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ABSTRACT

Today's international community is engaging in a new kind of arms control, which parts ways with past practice to privilege humanitarian concerns and civilian protections over perceived national security interests. Humanitarian disarmament has resulted in multiple multilateral agreements in recent years banning exceptionally injurious or unnecessarily harmful weapons. Existing arguments, which emphasize international pressure or norm diffusion as explicating policy change, cannot fully explain governments' mixed reception to the humanitarian disarmament approach. They neglect the process by which persuasive action at the domestic level impacts policy-making, that can result in the legalization of new humanitarian norms. Through the examination of four states involved to varying degrees with the cluster munition disarmament process, this dissertation contributes a new theory of this domestic campaign pressure process. It shows that where civil society groups are able to run a well-resourced, organized domestic campaign that increases the issue's salience and activate public participation in application of political leverage, disarmament policy change is likeliest to occur. States that join agreements as a result of this process do so for instrumental rather than normative reasons, but in self-imposing new weapons bans, reticent governments ultimately contribute to the humanizing of the laws of war.

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CHAPTER 1

AN INTRODUCTION TO HUMANITARIAN DISARMAMENT, OR: HOW WE LEARNED TO STOP WORRYING AND BAN THE BOMB

In the modern era,¹ humans have advanced exponentially their technological capacity for killing while gradually also converging on the notion that the means of making war must have limitations. Through a series of comprehensive international agreements in recent decades, a majority of the international community of states has prohibited certain weapons perceived as inherently causing unnecessary suffering.² Whereas conventional arms control practice privileges the national interests of states, these agreements were fomented through the newer approach of humanitarian disarmament, which prioritizes humanitarian considerations and civilian protection over state interest in the formulation of arms control policy.³ Humanitarian disarmament, in this project, is the category of policies and agreements that aim to regulate or ban particular weapons due to their humanitarian effects.⁴

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¹ Particularly since the early 1990s with the rise of smart weapons, unmanned aircraft, and robotics.

² Cluster munitions are shells that contain and disperse dozens to hundreds of smaller bomblets, scattering their payload across an area up to the size of a football field. With a failure rate between 5 and 30%, cluster munition duds operate like landmines, which do most of their harm to civilians after combat operations are over. "Cluster Munition Monitor," Cluster Munition Coalition, last updated September 3, 2015.

³ Norwegian People's Aid defines humanitarian disarmament as "operational and advocacy work which aim to reduce and prevent harm to civilians from the impacts of weapons and ammunition, and where civil society plays a critical role." Humanitarian Disarmament. *Norwegian People's Aid* (NPA). Retrieved from https://www.npaid.org/Our-Work/Humanitarian-Disarmament.

⁴ Also referred to as humanitarian arms control; this term is not well defined in the disarmament community beyond the NPA definition, which has yet to be adopted broadly.

Historically, arms control agreements largely addressed the weapons deemed to be an existential threat to the international community; the focus has shifted to weapons that threaten human rather than state security, and the language in many of these new agreements advocates normative rather than material concerns. Among these agreements are bans on landmines, cluster munitions, small arms, and light weapons, all of which have long-term humanitarian impact for post-conflict areas. Arms control advocates have adopted the term humanitarian disarmament to collectively refer to these issues and their agreements. While the new agreements and the humanitarian norms they instantiate enjoy broad support, and many now-champions of these regimes were once their staunch opponents, the new humanitarian disarmament agreements are far from universal.

The puzzle that arises from this pattern of behavior is why governments that report valuing their weapons strategically would then become willing to abandon them, in part or whole, over a relatively short period of time. The core argument of this dissertation is that, notwithstanding the international pressures for states to build and maintain diverse military arsenals, it is domestic campaigns and domestic pressure that emerge as key drivers of humanitarian behavior change, particularly in democratic states. More specifically, I demonstrate that where issue advocates organize a broad and well-resourced domestic campaign, increasing the domestic salience of the issue through media work and lobbying, and activate citizens to participate in the application of political leverage by petitioning or demonstrating, reticent governments are most likely to exhibit humanitarian policy change. Joining previous studies of humanitarian advocacy

targeting rights violations in authoritarian states,⁵ this project fills a gap in our knowledge about how transnational advocacy networks approach and are approached by democratic states, and how this relationship shapes international outcomes more broadly, in terms of how norms and policies diffuse, why they gain traction at particular moments in particular places, and the role of transnational advocacy in guiding the behavior of democratic and non-democratic states alike on the international stage.

This project explores the phenomenon of humanitarian disarmament through the study of participants to the most recent such international agreement, the 2008 Convention on Cluster Munitions, seeking to understand why states that had previously made and used cluster munitions have, albeit sometimes grudgingly, abandoned them. This dissertation examines evolution in the behavior of four governments—the Netherlands, the United Kingdom, France, and Poland—involved to varying degrees with the drafting, entry into force, and ongoing universalization of the Convention on Cluster Munitions, uncovering the particular factors that guided improved humanitarian outcomes in each case. The design of the study is a most-similar-systems design, intended to hold as many factors as possible constant across cases. All four countries selected are democratic members of both NATO and the European Union, which have joined the sister agreement to the Convention on Cluster Munitions, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Mine Ban Treaty). All four of these countries entered the negotiation of the Convention as defenders and users of cluster munitions, yet some

⁵ Keck, M. & Sikkink, K. (1998). Activists Beyond Borders: Advocacy Networks in International Politics. Ithaca: Cornell University Press; Risse, T., Ropp, S. C., & Sikkink, K. (Eds.). (1999). *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press.

of them moved to sign, comply, and even over-comply with the Convention, while others held their ground as defenders of cluster munitions. It is this variation in humanitarian disarmament behavior that I seek to explain in the dissertation. That is, the project seeks to explain shifts along a continuum of potential behavioral outcomes that ranges from non-response to humanitarian disarmament issues to design of, compliance with, and over-compliance with new humanitarian disarmament agreements.

Cluster munitions are a productive case to test this theory of pressured international behavior change for several reasons: the bombs were popular and legitimate weapons, the issue of their use was of very low salience, and the fractured international perception of their use until recently made it very unlikely that they would ever be banned as an instrument of war. While cluster munitions have been called indiscriminate and inhumane for over seventy years⁶ and the earliest calls for a categorical ban on the weapons came over forty years ago,⁷ the real battle for a new norm and an international treaty in actuality began in the early 2000s, following the success of the Mine Ban Treaty. Even as the norm began to spread to some states, most resisted the idea of regulation vehemently, making strong cases in fora like the Convention on Conventional Weapons that cluster munitions need not be separately regulated. Yet, they have since been banned and are subject to a taboo, a norm that "involves expectations of awful or uncertain consequences or sanctions if violated." In instances of cluster munition use

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⁶ Nystuen, G. & Casey-Martin, S. (2010) *The Convention on Cluster Munitions: A Commentary* (New York: Oxford University Press): 6.

⁷ In 1974, Sweden made the first call for a cluster munition treaty, troubled by the extensive use of the weapons in Vietnam and Cambodia. Nystuen & Casey-Martin 2010: 12.

⁸ Tannenwald, N. (2005). Stigmatizing the Bomb: Origins of the Nuclear Taboo. *International Security* 29: 9.

even by non-Parties to the Convention on Cluster Munitions, governments can expect international shaming and increasingly sanctions. Thus, deep observation of the states that exhibit strong shifts in their cluster munition policy should be fruitful for examination. As I argue that change comes from strong campaigns and the leverage they apply, this argument is limited in that these factors are likely to have the strongest effects in democratic societies, where civil society can most freely campaign, where leaderships are most accountable to citizens, and where material leverage is most likely to impact policy. However, it is also likely that the argument would also apply in cases where other low-salience arms control issues rise to the fore of international debate, such as small arms, autonomous weapons, human rights, and developmental and environmental issues where humanitarian considerations can be placed first.

There are three alternative explanations to which the project will be attentive in the behavioral shift toward humanitarian disarmament: existing arguments in international relations theory locate the bases for behavior change in strategic calculation, convergent preferences, or normative suasion¹⁰ Governments could be making a strategic choice about humanitarian disarmament where the weapons—in this case, cluster munitions—have lost their utility, decreasing the cost of abandoning the weapons and increasing the value of alleviating internal or external pressure to do so. A second possibility is that the international community is converging on a preference for disarmament goals that serve its interests, evidenced by increasing participation in and

⁹ Gladstone, R. (2015, September 15). Banned Cluster Bombs were used in Five Countries. *New York Times*.

¹⁰ Checkel, J. T. (2005). International Institutions and Socialization in Europe: Introduction and Framework. *International Organization* 59: 801-826.

agreement on the design and implementation of new disarmament agreements. Finally, governments might be disarming as a result of normative diffusion of the unacceptability of the weapon, and suasion of disarmament as an appropriate response. As will be discussed in greater depth and demonstrated throughout this dissertation, these arguments fall short of fully explaining the turn to humanitarian disarmament. Even where the weapon has fallen out of use due to utility loss, dismantling and replacing it still represents a high cost, which might be further compounded by difficulty in cooperating with ally states that continue to utilize the weapon. With respect to converging ideas, international responses to humanitarian disarmament agreements have been fractured by highly variegated national responses and the creation of competing regimes. Finally, governments rarely use normative language to describe their disarmament behavior or celebrate the fulfillment of disarmament commitments, as would be expected had states been normatively persuaded, preferring to highlight their achievements in international law creation or not at all. The highly mixed response across the international community to the new humanitarian disarmament movement begs a deeper examination of those states that have shifted behavior.

This chapter will proceed as follows. First, I offer a discussion of the challenges of addressing cluster munitions through international cooperation, discussing in greater detail where alternative explanations may help to explain failure to disarm. Second, I briefly preview the theoretical framework guiding this dissertation, including the process through which disarmament behavior change occurs, from which I derive causal variables, and the continuum of disarmament outcomes along which state behavioral

change can be observed. Finally, I discuss the research design and scope of the project, laying the foundation for a deeper explication of the theory, which follows in Chapter 2.

The Challenge of Cluster Munitions

Cluster munitions are widely perceived to be inhumane by design as exemplified in the recognition by even user states of the problems with their design. As larger munitions that explode midair to broadly disperse smaller explosive submunitions, these weapons are incapable of precision and thus incapable of discrimination in targeting. Further, while many producer states make claims to the safety of modern cluster munitions, they generally suffer a failure rate between 5% and 25%, and in conjunction with large-scale use, most cluster munition casualties occur after conflict to civilians. While these weapons are perceived to be effective in anti-personnel operations and lack cost-effective

¹¹ For instance, the current Polish position states, "The Polish position states that cluster munitions causing unacceptable humanitarian consequences, especially without the possibility of self-liquidation or self-neutralization, should be prohibited. On the other hand, we recognize the right of states to use modern, highly reliable cluster munitions for defense purposes." Cluster Munitions. (2012) Ministry of Foreign Affairs, Republic of Poland. Retrieved from http://www.msz.gov.pl/en/foreign_policy/security_policy/conventional-disarmament/cluster-munitions/.

¹² For instance, the leading producer of cluster munitions, the United States, claims: "Cluster munitions have demonstrated military utility. Their elimination from U.S. stockpiles would put the lives of its soldiers and those of its coalition partners at risk. Moreover, cluster munitions can often result in *much less collateral damage* (emphasis in original) than unitary weapons, such as a larger bomb or larger artillery shell would cause, if used for the same mission." Cluster Munitions. United States Department of State. Retrieved from http://www.state.gov/t/pm/wra/c25930.htm.

¹³ The Current US Cluster Munition Stockpile. *Human Rights Watch*. (2004). Retrieved from https://www.hrw.org/legacy/backgrounder/arms/cluster0705/2.htm; Human Rights Watch and Landmine Action, *Banning Cluster Munitions: Government Policy and Practice*. (Ottawa, Mines Action Canada: 2009): 1.

¹⁴ "Fatal Footprint: The Global Human Impact of Cluster Munitions," Handicap International, November 2006.

alternatives, there is growing consensus that their use should be prohibited, as designated in the 2008 Convention on Cluster Munitions (CCM).

The campaign to ban cluster munitions began as a small group of organizations that had previously worked on other humanitarian arms control issues, with a general call for the cessation of the use of cluster munitions. Riding the wave of the Campaign to Ban Landmines and other human rights campaigns of the 1990s, the effort began by seeking an amendment to the existing 1980 Convention on Certain Conventional Weapons (CCW) to regulate the weapons. Many states—including most of the Western democratic states examined in this dissertation—responded to civil society's call with ambivalence, heel-dragging and outright resistance to a legally binding instrument. As a result, the agreement that emerged from the CCW process in 2003, Protocol V to the CCW Protocol V to the CCW, failed to achieve even a partial ban on cluster munitions. The conference did, however, reveal the pro-ban 15 states. Several of these, particularly Norway, encouraged and helped facilitate the formation of the transnational Cluster Munitions Coalition. 16

As the issue campaign became more organized as a group from a loose collection of NGOs to the Cluster Munitions Coalition, they shifted their call away from voluntary moratoria toward an international ban. They developed naming and shaming scorecards in which they praised the governments that accepted the voluntary moratorium and

¹⁵ Most of these states only supported a partial ban on cluster munitions during this time, which would ban only the weapons with the highest failure rates.

¹⁶ Norway contributed to advocacy efforts related to the Convention on Cluster Munitions that included sponsorship support to the Third Meeting of States Parties, Cluster Munition Coalition, Handicap International, and Norwegian People's Aid. "Cluster Munition Monitor," Landmine and Cluster Munition Monitor, last updated September 3, 2015. http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

shamed states that continued to produce or use cluster munitions. These scorecards identified potential new champions, in addition to the original pro-ban states, as well as potential target governments for the campaign. They also worked with specific members of government, cultivating champions on the inside.¹⁷

Early participants in discussions of regulating cluster munitions included Austria, Belgium, Canada, Denmark, France, Ireland, Mexico, the Netherlands, New Zealand, Norway, Sweden, Switzerland, Peru, and Costa Rica¹⁸—none of which are territorially affected by cluster munitions, nor threatened by neighbors who own or use them. While some of these countries have a history of joining humanitarian arms control agreements and joining the Convention represented little commitment for some, other governments including Canada, the Netherlands, Sweden, and France, later distanced themselves from discussions they saw as moving toward a ban and sought to maintain their stockpiles and investment in the weapons.

