions also prompted a strong reaction from the UN Undersecretary of for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland (an erstwhile leader on the mine-ban as Norway's Deputy Foreign Minister in the 1990s) who called it "shocking and completely immoral" since 90% of the strikes occurred in the last 72 hours of the conflict when it was known that there would be a ceasefire (McCarthy, 2006). Furthermore, as the CCW Review Conference opened in November, Egeland called for an immediate freeze on the use of cluster munitions, reasoning that "[a]s long as there is no effective ban, these weapons will continue to disproportionately affect civilians, maiming and killing women, children, and other vulnerable groups" (quoted in Associated Press, 2006). A similar (even though less categorical) message was also delivered to the CCW Conference by UN Secretary General Kofi Annan, who called on delegates to "devise effective norms that will reduce and ultimately eliminate the horrendous humanitarian and development impact of these weapons."¹⁸⁰ Finally, following the end of the CCW Review Conference, a UN Panel investigating the conduct of the Israel-Hezbollah conflict placed special emphasis on the issue of cluster munitions and concluded that their use

¹⁸⁰ Specifically, the Secretary General called on delegates "to freeze the use of cluster munitions against military assets located in or near populated areas [...] to freeze the transfer of those cluster munitions that are known to be inaccurate and unreliable, and to dispose of them [and...] to establish technical requirements for new weapons systems so that the risk they pose to civilian populations can be reduced" (UN Department of Public Information, 2006).

by Israel was “excessive” and “amounted to a de facto scattering of anti-personnel mines across wide tracts of Lebanese lands” (quoted in O’Neil and Myre, 2006).

The European Parliament

Another institution, which provided the NGOs with support on the issue of cluster munitions, is the European Parliament (EP). Different NGOs have taken the lead in raising awareness among and lobbying members of the European Parliament (MEPs) on the problem of cluster munitions, in addition to national organizations contacting their own MEPs. Landmine Action UK was among the first to bring the issue to the attention of MEPs in 2001 and 2002, with support from the ICRC (International Security Information Service, 2001, 2002; Wiebe, 2003: 102). This was followed by efforts from Pax Christi Netherlands and the German Actiongroup Landmine.de in 2004, supported by briefings from Handicap International and the ICRC (interviews 18, 27, 32 NGO).¹⁸¹

Whereas NGOs have been actively contributing to the discussions on the issue in the EP, the initiative for passing resolutions calling for a moratorium on the use, production and transfer of cluster munitions has often times come from the Parliament itself, and in particular, from the disarmament advisor of the Green Party Group, Ernst Guelcher (interview 18 NGO). Thus, the latter has served as a connection between NGOs and MEPs on weapons-related issues and worked together with them on finding compromise language that would be supported by the European party groups in order to pass the resolutions.¹⁸² The timing of the resolutions themselves has been aimed to

¹⁸¹ Representatives from the ICRC have supported NGO and EP activities on the issue with expert presentations when invited to participate, but have not initiated them (interview 40 NGO).

¹⁸² The main obstacle to passing the resolutions on cluster munitions has been opposition from the group of the European People’s Party (Christian Democrats) and European Democrats and British MEP, Geoffrey Van Orden (interview 24 PARL). Pax Christi’s lobbying of the Christian Democrats has been particularly helpful in overcoming their opposition to the 2004 resolution (interview 27 NGO).

coincide with, and if possible, influence upcoming events such as the CCW meetings (interview 24 PARL).

In that sense, the involvement of the European Parliament on landmines and cluster munitions has been similar to that of national parliaments in several European countries, where NGOs create the issues to be picked up by parliamentarians and pushed through with NGO help. The European Parliament has been responsive to NGO calls for resolutions asking for a European moratorium on “the use, stockpiling, production, transfer or export of cluster munitions, including air-dropped cluster munitions and submunitions... until an international agreement has been negotiated on the regulation, restriction or banning of these weapons” (EP, 2004, also, 2001, 2003);¹⁸³ for a ban on financial investment in companies producing landmines and cluster munitions (EP, 2005); as well as, support of the international movement to ban cluster munitions (EP, 2006). In fact, the Parliament has been quite open and willing to take up weapons and disarmament issues and sometimes has even tried to pass resolutions going beyond what NGOs were asking for.¹⁸⁴ Thus, it could be said that the European Parliament and NGOs have promoted the issue of cluster munitions

¹⁸³ The wording of the three calls for a moratorium has been slightly different. In 2001 it was for “an immediate moratorium until an international agreement has been negotiated on the regulation, restriction or banning of the use, production, and transfer of cluster munitions under the CCW” and also urged “all states possessing and/or using cluster munitions to undertake other measures, such as improving the reliability of fusing mechanisms by way of dual-event fuses and incorporating self-destruct or self-neutralising mechanisms into munitions” (EP, 2001). In 2003, the EP more broadly requested Member States “to immediately implement a moratorium on the further use of cluster ammunition and depleted uranium ammunition (and other uranium warheads), pending the conclusions of a comprehensive study of the requirements of international humanitarian law” (EP, 2003).

¹⁸⁴ For example, in 2005, MEPs wanted to pass a resolution calling for a ban on anti-vehicle mines and sought help from NGOs to draft one, but the NGOs were reluctant to go that far. In a similar vein, the EP has been involved in the issue of depleted uranium and the health and environmental consequences of its use but could not get Greenpeace interested in the subject (interview 24 PARL). During the process of drafting the 2004 resolution calling for a moratorium on cluster munition use, there were proposals from the Alliance of Liberals and Democrats for Europe (ALDE) Group for “a total ban on cluster munitions,” whereas PXC lobbying on the subject only sought support for the CMC call and dissuaded more active MEPs from pushing for more ambitious language in the resolution, to make sure it would not be blocked by conservative MEPs (ALDE, 2004; interview 27 NGO).

In addition, already in November 2001, the president of the EP, Nicole Fontaine, declared that she “personally believe[d], in all conscience, that the use of cluster bombs must be banned” and called on the US “to refrain from any further use of such weapons” (EuropaWorld, 2001).

together, rather than see the process as a unilateral effort from NGOs to influence parliamentarians. The NGOs have benefited from the European Parliament support and used it as an additional argument strengthening the legitimacy of their campaign, even though its resolutions have had limited impact on EU common policy on the question outside of the area of funding for clearance of ERW.¹⁸⁵

Thus, UN agencies dealing with development and demining share with NGOs the same interests in popularizing the problems of landmines and cluster munitions and attracting more funding for clearance. The NGOs make good use in their campaigns of the political support coming from UN agencies, as well as, resolutions from the UN General Assembly and the European Parliament that back their objectives. Whereas it has been argued that the UN and international organizations gave legitimacy to NGOs in international politics and facilitated their functioning (Tarrow, 2001, 2005; Jacobson, 2000: 155-56), the cases of landmines and especially cluster munitions suggest that this has been a process of mutual reinforcement in an area where both NGOs and UN agencies share interests and where NGOs have valuable expertise and may actually be a step ahead of the UN in their thinking about the problem of cluster munitions. In fact, from a different perspective, it has been suggested that the relationship between international NGOs and international organizations is one of “mutual legitimization,” providing each with “some veneer of democratic legitimacy,” despite the democratic deficit characterizing both (Anderson, 2000). As I have tried to show, the relationship was really one of “mutual legitimization” and reinforcement but not so much because either side lacked democratic legitimacy, as because both faced the same problem and were trying to

¹⁸⁵ More recently, French NGOs have aimed at influencing EU decisions related to the problem of cluster munitions through a post card campaign organized by Handicap International France, Agir Ici, and Observatoire des Transfers d’Armements targeted at the President of the EU among others, and reporting on the production and trade of cluster munitions by EU industries with specific recommendations about comprehensive prohibitions (e.g. Observatoire des Transfers d’Armements, 2005).

find a solution to it.¹⁸⁶

Conclusion

The landmine campaign took place during the post-Cold War years when new opportunities opened for both smaller states and NGOs to become more active on security issues at the international level. Its story is probably unique in its dynamic of sustained competition among a number of states willing to push it forward for the dividends of leadership and international recognition that it could yield in addition to helping alleviate a real humanitarian crisis. And the objective of achieving an international ban on a weapon with limited military utility was much more manageable and cheaper than alleviating hunger and disease in the developing world, for example, or other humanitarian causes that might produce political dividends and strike public consciousness with similarly horrific images of human suffering. Thus, the success of the campaign was not so much the result of the substance of a problem, involving “bodily harm to vulnerable individuals” (Keck and Sikkink, 1998), as of the ability to identify a concrete culprit – landmines – and concentrate on a simple solution – a ban on them. The landmine success came from this simplification of the issue and presenting it as the only possible point of reference, where many other

¹⁸⁶ If critiques about the EU’s democratic deficit abound, it is more difficult to level them against the European Parliament – its only directly elected institution. In addition, critiques of democratic deficit usually refer to the lack of participatory input or internal accountability of international organizations and NGOs – they are not elected organs and do not provide accounts of their activities to their principals or the citizenry. In fact, international organizations (IOs) are actually accountable to their member states, even though NGOs report back only to a limited number of members and funding bodies. In both cases, however, their legitimacy does not depend so much on their internal accountability, as on the effects of their policies and activities, and ability to address problems and represent the common good. In this sense, IO and NGO legitimacy rests upon their moral authority, impartiality and expert knowledge, as well as on the effectiveness of their work in solving problems (Risse, 2006: 188-92).

causes and solutions of the problem have and could have been brought up.

At least in hindsight, and possibly a bit dazzled by the glow of its success, diplomats and NGOs alike refer today to the landmine issue in the 1990s as “sexy”. Once the issue was “packaged” and, one by one, states started showing interest in the “product,” other states got interested as well. What followed was a process approximating bidding for leadership, with the early bidders dropping out after realizing that they either did not have the resources to win or lacked the support of important elements at home. Even though this dynamic was at work from the beginning, it actually took several years of work, incremental progress, and successes domestically before the issue was propelled into the limelight of international attention, first by a failure of consensus decision-making in an international forum and then by the Canadian bid for leadership at a point when others hesitated about their next move. From that moment on, the energetic efforts of NGOs and diplomats from a group of like-minded states to promote the treaty all over the world brought about a bandwagon effect of countries joining the Ottawa Process.

The dynamic was started and maintained over the years by a handful of NGOs and determined individuals who gathered together in the early 1990s and decided to launch the ICBL with the single goal of banning landmines. Over the course of the 5 years from the inception of the ICBL campaign to the adoption of the Ottawa Convention, the six founding members were joined in their cause by hundreds of NGOs as dividends accrued not only to the leading states but also to the non-governmental organizations involved in the process. The relationship between NGOs and governments and international institutions was generally one of mutual reinforcement. Not only did the NGOs need state support to achieve their goals, but government officials equally needed NGO support to provide them with new ideas of

areas where they could leave their mark and persuasive arguments and data to use in the battles with opponents in their own governments. The fact that NGOs remained independent in this relationship allowed them to exercise another function, whether welcomed by their governmental partners or not – to monitor closely the negotiating process and thus prevent people in government from walking away from their publicly made commitments. Depending on the real commitment of their governmental allies, this NGO function reinforced the position of their governmental partners in times when they were under pressure from higher-ranking officials or foreign powers, or limited their freedom of maneuver.

In contrast to the landmine case, the campaign against cluster munitions first started with individual NGOs and the ICRC raising concerns about the weapons following the NATO intervention in Kosovo. Both NGOs and the ICRC were much more circumspect in their calls about what should be done to solve the problems of cluster munitions. NGOs did not form a coalition from the beginning and have remained divided in their objectives throughout the process. States, on the other hand, were responsive to some of their concerns, in particular the one NGOs highlighted most – the unexploded cluster submunitions – and undertook negotiations on explosive remnants of war within the CCW. Bringing up the issue of ERW and addressing it in the CCW Protocol V has proved a comparative success and a welcome addition in an area previously unregulated by an international legal instrument. The debates and international negotiations surrounding it have also left the door ajar for subsequent talks on cluster munitions (interview 40 NGO). However, as I have argued, the amalgamating of the problem of cluster munitions with ERW and depicting it in terms of submunition failure rates has also made it more difficult for NGOs to get out of this frame later. They had to switch their focus from arguments that submunitions were *de facto* landmines to the immediate dangers they posed to civilian lives and

demand more comprehensive regulations that would not only address the technical issues of reliability, but also deal with the area and saturation effects of the weapons. Thus to some extent, the difficulty NGOs faced in getting more comprehensive regulations on cluster munitions were a product of their own making, since states responded to criticisms about high failure rates (and NGO calls for improving them) by focusing on technical solutions (especially France, the UK, USA) and opposing the adoption of new international legal restrictions.

In 2004-2005 NGOs realized that they were lacking crucial elements in their campaign if it were to yield more comprehensive restrictions on the cluster munitions' use and not only their aftereffects. Conventional diplomacy in the conference hallways, providing negotiators with information and ideas did not suffice to overcome opposition in a forum of consensual decision-making. Not even the most sympathetic government representatives who shared their convictions could go much further in their proposals when they didn't have a consolidated domestic policy on the issue and no other states showed encouraging signs of supporting their ideas. To change this, NGOs had to revert back to basics, educate the public about the issue and work in their domestic contexts, form connections with legislators, and push for national measures against cluster munitions. The adoption of national bans would have the double effect of providing greater freedom of action to their diplomats and encouraging other states to follow suit. Whereas the passing of national laws is neither a necessary nor determining condition for the position of every single state, the adoption of national legislations and supportive national positions toward prohibitions in a number of states is a necessary condition for setting the international process in motion. Once domestic support in different states starts developing, it becomes easier to mobilize action internationally, especially if NGOs and their state and IO partners make the best out of the opportunities exogenous shocks, such as the Israel-Hezbollah

war, provide them.

The domestic developments that preceded and laid the conditions for the Ottawa Process are the often-neglected side of the landmine campaign and the one that is in the process of emerging for the cluster munition campaign. As will be shown in the following chapters, countries follow different paths when it comes to addressing the humanitarian problems of weapons that also have security implications. But these paths need to be traveled by a certain number of countries before they could march together toward an international agreement.

PART TWO
DOMESTIC PROCESSES OF NORM EMERGENCE

CHAPTER FOUR

The US: The Military Calls the Shots, Technology Will Save the Day

Domestic structure and politics

The US is regarded as an example of the “society-dominated” type of domestic structure. Its political institutions are usually characterized as fragmented and its foreign policy-making process as decentralized. The executive has the prerogative for formulating foreign and security policy but several agencies influence the actual process including the National Security Council, the State Department, and the Pentagon, the latter also taking into account the preferences of the armed services in formulating its position on issues of arms control and weapons restrictions. Finally, the Senate holds a veto power over treaty ratifications that can only be passed by a two-thirds majority. The political system is also open, providing multiple points of access at which societal actors can reach policy-makers and voice their concerns and interests.

The openness of the system, combined with a relatively heterogeneous society and good organization of interest representation results in the exertion of pressure on the multiple policy-making bodies from various directions. Thus, while coalition-making between social actors and political elites is relatively easy, there could be strong competition from opposing interests. Winning the support of just one decision-maker, be it a key one, does not ensure the translation of the actors’ demands into policy and even when a policy is actually adopted, it could be short-lived and dismantled after the policy-makers that introduced it leave office (Risse-Kappen, 1991, 1995a).

A third factor that should be taken into account when considering US foreign and security policy making is the strength and politicization of the military establishment. Not only is the Pentagon one of the policymaking bodies in the US system, but the military and the armed services have become increasingly politicized since the early 1990s and thus play an additional role as a concerted interest that can lobby Congress for its preferred policies. In particular, when there is a divergence of policy preferences between the executive and the legislature, the military is apt to play one side off the other and push for its own specific interest (Avant, 1994).

Thus, the expectations of the domestic structure model are that NGOs would be able to forge coalitions with political elites to advance their cause of banning landmines and restricting the use of cluster munitions, but the success of their efforts will not be assured, especially if the military opposes their goals. This prediction is largely borne out in the case of landmines. On the issue of cluster munitions, however, NGOs have not even attempted to form a coalition with policymakers. The latter outcome can be explained both by Human Rights Watch's organizational culture – that in practice has been the only actively engaged NGO on the issue – and the transformation of the US domestic political structure in the period 2003-06 from an open and fragmented one into a much more centralized one, with the concentration of executive and legislative power in the Republican Party. Nevertheless, the NGOs have been able to influence policy making and military practices regarding cluster munitions by highlighting their problems in the media early on after the Kosovo intervention, establishing some lines of communication with the Air Force that was the major user of the weapons until the 2003 military operations in Iraq, and finally, by placing the issue on the agenda of international negotiations at the Convention on Certain Conventional Weapons (CCW).

Thus, the domestic structure concept could be applied only to a certain degree

and keeping in mind that it is not a constant over time. It will be argued that American political culture and the place military values occupy within it has been of particular importance for the inability of NGOs to translate their demands into policy regarding landmines. The self-identification of the military and its desire to project an image of a professional and responsible force that protects the nation, uses weapons discriminately, and takes care not to injure civilians has been used to deflect criticisms about its insistence on retaining certain types of landmines. As has been argued, the US military was not part of the problem – its landmines did not cause civilian casualties. The same arguments, however, could be turned against the military when its cluster bombs were killing civilians in Kosovo, Afghanistan and Iraq. Thus military interests and culture have been at the same time a barrier to a total ban on landmines and an opening for efforts to reshape military policy and practice regarding cluster munitions. Thus, one can argue that the military has played a central role in defining US policies on landmines and cluster munitions but it has not been impermeable to humanitarian concerns raised by NGOs. Under two very different administrations, the military influence has produced similar policies on both types of weapons by promoting a technical solution to their problems.

The Bush Administration has been portrayed as unabashedly unilateralist, determined to stay away from or even undermine international agreements such as the Kyoto Protocol or the International Criminal Court. In contrast, the Clinton Administration came into office favoring a policy of “assertive multilateralism” and has even been dubbed by its opponents “the most Globalist” US administration in the 20th century (Bolton, 2000:212).

Yet, when one looks at the cases of anti-personnel landmines (APLs) and cluster munitions there are more similarities than differences between the approaches the two

administrations pursued. Whereas the US under Clinton was one of the first countries to focus on the problem of APLs and call for an international ban, in the end Clinton decided not to join the Ottawa Treaty and opted instead for the development of technological solutions to the problem of landmines and increase of the funds for demining programs. The Bush administration's policy on APLs can be seen as an extension of this trend with some backsliding, especially with its renunciation of the goal to sign the Ottawa Treaty in 2006 if APL alternatives were developed, which was set up by the previous administration. Similarly, on the problem of cluster munitions, which was placed on the international agenda only in 2000, the Clinton Administration instituted a policy of technological improvement of submunition reliability that was continued under Bush. The US participated actively in the meetings of the states parties to the Convention on Certain Conventional Weapons (CCW) regarding the problem of explosive remnants of war (ERW) and cluster munitions. Interestingly, even though it opposed the adoption of a legally binding agreement, under an Undersecretary of State for Arms Control and International Security, notorious for his distaste of international treaties, in the end, the US decided not to block consensus, accept the addition of Protocol V on ERW to the CCW, and even submit it for ratification to the Senate.

I would argue, many activists' critiques notwithstanding, that in both cases US policies have responded to the humanitarian arguments of a host of nongovernmental organizations (NGOs) and have actually contributed to the emergence of the norm against landmines and the acknowledgment of the problem of cluster munitions. Whereas US policies have not exactly dovetailed with the demands of NGOs in either case, neither have they simply reflected military positions on the issues, as some have argued (Center for International Policy (CIP), 1999). Rather, I would argue that the US positions regarding landmines and cluster munitions under both Clinton and Bush,

were made up of a mixture of humanitarian and military considerations, which is typical of the development of IHL as a whole. Clinton's personal position, receptive to the NGO arguments and favoring an international ban was tempered by military opposition, whereas the position of Bush, and notoriously, of his Undersecretary for Arms Control, John Bolton against any multilateral agreements and international norms that might limit US freedom of action, were balanced by humanitarian concerns. This is not to suggest that the two administrations exhibited exactly the same positions on these issues but to point out that the differences (as well as the similarities) of US policy pre- and post-Bush and 9/11 have been exaggerated. I propose to shift attention to the processes through which these positions regarding IHL have been shaped.

I will also argue that the US position on these issues was to a large degree shaped by the domestic discourse initiated by the NGOs. In contrast to the public debate on landmines in other countries, the one that unfolded in the US after 1996 has highlighted the military arguments about operational requirements for landmines and their role in saving soldiers' lives instead of focusing on the human tragedy caused by these weapons. This has been commonly attributed to the influence of the military on the US administration and the Congress and its ability to reframe the debate in the media. The interest to the military aspect of landmines restrictions is also understandable in view of the greater American security engagements. These factors obviously influenced the decision of the most actively involved US NGO in the landmine campaign, the Vietnam Veterans of America Foundation (VVAF) to follow a strategy of drawing support for their cause from military figures and trying to expose the flaws in the military arguments from a military point of view instead of approaching them above all from a humanitarian perspective. Thus, I would argue the VVAF's choice of strategy had the unintended consequence of turning the debate to its

disadvantage. In addition, the focus of the US Campaign to Ban Landmines (USCBL) predominantly on domestic political games and legislative actions seems to have limited its efforts to highlight the scope and pace of the international campaign going on at the same time. As a result, it did not fully exploit this potentially useful lever to put pressure on the Clinton Administration – i.e. it didn't bring the “boomerang” of international campaigning to bear on US decision-making.

Similarly, the initial framing of cluster bombs as *de facto* landmines influenced the direction international negotiations and domestic initiatives would take. The argument focused on the high failure rates of submunitions that function in the same way as landmines and the larger category of explosive remnants of war that did not encompass the problems submunitions caused during war. Early on VVAF promoted the incorporation of self-destruct and self-neutralization features in the submunitions as a possible solution to the problem and this has been a central demand of Human Rights Watch and other NGOs as well. However, the emphasis on munition reliability displaced attention from the other NGO concerns about the indiscriminateness of the weapons and the danger inherent in their use near civilian areas. It took NGOs three years after the ERW Protocol was adopted in 2003 to put the focus back on the other problems of cluster munitions in their domestic campaigning in European countries, and the shock of indiscriminate employment of cluster munitions in the Israel-Hezbollah conflict in the summer of 2006, to squarely place the problem on the international agenda. It remains to be seen if they would try and be able to do so also in the US domestic context.

Landmines: from leadership to opposition on the ban

1991-1995: NGO-Congressional partnership leading the way

What gave an initial boost to the NGO efforts to ban landmines was the concern shown for the problem in the US Congress. After a visit to a field hospital on the Honduran border during the conflict in Nicaragua, in 1989 Senator Patrick Leahy established the War Victims Fund – a \$5 million annual congressional appropriation to assist victims of landmines. Thus the Senator was a natural ally for the VVAF in its efforts to get a landmine ban campaign started and in December 1991 Jody Williams met with his aide Tim Rieser to probe the possibility of getting the Senator's support. Rieser assured her that Leahy would be willing “to enter information about such a campaign into the Congressional Record.” In early 1992, closer relations between VVAF and Leahy’s Office developed with VVAF offering support for Leahy’s first legislative initiative – a one-year landmine export moratorium. The VVAF also gained the support of Congressman Lane Evans, a Vietnam veteran himself, to work for the landmine legislation in the House (Wareham, 1998: 213-4).

The proposed moratorium was only the first among a series of actions in Congress initiated by Leahy that aimed, first at setting the course of US policy on landmines and providing an example for other countries to follow, and later, at getting the US to agree domestically on restrictions on landmines that would bring it closer to the international standards set up with the Ottawa Treaty. In July 1992 Leahy introduced the bill to impose a one-year moratorium on the sale, transfer or export of antipersonnel landmines (APL) abroad, which was referred to the Foreign Relations Committee but never enacted.¹⁸⁷ However, the moratorium still passed after being

¹⁸⁷ The bill had 34 cosponsors, of which 30 democrats and 4 republicans (Chester, 1999:32).

attached as an amendment to the 1993 Defense Authorization Bill and was signed into law by President Bush in October 1992.¹⁸⁸ In 1993 the export moratorium was extended for another 3 years with a vote of 100 to 0 in the Senate (Wareham, 218).

Whereas VVAF had established good relations with Senator's Leahy's Office, the idea for the moratorium originated with the office itself and its successful passing was chiefly the result of skillful work within Congress and not NGO advocacy (Williams and Goose, 1998: 26; interview 15 NGO). Neither did the NGO envisage that the moratorium would "galvanize the imagination of the international community" and make politicians abroad believe that the US was willing to address the problem and that progress could be made toward the elimination of landmines (Williams and Goose, 1998:26). It also proved an excellent tool for activists who would pressure their own governments to follow the US lead and parliamentarians to enact similar landmine laws.

In September 1993, the State Department produced a report to Congress, *Hidden Killers: The Global Problem with Uncleared Mines* that depicted the proportions of the landmine crisis worldwide. The State Department indicated that "landmines may be the most toxic and widespread pollution facing mankind"¹⁸⁹ and Secretary of State Warren Christopher characterized them as "weapons of mass destruction in slow motion" – statements indicating the serious concern with the problem in the US State Department. The report itself and Warren Christopher's words provided another boost for the NGO community. On the one hand, they made appear that the State Department shared not only the concerns, but also the goals of the NGOs, and thus

¹⁸⁸ Most probably, the moratorium passed because it was attached to the Defense Authorization Bill in the last minute by Rieser, something he was very good at. "The amendment also called on the US to 'seek verifiable international agreements prohibiting the sale, transfer, or export, and further limiting the use, production, possession, and deployment of antipersonnel landmines.' Separate language in the Defense bill also called on the President to submit, within 180 days, a report on demining activities in certain nations. Senator Leahy also called the US government to ratify the 1980 Convention on Conventional Weapons" (Wareham, 1998: 214).

¹⁸⁹ Quoted by Senator Leahy in a speech to the Senate (Congressional Record, February 28, 1994).

served as an encouragement to other states to take up the issue. On the other, if that strong language would not be followed by equally strong actions toward elimination of the landmine threat, it also opened the State Department to critiques by the NGOs for not living up to the challenge of landmines and its own words.

Senator Leahy directed his efforts to the UN as well where he had a personal friend in US Ambassador Madeleine Albright (Dobbs, 1999: 277) who together with her arms control deputy Karl (“Rick”) Inderfurth were considered ban advocates. In November 1993, Leahy’s collaboration with them led to his introducing at the UN General Assembly a resolution urging states to agree to and implement a moratorium on the export of “antipersonnel landmines that pose *grave dangers* to civilian populations” – a definition that in contrast to the moratorium passed by the US Congress could be construed as not covering self-destructing landmines (quoted in Wareham 1998: 220, her emphasis). As a follow up to the resolution, the Clinton Administration sent out letters to 44 mine-producing countries asking them to ban exports for three to five years. Finally, lobbying efforts by Sen. Leahy and his staff bore fruit, when in a speech to the UN General Assembly in September 1994 President Clinton called for international efforts to achieve the “eventual elimination” of anti-personnel mines (Wareham, 220).¹⁹⁰

Thus during this early period of landmine advocacy, Senator Leahy played the major role in the debate on landmines in the US and to a large extent was able to define the US position on the problem through Congress. He was tirelessly bringing up the issue in the Senate, emphasizing the indiscriminate nature of landmines, their enormous impact on civilians, and by drawing comparisons to the prohibition of chemical weapons, advocated that the only solution to the landmine humanitarian

¹⁹⁰ The “eventual elimination” for which Clinton called for, was premised on the development of “viable and humane alternatives” (Wareham, 1998:221) but this detail may have not registered with most countries.

crisis was a ban. Furthermore, he managed to spur action in the Clinton Administration, invigorate the UN debate on the issue, and indirectly give a boost to efforts to deal with the landmine problem in other countries. The debate at this point, both in the US and internationally, was predominantly shaped by humanitarian considerations and the military aspects of the problem were largely ignored. The military did not show concern for the issue partly because it had not yet generated a lot of public interest, partly because the idea of a total ban while in circulation was accompanied by different, more modest proposals about creating an international export regime or enacting other half-measures, and finally because the suggestion of a total prohibition on landmines prior to Clinton's speech at the UN seemed to US military officers "so bizarre as not to merit detailed rebuttal" (CIP, 1999).

However, these early successes¹⁹¹ gradually drew the attention of the Pentagon. The unanimous passing of the export moratorium extension, pending legislation by Leahy in conjunction with the FY1995 Defense Authorization bill, and the upcoming CCW review conference in 1995 prompted the Department of Defense (DoD) to start thinking about formulating its own position on the issue, even though this remained of low priority for the Pentagon (interview 10).¹⁹² The Office of Special Operations and Low Intensity Conflict (SOLIC) was tasked to draft some guidelines for developing a DoD position, and in turn, it contracted the Institute for Defense Analyses (IDA) to perform a quick response study of the military utility of landmines and the implications for arms control. The first part of the report was concluded in June 1994

¹⁹¹ However, even early on success was not easy to achieve – while the export moratorium was unanimously extended in 1993, a Landmine Moratorium Extension Act cosponsored by 57 Senators, among which 13 Republicans, which declared that "it should be the US policy to terminate manufacture, possession, and use of anti-personnel landmines" was referred to committee but never enacted (Chester, 1999:33).

¹⁹² The reason why the issue was thrust upon the relatively small Office of Special Operations and Low Intensity Conflict (SOLIC) was precisely because it was a low-priority matter. In addition, it was "an orphan issue" that "no one wanted to touch" because it couldn't be expected that one would progress in her/his career by working on it (interview 14 NGO).

(Biddle et al., 1994: 3)¹⁹³ and it highlighted two important results: first, the military utility of landmines depended on whether the US was planning to use them in defensive or offensive operations;¹⁹⁴ second, for antipersonnel landmines to have an effect, very stringent conditions have to obtain, and even under those conditions, the impact of antipersonnel landmines is significantly smaller than that of anti-tank mines.¹⁹⁵ The overall conclusion IDA made was that “military utility in high intensity conflict need not preclude consideration of landmine arms control” and antipersonnel mines should be considered for such controls first (Biddle et al., 1994:68).

Whereas the IDA report was perceived as very favorable to their cause by the NGOs¹⁹⁶ and encouraged the civilian officials at SOLIC to work for a landmine ban within the military bureaucracy (interview 10), its actual impact on the DoD position is less clear. Even though among SOLIC’s chief civilian officials were two political appointees of the Clinton Administration who were in favor of a total landmine ban – Deputy Assistant Secretary of Defense for Humanitarian and Refugee Affairs, Patricia Irvin and Principal Deputy Assistant Secretary of Defense for Special Operations, Timothy Connolly – the ability of SOLIC to influence the DoD policy on the matter was limited.

¹⁹³ Prior to that the Joint Chiefs of Staff and the Arms Control and Disarmament Agency had drafted position papers on landmine control, respectively, on 4 February and 8 June 1994 (Biddle et al, 1994:5).

¹⁹⁴ Whereas the military generally envisaged a Korean type scenario, or even relied on old Cold War plans of fighting a defensive war in Europe, combat of the offensive type waged in the 1991 Gulf War would be more probable. In addition, since pure defense without counterattack is rare, even in a defensive scenario, the net effect of removing landmines on US materiel and combatant losses would be less significant than the one under pure defense conditions; For example, if mines were altogether removed from a scenario featuring a US mechanized brigade in defense on desert terrain that includes a counterattack and use of scatterable AT mines by the US, there would be a 20% increase in US vehicle losses, in contrast to previous assertions in the arms control debate that giving up mines will double US losses (Biddle et al, 1994: 44).

¹⁹⁵ “For AP mines to have a decisive effect, a number of important preconditions must be met, among these being: (1) that the attacker reach the close-in positions where US doctrine places most AP mines; (2) that the attacker’s infantry dismounts and conducts the assault on foot; and (3) that the attacker maneuvers this dismounted infantry and its accompanying armored vehicles independently” (Biddle et al, 1994: 70).

¹⁹⁶ For example, NGOs organized briefings of the report to NGOs in the US and its leading author was even invited to give a presentation for Save the Children in Sweden (interview 10).

Thus by mid 1994 both the State Department and the Pentagon were becoming more closely involved in the policymaking process regarding landmines. When in June 1994 Sen. Leahy gathered the support of 50 Senators for a bill that would require a one-year moratorium on the production and procurement of antipersonnel landmines, for the first time his initiative provoked strong resistance from the Secretaries of State and Defense and he eventually dropped it, allegedly to “give the Administration time to develop its own landmine policy” (quoted in Wareham, 219).¹⁹⁷

The shape of the Administration’s policy became clear when a month after Clinton’s speech to the UNGA in September 1994, the State Department held a briefing for representatives of the US Campaign to Ban Landmines. The Administration plans included working for the reinforcement of the CCW Mine Protocol at the CCW Review Conference, reduced reliance on traditional, non-self-destructing mine, and the establishment of an international export regime. Both at the meeting and in a subsequent letter to the President, the NGO community reacted negatively to the proposed policy and characterized it as “a giant step backwards in what has been until now a promising US leadership initiative” (quoted in Wareham, 221).

Nevertheless, the State Department did not make changes to its policy, which appeared in its 1994 report to Congress on landmines, released on 27 January 1995. The report fell far short of charting a policy course that would move the US toward a total ban in the near future, even though rhetorically it seemed to suggest as much by drawing a parallel to the 1992 Chemical Weapons Convention: “[s]oon, a comprehensive body of law similar to that recently developed to regulate chemical weapons should narrow the lawful uses of landmines to a point where the future risk to

¹⁹⁷ More probably, the bill was dropped because it would not have gathered the necessary votes after opposition from the Administration undermined support in the Senate (interview 15 NGO).

noncombatants will be substantially reduced” (US Department of State, 1994: 55). Instead, it defined the priorities of US policy at the upcoming CCW Review Conference as seeking an extension of the scope of the mine protocol to cover internal conflict; a prohibition of the use of non-self-destruct mines out of marked and monitored areas; and a ban on non-detectable mines, among others. It also promoted the idea of a multilateral control regime on the production, stockpiling, and export of landmines as a way to curb their proliferation (US Department of State, 1994: 27-8). Whereas by that time the Pentagon had not come out with a specific policy on landmines, the one elaborated by the State Department was consonant with its interests.

However, Senator Leahy and Congressman Evans kept up the pressure on the government to take a bolder position on landmines. On 15 June 1995 they introduced in the Senate a joint bill with 49 cosponsors that aimed at emplacing in three years a one-year moratorium on the use of antipersonnel landmines “except along internationally recognized or in demilitarized zones” in marked and monitored minefields (Wareham, 219). At this point, ban proponents spurred significant media interest in the issue and the American Red Cross, headed at the time by the wife of Senate majority leader Robert Dole, endorsed the bill (CIP, 1999).¹⁹⁸ It passed in the Senate by a vote of 67-27 in August 1995 despite the fact that the 1994 elections had brought in a Republican majority and Jesse Helms had assumed the chairmanship of the Foreign Relations Committee.

It was this one-year moratorium on landmine use coming in force in 1999 and the need to comply with it that finally awakened the military to the seriousness of the issue and mobilized opposition among them (interview 14 NGO). On 12 September,

¹⁹⁸ For example, a statement from the Catholic Bishops in favor of a ban and 10 pro-ban newspaper articles from major national and local media (9 of which from July), were attached to Sen. Leahy’s June 21 and July 21, 1995 statements (Congressional Record, 1995a,b).

prior to the bill passing in the House, the Chairman of the Joint Chiefs of Staff (CJCS), Gen. Shalikashvili sent a letter to the Chairman of the House Committee on National Security, Floyd Spence, requesting his support to defeat the proposed legislation since its banning of self-destruct mines that “do not pose a significant humanitarian problem” would “needlessly place [American] forces at risk.”¹⁹⁹ However, it was too late to mobilize and stop the bill that had already passed the Senate, and it was signed into law by President Clinton on 12 February 1996. That was a lesson learned for the military that from that point on started preparing “a legislative game plan” (interview 14 NGO), would follow closely action in the Congress and take measures to influence its outcome. As Leahy was hoping, the bill also had the practical effect of spurring the Army to think about how it could comply with the use moratorium, and as a result, it ordered the procurement of Volcano mine systems that would incorporate only antitank mines instead of the standard mixed munitions (interview 14 NGO).

1996: The military enters the stage... and steals the scene

While domestic legislation solidified opposition in the military, the CCW Review Conference that took place in Vienna in September-October 1995 and its follow up sessions in Geneva in January and April-May 1996 turned into a focal point for the international NGO campaign and helped it not only get media attention but also develop in terms of organizational coordination and strategy for action. As a result, the debate about landmines shifted from relative obscurity to the spotlight in the media,

¹⁹⁹ John M. Shalikashvili, letter to the Chairman of the House Committee on National Security, Floyd Spence, 12 September 1995, reprinted in Congressional Record (1995c).

public support for a ban increased, as did the profile of the NGOs promoting it. Whereas that was particularly true of some European countries, the public campaign in the US gathered force as well and presented a more formidable opponent for the military. However, the battle in the US continued to take place on the domestic front, and particularly, in the field of legislative action, where the USCBL efforts were primarily directed – a choice of tactics that in the end, however, did not deliver the hoped for results.

After Leahy's 1995 use moratorium, it was Ambassador Madeleine Albright who spurred a whirl of activity and controversy on the landmine issue. After a visit to mine-infested Angola in January 1996, about which she commented, "I've never seen so many one-legged people as I have in Angola" (quoted in Sciolino, 1996), Ms. Albright took it upon herself to change US policy on landmines. She sent a personal letter to the President, the CJCS Gen. Shalikashvili, and the Secretaries of State and Defense, arguing that with the current US policy the elimination of landmines would not be achieved "within our lifetimes" and urged for a new policy (Wareham, 223). Arguably, it was this letter that prompted Gen. Shalikashvili to order a review of Pentagon's policy on landmines that became public knowledge in March 1996.²⁰⁰

Apparently, Gen. Shalikashvili (who was on good terms with Ambassador Albright)²⁰¹ had become "inclined to eliminate all anti-personnel landmines" – a

²⁰⁰ According to Folkerts (1997) the policy review took place from February through May 1996. Albright's letter and the Pentagon policy review became a public issue only after parts of her letter were leaked and appeared in a New York Times article by Raymond Bonner on 17 March 1996; see also Mintz (1996a). Further information from a meeting between Bobby Muller from the VVAF and Albright, which she insisted was off the record appeared in a Washington Post article by Mary McGrory on 21 April 1996. As a result Muller was "angrily denied access to her office" (Wareham, 223). McGrory's article was obviously intended to warn of the solidification of the Pentagon's position that was at odds with the President's and "shame" the latter into assuming a tougher stance against the military.

²⁰¹ The fact that both Albright and Shalikashvili were émigrés from East Central Europe created a kind of bond between them – for example, Albright referred to Shalikashvili as a "fellow Slav" (Albright, 2003: 167). Also, Albright's views on the use of military force were shared by Shalikashvili, who has been depicted as her "close ally" in the Administration (Sciolino, 1996).

position which was made public in a NY Times article (Bonner, 1996; also Mintz, 1996b)²⁰² and spurred several European states among which Germany, the Netherlands, and Austria to change their policies and declare national bans on landmine use in “anticipation of a bold new policy from the US” (ICBL, 1996a). Shalikashvili was willing to push the military bureaucracy on the issue and see how far they could go to accommodate the concerns expressed in Albright’s letter. Thus he gathered the major stakeholders on landmines within the Joint Staff and people from the Office of the Secretary of Defense to discuss the issue. The options that were presented by the Joint Staff Head of Operations were basically three: “the US does not have mines anymore; the US will not have mines in 5 years, or we keep the same way. Option three is not tenable, figure out how to make option one and two happen.” Some progress was made during the discussions, technical fixes that would have allowed compliance with a landmine ban were proposed, and the Army considered giving up some systems (interview 14 NGO).

During the same period VVAF activated its lobbying efforts and worked to solicit the support for a landmine ban from high ranking retired military officers. It managed to garner the support of 15 senior military figures, among whom, the Commander of Operation Desert Storm, Gen. H. Norman Schwarzkopf, former Chairman of the Joint Chiefs of Staff, Gen. David Jones, and former Supreme Allied Commander, Europe, Gen. John R. Galvin.²⁰³ VVAF then paid for a one-page ad in

²⁰² Responding to a letter from the president of Dupuy Institute, Nick Krawciw, in which he was recommending that the US adopt a total landmine ban, Shalikashvili wrote “Concur in the conclusion that the US should support a total ban on APL” (letter reproduced in VVAF, 2000). Krawciw wrote to Shalikashvili in January 1997 to clarify the implications of a quick reaction study the Dupuy Institute had performed at the request of the JCS as part of the review process in April 1996 and offer that the Institute perform more analysis to substantiate the recommendation for a total ban at the time when the Administration was considering the choice between the Ottawa process and the CD.

²⁰³ Mark Perry and Bobby Muller of VVAF circulated an appeal to 38 retired generals who they believed might favor a ban, of whom, 15 signed (Priest, 1997c). Colin Powell, while in favor of a ban, declined to sign the letter because he wanted to give Shalikashvili time to complete the internal Pentagon review (Wareham, 224). In addition to the three generals cited above, the rest included: General William G.T. Tuttle, Jr. (US Army, ret.), former Commander, US Army Materiel Command;

The New York Times to publish an open letter from these generals to President Clinton on 3 April 1996. The letter tried to provide Clinton with authoritative military backing and thus encourage him to resist pressure from within the military establishment and take a bold stance in favor of a total ban. It tackled all the arguments of the opponents of the landmine ban and assured the President that a total international ban was “not only humane, but also militarily responsible,” it would not affect antitank mines or “undermine the military effectiveness or safety of our forces,” nor would it turn into a “slippery slope” to ban other categories of weapons. The unprecedented character of this action made it an international news story (Wareham, 1998: 224).²⁰⁴

As the Pentagon review progressed, hopes among the NGOs about its coming out in favor of a ban ran high. Already in March Timothy Connolly of SOLIC had come out publicly in favor of a total ban, including on self-destruct mines, with an exception only for Korea (Bonner, 1996). Information has also gotten out that the discussions at the Pentagon “even included time frames for a US ban on all mines from as early as 1999 to 2014;” there would only be a “‘muddy’ statement about

General Volney F. Warner (US Army, ret.), former Commanding General, US Readiness Command; General Frederick F. Woerner, Jr. (US Army, ret.), former Commander-in-Chief, US Southern Command; Lieutenant General James Abrahamson (USAF, ret.), former Director, Strategic Defense Initiative Office; Lieutenant General Henry E. Emerson (US Army, ret.), former Commander, XVIII Airborne Corps; Lieutenant General Robert G. Gard, Jr. (US Army, ret.), former President, National Defense University President, Monterey Institute of International Studies; Lieutenant General James F. Hollingsworth (US Army, ret.) former I Corps (ROK/US Group); Lieutenant General Harold G. Moore, Jr. (US Army, ret.), former Commanding General, 7th Infantry Division; Lieutenant General Dave R. Palmer (US Army, ret.), former Commandant, US Military Academy, West Point; Lieutenant General DeWitt C. Smith, Jr. (US Army, ret.), former Commandant, US Army War College; Vice Admiral Jack Shanahan (USN, ret.), former Commander, US Second Fleet; and Brigadier General Douglas Kinnard (US Army, ret.), former Chief of Military History, US Army (Congressional Record, House, May 15, 1997, p.H2776-H2778).

²⁰³ Another who publicly supported the ban was Brian Atwood, the administrator of the US Agency for International Development (see, Atwood, 1996). Patricia Irvin, Deputy Assistant Secretary of Defense for Humanitarian and Refugee Affairs, who was also an advocate of the ban, also left the Administration in 1996.

²⁰⁴ In fact, the action – retired military officers expressing public views with the goal of influencing US policy – was not unprecedented (see, Kohn 2002). What was unprecedented was its defense of NGO goals.

Korea involving a finite exception mandated by the President” (Wareham, 224). The VVAF felt it was close to convincing the Joint Chiefs to agree to a ban (Teague, 2002:24).

However, the information about a draft interagency proposal that became public in mid April did not meet the expectations of the NGOs and advocates in Congress. It envisaged that the US would stop using non-self destruct mines in 2001 and all antipersonnel landmines in 2010, but there would be exceptions for the Persian Gulf region and Korea, as well as for the use of APL in combat search and rescue operations and the extraction of Special Operations Forces. The proposal drew strong criticism from both NGOs that argued that such a proposal would place the US in the same position as China, and Sen. Leahy who declared he would oppose the proposal since the US had to ban landmines “flatly” and “almost immediately” (Lewis, 1996; Graham, 1996). Another bad news for the landmine campaign came at the same time – one of the few people supporting a total landmine ban within the Administration, Principal Deputy Assistant Secretary of Defense for Special Operations, Timothy Connolly,²⁰⁵ was dismissed, as the media speculated, in large part due to the conflict between the course he was pushing for on landmines (favorable to the NGO demands) and the policy preference of the Pentagon (McGrory, 1996; Diamond, 1996).

In view of these discouraging news, the VVAF stepped up their lobbying efforts and on 30 April bought a table for \$60,000 at a White House fundraising dinner for the Roosevelt Memorial just to give the opportunity to Bobby Muller and two of the signers of the NY Times letter, Gen. Robert Gard and Gen. David Jones, to advocate the cause of the ban personally with the President. However, while Clinton said that he wanted to negotiate a ban, “he couldn’t afford a rupture with the Joint Chiefs” and

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asked Muller for help “to get them off [his] back” so that he could move toward a ban – something VVAF had already tried to do by publishing the letter (Mintz, 1996c; CIP, 1999).

After these reactions from ban advocates, it appears that some changes were further discussed and days before the official landmine policy was announced, media reports indicated that exceptions for landmine use were narrowed to Korea and the deadlines for banning mines were set earlier – in 1999 or 2000 for non-self-destruct mines and 2006 or 2007 for self-destruct ones. Whereas some of the media coverage made it appear that the Administration and the military had reached consensus for a comprehensive landmine ban,²⁰⁶ the VVAF and Sen. Leahy reacted negatively to the exemptions, which in their view would make the achievement of an international ban impossible (Shenon, 1996). Despite being aware of the overall content of the policy review, till the very end the NGOs hoped that President Clinton would take some steps to change its direction. When on 10 May they learned details of the review conclusions that Gen. Shalikashvili had taken to the White House, they were bitterly disappointed and outraged. Obviously, the military had yielded regarding non-self-destructing APL (which the policy banned immediately, except those needed for the defense of the demilitarized zone in Korea), whereas it had held fast for self-destructing or self-neutralizing mines for whose use no deadline was set – they were to remain in the American arsenal until alternatives were developed or until an international agreement was reached. It also directed the Services “to begin

²⁰⁶ For example, the Time Magazine from 13 May 1996 announces, “Can a superpower say no to the poor man’s weapon? Clinton and the Pentagon agree it can” and goes on citing senior Pentagon policy makers declaring that, “We’ve all agreed we’re going to have to get rid of land mines... We have to lump them together with chemical and biological weapons. Even though we used them more carefully than other nations, we still agreed to scrap them too.” Even an Army officer opposed to the ban is quoted as saying that though, “There’s no easy way to defend a perimeter without land mines... it’s just politically incorrect to support the use of land mines right now.” Not only does the article claim that “many in the Pentagon [were] already convinced by the antimine argument” but even among the Republicans, despite the reservations of many, “nobody’s willing to take the thing on” because of Elizabeth Dole’s backing of the ban (Fedarko, 1996).

development of tactics and Service doctrine eliminating the need to rely on self-destructing APL in anticipation of prompt international agreement to ban all APL.”²⁰⁷ In these recommendations Sen. Leahy and the NGOs saw nothing but the old military position, lack of a concrete US commitment to an international ban, and “a failure of US leadership.”

Angry about these results the campaigners from USCBL protested that they were not consulted during the policy review and urged the President to reject the advice of the JCS. To deflect criticism, the National Security Council (NSC) “hastily convened a late-night meeting with VVAF representatives” trying to convince them that it was not too late to have their input in the final decision. Ironically, at the same time, the NSC were informed that the President had just signed on the policy proposed by the JCS, which was officially announced on 16 May 1996 (Wareham, 224-5).

So what had happened? The VVAF had focused all of their efforts on convincing Clinton to assume leadership and basically announce a total US ban on landmines in order to make other countries follow suit. They knew the President was personally in favor of a ban – in the margin of Albright’s letter next to the sentence saying “we must get rid of these,” he had written, “I agree with you” (McGrory, 1996).²⁰⁸ However, his troubled relations with the military over avoiding the draft and the issue of gays and lesbians were widely known, as was his reluctance to get into more conflict with them just prior to the 1996 elections. Whereas the landmine ban had some public support (CIP, 1999) it was hardly of a magnitude to compensate for an eventual break with the military. Still, the Administration (and Albright and Shalikashvili, in particular) had set the bureaucratic policymaking process in motion and was pushing the military to

²⁰⁷ The policy also directed the Chairman of the Joint Chiefs of Staff to report annually (beginning in 1999) to the Secretary of Defense and the President his assessment as to whether a military requirement remains for the exceptions and envisaged the demilitarization of “dumb” mines not needed for the defense of Korea by 1999 (DoD, 1997).

²⁰⁸ Reportedly, the President also held an antipersonnel mine on his desk in the Oval office (Wareham, 225).

find ways to comply with a future landmine ban. The various accounts of the process describe it as “a state of war” (quoted in Wareham, 224) and “vigorous debate” on whether the military should swear off the use of mines (Mintz, 1996a). However, as reflected in the several policy drafts that appeared before the final decision was announced, the military was obviously receiving mixed signals from the civilian officials, and in practice, was able to set the actual policy.

The VVAF understood the weak position of the President vis-à-vis the military and his hesitancy to push them on landmines and came up with the Open letter as a way to neutralize military criticism and portray a decision in favor of a ban as both humanitarian and militarily sound. Certainly, the letter was a success but it also focused attention on the controversy and to an extent paved the way for a more public and politicized role for the military that opponents of the ban did not hesitate to push forward.²⁰⁹ Arguably, by addressing the military arguments against landmines, the letter also shifted the debate in the field of their opponents – from predominantly humanitarian concerns, where the NGOs held the upper hand, over to the military utility of landmines.²¹⁰ If Clinton, had to make his decision based on military arguments, it was only natural that when it came to choosing between the opinion of a number of retired generals lobbied by NGOs and the uniformed military in charge of planning and fighting wars, he would side with the latter.