As the issue campaign improved organization and clarified their goals, they also ballooned as a coalition, swelling from thirty to nearly three hundred non-governmental organizations worldwide. With a unified message, and the strength and resources of a large coalition, they used international discussions on cluster munitions as their focal point. Initially they did so in the context of the CCW, but when it became clear that the CCW would not lead to a meaningful cluster munitions provision, they worked with

¹⁷ This assertion is corroborated by multiple interviews with campaigners. Thomas Nash, interviewed by Taylor Benjamin-Britton, October 2013 and November 2014. Richard Moyes, interviewed by Taylor Benjamin-Britton, October 2013. Amy Little and Lucy Pinches, interviewed by Taylor Benjamin-Britton, November 2014; Roos Boer, interviewed by Taylor Benjamin-Britton, November 2014.

¹⁸ "Oslo Conference February 2007," Convention on Cluster Munitions, Retrieved from April 30, 2016, http://www.clusterconvention.org/documents-and-resources/documents-from-the-process-on-cluster-munitions/oslo-conference-february-2007/.

champion states to move the issue to a separate forum—a Convention on Cluster Munitions (CCM)—and focused on targeting key governments they thought would strengthen the new forum. They released reports and sought media coverage around these meetings, raising salience for the humanitarian effects of cluster munitions.

Campaign activity was drastically intensified around the CCM meetings, and major resources were devoted to raising issue salience, such as television ads, regular radio adverts, press conferences for major reports, and the organization of demonstrations. As this activity increased, they were able to activate more of the public in target states, drawing greater participation in letter and telephone campaigns, and in their public media stunts; making clear to governments that significant numbers of people were interested in the cluster munition issue and would be displeased should they fail to join the Convention. Simultaneously, they worked with their champions in government to keep cluster munitions on the agenda throughout treaty negotiations. Most NATO members, however, expressed serious reservations throughout the negotiation of the Convention on Cluster Munitions.

In the Netherlands, where that government preferred to self-regulate and use only fail-safe cluster munitions, civil society activists targeted the Dutch government with shaming reports, and then used high-salience activities such as demonstrations and a prime-time documentary on cluster munitions to garner public attention. As a result, tens of thousands of calls were generated, requesting that the Dutch government and Dutch national pension funds withdraw their involvement in cluster munitions. Intense debate in the Dutch Parliament ultimately turned to support a ban on cluster munitions, and a domestic ban on investment therein.

In the United Kingdom, the Cluster Munitions Coalition relocated to London and targeted the British government, which they believed would help sway other NATO states to a cluster munitions ban. While the campaign was successful in winning signature and ratification, fewer leverage tactics were applied or they were applied to institutions that were less directly accountable to the public, such as the Royal Bank of Scotland and Oxford University. RBS has since divested from cluster munitions, but the British government has violated the Convention on Cluster Munitions by allowing American cluster munitions on its base at Diego Garcia, and cluster munitions were recently seen, although removed after some outcry, at a government-sanctioned arms fair.

In France, widespread and early campaigning elicited hundreds of questions about cluster munitions in parliament in the years before the start of the Oslo Process, and annual Shoe Pyramid events made injuries from cluster bombs highly salient in France. Today, the French government is a champion on universalization of the Convention on Cluster Munitions.

In Poland, an outlier in its vicinity to Russia, the government experienced little domestic campaigning and low issue salience. While it participated in many of the activities surrounding the cluster munition ban, that government has to-date refused to accede or apply a comparable domestic policy, but the Polish have gradually self-imposed restrictions on where and which cluster munitions can be used, and has not used them since the entry into force of the ban.

As of this writing, the CCM has been signed by 119 states and ratified by 100.¹⁹ Most of those that have ratified are well on track or have already completed stockpile

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¹⁹ Convention Status. *Convention on Cluster Munitions*. Retrieved from http://www.clusterconvention.org/the-convention/convention-status/.

destruction, some ahead of schedule.²⁰ Among the States Parties are many of those participants that initially resisted the comprehensive ban. These observations imply that the behavioral change regarding cluster munitions may be a strategic response to some incentive, like pressure from domestic civil society groups, the media, and public opinion, and this will be examined deeply in the case study chapters of the dissertation.

Theory

This dissertation seeks to explain the variation in state responses to new humanitarian disarmament agreements. In the case of the ban on cluster munitions, while some states easily joined and complied, others attempted to regulate cluster bombs through the weak, state-centric forum of the 1980 Convention on Conventional Weapons or water down the draft text of the nascent 2008 Convention on Cluster Munitions. Some governments that joined were slow to comply or even caught in violation of the treaty. How to explain this significant variation among states, including among NATO democracies that initially resisted joining the CCM? I argue that states are most likely to pivot toward humanitarian disarmament when targeted domestically by civil society; and where civil society's campaign exhibits both *strength*, which facilitates greater breadth and depth of access to state and society through improved pool resources, and *leverage*, which increases the cost of status quo arms control policy.²¹

Strength is operationalized in the number of coalition organizations active on the issue inside the state, with the participation of gatekeeper organizations weighted more

²⁰ "Convention Text," Convention on Cluster Munitions, Retrieved from June 20, 2016, http://www.clusterconvention.org/the-convention/convention-text/.

²¹ The status quo is maintenance of the entire stockpile or continued cluster munition use, resistance to humanitarian framing of the issue, and/or denial of the harm caused by the weapon.

heavily,²² representing the pool of funding, access to or relationships with the media, and activist labor available to the campaign. Strength here is akin to maturity of the issue network, wherein a strong campaign has many actors, extensive pooled resources which to expend, and engages in regular exchange of information among its constituent member organizations in order to facilitate more successful outcomes.²³ While not a precise measurement, the strength of the campaign will be considered in terms of relative numbers: low strength campaigns have numbers of civil society organizations numbering one to five organizations, medium strength campaigns have six to fifteen civil society organizations, and strong campaigns have over fifteen participating organizations. Gatekeeper organizations are weighted at the approximate value of five smaller organizations by virtue of much larger member and resource bases, but only four gatekeepers are regularly present in the cluster munition issue network observed in this project: Human Rights Watch, Handicap International, the Cluster Munition Coalition steering organization, and the International Committee of the Red Cross (which while not technically an NGO has behaved as such within this issue network). Salience, the relative prominence of the issue on domestic agendas, ²⁴ will be measured by imperfect proxy by Google Trends reporting on the frequency of internet searches on the issue of cluster munitions within each country over time. Leverage is operationalized as the scale of costly actions the campaign imposes on the state, explicitly in the form of mass scale

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²² Gatekeeper organizations can set the agenda but also bring much greater resources to the table. Carpenter, C. R. (2007). Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks. *International Studies Quarterly* 51: 99-120.

²³ Schrad, M. (2010). *The Political Power of Bad Ideas*. New York: Oxford University Press. 197.

²⁴ Cortell, A. P. & Davis Jr., D. W. (2000). Understanding the Domestic Impact of International Norms: A Research Agenda. *International Studies Review* 2: 65-87.

petitions, demonstrations, or news attention as a result of civil society-produced policy reports. Low leverage is operationalized as organized activities with participation in the dozens to hundreds (of petition signatures, letters and phone calls, or parties to demonstrations); medium leverage as participation in the thousands; and high leverage as participation in the tens or hundreds of thousands.

In brief, civil society activism shapes the choices available to governments, guiding them toward preferred behavior through the application of strong domestic issue campaigns and affecting the use of political leverage. Thus the causal factors of campaign strength and leverage, I argue, explain variation in humanitarian disarmament outcomes across an otherwise similar set of democratic NATO member states.. If this hypothesis is correct, I expect to find evidence of government actors experiencing and vocalizing about civil society pressure, particularly in justifications of existing or new policy; if not, I would expect to see policy change absent evidence of civil society activity (or no policy change in the presence of campaigns.) The study will however also remain attentive throughout to the three main alternative explanations: loss of the utility of cluster munitions, convergent international preference for regulation of cluster munitions,²⁵ or persuasion of the idea that cluster munitions are unacceptable.

I understand *civil society* to be the collection of voluntary organizations,

²⁵ Given the international movement toward regulation, states would prefer to keep costs to participation within acceptable bounds, to spread the cost among other actors so as to avoid security or market disadvantage, and access to design of an agreement that matches existing policy more closely, reducing future costs for implementation. Jennifer L. Erickson, "Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms," *International Studies Perspectives* (2015); Koremenos, B., Lipson, C., and Snidal, D. (2003). *The Rational Design of International Institutions*. Cambridge: Cambridge University Press.

²⁶ Diffusion can happen through strategic calculation, role-playing, or suasion. Checkel 2005.

associations, and civic groups through which a populace can address social and political interests to government; on the international stage, civil society includes international organizations, international non-governmental organizations, and their national components that operate at the domestic level. Civil society organizations address the interests of their members through regular campaigning on key issues, in this case disarmament. Civil society groups seeking to affect policy change can do so by increasing campaign strength through a larger network of organizations active on the issue in a state, particularly if that group includes major, influential international nongovernmental organizations such as Amnesty International or Human Rights Watch, which have many more members and can bring greater resources to bear. I take campaign strength to be the number of organizations and amount of resources a campaign can bring to bear on an issue within a state. Campaigning can include but is not limited to activities such as membership newsletters, op-eds, petitions, lobbying, and the organizing of public demonstrations. In the absence of domestic civil society organizations or groups which may be able to take up a disarmament issue within the state and make the issue a political one,²⁷ domestic political interests which are likely to remain with the status quo or to maintain the flow of money²⁸ and contracts to domestic defense industries are likely to continue to dominate the domestic political agenda.

Strong campaigns have the broad reach and resources to generate the intervening variable of *issue salience*, or the frequency of the issue's appearance in the national

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²⁸ Schrad 2010: 197.

²⁷ Price, R. M. (1998). Reversing the Gun Sights: Transnational Civil Society Targets Landmines. International Organization 52: 613-644.

discourse, by focusing on lobbying officials and media work.²⁹ I take salience to be the relative prominence or importance of an issue within the general discourse. Salience increases with how frequently an issue is attended in the discourse, conditioned by the amount and duration of media coverage of the issue.³⁰ Major relevant events, media coverage, and (as noted above) civil society campaigns can increase the salience of an issue. Civil society actors can enjoy moral authority and credibility of information;³¹ as such, they are often called on as experts on the issue, and can use this position to advocate for particular policies relevant to the issue. Citizens have multiple and oftencompeting considerations about even prominent issues, but it is the one with the highest salience that most affects responses.³² Civil society can increase salience by speaking as experts in the media or staging events targeted at media coverage, but they can also increase salience within their membership by reaching out through newsletters, op-eds, and other campaign activities. The higher the level of salience, I will argue, the larger scale public participation can be activated for leverage activities such as petitions, phone calls, boycotts, and votes.

When a strong campaign has made the issue more salient or regularly discussed, it may be able to activate the public to participate in the application of *leverage*, or the use of political power to achieve a desired result, in this case voting or demonstrating to

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²⁹ Salience is not well defined in political science and often measured by proxy. For a discussion, see: Wliezen, C. (2005). On the Salience of Political Issues: The Problem with 'Most Important Problem.' *Electoral Studies* 24: 555-579.

³⁰ Edwards III, G. C., Mitchell, W., and Welch, R. (1995). Explaining Presidential Approval: The Significance of Issue Salience. *American Journal of Political Science* 39: 112.

³¹ Florini, A. (2000). *The Third Force: the Rise of Transnational Civil Society* (The Japan Center for International Exchange and the Carnegie Endowment for International Peace). ³² Zaller, J. & Feldman, S. (1992). A Simple Theory of the Survey Response. *American Journal of Political Science* 36: 585.

influence government perceptions about the viability of status quo arms policy. Civil society leverage activities range in their strength: low-strength activities may include letter writing and petitions to government; high strength activities may include large public demonstrations, voting based on issue position, and the boycotting of national banks or other institutions. These are not fixed categories, thus a very large petition could draw national attention, where a poorly organized boycott can draw very little. The main point is that these actions can and do affect how costly particular policies are for government actors, and have the potential to impact their decision-making.

Campaign strength and leverage work together to influence state behavior change. Through campaign strength, governments feel the presence of and pressure from the campaign; through leverage, governments feel pressure from their *populi*. For civil society activity to become costly enough to elicit a behavior change, according to the theory, a target government must feel both a strong campaign and effective application of leverage. However, as governments are beholden to their voting populace for support, effective application of leverage has the stronger bearing on government policy particularly for democratic governments. I expect to find that both campaign strength and leverage have some impact on behavioral outcomes, but that impact will be greatest where political leverage is most broadly and often applied.

In order to assess the relative efficacy of campaign strength and leverage vis-à-vis alternative explanations, I developed a continuum of state responses to new humanitarian agreements, along which state behavior can evolve from non-response to overwhelming support of new humanitarian disarmament issues. Again, governmental behavior regarding the new humanitarian disarmament agreement on cluster munitions, the 2008

Convention on Cluster Munitions, is the dependent variable to be explained in this study. But between the extremes of inaction and overwhelming support is a continuum of humanitarianism wherein states increasingly, incrementally recognize and protect new humanitarian considerations which is applicable to humanitarianism broadly in international behavior.

At one end of the spectrum is *silence*, wherein the state does not recognize the norm or the concerns of other states regarding the norm. The first shift is from silence to *neutralizing recognition*, in which the state recognizes others' recognition of the norm by appealing to higher authorities such as existing international law or the national defense to justify violation and defray the reputational cost of doing so. As states continue to experience pressure, they may give concessions where, willing to recognize the potential for humanitarian problems with the status quo behavior, states may voluntarily abandon part of the arsenal. However, at the stage of concessions, part of the status quo policy is maintained and defended, and modern safety features and the permission of existing international law, defined as the lack of international regulation on the issue, justify the remaining arsenals. When states enter into the negotiation of agreements regarding the issue, they engage in soft rule making. At this stage, states recognize consistent harm caused by the weapon and declare intent to support the development of new international law to address the issue. Soft rule making becomes hard rule making when states not only declare support for new agreements and participate in their design, but also obligate themselves to comply with official declarations to do so. Compliance itself involves the fulfillment of the obligation, which in the case of humanitarian disarmament goes beyond stockpile destruction to funding victim assistance programs and condemnation of norm violators both inside and outside the agreement. Finally, states exhibit *over-compliance* when they formulate national regulations stronger than required by the treaty and make major efforts toward universalization and assisting other states with compliance efforts. Overcompliant states not only condemn violation of the norm and the agreement which instantiates it, but they also condemn Parties that fail to recognize violations.

By envisioning the range of potential state responses as a continuum, which will be further developed in the Chapter 2, this project can more accurately assess and measure large and small-scale behavioral change, allowing for more precise pinpointing of the sources of international behavior change.

Research Design

This project utilizes a qualitative, most-similar systems research design, which examines the Netherlands, the United Kingdom, the Republic of France, and the Republic of Poland. These cases were selected from a pool of similar-size democracies that share membership in the European Union and NATO. Importantly, each of these governments also entered into this process attached to their cluster munitions, and disarming them represented high costs. This design allows for the testing of the effects of the civil society campaign, while holding regime type, power, and institutional socialization relatively constant. Focusing on the democratic world does raise questions about the generalizability of the theory to authoritarian regimes, which is a subject for future research. However, as states move along a democratization continuum, and campaign strength and leverage are able to increase, I expect that the theory would gain explanatory traction in transitioning states as well.