²⁰⁹ As will be shown next, the letter tactic was picked up by right-wing opponents of the ban (e.g. from the Center for Security Policy) and skillfully exploited during the debates on landmines in 1997. The tactic was used by retired generals on other issues as well, for example, regarding space control technologies (CSP, Press Release, “43 of the Nation’s Most Eminent Military Leaders Insist that the U.S. Must Be Able -- And Allowed -- to Dominate Outer Space”, No. 98-P 07, 15 January 1998).

²¹⁰ Military interests necessarily make part of a decision to ban weapons and NGOs need to address that aspect as well (e.g., just prior to the Open Letter, in early March 1996, the ICRC published a study, “Antipersonnel Landmines: Friend or Foe?” written and backed by military experts showing that the military effectiveness of landmines was limited and far outweighed by the civilian suffering they cause). However, whereas military utility was discussed during the international negotiations on landmines, it did not come into the spotlight of media coverage in other countries as it did in the US. Of course, the focus on the military effectiveness and need for landmines can easily be explained by the greater security concerns the US has compared to other, especially some of the leading pro-ban countries.

Arguably, in the end what had stemmed the initial progress of the policy review was the opposition that came from regional commanders. The CJCS Gen. Shalikashvili was willing to deliver a deal that would work for the Administration, many other members of the JCS did not have strong opinions about landmines, and even the Army Chief of Staff did not want to take the lead in the fight against the ban. However, when the input from the regional commanders was requested, Gen. Gary Luck, commanding the US Forces in Korea, strongly opposed a ban, claiming that landmines were indispensable in his war planning and their removal would significantly increase US casualties (Snyder, 2004:9-10; Teague, 2002:16, 24). His position was endorsed by the Pacific Command, and subsequently, by Gen. Luck's successor, Gen. John Tilelli. Drawing on this assessment of the Korean war-planning, the Army and Marine Corps leadership began resisting the landmine initiative and convinced the CJCS to support their view.²¹¹ Eventually, the Air Force Chief of Staff and the Chief of Naval Operations joined the emerging position even though they did not seem to have a large stake in the issue (Snyder, 2004:10).²¹²

Following the policy announcement, the NGOs were not able to sustain media interest in the issue and publicize the international developments that were also taking place. After the CCW Review Conference adopted in May 1996 Amended Protocol II on landmines (which was viewed as especially weak and even a step back from the original protocol in its definition of antipersonnel landmines), the NGOs formed a collaborative relationship with several like-minded states favoring the rapid achievement of a total ban. To this end the Canadian government proposed to organize a working session for interested countries in Ottawa in the fall of 1996.

However, even though the USCBL repeatedly asked the Administration to take

²¹¹ On resistance from the Army and Marine Corps Chiefs of Staff, also Bonner, 1996.

²¹² This explanation is in line with Priest's (2003) overall argument about the growing influence of the regional commanders in chief on US foreign policy.

the upcoming Ottawa meeting seriously, it remained focused domestically and lobbied the government for three policy steps: “(1) turn its export moratorium into a permanent export moratorium; (2) at a minimum, adopt a moratorium on AP mine production; and (3) encourage greater transparency by taking the lead and establishing a global registry for AP mines” (Wareham, 226). These goals were hardly as bold as one could have expected after the controversy over the Administration review policy,²¹³ but no progress on them was made by the end of the year, even though President Clinton remained rhetorically committed to the landmine cause and in his speech to the UN General Assembly (UNGA) in September 1996 called for a worldwide ban on the use, stockpiling, production and transfer of anti-personnel mines and promised to lead the international efforts toward that goal.

As the Ottawa strategy meeting scheduled for October was approaching, the US Administration dismissed it as a “pep rally” and “an exercise in symbolism” (Wareham, 226). Yet, from this “exercise” came the big international breakthrough, when in his closing statement at the meeting, Canadian Foreign Minister Lloyd Axworthy announced that Canada was prepared to hold a treaty-signing conference for a total ban on landmines in December 1997 and challenged states to work toward that goal. While angered by the unexpected Canadian announcement, the Clinton Administration still seemed to share its stated goal. In November, Ambassador Albright introduced a UNGA resolution, originally drafted by Canada, that acknowledged the accomplishments and objective of the Ottawa meeting and called on states to vigorously pursue an international ban on the use, stockpiling, production and transfer of landmines. In December, the resolution passed unanimously with a vote of 156-0 (Wareham, 227).

²¹³ The goals were probably shaped by the Arms Transfer Working Group (a Washington coalition of organizations concerned with arms trade), which was a core member of the USCBL.

1997: Looking for a middle way and losing one's way

Early on in January 1997, the Clinton Administration decided to pursue its goal for a total and a global ban in the Conference on Disarmament (CD) where the big producers and users of landmines were participants instead of supporting the negotiating process launched by the likeminded states in Ottawa. Given the lengthy discussions characteristic of the CD, where decisions could only be reached by consensus, Clinton's choice in practice meant an indefinite delay of any landmine agreement and killing the momentum that had gathered force in Ottawa. To deflect criticism at home, the Administration introduced two modest policy changes – it made the Leahy export moratorium into a permanent ban and capped the landmine inventories at their current levels. In talks with the USCBL, Bob Bell from the NSC assured the NGOs that if discussions at the CD got stalemated, the Administration would shift its efforts to the Ottawa process (Wareham, 228). Pursuing this double approach, the Administration to some extent was also able to deflect public criticism and dampen grassroots mobilization among the NGOs. For example, activists found it very difficult to have to explain to their members the stakes involved in pursuing the issue in the two different fora and mobilize them to call the White House or representatives in Congress to ask that the US join the Ottawa process instead of CD.

As it turned out, the US was not able to place the issue of landmines on the CD agenda due to resistance from countries that thought that it should deal with nuclear disarmament and others that did not want to see attention diverted from the Ottawa process. In June 1997 the CD appointed a special coordinator on landmines to probe state opinions on whether the issue should be taken up by the Conference, who stated in mid August that until the outcome of the Ottawa Process in December was known no steps on landmines could be made at CD (Hubert, 2000: 19-20, Wareham, 228).

Whereas it was obvious that the CD was not working, the US Administration did not give much attention to the developments taking place in the Ottawa Process. US delegates attended the meetings but had no clear guidelines for the negotiations and what positions they should try to promote (interview 11 MIL). In practice, they did nothing more than observe what was going on without making an input in the process. At the Brussels meeting in June 1997, the US delegation was led by a mid-level official, while Ambassador McNamara “conducted aggressive bilateral discussions with country delegations in isolation from the conference at a downtown hotel” (Wareham, 228; ICBL, 1997a: 44).

Given the Administration’s reluctance to expend efforts on working for a landmine ban either domestically or internationally, the NGOs and Leahy decided to try again and push the issue through Congress, hoping to succeed as previously in sidestepping the military and creating the conditions that would allow Clinton to join the ban treaty. After months of lobbying by the NGOs and their congressional allies, in June 1997 Sen. Leahy and Congressman Charles Hagel (R-NE) managed to gather the support of 59 senators and 190 representatives for a “Landmine Elimination Act” seeking to ban any new deployments of landmines beginning in January 2000.²¹⁴ The same day 164 House members sent a letter to Clinton, urging him to support the Canadian initiative for an international ban (Priest, 1997a; Wareham, 229). Even though, in order to address the main military concern, the proposed legislation made an exception for Korea by permitting the President “to delay the application of the ban with respect to the Korean peninsula on a yearly basis” (Congressional record, June 16, 1997), the bill met with very strong and well organized opposition from the military. Following the pattern set by the VVAF Generals’ letter, a barrage of letters to Congress and an open letter to the President from both active duty and retired generals

²¹⁴ The bill was introduced on 12 June 1997.

followed, this time against the pending landmine ban legislation. The chairman of the Foreign Relations Committee Jesse Helms spearheaded the opposition to the landmine bill within Congress, while the right-wing Center for Security Policy (CSP) and his president Frank Gaffney led the assault against it in the media and played a role in organizing the generals' opposition (interview 14 NGO).

On 26 June 1997, the Secretary of Defense, William Cohen, supported by Gen. Shalikashvili, wrote to the Chairman of the Armed Services Committee that DoD strongly objected to the proposed landmine definition and argued that it should be narrowed to "those systems *primarily* designed as anti-personnel landmines" and should also exclude self-destructing landmines (quoted in CSP, 1997b, emphasis in original). On 27 June 1996, Jesse Helms followed with a letter attacking the Leahy-Hagel bill, which was distributed to his colleagues in the Senate, the CJCS, the Chief of Staff of the Army, and the General Counsel of DoD. On 10 July 1997, all the members of the JCS and all of the regional Commanders-in-Chief (CINCs) sent a letter to the Chairman of the Senate Armed Services Committee opposing the Leahy-Hagel bill that became known as the 64-star letter (signed by 16 4-star generals and admirals), finally, on 21 July, 24 retired generals sent an open letter to President Clinton to the same effect.

A lot of the resistance to the ban legislation was stoked by Gaffney's Center, in a series of decision briefs starting on 18 June 1997 (see, for example, CSP, 1997a, 1997b, 1997c, 1997d). Soon the debate between opponents and proponents of the mine ban moved on to the newspapers' pages as well.²¹⁵ However, the arguments that were exchanged were centered on the military utility and need for mines. Even, the legislation's sponsor Chuck Hagel emphasized above all his credentials as a Vietnam

²¹⁵ For some op-eds in the Washington newspapers in June-July (apart from media coverage), see, for example, pro-ban Hagel (1997), Gard (1997), Isenberg (1997a,b), however, the one that strongly makes the humanitarian case is MacPherson, 1997); for anti-ban Cronin and Sahlin (1997), Gaffney (1997), Day (1997).

combat veteran and unwavering supporter of the US military in making the case that the use of mines did not benefit the military (Hagel, 1997).

The NGOs kept trying to win the debate over landmines on the ground of the military. Right after the policy review came out, in June 1996 campaigners lobbied the NSC to assess the role of landmines in Korea and have the war game model, used to justify the need for mines, rerun with more plausible assumptions. Failing to convince the NSC to question the military's results, in August 1997 Demilitarization for Democracy published a study, *Exploding the Landmine Myth in Korea* that pointed out the flawed assumptions and misinterpreted results of the simulation model on which the military's claims against the removal of APL in Korea were based.²¹⁶ A month before that, Human Rights Watch (HRW) and VVAF published a similar study, *In its Own Words: The U.S. Army and Antipersonnel Mines in the Korean and Vietnam Wars*, that questioned the military reasoning behind the US insistence on exceptions for smart mines and Korea (HRW, 1997).

Despite the merits of engaging the military arguments, it seems that the unintended effect of this was that the debate was framed in military terms and its outcome hinged on counting the stars on the shoulders of the generals in support or against a landmine ban and on the ability to flaunt better military credentials. In such a debate, Clinton was obviously deprived of a say, as gradually were the landmine victims and humanitarian organizations as well. The Pentagon supplanted the image of “thousands of innocent amputees gathering to receive prosthetics and training” by the image of “a US soldier pinned down in a foxhole but protected by mines” (CIP, 1999),

²¹⁶ Publicly Clinton had claimed that if mines were removed from the demilitarized zone, North Korea would take Seoul. The study by Demilitarization for Democracy showed that a North Korean attack would be defeated before it reached Seoul “even with [the war game’s] extremely pessimistic assumptions (for example, weather that grounded allied aircraft but permitted a rare fording of rivers; allied refusal to attack North Korean forces during a week of obvious preparation for invasion; and rapid enemy advance despite allied control of the air and of the well-fortified mountainous terrain)” (CIP, 1999).

but as I would argue, not without the unintentional help from pro-ban advocates.²¹⁷

That the debate was framed in this way was hardly due only to Clinton's unfortunate woes with the military and Pentagon propaganda. It was also the result of a certain "militarization" of some aspects of American society that seems to place inordinate value on the status of the military and being tough at all costs (see for example, Sherry, 1995). Indeed, being part of that culture, the NGOs employed the same language and tactics that senior military officers have used before to influence US foreign policy.²¹⁸ The most common critique the NGOs themselves were leveling against Clinton was that he was not living up to his duties as commander in chief, "ha[d] abdicated power" (e.g. Washington Post, 13 Oct 1997) and wouldn't stand up to the military, despite their trying to stiffen his back. In short, he was not tough enough – the common right-wing accusation.²¹⁹ And in the end, Clinton did try to behave tough, however, not by standing up to the generals, but by siding with them and joining their club.²²⁰

²¹⁷ The CIP argument is that the Pentagon fought hard to substitute the argument of force protection for the humanitarian one first established by Leahy, but never managed to "truly reverse" his early success.

²¹⁸ See, Kohn (2002) on the politicization of the military and its public attempts to influence foreign policy decisions. For example, in 1995 soon after retirement a four-star general published an op-ed in the New York Times criticizing US policy on Bosnia, whereas Colin Powell as CJCS was "willing to put forward spin on a policy before the president has formally staked a position." When the first Bush administration was wrestling with the question of whether to intervene in Bosnia, he "gave an impassioned interview... on the folly of intervention" to the New York Times (Keller, 2001). The VVAF Open Letter from the generals was just a further step down the same road that gave undue leverage to the military. The VVAF campaign was probably also shaped by the fact that a lot of the advocacy was carried out by former military people – e.g. VVAF's Bobby Muller; Robert Gard, former president of the National Defense University and a combat veteran of the Korean and Vietnam wars; James Hollingsworth, former US commander in Korea.

²¹⁹ Portrayals in the media went along the same lines – for example, Clinton and Gore "meekly yield to the wrongheaded opposition of the Joint Chiefs of Staff" (NY Times, 21 June 1997); or Clinton should "let the Pentagon and the world know who's boss" (McGrory, 1996). In an advertisement VVAF ran in Washington papers opposing the recategorization of APLs in anti-tank systems as not being APLs, it called the redefinition "Bill Clinton's landmine dodge" (Wareham, 1998: 238). Attacks from the right, on the other hand, portrayed him as a "flip-flop" on landmine policy for his last-minute decision to go to Oslo and his pressure on the military to revise their views (e.g., Gertz, 1997). By far the strongest characterizations of this kind came from Jody Williams who called Clinton "a coward," "Billy," and "a weenie," whose legacy would be that he "did not have the courage to be the Commander in Chief of his military" (quoted in Goldberg, 1997).

²²⁰ See, for example, Priest's (2003: 41-51) description of Clinton's farewell dinner with the commanders in chief at the White House, marking the improvement of his relations with the military:

After the strong military opposition to the Leahy-Hagel bill, its sponsors forwent the vote on it, obviously fearing an unfavorable result (interview 15 NGO), even though Leahy argued that they did so to give the administration time to participate in the Ottawa Process (Wareham, 229).

Following this setback in Congress, the attention of the NGO and the media shifted to the upcoming negotiations in Oslo and the question of whether the US would participate in them. The USCBL sent a letter to the President urging him to “abandon the caveats which constrain your current policy in order to fully participate in ban treaty negotiations” in Oslo in September (Wareham, 230). Still, the NGOs remained wary of the Administration’s approach and preferred that “the US stay outside of the process rather than to contribute to the creation of a treaty full of loopholes, exceptions and reservations” (ICBL, 1997a: 44).

Throughout the year, Sen. Leahy would continuously bring up the question of the Ottawa Process and urge the Administration to participate in it at every possible occasion. Even though the USCBL remained primarily focused on the domestic legislative battle, it did bring up the issue of the Ottawa Process and the international ban to the Administration on a number of occasions (Wareham, 217). The NGO “political and legislative campaign... spent roughly \$ 2 million the first six months of 1997, much of it to produce and air television spots in the Washington market aimed at the handful of decision-makers and members of Congress who mattered on the issue” (Priest, 1997b). For example, on 7 April 1997 the VVAF published an ad in the *Washington Post*, made to coincide with the visit of Canadian Prime Minister Jean Chrétien, in which it announced its intention to intensify lobbying for the international ban scheduled for signature in December. It also began its efforts to seek the support

“Genetically, we’re all 99% the same, the president told his CinCs; if he couldn’t fight them, which he tried to avoid, then he would try to join their formidable club” (p.43).

for the Ottawa ban from House members that resulted in the open letter to Clinton signed by 164 representatives. In addition, campaigners sent thousands of postcards to the White House urging the President to ban antipersonnel mines and sign a treaty in December, and organized public rallies in May 1997 in Washington (Wareham, 217-8).

Nevertheless, the imminent success of the Ottawa treaty and the prospect that the US would be left behind in the same camp with China, Russia, and Pakistan dawned on the Administration only after the end of the Brussels Conference and the failure of the CD to take up the landmine issue in June.²²¹ On 15 August Clinton met with the Secretaries of State and Defense and National Security Adviser Sandy Berger to decide whether they should go to Oslo after the Interagency Working Group could not reach a consensus. Secretary Albright advocated joining the negotiations, whereas DoD opposed participation unless several key issues were changed in the Treaty. After being lobbied by UNICEF, Princess Diana and other ban advocates, Hillary Clinton was rumored to have influenced the President's decision to participate in Oslo, which was announced on 18 August (Wareham, 230-31).²²² The Administration then scrambled to reformulate its positions and tried once again to push the military toward accommodation. In the short period before the Oslo conference in September, very little could be done, however.

The policy formulation process then changed from the bureaucratic interagency deliberations to a very closed and personalized process, in essence, an exchange among a very limited number of people – the President, Sandy Berger and Robert Bell from the NSC, the vice-chairman of the JCS Gen. Joseph Ralston (who was taking the

²²¹ One reason why the landmine issue did not receive enough attention prior to that is that the Administration's chief arms negotiators, including Robert Bell of the NSC, were deeply involved in the fight over the ratification of the Chemical Weapons Convention by the Senate up until late April 1997 (Burkhalter, 1997).

²²² Some have also speculated that Diana's visit to Bosnia in August also influenced Clinton's decision to go to Oslo (Jerry White of Landmine Survivor Network quoted in Monin and Gallimore, 20-1).

lead on landmines at the JCS), and Jan Lodal, Principal Deputy Under Secretary of Defense for Policy (interview 14 NGO). While Berger and Bell were pressing for a ban (Snyder, 2004:14), and Gen. Ralston was probing the possibility of getting rid of the APLs in mixed systems, in the end, the position that emerged was not very different from what had already been agreed on in May 1996.²²³ The Korean exception and the use of mixed anti-tank systems, containing APL for protection, remained the two key issues and the main difference with the 1996 position was that the military dropped its insistence on the use of self-destruct APLs alone, but given the limited operational requirement for such a use, the concession did not amount to much.

The debate in Congress and the media continued, this time with a new focus on the international negotiations. The death of Princess Diana in the end of August focused media attention on the issue and gave additional impetus to the international effort to successfully conclude an international landmine ban, which she had been championing. Arguably, it also contributed to the President's desire to participate in the Oslo negotiations in good faith, and if possible, have the US sign the treaty.

However, opponents of the ban fought back against the prevailing mood in favor of the ban and the Administration's last minute effort to join the treaty. Jesse Helms sent an open letter to Clinton urging him to recall the US delegation from Oslo if the other delegations failed to accept the US "bottom line" positions (Lawson, 1998:93). On 11 September 1997, in an open letter to President Clinton, ten four-star retired generals added their voices to those of the 24 who had opposed a ban back in July. On 13 September, as the US was launching a frantic campaign to persuade foreign governments to agree to its proposals at Oslo, Gen. Shelton, the proposed new CJCS, sent his response to a letter from the chairman of the Senate Armed Services

²²³ The DoD was largely excluded from this process; the NCS would prod the JCS and Ralston would invest efforts in finding a compromise solution, but would not go over the "red lines" which had emerged back in 1996 (interview 14 NGO; Snyder, 2004:14).

Committee's Readiness Subcommittee, underlining the need for a Korean exception and continued use of mixed systems containing APLs (CSP, 1997e,f).

The State Department and the NSC were unwilling to accept the political consequences of staying out of the Ottawa Treaty and pushed for joining the Oslo negotiations on the belief that the Ottawa core group “would go to extreme lengths to bring the US into the treaty” and they would be able to “steer the negotiations toward an outcome that they could live with” (Maslen, 2004: fn. 198, 210). Thus, trying to reconcile both the President’s commitment to a landmine ban and the concerns of the military, NSC senior director for defense policy and arms control, Robert Bell pushed military lawyers to find ways to comply with the treaty provisions. The result was a series of unsuccessful attempts to redefine the meaning of an “anti-personnel landmine” and “anti-handling device” in the treaty text, so as to allow the use of APLs in mixed systems – attempts that were ridiculed both by pro- and anti-ban activists.²²⁴ They provoked a strong response from the NGOs and their slogan, “When is an AP mine not an AP mine? – When it’s American,” was picked up by the media.²²⁵ When the initial American proposals of new definitions faced state resistance, the US

²²⁴ See, for example, CSP (1997g) for the reaction of anti-ban activists who derided the desire to comply with the treaty and depicted it as bullying the military.

²²⁵ For example, the proposal of the US delegation from 8 September 1997 featured the following definitions:

1. “Anti-personnel mine” means a mine designed to be exploded by the presence, proximity, or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, as well as any anti-handling devices associated with those mines, are not considered anti-personnel mines.
2. “Mine” means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.
3. “Anti-handling device” means a device or submunition intended to protect a mine other than an anti-personnel mine and which is part of, linked to, attached to, placed under, or deployed as a constituent element of a munition containing the mine and which activates when an attempt is made to tamper with the mine, provided that any submunition deployed as a constituent element of a munition containing the mine has self-destruction and self-deactivation features in compliance with paragraph 3(a) of the Technical Annex to the Protocol on Prohibitions or Restrictions on the Use of Mines. Booby-Traps and Other Devices as Amended on 3 May 1996, whether or not such mines are remotely-delivered.

(Diplomatic Conference on an International Total Ban on Anti-Personnel Land Mines, APL/CW.9/Rev.1, 8 September 1997, reproduced in ICBL report, Oslo Conference, p. 32, emphasis in original)

delegates tried another one that would require only the addition of “or near” after “placed under” in the original definition of “anti-handling device” which read “a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine” (Lenarcic, 1998: 70). The ICBL response was “Near is Too Far” (Williams and Goose, 1998: 44). In the words of Jody Williams, “this one word would have had the same effect as putting another single word, the word ‘not,’ before the word ‘banned’ throughout the treaty” (CIP, 1999). As it turned out, state delegations opposed any such changes in the treaty text as well.

The other core issue for the US was Korea and some states, to the consternation of the NGOs, were more willing to accommodate the American concerns about it. The US started by demanding an explicit and indefinite exception in the treaty for the use of landmines by the US forces in Korea (August 1997 letter to the negotiating states from Albright, reproduced in ICBL, 1997b: 20). After that was rejected as unacceptable by the other countries, the US proposed that a transition period of 9 years from the time when the treaty entered into force be allowed for Korea. Canadian Prime Minister Jean Chrétien offered a counterproposal: “to allow up to a nine-year delay in carrying out the treaty for any signing country that declares it needs mines for an urgent defense need” (Sanger, 1997). The US accepted the offer that would have the extension period start upon signing of the treaty instead of its entry into force, even if that shortened the period by approximately 2 years (White House Press Briefing, 17 Sept 1997).

Thus in the course of the negotiations, the US dropped its insistence on a specific exception for Korea, but demanded two additions that would have still allowed it to use landmines there: first, a clause “providing individual states an option of deferring

compliance with certain treaty provisions for nine years from signature,”²²⁶ and second, a modification of the original clause that does not allow withdrawal from the treaty in times of armed conflict, which would make clear that “this restriction would not apply if the withdrawing party or its ally is a victim of armed aggression in violation of the UN charter” (US proposal, 13 Sept 1997, reproduced in ICBL, 1997b: 36).²²⁷ However, states were not willing to accept these US conditions and Canada did not manage to gather support even for its counterproposal. Nevertheless, on 15 September, Clinton insisted on a 24-hour extension of the negotiations to make one more attempt to lobby state governments to agree to the exemptions and include them this time not in the text, but as an annex to the treaty (Priest, 1997b) and reportedly was close to joining the treaty.²²⁸

The NGO community saw in all these American attempts a desire to torpedo the treaty and launched a vigorous public campaign that attacked the US position and insisted on “no exceptions, no reservations, and no loopholes” (Hubert, 2000:25).²²⁹ They also vigorously lobbied state delegates to oppose the US demands (interview 38 NGO). When the Canadians asked for a 24-hour extension of the negotiations in a last

²²⁶ In practice that meant that the US would have 19 years for development of alternative technologies before it would be required to have cleared the mines in Korea.

²²⁷ Initially, the US had demanded that the clause that prohibited withdrawal be altogether deleted (White House Press Briefing, 17 Sept 1997).

²²⁸ It seemed that the US had decided to drop its insistence on APL in mixed systems and agreed to the Canadian offer to find a way to use anti-handling devices connected to the AVMs. At 11pm on the night when the 24-hour extension was running out, Sandy Berger called Axworthy saying, “[the US] would likely be in.” However, a couple of hours later a second call announced the final decision that due to opposition inside the Beltway, the US would not sign (Axworthy, 2003: 147).

²²⁹ Despite the hype around the US conduct at the Oslo conference, which the NGOs rightly saw as a threat to the integrity and strength of the treaty, it does seem that the motivation for the US move was to be found in Clinton’s desire to have the US join the treaty (while at the same time dealing with some of its security concerns) and not in an alleged attempt to “torpedo” the treaty. After it was signed, the administration didn’t try to subvert the treaty and acknowledged that it was “a very significant accomplishment” (Eric Newsom, head of the US Oslo delegation, quoted in Bonner, 1997), “a great accomplishment” in the words of Robert Bell (White House Press Briefing, 16 Sept 1997). Sen. Leahy also characterized the last 48 hours of the Oslo negotiations as “a genuine attempt to break the impasse” (Wareham, 235). Clinton also stated that “he had ‘a lot of sympathy’ for the countries that had agreed to move ahead with the treaty and that he wished ‘we could sign the Oslo agreement’” (Myers, 1997). Later with his 1998 presidential policy directive, he aimed at signing the treaty by 2006.

effort to bring the US onboard, the ICBL sharply criticized this move and went out in the streets to protest against an eventual “sell-out” by some countries (Williams and Goose, 1998: 44; ICBL, 1997c). The result was that despite the ICBL fears, Canada and the rest of the states held up to their commitment and did not accept the American proposals.

After this blow to the US international prestige and the bitter disappointment at being spurned by his European allies,²³⁰ the President turned to his domestic audience and surrounded by his senior military officers announced that he refused to sign the treaty because it would expose American soldiers to risk: “there is a line that I simply cannot cross, and that line is the safety and security of our men and women in uniform” (Bonner, 1997) – a decision that was warmly applauded by the military and right-wing Republicans.²³¹ All of sudden the President earned the military’s respect, or at least for a while. Still, the President tried to keep up his commitment to eliminating landmines and win the support of the NGO community as well. Thus, parallel to announcing his refusal to join the Ottawa treaty, he promised to continue “to lead the world toward the elimination of anti-personnel land mines” and redouble efforts to reach a global ban through the Conference on Disarmament, and made public a new US landmine policy on landmines (Defense Issues, 1997). The policy increased funding for demining programs and directed the military to end the use of antipersonnel land mines by 2003 everywhere in the world except Korea, and be ready

²³⁰ According to President Clinton, the Oslo conference was determined to pass “the strongest possible treaty... partly because some people at the conference just wanted to embarrass the United States or bully us into signing the treaty as it was.” He further wrote, “I hated not to be part of the international agreement because it undermined our leverage in trying to stop the manufacture and use of more land mines” (Clinton, 2004:765).

²³¹ Jesse Helms, for example, praised the President for his “courageous act” (Priest and Trueheart, 1997), Gen. Joseph W. Ralston, the vice chairman of the JCS chimed in, “The Joint Chiefs of Staff feel very, very happy about the president’s decision...It was courageous” (Priest, 1997b); the right wing CSP commended him for doing the “right thing” and 12 retired generals sent an open letter to Clinton commanding him for resisting pressure (CSP, 1997h). Major newspapers such as *Washington Post*, *Washington Times*, and the *San Diego Tribune* also supported Clinton’s decision not to sign the treaty, whereas *New York Times*, *USA Today* and *Los Angeles Times* critiqued it (Wareham, 233).

with alternatives for Korea by 2006. The NGOs welcomed the policy as “a step forward” in that it stipulated deadlines for ending the use of mines – something the NGOs had long been asking the Pentagon to do. However, as it turned out the policy actually excluded APLs in mixed mine systems – the key issue for the NGOs – since according to the new understanding of the Administration they were not APLs but “explosive devices” – a definition that drew NGO criticism and was denounced by Sen. Leahy in the Senate but got very little media attention (White House Press Briefing, 17 Sept 1997; Trueheart, 1997; Congressional Record, 1997).²³² In a final gesture to the NGOs, Clinton appointed Gen. David Jones (a ban advocate and signer of the VVAF 1996 open letter) as special advisor to the President and the Secretary of Defense for issues related to landmine policy.

However, the goal of the USCBL and Sen. Leahy remained the US signature on the treaty in December. Leahy pledged to work for passing legislation that would ban landmines (Priest and Trueheart, 1997). The NGOs decided to organize a “Ban Bus to Ottawa” that would travel from California to Ottawa along a route that took into account “key congressional districts, locations of landmine producers, and sources of grassroots support.” The ride started on 27 October and finished on 1 December in Ottawa, after having made over a hundred presentations in 75 cities along the way. In addition, in December the Afghan Campaign to Ban Landmines and Save the Children, USA delivered to the President over 25,000 postcards featuring artwork by Afghan children. Arguably, the major boost to the campaign that highlighted the work of the ICBL and the importance of the upcoming signing conference in Ottawa came on 10 October with the announcement of the award of the Nobel Peace Prize to Jody Williams and the ICBL (Wareham, 234). Whereas all of this did not change the

²³² VVAF ran advertisements in Washington Papers, calling the redefinition “Bill Clinton’s landmine dodge” (Wareham, 238). One article that focused on the problem in the media is Priest (1997d).

American decision not to join the Ottawa Treaty in December, it did make clear to the Administration once again how badly they had dealt with the problem.²³³

1998: last efforts with no lasting effects

The Administration tried to do what it could to prove its serious commitment on the landmine problem. On 21 October 1997, Secretary Albright announced initiative “Demining 2010,” which aimed at generating financial support from private and public sources in order to increase funding for humanitarian demining five-fold, to \$1 billion per year. The position of US Special Representative for Global Humanitarian Demining was created as well and Karl Inderfurth was appointed to it (Wareham, 239).

Opposition to the ban legislation in the Senate was revived in February 1998 when the Chairman of the Foreign Relations Committee, Jesse Helms organized a hearing on the military implications of landmine restrictions and invited four retired generals opposed to a ban to testify (CSP, 1998a,b). But the military was strongly opposed not only to any new initiatives that might restrict the use of US landmines, but also to the one-year landmine use moratorium that was passed in 1995 and was

²³³ Reportedly, upon learning of the Nobel Prize award to Jody Williams, Clinton had no idea who she was. The only ban activist he knew was Bobby Muller. He had not been advised that Jody Williams was nominated for the prize either (interview 15 NGO). If that was true, however, it shows not only the bad work of Clinton’s advisers, but more damningly, bad work by the NGO campaigners in the US and their too narrowly focused legislative campaign that failed to convey the picture of the larger movement, which might have made a difference in Clinton’s decision, had it been made clear to him in time. A sense of nonchalance about the US is conveyed also by Williams at the end of the Oslo conference, “We hope President Clinton will take his confused internal policy home and fix it. But that is not our problem.” (Priest and Trueheart, 1997). One reason for that is the strategy, which the ICBL followed to get on board the states with worst landmine problems on the ground. In Steve Goose’s words, “We want to bring [the US] in, of course,” “But I don’t think they are going to create a humanitarian disaster” (Bonner, 1997). Another possibility would be that NGOs hoped for an international boomerang effect in the US, but obviously did very little to make it happen.

due to enter into effect in February 1999. The Pentagon was pushing for its repeal at the same time that the Administration was working to reshape further its landmine policy. In February, it was leaked that the NSC had consulted with the JCS about a draft of a new presidential directive on landmine policy that aimed at creating the conditions for the US joining the Ottawa Treaty in the future (CSP, 1998c).

The military and Republican representatives in the House have been fighting against the use moratorium since its passing.²³⁴ However, the opposition became more concerted as the moratorium's entry-into-force date approached and the Administration considered a revision of its landmine policy. In March 1998, Gen. Tilelli, commander of US Forces Korea, testified before the Armed Services Committee and conveyed his concerns with the upcoming moratorium (Congressional Record, 1998a). In April, a Pentagon report to Congress examining the implications of the moratorium argued against it, due to the threat that non-use of AP mines would pose to Seoul and an estimate that allied casualties would rise by 40 percent under such a scenario (CIP, 1999). The report was followed by a letter from Secretary of Defense William Cohen and the CJCS Gen. Henry Shelton to the Chairman of the Senate Armed Services Committee, Strom Thurmond. In it they expressed their "grave and substantial concerns" that the moratorium "constitute[d] an unacceptable risk to our troops and threaten[ed] mission accomplishment" and asked for a provision in the defense authorization bill that would allow the Secretary of Defense to waive it. Since the moratorium actually permitted the use of AP mines along international borders and in demilitarized zones, this time military arguments focused on the need for AP mines in the case of an Iraqi attack against Kuwait or Saudi Arabia (Myers, 1998).

²³⁴ In the two years after it was signed into law, "Republican opponents of the moratorium in the House have introduced legislation to reverse it in the Defense Department's authorization bill." Each time, however, "the Senate has refused to take it up" (Myers, 1998).

Eventually, Sen. Leahy and Rep. Evans agreed to permit the waiver in exchange for a Presidential Decision Directive (PDD) stating an intention to sign the Ottawa Treaty. The deal was struck by Leahy, Sandy Berger, and Gen. Ralston, largely without the participation of the military (interview 14 NGO; Congressional Record, 1998a).²³⁵ The PDD was never made public but its core provisions were communicated in a 15 May letter from Sandy Berger to Patrick Leahy.²³⁶ There were three major steps forward from the September 1997 directive – the administration had dropped its insistence that APLs in mixed systems were not mines, and thus they were covered by the new policy; second, it pledged to search for alternatives not only of non-self destructing and self-destructing mines, but also of mixed systems; third, it had made a clear commitment to sign the Ottawa treaty, even though it was conditioned upon the finding of alternatives to mixed mines.²³⁷

In June 1998 the Senate agreed to a presidential waiver of the moratorium, with the addition of a Leahy amendment providing funding and a mandate for two studies on alternatives to mines, to be commissioned by the Pentagon to independent research institutes (Congressional Record, 1998a; CIP, 1999).²³⁸ Leahy also tried to include in his amendment language that would reaffirm the policy directed by PDD 64 that the

²³⁵ According to CSP (1998d) Ralston had not even consulted with the rest of the Chiefs of Staff.

²³⁶ The PDD committed the US to: first, destroy by 1999 all of its non-self-destructing APLs, except those needed for Korea; second, stop the use of all, including self-destructing, APLs outside of Korea by 2003; third, aggressively pursue the objective of having APL alternatives ready for Korea by 2006, including those that self-destruct; and fourth, “search aggressively for alternatives to our mixed anti-tank systems by (a) actively exploring the use of APL alternatives in place of the self-destructing anti-personnel submunitions currently used in our mixed systems and (b) exploring the development of other techniques and/or operational concepts that result in alternatives that would enable us to eliminate our mixed systems entirely;” and finally, PDD 64 committed the United States to “sign the Ottawa Convention by 2006 if we succeed in identifying and fielding suitable alternatives to our anti-personnel landmines and mixed anti-tank systems by then” (Samuel Berger’s letter, reprinted in Congressional Record, 2004a).

²³⁷ Importantly, the deadlines for stopping the use of non-self destructing and self-destructing mines, including in mixed systems, out of Korea did not depend on the finding of alternatives. The point has been acknowledged by right-wing opponents of the ban at the time when Berger’s letter became public (CSP, 1998d). That has also been Leahy’s argument, but in practice, the lack of available alternatives has been among the major arguments justifying the change in landmine policy under the Bush administration.

²³⁸ The institutes proposed by Leahy were the National Academy of Sciences and Rand.

US would sign the Ottawa Treaty “as soon as practicable,” but his efforts were met with a campaign from retired military officers and some Republicans against any language that would imply a ban on landmines.²³⁹ On 16 June 1998 16 retired generals sent a letter to the Senate and its majority leader Trent Lott, expressing their concern about the presidential directive and urging against the adoption of any legislation that would ban the use of self-destructing mines and any mines in Korea.²⁴⁰ Leahy eventually decided to drop the language that referred to the US intention to sign the Ottawa Convention when Sen. James Inhofe (R-OK) put forward an amendment that would have barred U.S. signature of the treaty without the written approvals of the Joint Chiefs of Staff and the unified combatant commanders that “the signing of the Convention is consistent with the combat requirements and safety of the armed forces of the United States” (Congressional Record, 1998b).²⁴¹

Thus, with PDD 65 President Clinton presumably set the course for the US to join the Ottawa Treaty in the not-too-distant future. The policy fell short of the ultimate goals the NGOs had set, but in light of the legitimate (even if sometimes exaggerated) US military concerns compared to that of other, especially some leading pro-ban countries, as Canada, Belgium and Austria, it did represent a major step forward and a good balance between humanitarian and military interests, as understood by the administration.²⁴²

²³⁹ The exact language in the amendment read: “It is the policy of the U.S Government to sign the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction as soon as practicable” (Congressional Record, 1998b).

²⁴⁰ After Sen. Leahy responded to this letter and challenged its assertions, follow up letters from three generals were sent (see, Congressional Record, 1998b and a series of decision briefs and press releases from CSP in June-July 1998).

²⁴¹ The amendment required a written certification to the Senate Armed Services Committee and the House Committee on National Security.

²⁴² In fact, some people personally in favor of a ban were sympathetic to the dilemma the US faced. See for example, statements by Michael Ignatieff and Adam Roberts in Monin and Gallimore (2002). There are a couple of points commonly questioning the extent to which military concerns were sincere and well grounded – first, arguments about military requirements were just a cover for opposition to the ban out of fear that it would set a precedent and invite more attempts at limiting a series of weapons such as

Whereas the NGOs certainly welcomed the US funding for demining, in the policy realm most saw Clinton's commitment to the problem of landmines and the issue of PDD 64 in 1998 as little more than rhetoric and handing over the issue to next administrations for decision. Nevertheless, many were still hoping that he might make a bold step and sign the treaty just before leaving office and in the summer of 2000 NGOs made a last-ditch effort to persuade him to do so and one hundred members of congress sent him a letter to the same effect (Friends Committee on National Legislation (FCNL), undated; HRW, 2000b,c). Again, NGOs, and VVAF in particular, were placing the emphasis on disproving military arguments and thus providing the military grounds on which President Clinton could make the decision to sign the treaty. Over the span of the spring and summer of 2000, VVAF commissioned and published four studies on the utility of mines in general, and in Korea in particular, as well as on the military consequences of landmine restrictions (Dupuy Institute, 2000a,b,c; Rossiter, 2000). Apparently, the issue stayed with Clinton as well. On his last full day as President, he issued a statement on landmines emphasizing the US contributions to demining and efforts to find alternatives to landmines and "asked the new administration to continue our global demining effort for 10 more years" (Clinton, 2004: 949). Once again that fell far short of NGO's expectations and was not enough to consolidate the landmine policies instituted under his presidency. As it turned out, with the coming to power of the Bush administration all the significant policies regarding the search for alternatives to APLs in mixed systems and eventually joining the Ottawa Treaty would be overturned.

"artillery projectiles, mortar and tank rounds, grenades, bombs or submunitions that may fail to detonate, leaving in place unexploded ordnance" (for example, CSP, 1997a), and second, the defense of Korea, on which most of the security interest arguments focused, was not such a big concern (and one on which accommodation in the Ottawa treaty could have been reached), but retaining the mixed systems.

2001-2006: The usual NGO refrain that the government doesn't bother to hear

During George W. Bush's Presidency, the NGOs continued with their attempts to muster military support for their campaign to have the US accede to the Ottawa Convention. After Bush took office in 2001, 8 generals and admirals sent him a letter arguing that antipersonnel landmines "are outmoded weapons that have, time and again, proved to be a liability to our own troops...We believe that the military, diplomatic, and humanitarian advantages of speedy US accession [to the Mine Ban Treaty] far outweigh the minimal military utility of these weapons." (USCBL, 2003). This letter was followed by a similar one from 500 war veterans from all US states.²⁴³ In November 2001, as information about the Pentagon recommendations for the Administration's review of landmine policy became available, HRW also sounded the alarm and urged policy-makers to consider what was the real military utility of landmines (HRW, 2001a).²⁴⁴ Legislators mobilized as well and in December 2001, a letter from 124 members of the House of Representatives was sent to Bush urging him to "redirect the landmine policy review to reflect the need for the elimination of this outmoded, indiscriminate weapon from the U.S. arsenal," and at a minimum, not to reverse existing U.S. policy on the issue (quoted in FCNL, undated).²⁴⁵ Finally, as it

²⁴³ In March 2001, VVAF commissioned yet another study of the consequences of banning, this time, antitank mines that was ready in June. The study concluded that a total ban on all "dumb" mines (antipersonnel and anti-tank), including those in Korea, was a sensible option, but defended the usefulness of "smart" antitank mines (Dupuy, 2001).

²⁴⁴ As previously, the focus was almost entirely on the military arguments about landmine use. HRW brought to the attention of policy-makers questions such as, "Do Mines have a Role on the Modern Battlefield? How Much Time Do Antipersonnel Mines Buy? What is the benefit that antipersonnel mines provide in "protecting" antitank?," that were then subdivided into numerous detailed technical and operational questions. The memorandum concluded by asserting that there is no such thing as a humanitarian mine and outlined the international position of the US on the issue (HRW, 2001b).

²⁴⁵ It is not clear whether that lobbying played a role in delaying the announcement of the new landmine policy. Whereas the new policy was announced in early 2004, it was already formulated in 2001, but

became clear that the Administration's review process was about to be completed, the USCBL made another attempt to influence Bush's final decision and sent him a letter countering the military arguments for continued use of landmines and urging the President to join the Ottawa Convention (USCBL, 2003).

However, calls from NGOs and legislators were left unheeded and in February 2004, the Administration announced its new landmine policy that went back to the bottom-line positions of the military from the period before May 1996. It did away with all elements of Clinton's policy (stop the use of persistent landmines outside of Korea by 2003, join the Ottawa Treaty by 2006, and find alternatives to all, including self-destruct mines in mixed systems). The policy focused instead on eliminating the threat of all persistent (non-self-destruct) mines, including anti-tank ones. Thus it pledged to stop the use of all persistent mines anywhere in the world after 2010 and use them outside of Korea before this deadline only with Presidential authorization. However, no restrictions were placed on the use of "smart" mines. In addition, the Administration asserted that the US would continue to develop self-destruct and self-neutralizing mines and envisaged a 50% increase in the US Humanitarian Mine Action Program funding (US Department of State, 2004).

In 2005, the Pentagon proceeded with plans to start the production of a new, advanced landmine system, "Spider". The system was a part of Pentagon's program to develop landmine alternatives and was made of a network of command-detonated munitions. However, it also included a battlefield-override feature that could switch the landmines to a victim-activated mode that would turn them into conventional landmines prohibited by the Ottawa Treaty.²⁴⁶ For years, NGOs had been alerting the

DoD officials have claimed that the delay in the announcement was due to the low priority of the issue for the Administration (interview 13 GOV).

²⁴⁶ The "Spider" system is "a network of radio-controlled landmines which '[detect] intruders and [alert] the field operator, who may then engage a hostile target or warn off a noncombatant.'" The "man-in-the-loop" functionality requires human intervention before a mine can be detonated, but this

public and policy makers to the inherent indiscriminateness of the battlefield-override feature in the new mine alternatives. To their satisfaction, in December 2005 the Congress delayed the Pentagon's plans by including a last-minute provision in the 2006 Defense Appropriations Bill, which required the Secretary of the Army to conduct a review of all new landmine technologies and report to Congress on the possible indiscriminate effects of these new systems before their full-rate production started (USCBL, 2006a).

Even though the Pentagon had not provided the requested report to Congress, in 2006 information got out that it had awarded contracts to Alliant Techsystems and Textron Systems for the production of "Spider". The USCBL responded with an action alert to its members urging them to write to congressmen and "require that new victim-activated mines, which injure soldiers and children with impunity, not be produced" (USCBL, 2006b). In August 2006, senators Leahy and Arlen Specter (R-PA) proposed the Victim-Activated Landmine Abolition Act that aimed at prohibiting the procurement of landmines or other weapons designed to be victim-activated (Komp, 2006; HRW, 2006e).²⁴⁷ The corresponding bill was introduced in the House on 26 Sept 2006 by Rep. James McGovern (D-MA), co-sponsored by Rep. Phil English (R-PA). It still remains to be seen if the congressmen would be able to garner the bipartisan support needed for the passage of the bill in the Senate and the House.

mode could be switched off and the mines could then be exploded by the presence of humans without a decision from a military operator (FCNL, 2006).

²⁴⁷ The Bill prohibits only the procurement of such weapons, but does not ban the use of already procured victim-activated mines or require the clearance of already emplaced ones.

Lessons from the landmine saga

First, an obvious conclusion from the landmine campaign in the US is that the case confirms arguments about the significant role the military and militaristic culture play in US policy-making and society at large (Sherry, 1995; Bacevich, 2005; Lutz, 2002). In this case, the military factor went hand in hand with another characteristic of American culture – the belief in the progress of science and technology and their ability to improve society and solve its moral dilemmas (Sherry, 1987).

Cognizant of the force of the military and its arguments to define the US position on the subject, the NGOs tried to disprove their validity. In doing so, however, they bought into the dominant military frame of reference, instead of opting out of it and putting the emphasis on a different point of view that privileges the humanitarian over the military aspects of the problem. Thus, time and again they tried to meet the military on its own ground, and time and again they obviously lost the battle. The generals' open letter to Clinton was an innovative, and according to the NGOs, highly successful lobbying tactic (interview 38 NGO). Yet, as I have argued, it backfired against them both by reinforcing the tendency to frame the discourse on landmines in military terms and by opening the door to politicization of the issue and more active involvement of military opponents in the ensuing debate.

The NGO campaign was too narrow in another way as well. It focused its campaigning primarily on Washington and lobbying senators, House representatives and government officials. It didn't invest a lot of energy in mobilizing the public and grassroots followers even though public opinion would have been a strong factor in motivating Clinton's decision. Finally, concentrating on the domestic front appears to have limited the NGOs' ability to highlight the unprecedented international

mobilization on the issue and use it as an additional tool in lobbying policy-makers in the US. Thus, embedded in their domestic context, the NGOs failed to overcome the military opposition and sway Clinton to their side.

The pervasiveness of military considerations was exhibited in another way as well. As a commander in chief, Clinton could have tried to impose its preference for a total landmine ban over military opposition. However, he feared a rupture with the military, which could have cost him dearly in the 1996 elections and so he didn't challenge their position in the landmine policy review conducted in the spring of 1996. This preoccupation about breaking up with the military was born out of a personal vulnerability of the president due to his avoidance of the draft during the Vietnam War and the repercussions he suffered after bringing up the issue of homosexuals in the army early on in his term. Nevertheless, Clinton's "vulnerability" could only have mattered in the context of a political culture where military service was of great importance to voters. Personal idiosyncrasy cannot fully explain the prominence of relations with the military for Clinton. It has to be seen in the light of the perception of a weakness of the Democratic Party in matters military, irrespective of the military credentials of its leaders, which combined with the predominantly conservative values among military officers (which is hardly unique to the US, however) put it on the defensive when dealing with the uniformed corps.²⁴⁸

²⁴⁸ A 1998 poll showed that 64% of the uniformed military were Republican supporters – probably an underestimated figure due to the reluctance of officers to reveal their preferences out of concern for the outcry that the exact figure, that in reality may reach about 85-90%, would spur (Kohn, 2002: fn. 75). Understandably in light of the above data, draft avoidance and lack of military service among prominent Republicans have not become a problem in their dealings with the military. Thus one could argue that the problem was not so much about Clinton's personal problems with the military, as about problems that exist between the military and the Democratic Party, and which allow the military to exert a constraining influence on Democratic policies more than it could on policy-making under a Republican president, even when the positions of Republican administrations and the military diverge. The problems between the Democratic Party and the military originate in the post-Vietnam War period when the Democratic Party distanced itself from the military and used anti-military rhetoric – a fact the Republican Party exploited (and manipulated ever after to its advantage) and on its own worked toward creating solid Republican support among military officers (Kohn, 2002; Bacevich, 2005).

Whereas seen from this angle, the landmine case fits the argument about “militarization” of the American society (Sherry, 1995),²⁴⁹ the outcome of the NGO campaign was not preordained by culture. Indeed, “militarization” is only one of the forces that shape American society. On the other end of the spectrum one finds the belief in liberty, human rights, and anti-war sentiments (e.g. Lieven, 2004) that the NGOs represented in the landmine case. They did not lack public support at the beginning of the campaign and in 2004 polls showed that 80% of the Americans favored US support for the Ottawa Convention (USCBL, 2004). As already mentioned, the NGOs did not manage to mobilize this alternative force in American society to counter the influence of the military, but instead got enmeshed in the arguments spun by it.

Finally, the cultural and idiosyncratic factors played out within a system of fragmented government that is characteristic of the USA and that put the last stumbling block before a pro-ban policy. Even if the NGOs had succeeded in convincing Clinton, there were institutional obstacles that would have hampered the implementation of his decision. A more confident president could have challenged the military on an issue he felt strongly about, and in this case signed the Ottawa Convention. However, his signature would have had little effect in a Senate where the chair of the Foreign Affairs Committee supported by the military vowed not to allow the discussion and ratification of the treaty, as Jesse Helms had. Thus, the society-dominated domestic structure of the US ensured that various societal and institutional forces, including the military, would vie for shaping US foreign policy on the issue, and the making of the policy itself would be placed in the hands of several actors with conflicting interests. The military was able to play off the executive and legislative

²⁴⁹ Following Sherry’s definition, “militarization” is understood as “the process by which war and national security became consuming anxieties and provided the memories, models, and metaphors that shaped broad areas of national life” (Sherry, 1995: xi)

branches of government against each other in order to achieve its goals (see, Avant, 1994; Kohn, 2002; Bacevich, 2005: 30) and the Senate held the final veto power over the US decision to support the landmine ban even if it did not have to exercise it in this case.

Cluster munitions: the limits of US engagement and lessons learned from the landmine campaign

The Kosovo bombing campaign reveals a problem

In the case of cluster munitions the NGOs (Human Right Watch and Landmine Action, UK in particular) and the ICRC were the first to recognize the problem and bring it to the attention of governments. As with landmines before, the US was again the first to adopt some domestic measures aimed at minimizing the aftereffects of unexploded cluster submunitions that NGOs and the ICRC had highlighted as the major problem of the weapon.

Even though the Mennonite Central Committee had been calling for a ban on cluster munitions for years, the issue surfaced in the media and in the work of Human Rights Watch (HRW) as a result of the 1999 NATO bombing campaign of Serbia during which the use of cluster bombs was identified as one of the major causes of civilian victims. The issue came into the spotlight of the media, especially after several cluster bombs went off course and fell in the center of the Serbian city of Nis killing many civilians and damaging a city hospital.

The Nis incident was the critical point that opened a window of opportunity for Human Rights Watch to create public awareness of the problem of cluster bombs and mobilize opposition to it. In fact, before the incident, several times in early April cluster bomb attacks were reported and shown at US DoD briefings without provoking any questions from reporters.²⁵⁰ The first questions about the use of cluster munitions were raised in reference to a statement made by Senator Leahy that US planes were dropping anti-personnel and anti-tank landmines, which was rebutted by the Assistant Secretary of Defense Kenneth Bacon, while emphasizing the difference between air-dropped mines and cluster bombs (DoD, 1999c). Only after HRW issued in May 1999 a press release and a background paper condemning the use of cluster bombs in Yugoslavia, followed by a letter to the NATO Secretary General, raising among other things, concerns about the employment of cluster bombs (HRW, 1999a,b,c), did reporters at the DoD briefings, in particular, start asking more pointed questions about the use of these weapons, referring, among other things, to the HRW statement (DoD, 1999d,e; NATO, 1999).

Human Rights Watch and its work on cluster munitions

The problem of cluster munitions revealed in the Kosovo campaign left its mark on the Air Force and DoD. In contrast to the landmine campaign when they could argue that the US military was a responsible user of weapons that did not create humanitarian problems, now the US military and the Air Force, in particular, became the target of media questions and NGO attacks for causing civilian deaths with

²⁵⁰ The reports mentioned attacks against a troop staging area, tanks, and British use of cluster bombs through clouds (DoD, 1999a,b).

weapons they called “*de facto* mines.” Given this framing of the problem, the most frequent reaction of DoD and NATO officials when pressed on the question of cluster bombs was to argue that the weapons were “well within the confines of international law” (DoD, 1999c), they were “not mines,” (DoD, 2000: 90) and their duds are “like any other unexploded ordnance any place in the world” (DoD, 1999e). The legality of cluster bombs was always emphasized – even if a question was only, “are you using cluster bombs?” it engendered an almost knee-jerk reaction – “yes, but they are not illegal.” A similar reaction came when a reporter asked a more pointed question about Cluster Bomb Unit (CBU) – 87, the type most commonly used by the Air Force: Had military lawyers “vetoed occasionally the use of CBU-87s?” The answer was: “Never. It’s not illegal. It’s totally within the law of armed conflict, and it’s legal in the international community to use that weapon” (DoD, 1999e).

These statements testify to the effectiveness of the prior landmine campaign not only in stigmatizing landmines, as reflected in the acceptance of US military officers that mines were illegal weapons, irrespective of the fact that the US had not signed the Ottawa Convention and that it is questionable whether their use is banned under international customary law. It was also effective in opening up new opportunities for engaging the military on the use of other weapons. Whereas the much more extensive use of cluster bombs during the Gulf War in 1991 went almost unnoticed by NGOs and media alike, in the wake of the Kosovo campaign the military found itself on the defensive, having to justify their use, and eventually to suspend it after Clinton issued an order to that effect at the height of media and NGO criticism following the incident in Nis.²⁵¹

²⁵¹ Among the critics of the use of cluster bombs were also the UN High Commissioner for Human Rights Mary Robinson and former US President Jimmy Carter (BBC, 1999; CNN, 1999; Carter, 1999). Days after the Nis incident Clinton issued an executive order to halt the use of cluster bombs (HRW, 2000). The decision was made following two incidents of off-target impacts of cluster munitions and was verbally communicated to the US Commander in Chief, Europe during a teleconference. The use of

The issue of cluster munitions didn't fade away with the end of the bombing campaign either. HRW followed on the issue by publishing in June 1999 a report focusing specifically on the employment of cluster munitions by NATO (HRW, 1999d), calling in December for a global moratorium on use until the humanitarian problems of the weapon were resolved (HRW, 1999e), and issuing in February 2000 a second report evaluating the whole campaign, again with considerable emphasis placed on the use and aftereffects of cluster munitions (HRW, 2000a). Indeed, the nature of cluster munitions ensured that a major part of their problems would be revealed only after the conflict ended and people returned to their homes and tried to pick up their normal lives again. Unfortunately, the areas where NATO cluster bombs fell were infested with unexploded duds that would explode and kill civilians when disturbed by the unsuspecting victims. As humanitarian NGOs, the ICRC and UN deminers flocked back into Kosovo, they also discovered first-hand the dangers of cluster submunitions that some of them had been warning about. As a result, the ICRC and Landmine Action, UK (LMA) also issued calls for a moratorium on the use of cluster munitions and published two reports focusing on their problems.²⁵²

Whereas HRW brought attention to the issue of cluster munitions both in the US and internationally, it didn't follow up its efforts with an attempt to raise awareness of the problem among other NGOs and create a network of organizations

cluster munitions resumed following a review of US procedures (MCC, 2000, citing a letter from Lt. Gen. C.W. Fulford Jr., U.S. Marine Corps, Director, Joint Staff to a question from Representative Dennis J. Kucinich (D-OH), 7 March 2000), but no more incidents involving cluster munitions were identified after May 13th according to HRW. Arguably, the Nis incident was caused by malfunctioning of the fuze at an altitude higher than the one for which the bomb was designed, which contributed to the wide dispersal of cluster submunitions. Following the incident, US tactics for delivering cluster bombs were changed, instructing pilots to make sure that the trajectory path between the release point and the target did not pass over civilian areas, thus ensuring that if similar incidents happened, at least the submunitions would not hit the populated area (interview 3 MIL).

²⁵² In September 2000, the ICRC called for a ban on the use of cluster munitions in populated areas and suspension of the use of cluster bombs until an international agreement on their use and clearance was reached. Landmine Action recommendations were slight more circumspect – the NGO called for a global moratorium on use, manufacture, sale and transfer while a review of the impact and legality of cluster munitions was carried out (ICRC, 2000a; LMA, 2000).

campaigning on it. LMA and Mines Action Canada (MAC) took the initiative in this respect in a series of informal meetings with their NGO colleagues (interviews 29, 34 NGO). Their focus, however, was not exclusively on the humanitarian costs of cluster munitions. Instead, they situated cluster munitions within the larger problem of various unexploded munitions left by military operations, or the so-called explosive remnants of war (ERW). Out of consultations between the ICRC and LMA came also the idea to try to put the issue of ERW on the agenda of the CCW (interview 5 NGO). The proposition held some promise given that several states had already showed interest in the matter.²⁵³ Thus the ICRC proceeded in its time-honored fashion by convening a meeting of governmental experts in their personal capacity to discuss the issues in September 2000 in Nyon, Switzerland. The problem of ERW garnered considerable interest from experts even though their responses were divided. On the one hand, some government experts thought that it would not be possible to address the issue adequately before the CCW Review Conference in 2006, on the other, some states, together with the ICRC and the NGO community, envisioned the possibility of a rapid process, eventually leading to a new protocol of the CCW on ERW (interview 5 NGO; Kaye and Solomon, 2002). The result of the meeting and subsequent action during the preparatory meetings for the 2001 CCW Review Conference, however, was that the issue of cluster submunition use, that gave rise to the discussions in the first place, was limited to the aftereffects of cluster duds and got amalgamated in the category of ERW.

After the issue of cluster munitions and explosive remnants of war was included in the CCW agenda, HRW was among the few NGOs closely involved in the discussions. It also continued monitoring the use of cluster munitions by the US and

²⁵³ At the December 1999 Annual Review of the Amended Protocol II of the CCW, Switzerland called for consideration of a cluster bomb protocol and other states, including Sweden, Norway, Canada, the Netherlands, and New Zealand showed interest in joining such an effort (Wiebe, 2000: 162-63).

British forces in Afghanistan and Iraq, providing the most useful data on the effects of the weapons for NGOs campaigning on the subject and generating bouts of media interest in it when its reports were published (HRW, 2002a, 2003d).

However, its approach to solving the problem remained policy-oriented and focused on discussions with government officials, and primarily, diplomats at the CCW meetings. It never tried to develop a domestic public campaign or mobilize grassroots support through a network of American NGOs that have shown interest in the issue. It didn't even maintain contacts with the Mennonite Central Committee, which had been involved in the problem and campaigning on it at least since the 1980s (interview 16 NGO). Thus, HRW maintained a strictly professional approach and defended a moderate position, informed by interpretations of IHL. This has certainly solidified its image of "a professional NGO" almost on an equal footing with the ICRC among diplomats who often times prefer dealing and working with it rather than their national NGOs, which are seen as "less professional" and less knowledgeable (interviews 30, 37 GOV). Indeed, it has been stated by diplomats that their "military advisers would never question the substantive arguments of HRW and the ICRC," but other NGOs would not be taken as seriously (interview 37 GOV).

Unfortunately, HRW's professional approach has not helped it find support for its ideas among officials in the Bush Administration. US diplomats and officials regularly engage in discussions with the NGOs and make sure they attend all the briefings organized by HRW at the CCW meetings (interview 36 GOV). The information provided by HRW's field research is highly praised, the objectivity of its data is never questioned, but it has not been able to find common ground with US officials on its policy proposals (interview 12 GOV) and almost all of the interaction between HRW and US policy-makers, has been limited to the meetings of the CCW

and close to non-existent in the domestic context (interview 13 GOV). Another side effect of this elite and international-level approach was that US officials did not feel any domestic pressure to negotiate the protocol on ERW or go forward on the issue of cluster munitions. Until the summer of 2005, they had not perceived any interest in the media (interview 13 GOV) and the pressure from Congress or letters received on the subject amounted to virtually “zero” (interview 12 GOV).

True to its approach, HRW has always been careful to underline that it is not calling for a ban on cluster munitions. In 2002, it stated, “We are not arguing for a ban on cluster bombs... What we want is better targeting and technology in order to reduce the humanitarian side effects” (e.g. HRW, 2002b) and it still holds that position even after NGOs in Europe, and Handicap International in particular, have been successfully campaigning for a total ban. Given that HRW is not involved in a public campaign and thus does not need to generate public support for its goals, it can easily maintain its more reasoned and moderate position. Its arguments, however, have prompted responses from the US government, military and Congress that have been limited to slow, piecemeal technical improvements of cluster munitions reliability and some changes in targeting by the US Air Force, as it had been the main receiver of criticisms until the war in Iraq.

In its writing on the topic HRW has always mentioned the need to avoid the use of cluster munitions in populated areas, and that governments “consider targeting as well as technology” problems, but at least until its 2003 report on Iraq its emphasis has been on the problem of unexploded munitions and their functioning as de facto landmines (e.g. HRW, 1999d, 2002b).²⁵⁴ Throughout, its call to the CCW has been

²⁵⁴ For example, its 2002 report concluded with two recommendations that “Countries suspend the use of cluster bombs until the dud rate is reduced dramatically. By order of the Secretary of Defense, future U.S. submunitions must have a failure rate of at least less than 1 percent; Militaries consider the long-term effect of CBUs when choosing targets regardless of what the dud rate is” Only as an afterthought it stated further that “While solutions discussed above hold promise, one must remember that cluster

that solving the problem of cluster munitions should include “requirements to lower the initial failure rate of cluster munitions, and regulations on the circumstances in which cluster munitions are used, including a prohibition on use in or near populated areas” (HRW, 2003e, also HRW, 1999e, 2001c,d, 2002c). Nevertheless, its detailed recommendations on possible preventative measures regarding reduction of the failure rates often outweighed its suggestions on use practices.²⁵⁵

In 2004, HRW submitted to the CCW a draft proposal for a protocol on the use of cluster munitions intended to regulate and not ban the weapons, as it believed that “a blanket prohibition was not justified under existing international humanitarian law” (HRW, 2004c). In it HRW suggested a prohibition on the use of “submunitions with an initial failure rate of one percent or more,” whereas the indiscriminate and area effects of the weapons were regulated only by a proposed article that prohibited the use of “cluster munitions with *non-precision guided submunitions* on objectives in a city, town, village or other area containing similar concentration of civilians or civilian objects” (HRW, 2004b: 5, emphasis added, also 2004a,), thus even limiting the scope of its prior calls for no use of any cluster munitions. As it turned out, after reiterating the above demand in 2005 (HRW, 2005c,d), the organization went back to its previous call for a general restriction on the use of cluster munitions in civilian areas – a call that was also core to the ICRC approach to the issue. HRW also persisted with an effort to develop a list of “worst offenders” – munitions that pose dangers to civilians

bomb strikes would still raise targeting issues even if their dud rate were eliminated” (HRW, 2002,b). Only HRW’s report on the civilian casualties caused by the NATO bombing campaign of Kosovo focuses on the dangers of using cluster bombs in populated areas and their tendency to have indiscriminate effects on civilians during use.

²⁵⁵ See for example, HRW (2003e). Some of the preventative measures included: “Require a reliability standard (i.e. 99% or greater) for weapon and components; Incorporate self-destruct fuzes in all future production; Retrofit existing stocks with self-destruct fuzes; Incorporate other technology to assist in clearance (luminescence, visible hazard indicators, warnings); Create international quality standards.” In another backgrounder, it outlined the steps undertaken by the US military toward improving the reliability rate under a title “A Better Future?” (HRW, 2003b).

either because of their unreliability or inaccuracy (HRW, 2004c).

In 2005, HRW focused its efforts for a while on the US domestic scene by demanding the destruction of old submunitions with a failure rate above 1% and urging Congress to adopt a requirement that allows the “military [to] use rocket launchers only with unitary warheads or submunitions with less than a 1 percent dud rate” (HRW, 2005c,d). Another new initiative was to launch its report on production and export of cluster munitions (HRW, 2005a,b) together with Handicap International and Netwerk Vlaanderen with a press briefing in Brussels that called for an end of investment in cluster munition producers. Even though the HRW report actually only asked for “national policies to curb the unrestricted production and export of these weapons” (HRW, 2005b), and the briefing itself was limited in its objectives, this was the event that launched the process, which led to a Belgian ban on cluster munitions less than a year later. Similarly, due to its worldwide reputation, HRW was a frequently invited speaker at events on cluster munitions organized by European NGOs in France and the European Parliament, for example.

When the Israeli-Hezbollah conflict broke out in July 2006, HRW was again one of the first NGOs on the ground in Israel and Lebanon, monitoring the conduct of operations and gathering information about the use of cluster munitions. It was also the first organization to confirm the use of clusters (both by Israel and Hezbollah) and report on the civilian casualties it had caused. Nevertheless, it was cautious not to make statements on their legality that would go too far. Instead HRW limited itself to pointing out that it believed that “the use of cluster munitions in populated areas *may* violate the prohibition on indiscriminate attacks” and that “cluster munitions should never be used, even away from civilians, unless their dud rate is less than 1 percent” (HRW, 2006d, emphasis added) – a statement that again fell short of its prior

insistence that no cluster munitions be used in civilian areas.²⁵⁶

Thus, it could be argued that thanks to its reputation in the human rights field and years of serious work on weapons issues since the creation of its Arms Division in 1992, HRW has managed to position itself center-stage in the field of humanitarian law as well, next to the ICRC with its history of working in the field for more than a century. What helped it achieve this status was its active involvement in the landmine campaign (which, as in the case of cluster munitions, was mostly at the international level) and a series of important reports on landmines in the 1990s and several reports, based on research in the field, about the conduct of military operations in Iraq 1991, Kosovo 1999, Afghanistan 2002, and Iraq 2003. On the latter subject, in particular, HRW was basically the only NGO providing comprehensive information about the humanitarian impact of conflict, which was used extensively by other organizations in their work.

A couple of factors have facilitated HRW's work in this area. First, it had the resources to implement the studies and it did not hold a special position regarding relations with governments and the military in the field of the kind the ICRC had. Hence, it did not have to balance concerns about providing information to the public and the effect that would have on its activities in the field. Second, and importantly, HRW has been able to attract former military officers and analysts to its staff. Thus the people who conducted its research and battle assessments had the knowledge and skills to do so, some of them having done previously a similar job at the Pentagon.²⁵⁷ An additional asset were the connections those researchers had among the military

²⁵⁶ HRW statement on the permissibility of cluster munitions use in populated areas changed again 3 months later in its report on the use of the weapons by Hezbollah, when it declared that “[u]se of cluster munitions is never justified in civilian-populated areas because they are inaccurate and unreliable” (HRW, 2006f). Again, according to this statement, the prohibition on use in civilian areas seems to apply only to inaccurate and unreliable cluster munitions.

²⁵⁷ Similarly, HRW's main researcher on landmines dealt with the problem in the 1990s on the Pentagon side.

which helped them get the necessary information and stay abreast of developments in the military. HRW analysts' connections in the military also helped them present their work to military planners and task forces set up to draw lessons from military operations. Thus, there was an additional direct channel of communication between the NGO and the military that allowed it to make its concerns about problematic aspects of the use of cluster munitions and other military practices heard by the people who would be planning future operations.²⁵⁸ Finally, given their background, the HRW representatives were able to speak the same language as their military counterparts (interview 2 NGO). Thus, it is hardly surprising that HRW's approach to the issue of cluster munitions has been highly technical and oriented entirely to the policy level.

In the spring of 2006 European NGOs were trying to engage the public and wondered whether the success they had achieved in Belgium would have an impact on HRW and change its mind regarding a call for a ban. HRW, however, didn't redefine its position even though in practice the difference between it and what NGOs, such as Handicap International, were calling for was mostly a matter of semantics and not substance. And understandably so, where European NGOs needed a clear and strong message for their public campaigning, HRW needed to stay within the limits of the realistically achievable and not compromise its standing as a credible expert on IHL. Whereas it was willing to help in mobilizing the national campaigns of more activist NGOs, its official position remained unchanged. The side effect of this was that rather

²⁵⁸ For example, in May 2002 HRW senior military analyst, William Arkin briefed Task Force Enduring Look established by the Air Force to draw lessons from the Afghan campaign about his findings about collateral damage and problematic practices (Task Force Enduring Look, 2002, <https://www.tf-el.pentagon.af.mil/workshops.asp>). A briefing was made also at Task Force Deep Blue, the Navy lesson-learning task force for Operation Enduring Freedom in Afghanistan (interview 7 NGO). HRW analysts and a number of military officials, some of whom in charge of the planning of military operation, have participated in the workshop series on the Means of Intervention organized by Harvard's Carr Center for Human Rights Policy where issues of collateral damage have been discussed extensively.

than generating a positive “radical flank effect” (McAdam et. al., 2001) and getting governments to agree to HRW’s more moderate propositions, the differences among NGOs created the impression that they didn’t speak with one voice (interviews 30, 37 GOV) and thus were taken less seriously. Nevertheless, HRW remained actively engaged in the process of creating a group of like-minded countries supportive of the NGO goals and sent a stronger signal to CCW delegates in March 2006 stating that “If a mandate to negotiate cannot be agreed upon this year, other options should be considered by those states committed to the maximum protection of civilians during and after armed conflict” (HRW, 2006a).

Finally, at the CCW Review Conference in November, when momentum was gathering behind the proposal for a new international instrument to deal with the problem of cluster munitions and NGOs were finally mobilizing in force, with the two most actively engaged European organizations – LMA and HI – asking for a ban, HRW still abstained from such a call and closely followed the position of the ICRC. It demanded measures to “minimize the harm cluster munitions cause to civilians,” including “prohibiting the use of cluster munitions in or near populated areas; prohibiting the use of cluster munitions with high dud rates; prohibiting transfers of unreliable and inaccurate submunitions; and, destroying stockpiles of unreliable and inaccurate submunitions” (HRW, 2006h). Even though, state delegates continued wondering exactly what prohibitions the NGOs making up the CMC were asking for, fortunately they all could agree on advocating the prompt start of negotiations on a new treaty dealing with the humanitarian problems of cluster munitions either within the CCW or out of it.

The US response: there are problems -- there are technical solutions

The gist of the US position on the issue of cluster munitions is that it recognizes that there are problems with certain cluster munitions in terms of their reliability and lack of precision, but these problems do not make the weapons illegal, because they serve indispensable military purposes and can even reduce civilian damage: “when properly employed, [cluster munitions] do not cause unnecessary suffering nor are they per se indiscriminate. Area attack munitions serve legitimate military purposes, and in many instances may cause less collateral damage than other munitions” (DoD, 2005: 11; US Delegation to the CCW, 2001). Thus, in some respects the US government and military have responded to the NGO concerns by looking for technological fixes that could alleviate the humanitarian threat of the weapons without compromising or even by increasing their military utility.

Voices from the Congress

Following the Kosovo intervention, individual members of the Congress occasionally showed interest in the problem of cluster munitions. Even though this interest was not sustained, it had some effect in spurring DoD thinking on the issue. First, congressman Dennis Kucinich (D-OH) brought up the problem of cluster bomb use in the House by putting a question about the Nis incident to the DoD, and later in July 1999, proposing an amendment to the 2000 Defense Appropriations Bill that called for a complete cessation of funding for cluster bomb procurement, which however was not adopted. In August, Senator Leahy raised the issue in the Senate as well, and expressed concern over unexploded cluster bomblets in Kosovo (Congressional Record, 1999a,b,c). In

May 2000, Representative Kicinich brought up the issue of cluster bomb use again, this time requesting in an amendment to the 2001 Defense Appropriations Bill that a detailed report on the use of these weapons by US forces during operation Allied Force in Kosovo be submitted by DoD within a year (Congressional Record, 2000).

With no targeted NGO campaign on the issue, congressmen who voiced concern about cluster munitions in connection with the Kosovo intervention were primarily relying on media coverage to substantiate their claims. The same pattern repeated during the US military campaigns in Afghanistan and Iraq. During the bombing of Afghanistan, Representative Cynthia McKinney (D-GA) raised the problem, resulting from the use of yellow-colored cluster munitions in the same areas where similarly appearing yellow-colored food packages were distributed, and called on the president to stop the use of cluster munitions (Congressional Record, 2001a,b). After HRW claimed that TV images showed evidence of cluster bomb use in Iraqi Freedom, Senator Leahy voiced again his concerns about the use of the weapons and underlined his prior calls on DoD to use only submunitions with reliable self-destruct fuzes and abstain from employing them in heavily populated areas (Congressional Record, 2003a). The Senator also expressed his concerns about the lack of progress in reducing US munition failure rates and the civilian consequences from their use in Iraq in a letter to the Chairman of the Joint Chiefs of Staff. In the House, on the other hand, during discussions of the 2004 Defense Appropriations Bill, Representative Betty McCollum (D-MN) highlighted the need to fund the incorporation of secondary fuzes in legacy munitions to increase their reliability (Congressional Record, 2003b). Finally, in 2004 McCollum, supported by Representatives John Lewis (D-GA) and John Murtha (D-PA) managed to pass an amendment to the 2004 Defense Appropriations Bill that instructed the DoD to provide a report to Congress about the steps it was taking to improve the reliability rate of cluster munitions so that they

could meet the 1% requirement set up as DoD policy by Defense Secretary William Cohen in 2001 (see next section).²⁵⁹ In November 2004, DoD submitted the required report, which outlined its current stocks and planned acquisitions of new submunitions and asserted that, “the Department is keenly aware of interest in reducing our cluster munitions dud rates and improving the accuracy of the delivery methods to reduce the size of the residual hazardous areas and the total unexploded ordnance (UXO) produced” (DoD, 2004b: ii). It nonetheless underlined that whereas the desired functioning rate was 99% or higher, the submunition functioning rate during conflict might be lower due to various environmental and operational factors that in a sense emptied the policy of its major import.

Following the outcry caused by the use of cluster munitions by the Israeli forces in Lebanon in the summer of 2006, in September senators Dianne Feinstein (D-CA) and Leahy proposed an amendment to the 2007 Defense Appropriations Act that sought to prohibit the use of its funds “to acquire, utilize, sell, or transfer any cluster munition unless the rules of engagement applicable to the cluster munition ensure that the cluster munition will not be used in or near any concentrated population of civilians” (Congressional Record, 2006a). The amendment aimed at protecting the civilian population against the effects of cluster munitions during and after military conflict and tried to repeat and expand upon an earlier measure adopted by the US in 1976. In the 1970s the US had sold cluster munitions to the Israeli government on the condition that they would only be used in the case of major military operations

²⁵⁹ The amendment required the following: “The Secretary of Defense shall provide a report to the congressional defense committees not later than October 15, 2004, that addresses how the Department of Defense (DOD) is improving the dud rate of cluster munitions to meet existing DOD policies. This report shall address: (1) the types and quantities of munitions systems that employ cluster munitions presently in DOD's inventory that do and do not meet the 1-percent dud rate policy; (2) DOD efforts to ensure the development of cluster munitions that meet the 1-percent dud rate policy, including a list of programs funded in fiscal year 2005; and (3) a schedule describing the DOD cluster munitions inventory profile from the present until the time this inventory will meet the 1-percent dud rate policy” (Congressional Record, 2004c, 2004b).

“against organized Arab armies and clearly defined military targets under conditions similar to the Arab-Israeli wars of 1967 and 1973” (Cloud, 2006). When a 1982 Congressional investigation showed that the U.S. munitions were used against civilian areas, the Administration banned further transfers.²⁶⁰ The recently reported use of US-produced cluster munitions by Israel gave rise to a State Department investigation in the matter (Cloud, 2006; Kessler, 2006). The Feinstein-Leahy proposal sought to impose a similar prohibition not only on sales and transfers of cluster munitions, but also on their use by US military forces. Thus, it agreed with one of the main demands of HRW – to ban the use of the weapons in civilian areas. However, it was applicable only to the use of funds appropriated in the 2007 budget bill. Despite this limited scope, the amendment could not garner even the support of the senators from the Democratic Party and was rejected by a 70-to-30 vote (Congressional Record, 2006b).

The official DoD policy on cluster munitions

Early on, the US was certainly not a laggard in responding to the problem of cluster munitions either domestically or internationally. Given that the problem NGOs were highlighting most at the time was the failure rates of cluster submunitions, which left a good percentage of them functioning as landmines by effect, the US predictably responded by measures aimed at reducing the failure rates and facilitating post-conflict clearance.²⁶¹ Thus, it was the first country to announce a national policy regarding submunition reliability rates. Having concluded that the employment of cluster munitions in Kosovo revealed a “significant unexploded ordnance concern,” in January 2001 Secretary of Defense William Cohen issued a new policy requiring that

²⁶⁰ The ban was lifted in 1988. For details, see , Mohr (1982), Smith (1982), and Gwertzman (1982).

²⁶¹ VVAF for example, saw the solution to the ERW problem in reducing the failure rate to 1 in 1,000 munitions and proposed an ERW protocol to the CCW to that effect (VVAF, 2001).

future submunitions procured for the US armed forces meet a standard of 99% or higher reliability rate.²⁶² By setting this standard, the policy also gave impetus to the development of new self-destruct and deactivation mechanisms and efforts to upgrade existing fuzes and incorporate new self-destruct fuzes in legacy submunitions (Strickland, 2003; Defense Daily International, 2001).

Military use and lessons learned

Whereas prior to the Kosovo operation, the US Air Force has been primarily concerned with increasing the precision of its cluster bombs (interview 3 MIL), following the attention HRW and the media brought to the issue, it also came to acknowledge the importance of the failure rate problem. In August 2001, the US Judge Advocate General stated that cluster bombs “must pass [the] proportionality test,” the dud rate must be part of the proportionality determination because unexploded bomblets are “reasonably foreseeable,” and importantly, that there are “[c]learly some areas where CBUs normally couldn’t be used (e.g., populated city centers).”²⁶³ In an effort to reduce their dud rate, the US Air Force modified the BLU-97 submunitions in CBU-87.²⁶⁴

²⁶² The new policy calls for a 99% or higher functioning rate for all types of submunitions. It applies to all future submunitions that will reach Milestone III of their acquisition process in FY 2005 or beyond, but allows the services to keep and use existing submunitions that fall short of the new standard until they are “employed or superseded by replacement systems.” Milestone III represents approval to enter Phase III of the DoD weapon acquisition process - “production, fielding/deployments and operational support,” i.e. all weapons that enter full rate production in or after 2005 should meet the new policy standards (DoD, 2001).

²⁶³ An informal Bullet Background Paper on International Legal Aspects Concerning the Use of Cluster Munitions prepared by the Office of the Air Force Judge Advocate General, August 30, 2001 (quoted in HRW, 2002a).

²⁶⁴ “The newer version has a cap, or spider, that comes off more easily and a slightly different parachute. These modifications could decrease the chance of a bomblet malfunctioning, but there is no technical proof that this is the case” (HRW, 2002a).

Similarly, the Kosovo intervention proved a threshold in the thinking about cluster munitions of the US Navy: “Obviously, in recent times, we have become sensitized to the unexploded ordnance issue... Events ... in particular out of Kosovo, is really what has caused us to sit back and readdress what we

Being in the crosshairs of NGO monitoring of their practices, especially concerning the use of cluster bombs, both in Kosovo and Afghanistan, the US Air Force also appeared to have learned some lessons and made changes in its operational use of the weapons. In the war against Iraq in 2003, it used slightly fewer cluster munitions as a percentage of its overall weapons, a greater number of targeted cluster bombs equipped with the Wind Corrected Munition Dispenser compared to the campaign in Afghanistan, and avoided their employment in civilian areas (HRW, 2003d). The result was that only a few civilian casualties have been attributed to air-dropped cluster bombs (HRW, 2003d).

Unfortunately, the Iraq war witnessed the large-scale use of ground-launched cluster munitions, including in densely populated areas, which together with their high failure rates created a significant humanitarian problem during attacks, as well as in the aftermath of the major combat operations. The US Army had not taken part in the bombing campaigns over Kosovo and Afghanistan and thus its conduct of military operations had not been scrutinized by NGOs. Whereas prior to the beginning of the war, HRW had been warning against the use of ground-launched cluster munitions, especially in civilian areas because of their indiscriminateness and high failure rates (HRW, 2003a,b,c), the actual combat really revealed for the first time the scale of the problems these weapons posed to civilians not only after the end of hostilities but also during attacks (interviews 29, 31 NGO).²⁶⁵

Even though the US ground forces applied a vetting process aimed at limiting civilian casualties that avoided attacks near sensitive civilian objects, in the case of

want to do here" (Navy Capt. Robert Wirt, program manager for conventional strike weapons, quoted in Wall, 2000).

²⁶⁵ Prior to the Iraq War NGOs were aware of the area and saturation effects of the weapons and were obviously trying to prevent their use, but the war itself provided the real and irrefutable evidence of the problems of immediate effect on civilians.

counter-battery fire,²⁶⁶ they considered radar acquisition sufficient. This meant that civilian presence in the areas from which Iraqi fire was coming, was not taken in consideration when US forces fired back. This practice, coupled with the fact that often cluster munitions were the only available option for US long-range fire and Iraqi's illegal tactics of engaging the US forces from civilian areas, led to high numbers of civilian casualties.

After it became clear that the use of ATACMS and MLRS cluster munitions²⁶⁷ caused "heavy civilian casualties," the Third Infantry and the 101st Airborne Divisions tried to change the practice and when possible use air support instead.²⁶⁸ In the aftermath of the Iraqi operations, the assessment of the employment of DPICM submunitions²⁶⁹ led to the conclusion that they were among the "losers" of the war and "a Cold War relic" that not only endangered civilian lives and hampered post-war reconstruction, but also impeded military operations during the conflict (HRW, 2003d: 110, 114). The NGO criticisms spurred the ongoing Army effort to procure new

²⁶⁶ The U.S. forces screened ground cluster strikes through a computer to make sure that no sensitive civilian facilities such as schools, mosques, hospitals, and historic sites were fired at. For example, the Third Infantry Division's artillery batteries were programmed with a no-strike list comprising the coordinates of 12,700 such sites that could not be fired upon without manual override. Officers from the Division strove to keep strikes at least 500 meters away from such sensitive targets, and in general, they also required visual confirmation of a target before firing (HRW, 2003d: 92-4).

²⁶⁷ ATACMS denotes Army Tactical Missile System and MLRS Multiple Launch Rocket System.

²⁶⁸ In Najaf and Karbala, for example, the Third Infantry Division called in close air support, which engaged with precision artillery and surface-to-surface missiles inside the cities with little damage to surrounding buildings. The Second Brigade of 3rd Infantry Division preferred JDAMs (Joint Direct Attack Munitions) and A10 aircraft with tank-killing close air support to firing MLRS. In Baghdad, it used high explosive artillery airbursts over highway clover leafs to reduce damage to the roads (Third Infantry Division, 2003:134; HRW, 2003d: 92-4). Similarly, after the combat of Najaf, the 101 Airborne Division had a meeting at which it was decided not to use DPICMs any longer because it was realized that there were leaving a lot of duds that posed a danger to civilians (interview 9 MIL).

²⁶⁹ DPICM denotes Dual-Purpose Improved Conventional Munition

precision weapons²⁷⁰ and launch programs aimed at reducing the rate of unexploded ordnance of new and legacy munitions.²⁷¹

DoD certainly acknowledged the threats unexploded duds posed to “friendly forces and noncombatants alike” (DoD, 2004a) and the weakness in its approach toward solving it. The military had come under attack from NGOs for not conducting post-battle assessments of the real functioning rates of cluster munitions and relying instead on figures of manufacturer tests carried out under the best conditions so as to show a high reliability rate, which afterwards is never achieved in actual employment. Congress has also expressed concern over failure rates and civilian casualties from unexploded cluster munitions in Iraq. These considerations prompted the Undersecretary of Defense for Acquisition, Technology and Logistics to request in April 2004 the formation of a Defense Science Board Task Force to evaluate the current DoD efforts and additional steps that could be made toward reducing the amount of unexploded ordnance from munition failures.²⁷² The report was issued in

²⁷⁰ DoD affirmed “the Army is developing munitions with unitary payloads for the MLRS Family of Rockets. The ATACMS Quick Reaction Unitary (QRU) variant is being procured in small quantities, and a unitary variant of the GMLRS is under development. These variants are being developed to provide warfighters with alternatives to submunitions that produce a smaller UXO hazard area for use when operational maneuver concerns would constrain MLRS submunition fires” (DoD, 2004b: 8).

²⁷¹ “As a result of a new policy decision in 2001, weapons with submunitions produced after 2005 are required to be 99 percent reliable. A contract was awarded in February 2003 to manufacture 500,000 self-destruct fuzes for M915 105mm DPICM artillery projectiles. Funds to remanufacture and retrofit 24,345 M864 155mm DPICM projectiles with self-destruct fuzes were requested in the fiscal year 2004-2005 ammunition procurement budget request. Plans to produce a new generation of MLRS rockets with self-destruct fuzes for submunitions are also being developed” (HRW, 2003b). Under current Army programs, new and recapitalized M77 submunitions for the Guided-MLRS rocket and recapitalized M42 and M46 grenades for the M864 DPICM munition should be provided with self-destruct and self-neutralization mechanisms (Hiebel and Glickman, 2004). The cost to retrofit the 5,000 existing M864 155mm DPICM projectiles with self-destruct submunitions will be \$10.1 million (HRW, 2006c).

²⁷² The tasks before the board were to: “1. Conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use - a key subset of this effort should focus on submunitions system reliability. To the extent feasible, results of this assessment should be unclassified so they can be used to confirm or refute claims made about U.S. systems containing submunitions. 2. Review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions system failures, and evaluate whether there are ways to improve or accelerate these efforts. 3. Identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants. These measures can include: (1) further efforts to improve munitions fuze system reliability (e.g., secondary pyrotechnic fuzing or self-neutralization), (2) changes in employment

September 2005 and concluded that there was lack of focus in DoD policies in this area and a “growing international concern over the impact of UXO on civilians.” Unless DoD addressed the challenge of munition reliability urgently, “a critical aspect of our warfighting capability will be jeopardized and held to even higher levels of scrutiny” (DoD, 2005).²⁷³

Thus it is readily apparent that the pressure from NGOs, members of Congress and the media played a significant role in prompting DoD actions to deal with the problem of cluster munitions reliability. The recommended steps included, among other things, measures that have been advocated by HRW for quite some time (e.g. HRW, 2003e) – expansion of the testing of new and legacy munitions in a broad range of operationally relevant environments that may cause degradation; funding of new research and development of inexpensive, ultra-reliable fuzes; establishment of a munition database that would contain information about the type, quantity, and location of expended munitions, which would be shared and used to facilitate both combat maneuvering and post-conflict clean-up; development of radio frequency tags for munitions beyond logistics tracking to facilitate UXO remediation for new systems (DoD: 2005: 4-5). In short, the message of the report was, find technical solutions to the problem and urgently coordinate DoD activities to that end.

practices and/or procedures (including training) to minimize failures, and (3) technical modifications to munitions to facilitate the location and safe disposal of unexploded ordnance items. In considering these additional measures, the Task Force should take into account the efforts of other countries to mitigate the effects of munitions failures” (DoD, 2004a).

²⁷³ The report conclusions were quite strong and echoed some of the NGO criticisms of DoD policies. The briefings of former HRW researcher and military analyst, Bill Arkin, who had been voicing similar critiques for a long time, and Sarah Sewall and Matthew McKinzie of the Harvard Carr Center for Human Rights Policy have probably also contributed to the findings of the report: “The Task Force could identify no comprehensive approach—empirical observation or otherwise—to determine and document operational combat failure rates of US munitions. The available data is inconsistent, largely anecdotal, and often from questionable sources... Funding for munitions research and development is chronically inadequate, and there is no program in place to develop a new generation of area attack munitions that are affordable and highly reliable... A fragmented organizational approach hinders DoD’s post-conflict efforts to mitigate the impact of UXO” (DoD, 2005).

Weapons manufacturers also felt the impact of the NGO and media concerns about cluster bombs. Even though it is hard to argue that development of new weapons systems was undertaken as a result of NGO campaigning, there was certainly a change in the public representations of weapons (conceived for other reasons) as solving the problems of the old cluster munitions. This was particularly obvious in the efforts by Textron Systems to redefine its sensor-fuzed munition²⁷⁴ as a “smart,” “civilian friendly” weapon that leaves a “clean battlefield” and has nothing to do with the old type of munitions (interview 6 industry; Woods, 2003; Kerber, 2003; Textron Systems, 2002). In fact, even HRW people recognized the positive humanitarian consequences if this weapon were used instead of the legacy bombs,²⁷⁵ which was certainly consonant with the approach of HRW to the problem.

The US international position

Initially, the US was not trying to stall progress at the international level either. It participated in the Nyon meeting organized by the ICRC. Whereas the NGOs at Nyon were urging the prompt negotiation of a protocol on ERW and cluster munitions within a year, most states, even those favorable to the initiative, were cautious about

²⁷⁴ The Sensor Fuzed Weapon (SFW) consists of 10 BLU-108 submunitions that are released from a tactical munitions dispenser. Each submunition carries 4 skeet anti-armor warheads, for a total of 40 skeets per SFW. Each skeet independently scans the ground as it descends using an infrared sensor. When it detects a heat source such as a tank engine, the skeet fires an explosively formed penetrator slug downward through the top of the target vehicle, thus immobilizing vehicles within the range of its 15-acre footprint (Goodman, 1997). A Preplanned Product Improvement program, aimed at three major improvements – performance against countermeasures; performance against softer targets; and increased area coverage. To achieve these purposes, the enhanced SFW, adds active laser profiling to the original infrared sensor for improved aim point; incorporates 16 outer fragments to the central explosively formed penetrator for lethality against soft targets and light armor; and operates at a higher altitudes, permitting a 100% increase in area coverage from 15 to 30 acres. The laser sensor enhances precision by searching for the leading edges of a vehicle, making sure that the SFW is not triggered by hot spots other than the engine of a vehicle (Wall and Fulghum, 2000; Textron Systems, 2002).

²⁷⁵ See, for example, Mark Hiznay of HRW quoted in Kerber (2003)

the prospect of doing so before 2006. The US itself agreed that there was a humanitarian problem that had to be addressed but didn't think that the way to do so was necessarily an international agreement (interview 12 GOV).

Nevertheless, at the December 2000 CCW meeting, it co-sponsored a proposal by the Netherlands, which basically reformulated the ICRC recommendations and called for discussions during the preparatory meetings for the 2nd Review Conference of CCW in 2001 of “the humanitarian impact of various unexploded remnants of war.”²⁷⁶ The US also actively participated in the negotiation of the new Protocol V on ERW, even though it preferred more flexibility and resisted language that implied, for example, mandatory requirements for cooperation or “a right” to assistance in post-conflict clearance of affected countries (US Delegation to the CCW, 2003b,c).²⁷⁷ Whereas the US had strong objections to a legally binding instrument and wanted to link progress in the negotiations on ERW to that on anti-vehicle mines (US Delegation to the CCW, 2003a; interview 7 NGO), many states, including those in the EU, and the NGO community favored the adoption of a legal instrument. Eventually, “in responding to the wishes of other CCW Parties, including many allies and friends,” the US decided not to block consensus, as it was the only country to oppose it (US Delegation to the CCW, 2003d; interview 12 GOV). The main reason why the US agreed to the legally binding protocol was probably the fact that the protocol provisions actually reflected existing US practice in the area and thus it had nothing to lose by accepting the protocol (interview 13 GOV). Possibly, the change in the US position was also motivated by its desire to keep the process on ERW and cluster munitions under control. Given the preference for stricter restrictions on the use of

²⁷⁶ The Dutch proposal was co-sponsored by another 22 states in addition to the US: Argentina, Austria, Belgium, Bulgaria, Canada, Cambodia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Luxembourg, New Zealand, Norway, Peru, Portugal, Spain, Sweden, Switzerland, and United Kingdom (Wiebe, 2000: 163-4, fn 353).

²⁷⁷ The US Delegation also found the recording requirements too burdensome to soldiers in the field and opposed any suggestions that the protocol be made retroactive and applicable to past conflicts.

cluster bombs among the NGOs and several European states (HRW, 2004c), by blocking the adoption of the Protocol, the USA would have risked pushing the whole process out of the CCW framework and producing a stronger document the way it happened with the landmine campaign (interview 7 NGO).

Initially the Administration preferred to have first a new protocol on anti-vehicle mines (AVM) and then submit both the ERW and the future AVM Protocol to the Senate for ratification (interview 13 GOV). Even though the US together with Russia were portrayed as hold-out states regarding the ratification of the ERW Protocol (Agence France-Presse, 2006), in fact, by May 2006 the Protocol had already been cleared in the interdepartmental review process and in June the Administration submitted it for ratification to the Senate (interview 36 GOV; US Department of State, 2006).

Thus the first legal agreement in the field of disarmament after the Ottawa Treaty was negotiated with the active participation of the US and in a surprising gesture, the Bush Administration even recommended it for ratification by the Senate after its persistent opposition to international treaties such as the Kyoto Protocol, the Landmine Convention, and the treaty establishing the International Criminal Court to name a few. Granted, the ERW Protocol is not of the same importance as the above-mentioned agreements and contains a lot of loopholes that would make it difficult to hold countries accountable for non-compliance. Thus, the obvious reason for US support is that the Protocol does not impose on the US any heavy new obligations. It does, nevertheless, fill a gap in existing humanitarian law regarding post-conflict clearance measures. States such as the Netherlands are working on linking the Protocol to the Ottawa Convention in order to streamline the process of allocating clearance funding for both landmines and ERW and that would produce some practical results on the ground. It also requires parties “to the maximum extent

possible and as far as practicable [to] record and retain information on the use of explosive ordnance,” as well as provide this information to the parties in control of the areas affected by the ERW (Art. 4, Protocol V of the CCW) – both areas (but especially the recoding of information about strike locations) have been a very weak point for the US military as it itself has acknowledged. Despite the fact, that the protocol provisions are framed in such a way that it would always be possible for a non-complying state to argue that it has done everything “practicable” to fulfil its obligations, the Protocol is an incentive for governments to strive to observe it, especially when monitored by an active NGO community. Certainly, it cannot be argued that the US had to give up some important military asset in order to meet a humanitarian requirement. What made possible its active participation in the negotiating process was the fact that it was consensus-based and there were more states holding far less progressive positions than the US than there were states pushing for something more.

However, when in November 2006 some more costly restrictions on cluster munitions use came to be envisioned by a number of states requiring the adoption of a CCW mandate for negotiations of a legally binding instrument addressing the various humanitarian problems of those weapons, the US was again left behind in the opponent camp. Instead of keeping its course of engagement on the issue and agreeing to such negotiations within the CCW, which would have allowed it a maximum degree of leverage over their outcome, the US decided to oppose them and call the bluff of Norway, which was advancing the idea of alternative negotiations. As it turned out, it was not just a bluff and once again the US (together with several other countries) allowed the process of negotiating weapons restrictions to get out of the CCW and into the hands of those states willing to accept more comprehensive regulations.

Conclusion: domestic culture and gaps in NGO mobilization

The US positions on landmines and cluster munitions have been rather similar in their emphasis on finding technological solutions to the humanitarian problems of the weapons. In either case, initially the US has been leading domestically by adopting the Leahy export moratorium on landmines in 1992 and William Cohen's policy on munition reliability in 2000. Both measures have been followed by similar steps by the legislative bodies and governments of different countries. On both issues, the US has been engaged in negotiating international instruments within consensus-based fora, where it had maximum leverage to shape their agenda and outcomes. However, it opposed the international processes that aimed at stronger weapons restrictions going beyond technical improvements in self-destruction or self-neutralization of landmines and cluster munitions.

Two main factors combine to explain the inability of the US to play a leadership role on those issues and its resistance to stronger prohibitions. First, military considerations and opposition have defined the limits of US policies irrespective of the preferences of the civilian leadership. The attention paid to the voices of the military and its arguments has been rooted in turn in a certain part of US domestic culture emphasizing military values of toughness and manliness and portraying the US as a great military power whose armed forces not only protect the country but also provide the security of allies and order around the world. From that perspective the interests of the military become foremost for society (or there is no difference between the two) and demand a special status for the US under international law corresponding to the special roles it plays. Certainly, this "militarization" of domestic culture has never been total and it is usually counterbalanced by other

American values cherishing human rights and the free expression of individuality, as well as multilateralism in US foreign policy and international law (e.g. Lieven, 2004, Finnemore, 2005:188-90). However, this context has made it more difficult for ban proponents to advance their agendas in the US and has and even placed constraints upon Clinton's ability to assert his leadership on the issue of landmines. Similarly, NGOs have not been able to overcome the limitations posed by the military bias in US domestic culture. In the landmine case they tried to address the military arguments head on in order to debunk them, but as I have argued, this tactics had the unexpected result of shifting the whole debate on military grounds and thus disadvantaging the proponents of the ban who could not compensate for their lack of ability to speak authoritatively on military issues. In the case of cluster munitions, on the other hand, HRW's circumscribed approach demanding measures that would improve the precision and reliability of munitions, or impose limitations on their tactical use in civilian areas, has led to responses from the military that focused on technical improvements or some procedural changes in the employment of cluster munitions by the US Air Force – partial and piecemeal measures that did not solve the humanitarian problem of the weapons.

Second, the NGOs have not been fully successful in changing US positions on those issues because their campaigning in both cases has been truncated on either the domestic or international side. Senator Leahy has been the main leader on the issues of landmines and cluster munitions in the US. Compared to President Clinton, he has been less constrained by the military bias in US domestic culture. He could promote strong legislative action on landmines due to two factors – the senators' long term of office and the fact that Leahy was elected from Vermont – a liberal state with a constituency likely to support his initiatives. However, the main obstacles to advancing those issues have been the Republican majority in the Senate for most part

of the period since 1996, and on cluster munitions, the lack of a domestic NGO campaign to raise the public profile of the issue and lend support in advocating restrictions among members of the Democratic Party, congressmen, and government officials.

Given the importance of military interests in the US and the influence of the military establishment especially on weapons issues, to have a chance of success in changing US policy in this area the NGOs had to be able to bring the effect of both domestic and international campaigning to bear on the government, and if possible combine public mobilization and private, persuasion-oriented approaches to policy-makers. However, in the landmine case the US NGOs focused their energies almost entirely on the domestic and elite level, without utilizing the “boomerang” effect of the strong international campaign or American public opinion. In the case of cluster munitions in contrast, a domestic campaign did not exist at all. The leading NGO on the issue, HRW, did not establish connections with grassroots and activist organizations such as the Mennonite Central Committee, for example, which were also interested in the problem. Instead, it focused its attention almost entirely on the international level where it dealt more often with members of other governments than with US delegates. Thus, whereas in the landmine case the power of international campaigning was underutilized domestically, on cluster munitions the domestic arm of NGO campaigning was almost entirely lacking. Thus given the strong military opposition on both cases, the inadequate utilization of international and domestic forces both from the top and from below diminished further the NGO chances of success.

CHAPTER FIVE

European Countries and New Weapons Restrictions: Motors of Change?

Introduction

Three European countries – France, Belgium, and Norway – that have played different roles in spurring the campaigns on landmines and cluster munitions will be studied in this chapter. The countries also belong to different categories regarding their size and influence in world politics. France is a second-tier state with a permanent seat on the UN Security Council; Belgium is a small European country; and despite its small size and population, Norway is often characterized as a “middle power” because of its active international role, to which has been willing to devote energy and resources. The differences in the ways in which those states defined their positions on the two issues and the motivations behind them show that there is no unified “European” approach to the humanitarian problems of weapons, and by extension, to the purposes and uses of force.

France: Leading or Falling behind – Party Differences on Humanitarian Issues

Domestic structure

France is an example of the “state-dominated” domestic structure characterized by a centralized political system, policymaking power concentrated in the hands of the executive and a strong civil service that enhances the decision making power of the

executive. Whereas the President plays a predominant role in the field of foreign affairs, when there is a period of cohabitation, foreign policy making is divided between the president and the prime minister. The Minister of Foreign Affairs is in direct contact with both the President and the Prime Minister and the Ministry of Foreign Affairs conducts French foreign policy on a day-to-day basis and ensures its continuity under all regimes (Enjalran and Husson, 1999: 66, 71). The parliament (the Senate and the National Assembly) plays a negligible role in the foreign and security policy domain (Risse-Kappen, 1991: 488-89; Houben, 2005: 146; Abélès, 2000; Bourbao-Guiziou, 2004: 190-91; Boyer et al., 2003: 294-6).