States under civil society pressure to disarm will evolve their policy, even if only to a weak extent, along the continuum of possible outcomes ranging from non-response to overcompliance with the norm and its treaty. As will be presented in the following chapters, each government received a different "treatment" of campaign strength and leverage, and each one exhibited some degree of behavior change. Poland experienced low strength and leverage, the Netherlands experienced low strength and high leverage, the United Kingdom experienced high strength and low leverage, and France experienced high strength and leverage. Accordingly, and as will be shown in later chapters, Poland's behavior changed little, the Netherlands and the UK exhibited middling behavioral change, and France ultimately evolved into a champion for the cluster bomb ban.

Figure 1: Categorizing the Cases

	Leverage Low	Leverage High
Campaign Weak	Poland	Netherlands
Campaign Strong	United Kingdom	France

In the Netherlands, for instance, the campaign used tactics such as newspaper ads and radio jingles, and a primetime documentary on the effects of cluster munitions to raise issue salience; and activated tens of thousands of Dutch citizens to call national pension funds and government officials about their involvement with cluster munitions. In the United Kingdom, anti-cluster munition billboards and reports shaming the British government for their use in Iraq helped activate thousands of citizens to call MPs or send letters. Both states are now compliant with the 2008 Convention on Cluster Munitions, and have destroyed their stockpiles ahead of schedule (and their commitment.) In France, early and widespread campaigning early on made the issue of cluster munitions critical in the 2007 presidential election, and by eliciting campaign promises from all presidential

candidates that year (after failing in prior years), the campaign encouraged the French government to promise to constrain itself before an international agreement was even in sight. Today, transnational advocates see France as a "friendly government" and a champion of the Convention on Cluster Munitions. Finally, in Poland, strong incentives to keep using cluster munitions in Eastern Europe and weak campaigning by civil society prompted that state to evolve is behavior only minimally. Poland has shifted from ignoring the norm to justification of its arsenal and unique constraints on cluster munition use that have prevented Poland from deploying the weapon for the last decade. Under variegated campaign pressures, those states that saw the largest and most well resourced campaigns domestically also saw the greatest shifts in their international disarmament policies. Thus, I argue that governments are not changing their policies because of changing calculations about the utility of cluster munitions nor changing preferences, but rather, because domestic pressure to do so outweighs the preference for keeping cluster munitions. Civil society groups in many States Parties have had to keep up domestic civil society pressure to ensure the timely destruction of stockpiles, and in the spirit of overcompliance, have worked widely to convince Parties to ban investment in producers of the weapons even though the Cluster Munition Convention does not require this.

In order to uncover the specific causal factors that contributed to outcomes in each case and to rule out alternative explanations, I process trace the sequence of events in each case. Process tracing alleviates concerns about the role of competing explanations and the independence of the cases from one another.³³ It is expected in this project that a particular sequence of events fomented by civil society campaigning will result in

³³ George, A. L. & Bennett, A. (2006). *Case Studies and Theory Development in the Social Sciences* (Cambridge: MIT Press): 33.

behavioral change along the humanitarian disarmament spectrum. In brief, as the process will be discussed in depth in Chapter 2, behavior change is the result of a call and response between civil society and government. Transnational civil society identifies a new issue³⁴ and initiates a call for change, to which governments respond or do not respond, identifying their positions on the issue. Based on the stances identified, the transnational campaign identifies likely candidates for persuasion, typically those that offer a response of neutralizing recognition or stronger on the humanitarian disarmament spectrum³⁵, and directs national campaigns to domestically target candidate governments. At the domestic level, campaigns target government with strength in the form of large allocations of campaign resources and leverage in the form of public political pressure. Governments will make incremental behavioral changes to relieve this pressure, moving along the disarmament spectrum, expecting greater behavioral evolution with higher levels of campaign strength and leverage. Behavioral changes are cemented, finally, with ongoing civil society watchdogging, alerting the public to any evidence of violation and rendering violation therefore continually costly.

To build evidence of this process, I relied on research collected from a variety of sources including televised news reports and print articles, relevant studies conducted by both government and non-governmental organizations, parliamentary archives, documentaries, and government archives. Supplementing these sources, I also conducted

³⁴ The author is agnostic about why and how issues are selected, which is beyond the scope of this project and a concern for future research.

³⁵ The process of identifying states by their position is ongoing, and thus states may identify and become candidates for persuasion at different times, and may be included at earlier or later stages as targets for national civil society campaigns.

participant observation of civil society campaign work both inside and outside negotiating fora, and interviews with campaigners.³⁶

To rule out competing hypotheses as drivers of behavior change, finally, I assess potential alternative explanations within each case. Over the course of the project, three main alternative explanations are considered: loss of cluster munition utility, convergent international opinion on how to address cluster munitions, or diffusion of a prohibitionary norm on cluster munitions.

First, states have outright stated that cluster munitions have had utility.³⁷ A potential explanation for the abandonment of cluster munitions might be that newer, more efficient, or cheaper weapons have rendered them obsolete. While there is the potential that some Cold War-era munitions still in state stockpiles at the initiation of the cluster munition ban campaign had in fact lost their utility, and accordingly were abandoned as concessions under civil society pressure as discussed in the case chapters, states will also be shown in all four cases to defend their newer cluster bombs with safety mechanisms, demonstrating a perceived utility for those models. Put simply, I will demonstrate, states have not abandoned cluster munitions because they are no longer useful. Cluster munitions can and do also provide utility to states by virtue of the value to states' national defense or share in the international defense market. Weapons, inhumane or otherwise, are abandoned when they are no longer materially useful, either for actual deployment or

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³⁶ The author has conducted about thirty interviews from the civil society sector over the course of the project, across the four cases around which the project centers—the Netherlands, the United Kingdom, France, and Poland. Interviews center on London as the Cluster Munition Coalition was located there for the duration of the project.

Working Paper on the Military Utility of Cluster Munitions. (2005, February 21). 10th 2005 Session of the CCW Group of Governmental Experts (GGE) on Explosive Remnants of War, CCW/GGE/X/WG.1/WP.1.

sale. Many of the most reticent states to the cluster munition ban process, such as the United Kingdom, the second-largest seller of cluster munitions after the United States in 2008, were major dealers in cluster munitions. Utility loss can, thus, also be considered in terms of declining weapons sales. However, as will be demonstrated in the cases, major sellers of munitions were still developing new models and attempting to define them out of the Convention during the Oslo Process.

Second, there is also some international convergence of preferences³⁸ on cluster munitions to which the project must be attentive. Given the international movement toward regulation, states would prefer to keep costs to participation within acceptable bounds, to spread the cost among other actors so as to avoid security or market disadvantage, and access to design of an agreement that matches existing policy more closely, reducing future costs for implementation.³⁹ Groups of governments have expressed their preferences for keeping costs down in the face of rising pressure to address cluster munitions by converging around at least two different policy "poles" during the negotiation of cluster munitions, dominated on one side by the military power of the United States and its preference for non-regulation and on the other side by moral power Norway and its preference for strong regulation. However, the development of competing fora to address the issue, populated by an only partially overlapping group of state participants and dominated by different configurations of differently influential states, demonstrates growing consensus, albeit around at least two poles of ideas. As will

³⁸ Moravcsik, A. Liberalism and International Relations Theory. No. 92-6. Retrieved from https://www.princeton.edu/~amoravcs/library/liberalism working.pdf.

³⁹ Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press); Petrova, M. H. (2007). Small States and New Norms of Warfare. MPW Working Paper No. 2007/28.

be shown in the cases, international consensus on cluster munitions remains fractured by the domination of the status quo forum for disarmament, the CCW, and a humanitarian disarmament alternative, the Convention on Cluster Munitions. The four governments examined in the project participated in negotiations in both before ultimately selecting one or the other and neither institution comes anywhere close to universal at the time of this writing.

Third, states may be increasingly subscribing to an international prohibitionary norm or taboo on cluster munitions. Under conditions of a broadly accepted cluster munition taboo, cluster munition users could expect awful or uncertain consequences or sanctions for violation of the taboo. 40 That is, states using cluster munitions might face castigation or even punishment in the form of sanctions. As will be shown in the case chapters of this project, the states facing shaming and sanctions about cluster munitions largely feel the watchful eye of civil society and the shaming of civil society reports and scorecards rather than shame from other states. However as the Convention on Cluster Munitions becomes increasingly established, sanctions such as peer shaming, at least among Parties to the Convention, may form the basis for future taboo-like sanctions for violation. It is the position of this dissertation that while a taboo on cluster munitions has been socially constructed, and has achieved a level of broad acceptance at which Finnemore and Sikkink (1998) would expect for the norm to "tip" to the international community, nearly half of all governments remain outside the Convention on Cluster Munitions, including both producers and possessors, past victims of cluster munitions use, and states with no historical involvement with cluster munitions whatsoever. This

⁴⁰ Tannenwald 2005: 9.

dissertation posits that immaturity of the cluster munition taboo stems in part from its newness, as the Convention on Cluster Munitions has only been in force for six years as of this writing. The relative weakness of the taboo and the agreement which instantiates it to constrain without monitoring by the NGO community does not detract from the usefulness of the norm as a tool for cluster munitions campaigners seeking to shape state policy and military practice. Persuasion or pressure to participate in the legalization of new rules for cluster munitions, in fact, may be more successful when the norm still in the process of becoming consolidated, allowing states to (try to) keep the definition of appropriate behavior within bounds they determine to be acceptable but also drawing in the participation of actors that may have otherwise acted as spoilers to the ban process.

It is to these three factors that the case analysis will be attentive in the tracing of the shift to humanitarian disarmament.

Plan of the Dissertation

In the preceding pages, what has hopefully been illuminated is the puzzle of humanitarian disarmament behavior within the context of arms control and more broadly the modern conduct of warfare. Historically, states have prioritized their own interests in general in

⁴¹ Finnemore, M. & Sikkink, K. (1998). "International Norm Dynamics and Political Change," International Organization 52: 887-917.

⁴² Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 73.

⁴³ Garcia, D. (2006). Small Arms and Security: New Emerging International Norms, (New York: Routledge): 7.

⁴⁴ Petrova, M. H. (2016). Rhetorical Entrapment and Normative Enticement: How the United Kingdom Turned From Spoiler Into Champion of the Cluster Munition Ban. International Studies Quarterly: 6; Erickson, J. L. (2015). Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms. International Studies Perspectives: 13.

the formulation of their international policy, but many are currently shifting away from this focus toward the prioritization of human rights provision and protections across different issue areas. In explicating this shift, national interest remains an important driver of (status quo) policies for the state, but it is also critical for scholars to examine the potential sources of humanitarian incentives in order to fully explicate outcomes. For those interested in humanitarian disarmament, the most interesting question is why states that once opposed giving up their weapons have shifted their positions completely and abandoned them, That is the question motiving this dissertation. As argued above, the theory driving this project is that it is strong humanitarian campaigns that can raise domestic issue salience and turn out public participation in leverage actions that make status quo policies too costly for governments to maintain, and thus guide states toward more humanitarian policy choices along a continuum of potential responses.

While ostensibly a study of arms control behavior, this project has important broader implications and contributes to the discipline in three ways. It introduces humanitarian disarmament as a new class of humanitarian agreements in need of study that stand in opposition to the traditionally state-centric field of arms control. It advances a new theory of international behavior change that revisits the role of domestic political pressure as driver of change, improving our understanding of how transnational civil society approaches and is approached by the democratic world where existing work has focused more on behavior change within autocratic regimes. Finally, it situates this theorized process as a new and understudied path to legalization and internalization of norms to which future scholars should be attentive. This is not only important to our understanding of how international policy formation works, but also how activism can be

most effective shaping policy outcomes, thus driving the desirable forward progression of societies toward broader and deeper protections for rights not just in the international security arena, but in all arenas. That is, this project has implications not just for future students of international relations, but also for the civil society activists who wish to effect humanitarian change.

The plan for the dissertation is as follows. In Chapter 2, I will explicate the theory and its application in much greater detail, against the backdrop of the history of the cluster munition taboo and its ban. Through applying the theory to this real world case in Chapters 3 through 6, it will become clear that competing alternative hypotheses do little to explain the humanitarian disarmament outcomes. Chapter 3 explores a case of weak campaign but high leverage in the relatively small Dutch campaign, which was facilitated by only a handful of non-governmental organizations. Through a series of targeted highsalience campaign actions, Dutch activists successfully sparked mass mobilization over cluster munitions and were able to affect strong leverage over their government. Chapter 4 examines a case of strong campaign but low leverage in the United Kingdom, wherein dozens of organizations contributed to the campaign but were unable activate petitions or demonstrations on the scale seen in the Netherlands and France and thus resorted to directly targeting politicians later in the campaign. Between Chapters 3 and 4, the relative importance of campaign strength and leverage in relation to one another is also clarified; both causal variables can shift state behavior, but leverage emerges as having the stronger impact on disarmament outcomes. In Chapter 5, France is treated to both a strong campaign backed by Handicap International (a transnational actor, but itself a French NGO) and Amnesty International through major petitions and public demonstrations shifted the French position more rapidly and completely toward disarmament than in any other case. France offers the clearest case of a humanitarian shift. In Chapter 6, finally, I explore a case of weak campaign and low leverage in Poland, wherein the campaign was tiny and relied on weak international actions to influence that government. While Poland did not shift to a fully humanitarian disarmament stance, it moved a small amount along the continuum of responses to recognize and defend itself against civil society's prescriptions and ultimately imposed a national moratorium. Lastly, in the concluding chapter, I distill the findings of the project and discuss its implications for current and future research. It is to the theory that the project now turns.

CHAPTER 2

THE THEORETICAL FOUNDATIONS OF HUMANITARIAN DISARMAMENT

States have been increasingly banning the most egregious instruments of war since the turn of the 20th century, but from the 1990s forward a new model of arms control has emerged, that of humanitarian disarmament. Under humanitarian disarmament as presented in Chapter 1, the sanctity of human life is considered prior to the national interests of states in the design of new arms control regimes. Powerful arms-exporting and arms-using governments that previously behaved and designed their international agreements self-interestedly have increasingly shifted toward the design and adoption of humanitarian disarmament agreements, often at substantial cost to themselves. The puzzle around which this project centers is not why low-cost behavior change occurs occurs — as, for example when states agree to ban weapons which they neither produce nor possess — but rather why certain governments accept high-cost commitments to abandon large arsenals, moving from away state security-centered behavior and toward humanitarian disarmament. As will be developed in this chapter, the existing literature does not fully explain this surprising shift and new theory is needed.

In this dissertation, I argue that where states exhibit behavioral change on cluster munitions, a new humanitarian disarmament issue, transnational civil society groups have been hard at work campaigning inside that state. By increasing the salience of the issue through tactics designed to attract media attention and calling upon the public to participate in leverage-generating activities, such as mass letter-writing campaigns and

⁴⁵ Arguably finding its beginnings with the 1987 Convention on Conventional Weapons and the 1993 Chemical Weapons Convention, the first true humanitarian disarmament agreement is the 1997 Mine Ban Treaty.

demonstrations, campaigners have pressured even powerful governments to change their behavior on cluster munitions. Contending that this behavior change may be strategically driven does not imply that norms and normative persuasion do not matter. In this process, norms can be tools that transnational advocates can use to persuade governments. While strategically calculated behavioral change on its own does not constitute socialization into new norms, new behavior can also, over time, become internalized and unthinking. Thus, I argue that even while resisting new humanitarian disarmament norms, states shifting incrementally toward humanitarian disarmament ultimately contribute to strengthening these norms. Responses to new international humanitarian regimes are, rather than a dichotomous choice, a continuum of potential responses. By overlaying national responses onto the continuum of potential outcomes, as will be done in Chapters 3 through 6, it will also be possible to see how *much* these states' behavior evolved.

In this chapter, I lay out the theoretical framework for understanding the shift to humanitarian disarmament and the foundations for a closer examination of humanitarian behavior change. First, I offer a discussion of the literature on arms control, international regime development, norms and human rights, locating a gap in our understanding that might be filled by new theory in the area of humanitarian disarmament. Second, I develop in detail the theoretical framework for the project, including the process by which civil

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⁴⁶ Checkel, J. T. (2005). International Institutions and Socialization in Europe: Introduction and Framework. *International Organization* 59: 804.

⁴⁷ Potential responses to new international agreements will be discussed in greater detail later in the chapter, but range from total non-response, neutralizing recognition of the norm (denial or justification of the behavior): soft concessions like supportive statements toward treaty regimes, hard concessions like abandoning part of the arsenal or participating in treaty design, ratification and compliance with agreements, and finally overcompliance or behavior beyond the letter of but in the spirit of international agreements.

society identifies and pressures states to make humanitarian behavioral change, the causal factors at work within the theorized process, and the spectrum of responses along which states under humanitarian disarmament pressures can shift. Finally, the scope conditions for the framework and the alternative explanations to which the project is attentive are presented before transitioning to the evidence in the case study chapters.

Conventional Explanations for Disarmament

There has much relevant work in recent years that could be applied to explaining aspects of the humanitarian disarmament outcome observed in the case of cluster munitions, from the areas of arms control, human rights, and transnational activism. These arguments go beyond rationalist-constructivist divisions to include both logics of consequences and logics of appropriateness toward more complete explanations of the costly and often unexpected decision to ban and destroy "still serviceable weapons" of war. ⁴⁸ Cluster munitions, while often referred to as *de facto* antipersonnel landmines due to their high unexploded ordnance rates, are still used today and are in fact much costlier to produce, designating them more profitable and higher utility weapons than landmines, ⁴⁹ especially among states who own in part or in whole the companies that produce them. This challenges the realist notion that only useless weapons will be subject to bans. ⁵⁰ At the same time, the absence of major producers and dozens of non-producers of cluster bombs from the 2008 Convention on Cluster Munitions renders difficult the characterization of

⁴⁸ Garcia, D. (2006). Small Arms and Security: New Emerging International Norms, (New York: Routledge): 73.

⁴⁹ Garcia, D. (2011). Disarmament Diplomacy and Human Security: Regimes, Norms, and Moral Progress in International Relations. (New York: Routledge): 164.

⁵⁰ Petrova, M. H. (2010). Banning Obsolete Weapons or Reshaping Perceptions of Military Utility: Discursive Dynamics in Weapons Prohibitions. IBEI Working Paper No. 2010/31: 6. Retrieved from http://ssrn.com/abstract=1710479.

restraint on the basis of a mature taboo or prohibitionary norm on cluster munitions.⁵¹ This section will examine the existent research regarding, in particular, conventional weapons prohibitions, discussing the relative merits and shortcomings of these arguments. Three alternative explanations for disarmament will be highlighted here—the loss of cluster munition utility, the convergence of preferences for a cluster munition ban, and normative persuasion of the appropriateness of banning cluster munitions. Finally, the discussion will turn to locating the argument of the dissertation within the context of this literature.

Given the mixed response to humanitarian disarmament of cluster munitions, there a number of potentially applicable theoretical frameworks that might be applied. It is possible, first, that the abandonment of cluster munitions could be explained by the realist argument of declining weapon utility, or the relatively increasing security value of alternative weapons. The *loss of utility* argument for disarmament is based in the material interests of states: weapons, inhumane or otherwise, are abandoned when they are no longer materially useful, either for actual deployment or sale. A process of desecuritization may occur, wherein actors seek to diminish the perceived security provided by the weapons, making room for alternatives. States may abandon cluster munitions if they bear a low cost of doing so because the weapon is already being or has been phased out. As they are phased out, the creation or purchase of new precision

⁵¹ Cooper, N. (2011). Humanitarian Arms Control and Processes of Securitization: Moving Weapons Along the Security Continuum. *Contemporary Security Policy* 32:176. ⁵² Cooper 2011: 140.

May's dissertation expressly argues that chemical weapons have lost their utility. May, M. (2003). *The Proliferation of Chemical Weapons and the Military Utility of Chemical Warfare: A Case Study of the Iran-Iraq War*. Unpublished PhD Thesis, Syracuse University.

munitions can be legitimated vis-à-vis older, more imprecise weapons.⁵⁴ In the case of cluster bombs, imprecise airdropped munitions fell to the wayside in favor of precision, rocket-mounted munitions with self-destruct mechanisms, as exemplified in the defense by states of their "modern" cluster munitions through the Oslo Process for a ban on cluster munitions.⁵⁵ This, however, does not explain why even weapons with utility and safety features, such as the popular American-made M26,⁵⁶ have been nonetheless discarded from the active arsenals of states. While prohibition might present a low cost particularly for states not facing security dilemmas or a non-cost of dismantling an arsenal that was never possessed, as Price (1998) notes, the utility loss argument also does not account for the regular reference by disarming states to non-realist phenomena as justification for prohibition⁵⁷ such as the humanitarian cost of cluster munitions use.⁵⁸

Alternatively, in an argument derived from institutionalist approaches, cooperation on humanitarian disarmament of cluster munitions might be explained by states' *converging interests*, wherein the (internally derived) interests of states converge around a common focal point.⁵⁹ New regimes result from bargaining and agreement

⁵⁴ Cooper, N. (2011). Humanitarian Arms Control and Processes of Securitization: Moving Weapons Along the Security Continuum. *Contemporary Security Policy* 32: 139-40.

⁵⁵ Cluster Munitions. (2012) Ministry of Foreign Affairs, Republic of Poland. Retrieved from http://www.msz.gov.pl/en/foreign_policy/security_policy/conventional disarmament/cluster munitions/.

⁵⁶ Cluster Munition Questions and Answers: The M26 Rocket. (2006, August 18). Retrived from https://www.hrw.org/news/2006/08/18/cluster-munition-questions-and-answers-m26-rocket.

⁵⁷ Price, R. M. (1998). Reversing the Gun Sights: Transnational Civil Society Targets Landmines. International Organization 52: 614.

⁵⁸ Petrova 2010: 2.

⁵⁹ Goldstein, J. & Keohane, R. (1993). *Ideas and Foreign Policy: Beliefs, Institutions and Political Change* (Ithaca, NY: Cornell University Press): 177.

among states and (other actors) to solve specific problems, 60 including the problem of humanitarian harm from particular conventional weapons of war like cluster munitions. Under a rational design perspective, states either modify existing institutions or design new owns with a view to furthering their individual and collective goals, 61 for instance monitoring, regulation, and enforcement of the disarmament behavior of others such that future participants in the institution can avoid security or market disadvantages. In arms control negotiations, each government seeks to further its national interest—in this case economic and security costs for reducing the existing arsenal—by analyzing its preferences for maintaining or abandoning particular weapons, and then negotiates to advance their particular position.⁶² Generally, disarmament agreements designed in state interest should benefit participants by limiting their scope such that the costs to the state, for instance loss of domestic defense industry market share or requirements for members in the areas of stockpile destruction or victim assistance, are minimized in the bargaining around the draft text. It is also possible that domestic interests can raise the political costs to the state of maintaining or using cluster munitions. ⁶³ In debating future disarmament rules, disarming states may come to an argued consensus that the mutual abandonment of "dumb" munitions represents an acceptable cost. Under this perspective, the rules that

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⁶⁰ Koremenos, B., Lipson, C., and Snidal, D. (2003). *The Rational Design of International Institutions*. (Cambridge: Cambridge University Press): 2.

⁶¹ Koremenos, et. al. 2003: 6.

⁶² Abbott, K. (1993). "'Trust but verify': The Production of Information in Arms Control Treaties and Other International Agreements," *Cornell International Law Journal* 26: 32. ⁶³ Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 86.

states create are expected to be in their interests.⁶⁴ As Simmons (2009) argues, states join new arms control agreements they deem to have an acceptable or tolerable cost, particularly if they reflect past practice of disarmament.⁶⁵ This may also reflect the process posited by von Stein (2005) where treaties screen states, collecting support from states that were already compliant with the new rules.⁶⁶ Agreements that more closely reflect a state's ideals or current practice will also be easier to sell to domestic coalitions for ratification, similarly reflecting a low cost of participation therein.⁶⁷

States constrained by different groups domestically and internationally might also design and join new disarmament agreements to satisfy and relieve pressure from both sets of interests.⁶⁸ Domestic disarmament groups clamor for their preferred policy of a weapons prohibition, creating space for politicians to consolidate power in coalition with such groups domestically (and internationally). For instance, when questioned in 2005 about why it had not done more to pursue a ban process by civil society groups, Norwegian policy-makers made clear that they would need the support of a more active disarmament movement in order to take bolder steps internationally.⁶⁹ Internationally, governments seek to maximize their ability to satisfy this domestic pressure by making

⁶⁴ Koremenos, B., Lipson, C., and Snidal, D. (2003). *The Rational Design of International Institutions*. (Cambridge: Cambridge University Press): 8.

⁶⁵ Simmons, B. A. (2009). *Mobilizing for Human Rights: International Law and Domestic Politics*. Cambridge: Cambridge University Press, 65.

⁶⁶ Von Stein, J. (2005). Do Treaties Constrain or Screen? Selection Bias and Treaty Compliance. *American Political Science Review* 99: 611-622.

⁶⁷ Simmons 2009: 67.

⁶⁸ Putnam, R. (1988). Diplomacy and Domestic Politics: the Logic of Two-Level Games. *International Organization* 42: 427-460.

⁶⁹ Petrova, M. H. (2007). Small States and New Norms of Warfare. MPW Working Paper No. 2007/28: 25.

international agreements that meet public demand ⁷⁰ for humanitarian disarmament without unnecessarily constraining themselves under high standards for behavior change, reflected in Norway's push for a separate Oslo Process to ban *cluster munitions that cause humanitarian harm*. ⁷¹ The two-level perspective is useful as a starting point for thinking about the variegated sources of pressure for new disarmament behavior, but also assumes that government is interested in consolidating support from disarmament groups in the first place and that domestic groups already have an interest or aversion to the policy. Domestic groups must clamor for the new policy in order to draw the attention of lawmakers enough that they feel pressure to initiate policy proposals. ⁷² It cannot explain cases wherein most actors begin with neither information about nor interest in disarming their cluster munitions. As observed by Erickson (2015), domestic constituencies are typically uninterested in conventional arms transfers, ⁷³ and as this dissertation posits, conventional arms use, without activity that garners media attention. ⁷⁴

The position of bargaining for common interest is also weakened in the case of cluster munitions by anti-regulatory pressures from powerful, arms-producing states which has fractured the dialogue on a cluster bomb ban while pushing allies to reject any new agreements. During the negotiation of the cluster munition regime, as many states

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⁷⁴ Petrova 2007: 3.

⁷⁰ Putnam, R. (1988). Diplomacy and Domestic Politics: the Logic of Two-Level Games. *International Organization* 42: 434.

⁷¹ Emphasis mine. This formulation left room for the negotiation around the definition of cluster munition and a threshold for humanitarian harm which would continue to be negotiated throughout the Oslo Process for a cluster bomb ban. "Declaration," Oslo Conference on Cluster Munitions, Oslo, Norway, February 22-23, 2007.

⁷² Petrova, M. H. (2007). Small States and New Norms of Warfare. MPW Working Paper No. 2007/28: 14.

⁷³ Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press): 31.

advocated *for* the new treaty as those who *resisted* it, leading to two distinct "poles" around which interests converged, the pro-ban states and the major cluster munition producers. Any regulatory outcome would also be costly for cluster munition producers, which may or may not be mitigated by the moral or reputational benefit of joining the agreement, which flies in the face of arguments that states will support low- or no-cost disarmament agreements (von Stein 2005, Simmons 2009). International interests in favor of a cluster munition ban have been fractured rather than convergent as shown by mixed response to United Nations and European Union calls for national cluster munition moratoria beginning in 2004, and the development of competing institutions in Protocols to the 1980 Convention on Conventional Weapons and the 2008 Convention on Cluster Munitions.

A third possibility that could account for the humanitarian disarmament of cluster munitions is normative *suasion*, wherein actors are persuaded of the appropriateness (or not) of owning and using particular weapons on moral grounds.⁷⁵ Under this perspective, the interests and preferences of states are open for redefinition and other actors can influence this content through persuasion.⁷⁶ This line of argument suggests, first, the presence of a norm regarding cluster munitions, or a standard of behavior appropriate for actors with a given identity,⁷⁷ in this case states. Second, actors can be persuaded (non-coercively) to accept such a norm.⁷⁸

⁷⁵ Checkel, J. T. (2005). International Institutions and Socialization in Europe: Introduction and Framework. *International Organization* 59: 801-826.

⁷⁶ Checkel 2005: 807.

⁷⁷ Finnemore, M. (1996). *National Interests in International Society*. (Ithaca: Cornell University Press): 24.

⁷⁸ Johnston, A. I. (2001). Treating International Institutions as Social Environments. *International Studies Quarterly* 45: 489.