Policymaking authority on defense and security issues is vested in the Ministry of Defense and the Chief of Defense (*le chef d'état-major d'armées*), who is the direct military advisor of the president and operational commander of the French armed forces (Houben, 2005: 146; Martin, 1996:132). During the Cold War France tended to develop an independent security policy and defense industry, and after its end got actively involved in peacekeeping operations. In addition, as a permanent member of the UN Security Council and a core member of the European Union, France has always had the ambition “to remain capable of intervening, whenever and wherever required in the world” (Faupin, 2002: 46). Thus, the military had a potentially important role to play on policy issues falling within its domain of competence, especially after the end of the Cold War removed the emphasis on nuclear strategy. However, since the 1960s civilian control over the military in France has been quite strong. Indeed, it has been argued that the president reigns supreme in the foreign policy realm and has “unfettered” authority over decisions regarding the use of force that does not leave much leeway for military opinion or dissention (Boyer et al., 2003: 289-90). Even though periods of cohabitation open opportunities for the exertion of greater military influence over policy-makers, the military has not tried to exploit

them.²⁷⁸ In addition, due to the “norm of partisan neutrality,” few retired service members become active in politics (Boëne and Danet, 2000: 248-49).²⁷⁹ Thus, whereas the opinion of the military is important in the formulation of policies with defense implications, it does not resort to political lobbying to make sure that its preferences will prevail over those of the civilian leadership.²⁸⁰

In contrast, to the centralized state structure, French society is often described as fragmented along ideological, class, and religious lines and lacking in strong social organizations that would cumulate and represent social interests. Polarization of French society is also high – “differences of opinion often tend to be enlarged rather than reconciled, widening the gap between conflicting views and interests instead of closing it” (Houben, 2005: 142).

Thus, the predictions of the domestic structure model about the ability of NGOs to promote their demands for prohibiting the use of landmines and cluster munitions are that NGOs will face difficulty in accessing key policymakers that could advance their cause, but if they succeed and manage to have their demands institutionalized in policy, there is a chance that it would be lasting. The latter expectation follows, in particular, from the important role the non-political civil service plays in formulating and implementing policy.

²⁷⁸ A one-time statement from the Army chief of staff in 1997 that appealed to the President to guarantee the implementation of the 1996 programming law in the face of budget cutbacks announced by the socialist-led cabinet have been defined right away by political commentators as an attempt to “drive a wedge” between the president and the PM (Boëne and Danet, 2000: fn. 17).

²⁷⁹ Even though no clear data exist, indirect surveys indicate that political sympathies among the military service members “are not sharply at variance with the center of gravity of public opinion” (Boëne and Danet, 2000: 251; Boëne, 2000: 82).

²⁸⁰ Whereas the military has played a very limited role since 1960s and its prestige in the eyes of the French public has been low, since 2000 its prestige increased as well as its political involvement. The military spoke out in the media and the gendarmerie even protested in the streets the deplorable condition of their material force and the lowering of the standard of living of its members relative to other sectors of society (see, Boëne, 2006). These protests were highly political and visible, but they did not regard state foreign policies and were limited to bargaining over the economic situation of the armed forces. The upsurge of military political involvement has been the result of prior neglect of the military concerns and interests by policy-makers (Boëne, 2006, 2000).

The expectations of the model are largely borne out in the French case with two caveats – NGO success in promoting a landmine ban crucially depended on their links with key governmental officials (and initially with President Mitterrand) and the party affiliation of the government in power (with left governments being more supportive of their agenda). NGO attempts to push through national legislation banning mines failed under the center-right parliamentarian majority, even though law proposals to that effect were repeatedly introduced by the oppositional left parties. Similarly, in the cluster munition case, NGOs have concentrated their efforts on lobbying parliamentarians for the adoption of a French ban on cluster munitions but despite the support they have received from oppositional members of parliament (MP), attempts to secure such legislation have been unsuccessful. Given the lack of key government officials supporting their ideas, the NGOs have focused their strategy on winning support for their demands among MPs from the governing coalition and thus securing cross-party support for a ban law. Even though certain senators from the ruling center-right *Union pour un Mouvement Populaire* have shown interest in the problem, so far the necessary support from senators or members of the National Assembly has not been generated.

France's early leadership on landmines that suddenly slipped away: military or party limitations?

Handicap International (HI) launched its campaign against landmines in France in May 1992 with the introduction of the French translation of the report on the landmine problem in Cambodia by Asia Watch and Physicians for Human Rights, *The*

Coward's War. The report was targeted at the media, and especially, at the members of the French Parliament, to all of whom it was presented with the help of House Representative Michel Noir (HI, 1997: 58-9). The parliament was a focal point for NGO efforts at this point of the campaign and in June 1993 HI and Mines Advisory Group (MAG) with the support of MP Claude Malhuret presented to the MPs the French version of another report regarding the mine situation in Iraqi Kurdistan.

HI was the leading NGO in the French campaign²⁸¹ and its initial efforts were concentrated on lobbying parliamentarians, as well as on generating public interest in the issue through the media and the endorsement of the campaign goals by high-profile personalities.²⁸² Thus, the public campaign and HI's expert capacity in the field of demining were used to legitimize and reinforce HI's efforts to convince not only MPs but also members of the French government that urgent action was needed to tackle the problem of landmines (interview 19 NGO).

In December 1992 HI established its first contacts with the French government regarding the organization of a symposium on the issue of landmines together with the French Ministry of Foreign Affairs. Whereas initial contacts were made easily and the Foreign Ministry was cooperative, some three weeks ahead of the planned symposium contacts with HI were cut and the Ministry would no longer answer its calls (interview

²⁸¹ The French landmine campaign was started by HI supported by *France Libertés* Foundation. By 1994 Médecins sans Frontières, Terre des Hommes France, the Catholic Association for the Abolition of Torture, Greenpeace, Unicef France had joined in (HI France, 1994).

²⁸² HI drew the support of Elie Wiesel, Javier Perez de Cuellar, Simone Veil, Jean-François Deniau, Bernard Kouchner and Barbara Hendricks for its June 1992 manifest to the UN and all governments that denounced the proliferation of landmines and the lack of awareness of the problem. The public opinion campaign concentrated on creating regular contacts with the media and providing them with a flow of information on the landmine problem together with the gathering of signatures in support of a ban. The results of the campaign included press coverage in the major French dailies *Liberation*, *Le Monde*, *Le Quotidien de Paris*, *La Croix*; the medical dailies and paramedical journals; some of the major periodicals: *Le Nouvel Observateur*, *L'Evenement du Jeudi*, *La Vie*, *Paris Match*, *Le Monde Diplomatique*. Major TV broadcasts on landmines were aired as well - in November 1992 France 2's television program broadcast a documentary on the landmine consequences in Cambodia and following it in just a few days HI gathered 25,000 signatures supporting the ban of landmines (HI, 1997: 58).

19 NGO). At this point two letters from one of the invited symposium participants, Senator Patrick Leahy, provided an unexpected boost to the French campaign. In his first letter from 26 January 1993, he encouraged HI to try to convince the French government to call for a review conference of the CCW, and in a second letter a couple of days later, the senator explained that due to the “embarrassing position of not having ratified” the landmine Protocol II of the CCW, the US could not call for a review conference, but as a signatory would actively participate, if one were convened (Leahy letter, 28 Jan 1993, reprinted in HI, 1997). He further suggested that as a state that had ratified the protocol, France should call for a review conference.

Right after HI forwarded that letter to the Foreign Affairs Ministry, the communication flow with it reopened, suggesting that the Leahy letter played a role in motivating the French authorities to play a more active part on the issue of landmines (interview 19 NGO). HI prepared another letter for President Mitterrand that was directly handed to him by his wife, president of the *France Libertés* Foundation, together with the first 22,000 signatures gathered in support of a ban. During an official visit to Cambodia in February 1993, Mitterrand announced an indefinite French ban on APL export and called for a review conference of the CCW.²⁸³ Thus, the French decision resulted from strong lobbying by HI and was clearly motivated by “fear of American leadership on the landmine issue” (Chabasse, 1998:62).

In 1993-95 the NGO public campaign in France gained force²⁸⁴ and NGO

²⁸³ Even though the export ban was announced by Mitterrand on 11 February 1993, the official position of the French military equipment licensing body was only published in September 1993 (HI France, 1994).

²⁸⁴ In November 1993, France 3 with the help of HI presented a program dealing with the landmine problem in Kurdistan and the issue of landmine trade, in whose wake some 50,000 signatures supporting the mine ban were gathered. This was followed in March 1994 by a documentary on Kurdistan made by MAG broadcast by France 2. The petition campaign was unfolding in parallel with the media one bringing the signatures in support of a total landmine ban to over 120,000 by the end of 1993 (HI France, 1994; HI, 1997: 59-60). In June 1994, HI launched a public campaign “No to Antipersonnel Landmines” that included the display of 4,000 4-by-3-meters posters, the acceptance of posters by 350 city councils, a TV clip and a radio spot featuring Catherine Deneuve’s voice broadcast

members lobbied parliamentarians and worked together with them on the text of the first draft of a law banning APLs presented before the National Assembly in March 1995.²⁸⁵ However, these efforts had no appreciable effect either in the parliament or on the government's position. In May 1995, the socialist and communist groups in the National Assembly introduced law proposals for a total ban on landmines that were not adopted by the Assembly where the center-right parties had gained the upper hand in the 1993 elections.²⁸⁶

After a center-right government replaced the socialists in mid 1993, the approach to the problem of landmines changed. Initially a human rights issue, now it began to be addressed as a matter of disarmament. With the adoption of the disarmament approach to the problem of landmines, relations between NGOs and the government worsened, and at the expert meetings preceding the CCW review conference, France tried to accommodate the Chinese demand that no NGOs participate in the meetings. Even though the French delegation played an active part in the preparatory meetings for the CCW conference, its position was cautious and called only for a ban of mines non-detectable by electromagnetic equipment and of remotely delivered mines with no self-neutralizing or self-destructing mechanisms (HI France, 1994).

The NGOs' connections in the government and their ability to exert influence

on TV channels, radios and movie theaters, and a CD with interviews of opinion leaders and messages on landmines distributed to 500 local radio stations (HI, 1997).

Part of the HI's activities in 1995 focused on the presidential election campaign. It tried to make the question of a landmine ban an election issue and get the presidential candidates' responses on it. Lionel Jospin declared that he "would defend without hesitation [HI's] proposal for a total ban on antipersonnel mines and fight to have France stop the production of these weapons on the occasion of the conference in Vienna in September 1995" (Jospin, 1995; my translation). Jacques Chirac in his turn responded that he fully supported "all the efforts that would be made at the international level to ban the use of these mines as soon as possible" (Chirac, 1995).

²⁸⁵ HI worked with House Representative of Guyana, Mrs. Taubira-Delanon on a law proposal for the prohibition of trade, production, and use of landmines that was introduced in Parliament on 27 March 1995 (interview 19 NGO; HI, 1997: 61).

²⁸⁶ In August 1995 the Socialist Party put forward a fourth law proposal in favor of France's renunciation of landmines (HI, 1997:62).

on its policies significantly improved after Xavier Emmanuelli, a prominent NGO activist for more than 15 years and a friend to several NGO leaders, was appointed Secretary of State for Humanitarian Affairs in 1995 (Chabasse, 1998:63-4). During his term in office, communication between the government and NGOs was constant and resulted in some changes in policy as well.

HI and the rest of the core NGOs campaigning in France also kept bringing up the question of landmines to the attention of the newly elected president Jacques Chirac. On 18 September they sent him a letter asking that France support a total ban at the Vienna CCW Review Conference and that debate based on the law proposals introduced in the National Assembly and the Senate be held. Following a letter from the President on the following day, which reaffirmed his will that “France plays a leading role within international negotiations,” HI addressed one more open letter to him together with 180,000 signatures supporting an international landmine ban and the adoption of French ban legislation regardless of the outcome of international negotiations (HI, 1997:62-3).

The role of President Chirac during this period is interesting. According to NGO members, by that time he was personally convinced that landmines were weapons of the past that should be banned and his opinion was probably influenced by Emmanuelli who had developed a good relationship with Chirac since his time as a mayor of Paris (interview 19 NGO). But if the NGOs had read correctly the signs coming from the President in support of a mine ban, there should have been no obstacles to active French support for a total ban in 1995-97 under a President, government, and parliament from the same party and concentration of foreign decision-making power in the hands of the president. However, obviously Chirac’s support on the landmine issue was limited and he paid attention to the opposition of the military (whatever his personal views might have been). Thus, Chirac was

committed to “a leading role within international negotiations” on landmines, but not necessarily to a total ban as the objective of such negotiations.

HI did not restrict its efforts to lobbying the President and people in government. A major part of its strategy was also to mobilize public opinion and bring its influence to bear of decision-making.²⁸⁷ On the eve of the opening of the Vienna Conference, HI launched a public campaign together with the French Red Cross under the motto of “a victim = a shoe to say NO.” The idea was to build in four French cities – Paris, Lyon, Strasbourg, and Marseille – shoe pyramids (or mountains) symbolizing the numerous victims of landmines. Even though the happening was planned mostly as a “photo event” for the media, it turned into a true popular event that not only generated media interest but also brought together numerous supporters of the landmine ban (interview 19 NGO). The big success of the shoe pyramids made them a focal point of HI’s landmines campaign each year after 1995; they had also been used in other countries, and since 2004 have become the key event in HI’s campaign against cluster munitions in France and other European countries.²⁸⁸

These NGO efforts finally bore some fruit – at the CCW review conference in September 1995 in Vienna, France announced its decision to stop the production of APLs and start destroying its stockpiles – a decision Xavier Emmanuelli defined as a “courageous move” prompted by the need for “someone to lead the way” and one that

²⁸⁷ The contacts with government officials and the public campaign were linked together. Contacts with sympathetic insiders provided HI with information about upcoming important meetings where the landmine issue would be discussed and thus helped HI optimize the planning of its public events, so as to create maximum media attention and have impact on the decisions to be taken at the meetings that followed or coincided with the NGO mobilization events (interview 19 NGO).

²⁸⁸ The shoe pyramids have been a very successful tool for generating media interest. They provided journalists with a spectacular and yet interesting and serious topic that allowed them to include different political, developmental, humanitarian, local and foreign policy aspects in their coverage. The regularity of the event also helped them develop expertise in the issue and follow it over time (interview 19 NGO). The success of the idea is reflected not only in the fact that it had been adopted by NGO working on the same issue in different countries but also by its appropriation by other campaigns, e.g. a shoe pyramid was organized by the Campaign to End AIDS in front of the White House in May 2005 (Free Speech Radio, 2005)

was highly praised by the NGOs (CCW News, 1995). The decision was a cause of pride and enthusiasm especially for HI and the French NGOs, which realized for the first time that their efforts had an appreciable impact on French policies (interview 19 NGO).

Despite strong NGO mobilization and Emmanuelli's active support for a total ban on antipersonnel mines, it was difficult to secure unwavering endorsement of this goal and prompt measures to achieve it from the French government as a whole. The military opposed the ban and insisted on their right to use landmines. Still, the cooperation among government and NGO members reached a high point when Emmanuelli invited an NGO representative on the official French delegation to the 1996 Ottawa conference (interview 19 NGO). At the conference, France made another step toward embracing the total ban of APLs by declaring its decision to stop the use of mines, except "in the case of absolute necessity to protect its forces" even if this announcement fell short of the NGO objective (Chabasse, 1998:65).

Although France was actually criticized for this statement by Jody Williams at the conference (Tomlin, 1998:201), it was nonetheless indicative of French progress on the issue and support for the Ottawa goals. However, by the time the French decision came about, the bar had been raised by other countries such as Belgium, Norway, the Netherlands, Denmark, Germany, and Canada that had adopted domestic legislation banning the production and use of APLs and were rapidly pushing the international process forward.²⁸⁹

The military were very influential in deciding how far French policy could go toward limiting the use of landmines and at that point they made it clear that they needed more time before they could totally relinquish the use of these weapons

²⁸⁹ Even though France attended the Ottawa meeting as a full participant and made a step toward a total ban, it did not belong to the group of like-minded countries and did not take part in the meetings organized by the ICBL during the CCW sessions aimed at creating a like-minded coalition (Landmine Monitor, 1999).

(interview 19 NGO). Due to the need to reconcile its humanitarian drive with its military interests, France, as the US before it, was overtaken by lesser powers eager to reassert their leadership on humanitarian issues, and landmines in particular.²⁹⁰ The Canadian proposal at the end of the Ottawa conference in October 1996 to start a fast-track negotiating process and have the countries reconvene in Ottawa to sign a landmine ban treaty before the end of 1997 was a shock to all governments but was particularly bitterly resented by the French who saw it as “a political scoop” by the Canadian government (Chabasse, 1998:66; interview 8 NGO). Leadership competition, stoked by the NGOs had grown too strong for France. It opted instead to pursue the landmine talks at the Conference on Disarmament (CD) within which it could still exert influence and claim to be leading with its more progressive positions compared to those of many other CD participants.

After the Ottawa meeting, the French military continued its opposition to any further steps toward a total landmine ban, whereas officials in the Ministry of Foreign Affairs viewed the whole process launched by Axworthy as a WASP movement that was not really serious. As the process gathered force in the early 1997 and more states joined it, French diplomats started realizing its importance and novelty – a process that was not promoted, as usually until then, only by major powers, by the Scandinavians, or by Southern countries, but that had generated wide-ranging and cross-cutting support. However, they were not able to join it due to the veto power exercised by the military (interview 19 NGO) and kept insisting on landmine negotiations in the CD.

However, France changed its course and threw its support behind the Ottawa Process when a socialist government came to power in June 1997. The change in policy came with the appointment as Prime Minister of Lionel Jospin, who supported

²⁹⁰ For the role of middle powers during the Cold War in advocating “humane internationalism” and issues such as poverty reduction and developmental aid, see for example, Stokke ed. (1989), Pratt ed. (1989, 1990).

the total ban and appointed other long-time supporters to posts within the Ministry of Defense and the Ministry for Cooperation and for Development (Chabasse, 1998: 66). The new landmine policy could also be seen as a part of a general reassessment and reorientation of French commitments to international law undertaken by Jospin that sought to incorporate a human rights perspective in French international relations (interview 21 GOV). This turn in French foreign policy undertaken by the socialist government later resulted in the ratification of the 1977 Additional Protocols to the Geneva Conventions and support for the creation of the International Criminal Court.

In practical terms, the new French policy on landmines was brought about by personality changes in the administration, especially among the political appointees in the Ministry of Defense. In particular, Christian Lechervy (who had previously worked in the NGO sector) became the foreign affairs adviser of the new Minister of Defense, Alain Richard (interview 19 NGO). His first task at the Ministry of Defense was to undertake an inquiry about the last use of antipersonnel landmines by the French forces. As it turned out, landmines were used for the last time in 1982 to protect French soldiers in Beirut. During rescue operations and guerrilla type of combat in Congo and the Central African Republic, major military operations in Iraq and peacekeeping in Bosnia, French commanders had refrained from employing those weapons because of the danger they posed not only to civilians but also to the French soldiers. Thus, it became clear that if during the last 15 years landmines were not used in the types of conflicts in which French forces could be expected to engage in the future, their elimination was desirable not only on humanitarian but also on security grounds (interview 21 GOV). The inquiry proved that there was no operational necessity for landmines and their ban would not put soldiers' lives in danger. On this basis, Defense Minister Richard gave his support to the landmine ban. After calling a consultation meeting with the Foreign Minister Huber Vedrin and the Defense

Minister, Jospin took the decision that France would join the Ottawa Process (interviews 19 NGO, 21 GOV).

Thus, an energetic political official in the Ministry of Defense was able to change the military position on the issue by providing sound analysis and evidence that French forces did not need landmines and had already forgone their use. Thus, initial military opposition could be attributed to bureaucratic inertia and the lack of information that made people believe that someone, some day might need to use landmines for force protection (interview 21 GOV). Alternatively, it could be argued that the military opposed the landmine ban in principle because of their interest in preserving their autonomy and reluctance to let politicians, and even less so, NGOs meddle with their work. From this perspective, Lechervy managed to influence the position of the Defense Ministry because he acted quickly and had the backing of the prime minister who was in favor of the ban.

Thus, after it consolidated its position just days ahead of the Brussels Conference in June 1997, France pledged its support for the international mine ban and became (again) an active player in the process toward its achievement (Bourgois, 1997). Arguably, its joining the Ottawa Process helped create a bandwagon effect for other countries following suit and was particularly important in preserving unwavering support for the treaty among African countries during the tense hours of the Oslo conference when the US was exerting heavy pressure on all countries to accommodate its demands and modify the treaty text (interview 19 NGO).²⁹¹

The Ottawa Convention was ratified unanimously by the French Parliament on 25 June 1998. Reflecting the new attitude of the military and a renewed sense of

²⁹¹ The head of the French delegation in Oslo, Joëlle Bourgois was convinced that no exceptions were acceptable and played an active part in preserving the treaty intact (interview 19 NGO). Her determination might have stemmed also from her realization that the old French position that landmines were necessary in extreme cases, which she had been defending for years, was wrong and untenable (interview 21 GOV).

French leadership on landmines among the great military powers, the Minister of Defense declared:

This law authorizing ratification of the Mine Ban Treaty will make France the first permanent member of the U.N. Security Council to adhere to these standards. It indicates our determined willingness to arrive at a total and universal ban on antipersonnel mines. This same determination to see a total mine ban recently led France to declare before the Atlantic Alliance that it would unreservedly enforce the Ottawa Treaty. France will prohibit the planned or actual use of antipersonnel mines in any military operation whatsoever by its military personnel. Furthermore, France will refuse to agree to rules of engagement in any military operation calling for the use of antipersonnel mines (quoted in Landmine Monitor, 1999).

The persistent NGO campaigning and their demands for information and action on the issue of landmines by the French government brought about cooperation from government officials and an unprecedented degree of openness in the area of disarmament that had previously been restricted to the public. The newly gained role for NGOs and their improved relations with government ministries and parliamentarians were finally reflected in the establishment of a National Committee For the Elimination of Antipersonnel Mines with the participation of government representatives, two Representatives and two Senators, members of humanitarian organizations, and representatives of corporate management and organized labor. The National Committee has to ensure monitoring and enforcement of the French law, as well as of French actions in support of victim assistance and humanitarian demining internationally. The Committee marked the first time ever that the French government has officially allowed NGOs to take part in the monitoring of its political process (Landmine Monitor, 1999).

Thus even under unfavorable conditions from the point of view of the domestic structure model, NGOs were able to find allies in government to promote their cause,

and as a result of their successful campaigning, secured an opening for their future activities in the otherwise closed French political system. The domestic structure model points to the channels through which NGO influence is more likely to find its way into French policy making (i.e. through the executive and not the parliament), but it is less successful in explaining the NGO success. To do so, the model has to be supplemented by attention to the role of individuals, supportive of NGO demands and well positioned not only in the government hierarchy but also within a government that shares their ideas and creates a propitious ideational climate. Secretary of State for Humanitarian Affairs, Xavier Emmanuelli was in favor of NGO demands, but could not overcome the military opposition within a center-right government even with NGO backing. NGOs made real advances in influencing the French position, but fell short of winning its support for a total and unconditional ban in the lack of strong commitment to this cause on the part of the president. On the other hand, when the socialist government came to power in 1997, the prime minister was able to overcome military resistance to the mine ban and push the preferences of the socialist government over any hesitations that the president might have had on the issue in view of his prior record of half-hearted support for the ban. Thus even in the French political system unanimously seen as one of the best examples of state-dominated domestic structure, centralization is not absolute.

Cluster munitions: strong national campaign, few policy results

Whereas Human Rights Watch, Landmine Action, UK and the ICRC had been actively focusing on the problems of cluster munitions since the NATO bombing campaign in Kosovo in 1999, Handicap International (HI) didn't pick up the issue

until 2003 when in the wake of the Iraqi war it decided to broaden its campaign from antipersonnel mines to cluster munitions and explosive remnants of war. The campaign started with a focus on the Iraqi situation, numerous press conferences, and the release in August 2003 of a report on cluster munitions systems (Landmine Monitor, 2004; HI, 2003a). In November 2003, HI was among the NGOs that founded the Cluster Munition Coalition in The Hague but still was lagging behind in terms of coming up with a specific position.

Whereas HI was slow in embracing the issue of cluster munitions, it quickly became the most active NGO working on this problem with a particularly strong public campaign in France that was launched in July 2004. The campaign represented a break with traditional humanitarian campaigns HI had engaged in before. It relied on the use of the Internet and the creation of a site on cluster munitions (www.sousmunitions.org) with all the necessary information on the issue, current events, news, and an on-line petition in support of the elimination of cluster munitions. The idea was to combine the new medium with a strong message and graphic illustration of the problem that would appeal not only to HI's traditional base of supporters, but also to younger people. The campaign also included the distribution of posters, and short films for the TV and cinema (HI, 2004a).²⁹² Its high point was the organization of the traditional shoe pyramids in 35 French cities, accompanied by numerous concerts, exhibitions and demining demonstrations, this time in support of ending the use of cluster munitions. The motto of the shoe pyramids was "To say NO to cluster bombs," variously described as "the coward's weapons" ("armes des lâches") and "antipersonnel landmines by another name" ("des mines antipersonnel

²⁹² The campaign included 3,000 posters of 4 x 3 m distributed nationally; 8,000 posters of 120 x 176 cm placed on the Abribus buses; 15,000 40 x 60 cm posters; a 30-second film played in about 200 movie theaters in France; one 25-second TV film distributed over the national and regional channels and cable TV stations; and web ads on the Internet. In addition, about 400 municipalities supported this campaign by the placing of posters and the insertion of announces in the municipality bulletins between August 2004 and March 2005 (HI, 2004a, my translation).

qui ne disent pas leur nom") (Le Monde, 2004).

In the wake of this mobilization, François Rochebloine, deputy from the UDF (*Union pour la Démocratie Française*, a center-right party that holds 29 seats in the National Assembly and is linked to the ruling *Union pour un Mouvement Populaire*), together with another 27 parliamentarians, introduced in the National Assembly, a law proposal envisioning the extension of the landmine definition in the French landmine legislation to cover cluster munitions as well. Even though the law proposal was inspired by HI's campaigning on the issue, it was not the result of direct HI lobbying or consultations between Rochebloine and the NGO. In fact, the expanded definition of landmines, proposed in the text was too vague and resented by HI.²⁹³ Even though at that point HI was talking about ending the use of cluster munitions, it had not decided to call for a total ban and was still demanding only "the prohibition of the use, production or transfer of cluster munitions until their humanitarian problems have been resolved" (HI, 2004b). HI also regretted the law proposal because it was hoping to garner cross-party support for a better thought-out proposal that would have better chances of approval (interview 20 NGO).

When the international talks at the CCW about explosive remnants of war, adequacy of international humanitarian law for regulating the use of cluster munitions, and preventive measures to limit their humanitarian impact stalled in 2004, HI decided to call for a ban of these weapons. Its decision was prompted by its field experience of demining and assisting victims of war that highlighted the gravity of the problem and

²⁹³ "Le terme « mine antipersonnel » s'applique également à toute arme qui met hors de combat, blesse ou tue une ou plusieurs personnes et dont l'action de destruction est déclenchée par la présence involontaire d'une personne à proximité de cette arme ou d'un dispositif annexe lié à cette arme, ou indépendant ou partie intégrante de cette arme." (Proposition de loi visant à compléter le dispositif d'interdiction des mines antipersonnel, No. 1821, Assemblée Nationale) (The term "antipersonnel landmine" is equally applicable to all weapons that put hors de combat, wound, or kill one or more persons and whose destructive act is triggered by a person's involuntary presence in the proximity of this weapon or that of an attached device linked to this weapon, independent, or making an integral part of this weapon;" my translation)

the urgency of resolving it. In addition, only a clear and powerful message could mobilize the public behind HI's campaign (interview 18 NGO) and this made it necessary to leave aside the technical and legal details that warranted a more nuanced and less ambitious approach preferred by other organizations. Thus in 2005 HI issued a petition calling for "a ban on the production, use and transfer of cluster bombs, a French position in favor of an international agreement on this issue, and destruction of existing stocks" (HI, 2005a). It launched a continuation of its cluster munition campaign that tried to enlarge its scope and generate more public interest through the engagement of celebrities such as Catherine Deneuve, Juliette Binoche, Antoine de Caunes, and Cédric Pioline.²⁹⁴

Parallel to the public campaign, HI was heavily engaged in lobbying members of parliament and ministers. In July, it sent letters to all members of parliament, and the ministers of defense and foreign affairs, calling their attention to the humanitarian problems of cluster munitions and asking them about the measures France was taking to alleviate them. Following the passage of the law prohibiting cluster munitions by the Belgian Senate in July 2005, HI targeted its efforts in particular on the French Senate where it organized on 6 October 2005 a public education event on the humanitarian problems of cluster munitions and explosive remnants of war with the participation of NGOs from the Cluster Munition Coalition (CMC) and the ICRC, government officials from the Ministries of Defense and Foreign Affairs, representatives from UNICEF, French parliamentarians, and journalists. The idea was to stir interest in the issue and repeat the success of the Belgian Senate in adopting a

²⁹⁴ This time the campaign included 4,600 posters of 4 x 3 m distributed nationally; 18,200 posters of 120 x 176 cm placed on the Abribus buses; 20,000 40 x 60 cm posters; a 20-second film played in about 200 movie theaters in France; one general 20-second film and one 25-second film on the pyramids distributed over the national and regional TV channels and cable TV stations (the TV and cinema films used Catherine Deneuve's voice); and web ads on the Internet. In addition, about 500 municipalities supported this campaign by the placing of posters and the insertion of announces in the municipality bulletins between 15 July and 15 October 2005 (HI, 2005b, my translation).

law prohibiting all cluster munitions. To this end the Belgian senator who had initiated the Belgian legislative action, Philippe Mahoux, was invited to speak at the event (CMC, 2005d).

The Senate event was followed by a show of public mobilization with the organization of the show pyramids in 36 French cities on 8 October. In only one day, HI gathered over 65,000 signatures in support of a ban on cluster munitions – an absolute record in the 11-year history of the pyramids (HI, 2005c). The Internet petition signing also gathered force and reached some 200,000 signatures in favor of a ban.

The public mobilization and interest in the issue didn't go unnoticed by the French parliamentarians. As a result about 40 members of parliament picked up the issue and directed to the government over a hundred questions on cluster munitions (interview 20 NGO). In addition to Rochebloine's 2004 law proposal, Georges Hage of the Socialist Party (PS) and another 22 deputies introduced a similar law proposal on cluster munitions in the National Assembly in November 2005, followed by a law proposal along the lines of the Belgian legislation put forward in the French Senate by Hélène Luc (PS) and 22 Senators in March 2006 (Proposition de Loi 2640, Assemblée Nationale; Proposition de Loi, 253, Sénat). Finally, following a hearing of HI representatives, the members of the bureau of the Commission on Foreign Affairs and on Defense in the Senate decided to create an information mission on cluster munitions that would gather information on the issue and prepare a report and recommendations to the government (HI, 2006a).

Prompting Senate action on cluster munitions remained a priority for HI lobbying efforts in 2006. In a rare case of close collaboration between NGOs and Senators, HI is hoping to create a cross-party coalition behind a new proposal for the prohibition of cluster munitions with the help of Joëlle Garriaud Maylam of the ruling

Union pour un Mouvement Populaire (who is also leading the information mission on cluster munitions) and Jean-Pierre Plancade of the Socialist Party (interview 20 NGO).

Despite the considerable concern shown over the problem of cluster munitions in the National Assembly and the Senate, the law proposals introduced in them could not garner the necessary support for adoption. Nor did NGO campaigning and parliamentarian letters influence the position of the French government regarding the need for stronger actions domestically and internationally. Both the Foreign Ministry and the Ministry of Defense defended the legality of cluster munitions and neither was ready to go farther than reaffirming their support for CCW Protocol V on explosive remnants of war (ERW)²⁹⁵ and working further within the CCW framework on preventive measures that would minimize the occurrence of ERW as a result of the use of cluster munitions (Douste-Blazy, 2005; Alliot-Marie, 2005; Scellos, 2005).²⁹⁶

The Ministry of Defense asserted that its armed forces considered “especially necessary to continue to be equipped with certain weapons with submunitions. These weapons are particularly suited to neutralizing ground targets (vehicles, artillery batteries, logistic systems, etc.) and they remain unrivaled in this way of employment. To decide to do without them would mean to accept an important reduction of the national defense capabilities of states, and of France, in particular” (Scellos, 2005).²⁹⁷

Thus the French military insisted on the military effectiveness of cluster

²⁹⁵ France supported the establishment of a Governmental Group of Experts to study the issue of explosive remnants of war, which resulted in agreement on a new CCW protocol in November 2003 and considered that problem to be a priority issue (France, 2001a,b, 2003; Landmine Monitor, 2004).

²⁹⁶ For a number of responses to the same effect from the Ministries of Defense and Foreign Affairs to parliamentarian questions, see for example, <http://www.senat.fr/basile/visio.do?id=qSEQ050718908&idtable=q168544|q168582|q168398|q169236|q169324|q168583|q168562|q169027&c=sous-muniti...&rch=gs&de=20050327&au=20060327&dp=1+an&radio=dp&aff=sep&tri=p&off=0&afd=pr&afd=ppl&afd=pjl&afd=cvn>

²⁹⁷ My translation, original text reads: “particulièrement nécessaire de continuer à être dotées de certaines armes à sous-munitions. Ces armes répondent de façon particulièrement adaptée à la neutralisation d’objectifs de surface (véhicules, batteries, plots logistiques, etc.) et elles restent sans équivalent dans ce cadre d’emploi. Décider de s’en passer impliquerait d’accepter une réduction importante des capacités de défense terrestre des Etats en général et de la France en particulier.”

munitions and held to the opinion that the improvement of the reliability rate of submunitions was both an effective and realistic way to solve their problems (France, 2002a). In light of this position, by August 2006, the only practical measures that France had undertaken with a view to curbing the incidence of ERW from cluster munitions were the destruction of its stock of old and unreliable BL-66 Belouga and Rockeye cluster bombs, in addition to the announced intention not to use M26 MLRS rockets with DPICM submunitions until they are modernized (HRW, 2006i).

In spite of the significant NGO mobilization and the accelerated talks between them and like-minded countries regarding the possibility of adopting an international agreement restricting the use of cluster munitions following the passing of the cluster ban legislation in both the Belgian Senate and House in February 2006, the official French position on the issue remained lukewarm at best. France insisted on approaching the issue of cluster munitions by reducing the humanitarian threat of all types of ERW. In March 2006 it still was not ready to call for a specific focus on cluster munitions within the CCW, even though it did not intend to work actively against such a focus if it were proposed (CMC, 2006g).

Since France regarded the problem created by cluster munitions as no different from or graver than that posed by ERW in general, its position remained that IHL was sufficient to deal with the dangers of those weapons and no new legal provisions were necessary in this regard.²⁹⁸ Thus it focused on the need of correct implementation of IHL and the development of preventive technical measures that would diminish the risks cluster munitions pose to the civilian population. In its view, the indiscriminate effects of cluster munitions could be curbed in several ways, such as reduction of the number of submunitions contained in the cluster munition, incorporation of self-

²⁹⁸ France has insisted on the possibility of solving the cluster problem by technical measures and opposed taking up the issue of IHL in connection to ERW since the beginning of the negotiation mandate on the ERW Protocol (see, for example, France, 2002a, 2002b).

destruct and self-neutralization features, improvement of precision targeting through guidance mechanisms, improvement of the submunition reliability rate, and retirement of the unreliable and dangerous munitions. In short, France did not support a total ban on cluster munitions because they remained useful weapons with no alternative to replace them (interview 39 GOV).

Despite the lack of responsiveness to its demands, HI kept pressing the issue in France. In July 2006 it launched another round of its public campaign against cluster munitions that lasted until the end of September. As in 2005, the shoe pyramids were a success and gathered an additional 65,000 signatures in support of a ban that brought the overall number of signatures to 300,000 (HI, 2006b,f).²⁹⁹ In September, HI questioned the 2007 presidential candidates regarding their position on the issue of cluster munitions and published in the newspaper *Libération* a public appeal backed by 100 French personalities asking the presidential candidates to support the prohibition of cluster munitions. The call resulted in clear positive commitments to a ban on cluster munitions from all the presidential candidates, except for Nicolas Sarkozy, the candidate of the ruling center-right *Union pour un Mouvement Populaire* (HI, 2006e,g).

Despite the strong NGO campaign domestically and the momentum behind a proposal for a negotiating mandate on cluster munitions created at the November 2006 CCW Review Conference in Geneva, the French government did not move from its position. It insisted that the implementation of the ERW Protocol (that had just entered in force in November) would be adequate in addressing the post-conflict problems of cluster munitions, and that technical improvements in the munitions design could solve the other problems related to use. Thus, even though France did not openly

²⁹⁹ During the summer, HI also actively reported on the cluster munition situation in Lebanon during the Israeli-Hezbollah conflict and supported post-conflict clearance by a number of Lebanese NGOs (HI, 2006c,d).

oppose the CCW negotiating mandate, it did not join the 15 EU countries that were supporting it (Hi, 2006h, i). It remains to be seen if this “tacit opposition” could be turned into at least “tacit support” but currently the main hope for change lies ahead in the upcoming presidential elections in 2007.

Conclusion: NGO efforts matter but resonate better with parties on the left

The domestic structure model has some purchase in defining the most conducive ways of exerting NGO influence on policymaking but has to be refined with a focus on the role of individuals and political parties in power to better understand also the success or failure of NGOs to translate their access into effect on policy.

NGOs in France were particularly effective in publicizing the issues of landmines and cluster munitions and mobilizing public interest and support of their prohibitions. They have been able to make those problems even election issues. Access to policymaking has never been an insurmountable obstacle. They have found supporting individuals in government at the very top such as President Mitterrand or Prime Minister Jospin, as well as in other important positions such as Secretary of State for Humanitarian Affairs, Xavier Emmanuelli, and the appointees in the Ministry of Defense. Even under a center-right government in the period 1995-97 NGOs had a very close working relationship with the government and even became members of the official French negotiating delegation. Finding allies in the right government on cluster munitions has proven more difficult. This has made the NGOs focus their activities on parliamentarians where they have easier access, but where this support is also less consequential for actual policymaking. Several law proposals for a national ban on cluster munitions have been tabled by opposition party members, but have

remained inconsequential. Nevertheless, the NGOs succeeded in institutionalizing the issue within the Senate with the creation of an information mission on cluster munitions that discusses the problem and should issue a report with recommendation for government action.

In both the landmine and cluster munitions case, it appears that to some degree the French position has been shaped by military considerations. Military concerns had a role to play in France's policy-making process due to its status as a second-tier power with a permanent seat on the UN Security Council and significant military engagements in different parts of the world, including many peacekeeping operations after the end of the Cold War (Boyer et al, 2003: 284). The military could draw on various sources of legitimacy given the range of foreign policy roles it could play. Whereas public trust in politicians and many public institutions fell in the years after the Cold War, the military could actually enjoy enhanced support and prestige in France (Boëne and Martin, 2000: 62; Dogan, 2005; Boëne, 2006). Thus military arguments carried a weight for French policy makers, but have been more readily accepted by governments on the right than on the left of the political spectrum.

Early on in 1993 under a socialist president and government, HI convinced France to play a leadership role and call for a review conference of CCW to address the problem of landmines. From 1993 to 1995 in a period of cohabitation between a socialist president and a right government, NGOs experienced a setback in their relations with the government, which was not prevented by the fact that the president had earlier shown interest in their cause.³⁰⁰ From 1995 till spring 1997 under a right government and president, the NGOs had a strong ally in the Secretary of State for Humanitarian Affairs, Xavier Emmanuelli, but faced with military opposition, he

³⁰⁰ However, this could be attributable to the general weakness of NGO campaigning efforts during this period.

could not bring French policy in line with NGO demands. Thus for the most part of the Ottawa Process till June 1997 France was opposing it and working at cross purposes to move discussions on landmines to the consensus-based Conference on Disarmament. Only with the coming to power of a socialist government in May 1997 (cohabitating with a right president) and the appointment of key individuals at the Ministry of Defense was it possible to change the course of French policy on landmines. Arguably, the change was portrayed as entirely pragmatic and justified by military considerations – anti-personnel landmines were not militarily indispensable and even endangered the safety of French soldiers (interview 21 GOV). Thus the new socialist government could claim that there was no conflict between its humanitarian goals and state military interests. Yet, it is doubtful that without a serious commitment from the prime minister, the military review could be implemented and military thinking about the weapons' utility changed in the less than a month between the coming to power of the government and the announcement of its new policy. In the case of cluster munitions, in contrast, despite the relatively strong NGO campaign, especially compared with activities undertaken in other countries, the military utility of cluster munitions remained a matter of fact for the center-right government (in power since 2002) and it insisted that there were other effective ways to deal with their humanitarian impact than a ban.

Thus, military arguments have been a factor defining French policy on weapons restrictions, but not *the* factor that determines it. The military has given its opinion but has not lobbied for it actively, used public means to promote it, or tried to play the two branches of the executive off against one another in periods of cohabitation. Rather, what shaped French positions on the two issues were the visions that different parties had about the role France should play and the image it should project internationally.

Belgium: Raising the Stakes Domestically

Domestic Structure

Traditionally, the Belgian political system has been defined as “consociational democracy,” characterized by a balance in the relationship between the executive and legislative branches of government and executive power sharing in coalitional governments (Lijphart, 1980: 4-5). Social interest representation is concentrated in strong intermediate organizations and political parties, in particular, play a key role in political life, so much so, that sometimes the Belgian system is called “partocracy”. Its political culture and policy networks heavily emphasize the need for consensus and compromise in order to keep together a highly heterogeneous society, divided along religious and linguistic lines. Thus, many politicians see the de-escalation of conflict as a priority over problem solving. The emphasis placed on reaching consensus has probably impacted not only the political culture of the country but also the individual style of politicians and diplomats – as has been argued – “[p]olitical leadership and statesmanship do not come naturally in Belgium” (Houben, 2005: 33; also Willame, 1999: 252-55).³⁰¹

Thus according to these features, the Belgian political system can be included in the “corporatist” category of the domestic structure model. The predictions of the model are that in order to advance their goals NGOs need to work through and

³⁰¹ In Willame’s words, Belgian foreign policy is one of followership (“suvisme”), which is characteristic not only of the executive but also of the parliament and political parties. Another of its features is the lack of political personalities (“permanent personalities’ capable d’être des éléments intégrateurs des forces politiques dans la société”) (Willame, 1999: 252).

“penetrate” the societal and political organizations, especially the parties. Given the diverse interests of different sectors of society and the compromise-oriented policy-making process, it would require effort and a long time before NGOs could succeed in this task. If they manage to do so, however, and policies reflecting their demands are adopted, this would have a long-lasting impact, since corporatist structures tend to institutionalize social and political compromises once achieved (Risse-Kappen, 1995b: 27).

The model does not provide explicit specification about the institutional channels that would be most conducive to NGO influence. Given the importance of parties and party leadership it could be argued that this would be the point of access, which NGOs should be targeting. The literature on corporatism, on the other hand, suggests that corporatist arrangements result in a process of direct bargaining between organized interests and the government and bypassing and weakening of the parliament (Schmitter, 1979: 21; Rokkan, 1966: 107). Thus, according to the theory, parliament would be a dead-end alley for NGO advocacy unless some of the parties or government officials back NGO efforts.

In the Belgian case it has been argued that foreign and security policy is “the classic story of a very small group of people that shape it” (quoted in Houben, 2005: 36). The policymaking power is concentrated in the hands of the Prime Minister (PM) and a “core cabinet” composed of the PM and four vice-prime ministers from different parties, whereas civil servants do not play a significant role in the process of making decisions. The Ministry of Defense consists of a very small civilian administration. The military follows a strictly non-political line in its dealing with policy makers and its efforts are traditionally concentrated on Belgium’s role as a “loyal ally” within NATO’s integrated structure (Houben, 2005: 33-34; 36-39).

On the other hand, in contrast to Lijphart's emphasis on the sharing of power between the executive and the parliament (composed of the Senate and the Chamber of Deputies), the latter has been described in Belgium as "a rubber-stamp for decisions effectively taken elsewhere" (Fitzmaurice, 1996: 114; also Magnette, 1999: 93). Compromises between social actors and the government are made without the parliament's involvement. The core cabinet in consultation with organized interests and the political parties work out the details of law proposals that are then transmitted to parliament for adoption. Thus, the corporatist structure leads to the marginalization of parliament (Magnette, 2004: 97-99). In addition, in the field of foreign policy, the complexity of foreign relations "has tended to reduce the real influence of Parliament and strengthen the executive" (Fitzmaurice, 1996: 113). The involvement of parliament in decisions on security policy has also been very low or nonexistent (Houben, 2005:55). Whereas the cohesiveness of the Belgian governments because of their coalition character is much lower than that of their British or French counterparts, for example, this weakness of the executive has not benefited the parliament, and in fact, its role is even more limited than that of parliaments in majoritarian democracies.³⁰² Thus Magnette (2004) states that any observer of Belgian political life is struck by the "impotence of the parliamentarians."³⁰³

In light of the above observations about the Belgian political system and the domestic structure model predictions, one should not expect any success for NGOs trying to advance their cause through the Belgian parliament. The emphasis should be placed instead on working with the leadership of the ruling parties. In addition, given the consensual political culture of the country, Belgian leadership on the international arena and entrepreneurship by individual government officials could not be expected.

³⁰² "[D]ans une démocratie de compromis telle que la Belgique, le Parlement est plus cadenassé encore qu'il ne l'est dans les régimes majoritaires" (Magnette, 2004:99).

³⁰³ "Quiconque a pu observer la vie politique belge n'a pu qu'être frappé par l'impuissance des parlementaires" (Magnette, 2004: 92).

What will be shown in this chapter, however, is that the expectations of the domestic structure model do not hold true and NGOs in partnership with influential senators were able not only to set the tone of Belgium's national policies on landmines and cluster munitions, but to a large extent also of its foreign policy on the issues. In each case, it took a year or less to translate NGO demands for a landmine and a cluster munition ban into domestic legislations, which is probably less than the model's predictions of slow progress. As I will argue, the NGO campaigns in both cases brought the problems to the attention of senators whose agendas gave priority to human rights and humanitarian issues. The partnership built between the NGOs and the Senators reinforced their positions and furthered the interests of both sides, thus overcoming the structural constraints imposed by the political system. On the other hand, the policy network aspect of the domestic structure model is validated – the process of law making and adoption in both cases of landmines and cluster munitions was based on reaching compromise among the various stakeholders. Political culture also explains the lack of Belgian initiative at the early stages of forming an international process on landmines and cluster munitions that would break with the established diplomatic practices and consensus-oriented negotiations.

Belgium and landmines – the first national step in an international process

Belgium was among the countries with one of the strongest public landmine campaigns (interview 8 NGO) that combined close work with parliamentarians at its outset and government officials later during the Ottawa Process. One of the first actions by the Belgian NGOs was to encourage the urgent ratification of the CCW so that Belgium could actively participate in the review conference in 1995 – an effort,

which met with success in February 1995 when the country ratified the Convention. This step was quickly followed by the adoption of a law prohibiting the production, procurement, sale, export, use and custody of landmines in March 1995, which made Belgium the first country that had legislated a total ban on landmines (Landmine Monitor, 1999). The ban was the result above all of the cooperation between Handicap International, Belgium and senators Martine Dardenne (Green Party) and Roger Lallemand (Socialist Party).

Even before a national campaign on landmines was launched in Belgium, Handicap International, Belgium (HI) decided to focus its efforts on creating awareness of the problem among parliamentarians. First, in the summer of 1993 HI sent to Senator Martine Dardenne a letter accompanied by the book, *Hidden Death: Antipersonnel Mines in Iraqi Kurdistan*. This was followed by a meeting between her and Pascal Simon from HI. The cooperation between the Senator and HI resulted in the distribution to all the members of the Senate and the Chamber of Deputies of the same publication *Hidden Death*, accompanied by a cover letter from Dardenne (HI, 1997; HI, Belgium). Whereas the report proved crucial for stirring interest in the issue and eventually for the adoption of the Belgian ban on landmines, at the time of its mailing HI had not planned or envisioned such far-reaching outcomes. Indeed, it was only after the distribution of the report that HI began setting up a landmine coalition of Belgian NGOs to work on the issue. This resulted in January 1994 in a first meeting between the Belgian and French sections of Handicap International, the Beglian Red Cross and a small number of Blegian NGOs that worked out the terms of the campaign call.³⁰⁴

³⁰⁴ The other organizations included Médecins sans Frontières, Greenpeace, Groupe de Recherche et d'Information sur la Paix et la Sécurité (GRIP), and the Belgian section of OXFAM. The organization of the NGO coalition went along with developments in the Senate. The leading Belgian NGO, HI only hired a campaign officer on landmines, Pierre Ryckmans, in October 1994 and a steering committee of the network was elected only in February 1995.

The idea to put forth a law proposal to ban landmines came first from Martine Dardenne, and independently from Senator Roger Lallemand in February 1994.³⁰⁵ The involvement of the latter was of crucial importance for the successful passing of the legislation, because of his high political stature and influence in the Senate.³⁰⁶

In March 1994, the Belgian NGO network held a press conference under the motto “Time for a total ban on the production and use of antipersonnel landmines” with the participation of senators Dardenne and Lallemand who publicly announced for the first time their parliamentary initiative. The press conference, and for the first the landmine campaign, received wide media coverage, which the NGOs tried to sustain thereafter by feeding a continuous flow of information on the issue to the media, a visual campaign of posters and spots in movie theaters, as well as a signature gathering campaign (interview 26 NGO).

In the Senate an informal division of labor between Dardenne and Lallemand was established. Whereas on the suggestion of HI, Dardenne worked primarily on convincing women-senators to support the legislation, Lallemand with the help of law professor Eric David devised the law proposal text and Lallemand’s political skills and contacts played a large part in its passage in the Senate.³⁰⁷

Even though the military was initially opposed to a total ban on landmines, it did not mobilize to fight against the legislation in the Senate. In June 1994, during

³⁰⁵ Interviews 25, 26 NGO; HI, Belgium; also Mekata (2000: 149-50). This contrasts with the version in Long and Hindle (1999: 252) that HI proposed that legislation be placed before the Senate. At the time when the Senators suggested introducing a mine ban legislation, HI was mostly thinking about the upcoming CCW Review conference, the need for Belgium to ratify the CCW in order to be able to participate in it, and influencing the position of the Ministry of Foreign Affairs (interview 26 NGO; Landmine Monitor, 1999).