Finnemore and Sikkink (1998) argue that the life cycle of new norms begins with the spread of a new idea about appropriate behavior by norm entrepreneurs;⁷⁹ persuasion may be particularly successful regarding weapons norms when still in the process of becoming consolidated,⁸⁰ allowing states to keep the definition of appropriate behavior within bounds they determine to be acceptable.⁸¹ Persuasion of states is also likelier where the nascent norm resonates with already accepted norms, as with democratic states and norms regarding human rights and human security, to which end the new standard can be framed as fulfilling existing identity as "liberal" and "democratic." New disarmament norms fall into the category of human rights norms where justification of the practice is framed as humanitarian in nature.⁸³ As in the case of antipersonnel landmines,⁸⁴ the norm regarding cluster munitions use was first framed in terms of a need to strike the right balance between legitimate military objectives of the state and the humanitarian concerns caused by the behavior.⁸⁵ This is strengthened by the adjacency of

⁷⁹ Finnemore, M. & Sikkink, K. (1998). "International Norm Dynamics and Political Change," International Organization 52: 895.

⁸⁰ Garcia, D. (2006). Small Arms and Security: New Emerging International Norms, (New York: Routledge): 7.

⁸¹ Petrova, M. H. (2016). Rhetorical Entrapment and Normative Enticement: How the United Kingdom Turned From Spoiler Into Champion of the Cluster Munition Ban. International Studies Quarterly: 6; Erickson, J. L. (2015). Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms. *International Studies Perspectives*: 13.

⁸² Risse, T. & Sikkink, K. The Socialization of Human Rights Norms into Domestic Practices: Introduction. In Risse, T., Ropp, S. C., & Sikkink, K. (Eds.). (1999). *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press.

⁸³ Price, R. M. (1998). Reversing the Gun Sights: Transnational Civil Society Targets Landmines. International Organization 52: 632.

⁸⁴ Price 1998: 682.

⁸⁵ Rappert, B. (2005). Out of Balance: The UK Government's Efforts to Understand Cluster Munitions and International Humanitarian Law. *Landmine Action UK*. Retrieved from https://ore.exeter.ac.uk/repository/handle/10036/35217.

the new rule to existing understanding regarding the humanitarian concerns of antipersonnel landmines⁸⁶ and the grafting of moral opprobrium from other delegitimized practices of warfare rooted in the principle of discrimination between military and civilian targets, and the prevention of "unnecessary suffering" for the latter.⁸⁷ Cluster munitions have been identified as problematic by design;⁸⁸ that is, by the nature of imprecision targeting systems and the high rate of unexploded ordnance, cluster munitions cannot by design distinguish between targets, and cause an overwhelming proportion of their harm to civilians.⁸⁹

Suasion can go so far as to identify a behavior as subject to a taboo, a norm which if violated by a member of the community would elicit awful or uncertain consequences or sanctions. ⁹⁰ Indeed, the case can be made that a taboo on cluster munitions has been constructed. ⁹¹ While a decade ago many advanced, Western democracies with otherwise strong human rights predilections were still developing and using cluster munitions, a majority of states now consider cluster munitions unacceptable, evidenced by 100 Parties to the 2008 Convention on Cluster Munitions that are "determined to put an end for all

⁸⁶ Garcia, D. (2006). Small Arms and Security: New Emerging International Norms, (New York: Routledge): 22.

⁸⁷ Price 1998, 628.

⁸⁸ For instance, "New Zealand regards the very existence of anti-personnel landmines and cluster munitions as inherently unacceptable." Banning Weapons. (2016, May 18). Ministry of Foreign Affairs and Trade, New Zealand. Retrieved from https://www.mfat.govt.nz/en/peace-rights-and-security/disarmament/chemical/banning-weapons/.

⁸⁹ Garcia, D. (2011). Disarmament Diplomacy and Human Security: Regimes, Norms, and Moral Progress in International Relations. (New York: Routledge): 153.

⁹⁰ Price 1998; Tannenwald 1999.

⁹¹ Garcia, D. (2011). Disarmament Diplomacy and Human Security: Regimes, Norms, and Moral Progress in International Relations. (New York: Routledge): 160.

time to the suffering and casualties caused by cluster munitions." The post-conflict detonation of cluster munitions in civilian hands constitutes one awful consequence of cluster munitions, and Parties to the agreement which instantiates the prohibitionary norm on cluster munitions can expect real sanctions and shaming as a consequence of violation. The uneven acceptance of the taboo as stated in the Convention on Cluster Munitions and the questionable compliance of some States Parties to the agreement calls into question the maturity of the cluster munition taboo and its ability to constrain states.

The immaturity of the cluster munition taboo stems in part from the newness of the norm; as the Convention on Cluster Munitions has only been in force for six years as of this writing, it may still be early in the taboo's life cycle. At the same time, the nascent taboo can still be a powerful tool for actors wishing to modify state policy and military practice. Civil society organizations, operating within networks of like-minded actors, are particularly well poised to strategically influence the terms of disarmament though issue campaigning. On humanitarian issues, relevant civil society and non-governmental organizations (NGOs) have particular claims to expertise and authority that enable more effective moral persuasion.

Transnational activist networks (TANs) are networks of such actors, operating both domestically and transnationally, distinguishable by the centrality of the principled

⁹² Convention on Cluster Munitions. (2008, May 30). 26 UNTC 6. Entered into force August 1, 2010. Retrieved from http://www.clusterconvention.org/.

⁹³ Finnemore, M. & Sikkink, K. (1998). "International Norm Dynamics and Political Change," International Organization 52: 887-917.

⁹⁴ Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 73.

⁹⁵ Price, R. M. (1998). Reversing the Gun Sights: Transnational Civil Society Targets Landmines. International Organization 52: 638.

ideas or norms that motivate them. 96 TANs are believed to have expertise in their issue area, moral authority to speak to the issue, and a claim to political legitimacy through the kinds of actions they take to foment behavior change. 97 Through the mobilization of information about the humanitarian harm caused by particular weapons, TANs have the potential to construct urgency around disarmament issues and open up space to persuade, pressure, or otherwise gain leverage over state policy. 98 The network can function as a public good that provides benefits for those organizations that utilize the network, improving advocacy output. 99 A mature TAN has many actors, extensive pooled resources which to expend on a campaign, and engages in regular exchange of information among its members in order to facilitate more successful issue campaigning. 100 The humanitarian disarmament network that generates issue salience or prominence for cluster munitions 101 is a mature TAN, which derives many actors, connections, tactics, and resources from the established International Campaign to Ban Landmines, and has since formally merged with the Cluster Munition Campaign to become the ICBL-CMC. Within this network, particularly influential organizations such as Human Rights Watch and Handicap International can strengthen the disarmament campaign by flexing their agenda-setting power to bring the issue to the fore of

⁹⁶ Keck, M. & Sikkink, K. (1998). Activists Beyond Borders: Advocacy Networks in International Politics. (Ithaca: Cornell University Press): 1.

⁹⁷ Price, R. M. (2003). Transnational Civil Society and Advocacy in World Politics. *World Politics* 55: 587.

⁹⁸ Keck and Sikkink 1998: 2.

⁹⁹ Murdie, A. (2013). The Ties that Bind: A Network Analysis of Human Rights International Non-governmental Organizations. *British Journal of Political Science* 44: 1-27.

¹⁰⁰ Schrad 2010: 197.

¹⁰¹ Cortell, A. P. & Davis Jr., D. W. (2000). Understanding the Domestic Impact of International Norms: A Research Agenda. *International Studies Review* 2: 65-87.

international debate.¹⁰² Such organizations may have power not only to set the agenda, but also effectively to veto competing agendas, such as the move to weakly constrain cluster munitions in a Protocol to the Convention on Conventional Weapons.¹⁰³ Large membership human rights organizations also have a particular advantage in influencing the domestic politics of democracies through their own member base, greater media recognition, and lobbying capital in legislatures.¹⁰⁴

The humanitarian disarmament network can influence state behavior in a number of ways. Through information politics, the campaign can quickly and credibly generate politically useful information to other parts of the network, particularly in windows of opportunity to stir media attention such as instances of civilian casualties from cluster munitions. Through symbolic politics, humanitarian disarmament campaigns can take actions around broadly or globally meaningful events; borrowing from the antipersonnel mine campaign, cluster munition campaigners for instance have engaged in the annual Shoe Pyramid demonstrations, allowing domestic publics to identify the adjacency of the problems with cluster munitions with the harm already understood to be caused by landmines. Through leverage politics, humanitarian disarmament campaigns can link the

¹⁰² Carpenter, C. R. (2007). Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks. *International Studies Quarterly* 51: 99-120.

Wendy Wong (2012) Internal Affairs: How the Structure of Non-governmental Organizations Transforms Human Rights. (Ithaca: Cornell University Press).

¹⁰⁴ Keck, M. & Sikkink, K. (1998). Activists Beyond Borders: Advocacy Networks in International Politics. (Ithaca: Cornell University Press): 23.

¹⁰⁵ Keck & Sikkink 1998: 16.

¹⁰⁶ Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 73.

abandonment of cluster munitions (or not) to money, goods, prestige, or reputation. ¹⁰⁷ Material incentives in particular can motivate states to adopt new norms or prescribed behavior not in their interest due to higher costs vis-à-vis the status quo. ¹⁰⁸ In order to elicit humanitarian disarmament behavior, TANs could affect a variety of pressures on states, most familiarly through "naming and shaming." ¹⁰⁹ By highlighting harmful behaviors alongside model ones, ¹¹⁰ advocacy networks can draw attention to undesirable behavior, as the CMC did through the production of Hall of Fame and Hall of Shame scorecards on cluster bomb policy. Finally, via accountability politics, the humanitarian disarmament TAN can hold domestic actors to their stated principles and past policies. ¹¹¹ Particularly after domestic politicians have made some tactical concession to alleviate these pressure politics, they can become "rhetorically entrapped" by the regular highlighting of future inconsistencies with that initial recognition of harm that justified earlier concessions such as abandoning "dumb" cluster munitions. ¹¹²

The characteristics of the TAN's target partially determine its impact on state behavior change, specifically the compatibility of the domestic culture with the new

¹⁰⁷ Keck, M. & Sikkink, K. (1998). Activists Beyond Borders: Advocacy Networks in International Politics. (Ithaca: Cornell University Press): 23.

¹⁰⁸ Erickson, J. L. (2015). Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms. *International Studies Perspectives*: 4.

¹⁰⁹ Finnemore, M. & Sikkink, K. (1998). "International Norm Dynamics and Political Change," International Organization 52: 887-917.

¹¹⁰ Erickson, J. L. (2014). Saving Face, Looking Good, and Building International Reputation in East and West. In Jentleson, B. and Pauly, L. (Eds.). *Power in a Complex Global System*. (New York: Routledge): 190.

¹¹¹ Keck & Sikkink 1998: 16; Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 77.

¹¹² Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): pp. 89-90.

disarmament idea and the political opportunity structure through which the TAN can access domestic elites. 113 Risse-Kappen (1995) argues that domestic political structure determines the available channels of access for norm entrepreneurs to reach and form coalitions among political elites. 114 The international community may be moving toward an ethics of care and an impulse to intervene for the greater good, 115 which can be leveraged to draw attention to the humanitarian impact of practices of war and weapons use. Democracies especially are expected to confirm to principles of human rights protection, and are particularly vulnerable to media and public attention to gaps between professed policies and actual, irresponsible practice. 116 Those governments may join new agreements to improve or protect reputation, if they perceive theirs or the government's legitimacy to be vulnerable as a result of external condemnation. 117 Domestic elites care about their reputation, which can be damaged by scandal around failure to fulfill democratic practice in the conduct of war; while arms control failures rarely swing elections, they can erode political legitimacy and social prestige. 118 Facing media attention on humanitarian disarmament failures, domestic elites may swing to more "responsible" policy to repair reputation, as opprobrium from attention to undesirable

¹¹³ Price 2003, 592.

Risse-Kappen, T. (1995). Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures, and International Institutions. (Cambridge: Cambridge University Press): 3, 25; Kaufmann, C. D. and Pape, R. A. (2003). Explaining Costly International Moral Action: Britain's Sixty-year Campaign Against the Atlantic Slave Trade. International Organization 53: 631-668.

¹¹⁵ Barnett, M. (2012). International Paternalism and Humanitarian Governance. *Global Constitutionalism* 1: 485-521.

¹¹⁶ Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press): pp. 23-24.

¹¹⁷ Burgerman, S. (2001) *Moral Victories: How Activists Provoke Multilateral Action.* (Ithaca: Cornell University Press).

Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press): 19.

practice carries costs to prestige, status, or even identity. ¹¹⁹ While TANs can draw attention to disarmament issues, finally, it remains within the purview of legislators to draft new policy, necessitating the development of coalitions to draft new law or ratify new disarmament agreements. ¹²⁰ Domestic political actors may "rhetorically entrap" themselves when attempting to justify and legitimize their disarmament behavior, where past policy and behavior can be looked to for inconsistency. ¹²¹ Once entrapped, they may seek to diffuse the cost of new behavior or reduce future disadvantages of being constrained by spreading the cost among other similar actors via broader treaty participation. ¹²² As Petrova (2008) argues, it may be a combination of domestic campaigning, the forging of partnerships with legislators, and skillful use of opportune moments to "stir media and public attention to the harmful effects of weapons," in order to induce behavior change. ¹²³

Finally, the nature of the disarmament issue itself matters, specifically whether the weapon can be credibly and predictably associated with bodily harm to "populations perceived as vulnerable or innocent," 124 as with cluster munitions, which can be expected

¹¹⁹ Johnston, A. I. (2001). Treating International Institutions as Social Environments. *International Studies Quarterly* 45: 504.

¹²⁰ Petrova, M. H. (2007). Small States and New Norms of Warfare. MPW Working Paper No. 2007/28: 14.

¹²¹Bower, A. (2015). Norms Without the Great Powers: International Law, Nested Social Structures, and the Ban on Antipersonnel Mines. *International Studies Review* 17: 347–373

¹²² Erickson, J. L. (2015). Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms. *International Studies Perspectives*: 7.

Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): pp. 73, 76-77. ¹²⁴ Keck, M. & Sikkink, K. (1998). Activists Beyond Borders: Advocacy Networks in International Politics. (Ithaca: Cornell University Press): 27.

to cause over 90% of their harm to the civilian population. 125 Through the production of reports in post-conflict areas, TAN experts can construct a causal story of harm from state use of cluster munitions. 126 Further, how the TAN frames the issue can be key to this. To be effective issue networks must show the issue to be neither natural nor accidental, identify the responsible parties, and propose some credible solution to the problem. 127 By focusing on the humanitarian concern with cluster munitions such that it resonates with existing norms and democratic values, activists can amplify the strength of the frame. 128 The humanitarian disarmament TAN does this by demonstrating consistent harm from cluster munitions use and recommending that the best course of action is to avoid use. Questioning the utility of cluster munitions in relation to the humanitarian harm or appealing to potential loss of "hearts and minds" caused by cluster munitions use can also force domestic political actors to try to justify continued sale or use, 129 and where domestic actors cannot generate "socially sustainable" counterarguments they may abandon their appeals to utility. 130 If concessions must be made to appease pressure, 131 however, governments may attempt to ease the burden of concessions by building loopholes into disarmament agreements or violating them outright. In the area of disarmament, leverage politics can be particularly effective in curbing such behavior where desirable change can be linked materially to internal or external political

¹²⁵ Garcia, D. (2011). Disarmament Diplomacy and Human Security: Regimes, Norms, and Moral Progress in International Relations. (New York: Routledge): 153.