³⁰⁶ Roger Lallemand was the leader of the French speaking Socialist Party in the Senate and had left his mark working for the legalization of abortions in Belgium and later stimulated the debate on euthanasia. He is also a poet and writer and an emblematic figure in Belgian cultural life.

³⁰⁷ He also made a deal with the president of the House that if they voted the landmine law, the Senate would vote in return something else the House was interested in. The support of the Flemish social democrats was also very important for the passing of the legislation and Pax Christi’s connections of with the party were instrumental in securing it (interview 26 NGO).

discussions of the law proposal in the Senate’s Justice Commission, the Minister of Defense, Delecroix expressed reservations to it and insisted that it should allow the Belgian military “to keep their mines for defense purposes, within international organizations, such as NATO or UEO,” for fears that the original legislation would isolate Belgium from its allies (HI, 1997:53). Nevertheless, several months later the Defense Minister announced his support for a worldwide ban on APLs and pledged to destroy Belgian stocks instead of selling them to third parties. In addition, he declared that mine launchers would not be sold either, a decision that in his words “amount[ed] to a loss of ten million of francs, but … justified by a clear ethical choice” (quoted in HI, 1997:53). Despite those decisions and public pronouncements, in October 1994 the Defense Minister introduced an amendment that provided for the use of APLs “in case the military needs to defend themselves under exceptional circumstances, and when there are no other means available.”

The NGO response was to lobby parliamentarians to stick to the original proposal and a large-scale public campaign on the effects of landmines that called for a total ban. After this lobbying and some skillful maneuvering by Lallemand who argued that in such a case of self-defense the use of landmines is implicitly understood so that it was not necessary to explicitly mention it in the law text, the bill was passed by the Senate without changes in January 1995. On 2 March 1995 it was unanimously voted by the Chamber as well, making Belgium the first country to adopt a total ban on the production, use, export and transfer of landmines. Even though both at the time and ever after, the legislation has been hailed as a total ban, in fact it didn’t prohibit the stockpiling of landmines and covered only a 5-year period after which it could be extended by the Council of Ministers.³⁰⁸ These two provisions were key in gaining support from certain MPs and assuaging military opposition, thus making possible the

³⁰⁸ A year later in May 1996, a law prohibiting the stockpiling of APMs was adopted as well.

achievement of consensus on the issue.³⁰⁹

Thus, the NGOs in Belgium served as catalysts by stirring interest in the problem of landmines in two prominent senators. They were also able to stoke further interest by conferences, public demonstrations, and signature gathering campaigns. The degree of HI involvement in lobbying and its effects on parliamentarians are less clear, however – whereas according to senator Dardenne, “civil society played a crucial lobbying role with Parliament,” senator Lallemand saw the legislation as a result of “parliamentary initiative rather than a popular movement” (cited in Mekata, 2000:150). In a later statement Lallemand acknowledged that, “Handicap International was the decisive inspirer (l’inspirateur determinant) of legislations that banned antipersonnel landmines in many countries” (HI, Belgium, 2002), but it is true that the law itself was achieved thanks to the initiative and work of senators, supported by the Belgian NGOs (interviews 25, 26 NGO). Among the latter, HI played a key role and relied almost entirely on its own expertise and connections to develop the campaign in Belgium at an early point when the ICBL had just been launched (Mekata, 2000: 151). Indeed, the NGO success and the new law in Belgium had probably more important consequences internationally rather than domestically. Although it was not technically speaking “a total ban,” it was depicted as such and had a huge symbolic significance that imparted momentum to NGO campaigning and similar national legislations in other states among which, France, Denmark, the Netherlands, New Zealand, and Switzerland.

The legislation together with the ratification of the 1980 CCW provided the Belgian government with a strong position from which to promote an international landmine ban. Already in July 1995, at a conference on humanitarian mine clearance

³⁰⁹ In addition, the fact that Belgium had not used landmines since 1951 in Korea and had stopped producing them in 1990 made the passage of the bill easier (HI, Belgium: 4; ICBL, 1995).

in Geneva, the Belgian Foreign Minister Derycke stated “that the time has come for an initial examination of the timeliness of an international convention banning antipersonnel mines” (Landmine Monitor, 1999). Thereafter Belgium participated in the meetings with like-minded countries organized by the NGOs in January and April 1996. At the October 1996 meeting organized by the Canadian government in Ottawa to strategize how to achieve a global ban, it supported a total ban and envisioned that the first steps to it included a total and immediate ban of production and stockpile destruction.

Ahead of the Ottawa conference, Belgium had also proposed to hold a follow-up meeting in Brussels in June 1997 (Landmine Monitor, 1999) and Axworthy’s appeal to states to come sign a treaty in Ottawa in one year that came by surprise at the end of the Ottawa conference made the planned Brussels meeting look just as a part of the Canadian initiative and what would become the Ottawa Process. Indeed, it has been argued that following Axworthy’s call, “[t]here was some dismay from the Belgians that their particular campaign had been hijacked by the Canadians, as Belgium and Canada had for some time been rivals for leadership of the intergovernmental aspect of the landmines campaign” (Long, 2002: 434). Other authors have also made the case that the Canadian decision to take the initiative on landmines was dictated by the fear that, “if it did not do so, chances were that someone else would [and] [t]he most likely candidate to usurp Canadian leadership was Belgium” (Tomlin, 1998: 203). Whereas it is true that the Belgian position on landmines was strong, especially in view of the momentum the adoption of its domestic legislation created, there are no indications that Belgium was planning anything significant on the international level or remotely comparable to the Canadian initiative (interviews 25, 26 NGO). Something of similar proportions would have required the dedication of considerable financial resources, and more importantly,

active and enterprising diplomats willing to take risks. It is far from clear that Belgium was in a position to offer either.³¹⁰

In fact, even though in principle Belgium supported a global landmine ban, the position it took at the CCW Review Conference was not particularly ambitious. It was limited only to seeking an extension of the CCW landmine protocol to internal conflicts, adoption of detectability requirements, and a ban on landmine transfers.³¹¹ Belgium has also supported dealing with the issue of landmines at the Conference on Disarmament (CD) from early on in 1995 before the CCW Review Conference, after the failure of the CCW to adopt meaningful restrictions in 1996, and throughout the whole Ottawa Process. Despite being aware of how much time it would take before any result could be achieved at the CD, Belgium did not mind following that routine path, nor did it see a contradiction between the Ottawa Process and the CD and was still willing to follow both.³¹² At the time of the Brussels meeting in June 1997 it declared that, “the only true objective is the ban of antipersonnel mines. The paths that we take to achieve this objective are a matter of indifference to us” (quoted in Landmine Monitor, 1999). In view of this position, one could hardly say that Belgium

³¹⁰ Similarly, during discussions on the subject in 1998, Jody Williams reacted to the suggestion that in October 1996 Canadian officials feared that Belgium would take the initiative if they didn't move, stating that, “Belgium could never have taken the lead. In the landmine campaign... Canada's resources and relative influence were the most impressive. There was no other choice.” (English, 2000: 32).

³¹¹ The announced position was: “We have a two-pronged political position which is namely in international matters, we would like to push every initiative towards a total ban on antipersonnel mines but regarding the conference here which was the finalizing of new regulations on the use, the production and certain technical aspects of the use of mines, we have aligned our position with the Joint Action of the European Union (Joint Action, 12 May 1995) with a specific focus on the extension of the scope of the protocol in internal conflicts and on detectability. The third point which was extremely important for Belgium and the European Union was the ban on transfers, that is to say, the international trade of mines.” (quoted in Landmine Monitor, 1999)

³¹² At the closing session of the CCW review conference in May 1996, the Belgian delegation declared: “We are prepared to devote several years to putting in place a system totally banning antipersonnel mines first by passing a resolution (at the General Assembly of the United Nations (and if possible by obtaining a mandate which would lead to the negotiation of a worldwide ban treaty at the Disarmament Conference in Geneva. This takes time but it is possible, we did it for chemical weapons, we will finish by doing it for nuclear tests, we believe that it is possible for mines. But this would not be done tomorrow. It is a long-winded issue which requires a great deal of assiduity and which requires continuity in the political willingness of which, in Belgium, there is no doubt” (quoted in Landmine Monitor, 1999).

was prepared to offer much leadership on landmines internationally. The Belgian conservative diplomatic culture and national consensus-oriented politics made it hesitant to assume international leadership and predisposed it to seeking consensus on the international level as well.³¹³

Once the international process to ban landmines got underway, however, the Belgian government played an active and important role in its implementation. It also closely cooperated with the NGOs, and HI in particular (interview 8 NGO), as evidenced in the fact that an HI representative was part of the Belgian official delegation at each of the conferences that led to the signing of the landmine ban treaty in December 1997 in Ottawa (Landmine Monitor, 1999).

Cluster Munitions – a replay of the landmine process

In Belgium, developments regarding the problem of cluster munitions largely followed the lines of the landmine issue. After cooperation between Handicap International and a prominent senator, a law banning submunitions was adopted by the Senate and the Chamber. Despite the surprising ease with which the national legislation was passed by the Senate, the law run into some difficulties in the Chamber and its passage required accompanying legislation to specify its scope of application and clarify which weapon systems came under its purview. Even though the law was not a total ban since a certain type of advanced munitions were arguably excluded from it, it was hailed by the NGOs as the first breakthrough national legislation that would lead the way to similar laws in other countries.

³¹³ In the words of an NGO member – whereas Canada and Norway had good resources and diplomats to take on the issue, Belgium (and France) lacked good and entrepreneurial diplomats (interview 14 NGO).

Even though early on in March 2003, HI Belgium had launched an online petition “No to mines. No to cluster munitions!” which asked for the prohibition of the use, production, stockpiling, and transfer of cluster munitions (HI Belgium, 2003), until early 2005 it had not developed a particularly strong or systematic public campaign on the issue. On 2 February 2005, the sections of HI decided to call for a ban on cluster munitions but prior to that their focus had been on promoting legislation regarding anti-vehicle mines with anti-handling devices. Only after it became clear that attempts to pass such legislation in the Senate had no chances of success, did HI call in March 2005 on the Senate to work on cluster munitions (interview 18 NGO). The next step was to organize two briefings on 7 April 2005 together with Human Rights Watch and Netwerk Vlaanderen for the media and Belgian banks. The briefings focused on HRW’s research on countries and companies producing cluster munitions and Netwerk Vlaanderen’s investigations of bank investments in controversial weapons, and in particular, cluster munitions.³¹⁴ The three NGOs called for ending investment in producers of cluster munitions and gave as positive examples in this direction the ING and KBC banks and the Norwegian Government Petroleum Fund that had instituted restrictions on investment in such companies (interview 18 NGO; HRW, 2005a).

The briefing was not part of a special media campaign but to the surprise of its organizers, it received a very strong media response that was additionally stoked by denials of cluster munition production by the Belgian industry. The credibility and stature of the NGOs together with the fact that Belgian banks were involved in investment and companies in production of cluster munitions made the topic

³¹⁴ As part of its campaign, “My money. Clear Conscience?”, aimed at making public bank investment decisions and giving savers and investors a say in choosing where their money is invested, Netwerk Vlaanderen had produced two reports, “Cluster Bombs, Landmines, Nuclear Weapons and Depleted Uranium Weapons: A report on the financial links between banks and the producers of controversial weapon systems” (April 2004) and “Banks Disarm(ed)” (April 2005).

newsworthy and the media interest proved to be the key factor that prompted Senator Philippe Mahoux (president of the Socialist Party Group in the Senate, who had previously worked as a doctor in Médecins Sans Frontières) to approach HI a week later with the intention to introduce a law proposal banning cluster munitions (interviews 18 NGO, 22 PARL).

After the law proposal was introduced in April, it encountered no opposition and was passed unanimously in July 2005. HI participated in a briefing of the Senate Foreign Affairs and Defense Commission in June, but senators did not require a lot of lobbying to be convinced of the need to pass the law and showed support for a total ban of cluster munitions³¹⁵ from the very beginning (interviews 18 NGO, 22 PARL).³¹⁶ At the same briefing,³¹⁷ the Ministry of Defense limited itself to underscoring the different types of munitions that existed under the heading of fragmentation munitions (the term was used in the initial Mahoux proposal) and proposing a definition that would comprise only submunitions without a self-destruction or self-neutralization mechanism. The Ministry of Defense argued, in much the same way as it had done when the landmine ban was debated in 1995, that the narrower definition would allow Belgium to meet its international commitments, especially within NATO (Belgian Senate, 2005a). Despite these suggestions of

³¹⁵ The used definition is the one formulated by the UNMAS, UNDP and UNICEF in March 2005: “Any munition that to perform its tasks separates from a parent munition. That includes all munitions or explosive ordnance designed to explode at some point in time following dispersal or release from the parent munition.” The Belgian law reads: “Doit être considéré comme sous-munitions, toute munition qui pour remplir sa fonction, se sépare d'une munition mère. Cela recouvre toutes les munitions ou charges explosives conçues pour exploser à un moment donné après avoir été lancées ou éjectées d'une munition à dispersion mère.”

³¹⁶ The law had the strong support of the Green Party whose leader Isabelle Durant was very active and had also contacted HI with a proposal to table a law a little later than Mahoux. If anything, some other senators were way too active, placing amendments to the law that would have prohibited not only cluster munitions, but also anti-vehicle mines with anti-handling devices and depleted uranium weapons (see, Belgian Senate, 2005b). However, in view of the encountered difficulties with legislation on AVMs with anti-handling devices, senator Mahoux preferred a step-by-step approach that could ensure gradual progress (interview 22 PARL).

³¹⁷ The briefing focused on statements by four representatives of HI, two representatives from the sections of the Belgian Red Cross, and representatives of the Ministry of Defense.

limiting the scope of the legislation, as a whole, the Ministry of Defense did not mobilize to lobby against the law and maintained a position of noninterference with the work of the Senate (interview 22 PARL).

Representatives of the defense industry were not even invited to brief the Senate Commission and only after the law had passed in the Senate, did the industry ask to be heard in the parliament – a demand that had no effect. However, by the time when the law came up for discussion in the Chamber Defense Commission in November 2005, the industry had fully mobilized in opposition to a comprehensive ban of cluster munitions. The issue at stake was a specific contract under which the company Forges de Zeebrugge had to develop a new, advanced type of cluster munitions for the German government, as well as, fears from the arms industry at large that the law would put a break on research and development activities and undermine the Belgian industry competitiveness with the result that high-tech production would be attracted by other countries. Soon, the arms industry was using the argument of employment and job losses for the whole region of Wallonia, where it is based (see, HI Belgium, 2006a; M. Jean-Claude Lacroix in Belgian Chamber of Deputies, 2006a). Its opposition was very strong and its campaign included sending letters to all MPs, lobbying the government, and finally mobilizing the unions resulting in workers' protests against the adoption of the new law in front of the parliament (interview 22 PARL).

In contrast, the Ministry of Defense did not even participate in the briefings of the Defense Commission and its representatives just said that “it was up to the wisdom of the representatives to make the decision” about the new law (interview 22 PARL).³¹⁸ Keeping with its role of a non-political institution, the military did not get

³¹⁸ The Chairman of the Defense Commission of the House decided who to invite to brief it, but the lack of participation by the Defense Ministry could not only be explained by the line of noninvolvement it was following, but also by the fact that in practice its positions were voiced by the industry.

involved in political debates and was ready to do whatever necessary to comply with the new law (interview 33 MIL).

HI, on the other hand, had prepared well for the debates in the Chamber. Just before they started, it organized a media trip to Kosovo to show the horrendous effects on civilians of the use of cluster munitions. As debates heated up, HI participated in the briefing of the Defense Commission in December where it urged Belgian deputies to take the initiative and let Belgium lead the way on cluster munitions as it had in the landmine campaign – a refrain that was often repeated in the media coverage of the issue. It also underlined the fact that similar parliamentary actions were already underway in numerous other countries that were ready to follow Belgium's example (Belgian Chamber of Deputies, 2006a). HI also intensively lobbied MPs to support the law, and just ahead of the vote in the plenary, held a press conference together with HRW, Groupe de Recherche et d'Information sur la Paix et la Sécurité (GRIP), and the Swedish Peace and Arbitration Society. As the controversy around the new law increased, so did media coverage and public awareness of the issue. The HI campaign thus gathered force and could induce evidence of public support in its lobbying of parliamentarians as signatures in favor of the cluster ban went from 100,000 at the time of the Senate vote, to 200,000 when the House Defense Commission started deliberations in December 2005, to 300,000 when the law was adopted in February 2006. At a crucial point in the debates, the contribution from another NGO, GRIP, respected for the quality of its independent research and analyses, also provided a strong backing for the law advocates (interview 22 PARL).³¹⁹

The NGOs mobilization was highly instrumental in keeping parliamentarian

³¹⁹ GRIP distributed two analyses of the stakes involved in the production of cluster munitions in Wallonia that showed that the loss of employment from the Forges de Zeebrugge's project that was still in a development phase would be negligible and much lower than the industry made them appear. In addition, it made the argument that given the trend toward restricting investment in cluster munition producers and the high probability of an international ban on cluster munitions, an early restructuring of the industry away from their production is actually to the benefit of the sector (see, GRIP, 2005, 2006).

support for the law and resulted in voting down a couple of amendments, aimed at excluding from the definition of cluster munitions in the original law cluster munitions with self-destruction or self-neutralization mechanisms and containing less than 10 submunitions (see, for example, Belgian House, 2006b). Nevertheless, the chairman and all of the Socialist Party members of the Defense Commission remained receptive to the arguments and demands of the arms industry, since they were elected from the Liege region where it is based (interview 22 PARL). In the end, the Commission, and later, the Chamber adopted the Mahoux legislation,³²⁰ but the price for that was an all-party agreement to pass a second, complementary legislation that would exclude from the definition of cluster munitions certain types of weapons, namely non-explosive submunitions and new types of cluster munitions that pose no problems in terms of reliability rates or indiscriminate effects.³²¹

The wording of the second law still sounded quite strong,³²² allowing only the employment of anti-tank munitions that “can only be used … without any possibility to indiscriminately saturate combat zones, including by the obligatory control of their trajectory and destination, and that if applicable, can only explode at the moment of impact, and in any case cannot explode by the presence, proximity or contact of a person.”³²³ This definition gave grounds to HI to declare that “such a weapon does not

³²⁰ The Defense Commission adopted the law with a vote of 11 for and 5 against on 1 Feb 2006 and the House passed it by a vote of 112 versus 22 abstentions and 2 opposed on 16 February 2006.

³²¹ According to the second legislation the following are not cluster munitions or submunitions:

“- dispensers that only contain smoke-producing material, or illuminating material, or material exclusively conceived to create electric or electronic counter-measures;
- systems that contain several munitions only designed to pierce and destroy armored vehicles, that can only be used to that end without any possibility to indiscriminately saturate combat zones, including by the obligatory control of their trajectory and destination, and that if applicable, can only explode at the moment of impact, and in any case cannot explode by the presence, proximity or contact of a person.”

³²² The new definition was formulated mainly by the Socialist Party sponsoring the first law. Even though HI was consulted on this matter, the definition came from parliamentarians (interview 18 NGO).

³²³ However, the strength of the text is undermined by the commentary of the same article 2, which states that the exigency to control the trajectory and destination of munitions “does not necessarily imply that each munition be equipped with a guidance system, but that as a minimum the guidance of the device and its opening and distribution mechanism allow to avoid random dispersal and guarantee that the munition would impact over a surface that is of reasonable size in relation to the targeted objective and its surroundings” (Belgian House of Representatives, 2006c, my translation).

exist," (interview 18 NGO) and congratulate the parliamentarians for having resisted pressures from the arms industry. The latter, on the other hand, announced its satisfaction with new law, which in its view showed the efficacy of the mobilization of the industry, workers, and unions (Rogea, 2006). Finally, representatives of the Ministry of Defense felt that the second law did not cover the newest types of submunitions being developed by Forges de Zeebrugge (interview 33 MIL).

Indeed, the second legislation seemed to satisfy everyone and the government coalition partners of the Socialist Party and Liberal Party that were bitterly divided over the first law finally reached consensus with this compromise formulation (RTBF.be, 2006; L'Echo, 2006). Thus the definition in the second law also catered to the interests and demands of a diverse group of stakeholders including NGOs, the arms industry, unions, and the military, but this consensus was obviously built upon its vagueness and the ability of each to interpret it as they saw fit.³²⁴ Despite (or because of) this vagueness, the new law made possible the achievement of consensus on the issue of cluster munitions nationally in a way consonant with Belgian domestic political culture. Importantly, it also provided NGOs with the opportunity to project internationally the image of Belgium as a trailblazer in banning cluster munitions, whose example would ineluctably be followed by other states (while obscuring details and nuances in the Belgian legislation).³²⁵

By advocating a total ban and securing one in Belgium, HI was also able to influence the dynamics within the Cluster Munition Coalition (CMC) and tilt the

³²⁴ In fact, it appears that the only ones who were discontented with the second law were some journalists. Some reactions in the media, especially from the Dutch-speaking press were surprisingly negative and harsh to the second legislation (interview 18 NGO; for an example in the French press, see Le Soir, 2006).

³²⁵ Indeed, whereas NGOs announced with enthusiasm that Belgium was the first state to adopt a total ban on cluster munitions, they had not mentioned the second law redefining the scope of the ban (e.g. HI France, 2006; HI Belgium, 2006b; HI Switzerland, 2006). Interestingly, neither of the other NGOs mainly involved in the cluster issue (Mines Action Canada, HRW, Landmine Action, UK, Landmine.de, Mennonite Central Committee) mentioned the adoption of the Belgian ban. Only CMC provided information on it and the accompanying legislation limiting its scope.

balance in the direction of public campaigning for a ban, compared to the more circumspect language of the CMC call and the positions of organizations such as HRW that technically don't call for a total ban, but demand instead policy and technological changes that in practice amount to much the same goal that was achieved with the second Belgian law. Whereas so far, HI has not been able to change HRW's reticence regarding the ban and thus the overall position of CMC, it certainly reinvigorated the movement with its success and inspired other NGOs to develop more publicly oriented campaigns and work on national legislations/moratoria to be used as stepping stones for a future international agreement, most notably Landmine Action, UK that followed its suit and switched to a ban call in early 2006.

Whereas the Senate led the way in formulating the Belgian position on cluster munitions, in much the same way as it did on landmines in the 1990s, the government remained passive during the debates on clusters and took a cautious wait-and-see position on this matter. The only sign in which support for the Mahoux initiatives could be read was the fact that in May 2005 the Senator was invited to speak at the Meetings of the Standing Committees of the Mine Ban Treaty in Geneva by the Belgian ambassador to the UN (interviews 18 NGO, 22 PARL).³²⁶ In his statement during the briefing of the Chamber Defense Commission, the Government representative did not comment on the Belgian law proposal and limited himself to highlighting the work of the CCW, and specifically the developments regarding anti-vehicle mines (AVMs) and explosive remnants of war (ERW). He described the stage of current international talks on cluster munitions and ERW and indicated that any international attempts to regulate cluster munitions would run into the same kind of difficulties encountered in the process on AVMs where states such as Russia and

³²⁶ However, Mahoux's speech did not focus on cluster munitions but regarded the Belgian law restricting financial investment in landmine producers (see, Mahoux, 2005).

China opposed measures on self-destruction due to economic concerns (Huynen in Belgian Chamber of Deputies, 2006a). Basically, the government had no position regarding the parliamentary initiative and refrained from interfering with it (interview 28 GOV).

When in turn, the Belgian government delegation had to make a statement at the CCW session of the Group of Governmental Experts in March 2006 after NGOs and other state delegations congratulated Belgium on its bold domestic steps toward banning cluster munitions, it confined itself to describing the parliamentary process in its country and emphasizing the fact that it had not been concluded and it was difficult to predict when the law would enter into force (Belgium, 2006).

Even on the day when the second law was adopted in plenary and had already been voted in the Chamber Defense Commission,³²⁷ government officials preferred to talk about it only in hypothetical terms and their position regarding any international steps remained one of caution and non-commitment. Given the attitude of states such as Russia and China, they felt there was little chance of achieving a global agreement on the problem. There were a host of other factors that made Belgian diplomats wary of assuming any international engagements: lack of strong leadership by other countries such as Canada on landmines and a critical mass of supportive states; expectations of a repetition of the success of the Ottawa Process, which was highly unlikely given the differences between the issues of cluster munitions and landmines (thus even a moderate success on clusters would be viewed as a failure compared to Ottawa); preoccupations that an alternative process out of the CCW would undermine its credibility and usefulness at a moment when it has been reinvigorated (interview 28 GOV). An explicit instruction from the Parliament requesting that the government

³²⁷ The second law passed in the Defense Commission on 22 March 2006 after one amendment that tried to weaken its language was voted down (my notes from commission meeting) and was adopted by the House on 30 March 2006.

work toward an international ban remained a prerequisite for the definition of the future government position in this regard (interviews 28 GOV, 32 MIL).

The cautious position of the Belgian government changed only slowly after an increasing number of states pledged support for a negotiating mandate on cluster munitions at the CCW Review Conference in November 2006. Initially, the Belgian delegation pointed out that in the growing number of legislative initiatives on cluster munitions in a number of countries, it saw the development of propitious conditions to address the problem multilaterally as well. However, it argued for an effective and inclusive approach that should advance step-by-step guided by a clear objective but also aiming at attracting a “solid consensus” around that objective. The way to do so, Belgium suggested, was to continuing the discussion mandate of the group of governmental experts on ERW, possibly by adding to it the examination of the question of cluster submunitions from the perspective of compliance with IHL rules (Belgium, 2006b). Only on the last day of the conference, did Belgium decide to join the group of countries that asked more forcefully for a mandate to negotiate a legally-binding instrument addressing the humanitarian problems of cluster munitions.

Conclusion

There are striking similarities between the two processes that led to the first national legislations on landmines and cluster munitions in Belgium. In both cases the NGOs serve as catalysts in highlighting the issues but prominent senators assume the major role in drafting and passing ban laws in the Senate. Several characteristics of the Belgian political system also come to the fore. The importance of the parliament and, particularly, of the Senate as a body that not only took the lead in legislating new

norms with international resonance, but also set the course of the Belgian foreign policy in an area of arms control is a striking exception to its otherwise limited role in Belgian politics. In comparison, the military had a limited political leverage in the Belgian system and avoided getting involved in political debates even on issues that directly affect military capabilities and strategies. Legislating a ban despite the existence of important industry interests at stake shows that this was not an entirely low cost decision for Belgium to make or for senators to advocate. In order to secure consensus on the issue, some compromise formulas in both the landmine and cluster munition bans were included, without however diluting their humanitarian focus. Finally, the government and the Ministry of Foreign Affairs have maintained neutrality and non-involvement in the parliamentary process regarding both landmines and cluster munitions. In tune with the state's political and the Foreign Ministry's organizational culture, Belgian diplomats shied away from taking up leadership roles either on landmines or cluster munitions despite the fact that their national position was the most progressive compared to that of other countries. Instead they preferred the well-established negotiation fora in the area of arms control. It appears that Belgian diplomats lacked both the resources and confidence to assume risks in leading the way, even though they worked actively within a coalition of like-minded states on landmines and after some hesitation got involved in efforts to build a similar group on cluster munitions. As a small country, Belgium was not a natural leader even if it was a leader domestically and one of the "like-minded" internationally. Public diplomacy has never been a source of national prestige and identity. Rather, Belgium has tried to achieve a degree of national cohesion by anchoring itself in the European Union and NATO and becoming also the center where those institutions are based.

Thus, the cases of landmines and cluster munitions confirm the importance of domestic political culture as a factor in influencing the policymaking process in

Belgium and the country's international role. The two cases, however, challenge the domestic structure model's efficacy in identifying the avenues to channel NGO initiatives and the prospects for their success. The partnership between Handicap International and Senator Mahoux on cluster munitions helped overcome the obstacles that the Belgian system usually imposes on legislative initiative. Indeed, the legislation was adopted in the face of protests from the unions and the organization of the industry employers – powerful peak organizations that under different circumstances manage to work out their differences in interests directly with the government. Thus the involvement of NGOs, civil society, and the public in raising important issues directly with the parliaments contributes to the reinvigoration of its functions that are otherwise circumvented within the corporatist setting (Magnet, 2004: 102). In the case of cluster munitions, NGO campaigning in several European countries and the successful partnership between Handicap International and Senator Mahoux has also given rise to an idea to organize a meeting of European parliamentarians working on similar ban legislations to share experience and stimulate a common approach on the issue. Thus the success of one European Parliament could contribute to the strengthening of parliamentary initiative in other countries where NGOs are advocating similar action.

What other factors could explain some of the features characterizing the Belgian legislative processes and positions? Certainly, the geographical position of Belgium currently provides it with a high degree of security to which NATO membership adds a security guarantee. Indeed, it might be argued that Belgium could get rid of landmines, cluster munitions and other controversial weapons such as depleted uranium munitions, because it does not use them, and in case its national security is threatened, it could always rely on the sophisticated weaponry of its NATO allies, unlike some neutral countries with no less humanitarian zeal such as Sweden

and Finland, for example. Thus it could be argued that war experience and the realization of the atrocity of war have made Belgians more responsive to the needs and suffering of others, whereas the security their country enjoys has enabled them to act on their values and beliefs, without having to bear the cost.³²⁸

Indeed, it has been argued that the history of the country that had experienced severe war devastation in the two world wars makes it a natural supporter of disarmament and pacifism. Certainly, Flemish pacifism made easier the adoption of the two national bans, even though the initiative for them came from other quarters. Yet, different lessons could have been drawn from the checkered Belgian history. As victims of German invasion in both the First and the Second World Wars, Belgians could have decided that disarmament and giving up weapons is not in their best interest and if undertaken should never be unilateral but only in the context of an international agreement. Indeed, Belgian active support of and membership in international and regional organizations after the end of WWII (UN, NATO, EC) point in the same direction (e.g. Reiter, 1994). However, in the case of landmines and cluster munitions, Belgian leverage internationally and within those organizations has been exercised in an interesting, indirect way – Belgium has undertaken bold measures to ban those weapons domestically without expending too much effort to make sure that other countries would follow. The lack of international leverage has been compensated by domestic assertiveness coming from civil society and legislators. Other countries were nevertheless influenced by the Belgian decisions and followed suit thus feeding a dynamic of leadership competition.

³²⁸ Belgium has been a pioneer not only regarding landmines and cluster munitions, but also in adopting a law on universal jurisdiction in 1993, and quite probably will be leading the way again on depleted uranium weapons in the not-too-far future. It cannot be argued, however, that the decision to ban cluster munitions involved no costs for Belgium as the fierce lobbying of the arms industry showed.

Norway: Making a difference in the world by developing new NGO partnerships

Domestic Structure

Norway is another example of “consociational democracy” in which consensual policy-making is emphasized (Matthews and Valen, 1999: 31; Houben, 2005: 99, Neumann, 2002: 108). It is also one of “the most thoroughly organized societies in the world” with powerful interest organizations and voluntary associations (Matthews and Valen, 1999: 29) including a plethora of NGOs, among which four big organizations with humanitarian and aid agendas stand out – the Norwegian Red Cross, Norwegian Church Aid, Save the Children, and Norwegian People’s Aid – that also make up an umbrella organization, the Norwegian Refugee Council. Many of the NGOs in the field of development have relationships with the government and especially with the Norwegian State Directory for Aid, NORAD that channels a good part of the Norwegian developmental aid through the NGO sector. In addition, some of the NGOs such as Norwegian People’s Aid (NPA) have a historically close relationship with the Labor Party (Neumann, 2002: 109-110). The large and powerful interest organizations have regular contact with the government through a network of commissions, advising boards, councils, and similar bodies. Thus the corporatist system is also characteristic of Norway (Matthews and Valen, 1999: 30).

However, in terms of balance of power between the executive and the parliament, the situation in Norway is somewhat different from the one encountered in Belgium despite the similar features of corporatism and the consensual policy process. Traditionally, Norway has had a strong executive (Houben, 2005: 103) and at least until the mid-1980s scholars described the role of the Norwegian parliament in

policymaking as very limited and largely supplanted by the public administration and interest organizations (Rommelvedt, 2003: 2-3; Shaffer, 1998:2-5; Matthews and Valen, 1999: 58).³²⁹ The role of the parliament has changed especially since 1985 from which point on minority governments, lacking support from the parliamentarian majority, have been in power.³³⁰ This change, together with an increasing heterogeneity of Norwegian society, has been credited as the cause of greater leverage of the parliament over government decision-making in subsequent years (Shaffer, 1998:34). Due to its better research resources and expertise, the executive branch still has considerable influence on parliamentary decisions (Matthews and Valen, 1999: 59; Christensen and Peters, 1999:85), but nevertheless, compared to its negligible role until the 1980s, the Parliament (*Storting*) has become more powerful in Norwegian politics. So much so, that in 1999 the president of the parliament expressed concern about “the ‘fundamental and unfortunate shifts’ that may occur in ‘the natural interplay between the *Storting* and the Government’ if the *Storting* is too active” (Rommelvedt, 2003: 6). The shift in the parliament’s role has also been reflected in the growing number of interest organizations that establish contacts with parliamentarians in contrast to the earlier period when the prevailing view was that legislation was shaped within the administration (Christiansen and Rommelvedt, 1999). Thus at present there seems to exist a certain balance between the executive and legislative branches of government. On the whole, however, their relationship has been “a relatively cooperative one, characterized by trust and mutual adjustment,” rather one of competition over influence (Christensen and Peters, 1999: 63).

³²⁹ In 1985, for example, Egeland (1985: 38) argued that Norwegian NGOs interact mainly with the Ministries of Foreign Affairs and Development Aid, and the parliament was not a focus of their activities because of perception where real decision were made. Others arguing about the weakness of parliament include, for example, Arter (1984) and Hernes (1983), cited in Matthews and Valen (1999: 56)

³³⁰ The last majority government lasted till 1961, from 1965 to 1971 and from 1981 to 1986 there have been majority coalition governments (Rommelvedt, 2003: 4).

The military in Norway can play a rather independent and even political role. The Norwegian Chief of Defense is the principal military adviser of the Minister of Defense but has significant independence and a mandate to “speak freely” and inform the general public, which makes the office of Chief of Defense the center of gravity within the government regarding the implementation of security and defense policy (Houben, 2005: 104).³³¹ NATO membership and concerns over Norway’s border with Russia have been central for its armed force, as well as involvement in peacekeeping operations that was seen in Norway as a way of drawing “high political” gains” from “low political” issue-areas”.³³² The Norwegian military has also enjoyed relatively high and stable levels of public trust over the period 1985-2000 (between 70 and 80% of “a great deal” or “quite a lot” of confidence) (Bondeson, 2003: Fig. 13.26). However, in contrast to the French case, the other Norwegian social and public institutions also enjoyed such or even higher levels of support (Bondesom, 2003:52-4; Gulbrandsen, 2005; Christensen and Peters, 1999: 143).

Finally, in terms of domestic culture and diplomatic tradition is should be noted that Norway has a humanitarian tradition linked to Protestant missionary work and humanitarian relief work (Neumann, 2002:108; Heidar, 2001: 149). A central feature of Norway’s foreign policy during (and after) the Cold War has been the promotion and contribution to developmental aid.

As a small country, Norway has always been interested in the promotion of international rule of law, human rights and effective international institutions (Heidar, 2001: 151; Østerud and Selle, 2006: 40). For example, in 1998 the Norwegian Foreign Minister Knut Vollebaek stated, that “[i]t is in the interest of a small state like Norway

³³¹ The extensive prerogatives of the Chief of Defense were granted because of the belief that in WWII Norway was not prepared to defend itself against the German invasion because the parliament had not heeded military advisers.

³³² The commitment to peace operations also shows in these figures – from 1949 till the early 1990s, from a population of 4 million over 50,000 Norwegians have taken part in international operations (Nustad and Thune, 2003: 154).

to maintain a strong UN and support the role of the UN and its ability to uphold a degree of peace and order in international relations.” His predecessor Bjorn Tore Godal similarly argued in 1996 that “Norwegian society’s deep respect for humanitarian values had made the promotion of Human Rights a cornerstone of all our policy. This is of special importance to our work for peace, where it combines idealism and self-interest. *The more respect for Human Rights, the safer the World will be for all of us*” (quoted in Nustad and Thune, 2003: 170, 173, emphasis in original). Thus both commitment to international norms and self-interest have motivated Norway’s support of UN peacekeeping missions, as well as its notable peacemaking efforts, among which its work for the achievement of the 1993 Oslo Peace Accord stands out.³³³ In those initiatives it has relied on low-profile diplomacy and private negotiating channels that have produced high-profile results (Henrikson, 2005: 79-82). Based on such practices, Cooper (1997) characterized Norwegian diplomacy as quiet, low-key, consensus-oriented, and focused on a few distinct issues.

Given the Norwegian changing political structure, the domestic structure model does not have clear-cut predictions about the institutional channels to which NGO efforts should be directed in order to be successful. The strong influence of political parties both on the government and parliamentarian life could make them the center of gravity of the political system. On the other hand, the consensual and compromise-oriented decision-making process, coupled with a variety of well-organized interests and an independent military would suggest that it would take considerable amount of time before NGO demands could be translated into policy (Egeland, 1985:45).

³³³ During the 1990s Norway has also been involved in peace talks between Communist rebels and the Philippine government, Croatia and Yugoslavia, Colombia and the FARC rebel movement, as well as in Cyprus, Somalia and Sudan. In 2002 it brokered a power-sharing agreement between the Tamil Tigers and Sri Lanka (Henrikson, 2005: 80).

Argument

In the following sections, I will argue that NGOs followed multiple pathways in trying to influence Norwegian policies on landmines and cluster munitions. Their success depended on winning the support of the governing parties, but most importantly, on the support of key officials in the Ministry of Foreign Affairs (MFA). It has been shown that Norway has the highest scores among West European countries on affiliation of ministers to interest groups (such as unions and employer organizations), the number of employees from interest groups in the cabinet has also been increasing, and ministers, for specialized departments in particular, have been recruited from the interest groups (Christensen and Peters, 1999: 83, 82, 91). Following Neumann (2002), I argue that this trend has been extended to the recruitment of NGO members to governmental posts and the 1990 appointment as adviser to the Foreign Minister and then as Junior Foreign Minister of Jan Egeland (who had previously chaired Amnesty International, Norway and worked for the ICRC), and the 2005 appointment as Minister of Foreign Affairs of Jonas Gahr Støre (previously Secretary General of the Norwegian Red Cross) have been important factors in defining the Norwegian position on landmines and cluster munitions, respectively. The NGO domestic and international campaigns on both issues became a source of strength, harnessed by MFA officials in their efforts to improve the Ministry's organizational capability, facilitate Norwegian foreign policy, and ultimately, enhance Norway's international position. However, Norway's leading role in the processes toward negotiating new international treaties on landmines and cluster munitions does not fit within Cooper's (1997) characterization of Norwegian diplomacy. Instead of low-key and consensus-oriented, it has been public and oriented toward the creation of new humanitarian

norms out of the international consensus-based fora and in defiance of major military powers.

The Norwegian involvement on landmines, and especially the Norwegian initiative to launch an alternative negotiating process on cluster munition could be seen as part of renewed Norwegian efforts at enhancing Norway's image and influence in the world. After studies showed lack of knowledge of the country among foreign audiences, in 2003 a new program was launched aiming at "branding" a distinct Norwegian image internationally. Whereas big countries such as the US, China, the UK, or France have to deal mainly with managing and reshaping their images, "Norway's central public diplomacy problem is that of invisibility" (Leonard and Small, 2003:1). And in the words of Norwegian State Secretary Thorhild Widvey, "[t]o gain influence, we have to be noticed" (Widvey, 2003a), especially since "[a]s a result of globalisation there are ever more actors in the global market place battling for attention" (Widvey, 2003b). Hence, the need for "carefully nuanced pictures of modern Norway to prevent [it] from being gradually marginalized" (Widvey, 2003a).

Based on its traditions and comparative advantages in development, peacekeeping and peacemaking, the central "brand" that emerged from an academic study of Norway's public diplomacy was that of a "humanitarian superpower."³³⁴ The other focus of the Norwegian approach to increasing its international leverage was the work with different partners in Norwegian society, including NGOs (Widvey, 2003a; Bátora, 2005). Indeed, it has been argued that Norway's globalization strategy has become a new "mode of *national corporatism* of nongovernmental organizations

³³⁴ "Humanitarian superpower" was presented in this way: "Norway might only be 115th in the world in terms of its size, but it is leading the world as a humanitarian power – outperforming all other countries in terms of its contributions to aid, its role in peace-keeping and peace processes and its commitment to developing new kinds of global governance. This commitment goes far beyond the activities of the Norwegian state – infusing every aspect of Norwegian society from NGOs and business to ordinary citizens." The other three more commercially-oriented "brands" were "living with nature," "equality," and "internationalist/spirit of adventure" (Leonard and Small, 2003: 34-5). The study was carried out with input from opinion leaders, NGOs, and government officials.

consultancy firms, research institutions and the state in the formation and conduct of the policy of foreign engagement” (Østerud and Selle, 2006: 33; also on NGOs, Bátora, 2005:17). As it will be shown, not only did the Norwegian Ministry of Foreign Affairs “harness” the power of national NGOs in projecting a distinct Norwegian role internationally (Neumann, 2002). It also established similar links with NGOs from other states, supported them, and in turn leaned on their backing and active mobilization to launch its negotiation initiative on cluster munitions. It remains to be seen if this new more activist and confrontational approach that aims at gaining “visibility” and influence for Norway’s internationally would be successful in the cluster munitions case and compatible with Norway’s peacemaking and mediation roles that are still emphasized as part of its distinctive “brand.”³³⁵

Finally, given that peacekeeping and peacemaking are so core to Norwegian self-identification and international image, these identity frames have influenced not only the purposes of the use of force by the military, but its organizational identity as well. With the end of the Cold War and the diminished priority given to defense against a major land invasion from Russia, the frame of peacekeeping or humanitarian soldiering has become even more influential.³³⁶ Thus, one could argue that this humanitarian frame imposed limits on the ability of the military to argue against the ban on landmines and the cluster munitions moratorium since opposition to them

³³⁵ Norway’s ability to excel at peacemaking and be accepted as an effective mediator depends on the perception of its impartiality by the parties involved. In this light, the cluster munition campaign and its sharp criticism of the Israeli use of the weapons, even though balanced with similar but fewer criticisms of Hezbollah’s use of clusters, may create perceptions of some partiality on the part of Norway as the leading state behind the issue.

³³⁶ Whereas during the Cold War Norwegian security policy involved three core elements – “support of the UN, involvement in peacekeeping, and a strong territorial defense [...] all elements of the same policy – securing the Norwegian state (that is, its territory) and securing Norwegian national identity.” Since the 1990s the meaning of security has changed – “[f]rom taking as its object the nation/state/territory, its object has now become, at least at the level of rhetoric, redefined as universal human values” (Nustad and Thune, 2003: 172). However, the relative importance of the humanitarian frame is time and context dependent. With the rise of new threats and missions emphasizing rapid deployment, specialist forces, or anti-terrorist operations, peacekeeping may become less important for the military institution, and thus the frame might lose some of its legitimizing and constraining power.

would have undermined a core aspect of the military's basis of legitimacy in Norwegian society and gone against its own self-perception as a force for good and a force for peace in the world.

Landmines: second on the finish line

The story of the Norwegian decision to ban landmines domestically and give its full support to an international ban is a particularly interesting one.³³⁷ In contrast to other leading countries with negligible security threats, such as Belgium and the Netherlands, for example, Norway's common border with Russia has always been a source of concern (Otterlei, 2002: 358). Yet, military and strategic arguments were sidelined and the military was basically faced with a fait accompli when a ban on landmines was adopted domestically and later internationally. The case is also interesting, because early on the willingness to work on the problem of mines came from the government, whereas the Norwegian NGO campaign for a total ban got established only in the fall of 1994, later than in most other leading pro-ban countries.³³⁸ Despite its later start, the NGO campaign was very successful in lobbying parties and members of parliament, creating public interest in the problem of landmines and pushing the Norwegian government toward full support of a total ban.

³³⁷ Most of the section on landmines is based on the excellent case study by Neumann (2002).

³³⁸ The Canadian NGO campaign was launched at about the same time; only the Austrian campaign started even later - as late as the Vienna CCW conference in September 1995, there was no Austrian NGO coalition working on landmines (Liz). In 1996 the Austrian Red Cross, together with a number of NGOs, launched a public campaign for a total ban and gathered 120,000 signatures in its support (Landmine Monitor, 1999).

In 1992 the government offered funding to an NGO, Norwegian People's Aid (NPA),³³⁹ to organize a demining mission in Cambodia. The key person who established the link between the Foreign Ministry and NPA was Junior Minister of Foreign Affairs Jan Egeland, who before going into politics had been engaged in developmental issues, had been the chair of the Norwegian section of Amnesty International, and importantly, had worked for the International Committee of the Red Cross (ICRC) in Geneva and thus had been exposed to its work on landmines (Neumann, 2002: 110-11).³⁴⁰

Whereas internationally the problem of landmines appeared on the governments' agendas through the insistence of NGOs that convinced France to call for a CCW review conference, once the process started with a series of four preparatory expert sessions working on amendments to the CCW from the fall of 1993 to January 1995, NGOs' input in the process was minimal given that they were not even allowed to attend the meetings. Certainly, the Norwegian delegation proceeded with its work in the sessions without any NGOs involvement on the issue till the fall of 1994. In fact, initiative for more active Norwegian involvement on landmines emanated from Geneva. According to Jorn Gjelstad, member of the Norwegian delegation at the CCW talks "it was indeed this delegation which pushed the MFA [Ministry of Foreign Affairs] into action" and "insisted that Norway had to do

³³⁹ NPA has its origins in the workers' movement and strong ties to the Norwegian Labor Party. It became a large developmental NGO with 125 local divisions and projects in 33 countries (Neumann, 2002:109).

³⁴⁰ Before Egeland was asked to become the personal advisor (and later junior minister) of Foreign Minister Thorvald Stoltenberg, he was the head of the international department and media person at the Norwegian Red Cross. Prior to that he had also been Chair of Amnesty International, Norway and Vice-Chair of the International Executive Committee of Amnesty International. After leaving the Foreign Ministry he became the UN Secretary-General's Special Adviser on Colombia, then the President of the Norwegian Red Cross, and finally Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (Irinnnews, 2006; UN Department of Public Information, 2003). Stoltenberg, who brought Egeland in the government was previously the UN High Commissioner for Refugees and after leaving MFA became President of the Norwegian Red Cross, which points to the rotation of NGO activists in and out of government (and international organizations) and the openness of the Norwegian political system to humanitarian issues and NGO people.

something, because this case might go off” (quoted in Neumann, 2002:115). Certainly, the Norwegian Ambassador at the Geneva Permanent Mission and negotiator at the CCW, Steffen Kongstad, was actively involved in the issue.³⁴¹ The other direction from which interest in the issue of landmines came was the ICRC, with which junior minister Egeland maintained his contacts (*ibid*, 116). Only later in the fall of 1994 did NGO pressure begin to materialize. However, it was the NGO call for a total ban that radically changed the terms of the debate in Norway, and together with the momentum gathering in other pro-ban countries, determined its position in favor of a comprehensive international and domestic prohibition of APLs.

The stimulus for the creation of the Norwegian landmine coalition itself came from the ICBL and the Norwegian Afghanistan Committee (NAC) – an NGO involved in demining and humanitarian aid in Afghanistan where it had come into contact with Rae McGrath, founder of the Mines Advisory Group in the UK – one of the six founding organizations of the ICBL. After attending a seminar on landmines in Geneva in the summer of 1994, the NAC activist Kristian Berg Harpviken, decided to organize a meeting of Norwegian NGOs in the fall of 1994 and invited McGrath to address it. It was only after this meeting that the Norwegian chapter of the ICBL was created and the NPA got motivated by the idea of a total landmine ban. Given its good institutional position and connections, the NPA then took over the political work to push for a total ban (Neumann, 2002:116). And it was at this point that relations between NPA and Junior Minister Jan Egeland, who first got NPA to work on mine clearance in 1992 and so far had been seen as actively engaged in humanitarian problems, got tense. In his words: “And then this circle... began to argue in favor of a total ban. Suddenly, I was on the defensive” (quoted in Neumann, 2002: 117).³⁴²

³⁴¹ Kongstad was called by NGOs one of “the fathers of the Ottawa Convention” (interview 18 NGO).

³⁴² The circle Egeland refers to consisted of NPA, the Norwegian Red Cross, their Geneva office, Norwegian Church Aid, and their international branches – the Lutheran World Federation and the World Council of Churches.

Nevertheless, Egeland sought to engage the NGOs in a dialog on the issue and initiated a series of meetings with them. However, he thought the idea of a total ban was unrealistic; it simply “had not existed as such.” Given the Norwegian geostrategic situation, he thought the idea was not a feasible option for his country. Moreover, he asserted that, “the MoD and the Department for Security Affairs were in the driver’s seat” in Norway and he had “no power of instruction over them” (p.118).

Even though the NGO campaign soured their relationship with Egeland and made tensions between MFA and MoD apparent as the debate over landmines continued, the claim that MoD had the authority to decide on the issue is dubious in light of the way and speed with which events in Norway unfolded. Rather, it seems that the support of party groups in parliament was key for the adoption of a total ban domestically, and hence internationally as well. And getting their support was one of the main goals of the NGO campaign.

Indeed, what the meeting with Egeland made clear to the NGOs was that he was opposed to their initiative and “there was little point in trying to convince key politicians directly” (Svein Henriksen of NPA quoted in Neumann, 2002:118). Instead NGOs directed their efforts toward building momentum by targeting the media and getting the support for a total ban from as many organizations as possible. The result was that some 120 organizations, including influential church organizations and unions, signed a resolution calling for a ban and allowed the Norwegian landmine coalition to claim broad-based representation and support. The other two targets of the campaign were the top politicians in the parliament and the governing Labor Party itself. The breakthrough came in the spring of 1995 when Thorleif Jensen of the Working Group against Mines managed to convince their contacts in the Center Party

to put forward a motion in favor of a total ban in the parliament (pp.118-19).³⁴³ The motion then got to the Foreign Committee where NGO representatives made presentations and tried to convince the committee members of the need for a ban. The work in the parliament attracted growing attention as debates got underway and eventually contradictions between the positions of the MFA and MoD became evident during the parliamentarian discussions (p.121).

The efforts to influence the Labor Party during its annual meeting in the fall of 1994 were unsuccessful because of the opposition from Defense Minister Kosmo. Nevertheless, the campaigners decided to turn to the annual meetings of the county chapters and have them pass resolutions in favor of a ban.

Junior Minister Jan Egeland for his part also tried to sway the Labor Party's faction for foreign policy in the parliament. Witnessing activism on landmines in Canada, Austria and Belgium in the spring of 1995, he argued that "either we could sit there and do nothing, which would mean that we eventually be forced to adopt the total ban by public opinion and international actors, or we could bite the bullet and go in for a total ban ourselves." He argued for the latter option "from an interest-based perspective" (quoted in Neumann, 2002: 120). Another motivation to adopt a more progressive policy on landmines came from "a need to keep up with the Swedes" (Neumann, 117) who were staking out an active position in favor of a total ban at the preparatory session for the CCW review conference.³⁴⁴

In the end the Labor Party group in the Parliament came about to support a total ban, consensus on the issue was also reached in the Foreign Committee and on 2

³⁴³ To forward the motion, parliamentarians Arnstad and Lahnstein used the "so-called Document 8 suggestion which can be used by single representatives of parties regarding all issues which are not circulating in the system." As a follow-up of the motion, they also sent a letter to the Foreign Minister. Another letter was sent by Erik Solheim of the Socialist Left Party (fn. 16).

³⁴⁴ Sweden had proposed a total ban at the third preparatory session for the review conference in August 1994 and the Swedish parliament was asking its government to take measures toward achieving the goal internationally and domestically (ICBL, 1994b).

June 1995 the parliament adopted a total ban on the production, sale, purchase and use of AP landmines, which marked an important point in defining Norway's position given its "consensus traditions and the way the enlarged committee of the *Storting* [Parliament] acts as a consensus-building clearing-house for difficult decisions" (Neumann, 2002:122).

The MoD did see landmines as "a central and legitimate part of the country's defense" (security division official, quoted in Neumann: 120) and gave some resistance to the general mood for a ban, but on the whole the military was overtaken by the course of events. There were divergent opinions on the need for and utility of landmines within MoD. From the military engineers' point of view, Norwegian mines were very old, of limited utility and could be dispensed with. On the other hand, from a strategic point of view, Norwegian defense strategy depended on the use of clusters of anti-tank and antipersonnel mines against attacking tanks and a ban meant the reshaping of this strategy at some cost (p.121). However, the strategic argument got more or less lost in the debates on landmines and the MoD policy was left in the hands of its juridical division (quote, p. 120). The public interest in landmines created by the NGOs and their pressure on parliamentarians were a strong counterweight to military arguments.

Thus, the NGOs were able, on the one hand, to put pressure on the MFA, and on the other, when the latter came to embrace the idea of the ban, to provide the MFA with the necessary backing in its dealings with MoD. The military was simply not skillful in the political game – in the words of a MoD official, "in the MoD, it is only Press and Information which has, or is supposed to have, contacts with the outside world" (quoted in Neumann, 2002:126) and did not resist the flow once consensus was reached on the issue in the Labor Party in parliament.

The military began to appreciate the implications of the total ban only when

the definition of landmines for the Ottawa Treaty clearly emerged in 1997 and indicated that a range of US smart mines on Norwegian territory would be banned by the treaty. Attempts by the military to change the definition of landmines came too late and to no effect (quote, p.125). By that time, the NGOs were working closely with the government and NGO representatives were part of the official Norwegian delegation.³⁴⁵ This access to insider information further helped the NGOs in their lobbying tactics toward state representatives at the conferences leading to Ottawa (quote, p.124).

Overall, several important factors/phases regarding the Norwegian landmine case can be emphasized: **First**, the political system was open to government-NGO cooperation on humanitarian issues. Indeed, NGOs in Norway are an institutionalized part of the process of delivering humanitarian and developmental aid and some of them have close connections to Norwegian parties. The system was not only open to collaboration by NGOs, but importantly, key governmental posts were open to people linked to or from the NGO sector, such as the Foreign Minister Thorvald Stoltenberg and his deputy Jan Egeland. **Second**, in order that these NGOs assume a more active role on landmines, an impetus from the international campaign to ban landmines had to be imparted. **Third**, whereas momentum for the creation of the Norwegian landmine coalition came from the international level, their legitimacy domestically lay in their expert knowledge of the problem from their field work. The tactics they employed were a combination of a public media campaign and lobbying parliament and party officials, but arguably it was the latter that yielded best results. **Fourth**, despite its interest in the problem, initially the government was prevented from adopting a bold position toward banning landmines due to security concerns. Only

³⁴⁵ Either Halle Jorn Hanssen or Svein Henriksen of NPA were most often on the Norwegian delegation (fn. 18)

after the NGOs had launched a strong campaign for a ban domestically, and internationally other states were taking the lead on the issue, did the government perceive the need for a more radical position in favor of a total ban and got the necessary arguments to overcome the military opposition. **Fifth**, key to the development of the Norwegian position was the building of consensus domestically, which was achieved by the efforts both of NGOs and the MFA to persuade the Labor Party group on foreign policy and then the Foreign Committee of the parliament to support a total ban. **Finally**, the international competition for leadership on the issue did play an important role in defining Norwegian policy as well. In an apt sports metaphor, junior minister Jan Egeland describes the evolution of Norway's position: "We lagged behind on the mine issue. Then we came up with this mine clearance and caught up by initiating the work of the NPA. Then we lagged behind on the political front due to our defence considerations. We were not amongst the four or five front runners in spring 1995. Then we moved up front at the end and finish as a good number two right after Canada" (quoted in Neumann, 2002: fn. 25).

The front-runner on cluster munitions

The two organizations that have been active on the issue of cluster munitions in Norway are the Norwegian People's Aid (NPA) and the Norwegian Red Cross, whereas Norwegian Church Air, the Norwegian Refugee Council, and Save the Children have been showing support on the issue. In 2000, NPA was one of the NGOs attending the ICRC meeting on explosive remnants of war (ERW) in Nyon that set the course for action on ERW at the CCW (ICRC, 2000b). Despite this early interest, for a couple of years NPA did not get actively engaged on the issue internationally.

Domestically, the Norwegian Red Cross was advocating measures to restrict the use of cluster munitions and a more active role for the Norwegian government internationally.

The Norwegian Parliament got interested early on and in June 2001 it adopted a decision that required the destruction of all air-delivered cluster bombs previously in stock “because of their low level of precision and high dud rate” and prohibited the acquisition of munitions with no self-destruct mechanisms and a failure rate above 1% (Norway, 2003). It also instructed the government to work actively for an international ban against cluster bombs. Pursuant to the decision, Norway has also foresworn the use of air-dropped cluster munitions in international conflicts and prohibited their use in Afghanistan (HRW, 2004). In addition, Norway has stated that existing IHL “obligations and restrictions d[id] not provide sufficient protection for the civilian population against the humanitarian consequences related to ERW” and has called for further regulations on their use (Norway, 2003).

Whereas Norway was a leader on the issue of cluster munitions within the CCW, NGOs and the Norwegian Red Cross, in particular, were pushing it to assume a more active role. However, there were not many opportunities to exercise leadership within the CCW given the opposition of a large number of states even to discussions of the problem of cluster munitions. Thus when in 2003 in media debates the Deputy Minister of Foreign Affairs, Vidar Helgesen, was pressed by NGOs for not doing enough, his response to the NGOs was, “What are *you* doing through your international networks?” (interview 42 NGO). And justly so since at that point the international campaign was weak and disorganized and no national campaigns on the issue existed. Yet, Norway needed the backing of a stronger international movement to be able to take bolder steps internationally. This prompted the Norwegian Red Cross to become more engaged in motivating interest in the issue among the Red

Cross and Red Crescent societies and start attending the CCW meetings in Geneva. Throughout the spring of 2005 the Norwegian Red Cross also ran a large-scale advertising campaign on the issue of cluster munitions with popular events organized in several cities.

The passing of the cluster ban law in the Belgian Senate gave a boost to the NGO campaign in Norway as well. In June 2005, in a demonstration of engagement from international NGOs, the Cluster Munition Coalition held a briefing on cluster munitions with the opposition Center Party, which was followed by a seminar organized in the Norwegian Parliament by the Center Party under the title “What role can Norway play in the fight against cluster munitions?” Speakers from HRW, NPA and the Norwegian Red Cross participated in the seminar, which concluded with a joint briefing of NGOs and the Center Party that included a call for a ban on cluster munitions in its platform for the upcoming elections in the fall of 2005 (CMC, 2005a,b). The NGOs concentrated their lobbying activities also on the other two opposition parties – the Labor and Social Left (interview 42 NGO).

As the international and national campaigns on cluster munitions got mobilized, the Norwegian Ministry of Foreign Affairs also became more engaged and assumed leadership on the issue. Previously, the Netherlands was most active on the issue of explosive remnants of war, and had been gathering NGOs and government experts to an annual meeting to discuss the issue prior to the CCW sessions. Now, Norway took up this role and in June organized a seminar on cluster munitions and possible ways of addressing the issues in the CCW for like-minded countries and NGO representatives.³⁴⁶

³⁴⁶ Among the like-minded group were representatives from Sweden, Switzerland, Austria, Australia, Canada, the Netherlands and New Zealand. The NGOs included Human Rights Watch, the ICRC, Landmine Action, UK, Norwegian People’s Aid and the Norwegian Red Cross.

The lobbying of NGOs of the *Storting* parties over the previous period bore fruit when in October 2005 a new coalition government, including the Center Party, Labor, and the Social Left Party, came to power on a “government platform” that stated, among other things, that it will “work for an international ban against cluster bombs.” In addition, the former Secretary General of the Norwegian Red Cross, Jonas Gahr Støre, became the new Minister of Foreign Affairs (CMC, 2005c) – another enabling factor for the NGO campaign that paralleled the situation during the landmine campaign in the 1990s when the Junior Minister of Foreign Affairs Jan Egeland was a former ICRC and Norwegian Red Cross person and the Minister of Foreign Affairs Thorvald Stoltenberg involved in the NGO sector and later headed the Norwegian Red Cross. Another person also gave hopes for Norwegian leadership on the issue – Steffen Kongstad who was very instrumental during the Ottawa Process got more involved in the cluster munitions issue as well.

After the Belgian national ban on cluster munitions was passed by the Chamber in February 2006, NPA decided to reinforce its domestic lobbying by hiring a fulltime staff member to work specifically on cluster munitions and saw this step as a way to contribute to the international campaign of the Cluster Munition Coalition (CMC) (interview 42 NGO). NPA also stepped up its media campaign and lobbying of parliamentarians. A couple of days after the passing of the Belgian law, NPA circulated a letter to MPs titled “Belgium has banned cluster bombs – why is Norway hesitating?” and called for the introduction of a similar legislation in the Norwegian Parliament banning “all cluster munitions with submunitions which are not individually guided/target seeking and which do not have empirically proven and reliable self-destruction mechanisms.” It also called on the government to live up to its election campaign promise and take concrete measures toward achieving an international ban (CMC, 2006a). Due to opposition from the military to a “ban” on

cluster munitions, the NGOs modified their call in March 2006 and aimed instead at the adoption of a moratorium on cluster munition use and the destruction of all old types of cluster munitions that presented a humanitarian problem. Its demands regarding an international solution to the problem were aimed at preventing an agreement that would only lead to the retrofitting of old cluster munition stocks with self-destruct mechanisms without addressing their problems of indiscriminateness (CMC, 2006b; interview 42 NGO).

Another breakthrough point for NGO lobbying came when they discovered that Norway's remaining stockpile of ground-launched cluster munitions contained the same type of munitions that the British forces had used in the Iraq War in 2003 around Basra. Even though these were a new type of cluster munitions with a built-in self-destruct mechanism that ensured about 98% reliability rate, the Human Rights Watch report on the conduct of military operations had documented that their use in Iraq had resulted in several dozens civilian deaths. The Norway's announced policy for its stock of cluster munitions, however, required a reliability rate of at least 99%. The NGOs used this discrepancy between policy and practice and the issue became the focus of intense debate in the media and discussions between the NGOs and the Ministry of Defense. Because the issue fell within the purview of the Ministry of Defense (MoD), NGO contacts were concentrated on it, and the Ministry of Foreign Affairs did not get involved in the issue until after most of the differences between MoD and the NGOs were ironed out (interview 42 NGO).

Finally, in May 2006 following the extensive media coverage of the cluster munition issue and debates about the future of Norway's stockpiles of the weapons, MPs from the three coalition parties in the Defense Committee organized a closed parliamentary seminar for government officials and NGOs to discuss the issue. The latter asked for a national moratorium on cluster munitions until an international

agreement was achieved and MoD announced that such a moratorium was in fact in place until further testing of the reliability rate of stockpiled munitions in the fall (CMC, 2006c). The NGOs demanded that the policy be made official, and in June 2006 at the CCW meetings, the Norwegian delegation announced the moratorium officially (interview 42 NGO). It went on to state that “[i]t is imperative to start working, without further delay, towards an international ban on cluster munitions that cause unacceptable humanitarian problems” and demand a clear negotiating mandate to that end at the CCW. It also emphasized that the Norwegian “government wishes to work closely with interested states, humanitarian organisations and other relevant actors in a concerted endeavour to meet the existing challenges and to prevent a new humanitarian disaster caused by certain types of cluster munitions” (Norway, 2006).

In the meantime, the Israel-Hezbollah war that unfolded in July-August 2006 opened a window of opportunity for the advocates of a ban on cluster munitions and UN agencies and NGOs, helped by the Norwegian Ministry of Foreign Affairs (MFA) made the best out of the horrible humanitarian situation. Israel used a large number of cluster munitions targeted indiscriminately over wide areas in Lebanon, including in civilian areas during the last three days before the ceasefire came into effect. UN mine action teams on the ground and NGO teams quickly started gathering information on strike locations and civilian casualties and made the issue of cluster munitions a front-page news around the world. Jan Egeland, the erstwhile moving force behind the landmine ban in Norway, and current UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator lent a helping hand as well, decrying the cluster munition use as “shocking and completely immoral” (McCarthy, 2006). MFA also financially supported NGOs whose help it needed in generating international momentum on the issue. Two reports on the global and Lebanese problem of cluster munitions by Landmine Action, UK and Handicap International, which appeared in

time for the crucial CCW Review Conference in November 2006, were supported by the Norwegian MFA.

Alerted to national developments regarding proposals for cluster munition bans in several countries, the announced willingness by Norway to lead the way on the issue, and especially the dangers of cluster munitions use revealed in the Israel-Hezbollah war during the summer, six states, led by Sweden and Austria proposed a negotiating mandate on cluster munitions at the CCW. With each day of the Review conference, the number of supporters of the proposal increased to reach 27 just ahead of its closing. Norway, however, had made it clear that it did not regard the CCW as the forum suitable to achieving a meaningful international agreement on cluster munitions. It only joined the countries supporting the mandate on the last day of the conference when it was clear that it will be opposed by several countries among which the US, Britain and Russia. This failure of CCW to take up the issue provided a justification for launching an alternative negotiating process out of it in order to address the pressing humanitarian problems of the weapons. Norway seized the moment and announced its initiative to “start a process towards an international ban on cluster munitions that have unacceptable humanitarian consequences” (Norwegian Ministry of Foreign Affairs, 2006).

Concluding remarks

Thus, as in the landmine case, Norwegian NGOs have brought up the question of cluster munitions at different levels of government, worked with parliamentarians, government officials in the Ministry of Foreign Affairs and Defense. Their efforts to secure the support of parties in opposition ahead of the 2005 elections paid off when

they came to power. In contrast to the landmine case, the Ministry of Defense has been more closely involved in the issue from the beginning, and despite its opposition to a total ban on all types of cluster munitions, has been responsive to the demands of NGOs and concerned about the humanitarian effects of the weapons in its possession. Thus, in both cases the military accepted the humanitarian discourse and has performed as a “force for peace.” As in the landmine case, the consensus policymaking process has been at work in the cluster munitions case as well and NPA deemed it necessary to make a concession about the most advanced new cluster munition types in order to win the support of the Ministry of Defense for solving the humanitarian problem of old munitions. Finally, the Norwegian cluster munition campaign was in large measure conceived within the context of the international campaign and the passing of the Belgian ban legislation was a key event imparting momentum to the activities not only of NGOs but also of government officials in Norway.

Junior Foreign Minister Egeland was first to direct NPA toward taking up demining operations funded by Norway and he used the landmine issue to reallocate funds from the parliament and boost the organizational capacity of the Ministry of Foreign Affairs to deal with humanitarian problems. When the NGO demands for a total ban got more vocal, he played a “double deal” – he tried “to mediate between the NGO pressure and those – inside and outside of the MFA – who insisted on framing the question of mines not as a humanitarian issue, but as one of state-to-state disarmament policy and Norwegian security policy.” In the process, the MFA “harnesse[d] the social power of NGO, and also the military sector” to enhance its own role (Neumann, 2002: 128). As Norwegian NGOs became empowered by their international networks, the Norwegian MFA used this source of strength to maintain its centrality vis-à-vis its own polity as well as increase its leverage in dealing with

other states and enhance Norwegian standing internationally (Neumann, 2002: 129). Thus, a “symbiotic relationship” between the MFA and NGOs was present, with both sides having a stake in pushing the issue forward (e.g. Bátora, 2005:5, 17) From this perspective, it is understandable why in 2003 the Deputy Foreign Minister sought stronger support from an international NGO network before Norway could contemplate more ambitious policies on cluster munitions. As the domestic campaigns in several European countries and the international campaign on cluster munitions gathered force following the Belgian law, the Norwegian international position became more assertive and the MFA sought ways to increase NGO leverage through funding. A new Foreign Minister who had presided the Norwegian Red Cross when it was campaigning against cluster munitions in 2003-05 also made a difference. Finally, Sweden – Norway’s traditional rival on humanitarian issues and contestant for the title of “über-Scandinavian”³⁴⁷ – pushed for negotiations on cluster munitions within the CCW. Then Norway counted the countries that came to support the Swedish proposal, and when it deemed there was a sufficient number willing to follow if it took the lead, Norway decided to move into full gear and launch an alternative process on cluster munitions out of the CCW. Thus, Norway’s bold step allowed it not only to gain international visibility, but also to reposition itself regionally vis-à-vis a country with which it shares many features in common.

Conclusion

In these three European countries NGOs followed different strategies and met with

³⁴⁷ “Über-Scandinavian” was discussed as one approach of “branding” the Norwegian public image in Leonard and Small (2003: 43) and emphasized the common associations of Scandinavia with “equality, peace, nature, or self-sufficiency” but on a higher level. However, the danger that this approach might result in Sweden’s “crowd[ing] Norway out of the picture” was noted.

different degrees of success, but in all of them the presence of support from key individuals in parliament or government has been conducive to the promotion of their cause. In Belgium parliamentarians played the most important role. In Norway both parliamentarians and foreign affairs officials made a difference but involvement of the latter was crucial in adopting a more active Norwegian posture internationally. In France, government officials moved the issue of landmines forward but the coming to power of a new left government was key for French support of the Ottawa Process. On cluster munitions, parliamentarians have been most interested in the issue but under a center-left government the NGOs have not been able to influence French policy significantly.

Thus it could be argued that in Belgium and Norway humanitarian issues and weapons prohibitions have drawn more universal support, which has not been dependent on party affiliation of the government in power. In those two countries the government is often times a coalition of parties, not necessarily from the same side of the left-right political divide.³⁴⁸ The military in those countries has accepted the prohibitions of landmines and a moratorium on cluster munitions without particularly strong let alone public opposition. In both cases, however, its concerns were addressed at least to some extent in the adopted laws and thus its support has been secured in a way characteristic of the working of those two consensus-oriented political systems.

In contrast, in France the military has been more influential in posing certain limits on French policies on landmines and cluster munitions, but it could find support for its arguments primarily when center-right governments were in power. Given the strong civilian control over the military, a left government had no particular

³⁴⁸ Even though party affiliation does not matter for support of the initiatives to ban landmines and cluster munitions in Belgium and Norway, leadership on those issues has come from individuals in the socialist party in Belgium and the Labor Party in Norway, but the Norwegian Center Party has also been very actively supporting both the landmine ban and restrictions on cluster munitions.

difficulties with adopting an actively supportive position of the Ottawa Process.

The three examined countries have also played different roles internationally. Belgium was a leader in adopting strong national prohibitions on the two types of weapons but refrained from a leadership position internationally. Norway on the other hand, was progressive both in terms of domestic policy and particularly internationally. France, initially had leadership ambitions on landmines under a left government when it could take on an issue on which the US was also vying for a leading role, but then under a right government became obstructionist regarding the Ottawa Process. On cluster munitions it has been working constructively but has showed resistance to more comprehensive restrictions on their use. Thus its positions have been quite similar to those of the US and it is difficult to say that there is a unified European approach to those issues. To the extent that it materializes, it is the result of strong NGO campaigning on these issues both domestically and internationally.

CHAPTER SIX

Canada: Leadership Matters, Partnerships Pay Off

Introduction

Domestic Structure

Canada is another country that falls in the category of “state-dominated” domestic structure, characterized by a concentration of power in the hands of the Prime Minister, including on foreign policy issues, and a weak role for the parliament (e.g. Savoie, 1999; Smith, 2000:185). Societal interests are represented in fairly well developed social organizations and close links exist between the Canadian International Development Agency (CIDA) that is in charge of Canadian foreign aid and humanitarian and aid NGOs that benefit from CIDA funding to carry out humanitarian programs and deliver aid and services in the developing world.

The Military

The Canadian military is non-politicized, civilian control well embedded, and on the whole, civilian-military relations “circle about politicians’ concerns about auditing the ‘expert’ advice they receive from the military and soldiers’ frustrations with politicians who seem content to ignore that advice” (Bland, 1996: 42). During the

Cold War, national security and defense were not among the main preoccupations of the Canadians.³⁴⁹ Indeed, they have been depicted as notoriously “unmilitary” (Stairs, 1998a), so much so, that “when you make a claim in defence of national defence and military expenditure, you are ultimately regarded as some kind of foaming-at-the-mouth warmonger” (Michael Ignatieff quoted in Kilgour, 2005) – a trend that has become stronger following the end of the Cold War and the diminished threat perceptions that it brought. Given these attitudes, the military has found it hard to receive support for its demands either with the public or the media (Stairs, 1998a; Pinch, 2000: 171-2).

Whereas public support for the military institution and defense spending has not been very high,³⁵⁰ Canadians have overwhelmingly supported its peacekeeping and humanitarian missions (Dorn, 2005; Hampson, 2003: 132; Pinch, 2000: 163-4). In fact, according to a 1993 report by the Canadian Senate Standing Committee on Foreign Affairs, peacekeeping is the “sole military activity that Canadians fully support” (quoted in Dorn, 2005:7). As Dorn (2005: 7) has argued, “Canadian support for its peacekeeping role has been so strong for so long that it has even become a part of the national identity. It is a celebrated part of what Canada is as a nation, and even who Canadians are as a people.”³⁵¹

Even though the military has also embraced its peacekeeping role, it has

³⁴⁹ For example, during the 1970s and 1980s only 0.5% of Canadians listed defense as one of their major concerns (Pinch, 2000:163).

³⁵⁰ E.g., in 1990 71% of Canadians “saw the necessity for a military” (Pinch, 2000: 163, emphasis added).

³⁵¹ Almost 90% of Canadians “believe] that Canada should provide troops for peacekeeping when asked by the UN,” whereas polls in 1992 and 1997 “showed that Canadians overwhelmingly (90 percent and 94 percent respectively) identified their country as a world leader in international peacekeeping” (Dorn, 2005:7). The extent to which peacekeeping has become a part of Canadian identity shows from the fact that peacekeeping symbols appear on some Canadian dollar bills and coins; the Peacekeeping Day had recently been inaugurated as an annual celebration in most Canadian provinces; the National Peacekeeping Monument is one of the three major monuments in the Canadian capital along with many memorials to peacekeepers around the country; and the Canadian Peacekeeping Service Medal instituted in 2000 (Dorn, 2005: 7).

“consistently remained less enthusiastic about peacekeeping than [...] Canada’s foreign-policy elites,” which has also shown in its reluctance to take up missions in several instances (Hampson, 2003: 132; 135, 137; also Dorn, 2005).³⁵² It has always been wary of “the single-minded” focus on peacekeeping that would render the armed forces incapable of high-intensity combat. Whereas soldiers see peacekeeping as “an important task”, they are reluctant to see it as “the primary task” (Dorn, 2005). In practical terms, soldiers have also complained about UN rules of engagement, poor coordination, and lack of proper equipment and the military has shown preference for the better-organized NATO peace operations. As the latter increased in number, Canadian contribution to UN peacekeeping correspondingly fell – in 2003 for example, Canada contributed to NATO operations 20 times the number of personnel it had deployed in UN missions (*ibid*). Even without this turn toward greater Canadian involvement in NATO operations, Canada had lost its leadership position in peacekeeping after the end of the Cold War when developing countries became the main troop contributors.³⁵³ Thus the support, which the Canadian military could receive from the public, was mostly based on its peacekeeping role, but the military itself never considered it as its core role and recent engagement in NATO missions, especially in Afghanistan, have given precedence to more forceful and high intensity operations.³⁵⁴

³⁵² More than 125,000 Canadian military personnel have served in UN peacekeeping operations from 1947 to 2005 (Dorn, 2005: 7).

³⁵³ Pakistan became the leading country and in 2005 Canada fell to 35th place in terms of troop contribution to UN peacekeeping (Dorn, 2005; Kilgour, 2005).

³⁵⁴ This is also understandable in view of the fact that Canada had one of the biggest armed forces in WWII.

Middle Power Diplomacy

Peacekeeping was so important to Canadians also because the concept itself was Canadian – it was conceived by Canadian External Affairs Minister Lester Peterson in 1956 as a solution to the conflict between the US and France and Britain over the Suez crisis. This achievement stood out in a period of Canadian diplomacy that was later looked back upon as the “Golden Era” and thus shaped the aspirations of cohorts of Canadian diplomats (Nossal, 2000). As already pointed out, peacekeeping became a part of Canadian national identity and thus also served as a tool of national unification – bridging cultural and regional divisions. However, it was also part of the Canadian strategy to enhance their country’s role internationally and project a distinctive image abroad that would distinguish Canada from its dominant neighbor and ally, the US (Mingst, 2003: 62; Roussel and David, 1998). Not only peacekeeping, but Canadian foreign policy and public diplomacy as a whole served, both before and after the end of the Cold War, the double purposes of gaining international leverage and forging national unity (Chapnik, 2000: 201; Potter, 2002/03; Axworthy, 2003: 58-9), with more importance sometimes attributed to the latter function (e.g. Bátorá, 2005; English, 2000: 24-5).

The other traditional features of Canadian diplomacy have been its commitment to international development and aid for the Third World, support for the UN and multilateral institutions, and its role as a conciliator trying to mend relations between its European allies and the US within NATO, as an “honest broker” trying to mediate between the East and the West, or build bridges between the South and the North or the US and the non-aligned countries during the Cold War (Roussel and David, 1998). Those international roles were motivated both by Canada’s

humanitarian impulses and its self-interest as a state whose security and prosperity depended on the preservation of a peaceful world order (Neack, 2000; Roussel and David, 1998).³⁵⁵ On the other hand, the performance of these kinds of intermediation hinged upon Canada's ability to engage in compromise seeking, behind-the-scene negotiation, and credibility as an impartial and neutral party. Based on that, Cooper (1997) has classified Canadian diplomacy as quiet, low-key, consensus-oriented but stretched over a wide area of issues. Due to its membership in many organizations (NATO, OECD, G-7, the Commonwealth, the Francophonie), Canada was also the "quintessential joiner" that could exert leverage through those organizations and create linkages between different actors.

Argument

However, the end of the Cold War has brought about structural changes that different authors expected to either give a boost to middle power initiatives by opening more opportunities for them (Potter, 1996/97), obviating the need for their services due to rapprochement between the great powers and their closer involvement in areas where middle power expertise was earlier required (Roussel and David, 1998), or curbing their freedom action when it went against the wishes of the new sole superpower (Neack, 2000). Even though the international system within which Canada had to operate changed, its goal of playing a distinctive international role remained. To achieve it, Canada had to find new ways to reposition itself in an environment

³⁵⁵ For an overview of the debates over the humanitarian or self-interested motivations of Canadian peacekeeping, see Dorn (2005).

crowded by competitors and great powers entering the fields of peacekeeping and mediation. Indeed, it has been argued that Canada had adopted a new style of diplomacy – one oriented toward public and sometimes confrontational diplomacy (vis-à-vis the US) pursued outside of the consensus-based fora of established multilateral institutions (Michaud and Belanger, 2000; Cooper, 2000). These new developments unfolded during the period 1996-2000 when Lloyd Axworthy was at the helm of the Canadian Ministry of Foreign Affairs, but were attributed to structural factors (Michaud and Belanger, 2000). The years that followed his stay in office have often been portrayed as a period of Canadian decline and certainly lacking in any “new diplomacy” initiatives (Kilgour, 2005), in fact Canada didn’t engage in its traditional middle power role either. Thus, the middle power approach and its modifications don’t offer an entirely clear explanation of Canadian positions internationally, or on the two studied cases of landmines and cluster munitions.

On the other hand, the predictions of the domestic structure model are that NGOs would experience difficulties in gaining access to top officials who are the chief policy makers on the issues of their concern, but if they manage to win their support, there is a good chance that NGO demands would be incorporated into state policy. Thus, key to NGO success is finding governmental allies, whereas attempts to push forward their cause through the parliament would hardly produce good results.

Whereas the Canadian story largely confirms the domestic structure model expectations, the two cases also show the important role of individuals, coupled with greater input from NGOs. These two factors I would argue have also to be taken into consideration when explaining the ability of middle powers to play prominent international roles and engage in “new diplomacy”. In this respect, the role the Foreign Minister Lloyd Axworthy played in the landmine case was key. He used the

partnership with NGOs to enhance Canada's position internationally and gain recognition and renewed prestige for his country. The NGO partnership also allowed him to improve his bargaining position relative to other governmental agencies that hold resources (such as CIDA), to compete successfully in drawing attention to foreign policy issues of interest to him in contrast to commerce and economic issues dominated by the other branch of the joined Department of Foreign Affairs and International Trade (i.e. the Department of International Trade) and thus redefine the Ministry's agenda as a whole, as well as to overcome resistance to his initiatives coming from within the conservative diplomatic culture of his own Ministry. Finally, the partnership with NGOs also allowed the Foreign Minister to gain a degree of independence and freedom of maneuver within the otherwise highly centralized political system that privileges the power of the Prime Minister.

In the case of cluster munitions, the advantages offered by association with the NGOs were fewer until 2006 because of the weakness of the NGO campaign. More important than that however, was the lack of individual leadership on the issue that could have mobilized the NGO efforts and produced synergy effects for both the government and its NGO partners.

Canada – the savvy leader on landmines

Among the like-minded countries, Canada was the last to adopt an active position on landmines. Only toward the spring of 1996 did Canada see the momentum created by NGOs and several progressive countries on the issue of landmines and took the

opportunity to lead it to a successful completion.

Similar to the Norwegian case, the Canadian NGOs launched a landmine campaign rather late in September 1994 (ICBL chronology) and were instrumental in tilting the balance between humanitarian and military arguments in the debate between the Department of Foreign Affairs and International Trade (DFAIT) and the Department of National Defense (DND). Unlike Norway, however, the parliament had only a secondary, if any, role to play in the decision-making regarding landmines. The key actors in the Canadian landmine process were people at DFAIT – both the Foreign Minister (first, André Ouellet, and then Lloyd Axworthy) and low- and middle-level officials in the Non-proliferation, Arms Control, and Disarmament Division (Arms Control Division) of DFAIT's International Security Bureau.

Business as usual: the early NGO campaign and military opposition

Due to financial constraints and traditional tendency not to get involved in disarmament issue due to fears of losing their charitable status, Canadian NGOs were slow to get involved in the issue of landmines. In 1993 a couple of organizations began responding to critiques coming from the ICBL for the lack of action by Canadian groups. In the fall of 1994 a loose coalition was formed, and finally in March 1995, Mines Action Canada (MAC) was officially launched with the appointment of a coordinator and registration of membership in the ICBL (Warmington and Tuttle, 1998: 48-9).

Right after its establishment, MAC demanded and was granted regular

meetings with government officials, during which information was exchanged about the Canadian policies and NGO concerns. However, there was very little common ground between the positions of MAC and the government. Despite the abundant evidence of the severe humanitarian consequences of landmines, the government kept arguing that, “it was impossible to address these issues outside of the existing Canadian negotiating position within the Review Conference of the CCW” (Warmington and Tuttle, 1998: 50). The government arguments were based on considerations of military utility and assertions that it was possible to use landmines responsibly without creating humanitarian risks. Thus, up until the fall of 1995, the government response to NGO calls for a total ban and a more proactive Canadian position in international negotiations, was that any attempts to push forward discussions at the CCW would be counter-productive and more ambitious proposals from Canada would only marginalize it and impair its standing and leverage as a serious negotiator (Warmington and Tuttle, 1998: 50, 53).

What gradually changed the minds of people in DFAIT, in particular, was the vigorous NGO campaign that created great media and public interest in the issue of landmines.³⁵⁶ In addition to working with the media, MAC was gathering petition signatures and launched an intensive letter-writing campaign addressed to ministers and members of parliament (MPs). It focused its efforts on parliamentarians in particular, sending a series of information packages to all MPs’ constituency offices in the summer of 1995 and organizing a press conference on Parliament Hill to launch the ICRC study of military effectiveness of landmines in March 1996. Even though MAC kept lobbying for a law ban by parliament throughout the summer of 1996 and some opposition MPs showed interest in the issue and were asking parliamentarian

³⁵⁶ The media interest and requests for information from journalists was so overwhelming that MAC could barely cope with it. It even set up a 1-800 line to be able to respond to the incoming demands (Warmington and Tuttle, 1998: 52; ICBL, 1995b).

questions on the subject, NGO efforts did not result in any significant parliamentarian initiatives on the subject.³⁵⁷

Given the Canadian centralized political system and the limited involvement in and leverage over foreign policy of parliamentarians,³⁵⁸ it is not surprising that the NGO campaign did not produce any changes in terms of new policies or legislation. Canada is noted for the concentration of power in the hands of the prime minister (especially when his/her party holds the majority in the parliament), which is strengthened by party discipline (Savoie, 1999; Whittington, 2000: 44-6). Thus, it has rightly been argued that “[f]or collective actors seeking to influence government policy, then, targeting individual members of the legislature, whether on the governing or the opposition side, is not a fruitful strategy” (Smith, 2000:185). The only way that NGOs could have affected their government’s position on landmines through the Parliament (and one very rarely used at that) was to win the support of the majority party, which then could have conveyed its views to the government through the caucus.³⁵⁹ In the landmine case, however, the NGO supporters were mainly among the

³⁵⁷ Keith Martin from the conservative Reform Party was particularly active on the issue of landmines (English, 1998:76) and other opposition MPs such as Svend Robinson and Bill Blakey were asking questions about the Canadian position on landmines (Warmington and Tuttle, 1998:52).

³⁵⁸ Historically, the Canadian parliament had very limited involvement in foreign policy. A committee on foreign affairs was not established until 1949 and up until the mid-1980s parliamentarian committees could study specific questions only with authorization from a minister. However, after the committees gained authority to determine their own agenda, their reports were not taken seriously enough and had little impact on government policy (English, 1998: 60-70, 77). It has been argued that due to a number of factors, including the structure of the Canadian parliament, lack of resources for MPs, and lack of constituency interest in foreign affairs, “Parliament acts to push members away from the capital and pull them toward their local ridings” (Docherty, 1997 quoted in English, 1998: 72). Even though the Liberal Party came to power in 1993 with a Red Book calling for “a participatory foreign policy in which members of Parliament played a central role” and established a Special Joint Committee of the Senate and the House of Commons to Review Canadian Foreign Policy (English, 1998: 70), the actual involvement of the Parliament in foreign affairs has been minimal. Indeed, despite the Red Book’s statements, at the first National Forum on Canadian Foreign Policy MPs were not initially invited and at some sessions of the 1994 forum MPs were not permitted to speak. NGOs, on the other hand, emerged as the alternative to MPs in representing and understanding public opinion (English, 1998: 79).

³⁵⁹ The party caucus is a regular meeting of the supporters of government in the House of Commons and the Senate and Cabinet members that is held *in camera* so that everyone can speak openly. During meetings the Cabinet briefs MPs on its policy initiatives and receives feedback from MPs that can voice their concerns and sometimes opposition to certain measures. In case of disagreements, either the

opposition MPs and had few channels through which to exert influence on the government policy.³⁶⁰

The NGO campaign, however, led to some changes in the government policies that were initiated by Foreign Minister André Ouellet. Initially, Ouellet got interested in the problem of landmines in 1994 when the president of the ICRC, Cornellio Sommaruga urged the Prime Minister Chrétien to support a ban on AP mines, which given Canada's G-7 membership would lend legitimacy to the movement against landmines (Tomlin, 1998: fn. 18).³⁶¹ Ouellet's interest in the issue was also encouraged by his policy advisor Michael Pearson. However, his attempts to have a change in the Canadian policy on landmines in the summer and fall of 1995 were faced by strong resistance from DND and Defense Minister David Collenette who insisted that landmines could not be eliminated before alternatives were found (Tomlin, 191). In the end, Ouellet managed to convince the Defense Minister to agree on an export moratorium in October 1995 almost by chance. In 1995 the UN published a list of the countries that had instituted an export moratorium, in which Canada was mistakenly included. As it would have been an embarrassment to ask for correction, DFAIT pressed the DND harder on the issue and eventually it acquiesced to the export moratorium (English, 2000: 29-30). However, encouraged by the growing public support of a ban reflected in public opinion polls and the heavy flow of mail to his office as a result of MAC's letter-writing campaign, Ouellet went on and in early

government convinces its party supporters to back its policies, or in some rare occasions the caucus and MPs could block government measures. Both have happened under Chrétien's government. In 1994 he convinced caucus members not to oppose the lowering of tobacco taxes, whereas later in his term the Cabinet decided to veto proposals for bank mergers due to the Liberal caucus opposition to their approval (Whittington, 2000: 46; Atkinson and Docherty, 2000: 21). For a skeptical evaluation of the ability of the caucus to launch new initiatives or change the course of government policy, see, Savoie (1998: 91-3).

³⁶⁰ See, Atkinson and Docherty (2000: 17-20) for the opportunities open to opposition MPs to stall, if not really shape, government policies.

³⁶¹ Chrétien responded to this request favorably and raised the landmine issue at the G-7 meeting in Halifax in 1995 (Axworthy, 2003: 141).

November 1995 announced in an interview that “Canada should destroy its stockpile of landmines and declare a total ban on the production, export, and use of the weapons” (Tomlin, 1998: 192-3). This statement made officials in the Arms Control Division suddenly realize that the Foreign Minister was behind the idea of a total ban and ready to fight with DND over it.³⁶² And the announcement also prompted the first step toward building a common front with the NGOs. Bob Lawson secured a transcript of Ouellet’s statement and faxed it right away to MAC that then flooded the minister’s office with congratulatory messages. From that point on, ideas and concrete policy proposals on landmines emanated from the Arms Control Division - in particular, from Robert Lawson, Mark Gwozdecky and the Division’s director Jill Sinclair – that would shape Canadian policy and eventually initiate the Ottawa Process.

Immediately after Ouellet’s statement, in November 1995 the Arms Control Division advised him to declare a comprehensive moratorium not only on exports, but also on production and use of landmines – a position that reflected the influence exerted by MAC (Lawson, 1998: 84; Axworthy and Taylor, 1998: 194). Despite its discontent with the proposal, DND “acquiesced” and in January 1996 DFAIT announced a comprehensive moratorium, even though the moratorium had few practical implications since its ambiguous language banned the use of landmines unless needed, did not require destruction of stockpiles, and there had been no production of landmines in Canada since 1992 anyway (Warmington and Tuttle, 1998: 54; Landmine Monitor, 1999).³⁶³ Still, the military’s “acquiescence” in the moratorium marked the beginning of DND’s losing its say in the decision-making process on landmines (Tomlin, 194-5, fn. 28) and the ascent of NGO involvement and

³⁶² Earlier, upon his arrival at the Arms Control Division in October 1995, Bob Lawson was told that “an outright ban on landmines, however desirable, was not in the cards because DND would not countenance further changes in policy” [referring to anything beyond the agreed export moratorium] (Tomlin, 192)

³⁶³ Canada had also not used landmines since the Korean War (Warmington and Tuttle, 1998: 50).

influence on the issue, as also witnessed in the invitation of an NGO representative to become a member of the official Canadian delegation to the CCW Review Conference in April 1996 (Warmington and Tuttle, 1998: 55). The DND's gradual loss of ground to the NGOs was probably facilitated by the fact that during this period it found itself in the midst of a serious scandal. The revelation that members of the Canadian Airborne Regiment on a peacekeeping mission in Somalia had tortured and killed a Somali youth in 1993 was followed by media stories of cover-up attempts by higher-ranking military officials, and in the fall of 1995 this led to the establishment of a parliamentary Commission of Inquiry into the deployment to Somalia.³⁶⁴ Hence, the military's image during this period was severely damaged, its members and senior officials were intensively questioned over their involvement in the Somali mission, and this limited the military's ability to play a more assertive role in policymaking.

In the same month when the Canadian export moratorium was announced, Ouellet was replaced by Lloyd Axworthy as Foreign Minister – someone, as it would turn out, even more supportive of the landmine cause, and especially, of the idea that Canada play a leading role in achieving an international ban. His active and personal engagement in the issue made possible a U-turn in Canadian policy and a break with established diplomatic culture. From practicing quiet diplomacy and pursuing moderate positions in routine negotiating forums, Canadian diplomats turned to launching a bold and ambitious process, defying accepted diplomatic wisdom and practice that came to be known as “new diplomacy.”

³⁶⁴ See, for example, Hampson (2003: 143-7). The Somali debacle came in the midst of other reports about practices of hazing new recruits, abuse of female soldiers, and charges of racism (Stairs, 1998a). Those often involved the same elite, “macho” Regiment trained for high intensity missions, which at the closure of the Commission of Inquiry in 1997 was disbanded (Dorn, 2005; also Pinch, 2000: 172).

The emergence of “new diplomacy”

It could be argued that the seeds of the “new diplomacy” were sown by Lloyd Axworthy in the years ahead of the Liberal Party’s coming to power in 1993. Between 1988 and 1993 ideas about consultations with NGOs and greater involvement of the public in foreign policy issues grew in the ranks of the Liberal Party – a traditional supporter of liberal pluralism (Stairs, 1998b). Axworthy was among the proponents of those ideas and closely involved in the writing of the 1993 Party election platform (the Red Book), and especially the Foreign Policy Handbook that called for greater participation of domestic constituencies in the development and implementation of Canadian foreign policy (Hampson and Molot, 1998: 8; Van Rooy, 2001: 263; Stairs, 1998b). Thus, the foundations for greater NGO involvement in foreign policy were laid by the Liberal Party (and to a good extent by Axworthy himself) and its assumption of power in 1993.

Despite this announced party pledge to working more closely with NGOs, as already shown, Foreign Minister Ouellet did not make much use of it. During his tenure, he honored the form of his party’s commitment to greater engagement of the public and NGOs in foreign policy-making, “but for the most part had been careful [...] to remain personally aloof from the consultative process in order to preserve his own freedom of manoeuvre” (Stairs, 1998b: 25).³⁶⁵ More than that, he was perceived as being “notably skeptical” of many NGOs and under his tenure the budget of the

³⁶⁵ In other accounts, the lack of initiative from Ouellet has been attributed not so much to his concern for preserving independent decision-making power, as to personal traits: “Unlike his phlegmatic predecessor, Foreign Minister Lloyd Axworthy has seized the initiative on a number of important issues” (Hampson and Molot, 1998: 2). He “was domestically oriented and more politician than policy-maker” (Kitchen, 2001/02: 41) and this nonchalance to foreign affairs had earned him a nickname within DFAIT as “Mr. Five-Per Cent,” allegedly the portion of his time spent on foreign policy (Nossal, 2000:4). Even though the question of landmines caught his attention, he tried to push it forward only in the established ways of working with his colleague in the Defense Ministry.

Canadian International Development Agency (CIDA)³⁶⁶ was reduced (English, 2001: 99). In particular, the funding for the Canadian Public Participation Program, devoted to enhancing public awareness of development issues in Canada, which funded the work of numerous, especially community-based, Canadian NGOs, was eliminated and the Global Education Program, funding teachers' associations to incorporate global education in school curricula, took deep cuts. Many in the NGO sector attributed the elimination of these programs directly to Ouellet's involvement.³⁶⁷ His successor, Lloyd Axworthy, on the other hand, came into office not only open to input from NGOs but also determined to build a relationship with them that could help him increase his leverage within his more conservatively-minded department, as well as within the Cabinet, and thus enable him to follow his policy agenda that included more left-of-center issues.³⁶⁸

Thus, within the otherwise highly centralized system of Canadian politics

³⁶⁶ The Canadian International Development Agency (CIDA) was established in 1968, replacing a prior division dealing with Canada's development aid within the ministry of external affairs – the External Aid Office, which itself was created in 1960 in place of an office dealing with the matter that had been under the Department of Trade and Commerce since 1951. Throughout its history, CIDA has been situated within the Ministry of External Affairs, and since 1993 Foreign Affairs and enjoyed different degrees of organizational autonomy. From 1968 to 1979 it had been headed by a president reporting to the secretary of state for external affairs. For a year between 1979 and 1980 the post of minister of state for CIDA was created. In 1996, CIDA acquired again its own junior minister of the Ministry of International Cooperation that was within the purview of the Minister of Foreign Affairs – a situation that has been preserved until now (Morrison, 1998).

³⁶⁷ NGOs argued that Ouellet targeted the Public Partnership Program because of his personal offence at criticism directed at him by Quebec-based NGOs in the fall before the cuts were made (in the spring of 1995). In addition, it has been argued that CIDA had wanted for a long time to pare down this program and funding for NGOs that were not supportive of the official government line in the field of development (e.g. Ellwood, 1995; Morrison, 1998: 417–18). Ouellet himself asserted that support for NGOs, as a whole has not been withdrawn, but only funding for NGOs that are not involved in overseas developmental work (Canadian Parliament, 1995). In fact, funding for advocacy and public education was cut entirely, whereas NGOs involved in overseas development suffered a cut of 15% (Phillips, 1995). Of course, the reductions themselves were not the initiative of DFAIT, but a result of budgetary constraints imposed by the Finance Ministry in an effort to reduce the budget deficit. In this context, the Finance Minister announced that the government approach to interest-group funding would change (Nelson, 1995). It is nonetheless true, however, that Ouellet was intimately involved in the distribution of the cuts among different programs (Morrison, 1998: 415).

³⁶⁸ Axworthy also made extensive use of outside advisers and connections that would bypass the traditional bureaucratic channels and help him promote his “left-agenda” as Minister of Employment and Immigration (1980–1983) and Minister of Transport (1983–1984) (Stairs, 1998b: 47).

where the Prime Minister reigns supreme (Savoie, 1999; Whittington, 2000), including in the foreign policy field (Stairs, 2001; Kirton, 1985, 1988, 1997; Burney, 2005: 49), Axworthy's personality and skills, coupled with NGO backing, helped him gain some independence and carve a niche within which he could pursue issues falling within the area of human security (landmines, child soldiers, peace-building) that did not rank high among the priorities of his own ministry (Department of Foreign Affairs and International Trade), or of the Prime Minister, both focused on trade-related issues (Stairs, 1998b: 26).³⁶⁹

In that sense, with the Liberal Party Red Book the institutional framework for greater NGO influence was laid down and with Axworthy's assuming the post of Foreign Minister the personal predisposition and commitment to working with NGOs were there. Axworthy had a predilection for working on progressive issues, but it was up to the NGOs to put the landmine question on his agenda.³⁷⁰ They had to work hard before this particular issue captured the attention of DFAIT officials and then work even harder together with them to turn the opportunities opened by the new foreign minister into a treaty with real and concrete consequences for people suffering from the effects of landmines around the world.

³⁶⁹ Chrétien's "tendency to delegate responsibility" also allowed Axworthy freedom of action (Kitchen, 2001/02: 42).

³⁷⁰ Indeed, upon his coming to the Foreign Ministry, Axworthy's agenda looked fairly conventional ranking in terms of priority, protection of Canadians abroad, promotion of international trade to stimulate domestic employment, defense of Canadian interests, and on the fourth place, support for human rights, followed by other "individual security" concerns such as international development, UN reform, peacekeeping and youth outreach (Hillmer and Chapnik, 2001: 72). Earlier in this year (1996) in a speech at the UN Commission on Human Rights he had emphasized the role of civil society and the need for a new agenda on individual security, which had to focus on issues such as human rights, terrorism, dissemination of hate literature, violations of the rights of the child (*ibid*, p.71). Nowhere, however, did he make reference to landmines. The issue only appeared in his writing and speeches in the spring of 1997 and didn't really become a central focus of his human security agenda until after the Ottawa Convention was adopted. In fact, the emphasis on human security, itself in Axowrthy's foreign policy seems to have crystallized and become much stronger following the landmine success (for an overview of Axworthy's evolving human security agenda, see, Hillmer and Chapnik, 2001, especially 72-77).

The idea for a fast-track negotiation by like-minded states: the importance of mid- and low-level Canadian officials

After negotiations at the Vienna CCW review conference produced a deadlock on the issue of landmines, a series of three sessions was scheduled for January, April and May 1996 in Geneva with the aim of concluding negotiations. Realizing the difficulty to make any progress under the consensus-based rules of the CCW, people from ICBL started thinking about ways to build momentum after the conference and strategize about possible alternatives (Williams and Goose, 1998:32). To this end, during the January Geneva session Pieter van Rossem of the Dutch campaign against landmines suggested that delegates from pro-ban states be invited to an informal meeting with the NGOs to discuss possible ways forward. Whereas most people from ICBL were opposed to the idea, “fearing that if an attempt to bring pro-ban states together failed, it could weaken the momentum and discourage new state initiatives” (Mekata, 2000:156), others agreed to it convinced that the NGOs had nothing to lose even if states did not respond positively (interviews 8, 38 NGO). The meeting was also seen as a way of creating a “pro-ban identity” among the supportive governments (NGO representative quoted in Mathews, 1997b) and setting them on a course toward the establishment of a new strong norm against landmines. In the end, 22 countries were invited of which 8 showed up (Austria, Belgium, Canada, Denmark, Ireland, Mexico, Norway, and Switzerland). Interestingly, Canada was not invited to this first meeting because at that point, it had not yet pledged its support for a total ban. Nevertheless, having learned about the meeting, Bob Lawson volunteered to attend (Mekata, 2000:157, fn. 34) and left the impression among NGO members that he would try to get his government assume a more active role (interview 38 NGO). As it turned out,

they were not mistaken.