¹²⁶ Keck & Sikkink 1998: 27.

¹²⁷ Keck & Sikkink 1998: 19.

¹²⁸ Petrova 2010: 6.

¹²⁹ Price, R. M. (1998). Reversing the Gun Sights: Transnational Civil Society Targets Landmines. International Organization 52: 613-644. See also: Petrova 2010.

¹³⁰ Petrova 2010, 1.

¹³¹ Risse and Sikkink 1999.

support; ¹³² by extension, we might expect to observe greater humanitarian disarmament behavior outcomes where humanitarian advocates engage in leverage tactics. In the case of cluster munitions, both democratic and authoritarian states worked to weaken the draft text of both the Convention on Conventional Weapons Protocol on cluster munitions and the draft text of the Convention on Cluster Munitions (CCM), but ultimately the Parties to the CCM agreed under pressure to stringent rules and complete disarmament of cluster munitions.

Under various internal and external stimuli, states enter the process of developing international disarmament rules to satisfy normative prescriptions, receive benefits, or relieve pressures. In debating future disarmament rules, they may come to an argued consensus about the appropriateness of acts such as abandonment of "dumb" munitions; however, as they attempt to persuade one another, states can also entrap themselves by their own arguments and the international agreements that result. ¹³³ Ban champions have pushed for broader treaty participation and deeper commitment in multiple fora, and international organizations including the United Nations and European Union have issued multiple calls for moratoria on cluster munitions since 2004, yet anti-regulatory advocacy from powerful arms producers has fractured the dialogue on a cluster bomb ban and pressured allies to reject any new agreements. During the negotiation of the Convention on Cluster Munitions, potential institutional socialization was weakened by competing groups of states advocating both for and against a ban.

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¹³² Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics.* (Ithaca: Cornell University Press, 1999).

¹³³ Checkel, J. T. (2001). Why comply? Social Learning and European Identity Change. *International Organization* 55: 553-588.

As will be argued in the next section and throughout this dissertation, the cluster munition taboo and its institutionalization through the 2008 Convention is only part of the explanation for patterns of state behavior change. The argument of this dissertation derives from both strategic and normative decision-making processes, endeavoring to explain the observed behavioral variation as states engage with new disarmament agreements along a continuum of potential options, from silence to neutralizing recognition, concessions, soft and hard rule making, compliance, and over-compliance. Behavior change ostensibly motivated by moral positions might come as a result of unacceptable levels of pressure without requiring a shift in values, and states often backslide when pressure is not maintained. As I argue below, variation in the capacity of civil society to domestically pressure these governments, through processes of pressure, can help to explain variation in humanitarian disarmament behavior.

Theoretical Framework

The case of the humanitarian disarmament of cluster munitions, like other recent agreements such as the 1997 Mine Ban Treaty and 2013 Arms Trade Treaty, highlights a shift in international responses away from state-centric arms control that is not fully explained in the literature. The theory put forth by this dissertation, in brief, is that governments are likeliest to engage in humanitarian disarmament when civil society runs a strong campaign, increases issue salience, and activates citizens to pressure them to do

Overcompliance is behavior in the spirit of a norm that is not expressly legally required by its applicable treaty, as defined by the project in Chapter 1. In the case of cluster munitions, domestic legal penalties for cluster munition investment are not required by the Convention on Cluster Munitions, but overcompliant states have enacted such laws in the spirit of the cluster munition taboo.

¹³⁵ Checkel, J. T. (2005). International Institutions and Socialization in Europe: Introduction and Framework. *International Organization* 59: 801-826.

so. If salience is high and citizens apply material leverage over their government as through a vote or the boycott of a national bank, then governments are likeliest to respond with policy change. If salience is high and citizens can employ material leverage over their government, I further argue, then governments will exhibit the greatest amount of behavior change toward humanitarian disarmament. This occurs as a process, which is initiated by norm-entrepreneurial civil society organizations in the area of human rights, and is expressed in a continuum of behavioral outcomes: silence, neutralizing recognition, concessions, soft and hard rule making, compliance, and over-compliance. The project is agnostic to why particular issues are subject to humanitarian campaigns, ¹³⁶ focusing instead on the particular sequence of events through which humanitarian issues are eventually instantiated in international humanitarian agreements.

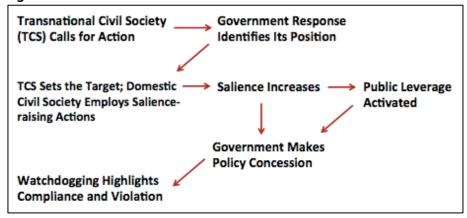


Figure 2: the Humanitarian Arm-Twist

The Causal Process, in Seven Steps

In this dissertation, I hypothesize a causal process, with seven identifiable steps, whereby civil society organizations may, under certain conditions, produce behavioral change in their target governments' disarmament positions, even in the face of initial strong

¹³⁶ Murdie, A. & Urpelainen, J. (2015). Why Pick on Us? Environmental INGOs and State Shaming as Strategic Substitute. *Political Studies* 63: 353-372.

resistance. It is not necessary that states pass from step to step in sequence, but due to the scale and cost of activities at each juncture, drastic behavioral change that would constitute "skipping" a step is unlikely.

First, transnational civil society groups initiate a campaign that will target states to change their behavior on a new humanitarian issue. While the campaign is initiated at the transnational level, government behavioral change is a result of a strong domestic campaign steered by the umbrella transnational campaign, and it is the implementation of nationally tailored campaign tactics deployed inside target states that shape state behavioral outcomes most. Why and how they choose particular issues is less the focus here than the sequence of events through which those issues shape international behavior. Advocacy groups use existing international norms such the sanctity of civilians as tools to advocate for what is generally the minority position in the domestic conversation, ¹³⁷ if a position yet at all, to call for greater humanitarian consideration in international behavior. As a starting point, most domestic publics are unaware of the contents of the state's arsenal; for an individual, finding this information may be time-consuming or inconvenient, if it is even accessible. Government use of particular arms is thus not often an issue of high salience for most people, unless it has already been the focus of media attention. As a result of this, relevant civil society groups interested in changing the contents of that arsenal must first provide this information. The campaign thus begins with raising issue awareness through commenting on relevant news events and the provision of informative reports, and a first (usually unsuccessful) attempt to persuade government. At this stage, campaigns can generally be characterized as weak, as they

¹³⁷ Finnemore, M. & Sikkink, K. (1998). "International Norm Dynamics and Political Change," International Organization 52: 893.

consist initially of few organizations and pooled resources for the campaign.

Second, if not immediately successful in persuading government, the campaign must generate more specific policy requests for government. While left-leaning parties in general are more receptive to the humanitarian disarmament appeal, they are not specific primary targets for the campaign, which instead seeks out support across parties in order to build broad domestic support. Government actors are likely to resist persuasion or make easy but tactical concessions to appease pressure groups, ¹³⁸ thus it is necessary for humanitarian campaigns to generate a clear preference to present to government and conduct further campaigning though their member organizations' domestic offices. Generating a clear preference allows the categorization of government responses according to how near or far from advocates' preferences, and makes clear which policies are praiseworthy or shameful. A clear preference from the campaign can also help certain government actors decide whether or not to support early on; those who do often become civil society's champions within government, and help move governmental debates in a more favorable direction for civil society. Finally, clear calls from civil society can attract other like-minded organizations to the issue campaign.

Third, the campaign is expanded, through the building of a coalition among other relevant civil society groups. That is, because many civil society groups have limited resources, staff, and memberships, in order to expand their capacity, they must work together on issues. The most successful campaigns are able to build coalitions, which are able to then share the burden on time and resources of running a major campaign. Larger

¹³⁸ Thomas Risse and Kathryn Sikkink, "The socialization of international human rights norms into domestic practice." In *The Power of Human Rights: International Norms and Domestic Change*, eds. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, (Cambridge: Cambridge University Press, 1999): 6.

coalitions are also likely to have a larger membership base, which can be potentially activated to engage in campaign activities and increase pressure on government. As Carpenter finds, certain organizations can influence a particular issue's emergence¹³⁹ as prominent but are not necessary to successful pressure for governmental behavior change. In this way, the campaign improves its strength and thus its capacity to influence humanitarian outcomes.

Fourth, with the expanded strength and resources of a broadened coalition, campaign activities are increased. That is, more resources can be devoted to developing and distributing reports, contacting membership bases, lobbying government officials, and seeking media attention. With the increased intensity of campaign activities—especially activity that can generate media attention—salience increases. Over time, as the general public becomes more aware of the issue through regular coverage thereof, government debate of the issue also increases.

Fifth, with high issue salience, the campaign activates civil society, often initially through the membership bases of the coalition, but also activating interested members of the general public as well. Liberal democratic governments in particular depend on the consent of citizens to function. It may be possible for civil society to influence this relationship. By raising the salience of the issue, both in terms of the seriousness of the issue and also in terms of how the government has behaved regarding the issue, they may be able to persuade the domestic population that their government should change behavior. If so, portions of the populace can be mobilized. Depending on the level of

¹³⁹ Carpenter, C. R. (2007). Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks. *International Studies Quarterly* 51: 99-120.

access the public has and awareness of how to use leverage tools, public action may be able to add to the pressure already being applied by the campaign in the halls of parliament and through ongoing media coverage, thus affecting leverage over the target government. Boycotting national institutions or basing voter preference on policy change sends a strong signal to government that failure to change behavior will incur costs.

Sixth, when the issue campaign applies both high strength and high leverage to government, behavior change becomes most likely, in this case the state undertakes to join the new agreement.

Finally, after states join new humanitarian agreements, there is the necessary seventh step of watch dogging that helps to uphold state compliance. Civil society uses the same tools to maintain salience after behavior change, in order to pressure government to continue comply with its international agreements. In some cases, it has been possible to induce states to "over-comply," or go beyond their commitment to form policy not expressly delineated in international agreements but that comply with the prescription of the relevant norm. If campaigns are unable to generate much leverage, however, they may shift to campaigns targeting individual politicians to some success.

Campaigns that are strong in resources, garner much media attention, and activate large leverage-generating demonstrations and petitions are most likely to garner change from government. Behavior change is not a given under these conditions, nor is policy change a dichotomous variable. Instead, the continuum of possibilities can be arrayed along a continuum from inaction to recognition to increasing policy concessions that in their strongest form over-comply with the humanitarian agreements to which these states are bound. The theory predicts that how much behavior will evolve along the continuum

under conditions of campaign pressure is determined by the strength and leverage applied by the domestic humanitarian campaign. Ceteris paribus, this process is most likely to produce lasting policy change when both campaign strength and leverage are high.

The Independent Variables: Campaign Strength and Leverage

Campaign strength is determined by the number of organizations party to the issue campaign active within the target state. Larger campaigns with more coalition members have greater campaign strength: coalition size matters because the pool of resources in the coalition increases with the number of partners. Membership size also matters because it provides a larger pool of citizens to call upon. Thus, campaigns with larger or more influential campaign partners such as Human Rights Watch are likely to have greater campaign strength through larger membership bases and greater financial resources. Campaign strength finally impacts the amount of media resources and access the campaign has, and thus the amount of issue salience it can effectively raise.

Salience, again, is the frequency of the issue in the national discourse; at a starting point, disarmament issues are generally not salient. As civil society activities draw attention to the issue through providing information as issue experts in the national news, producing informative government policy scorecards, and through engaging in activities designed to draw media attention such as public demonstrations, disarmament issues can become salient. Increased frequency of media coverage provides citizens with more information about the issue than they previously had, and when regularly packaged with civil society's humanitarian frame, it is likely that average citizens will understand the issue through that frame. Regular media coverage of the issue, particularly through the humanitarian frame, also reduces the likelihood that status quo government policy will go

unnoticed and increases the likelihood of government discussion of the issue.

Once a government has undertaken to debate an issue, leverage can be applied to make the status quo policy even more costly and thus guide the national discussion in a direction favorable to the issue campaign. Leverage ranges in strength, and thus in impact on government behavior: low-strength activities may include letter writing and petitions; high strength activities may include large demonstrations, voting based on issue position and the boycotting of national banks or other institutions. As the cost of maintaining the weapon in the face of media attention and public opposition becomes greater than the benefit, government is likeliest to submit to demands for the policy change.

Strength is operationalized and measured in the number of domestic civil society organizations active on the issue inside the state, with the participation of gatekeeper organizations weighted more heavily, ¹⁴⁰ representing the pool of funding, established access with the media, and activist labor available to the campaign. In the absence of many or any civil society organizations at the domestic level, status quo interests are a expected to continue to dominate the behavioral decision-making. Strength I take to be similar to the maturity of the domestic issue network, wherein the domestic civil society campaign has many actors, extensive pooled resources which to expend on a campaign, and engages in regular exchange of information among its members in order to facilitate more successful issue campaigning. ¹⁴¹ While this is not a precise measurement, considering campaign strength in terms of relative numbers of civil society organizations

¹⁴⁰ Gatekeeper organizations can set the agenda but also bring much greater resources to the table. Carpenter, C. R. (2007). Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks. *International Studies Quarterly* 51: 99-120.

¹⁴¹ Schrad 2010: 197.

can provide a window into the relative efficacy of the campaign. Low strength campaigns have numbers of civil society organizations numbering one to five organizations, medium strength campaigns have six to fifteen civil society organizations, and strong campaigns have over fifteen participating organizations. Gatekeeper organizations ¹⁴² are weighted at the approximate value of five smaller organizations by virtue of much larger member and resource bases, but only four gatekeepers are regularly present in the cluster munition issue network observed in this project: Human Rights Watch, Handicap International, the Cluster Munition Coalition steering organization, and the International Committee of the Red Cross (which while not technically an NGOs has behaved as such within this issue network). Salience, the relative prominence of the issue on domestic agendas, 143 will be measured by imperfect proxy by Google Trends reporting on the frequency of internet searches on the issue of cluster munitions within each country over time. 144 Leverage is operationalized as the scale of costly actions the campaign imposes on the state, which depend on the establishment of a strong issue network and campaign, is measured explicitly by the scale of participation in petitions, demonstrations, or news attention as a result of civil society-produced policy reports. Low leverage is operationalized as publicly organized activities with domestic citizen participation in the dozens to hundreds (of petition signatures, letters and phone calls, or parties to demonstrations); medium leverage as participation in the thousands; and high leverage as participation in the tens or

¹⁴² Carpenter, C. R. (2007). Setting the Advocacy Agenda: Theorizing Issue Emergence and Nonemergence in Transnational Advocacy Networks. *International Studies Ouarterly* 51: 99-120.

Quarterly 51: 99-120.

143 Cortell, A. P. & Davis Jr., D. W. (2000). Understanding the Domestic Impact of International Norms: A Research Agenda. *International Studies Review* 2: 65-87.

¹⁴⁴ Searches by country, in the local language if applicable, of "cluster munition" and "cluster bomb." GoogleTrends, http://trends.google.com.

hundreds of thousands. Again, in the absence of civil society organization around the issue to bring it to the fore of the agenda, arms control issues are not expected to rise to the fore of domestic policy debate or action.

Strength and leverage vary across the cases for a number of reasons. First, strength measured as the size of the presence of relevant civil society organizations, particularly those that address human rights in general and disabled rights, varied within each case prior to the initiation of the transnational campaign. This is due to the relative size and relative homogeneity of interests in each state. The United Kingdom and France are larger states in terms of population size and area that encompass a wide variety of domestic interests, and have larger groups of established civil society organizations in the human rights issue area. The Netherlands, a much smaller corporatist democracy, features fewer such organizations but also as a feature of corporatism and domestic population homogeneity features less contentious politics around human rights, necessitating fewer organizations to address the gamut of humanitarian issues. Poland, while large and relatively homogenous, is a newer democracy, features a far smaller and less established set of domestic rights organizations, and those organizations have had less time to establish membership bases, create channels of access with the government, and develop media rapport. The relative capacity for the application of leverage tactics recommended by the transnational campaign in domestic settings in turn depends on the establishment of the domestic network as well as the resources it possesses. The capacity for the set of domestic organizations to attract media attention and create issue salience (or scandal) and cost to governments for status quo behavior thus varies on the establishment of the domestic issue network.

The Dependent Variable: A Continuum of State Responses

At one of the spectrum are the weakest responses: *silence* or total non-recognition of the norm or relevant existing international law. Governments that do not recognize the issue do not respond to accusations of engaging in the behavior or using the weapon, and feel no compulsion to do so. However, states make a recognizable shift when they engage in *neutralizing recognition*, either denying responsibility for the behavior *or* appealing to a higher authority such as existing international law or the national constitution for justification thereof. Neutralizing recognition allows actors to engage in delinquent actions without incurring serious damage to their self-image. Neutralizing recognition concedes that others value compliance with the prescriptions the new norm. Neutralizing governments are candidates for effective application of pressure because while they may not feel a pull to comply with the prescribed behavior, humanitarian campaigns and humanitarian-minded states can create costs for delinquents. Costs might include damage to reputation, economic sanctions, or exclusion from participation in the design of new international institutions.

The nature of the state target of the issue campaign partially determines the impact of civil society activism on disarmament behavior change, specifically the compatibility of existing domestic values and norms with new disarmament ideas, the institutional structure through which the campaigners access domestic elites, ¹⁴⁶ and the capacity for the campaign to use that access to make status quo behavior costly for

¹⁴⁵ Sykes, G. & Matza, D. (1957). Techniques of Neutralization: A Theory of Delinquency. *American Sociological Review* 22: 664-670.

¹⁴⁶ Price, R. M. (2003). Transnational Civil Society and Advocacy in World Politics. *World Politics* 55: 592.

domestic political elites. Democracies, which are the subject of this dissertation, are expected to accept a basic set of human rights values and to conform to principles of human rights protection in the conduct of their international relations. Democracies further have more developed civil societies, and allow a greater level of access for civil society to the policy-making process that determines state behavior change, as opposed to autocracies wherein these groups are often shut out, if allowed to operate at all. Liberal democracies are particularly vulnerable to media and public attention to gaps between professed policies and actual, irresponsible practice. 147

Governments of either type may shift to humanitarian disarmament to improve or protect reputation, if they perceive theirs or the government's legitimacy to be vulnerable as a result of external condemnation, ¹⁴⁸ although due to the democratic concern with human rights this effect is greater in democracies whereas in non-democratic or transitioning states, humanitarian behavior may simply be "window-dressing." ¹⁴⁹ Domestic elites care about their reputation and see damage to reputation as costly, which can be facilitated by civil society's introduction of "scandal" around failure to fulfill democratic practice of responsible arms use and sales. ¹⁵⁰ Facing media attention on humanitarian disarmament failures, domestic elites may swing to more "responsible" policy to repair reputation, as opprobrium from attention to undesirable arms exports or

¹⁴⁷ Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press): pp. 23-24.

¹⁴⁸ Burgerman 2001.

¹⁴⁹ Hafner-Burton, E. & Tsutsui, K. (2005). Human Rights in a Globalizing World: the Paradox of Empty Promises. *American Journal of Sociology* 110: 1378.

Erickson, J. L. (2014). Saving Face, Looking Good, and Building International Reputation in East and West. In Jentleson, B. and Pauly, L. (Eds.). *Power in a Complex Global System*. (New York: Routledge): 180-191.

cluster munition use can create costs for their prestige and status. 151 While arms control failures rarely swing elections, they can erode political legitimacy and social prestige. 152 While domestic civil society activity can draw attention to salient disarmament issues through the regular provision of authoritative reports on state practice, finally, it remains the purview of legislators to draft new disarmament policy, necessitating the development of coalitions with supportive members of the legislature and the executive to draft new law or to sign and ratify new disarmament agreements. 153 Domestic actors under fire for inconsistent disarmament practices may try to justify their behavior in order to maintain some legitimacy, however the highlighting of past practice and rhetoric can serve to constrain these actors. Once entrapped by past commitment, these actors may attempt to diffuse the cost of accepting new commitments by focusing on universalization too new agreements, thus reducing future disadvantage. 154 Alternatively, where an agreement seems inevitable, civil society can shift tactics to provide praise for governments that participate even if slowly at first, allowing them to take ownership over and advance the international disarmament process. 155 It first is a combination of domestic campaigning, which can facilitate access to and the forging of partnerships with a coalition of domestic legislators, and skillful use of opportune moments to "stir media and public attention to the harmful effects of weapons," that allows campaigns to raise the cost of status quo

¹⁵¹ Johnston 2001: 504.

¹⁵² Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press): 19.

¹⁵³ Petrova, M. H. (2007). Small States and New Norms of Warfare. MPW Working Paper No. 2007/28: 14.

¹⁵⁴ Erickson, J. L. (2015). Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms. *International Studies Perspectives*: 7.

¹⁵⁵ Margarita H. Petrova, "Rhetorical Entrapment and Normative Enticement: How the United Kingdom Turned From Spoiler Into Champion of the Cluster Munition Ban," *International Studies Quarterly* (2016): 1-13.

behavior. 156 However, it is the influence of leverage through mass participation in disarmament campaigns through petition, letter writing and phone calling, and demonstrations that raise the cost of status quo domestic for political elites such that it tips the balance in favor of disarmament behavior change.

Governments can engage in an array of *concessions* to relieve those costs ranging from verbal support for international regimes to dismantling older, out-of-use weapons while justifying the remaining arsenal vis-à-vis safety mechanisms. As concessions grow stronger, they evolve toward rule making about the behavior: *soft rule making* entails national rules around the issue that self-constrain the state without allowing an incursion of international law onto national sovereignty, and *hard rule making* goes further, through participation in and willingness to self-constrain under the provisions of new international rules about the issue.

Willingness to self-constrain is not the same as *compliance*, however; compliant governments not only express willingness to self-constrain but also follow the behavioral prescriptions of the new agreement, including condemnation of states which continue to engage in delinquent weapons sales or use. Some governments may even go further than the letter of the international agreement to engage in *over-compliance*, wherein national self-regulation is even stronger than the provisions required by the treaty, for instance bans on investment in weapons producers or pledges of extra effort on universalization.

¹⁵⁶ Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): pp. 73, 76-77.

Figure 3: the Continuum of Humanitarian Disarmament Behavior

Silence: non-recognition of the

Neutralizing recognition: justification of norm violation in appeal to existing IL or national authority; indicates earliest recognition of the norm.

Concessions:
recognition of
potential for harm
if norm violated;
voluntary
abandonment of
older weapons or
policies;
justification of
remaining
weapons or policies
vis-a-vis technical
safety fixes and
self-regulation
based in existing IL.

Soft Rule-making:
recognition of
consistent harm;
national
moratorium on the
harmful behavior
or weapon;
participation in all
IL processes aimed
at addressing that
harm; willingness
to declare support
for new IL.

Hard Rule-making recognition of consistent harm; participation in all IL processes aimed at banning the source of harm; willingness to declare future intent to comply.

Compliance:
recognition of
consistent harm;
participation in all
IL processes aimed
at banning the
source of harm;
signature and
ratification of a
pan; condemnation
of norm violation;
compliance if
coupled with
regular
watchdogging;
efforts toward
universalization.

Over-compliance: recognition of consistent harm; participation in all IL processes aimed at banning the source of harm; full compliance with ban; stronger national regulations than required by ban; condemnation of norm violators and Parties that fail to condemn; major effort on universalization.

Almost all responses to civil society pressure begin with neutralizing recognition of the issue; with low campaign strength and low leverage, governments are unlikely to go further than this. For a policy to become costly *enough*, government actors must feel pressure: both strong campaigns and leverage are necessary, but as governments are beholden to their voting populace, effective application of leverage has the stronger bearing on government policy in democracies.

Controlling for Alternative Explanations

There are several potential alternative explanations to which the study will be attentive: loss of utility, convergence of interests, or normative persuasion could account for behavior change. While these variables may matter more in certain contexts, a strong campaign and leverage over government are most likely to affect disarmament outcomes, as will be uncovered through a careful process tracing of the four cases. With a strong campaign but weak leverage, governments are likely to respond by bargaining for a weaker agreement and officially voicing reluctance to join the agreement, and with slow or partial compliance.

Once constrained by an agreement, behavior counter to the agreement becomes much more difficult and less likely. Constrained states become vulnerable to legal in addition to moral shaming, should they fail to meet compliance standards. With a weak campaign but strong leverage, governments are likely to respond by bargaining and voicing reluctance to join, but ultimately with full compliance, as they are held accountable by leverage. Governments experiencing both a strong campaign and high application of leverage still resist and bargain at first, but they comply fully and rapidly, and afterward apply pressure on other governments to join. To show their full

commitment, these governments often partner up with civil society on universalization efforts and over-compliant domestic rules. To ensure this, norm entrepreneurs continue to engage in activities that raise salience and apply leverage, encouraging increased and ongoing compliance. While states may change policy at any time, they are most likely to do so as a result of continued pressure, and the most reticent states are likely to require continued pressure to remain compliant with the new agreement.

As discussed previously, there are three main potential alternative explanations to which the project must also be attentive and which will be addressed in the case studies: loss of the utility of cluster munitions, convergent ideas that a cluster munition ban is in state interest, or the spread of a prohibitionary norm on cluster munitions. Cluster munitions have had utility vested in them by many governments as demonstrated by outright declarations of their utility, ¹⁵⁷ their efficiency, or the lack of comparable alternative weapons. Where cluster munitions have lost their utility, it is expected that the language of utility, efficiency, and viable alternatives would disappear from official government statements, and in some cases the descriptor "dumb" weapons exemplifies this shift. Older, airdropped cluster munitions may well have diminished utility vis-à-vis alternative weapons, as exemplified by the voluntary abandonment of "dumb" munitions by the Netherlands, the United Kingdom, and France. Abandoning low utility munitions

^{157 &}quot;Cluster munitions have demonstrated military utility. Their elimination from U.S. stockpiles would put the lives of its soldiers and those of its coalition partners at risk. Moreover, cluster munitions can often result in *much less collateral damage* (emphasis in original) than unitary weapons, such as a larger bomb or larger artillery shell would cause, if used for the same mission." United States Department of State, "Cluster Munitions," Retrieved from June 25, 2016, http://www.state.gov/t/pm/wra/c25930.htm.

158 Cluster Munitions. (2012) Ministry of Foreign Affairs, Republic of Poland. Retrieved from http://www.msz.gov.pl/en/foreign_policy/security_policy/conventional_disarmament/cluster_munitions/.

demonstrates a low cost to states. However, efforts to defend certain cluster munitions with safety mechanisms and precision targeting systems, or to exclude them outright from the Convention on Cluster Munitions, as done by nearly all of reticent participating states to the negotiation of the convention, demonstrates the ongoing utility of certain modern cluster munitions for states.

Convergent international interest in addressing cluster munitions is a second alternative explanation to humanitarian disarmament. New disarmament regimes result from bargaining and agreement among states and (other actors) to solve specific problems. 159 including the problem of humanitarian harm from particular conventional weapons of war like cluster munitions but also the problem of security or market disadvantage from early adoption 160 of disarmament behaviors. In order to secure their interests, states either modify existing institutions or design new owns with a view to furthering their individual and collective goals, ¹⁶¹ for instance monitoring, regulation, and enforcement of the disarmament behavior of others such that future participants in the institution can avoid security or market disadvantages. In arms control negotiations, each government seeks to further its national interest—in this case economic and security costs for reducing the existing arsenal—by analyzing its preferences for maintaining or abandoning particular cluster munitions, and then negotiates to advance their particular position. 162 Agreements designed in this particular way should benefit participants by limiting their scope such that the costs to the state, for instance loss of

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¹⁵⁹ Koremenos, B., Lipson, C., and Snidal, D. (2003). *The Rational Design of International Institutions*. (Cambridge: Cambridge University Press): 2.

¹⁶⁰ Erickson, J. L. (2015). Dangerous Trade: Arms Exports, Human Rights, and International Reputation. (New York: Columbia University Press),

¹⁶¹ Koremenos, et. al. 2003: 6.

¹⁶² Abbott 1993: 32.

domestic defense industry market share or requirements for members in the areas of stockpile destruction or victim assistance, are minimized in the bargaining around the draft text. It is also possible that domestic interests can raise the political costs to the state for maintaining or using cluster munitions¹⁶³ particularly in democratic states with centralized decision-making. 164 In debating future disarmament rules, disarming states may come to an argued consensus that the mutual abandonment of "dumb" munitions represents an acceptable cost. Under this perspective, the rules that states create are expected to be in their interests, ¹⁶⁵ or have an acceptable or tolerable cost, particularly if they reflect past practice of disarmament. 166 Convergence might be evidenced by increasing numbers of states participating in international discussion of the issue and emergent consensus about how best to address the issue, absent the normative argumentation that might be expected of suasion or norm diffusion. The case studies will on this count be attentive to increasing participation around focal institutions and the extent to which consensus on cluster munitions universalized; as will be shown, at least two poles of state influence fractured consensus on cluster munitions in two different over the course of the Oslo Process, however with the entry into force of the 2008 Convention on Cluster Munitions, it may be possible to observe greater convergence around this new focal institution.