In March 1996 the Arms Control Division drafted a *Canadian Action Plan to Reduce the Global Use of Landmines*, one point in which suggested that Canada “host a small international meeting of officials and NGOs to develop an action plan on landmines” (Tomlin, 1998: 195). In this proposal one can see the same idea as the one of the ICBL’s Geneva meeting of NGOs and “pro-ban” states and also the outlines of what would later become the Ottawa conference. Indeed, at the second meeting between NGOs and pro-ban governments on 22 April 1996, Bob Lawson floated the same possibility unofficially and received approval (Mekata, 2000:158; Matthew, 2004: 8). Following the meeting Lawson reported its results to Jill Sinclair who agreed that “this was a leadership opportunity for Canada that they could not afford to pass up” and authorized him to officially announce Canada’s intention to host a meeting in Ottawa in the fall (Tomlin, 1998: 195), which he did at the closing CCW session in May.

Even though the amended Protocol II of the CCW that resulted from the Geneva conference fell short of the expectations of the NGOs and pro-ban states, the negotiating process was an excellent opportunity for NGOs to further raise the profile of the landmine problem, gradually garner support from more states (41 supported a total ban at the end of Geneva compared to the 14 at the end of the Vienna conference 9 months before), and eventually open the opportunity for the more ambitious negotiating process that would eventually come out of the proposed Ottawa meeting (Williams and Goose, 1998:33).³⁷¹

However, the idea for the meeting itself came from the head of the Canadian delegation in Geneva, Bob Lawson and was only coordinated with his boss, the Arms

³⁷¹ The Canadian decision to hold the Ottawa strategizing meeting came when there were 31 state supporting a total ban stood at 31 (CCW News, 30 April 1996).

Control Division director Jill Sinclair. Even though Axworthy's policy adviser Michael Pearson and the head of the International Security Bureau, Ralph Lysyshyn were informed about its initiatives, on the whole, the Arms Control Division was left to handle the landmine issue alone (Tomlin, 1998:195-6).³⁷²

The idea to host a meeting in Ottawa did not originate with the ICBL either. The NGOs had no clear strategy how to proceed after the end of the Review Conference and were not trying to thrust the leadership on landmines in the hands of a specific state or Canada in particular. In fact, "some in the ICBL were skeptical [about the idea], to say the least" (Williams and Goose, 1998:34). Nevertheless, the ICBL began to work with the Canadian officials on the organization of the meeting and a close cooperative relationship between them soon developed (Williams and Goose, 1998: 34; Tomlin, 197-8).

The main question before the organizers was which countries to invite so that participation be broad enough and yet prevent strong opponents from undermining the whole process. In June 1996 Mark Gwozdecky of the Arms Control Division proposed a simple self-selection mechanism: all countries would be invited but their attendance should be premised on their endorsement of the draft political declaration stipulating the objectives of the meeting that Canada would circulate in advance (Tomlin, 1998:196).

The ICBL was closely involved in deciding on the invitation procedure and throughout the Ottawa process Lawson would conduct weekly conference calls with ICBL members, principally Jody Williams and Steve Goose of Human Rights Watch. In fact, the selection mechanism for inviting countries to the Ottawa strategy session was first discussed with NGOs at the meetings between them and pro-ban states in

³⁷² In fact, Lawson's announcement of the intended Ottawa meeting took the Foreign Minister by surprise and led to his displeasure because a low-ranking official revealed the decision to the media and got all the attention (Tomlin, 196).

Geneva on 22nd and 29th April 1996 (ICBL, 1996: 96-7). Over the summer and early fall, Canadian officials “engaged in an intensive series of consultations on the form and content of the Ottawa conference with representatives of the NGO community” (Lawson, 1998: 84). They also decided to include in the Canadian delegation at the conference a member of MAC and to encourage other countries to involve NGOs in their negotiation teams – they specifically increased the number of delegates that could be accredited to the conference by one if an NGO member were to participate (Tomlin, 1998:198), thus aiming at drawing a greater number of NGOs to the conference and if possible influencing other states’ decisions through the inclusion of NGOs in their delegations.

Despite the fact the Ottawa process that resulted in the 1997 landmine ban treaty originated from the Ottawa meeting in the fall of 1996, there was no grand plan guiding the actions of the Canadian officials. The Arms Control Division was left in charge of organizing the meeting, which was expected to be “nothing more than a small planning session” (Tomlin, 198; Axworthy, 2003: 127). In fact, planners envisioned that if 20 states attended, the meeting would be a real success (Williams and Goose, 1998: 34). However, as states began showing interest in participating, in the summer of 1996, the Arms Control people started thinking about what steps should follow the meeting. Two options were suggested – a UN resolution and a forum for negotiations. Jill Sinclair argued that negotiations would be stalled if they went to the UN Conference on Disarmament, and promoted the idea of a “stand-alone forum” for like-minded countries similar to the Ottawa strategy session being organized in the fall. Mark Gwozdecky in turn suggested that Ottawa could host such a forum, but the head of the International Security Bureau, Lysyshyn, based on his experience of the “Open Skies” conference held in Ottawa in 1989 rejected the idea because of the high

cost it would entail (Tomlin, 198-9).³⁷³ Just about a week before the conference, Sinclair again raised with Lysyshyn the issue of a fast-track negotiation that Canada could initiate and stipulate a timetable for the completion of a treaty in, say, 2 years, only to have it rejected again.

However, as the conference convened Lysyshyn's calculations began to change. Instead of the initially expected twenty, 50 states participated after pledging support for a total ban and another 24 came as observers. Lysyshyn estimated that probably a half of the 50 full participants supported a total ban, whereas the rest either really did not know or didn't care much about the problem. There was both a threat and an opportunity inherent in this situation. Given the American, British and French insistence that the problem be dealt with at the Conference on Disarmament, many states would simply follow their lead and the momentum would be lost. On the other hand, a critical mass for action from a cross-section of developing and developed countries had formed (Gwozdecky and Sinclair, 2001: 30-1). Thus, in Axworthy's words, two competing moods were at play at the conference – “an overwhelming sense of urgency and a growing feeling of frustration” (Axworthy, 2003: 135). In the end, the former prevailed. And combined with the public interest in landmines and the active NGO campaign, it created conditions for real change and “an opportunity... for Canada to secure its leadership role on the issue. And if it did not do so, chances were that someone else would. The most likely candidate to usurp Canadian leadership was Belgium” (Tomlin, 1998: 203).³⁷⁴

³⁷³ In September 1989, an international Open Skies conference took place in Ottawa with the participation of all NATO and Warsaw Pact countries. The idea was to negotiate a treaty aimed at transparency and confidence-building between the two blocs by developing a program for unarmed aerial surveillance flights over the entire territory of the participating states that would allow them to gather unlimited information about military activities and forces of the other members. Subsequent rounds of negotiations were organized over the next three years in Budapest and Vienna, that concluded with a signing conference held in Helsinki in March 1992. The Open Skies Treaty entered into force in January 2002.

³⁷⁴ As was argued in the chapter on Belgium, the impression of Belgian ambitions to lead the way on landmines internationally was above all the result of extrapolating its strong domestic position on the

Thus, the perception of competition for leadership was one of the driving motives behind Canada's decision to launch the fast-track negotiation of the landmine treaty. And the initiative for this decision stemmed from below, from the people in the Arms Control Division who were really devoted to finding a solution to the landmine problem. Higher up in the bureaucracy, Lysyshyn was the person who perceived the political opportunity the issue had created and based on his experience with "Open Skies" to formulate a concrete proposal and funding request for a treaty-making conference in Ottawa in 1997. Even though the success of the whole enterprise crucially depended on the support of Foreign Minister Axworthy and Prime Minister Chrétien, the idea itself did not come from the top. The famous Axworthy invitation to the governments at the conference to come back in Ottawa to sign a ban treaty no later than December 1997 emerged in the very last moment – the day before the close of the conference when Lysyshyn made his proposal, it moved up the ladder and got approved and delivered by Axworthy the next day.³⁷⁵

Still, once the gauntlet was thrown, the successful completion of the treaty critically depended on the involvement of the Prime Minister, whose support was essential in the first place, but whose direct promotion of the treaty with heads of states around the world and securing approval of funds to meet Canada's commitment to the fight against landmines in practice greatly helped the success of the bold initiative launched by his Foreign Minister (Axworthy, 2003: 141; Axworthy and Taylor, 1998: 196).³⁷⁶ The mobilization of the Canadian diplomatic apparatus all over

international arena, when in fact Belgian diplomats did not contemplate anything similar to the Ottawa Process.

³⁷⁵ Lysyshyn phoned his boss, Assistant Deputy Minister Paul Heinbecker with the proposal and an estimate that \$2 million would be needed to implement it at noon on Friday 4 October. Three hours later he got the go-ahead and was told that Foreign Affairs deputy minister Gordon Smith would brief Axworthy on it. Lysyshyn then moved to draft that speech, which was sent to Michael Pearson on Saturday morning and after some editing delivered by Axworthy the same afternoon (Tomlin, 1998: 204-5, fn. 47).

³⁷⁶ Another point at which the PM's Office had a very active part to play was when Canada had to adopt quickly domestic legislation that would make possible its ratification of the Ottawa Treaty at the

the world and the close cooperation with like-minded states and NGOs were among the other factors that made the Ottawa Process such a resounding success.³⁷⁷

Finally, consolidating the Canadian position at home so that it could match its international commitment was also of vital importance. The Canadian military had to be convinced that it had to destroy its stockpiles of landmines. Once, the government had embarked upon its course of eliminating landmines this was not an insurmountable obstacle, even though there was opposition to it among the military who also felt “strong counter-influences from the Pentagon” (Axworthy, 2003: 135). The Canadian military, however, “doesn’t exercise the same independent political influence in government that the Pentagon does in the United States” and its generals are responsive to civilian policy-makers and don’t have veto power over their

moment of signature. The law adoption had to be speeded up because the Canadians wanted to be the first country that had ratified the treaty, but it turned out that Irish signature on a treaty actually signified ratification and Canada had to have all the domestic legislation in place before the signing ceremony (interview 35 GOV).

In fact, some authors claim that the contribution of the PM Office and the Privy Council in the Ottawa Process has been underestimated. According to interviewees from the Privy Council Office “Axworthy gets a great deal of the credit, but where the prime minister is largely responsible for the success... Without the prime minister’s direct involvement, we would still be trying to get 12 countries to sign [to the Ottawa Treaty]” (quoted in Savoie, 1999: 135). An oft-given example showing the limits of Canadian human security policy and Axworthy’s ability to promote when it runs against Canadian economic interests, is the case of the Canadian Company Talisman that was criticized by NGOs for its involvement in the development of an oil field in Sudan and thus its direct or indirect contribution to human rights abuses in the country (see, for example, Brown, 2001; Copeland, 2001:163). Whereas Axworthy was in favor of placing restrictions on the company’s activity in Sudan, he could not achieve it without Chrétien’s support (I thank Liz Bernstein for bringing this issue to my attention).

The PM’s support for any foreign policy initiative of the scale of the landmine treaty is obviously indispensable. However, it could hardly be argued that Chrétien deserves the credit for initiating or masterminding it (interview 35 GOV). Instead, the people who actually launched and navigated the Ottawa Process were mid-level officials from the Arms Control Division that had Axworthy’s active support.

³⁷⁷ Certainly, Axworthy’s speech took everyone (but the NGOs and the ICRC who were advised of it a bit before its delivery) by surprise and angered many, including pro-ban states, for the lack of any prior consultations and what was perceived as Canadian “grandstanding” and an attempt “to hijack the process” (Lenarcic, 1998:68). “There was some dismay from the Belgians that their particular campaign had been hijacked by the Canadians, as Belgium and Canada had for some time been rivals for leadership of the intergovernmental aspect of the landmines campaign... The most overt response, though, was outrage, particularly among some of the participating EU states and most especially from France” because of the breach of diplomatic protocol and the obvious short-circuiting of the CD Axworthy’s proposal implied (Long, 2002:434). The success of the process thus also depended on countries swallowing their resentment and contributing their part to the common effort (interview 8 NGO).

decisions (Axworthy, 2003: 141-2). Thus, with the help of Defense Minister Art Eggleton and promises of funding for research on landmine alternatives, the military agreement was secured and in September 1997 the Chief of Defense Staff General Maurice Baril even argued in favor of the treaty remarking that landmines “have become the weapon of cowards” (quoted in Oliver, 1997).

The role of NGOs for the final shape of the treaty

At the conference itself the ICBL, the ICRC, and a host of NGOs attended³⁷⁸ and were “actively involved in drafting the precise language of both the final declaration and the action plan” (Williams and Goose, 1998:35; Goose and Williams, 2004: 246). This close cooperation between the NGOs and Canada would continue throughout the Ottawa Process and would also characterize the relationship between the ICBL and national NGOs with the governments of the core countries organizing a series of negotiating conferences in 1997 in Austria, Germany, Belgium and Norway (interview 8 NGO). The ICBL worked tirelessly during 1997 to get governments and regional organizations to endorse a landmine ban and build up momentum through a series of conferences and seminars in Africa, Asia, and Europe.

How crucial a role NGOs played in the Ottawa Process became apparent when shortly before the Oslo conference where the final treaty was to be drafted, the US decided to attend and seek several modifications in the treaty text that would address the American concerns, which included a new definition of anti-handling devices that would exclude from the scope of the treaty US antipersonnel landmines used in mixed

³⁷⁸ However, to allay concerns by USA and other countries over the NGO participation, the Arms Control Division asked the NGOs to agree to a formula of closed and open sessions, only the latter with NGO participation (Tomlin, 198).

systems with anti-tank mines; an addition of a withdrawal clause that would allow a state victim of aggression in breach of the UN charter to withdraw from the treaty; and a geographical exception for the use of landmines in Korea that was redefined later as a 9-year deferral period for compliance with certain treaty provisions after its entry into force.

Canada really wanted to have the US onboard the treaty and tried to find ways to accommodate its demands (Axworthy, 2003: 147; interview 38 NGO). Axworthy was in constant contact with Madeleine Albright and Sandy Berger, while Prime Minister Chrétien discussed options with President Clinton. As US pressure was beginning to have an effect on the Canadian government, the Canadian delegation in Oslo had to answer questions coming from Ottawa as to why it was not possible to have an exception for smart mines in the treaty (interview 35 GOV).³⁷⁹ Following these consultations, Chrétien offered the US a counterproposal: “to allow up to a nine-year delay in carrying out the treaty for any signing country that declares it needs mines for an urgent defense need” (Sanger, 1997), which the US accepted (White House Press Briefing, 17 Sept 1997), but then Canada could not muster support among other states for it.

In these tense hours, the flow of information between like-minded diplomats and NGOs was probably what saved the treaty. Having learnt about the US demands and Canadian attempts to find ways to meet them, the ICBL was able to mobilize public protests against those attempts to weaken the treaty and launch a hectic lobbying campaign of official delegations that had to “stiffen the backs of delegates” who were under heavy pressure to accommodate the US demands (Hanssen of NPA, quoted in Neumann, 2002: 124; interview 38 NGO). As the NGOs got information on

³⁷⁹ Indeed, it has been suggested that, “right after the US decision to join, there were concerns about the ability of Canada to withstand pressure from its southern neighbour. In the words of one Core group member, ‘When an elephant sneezes, the surrounding land feels an earthquake’” (Maslen, 2004, fn. 200).

Canadian deliberations about accommodating the US positions, they quickly greeted their governmental partners with signs “Canada – the 51st state of the USA” (interview 38 NGO).³⁸⁰ When on 16th September the Canadians agreed to prolong the negotiations for 24 hours in a last effort to reach some agreement with the US, the ICBL quickly denounced their decision “as giving the US time to try and see if it can torpedo the treaty” (Williams, quoted in Lenarcic, 1998: 74) and went out in the streets to protest and dramatize in theater the tense hours (Williams and Goose, 1998: 44).

In the face of statements from the Canadian Prime Minister that “some exceptions on the use of AP mines were acceptable because of ‘technical elements of a military nature’” (Warmington and Tuttle, 1998:57), his attempts to accommodate the US demands, and a degree of pressure on the Canadian negotiating team, the vigorous NGO reaction was probably the kind of support Foreign Minister Axworthy needed to withstand pressure within his own government and preserve the treaty intact. Had it not been for this strong response from the ICBL and the possibility of Canada losing face in the last moment, the outcome of the Ottawa Process might well have been different. As it turned out, however, key states held firm and a strong treaty with “no exceptions, no reservations, and no loopholes” was signed even at the cost of leaving behind the US angry with its European allies.³⁸¹

³⁸⁰ The NGOs learnt about the US demands and internal discussions of the Canadians about accommodating from people on the Canadian delegation – either from Lawson and Sinclair (interview 38 NGO) and/or from the MAC member on the delegation (Valerie Warmington). MAC itself angrily reacted to Chrétien’s statements that exceptions for smart mines could be made with a press release, entitled “Canada Accused of ‘Selling Out’ Humanitarian Treaty to US Policy” (Warmington and Tuttle, 1998:57).

³⁸¹ There are different accounts as to which states refused to agree to any of the US demands. According to an NGO representative, Ireland and Norway saved the treaty, whereas despite the fact that the South African chairman of the conference remained firm, he was willing to compromise and had organized a meeting between Jody Williams and the Canadians in search of a compromise solution (interview 38 NGO). Elsewhere it has been stated that “Belgium, Ireland, and Norway are often cited as those that held firm with South Africa. What is certain is that the South African delegation felt isolated in the final few days of the conference, although President Nelson Mandela gave unequivocal support to them when under pressure from the US President and they were confident that they could count on the

Cluster munitions – back to “old diplomacy”

The NGO campaign

Whereas Mines Action Canada (MAC) was one of the two NGOs that started organizing an international NGO coalition on explosive remnants of war and cluster munitions together with Landmine Action, UK in 2000, it soon became clear that there were no chances of securing Canadian leadership at the international level on this issue (interview 29 NGO).³⁸² After Axworthy left office, there was no political figure to get engaged in the problem of cluster munitions, which moreover, had not attracted much attention among the media or even the NGO community. Compounding that, it has been argued that after the success of the landmine treaty there had been a tendency to return to the routine diplomatic practices and avoid adventures of “new diplomacy” in partnerships with NGOs (interview 29 NGO).

Nevertheless, MAC got involved in the issue of cluster munitions, based on its mandate to work for ban of all weapons that function like landmines, including cluster bombs.³⁸³ In 2000, it issued a call for no use of cluster munitions by the Canadian forces (interview 29 NGO) and later urged its members and the public to sign online petitions to governments to address the issue of unexploded cluster munitions, write to their MPs, the PM, Minister of Defense and Minister of foreign Affairs, and get

support of other African delegations to block undesirable amendments if the issue were to come to a vote” (Maslen, 2004: fn 212).

³⁸² HRW and the ICRC had worked on the issue of cluster munitions before 2000, but had not worked on creating an NGO network on the problem. Rosy Cave of Landmine Action, UK and Celina Tuttle from MAC began organizing meetings on ERW and cluster munitions at the edges of the conferences and meetings on the Mine Ban Treaty. The ICRC and UN agencies got involved in the process as well (interviews 29, 34 NGO).

³⁸³ MAC’s mandate from September 1999 included commitment to “a complete ban on the use, production, stockpiling, and trade of anti-personnel mines and other weapons which function like anti-personnel mines, including cluster bombs and anti-vehicle/anti-tank mines with anti-personnel effect” (quoted in MAC, 2001).

involved in local campaigning and signature gathering (Tuttle, 2002; MAC, undated). However, MAC tied up the issue of cluster munitions with that of explosive remnants of war, often mixing the two categories and focusing predominantly on the problems of unexploded cluster munitions at the expense of the area effects of the weapons.³⁸⁴

As a network of different Canadian NGOs, MAC had to work out a compromise position on cluster munitions. Some of its members had been actively engaged in the issue from the time of the Kosovo bombing campaign when they expressed their concerns over the use of cluster munitions and demanded an inquiry into their status under IHL in a letter to the Standing Committee on Foreign Affairs examining the NATO intervention.³⁸⁵ Other MAC members had signed the call of the Mennonite Central Committee USA for a ban on cluster bomb use, manufacture, sale and transfer.³⁸⁶ However, MAC had among its members also demining organizations made up of former military officers that did not find all cluster munitions problematic and opposed a total ban. Thus, a compromise position agreeable to all had been to call for a moratorium and focus on the worst culprits, while trying to identify and define which munitions fall into this category (interview 29 NGO).

Despite the early interest and activeness of Canadian NGOs both nationally and internationally, it was difficult to launch a domestic campaign that would stir

³⁸⁴ For example, point two in MAC's 2002 goals was "Encourage Canada and other states to adopt a comprehensive approach to ERW by making it clear that AV mines with antihandling devices or sensitive fuses, directional fragmentation (Claymore-type) mines and cluster munitions *are part of much broader problem with unexploded ordnance and explosive remnants of war*" (Tuttle, 2002, emphasis added).

³⁸⁵ The letter read: "Cluster bombs need to be examined under principles of International Humanitarian Law to determine whether they are inherently indiscriminate (whenever they are used or only when they fail), whether they are prone to indiscriminate use, are excessively injurious, whether they cause unnecessary suffering, have a disproportionate impact on civilians compared to their military utility, or violate the dictates of public conscience. The fact that previous use of the same weapons in the Gulf War provided ample evidence of their impact on civilians, friendly troops and post-war recovery raises serious issues of negligence" (quoted in MAC, 2001). The MAC members that signed the letter were the Canadian International Demining Corps, CARE Canada, COCAMO, Physicians for Global Survival, UN Association in Canada, and World Vision.

³⁸⁶ Mennonite Central Committee, Canada, Project Ploughshares, and, Physicians for Global Survival were among the signers.

media interest and resonate with the public, since Canada had not used cluster munitions. The participation of Canadian forces in Afghanistan and the reorientation of Canadian doctrine from peacekeeping to combat operation has also strengthened the position of the Ministry of National Defense and made it more difficult for NGOs and government officials in Foreign Affairs and the Canadian International Development Agency (CIDA) supportive of their goals to overcome the opposition of the military. Probably, another factor has also worked to improve the military's position recently. After years of falling defense budgets certain deficiencies began to show that ate away at the Canadian image. For example, in 1999 Canadian forces had to take part in peacekeeping operations in East Timor. However, before a Hercules transport aircraft could leave for the mission, it had to return to base several times due to technical problems, which "prompted much ridicule over the deteriorating state of the equipment of Canada's armed forces" (Hampson, 2003:137). As a result the Foreign and Defense Ministers had to appear before a special joint session of the Standing Committees of Foreign Affairs and International Trade, National Defense and Veteran Affairs, and the Senate Committee on Foreign Affairs to answer questions about the readiness of the Canadian armed forces and defense cutbacks (*ibid*). Thus, after considerable neglect to the military, voices began to be heard in favor of more investment in the armed forces and argue that "soft power" could not work and "human security" could not be ensured unless Canada could rely on some "hard power" as well (e.g. Hampson and Oliver, 1998; Nossal, 1998/99; Royds, 2000; Molot and Hillmer, 2002; Kilgour, 2005).³⁸⁷ Thus, in such arguments the military could find some support to resist attempts at depriving it of yet another weapon.³⁸⁸

Finally, the domestic problems and financial scandals which had bedeviled the

³⁸⁷ Such critiques appearing in the press include Nossal (1998), Cooper and Bercuson (1999); Mills et al. (1999), cited in Royds (2000).

³⁸⁸ In addition, scandals involving the Liberal Party from 2004 to its loss of power in 2006, have also indirectly improved the relative standing of the military.

ruling Liberal Party and occupied everyone's attention over the last two years, followed by the coming to power of a conservative government had further diminished the chances of NGOs successfully lobbying parliamentarians or government officials on the issue of cluster munitions (interview 29 NGO).

In the face of these obstacles, MAC scaled down its (already rather limited) domestic campaign, confining itself to educating the public and raising awareness of the issue among parliamentarians, calling for a moratorium on the use, production or trade of cluster munitions by Canada until the humanitarian problems created by those weapons are adequately addressed (interview 29 NGO), and asking its government to ratify the new ERW Protocol of the CCW (MAC, 2004). Instead of trying to work on domestic measures and legislation, MAC decided to focus its efforts on strengthening the international NGO network and help create some international momentum on the issue (interview 29 NGO).³⁸⁹ Under the unfavorable domestic conditions, MAC's choice to put the emphasis on the international level might have been logical. However, Canadian action in the 1990s was spurred not only by the international momentum on landmines but also by an active domestic campaign. Moreover, international momentum cannot be created without domestic pressure on governments and the formation of a critical mass of states that have changed their national policies first. Nevertheless, in 2004 MAC and the CMC had concluded that the major efforts should be focused on European countries where the chances of achieving policy changes were greater (interview 29 NGO).

Nevertheless, the weakness of the NGO campaign in the case of cluster munitions is readily apparent when compared to the one on landmines. Whereas it is true that the domestic circumstances in Canada have not been very propitious to NGO

³⁸⁹ MAC's goals for the period 2006-2010 include "Increased prohibitions and restrictions on the use of cluster munitions; increase in the number of countries that have destroyed their stockpiles; progress towards entry into force of CCW Protocol V on cluster munitions; and positive progress towards Canada's ratification of Protocol V" (MAC, 2005: 6-7).

actions, neither was that the case in the 1990s when NGO also faced considerable difficulties from severely downsized federal and provincial funding and a series of domestic and international problems that distracted attention from the issue of landmines.³⁹⁰ Yet, in the 1990s MAC expended efforts and used every possible occasion to build its media and public campaign, work with the government, and lobby parliamentarians that eventually brought the issue to the attention of policy-makers. Certainly, the two issues are quite different and cluster munitions are a much more difficult problem to campaign about effectively, but it is also true that until mid 2006 Canadian NGOs have not been investing enough energy and time into the campaign and have even missed the few good opportunities to bring the issue to the attention of the media and impart some momentum to the campaign, such as the adoption of the Belgian national ban on cluster munitions, for example, that was neither mentioned in a press release nor on the MAC website.

Things changed when the Norwegian government showed willingness to lead forward a negotiating process on cluster munitions and the NGO international campaign intensified thanks to efforts of European NGOs in the summer of 2006 when the Israel-Hezbollah war broke out. In July MAC started uploading the updates and news appearing on the CMC website on its own website and in August for the first time MAC got an op-ed article by its director Paul Hannon published in *The Globe and Mail*. In it he urged Canada to take up the leadership position the way it did on landmines and work for a global moratorium on cluster munitions (Hannon, 2006). Still, Hannon refrained from calling for a ban on cluster munitions in the article and focused exclusively on the aftereffects of unexploded submunitions. In October 2006 MAC launched a new community mobilization campaign aimed at spurring Canada,

³⁹⁰ At the time there was an ongoing inquiry into the torture and murder of a Somali by members of the Canadian peacekeeping forces and another inquiry into Canada's HIV-contaminated blood supply (Warmington and Tuttle, 1998: 58).

called “a superpower on landmines” to work for eliminating the humanitarian problem of “landmines, cluster bomblets and explosive remnants of war still threaten millions of people worldwide” and provide a “made in Canada” solution to the problems (MAC, 2006a). Again, cluster munitions were presented only as part of a clearance problem together with explosive remnants of war.

Only at the CCW Review Conference in November 2006 when momentum behind the negotiation of an international instrument addressing the humanitarian concerns of cluster munitions gathered, did MAC state several reasons in support of developing “an effective legally binding instrument on use, transfer, trade, production and stockpiling of cluster munitions” (MAC, 2006b). Nevertheless, its position remained somewhat vague since a couple of days later it referred to a negotiating mandate on “cluster munitions which consistently and constantly become ERW” (MAC, 2006c).

Thus MAC has moved its attention entirely to the international level and focused on participating in international discussions of cluster munitions and building up the Cluster Munition Coalition (CMC) network. It provided its potential governmental allies with no strengths domestically, and even at the international level its cautious position to a call for a ban might have some restraining effects on the CMC.

The official Canadian position

Canada has not used cluster munitions, and reportedly, during the Kosovo bombing campaign, it expressed concern over the use of cluster bombs by coalition forces in the wake of incidents from their employment (MAC, 2001). It was active in the CCW

work on explosive remnants of war³⁹¹ and remained supportive of further discussions of IHL principles and their implementation with regard to munition use after the adoption of Protocol V. Together with a number of countries it submitted a questionnaire, developed in consultation with the ICRC, that sought state responses regarding the principles of IHL applicable to the use of munitions and the measures they took to implement them in practice (Canada, 2005). The completion of the three-step process on IHL and ERW (establishing what IHL principles are relevant in the use of munitions; how they are implemented by states; and whether implementation is adequate under IHL) remained a priority for Canadian officials in 2006 (Canada, 2006a), even though they did not plan to oppose talks on cluster munitions within the CCW, if such were proposed by other countries. Canadian officials, however, had made it clear that no Canadian leadership would be forthcoming on the issue and the country remained outside of the group of like-minded states in the making (interview 29 NGO). The US position has been highlighted as an important factor in defining the Canadian policy on the issue (interview 35 GOV) – a fact signaling a return in Canadian foreign policy focus to Canada-USA relations that have been an abiding interest of the Conservative Party that came to power in January 2006.

During the Third CCW Review Conference in November 2006, Canada praised the NGOs and the ICRC for their work and contributions to the CCW, but remained uninvolved in the proposals on cluster munitions. It affirmed its view that IHL “if correctly applied and fully respected can provide adequate protection of civilians” and suggested that the next step would be to examine “specific weapons systems,” noting the various proposals for mandates to work on cluster munitions either as part of discussions on ERW or on a separate negotiating mandate.

³⁹¹ Canada proposed at the 2000 CCW conference that the April 2001 Preparatory Committee set aside time on its agenda to discuss cluster bombs and other UXO. It also cosponsored a non-paper entitled, "Explosive Remnants of War" presented by the Netherlands (MAC, 2001).

Canada declared its openness to such discussions, underscoring that they should take place within the CCW (Canada, 2006b). However, it did not support the proposal for a negotiating mandate put forward by some 30 states.

Thus even though the Canadian position has been supportive of addressing the humanitarian problems of explosive remnants of war and cluster munitions and has been slowly pushing the process further within the CCW, it has remained cold to the idea of a negotiating process out of it.

Certainly, MAC had lost a great ally when Axworthy left office. Were he still the Foreign Minister, the cluster campaign might have looked rather different, given his proclaimed support for international action on the issue of cluster munitions, in a landmine treaty part two. In his words, “It is time for governments to get on with the unfinished business of ridding the world of these civilian-killing machines” (Axworthy, 2003: 152) and he urged action in this direction at the 2004 meeting of the states signatories of the Ottawa Convention.³⁹² The fact that most of the officials at the

³⁹² The lack of the “Axworthy factor” was not the only thing that made a difference. There were many changes in the international system, especially after President Bush’s coming to power and 9/11 that made more difficult “new diplomacy” and the promotion of a human security agenda on the international arena. However, given the odds against which Axworthy worked to create the new style of Canadian foreign policy, it is probably fair to say that his personal commitment and resolve were crucial factors in making it possible. Axworthy’s successor as foreign minister, John Manley had a different background coming from a long service as minister of Industry that probably explained the focus on economic foreign policy and Canada-US relations during his term that was marked by a turn away from the human security agenda. However, the next foreign minister, William Graham who took office in early 2002 shared Axworthy’s interest in a wide spectrum of multilateral initiatives and human security issues (Molot and Hillmer, 2002: 3, 4, 21), which was also true of Pierre Pettigrew who replaced him in mid-2004 and who had praised the Canadian role in the landmine process and its support for the ICC (Goold, 2004). In addition, not unlike Axworthy, the new Prime Minister, Paul Martin who came to office in the end of 2003, had “a keen interest in ideas and impatience with organizational constraints,” as well as an interest in foreign relations, that led to his involvement in a multitude of international initiatives (possibly too many to deliver consistent results in most of them, for which he has been criticized) (Cooper and Rowlands, 2005). Thus, one could say that there were some opportunities open for NGOs working on cluster munitions in terms of potentially receptive top government officials even after Axworthy’s departure from Foreign Affairs. However, the challenges Canadian foreign policy faced in the post-9/11 world seem to have thrown it into disarray (e.g. Cooper and Rowlands, 2005; Hillmer et al., 2003; Molot and Hillmer, 2002; Hillmer and Molot eds, 2002).

Arms Control Division who worked on landmines also changed posts further deprived MAC of a close partner in the government.³⁹³

At the national level, Canada had not made any spectacular steps either, but there has been some progress toward limiting the dangers of old cluster munitions. The DND undertook to destroy its stockpiles of old Rockeye cluster munitions by the end of spring 2006 and continued its review of the future of DPICM munitions. It did not plan the acquisition of replacement munitions for the demilitarized ones, but as a matter of current policy, Canada committed to acquire only munitions with a 99% or higher reliability (Canada, 2006a). However, the Defense Ministry remained opposed to any measures that might lead to a ban on cluster munitions and the destruction of Rockeyes could hardly be seen as motivated by the ongoing discussions at the CCW or the NGO campaign. Rather, it was a part of a phasing out process for obsolete munitions. Indeed, in the wake of the Belgian national ban, the ministry was quick to assert its strong opposition to any attempts to undertake similar measures in Canada (interview 29 NGO).

It remains to be seen whether Foreign Affairs officials that had recently assumed the lead in its Mine Action Team and have shown personal interest in the issue of cluster munitions would be able to overcome military opposition and tilt the

³⁹³ The close relationship between government officials and NGOs carries its risks for the government officials as well. Axworthy has been criticized for leaving foreign policy making in the hands of unelected and unaccountable NGOs. The possibility of endangering one's career prospects by engaging in unconventional partnerships with NGOs and advocating too bold policy steps is also present. In the 1980s officials who were pushing for sanctions against the apartheid regime in South Africa got their careers sidetracked even if the government eventually adopted such policies (interview 29 NGO). That doesn't seem to have happened with officials from the Arms Control Division who orchestrated the Ottawa Process. Since 1998, Jill Sinclair has been the Canadian Ambassador for Mine Action, Director General of DFAIT International Security Bureau, and finally a special coordinator of the Middle East peace process. Mark Gwozdecky was Director of Nuclear and Chemical Disarmament Implementation Agency before becoming Director of Public Information and Spokesperson of the International Atomic Energy Agency in 2002. Bob Lawson is currently a Senior Policy Advisor for human security issues within the Global Issues Bureau at the Ministry of Foreign Affairs.

Foreign Ministry position toward joining the ad hoc process toward an international agreement on cluster munitions launched by Norway.³⁹⁴

Conclusion: personality matters, partnerships pay off

Domestic structure limitations and traditional diplomacy

As already mentioned, Canada is characterized by a state-dominated domestic structure that features a concentration of decision-making power (also in foreign policy) in the Prime Minister's office (Savoie, 1999; Kirton, 1997; Stairs, 2001).³⁹⁵ In addition, the Ministry of Foreign Affairs suffers from a number of organizational and financial constraints. On the one hand, as a rule, trade issues and economic politics receive priority attention within DFAIT. On the other, DFAIT is a policy and representational department but not a “program” department in the sense that it administers very few programs, mostly devoted to promotional and public relations goals, often vulnerable to budget cuts. In contrast, CIDA has at its disposal most of the funds allotted to overseas purposes. In this light, the Foreign Minister faces severe limitations in his ability to orient Canada’s foreign policy agenda toward issues that don’t belong to its core economic priorities, and even if s/he succeeds in this task, runs into the problem of funding such international initiatives and commitments, which could lead to interdepartmental rivalries over resources (Stairs, 2001).

³⁹⁴ In 2005, Earl Turcotte became director of the Foreign Affairs Mine Action and Small Arms Team, after working for the UN Development Program Mine Action team and CIDA before that. He has taken part in the NGO-government meetings on clusters in his personal capacity.

³⁹⁵ See, for example, Savoie (1999) on the concentration of power in the post of the prime minister, not only in domestic politics, but also in foreign relations and defense policy (pp.134-7). In his words, in Canadian politics the prime minister is “*Primus*: there is no longer any *Inter* or *Pares*,” “Canadian prime ministers when they have a majority government in parliament, have in their hands all the important levers of power” (pp. 71-2).

Another feature of the Foreign Ministry institution was the traditional Canadian approach to foreign affairs, characterized by routine, quiet, low-key, and consensus-oriented diplomacy (Cooper, 1997; Hampson and Molot, 1998: 4) that did not leave much space for new ideas and ambitious projects. DFAIT had an “insular culture” and its officials saw foreign policy as the realm of professionals where public involvement and interference from outsiders were not welcome (Van Rooy, 2001: 256).³⁹⁶ Indeed, the initial Canadian position on landmines fits this description well. Canadian officials feared any steps that could be viewed as going too far from the consensual (and lowest-common-denominator) position at the CCW and thus compromise Canada’s established role of a serious negotiator. Similarly, Foreign Minister Ouellet did not draw directly on NGO support to overcome the Defense opposition to more comprehensive restrictions on landmines, even if his position on the issue was influenced by the NGO campaign.

Individuals and NGO campaigning

It is within this context of constraints, institutional culture, and traditional attitudes that Axworthy’s policies and the landmine process have to be considered. Despite the limitations,³⁹⁷ Axworthy was able to promote a number of human security issues and lead policies that placed Canada center-stage on the international arena.

³⁹⁶ Senior bureaucrats in the Foreign Ministry in the past were notorious for their “Fortress Pearson” mentality (Hampson and Molot, 1998: 10).

³⁹⁷ Some authors have argued that actually it was because of these constraints that Axworthy promoted the human security agenda as “an easy sell, with manageable risks and the prospect of substantial rewards” without considerable costs (Copeland, 2001: 161). There is disagreement, however, on whether the human security agenda was a rational choice of directing limited resources and diplomatic capital in areas where Canada could make a real difference or a flight from responsibility to work for solving difficult problems demanding serious, longtime commitments and financial resources, such as global poverty reduction and sustainable development that had been a traditional focus of Canadian foreign policy (see, for example, Copeland, 2001; Hampson and Oliver, 1998; Nossal, 1998/99).

With his coming to power, Canadian foreign policy on landmines was totally transformed. It discarded the traditional diplomatic forums and launched instead an unprecedented process of fast-track negotiation based upon the partnership between like-minded governments and NGOs. Whereas neither the cooperation between government agencies and NGOs,³⁹⁸ nor Canadian involvement in broadly defined human security issues were an entirely novel feature of Canadian politics,³⁹⁹ the change in diplomatic practice was. All of a sudden, “Canadian diplomats, who take pride in their skills at quiet diplomacy, provided dozens of backgrounder and on-record briefings to key journalists in the US, the UK, France, Australia and Japan” and got engaged in intensive lobbying of foreign governments (Lawson, 1998:89). The Foreign Ministry also used new communications technology – produced and distributed two videos and a six editions of a newsletter and set up a landmines website that even broadcast live the signing ceremony of the Ottawa Convention in an “unprecedented effort at outreach” (Axworthy and Taylor, 1998: 197). An extraordinary combination of active and committed middle level officials in the DFAIT’s Disarmament Division and a top DFAIT official, open to their ideas and new ways of conducting foreign policy, overcame DFAIT’s institutional culture and existing constraints on the Foreign Minister’s freedom of action. The entrepreneurship and success of these individuals, in turn, was based upon the mobilization and solid

³⁹⁸ As long ago as the 1972, the Canadian delegation to the Stockholm Conference on the international environment was accompanied by advisers from several NGOs that were involved in lobbying. By the time of the Rio Conference 20 years later, NGO personnel were included as members of the Canadian delegation itself. NGOs had always had good working relationships on development issues with CIDA (Stairs, 1998: 37-8, 42). Before Axworthy, Lester Pearson understood that non-state actors could be used to promote state domestic and foreign policies and Pierre Trudeau had argued for democratization of the foreign policy making process (English, 2001).

³⁹⁹ Canada was leading on the issue of sanctions against South Africa in the 1980s and had a key role in focusing attention at environmental security and sustainable development in the early 1990s (Hampson et al., 1999). It was also the founder of the concept of UN peacekeeping missions and the leading state in peacekeeping operations till 1990 (Cooper, 2000: 13; English, 2001: 94), as well as one of the biggest contributors of development assistance (Pratt, 1990: 14). For an overview of Axworthy’s legacy as part of the Liberal Party tradition, see, English (2001).

support of NGOs and public opinion. The risks they took eventually paid off in the adoption of the Ottawa Convention.

Thus, to the extent that the story of the Ottawa Convention is a story of Canadian foreign policy, what made it possible was a partnership between NGOs and the officials in the Foreign Ministry (the Foreign Minister himself and the staff of the Arms Control and Disarmament Division) in which both sides equally needed each other's support – the NGOs to achieve an international ban and the Foreign Minister to amplify “his diplomatic influence abroad and his political influence within his own government (and even within his own departmental apparatus)” (Stairs, 2001: 22, 1998b).⁴⁰⁰ Axworthy’s ability to win the Prime Minister’s support was also important in this respect, because under the Canadian political system, this virtually ensured that military opposition to the landmine ban would be overcome. As already argued, in contrast to other countries such as Belgium, in Canada the parliament had a very limited if any role in influencing its foreign policy or even setting the tone of Canadian domestic policy on the issue.

Thus, Axworthy used the NGOs as an asset and a lever to help him turn the cogwheel of Canadian foreign policy in a direction that both he and the NGO community favored. In fact, it was the NGOs that to a large degree determined the direction and the speed at which the wheel of Canadian diplomacy got rolling. The NGO campaign made the landmine problem into a foreign policy issue in the first place and lobbied governments to adopt a total ban on the weapon. But in the Canadian case, government officials actually approached NGOs and sought after their partnership, much to the surprise and initial suspicion of the latter. Back in Geneva in January 1996 Bob Lawson took the initiative and came to the NGO-organized meeting

⁴⁰⁰ The international and domestic influence of the Foreign Minister was amplified also by the “ad hoc combinations of like-minded sovereign states” (Stairs, 2001: 22).

with like-minded governments uninvited; thereafter Canada encouraged and welcomed NGO participation throughout the Ottawa Process. Thus, personalities in the Canadian Arms Control unit were also key in the landmine campaign and without their experience, inventiveness, and dedication it would have never succeeded (see, also Kitchen, 2001/02: 44). Thus the success of Canadian foreign policy was the result of the ability of the government to draw support and legitimacy from NGOs and create a synergy from a joint effort to address the problem of landmines.⁴⁰¹

This symbiosis between NGOs, the Arms Control Division, and Axworthy's leadership carried within itself obvious vulnerabilities. Once Axworthy and the Arms Control staff left their positions, MAC was deprived of its government connections, and given its exclusive focus on landmines and other victim-activated weapons and limited domestic constituency, that proved to be a serious drawback in its later efforts to mobilize support for the issue of cluster munitions. As has been argued, the influence of internationally-oriented NGOs is "heavily dependent for its survival on a willing government's active sympathy" (Stairs, 1998b: 48). Short of that, NGOs need to develop transnational links with governments and interests abroad, so that issues that can be ignored at home cannot be avoided on the international level (*ibid*) – a strategy that has remained the sole focus of MAC's campaign on cluster munitions. However, the lack of an effective domestic campaign on cluster munitions remained a liability. At the same time when NGOs lost their connections in government and let up their domestic efforts, the political leverage of the Canadian military relatively improved, which created a greater and not less need for a domestic campaign and debates on cluster munitions. Without public interest in the issue, voters' letters, and parliamentarian questions and legislative initiative the government did not feel

⁴⁰¹ For example, Bátora (2005) and Potter (1996/97) point out the increased role of NGOs for the promotion of Canadian foreign policy goals.

urgency to address the problem, and even those few individuals with it that would have liked to work more actively on cluster munitions lacked the necessary public support to take on their opponents.

Thus with the end of the “Axworthy era,” more or less came the end of Canadian “new diplomacy” as well, despite expectations that it represented a new model of Canadian foreign policy resulting from the post-Cold War structural conditions (Michaud and Belanger, 2000). As I have argued, in the case of cluster munitions this was the result of the lack of new leadership in government and weak domestic NGO campaigning on the issue. It remains to be seen whether the Canadian position would change after the international process toward negotiations moves forward and comes to exert a stronger “boomerang” on Canadian policymakers.

PART THREE
CONCLUSIONS

CHAPTER SEVEN

Conclusion: Leadership and Norm Creation

I have outlined the processes of norm formation in two cases of new weapons prohibitions that are the most recent additions to international humanitarian law (IHL). I have explored the dynamics through which restrictions on the use of antipersonnel landmines and cluster munitions emerged at the international and domestic levels and attended to the links between the processes taking place at those two levels. The focus on these processes is warranted for two reasons. First, they represent an early phase of new norm creation that has received less attention from International Relations scholars compared to the study of norm diffusion and socialization. Second, lessons could be drawn from these cases regarding international negotiations and IHL development in general.

Factors affecting the international processes of norms formation

Based on the historical case of development of restrictions on certain inhumane weapons during the Cold War and the two contemporary cases of emerging prohibitions of landmines and cluster munitions, I identify several factors that contribute to the achievement of more comprehensive restrictions on the international level: first, relatively peaceful international relations that open up space for greater state cooperation unrestrained by the confrontations of two rivalry blocs or tight alliances; second, negotiation fora that are based on majority voting instead of

consensus; and third, clearly defined normative injunctions that place the emphasis on prohibiting a concrete weapon on humanitarian grounds instead of seeking more complex but partial regulations based on strictly legal interpretations and military utility considerations (also, Goose and Williams, 2004; McCarthy, 2005; Borrie and Randin, 2005; Cameron, 2002; Gwozdecky and Sinclair, 2001: 34).

1/ International system

Even though, it could be argued that IHL has evolved gradually in the direction of greater “humanization” of war, in practice its development has been in fits and starts following major wars. After humanitarian principles are challenged in the heat of battle, come down crumbling, or new technology and methods of warfare reveal gaps in the existing laws, states, the ICRC, and more recently NGOs try to reaffirm and strengthen IHL. Thus, an unfortunate catalyst of IHL development has been war itself (e.g. Best, 1980; Meron, 2000; Wippman, 2005; Schindler, 2003; Anderson, 2003). The 1949 Geneva Conventions are the product of the experience of World War II, the 1977 Additional Protocols and the 1980 CCW – of the Vietnam War, the Ottawa Convention – of the legacy of numerous conflicts blazing in the shadow of the Cold War, the CCW Protocol V on Explosive Remnants – largely of the new kind of humanitarian intervention practiced by NATO over Kosovo and Serbia that highlighted the problem of cluster munitions, and finally the new Norwegian initiative to negotiate an international agreement on cluster munitions – of the Israel-Hezbollah war in the summer of 2006 that once again revealed the severe humanitarian problems the use of those weapons causes.⁴⁰²

⁴⁰² A new, slowly proceeding initiative to reaffirm and develop IHL principles started in January 2003. It was organized by the Swiss Federal Department of Foreign Affairs and the Harvard Program on Humanitarian Policy and Conflict Research in close cooperation with the ICRC. It gathered together military and legal specialists, state and NGO representatives to discuss the current challenges facing IHL. Two more meetings were organized in June 2004 and May 2006 with the objective to draft a

The other side of the coin is that peace provides opportunities for new IHL development. Relaxation of international relations opens up space for initiatives that seek to address problems going beyond the narrowly conceived national security of states. Improvement of the international climate allows smaller and middle states to play a larger role on security issues and form new alliances with countries that share their ideas and objectives, as well as with NGOs. As I showed in chapter 2, this dynamic worked in the field of weapons restrictions in the years of détente, when the 1977 Additional Protocols and the 1980 Convention on Certain Conventional Weapons were negotiated. It was, however, interrupted by the new round of Cold War rivalry in the 1980s, only to emerge again in full force following the end of the Cold War and find one of its best expressions in the Ottawa Process to ban antipersonnel mines. In the post-9/11 international environment, which has become more stringent and focused on national security, the issue of explosive remnants of war was the topic of discussions in the CCW and produced a new protocol regarding post-conflict clearance but did not address the problems inherent in their use. Then, for several years NGOs and states favorable to stronger restrictions had not been able to move the process forward. In 2006 the US debacle in Iraq became obvious and signs of war fatigue began to show among the American electorate that sent new Democratic majorities in the US House and Senate. In this new climate and after another war caused another humanitarian crisis, Norway decided to launch an alternative process aiming at adopting prompt restrictions on cluster munitions. It still remains to be seen whether NGOs and like-minded states would be able to mobilize stronger support among a larger number of states and achieve an international treaty on cluster

manual on IHL applicable to air and missile warfare – the prevalent type of warfare practiced by the technologically developed states, as demonstrated by the bombing campaigns in Iraq 1991, Kosovo 1999, Afghanistan 2001, and Iraq 2003. The ICRC has also brought up the issue of IHL reaffirmation at the 28th International Conference of the Red Cross and Red Crescent in December 2003 (see, ICRC, 2003).

munitions in the face of opposition from the major military powers, and with the US still bogged down in war.

2/Negotiation fora and procedures

The Cold War climate of intense two-block rivalry produced the type of bilateral and multilateral disarmament negotiation focused on reciprocal arms limitations agreed by consensus and guided by strategic and military considerations. The nature of the negotiations required consensus and often involved lengthy discussions of verification provisions and compliance. The organizational framework within which most of the multilateral arms control talks took place was the Conference on Disarmament (CD).⁴⁰³ It included most big military powers with each state holding a veto power over any decisions in the CD, including the adoption of a working agenda – a fact that ensured that whatever progress could be made in arms control would only come after slow and lengthy negotiations.⁴⁰⁴

In the late 1970s, the issue of inhumane weapons causing unnecessary suffering or having indiscriminate effects was raised by a number of countries in the context of the negotiations on reaffirmation and development of IHL. Those countries led by Sweden wanted to have the IHL conference deal with the weapons problem as well – a proposal opposed by most NATO countries and the socialist camp. The latter preferred to transfer the issue to the CD. The compromise decision led to the creation of a separate conference on certain conventional weapons, but the consensus decision-

⁴⁰³ The Conference on Disarmament is the successor to the Ten-Nation Committee on Disarmament set up by France, the UK, US and the Soviet Union in 1959-1960, the Eighteen-Nation Committee on Disarmament (1962-1969), the Conference of the Committee on Disarmament (1969-1978), and the Committee on Disarmament (1979-1983). From 1978 when its members numbered 31 states, the CD has grown to 66 states currently (Goldblat, 2002: 14).

⁴⁰⁴ For example, negotiations of the Comprehensive Nuclear Test Ban Treaty started in 1958 only to be completed after the end of the Cold War in 1996. Discussions of a ban on chemical weapons began in 1979 but only after the end of the Cold War in 1992 the Chemical Weapons Convention was finalized within the CD. Since 1997 the CD has been inactive for lack of consensus on its agenda (McCarthy, 2005: 57; Goldblat, 2002: 14-16; 147-150).

making procedure was carried over from the disarmament forum, which limited the scope of the regulations on inhumane weapons subsequently adopted by the Convention on Certain Conventional Weapons.

Similarly, in 1995-96 when the CCW sought to negotiate more stringent restrictions on the use and technical characteristics of landmines, progress was blocked by the consensual decision-making. Following the CCW failure, controversy erupted again between the major military powers such as the US, Britain, France, and Russia that wanted discussions on a landmine ban proceed at the CD and the group of like-minded countries led by Canada that embarked upon an ad hoc diplomatic process for states supporting a quick and comprehensive mine ban treaty that would not be burdened by consensus decision making. The Ottawa Process resulted in a strong treaty about a year after its start, whereas the CD could not even agree on placing the landmine issue on its agenda despite the strong US advocacy to have it included.

In 2003, after two years of negotiations, the CCW achieved some progress on the issue of cluster munitions, with respect to the clearance of unexploded submunitions following the end of conflicts. This was as far as this consensus-based forum could go. The discussions on preventive measures to reduce the failure rates of cluster submunitions or agree to restrictions on their use had not made much headway for 3 years. As consensus blocked the adoption of a negotiating mandate on cluster munitions in November 2006, in a replay of the Ottawa Process, Norway decided to take negotiations out of the CCW in an ad hoc process that would not depend on universal consent for moving forward.

Usually, a trade-off is to be expected between a consensus-based process and one relying on majority voting (and to a large extent sustained by NGO involvement and public interest). One might expect that modest restrictions would be accepted by a greater number of states, whereas an ambitious ban that runs against the security

interests of major powers will garner less support. It is not only a question of numbers, but rather of relative weight. Whereas there are currently 151 states parties to the Ottawa Convention banning landmines outright, only 86 states have joined the weaker CCW Amended Protocol II that merely places certain limitations on the weapons' use. However, among those are major military powers such as the US, Russia, China, India, and Pakistan. The latter four states are also major landmine producers, and all five have declined to sign the more ambitious Ottawa Convention. In fact, when they launched the Ottawa Process NGOs and like-minded states were aware that most of those countries would likely remain outside of the treaty. What they aimed at was establishing a clear prohibition and stigmatizing the weapon in public conscience so as to make its use reprehensible.

3/ Simple message and clear goals

The mobilization of public opinion by NGOs and the stigmatization effect of the norm against antipersonnel landmines were to a great degree the result of the simple message the campaign carried – “ban mines,” and thereafter, “mines are banned and illegal.” The specificity and simplicity of the message was key to the success of the landmine campaign – a factor whose importance for the establishment and longevity of international norms has been pointed out (e.g. Legro, 1995, 1997; Finnemore and Sikkink, 1998). Whereas the NGO campaign also employed horrible images of the suffering and mutilation of landmine victims, which grabbed public attention, what helped the campaign succeed was the simple and effective solution it proposed to the humanitarian crisis. Where one could have highlighted and sought to address the various causes of irresponsible use of landmines with as many various measures, “ban them now” had the advantage of simplifying the problem – the problem was the weapon itself – and offering a “cure-all” solution.

Whereas campaigns about hunger, health epidemics, and refugee crises in the developing world come with no less grisly images and stories of human suffering, they have not had the advantage of pointing to a simple approach to dealing with those problems, because of the complexity of their underlying causes and respective solutions. A similar difficulty has bedeviled the campaign against cluster munitions. The deadly and mutilating effects of these weapons actually exceed those caused by landmines because armed forces deploy them offensively in combat in areas where civilians are at risk of attack, and because, like landmines, many of the widely dispersed submunitions remain live long after their use.⁴⁰⁵ Even though the scale of the cluster munitions problem is arguably smaller, because the weapons have not been used as extensively or for as long a period as mines, it has been recognized as a humanitarian issue that needs to be addressed. However, a major factor that impeded quick progress in this direction is the complexity of the issue and the inability of NGOs until recently to propose a realistic and yet simple solution that would mobilize the public and provide a good objective for state negotiations. In this sense, what generates public support for a norm is not only the substantive character of a norm, i.e. the fact that it might involve “bodily harm to vulnerable individuals” or “legal equality of opportunity,” as has been suggested (Keck and Sikkink, 1998). Rather, widespread support for the concrete norm is also generated by its problem-solving potential. People are indignant that mines maim innocent people, but they are also mobilized by the normative injunction “ban landmines!” because it offers a concrete solution to the problem.

In addition to the specific and simple goal, a clear timetable for conducting negotiations might also contribute to their speedier conclusion (Borrie and Randin,

⁴⁰⁵ In addition, the explosive power and range of cluster submunitions is much greater than that of landmines, so a higher percentage of their victims are killed in incidents, a larger number of casualties result from a single incident, and the wounds inflicted on survivors are usually more severe than those of landmines.

2005; Cameron, 2002). The sense of urgency imparted by the need to alleviate a current humanitarian crisis warrants such an approach. If, however, the end goal of negotiations is not clear, a set deadline might lead to adopting a weak instrument reflecting the existing agreements and compromises that could be reached, while leaving out the thornier issues, which if ironed out after longer negotiations could result in a stronger document. Arguably, the CCW Protocol V on Explosive Remnants of War was adopted relatively quickly because it concentrated on the areas where agreement could be achieved (Cave, 2006). It remains to be seen whether the Norwegian initiative on cluster munitions will result promptly in a strong treaty or will get bogged down in discussions of exactly what weapons are to be banned. The danger of the latter is inherent in the lack of clarity about the final goals of negotiations that aim at banning “cluster munitions that have unacceptable humanitarian consequences” – a formula on which all proponents of regulations could agree, but which many interpret differently.

Finally, whether it is preferable to chose a step-by-step approach where progress on each step is easier to achieve and solidify before progressing to the next level, or to take the time to prepare for a bigger leap that may not succeed, depends on the estimate of existing support among states on a specific issue and the ability of state leaders to take risks and move the process further. Which brings me to the focus of the thesis – the interaction of domestic and international processes that generates support for stronger weapons restrictions in national policies, which in turn feed the treaty making dynamic at the international level.

“Chain reaction” model of the dynamics of norm formation

In contrast to most empirical studies on landmines and the literature on “new diplomacy”, which examine NGO campaigns and negotiation processes at the international level, I have focused considerable attention on the domestic developments and NGO campaigns, which have been a necessary precondition for the launching of a more robust international process. I have argued that the process of developing new weapons prohibitions applicable in these two instances is initiated and shaped by NGOs. It starts at the international level with NGOs advocating new international prohibitions. Parallel to that, they work on domestic campaigns seeking national restrictions on the targeted weapons. As international progress toward prohibitions stalls within the traditional consensus-based fora, NGO efforts revert to the national levels in an attempt to mobilize a critical mass of state support that could then be channeled back toward international action. Thus, the process involves a downward “scale shift” from the international stage to the national settings and then a shift back upward (Tarrow, 2005). NGOs seek to exploit and leverage all the opportunities that national and international structures offer them. In relation to Sikkink’s (2004) typology, these processes fall within the box that features relatively open access to both domestic and international structures that are conducive to the formation of insider-outsider coalitions – an area that has received less scholarly attention in comparison to cases where significant blockages exist either in the domestic or international sphere.

NGO roles in norm development

Agenda-setting and information politics: First, NGOs are all important at the agenda-setting stage when they point to a problematic practice of warfare, gather information about the effects of weapons, and define what the concrete problems are. During that phase the provision of reliable and abundant information about the humanitarian consequences of landmines and cluster munitions has been very important and field-based humanitarian organizations, UN agencies, and advocacy groups have cooperated in gathering and publishing the necessary data. Without such evidence that a specific problem really exists, the process of norm development could not start.

Issue framing: Second, and closely linked to the above, NGOs have often been quite influential in defining the nature of the problem, its causes, and even its solutions. Both in the case of landmines and cluster munitions the goal of NGOs has been to present the issues within a humanitarian frame, backed by arguments from a development perspective. The core arguments have been centered on interpretation of IHL principles of discrimination and proportionality of force. Those have been accompanied by arguments underlining the enormity of the landmine crisis, or in the case of cluster munitions, the dangers of a “humanitarian crisis in the waiting” and a “looming disaster” unless measures were taken to stop the proliferating use of those weapons. Thus NGOs have tried to create a sense of urgency to address the problems.⁴⁰⁶

However, at the stage of issue framing, different NGOs have used different

⁴⁰⁶ Another framing technique has been to focus attention on landmine victims that were women and children (even if they comprised about 30% of the victims) (Larrinaga and Sjolander, 1998), and in the case of cluster munitions that a disproportionately high percentage of the casualties are children.

approaches. In the case of landmines from the beginning the NGOs agreed on a simple and forceful message that identified the cause of humanitarian suffering and the solution to it – antipersonnel landmines and their total ban. NGOs as a whole kept to the humanitarian framework and emphasized the indiscriminateness and disproportionate harm landmines cause to civilians compared to their military usefulness. US NGOs, however, focused on arguments questioning the military utility and effectiveness of landmines for the armed forces and thus unwittingly focused the debate on technical and tactical issues and moved it to the field of the military.

In contrast to the landmine case, early on problems with issue framing slowed down campaigning on cluster munitions due to the inability of NGOs to decide exactly what the problems were, what measures would be adequate to address them, and thus what actions they should demand from governments. The way the NGOs initially framed the problem of cluster munitions as *de facto* landmines, had both positive and negative effects. On the one hand, it helped place the issue of explosive remnants of war (ERW) on the international agenda, but on the other, it directed attention away from the indiscriminate area effects of the weapons and thus delayed action on this problem. Even though NGOs agreed that the latter problems should also be addressed in an international agreement, different NGOs argued for different solutions based on their organizational profile and interests. The organizations whose credibility and influence depended on sound legal interpretations (and which focused predominantly on elite lobbying at the international level) – the ICRC and HRW – could not come out in favor of a ban on cluster munitions because they didn't think it was warranted in view of IHL principles. Humanitarian organizations involved in public campaigning on the issue – most notably Handicap International (HI), later followed by Landmine Action, UK (LMA) – preferred to leave aside the niceties of legal arguments and call for a ban on cluster munitions in order to mobilize public opinion. Mine Action

Canada (MAC) had been working from the perspective of ERW without developing a domestic campaign – hence, it shied away from advocating a cluster ban until November 2006.

Campaign tactics: The organizations most actively involved on the issues of landmines and cluster munitions could be divided into several categories according to their orientation toward the domestic or international arena, and according to their preference for public campaigning versus advocacy and lobbying. For example, the ICRC and HRW engage in advocacy and elite lobbying at the international level; the strengths of HI, LMA, and Norwegian People's Aid are primarily on the domestic level (both in public campaigning and lobbying decision-makers) but they are also active at the international level; finally, on landmines MAC has concentrated on domestic campaigning, whereas on cluster munitions it has moved to emphasize international level activities, and VVAF has been focused domestically on landmines and non-involved on cluster munitions after some initial interest. The NGO choice of tactics has influenced the shape and outcome of domestic campaigns and the combination of the strengths that different organizations can bring has shaped the direction of the two international campaigns – a point that will be elaborated further in the overview of the country cases.

All of the above NGO tactics aim at influencing policy-making from different directions. I have argued, however, that the domestic pathway toward norm creation is very important at this early stage. When either NGOs are not investing efforts in domestic campaigning and establishing relationships with parliamentarians or government officials, or their efforts meet with no response, the prospects of norm

creation are slim.⁴⁰⁷ NGO public mobilization in this sense is crucial. One the one hand, public interest could often be the stimulus that prompts parliamentarians to get involved on an issue, and thus it could make new NGO allies. On the other hand, when NGOs face difficulties in establishing close links with decision-makers, public campaigning is their only chance to promote their cause apart from moving to the international level and seeking to engender a “boomerang” effect. The presence of partners in government positions, however, is not a reason to dispense with public campaigning, as this would weaken the political leverage of their allies.

Individuals matter

The NGO success in promoting their cause depends to a large extent on the strength and focus of their campaigns but it is also greatly facilitated by the presence in decision-making positions of individuals sharing with the NGOs a similar interest in humanitarian issues and often times a similar background, whether they are located in the executive or legislative branches of government, or in international and regional institutions such as the UN or the European Parliament.

Thus, Thus, for example in France, early on President Mitterrand's wife's involvement in the NGO community benefited the cause; later the appointment of another NGO person, Xavier Emmanuelli, as Secretary of State for Humanitarian

⁴⁰⁷ An alternative, or rather complementary, pathway is to direct NGO efforts to the military officials responsible for the use and stockpiling of controversial weapons. This could be done either by generating media attention to their questionable policies and practices; establishing informal connections with military officials to discuss problematic issues; or both – an approach that was present in HRW's early work on cluster munitions and in the Norwegian case of cluster munitions.

Affairs helped the campaign; and finally, Christian Lechervy, who also had a background of NGO and development work, was key in securing the military agreement to a total ban on French mines. In Belgium, Senator Lallemand's interest in human rights and humanitarian issues led him to embrace the landmine cause and work with NGOs for a landmine ban. Similarly, Senator Mahoux – a former Médecins Sans Frontières doctor – took up the issue of cluster munitions in Belgium. In Norway, Junior Foreign Minister Jan Egeland had worked for both the ICRC and the Norwegian Red Cross and later became the UN Undersecretary for Humanitarian Affairs; his boss, Foreign Minister Thorvald Stoltenberg, also had an NGO background and had served as the UN High Commissioner for Refugees. Steffen Kongstad – a veteran diplomat who has been closely involved in the negotiation and implementation of the Ottawa Treaty – and the newly appointed Foreign Minister and former president of the Norwegian Red Cross Jonas Gahr Støre were also instrumental in energizing the Norwegian position on cluster munitions in 2006. In the USA, Senator Leahy had already developed an interest in the landmine problem and set up the War Victims Fund to assist mine victims, when NGOs approached him. Finally, Canadian Foreign Minister Lloyd Axworthy came into office with an academic background (and interest in the concept of “soft power”) and the desire to open the field of foreign policy to input from civil society and work on broadly defined human rights and human security issues.

In this sense, a certain predisposition toward the issues advocated by NGOs was present among the individuals who were key in starting the process of norm development. However, NGO campaigning was a necessary condition to open opportunities for a more active role of political figures or civil servants working in the fields of development and arms control, as well as to give a specific expression of their interests.

However, the chances that NGOs would find like-minded persons in decision-making positions are different in different countries. In Norway there has been the greatest degree of interpenetration of the NGO community and government, with an increasing number of cabinet employees recruited from the voluntary sector (Christensen and Peters, 1999; Østerud and Selle, 2006; Neumann, 2002). Whereas in Canada there is no similar recruitment pattern and the diplomatic corps has remained relatively closed to outsiders, the foreign policy making process has been particularly open to input from civil society since the mid 1990s. However, the Ministry of Foreign Affairs has provided broad access in terms of accepting advice and opinions from various civil society actors, without establishing particularly close relations with them (Bátori, 2005). The French foreign policy apparatus has been rather insular in terms of recruitment but NGO people could find their way into positions in the development, humanitarian affairs, and aid agencies. Finally, networking with NGOs is not always an asset for office holders, especially in institutions whose interest run counter to the NGO causes, as the case of US Deputy Assistant Secretary of Defense for Special Operations, Timothy Connolly, who was dismissed after advocating the NGO positions in the Pentagon, shows.

Some militaries matter more than others

In all of the cases the military was opposed to blanket prohibitions of landmines and cluster munitions mostly on the grounds that there were different types of weapons within those broad categories and some of them could be used without creating humanitarian problems. Even though states had different security concerns and threat

perceptions, the latter were not necessarily correlated with the strength of military opposition to a landmine ban. For example, despite the minimal risks to Canadian security, its military was more strongly opposed to mine restrictions than the Norwegian military that could potentially face the need to defend its border with its unpredictable neighbor Russia.

In all of the cases, except in the US, the military did not get involved in overt political maneuvering to advance its interests by playing one side of government against the other even though they did not lack opportunities to do so. On the whole, in Belgium, Canada, France, and Norway the military maintained a non-political stance and the NGO campaigns were a factor that enabled decision makers to overcome military opposition or assuage their concerns about the loss of a militarily effective weapon.

However, the military in different countries had different strategic cultures and their ability to exert political leverage on decision-making within their own countries was variable. For example, in France and Canada, despite significant involvement in peacekeeping operations, the military did not see peacekeeping as its core function. Thus their organizational culture made militaries in France and Canada more resistant to attempts at weapons restrictions than in Norway and Belgium where the militaries are smaller and primarily devoted to low-intensity peacekeeping missions, and national defense in the case of Norway. Of all the cases, peacekeeping has been most marginal for and even resented by the US military. Importantly, whereas public support for the military in Canada, Norway and Belgium was based in large part on their peace supporting functions, in the US the military was praised for being the strong defender of the nation. In that sense, the military in Canada and the European countries have been limited in their ability to defend weapons that NGOs, public

opinion, and policy-makers would describe as causing humanitarian problems and civilian suffering. In the US, on the other hand, the debate has revolved around the needs of and threats to soldiers if they would be deprived of militarily useful weapons.

Leadership competition

State traditions in the area of development and human rights promotion was a factor that NGOs could use to their advantage in generating support for their cause and a dynamic of leadership competition. First, NGOs would encourage national actions on landmines and cluster munitions by emphasizing the humanitarian crises brought about by those weapons and the need for prompt action; appeal to states' traditions in the field of human rights and development, and highlight the prospects for leadership national steps would confer upon states. Thus, indirectly even small states could be leading when they adopt national measure early on. Once there is a breakthrough national action on landmines or cluster munitions, NGOs could point to it and urge other states to follow suit in order to live up to their "humanitarian credentials" and lead the way instead of following the flow. NGOs could start drawing parallels among the positions of different countries and create lists of "the good, the bad, and the ugly" to both praise the leaders and shame the laggards in the process. As more states come out in support of the NGO cause, others would like to get off the "black list" and change their positions. At the same time NGOs would start organizing meetings of states that have shown support for their cause in order to strategize about future actions, as well as create a sense of common purpose and belonging to a vanguard group of like-minded states. At this point, there is an emerging opportunity for a state

to take the initiative and move the process beyond planning to implementation.

“Middle powers” that strive to leave their mark and gain greater leverage in international politics are particularly apt at playing the leadership role, because they have diplomatic traditions and experience in high-level negotiations and intermediation, as well as enough resources to devote to the issue. Entrepreneurial individuals willing to use their state’s resources and prestige to move the process of norm development forward, and as a result reap the dividends of leadership and enhance their country’s international position, are those who push the process over the “tipping point” of norm creation.

Domestic structures

To some degree, the domestic structure model was useful in pointing the avenues for NGO advocacy, but access to institutions was not the determining factor of NGO success. What mattered was how NGOs transformed that access into opportunities and coalitions. The predictions of the model were best confirmed in the “state-dominated” cases of France and Canada since key individuals in the executive were most instrumental in shaping their state policies on the issues. In the lack of such potential allies, NGOs have not been able to influence state positions despite support from parliamentarians.

In **Canada**, NGOs not only used institutional channels to access policy makers but together with Foreign Minister Axworthy contributed to the broadening of opportunities for the Foreign Ministry to secure more resources and redirect the

traditional bureaucracy toward a novel kind of diplomacy. Thus the partnership between NGOs and government officials reinforced both sides and opened up new avenues for NGO participation in an area that had previously been closed to outside involvement. Canadian NGOs created most of the initial interest in the problem of landmines in Canada, worked with parliamentarians to raise awareness of the issue, made public opinion bear upon the Foreign Ministry and provided backing for Foreign Minister Ouellet in his bargaining with the Ministry of Defense in 1995. However, the change in the Canadian position came when Lloyd Axworthy assumed the post of Foreign Minister and Canadian civil servants from the Arms Control Division networked with the international campaign to ban landmines in Geneva. Canada's ultimate decision to become more active was influenced by the momentum created by the domestic campaigns in European countries and the international campaign that they fed. From that point on, international NGOs, the ICBL, and the ICRC made important contributions to the Canadian foreign policy goals by advocating the mine ban treaty in countries around the world. In contrast, in the cluster munitions case the two important elements – strong NGO campaigning domestically and individual leadership from government officials was lacking, and correspondingly, the Canadian position remained moderate internationally and stale domestically.

Pursuant to the expectations of the domestic structure mode, in **France** policy regarding landmines and cluster munitions was made by the executive branch and parliamentarian initiatives remained inconsequential when undertaken by members of the opposition parties. Whereas France was among the early advocates of international restrictions on landmines, it fell behind other states when the stakes were raised to a total ban and the French military opposed it. Incremental progress toward a ban was nonetheless made with the help of Secretary of State for Humanitarian Affairs Emmanuelli, but after the Canadians launched their challenge for fast-track

negotiations, France opted for the tried forum of the Conference on Disarmament. The timing of the final French decision to join the Ottawa Process in June 1997 might suggest that France jumped on the bandwagon when the international campaign had gathered force. However, the change in the French position resulted from the coming to power of a new socialist government whose leaders had supported a total mine ban for years. The new government also came with a program that placed greater emphasis on human rights and humanitarian norms in French foreign policy. Finally, an energetic appointee in the Ministry of Defense worked from within the ministry to overcome military opposition by gathering evidence that landmines had been avoided by French commanders for years and posed more problems in combat than they solved.

Since 2002 the absence of key figures within the center-right government to support the NGO demands on cluster munitions has so far prevented any headway on the issue. Nevertheless, the French public NGO campaign has been the strongest compared to those in other countries and has generated significant support among members of the opposition (and even from a small party in the ruling coalition) in the French Senate and the National Assembly, who have tabled four law proposals for a ban on cluster munitions since 2004. Handicap International also made cluster munitions an election issue for the 2007 presidential elections. Thus, it has laid the ground for a more active French policy if there is a change in the executive given that all the presidential candidates, except for the one from the currently ruling center-right party, support a prohibition on cluster munitions.

In **Belgium**, despite the prediction of the domestic structure model that in “corporatist” settings NGO influence would be difficult to materialize through the parliamentarian channel, the success of both the landmine and the cluster munition

campaigns depended on a partnership between NGOs and prominent Belgian senators. Moreover, in the case of cluster munitions, NGOs were able to keep intact the legislative focus on the humanitarian effects of the weapons despite opposition from organized labor and employer interests in the arms industry. Thus issues brought up by NGOs that are not represented in a peak organization have better chances of success in parliament than through traditional corporatist channels featuring direct consultations between organized interests and the government. The partnership between NGOs and senators also helped the parliament strengthen its legislative initiative and assert its role in policymaking.

The domestic structure model had greater explanatory power regarding the character of policy networks and the decision-making process. The tendency to work out divisive issues by finding compromise decisions was evident both in the landmine and the cluster munition case. The adopted bans were not as “total” as they were portrayed by NGOs internationally. Some marginal concessions were made in the wording and scope of the two laws in order to deflect opposition from the military or the arms industry. The domestic culture of seeking and diligently working toward consensual solutions was also reflected in the conduct of Belgian diplomats on the international level. Despite the progressive national position of their country, they had not led the way in promoting similar measures internationally. Their approach remains cautious when no other, or very few, countries have come forward with policies similar to the Belgian one, but when a group of like-minded countries forms, the Belgians are good team players and help the international process move forward.

Even though **Norway** shares with Belgium a consensual policy-making process and strong societal organizations characteristic of corporatism, in recent years its parliament has moved from a position of relative weakness vis-à-vis the executive

to a more active role in political life that has led to a balance between the two branches of government. In that sense, the domestic structure provides NGOs with more than one potentially successful avenue to convey their demands to policymakers. If attempts at one level fail to bring the desired result, NGOs can try another one. That is what happened in the landmine case. Initially the Ministry of Foreign Affairs (MFA), and in particular the Foreign Minister advisor and then Junior Foreign Minister Jan Egeland, got involved in the landmine problem and alerted Norwegian NGOs to the possibility to work on it. Norwegian diplomats in Geneva, including Steffen Kongstad, also urged Oslo not to miss the case and “do something.” However, when the Norwegian NGOs got mobilized by the ICBL and came back home with radical demands for a total landmine ban, the MFA found those unreasonable, given Norway’s geostrategic location and the opposition that was expected from the Ministry of Defense. Not finding the expected support in MFA, NGOs turned to parliamentarians and worked through the party structures to move the issue forward. Egeland for his part also sought to influence the position of the Labor Party after realizing that several countries had moved in the direction of a total ban (including Sweden with which Norway traditionally compared itself). In his view then, the choice for Norway was either to be a leader and gain some dividends from it or fall behind and be forced to accept the ban “by public opinion and international actors” (quoted in Neumann, 2002: 120). In the end, the parallel efforts by NGOs and Egeland succeeded in passing national legislation on landmines. As in the Canadian case, NGO domestic and international mobilization was harnessed by the Norwegian MFA to strengthen its positions within the government, vis-à-vis the Ministry of Defense, and above all enhance Norway’s international role.

In the campaign on cluster munitions NGOs followed a similar path. Whereas the Norwegian Red Cross was active on the issue for several years, Norwegian

People's Aid got more mobilized when it became clear that the international campaign needed domestic backing if it were to proceed and the Belgian ban passed in the Senate. Again, the NGO campaigning included pressure both on governmental officials and parliamentarians. Their collaboration with the Center Party led to the inclusion in its election program of a commitment to work for an international ban on cluster munitions. In contrast to the landmine case, however, NGOs also engaged in direct talks with the Ministry of Defense regarding the Norwegian stocks of ground launched cluster munitions. Whereas NGOs decided not to insist on a total ban covering the most advanced cluster munitions that might not pose real humanitarian problems, the Ministry of Defense agreed to institute a moratorium. As new developments toward banning cluster munitions got underway in other European countries and the Cluster Munition Campaign gained more visibility internationally, the Norwegian MFA also became more active on the international scene. Its announcement of the Norwegian moratorium at the CCW in June 2006 gave an important signal about its willingness to lead a process toward an international ban. It also made clear that even new cluster munitions with a 2% failure rate (which the UK had actually ordered in order to minimize civilian casualties in the 2003 military campaign against Iraq) might be unacceptable from a humanitarian point of view. Finally, after Sweden and Austria took the lead in pushing for a negotiating mandate on cluster munitions within CCW and failed, Norway stepped forward and decided to initiate a new process for a ban out of this forum.

In the “society-dominated” case of **the United States**, the model has utility in depicting the complex and divided decision-making process regarding landmines on which various actors exerted influence. However, it does not fully explain why the

Clinton administration decided not to join the Ottawa Process⁴⁰⁸ given the preference of the President and high-ranking NSC and State Department officials to do be part of the treaty. As I argued, the cultural context prompted NGOs to engage military arguments head on in order to prove that banning landmines was a militarily sensible thing to do, and provide the President – widely perceived as “weak” in character and in his dealing with the military – solid military backing, based on which he could move against the wishes of his commanders and ban the weapons. Yet the result of this was focusing the debate within a military and disarmament framework and further undermining of the President’s position by reinforcing the image of his weakness and antagonistic relations with the military. Thus on the one hand, the NGOs lost their advantage of speaking on humanitarian grounds and the opportunity to mobilize better this alternative discursive framework. On the other, they limited their efforts to the domestic scene, and especially to legislative actions, and failed to bring the “boomerang” effect of international mobilization to bear on US policy-making. In that sense, political culture and NGO tactics provide more insight into the Administration’s decision not to join the Ottawa Treaty than a focus purely on domestic structure and strength of the military as an institutional actor. Nevertheless, the lack of success in getting the US to sign the treaty is relative when seen in the larger context of norm creation. Where the domestic US campaign failed, the international one indirectly succeeded in affecting the subsequent Clinton landmine policy of 1998 and the general acceptance by the US military of the norm that the use of landmines is reprehensible and even illegal despite the lack of any formal arrangements prohibiting it in the US.

During the period when the problem of cluster munitions was discussed, the US domestic structure underwent a process of centralization when the Republican

⁴⁰⁸ This question is different from the hypothetical question of why the US did not decide to ratify the Ottawa Convention.

Party gained control of the Senate, House, and the executive, that was only reverted with the congressional elections in the fall of 2006. Whereas access to policy-makers has not been totally cut out, NGOs were not able to influence policy directly. The impact they could exert was confined to stirring media interest, establishing direct links to military officials that were interested in maintaining the image of the armed forces (and especially of the Air Force) untarnished by allegations of indiscriminate use of cluster bombs, and finally, by keeping the subject on the agenda of the CCW internationally.

However, in both the landmine and cluster munition case, the NGO campaigns in the US had significant shortcomings that reflected the organizational biases of the NGOs that were most actively involved. On landmines, until late in the Ottawa Process, VVAF focused its efforts almost entirely on elite lobbying in Washington and influencing the legislative process at the expense of grassroots mobilization and without taking advantage of the international mobilization to pressure the US government from above. In the cluster munitions case, the opposite was true – HRW concentrated its attention on the international level and no domestic campaign evolved to exert influence on the government from below. Given the strong military position in the US, the combination of a domestic and international strategy might have yielded better results at least in these two cases.⁴⁰⁹

The examined cases suggest that the domestic structure framework offers some guidance about the domestic processes that one could expect to take place within different environments but no conclusive predictions either about the impact of NGOs or the pathways through which they could exert influence. NGOs and individuals in

⁴⁰⁹ In fact, if NGOs wanted to influence US policies on cluster munitions under the Bush administration they probably had better chances to do so by going through domestic channels given the Administration's aversion to international treaties.

the executive and legislative branches can and do shape their own institutional surroundings. NGO campaigns provide opportunities to officials in parliaments and the Foreign Ministries, in particular, with new platforms from which to project more active roles both for their own institutions within the government and for their states internationally. What unites the above cases is the presence of committed individuals that take up the NGO cause, irrespective of their institutional belonging.

The developments in the domestic structures examined in the Belgian and Norwegian cases might also suggest a trend toward increased influence of the parliament on foreign policy issues and fragmentation of government power as has already been observed in Norway (Rommetvedt, 2003). A similar trend might also be underway in France as has been suggested for other European countries (Costa et al., 2004). Certainly, the French Senate and National Assembly have been very active on the issue of cluster munitions, more so than on landmines in the 1990s, which is also witnessed in the establishment of the Senate information mission on cluster munitions.

If indeed there is a trend toward some reinvigoration of the role of parliaments, it could be attributed to societal trends toward increased heterogeneity, which in turn lead to increased numbers and diversified profiles of political parties and no clear majorities to ensure unified government. Rommetvedt (2003) attributes the gain in parliamentarian strength in Norway to the fact that for many years there had been minority governments dependent for their survival on parliamentarian support from more than one party. I have argued that NGO campaigning and the creation of partnerships between NGOs and parliamentarians have also worked in the direction of reinforcing the role of parliament. There are good reasons to expect that NGOs representing interests that have not been institutionalized in society and other interest organizations would encounter the fewest obstacles in approaching parliamentarians.

Absent governmental support, NGOs have tried to advance their demands on both landmines and cluster munitions through the parliamentarian channel. This is also the main strategy on which NGOs counted to mobilize greater European support for an international cluster munition ban.

Thus NGO activities appear to contribute to a degree of decentralization of decision-making power by strengthening the parliament vis-à-vis the executive. In the cases of Canada and Norway it could also be argued, however, that NGO campaigning leads to a shift of decision-making power and institutional capacity in the foreign ministries vis-à-vis the office of the prime minister and/or vis-à-vis the military establishment. Either way, NGOs have served as a balance weight between governmental agencies with opposing viewpoints domestically or among countries internationally. Whereas the latter phenomenon gave rise to the study of new diplomacy, it has been limited mostly to international level processes (e.g. Rutherford et al. eds, 2003; Cooper et al. eds, 2002; McRae and Hubert eds, 2001).⁴¹⁰ In my work I have tried to highlight the importance of domestic developments and their relations to the larger international processes regarding negotiations of prohibitions or restrictions on landmines and cluster munitions.

Future research

It is difficult to generalize the importance of domestic NGO campaigning for the

⁴¹⁰ There are several contributions to Cooper et al. eds (2002) that present country studies of “new diplomacy” initiatives, without focusing on their relations with the larger international context, however. See, Neumann (2002), English (2002) and Maley (2002). There are also several contributions in Cameron et al. eds (1998) that focus on the landmine campaigns in the US, France, and Canada.

mobilization of an international process toward stricter weapons prohibitions or norm creation in general. The study was limited to these two contemporary cases of weapons restrictions in an effort to capture a more general dynamic of IHL development in this area and the role of the military versus NGO influence on state decision-making.

Broadening the case selection to include negative cases of unsuccessful attempts at norm creation could test the generalizability of the model of norm emergence at least in the IHL field. Whereas it is not possible to include a detailed case where attempts to develop a new norm fail or do not take off at all, the examples of NGO activities regarding the use of depleted uranium weapons and attacks on dual-use targets can shed some light on the relative importance of certain factors for the success of norm development.

One factor that seems to facilitate norm creation is the existence of **clear and direct cause-and-effect relations** between the military practices targeted for prohibition and the negative consequences for the civilian population (and military personnel). In the case of depleted uranium such a relationship between health problems and the weapons use has not been scientifically proven. Whereas the negative consequences of destroying the electrical power grid of a country are more easily detectable, the fact that they materialize in the longer term, especially through the failure of water treatment systems makes it more difficult to attribute civilian death to the military strikes alone. For example, the government of the attacked country could also be blamed for the ensuing deaths because of its failure to repair the system promptly, provide assistance and health care to its own population.⁴¹¹

⁴¹¹ Here I consider both cases in which dual-use targets are really attacked because of their military uses and cases of attacks on dual-use facilities as a means to putting pressure on the civilian population with the goal of forcing it to rebel against its own government and end the war (i.e. “duress bombing” as it has been called by Thomas, 2006). The latter attacks are illegal under existing IHL even in the opinion of some vocal proponents of targeting civilian morale (e.g. Dunlap, 2000; Meyer, 2001), whereas a

NGO prestige and expertise in the issue area influence their ability to make a difference. The involvement of NGOs with field experience in mine clearance that are dealing with the problems of mines and explosive ordnance on the ground and provide first-hand credible information about the effects of those weapons has been important in the cases of successful campaigning against landmines and cluster munitions. Thus those NGOs, joined by others that have legal expertise such as the ICRC and HRW, could speak with authoritative voices and be the experts who provide the data, based on which discussions on the issues of mines and cluster munitions then take place. Whereas human rights NGOs such as HRW and Amnesty International have been documenting the impact of infrastructure bombing and decrying the destruction of power stations as illegal, no field-based organizations have become involved in the issue, probably preferring to keep to their narrower mandates focused on mines and other victim-activated weapons. In the case of depleted uranium (DU) on the other hand, the most actively involved NGOs have been veteran organizations concerned about the health problems of soldiers following conflicts where DU weapons were employed. In this case, medical doctors held the expert opinion. They had to carry out numerous studies and tests to see if health ailments could be linked to DU and thus NGOs were deprived of an authoritative voice on the issue. Another set of NGOs that could have made an impact given the potential long-term effects of DU on the environment, such as well-known environmental organizations, and Greenpeace in particular, had not shown interest in getting engaged on this issue. The lack of interest from those groups is possibly linked to the shaky scientific grounds upon which the protest against DU use is built and the fact that IHL issues do not fall within their domain of activities and expertise.

prohibition against bombing electrical power stations should focus on the disproportionate effects of such attacks on the civilian population, irrespective of the intentions of the attacker.

Third, **framing** is important. In the cases of both DU and dual-use bombing, the specificity and technicality of the issues has become a barrier to the mobilization of interest among a larger and more heterogeneous group of NGOs, which is a condition conducive to the creation of a successful campaign. A similar problem was observed in the cluster munition campaign that could not mobilize public opinion when it was mainly focused on technical measures toward solving the problems of cluster submunitions.

Basing NGO arguments in general IHL principles and framing of the issue in humanitarian terms, with clear focus on the harmful effects of a weapon or military practice on the civilian population also makes a difference for success. Instead, concentrating on the deleterious effects of the weapon on military personnel could be another reason why the DU campaigning has not been able to take off and gain the support of more NGOs.⁴¹² Similarly, the initial focus on the antipersonnel effect of cluster submunitions in the arguments of states willing to ban them during the negotiations of the CCW in the 1970s, combined with the lack of NGO interest in the issue has affected the outcome of the initiative.

On the other hand, even though the lack of clear and scientifically confirmed cause-and-effect relationships makes the creation of new norms banning the purported causal agent more difficult, it does not necessarily doom it to failure when NGOs mobilize strongly behind an issue. In such a case, NGOs could argue for the application of the “precautionary principle,” according to which citizens should be protected against potentially harmful effects even if at this point in time it is difficult to show beyond doubt that those effects really exist and could be attributed to a single agent. This approach has led, for example, to the introduction of a EU ban on the use

⁴¹² The impact of DU weapons on the civilian population in targeted countries has also been present in the campaigning on the issue, but most of the debates especially in the US regarding the Gulf War syndrome and in Europe following the peacekeeping mission in Kosovo have revolved around the health problems of soldiers.

of a number of phthalates in children's toys in 2004, following pressure from consumer and environmental organizations, including Greenpeace.⁴¹³ Some NGOs tried to use the same approach based on the precautionary principle in the DU case, but those that made up the International Coalition to Ban Uranium Weapons preferred to draw a parallel with the landmine convention (e.g. McDonald, 2004), without much success so far, however.⁴¹⁴ In contrast, while drawing on the landmine campaign, recently the cluster munition coalition has moved in the direction of the precautionary principle in a series of reports by Landmine Action, UK (LMA) that argued that cluster munition use should be banned before it has caused problems of the proportions of the landmine crisis and aimed at placing onto governments and the military the burden of proof that all precautionary measures to avoid civilian casualties are really taken when cluster munitions are used. Thus, instead of NGOs having to prove time and time again the extent of the damage cluster bombs cause to civilians, governments should show the ways in which they have endeavored to minimize civilian harm (e.g. LMA, 2005a,b, 2006a). In addition, drawing on consumer product safety campaigns, in the fall of 2006 LMA launched a shrewd "product recall" campaign for British cluster munitions with high failure rates that would endanger civilian lives more than many defective products recalled by companies each year.

⁴¹³ Phthalates are oil-delivered chemicals used in the softening of polyvinyl chloride (PVC), used, among others, in rubber and plastic chewing toys. A temporary EU ban was imposed in 1999, which was officially extended in 2004 and came into effect in January 2006. The use of three phthalates was banned in all toys and that of another three in toys and childcare products that can be put in the mouth. The ban resulted from concerns about phthalates' possible risks to children health ranging from causing cancer, endocrine disorders, liver and kidney damage, to reproductive abnormalities, despite the fact that, for example, in August 2003 following a risk assessment of the commonly used diisobutyl phthalate (DINP) (whose use in toys and childcare products that can be put in the mouth has been banned), the EU's European Chemicals Bureau announced that "the end products containing DINP [...] and the sources of exposure [...] are unlikely to pose a risk for consumers (adults, infants and newborns) following inhalation, skin contact and ingestion." Similarly, the Phthalates Information Centre Europe still claims that "[p]lasticised PVC has been used for nearly 50 years without a single known case of it having caused any ill-health and the environmental effects of phthalates are known to be minimal." (http://www.phthalates.org/yourhealth/childrens_toys.asp)

⁴¹⁴ The precautionary principle played a much more significant role in the domestic debates on depleted uranium in France, for example (see, Lesna, 2004).

In this sense, in the domestic and regional arenas NGOs can heighten concerns about product safety and lead to certain prohibitions even when irrefutable scientific evidence supporting their claims may not be available. Thus framing the issues in light of the precautionary principle could be more effective than trying to mold the campaign against DU on the ICBL and the arguments employed by it.⁴¹⁵ Norm “grafting” may not always work, especially when few real parallels between two issues exist. Even in the case of cluster munitions where unexploded cluster munitions do function as antipersonnel landmines and grounds for drawing parallels between the two exist, initially centering the cluster campaign around those arguments has had the effect of fencing off attempts to address the other negative, wide-area effect of the weapons for several years.

However, in the area of product safety, NGOs might face weaker opposition from producers because safety concerns among consumers can affect the demand for products and make companies voluntary change their policies and use of materials even without a legislative ban on a chemical or practice.⁴¹⁶ In addition, the existence of viable alternatives can make the change easier for producers. Thus, the **lack of strong opposition** to new restrictions from the interested parties is also an important factor in the promotion of new norms.⁴¹⁷ In this light, the stronger the opposition to a new norm is, the greater the need for clear and proven cause-and-effect relationship between the practice targeted for prohibition and the posited harmful effects.

The importance of **domestic campaigning** as a way to mobilize international and regional action is evidenced not only in the landmine and cluster munition cases, but also in the case of phthalates, where the 1999 EU ban was preceded by the

⁴¹⁵ The precautionary principle also plays an important role in the field of environmental protection.

⁴¹⁶ As has happened, for example, with many rubber toy producers in the USA.

⁴¹⁷ The lack of industry opposition (and in fact a confluence of interests on the part of the major producer, Dupont in marketing a more expensive alternative) has also facilitated the ban on the use of CFC (chlorofluorocarbons) (Kauffman, 1997).

introduction of domestic legislations, banning phthalates in toys for children under three year old, in 7 of the then 15 EU members (Greenpeace, 1999). On the other hand, the international campaign against DU so far has not been able to produce any palpable progress in this direction. Proposals for domestic bans on the weapons were unsuccessfully introduced in Belgium and France in 1999 and it remains to be seen whether a new legislation to the same effect proposed again in 2006 in Belgium would garner enough support to be passed and give some boost to other domestic initiatives and international campaigning.

The importance of **individual and NGO leadership** is also highlighted in those cases by its apparent non-existence. No major NGOs either internationally or domestically have become involved in campaigning against depleted uranium. Similarly, no parliamentarians or government officials have made it their priority to work on this issue. Things might change if a greater number and better-known NGOs decide to take up the issue since a few parliamentarians in Belgium and France have shown interest in the problem and there have been signs of concern about the use of depleted uranium in the European Parliament and the UN.

On the other hand, the politicization of the problem of bombing dual-use facilities by major NGOs such as HRW and Amnesty has not produced a sustained campaign against the practice. This could be explained in part by the highly legalistic character of the problem whose solution hinges on interpretations of existing IHL provisions and the lack of willingness on the part of those two organizations to work for the creation of an NGO coalition on this issue. An alternative approach has been undertaken by the ICRC, the Swiss government and a number of experts – a series of expert meetings closed to the public and the media that aim at drafting a new manual on aerial warfare that should regulate, among other things, the practice of attacking dual-use targets. If that initiative succeeds, it will be an example of a different process

toward norm creation that does not involve NGO campaigning and domestic mobilization, but centers on discussions, legal argumentation, and quiet leadership based on expertise alone.

Finally, one could argue that the success of the efforts to place restrictions or prohibitions on certain war practices is in an inverse relationship with their military utility – the greater the military uses and effectiveness of a weapon or practice, the slimmer the chances of its prohibition. However, the military utility of weapons is not a given and depends also on the point of view of those who do the assessment. For example, in the early 1990s the opinion that antipersonnel landmines were of high military effectiveness and indispensable for a country's defense was widespread, whereas most authors today tend to represent them as weapons of limited military use and utility – a change that was brought about with active NGO participation, research, and campaigning. Similarly, the military insistence on the high military utility of cluster munitions and the fact that about 80% of the US Army's munition inventory today consists of these weapons should bode ill for the CMC efforts to restrict their uses. Yet, the cluster munition campaign has already made progress toward stigmatizing the weapon internationally, outlawing it domestically in a few countries, and motivating Norway to step outside of the CCW and work for an international ban. The effectiveness of bombing dual-use facilities, on the other hand, is a moot issue. The US Air Force, which has resorted to it most often in recent years, deems it a highly effective way of forcing the enemy into quick submission (e.g. Tirpak, 1999). However, scholars and members of the Army have questioned the utility of infrastructure bombing (Pape, 1996, Daalder and O'Hanlon, 2000; Horowitz and Reiter, 2001; Thomas, 2006). Thus it is difficult to accept that there is an *a priori* ranking of the military effectiveness of different types of weapons and methods of warfare irrespective of the interests of those who make the assessments and the

specific uses to which those weapons and methods of war are put. Moreover, the question of military effectiveness cannot be divorced from the moral issues involved in waging war and the legitimacy and political effectiveness of military practices. Once the ethical side of the equation starts being redefined, it cannot be expected that the military side will remain unaffected. If weapons' acceptability were judged only by their military effectiveness, nuclear weapons should have been used much more often instead of not at all since WWII (e.g. Price and Tannenwald, 1996; Tannenwald, 1999, 2005). Thus by changing the perception of the humanitarian costs of a weapon or practice, NGOs could redefine the perception of its military effectiveness as well.⁴¹⁸

In sum, the examination of the “failure cases” does not seem to invalidate the postulated process of norm emergence and the factors that contribute to its success. Committed leadership from NGOs, policy-makers, or states is generally lacking in the cases of DU and targeting dual-use facilities. Since the two issues are at the very early phases of agenda setting where the contours of a problem are identified, the reasons why leadership either on the part of NGOs or policy-makers has failed to emerge in these two cases are mostly linked to issue framing and specificity – in particular, the lack of clear and immediate cause-and-effect relations between the practice targeted for prohibition and its negative consequences, and the complexity of the problems or highly legal discourses surrounding their characterization.

Thus, by identifying the important role of leadership and the domestic paths of norm emergence, the study has pointed out new processes and dimensions of norm development that have been largely neglected by the existing literature.

⁴¹⁸ The simple logic is that the political cost of using a weapon diminishes its effectiveness even if in purely military terms it might be “effective”. An additional, even though unlikely, process might be at work – once a weapon is stigmatized or put out of bounds, military strategists might start devaluing its military utility as well, following the logic “can’t use it, hence it’s no good using” (the “grape is sour” fable).

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LIST OF INTERVIEWEES

The interviews have been coded by number and according to the affiliation of the interviewee NGO (nongovernmental organization), GOV (government official either in the Foreign or Defense Ministry), MIL (military official).

The following people have provided information for the research in personal, telephone, or email communication:

Barton, Paula, Deputy Legal Adviser, US Permanent Mission, Geneva

Bernstein, Elizabeth, ICBL coordinator (1998-2005)

Biddle, Steven, scholar

Brabant, Stan, Head Policy Unit, Handicap International Belgium

Brigety, Reuben, Researcher, Arms Division, Human Rights Watch (2003)

Briot, Baudouin Lt. Col., Counselor, Belgian Ministry of Defense

Canadian Foreign Affairs official

Cave, Rosy, Lead Researcher for Explosive Remnants of War, UNIDIR; researcher, Landmine Action, UK (2001 – mid 2004)

Chabasse, Philippe, Director, Handicap International

Cheek, Marc, Acting Director, Humanitarian Affairs and Landmine Policy, Stability Operations, Special Operations and Low-Intensity Conflict Office, Department of Defense and Executive Secretary of the Defense Science Board Task Force on Munitions System Reliability

Crowder, Gary Col., USAF, Director for Strategy, Concepts and Doctrine Division, Directorate of Plans Air Combat Command (2003), previously, Chief, Combat Operations, Combined Air Operations Center, Operation Enduring Freedom; Deputy

Director of Operations and Battle Staff Director, Balkan Combined Air Operations Center, Operation Allied Force

Cummings, Edward, Deputy Legal Adviser, Office of the Legal Adviser, Department of State and Head of the U.S. Delegation to the Conventional Weapons Review Conference (2000-2005)

Docherty, Bonnie, researcher, Arms Division, Human Rights Watch

Dunlap, Charles, BG, Staff Judge Advocate General, Air Combat Command

Garlasco, Marc, senior military analyst, Arms Division, Human Rights Watch

Guelcher, Ernst, Disarmament Advisor, Green Party Group, European Parliament

Haake, Markus, Coordinator Actiongroup Landmine.de, Germany

Hannon, Paul, Executive Director, Mines Action Canada

Hiznay, Mark, Senior researcher, Arms Division, Human Rights Watch

Hodson, David, Action Officer, Arms Control Policy, International Security Policy, Office of the Secretary of Defense, Department of Defense

Hollestelle, Micha, Adviser Peace and Conflict, Pax Christi Netherlands (2002-2005)

Huynen, Paul, Head of the Disarmament and Nonproliferation Department, Belgian Ministry of Foreign Affairs

Lechervy, Christian, International affairs advisor of the Minister of Defense (1997-2002); Deputy director South-East Asia, French Ministry of Foreign Affairs (2004-present)

Libertucci, Marion, Advocacy Officer, Handicap International France

Maresca, Louis, Legal Adviser, Mines-Arms Division, International Committee of the Red Cross

Moyes, Richard, Policy & Research Manager, Landmine Action

Østern, Grethe, Policy Advisor, Mines Action Unit, Norwegian People's Aid,

Parks, Hays, Deputy General Counsel, Department of Defense

Prins, Daniel, Counsellor, Deputy Head of Delegation, Delegation of the Kingdom of the Netherlands to the Conference on Disarmament

Quanquin, Elisabeth, Conseiller, French Permanent Mission in Geneva

Rafferty, Mark, Business Development Division, Textron Systems

Rappert, Brian, scholar

Ryckmans, Pierre, Campaign Officer, Mines Department, Handicap International Belgium (Oct 1994 - Feb 1996)

Stainier, Vincent, Program Director, Handicap International Belgium (1994-2000)

Thunborg, Annika, First Secretary, Permanent Mission of Sweden to the International Organisations in Geneva, Disarmament section

Towaide, Catherine, advisor of the Belgian Socialist Party Senate Group

Vermelen, Paul, Director Handicap International, Switzerland

Walker, Susan, Humanitarian Affairs and Disarmament Consultant (since 2005); ICBL Intersessional Program Officer till 2005; ICBL Government Relations Liaison, ICBL spokesperson; 1998 ICBL Coordinator; Director, Handicap International US (July 1994 - 1998)

Wareham, Mary, coordinator of the US Campaign to Ban Landmines (1994-1997); researcher, Arms Division, Human Rights Watch

Wilson, Isaiah (Ike), Major US Army