Finally, the case analyses must be attentive to the potential for the spread of the

¹⁶³ Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 86.

¹⁶⁴ Schrad 2010: 15; Risse-Kappen 1995.

¹⁶⁵ Koremenos, B., Lipson, C., and Snidal, D. (2003). *The Rational Design of International Institutions*. (Cambridge: Cambridge University Press): 8.

¹⁶⁶ Simmons 2009.

prohibitionary norm on cluster munitions in the international community. Suasion, persuasion by moral argument, might be seen in the adoption by states of normative arguments about cluster munitions, ¹⁶⁷ or the abandonment of arsenals on the merits of humanitarian considerations such as civilian casualties. Here a norm, or a standard of behavior appropriate for actors with a given identity, ¹⁶⁸ in this case states, must be established, which constrains state behavior. States can be persuaded (non-coercively) to accept such a norm by civil society and other actors. ¹⁶⁹ Persuasion may be particularly successful regarding weapons norms when still in the process of becoming consolidated, ¹⁷⁰ which allows states to keep the definition of appropriate behavior and thus the costs of fulfilling normative prescriptions within acceptable bounds. ¹⁷¹ Persuasion of states is also likelier where the nascent norm resonates with already accepted norms, as with democratic states and norms regarding human rights and human security, to which end the new standard can be framed as fulfilling existing identity as "liberal" and "democratic," ¹⁷² and where justification of the practice (or cessation

¹⁶⁷ Checkel, J. T. (2005). International Institutions and Socialization in Europe: Introduction and Framework. *International Organization* 59: 812.

¹⁶⁸ Finnemore, M. (1996). *National Interests in International Society*. (Ithaca: Cornell University Press): 24.

¹⁶⁹ Johnston 2001: 489.

¹⁷⁰ Garcia, D. (2006). Small Arms and Security: New Emerging International Norms, (New York: Routledge): 7.

Petrova, M. H. (2016). Rhetorical Entrapment and Normative Enticement: How the United Kingdom Turned From Spoiler Into Champion of the Cluster Munition Ban. International Studies Quarterly: 6; Erickson, J. L. (2015). Leveling the Playing Field: Cost Diffusion and the Promotion of 'Responsible' Arms Export Norms. *International Studies Perspectives*: 13.

¹⁷² Thomas Risse and Kathryn Sikkink, "The Socialization of Human Rights Norms into Domestic Practices: Introduction," 7, in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change*. (Cambridge: Cambridge University Press, 1999).

thereof) is framed as humanitarian in nature. 173 The norm regarding cluster munitions use was first framed in terms of a need to strike the right balance between legitimate military objectives of the state and the humanitarian concerns caused by the behavior. 174 which is strengthened by the adjacency of the rule to existing understanding of the humanitarian concerns of antipersonnel landmines 175 and the grafting of moral opprobrium from other delegitimized practices of warfare such as the principle of discrimination between military and civilian targets, and the prevention of "unnecessary suffering." ¹⁷⁶ However, it may still be early in the taboo's life cycle. ¹⁷⁷ While the taboo on cluster munition use is still consolidating and spreading among states, and can still be a powerful tool for actors wishing to modify state policy and military practice, ¹⁷⁸ it has not achieved a strong prescriptive status among all members of the international community and is unlikely to constrain on its own. By considering and observing for evidence of these alternative explanations at work in the case analyses, the theory presented here gains greater traction by honing in on the true sources of humanitarian behavior change.

Conclusion

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¹⁷³ Price, R. M. (1998). Reversing the Gun Sights: Transnational Civil Society Targets Landmines. International Organization 52: 632.

¹⁷⁴ Rappert, B. (2005). Out of Balance: The UK Government's Efforts to Understand Cluster Munitions and International Humanitarian Law. *Landmine Action UK*. Retrieved from https://ore.exeter.ac.uk/repository/handle/10036/35217.

¹⁷⁵ Garcia, D. (2006). Small Arms and Security: New Emerging International Norms, (New York: Routledge): 22.

¹⁷⁶ Price 1998, 628.

¹⁷⁷ Finnemore, M. & Sikkink, K. (1998). "International Norm Dynamics and Political Change," International Organization 52: 887-917.

Petrova, M. H. (2008). Curbing the Use of Indiscriminate Weapons: NGO Advocacy in Militant Democracies. In Evangelista, Müller, & Schörnig. (Eds.). Democracy and Security: Preferences, Norms and Policy-Making. (New York: Routledge): 73.

I have more deeply explicated in this chapter the theoretical process by which states shift to humanitarian disarmament, and argued that it is not the result of the weapon losing its utility, convergence of preferences among states, or normative persuasion. I have offered a new theory, arguing that this behavior change is more likely where civil society stages a strong campaign, raises salience of the new issue, and activates populations to use leverage to pressure their governments. I have also argued that this occurs as a process with discrete stages, which can be studied empirically in each case. Civil society selects an issue, and designs a campaign that targets government; it clarifies its goals such that they consist of specific policy outcomes, and determine which governments should be praised or shamed; it grows campaign strength through the building of a coalition; it increases campaign activities, especially those that generate media attention, in order to raise issue salience; it activates civil society, through requests to the membership bases of the coalition and interested members of the general public to join leverage activities; finally, as pressure reaches a high point, government is persuaded to change policy. The same campaign may also use these same tools to maintain salience after policy change, in order to pressure government to remain compliant with its international agreements. Finally, I have argued that the dependent variable of behavior change can be looked at as a continuum of response: from silence, neutralizing recognition, concessions, soft and hard rule making, compliance, and overcompliance.

As an issue that began with relatively low international salience and as a policy option was relatively unthinking at the beginning of this process, cluster munitions offer an excellent case to study how pressure movements can persuade states to change policies that they otherwise would not. The case studies that follow represent variation

in the causal variables of campaign strength and leverage, leading to different behavioral outcomes in each case, which the following chapters will now proceed to demonstrate.

CHAPTER 3

'THE CLUSTERBOMB FEELING': CULTIVATING NATIONAL OWNERSHIP IN THE NETHERLANDS

"The Dutch government believes that the use of cluster munitions under certain circumstances is justified and legitimate after careful consideration." ¹⁷⁹

—Netherlands Ministry of Foreign Affairs, 2007

"The use of cluster munitions cause unacceptable human suffering. The use of cluster munitions poses serious dangers for the civilian population because of unreliability and inaccuracy ... It is for this reason that in 2011 the Netherlands became a party to the Convention on Cluster Munitions." ¹⁸⁰

—Netherlands Ministry of Foreign Affairs, 2014

The Netherlands is a former user, producer, importer, and reported exporter of cluster munitions. ¹⁸¹ Despite having deployed cluster munitions only the previous year during the 1999 NATO campaign in the former Yugoslavia, in 2000 the Netherlands assumed a leading role in the early development of Convention on Conventional Weapons (CCW) Protocol V. The Dutch delegation proposed the inclusion of explosive remnants of war

kamerstukken/2014/11/13/beantwoording-kamervragen-over-de-inzet-van-clusterbommen-in-de-oekraine.pdf.

kamervragen-over-clustermunitie. Translated with GoogleTranslate.

Answering parliamentary questions about cluster bombs / Beantwoording kamerfragen over clustermunitie. Ministry of Foreign Affairs, Kingdom of the Netherlands. (2007, October 16). Retrieved from https://www.rijksoverheid.nl/documenten/ kamerstukken/2007/10/16/beantwoording-

Answering parliamentary questions about cluster bombs in Ukraine / Beantwoording Kamervragen over de inzet van clusterbommen in Oekraïne. Lower House of the States-General, Kingdom of the Netherlands. (2014, November 14). Retrieved from https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2014/11/13/beantwoording-kamervragen-over-de-inzet-van-

¹⁸¹ "Cluster Munition Ban Policy," Country Profile: the Netherlands, *Landmine and Cluster Munition Monitor*, last updated September 5, 2015, http://www.themonitor.org/index.php/cp/display/region profiles/theme/2055.

(ERW) in 2000, and coordinated the negotiation of the text for the new Protocol. ¹⁸² In 2003, at the behest of the domestic humanitarian group Pax Christi Netherlands, the Dutch government provided initial funding for the Coalition on Cluster Munitions, the coordinating organization that would become the driving force behind the anti-cluster munition campaign. From this point, the Netherlands would continue to work for the regulation of cluster munitions through the negotiation of Protocol V.

However, the mandate of Protocol V never progressed beyond mitigation of the after-effects of cluster munitions use, as the Netherlands pushed mostly a program of post-conflict clearance measures rather than real restrictions on cluster munitions. The group of states preferring a preventive solution, a comprehensive ban on the weapons, defected to an independent forum, the Oslo Process, which would eventually culminate in the Convention on Cluster Munitions. As the norm instantiated in the treaty negotiations developed from mitigation of post-conflict effects to prohibition of use, the Netherlands fell behind the humanitarian pack.

While it had been reducing the size of its stockpile at the behest of the public in 2005, the Dutch government maintained in the same year that, "cluster munitions are legitimate and necessary weapons." The Netherlands joined the Oslo Process early, but repeatedly voiced its preference for the CCW Protocol V framework, which privileged state participants to the exclusion of much of civil society, and expressed its

¹⁸² "Banning Cluster Munitions: Government Policy and Practice" (Ottawa: Mines Action Canada, May 2009): 124.

¹⁸³ Op. cit.

¹⁸⁴ "Banning Cluster Munitions: Government Policy and Practice" (Ottawa: Mines Action Canada, May 2009): 126.

reservations about the draft text for a comprehensive ban. ¹⁸⁵ It sought to exclude particular cluster munition models with a low failure rate and conducted publicized tests with the Norwegian government to determine which models belonged in this category. ¹⁸⁶ During an Oslo Process conference in May 2007, the Dutch government stated that it was against a comprehensive ban. When pressed to explain, the Ambassador Johannes Landman made the case that the aim of the Oslo Process was not to ban the entire category of weapons. ¹⁸⁷

Interestingly, just one year later, the Netherlands would sign and begin the ratification process for a comprehensive ban on cluster munitions, and by 2012 it would successfully pursue a series of domestic policies that would disallow production, purchase, use, sale, and even direct and indirect investment in producers of cluster munitions. These policies go above and beyond the text of the 2008 Convention on Cluster Munitions to constitute over-compliance, and indicate a fundamental shift in the Dutch position from just neutralizing recognition to the strongest possible behavior shift on the humanitarian disarmament spectrum.

The aim of this chapter will be to uncover the process through which the Dutch government elected to change its position on the comprehensive cluster munitions ban. Recalling the basic theory of this dissertation, I hypothesize that government behavioral change is a result of a strong domestic civil society campaign steered by the umbrella

¹⁸⁵ Statement of the Netherlands. (2007, February 22). Oslo Conference on Cluster Munitions. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

¹⁸⁶ Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada. (2009): 135.

¹⁸⁷ Statement by Ambassador Johannes Landman. (2007, May 24). Lima Conference on Cluster Munitions, Cross-referenced in *Landmine and Cluster Munition Monitor*.

transnational campaign, followed by strong application of leverage to seal the deal for Dutch behavior change. Imperative to public activation in the Netherlands was high salience of the issue, propagated by the distribution of information about the issue through campaign activities and media coverage, which infiltrated the Dutch media. Once activated, publics engage in leverage politics by targeting the material interests of the state, through votes or investment in particular institutions, here the Dutch national pension funds, to achieve the desired change. Maintaining some pressure, as will be discussed, is also instrumental to continued compliance with the new policy. The specific process expected is broad advocacy for the behavior change; identification of key governments; clarified campaign call for a ban; expansion of the coalition and maximization of its campaign strength; maximized salience to activate the public; public participation; government behavior change; and finally, monitoring and upkeep of pressure from civil society to maintain good behavior.

The Netherlands offers an interesting case for the theory, in that it hosted a relatively small campaign, but faced a relatively strong application of leverage, and thus the theory would expect partial government behavioral change for the Netherlands. Process tracing through the following analysis renders it possible to uncover evidence of the hypothesized causal processes designated in Chapter 2, *and* to be attentive to and possibly rule out potential competing explanations. In this case, as will be demonstrated below, domestic civil society would launch a successful campaign to sway the Dutch position, culminating in late 2007 in a primetime film by activists about the involvement of the Dutch pension funds in cluster munitions producers. Massive public outcry over cluster munitions would be key to the decision to accept the comprehensive ban.

Continued salience and pressure would eventually persuade Dutch politicians to go beyond the treaty commitment and close a key loophole in the ban, on indirect investment, through legislature including punitive actions for even indirect investment in the producers of cluster munitions. In the Dutch case, alternative explanations of the loss of weapon utility, convergence on how to address cluster munitions, and diffusion play weaker roles than that of civil society. As exemplified in statements about utility and defense of the weapons well into the negotiation of the Convention on Cluster Munitions, the Dutch vested utility in the weapons. As the Dutch government was pummeled on both sides with arguments, on one from the UN, the EU, and civil society and on the other from the United States and NATO, and participated actively in both the state-centric and humanitarian fora, convergence was not a strong influence on the Netherlands. Finally, while the Dutch today make statements on the unacceptability of cluster munitions, this language did not appear in Dutch official statements until after the entry into force of the Convention on Cluster Munitions, which it took two years longer to ratify than the UK or France. The remainder of this chapter proceeds an the analysis of the sequence of events in the Netherlands over the course of the cluster bomb ban campaign, the role of the theorized causal factors of strength and leverage, and the potential role of alternative explanations.

Pushing the Norm

The earliest venue for regulation of cluster munitions was the 1980 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, or the Convention on Certain Conventional Weapons (CCW), Protocol V, which would enter

into force in 2004. The CCW itself aimed to protect military personnel from inhumane and excessive injury, ¹⁸⁸ and to prevent noncombatants from accidentally being wounded or killed by indiscriminate weapons. ¹⁸⁹ When the CCW entered into force in 1983, the treaty only applied to incendiary weapons, mines and traps, and weapons designed to injure through the dispersal of very small fragments. ¹⁹⁰ Following the use of cluster munitions in Kosovo in 1999, and in Afghanistan in 2001, groups that had been active in the campaign to ban anti-personnel landmines such as Mines Action, Handicap International, and the International Committee of the Red Cross (ICRC) began to call for the inclusion of cluster munitions in the CCW protocol under negotiation at the time, Protocol V. ¹⁹¹ The mandate for Protocol V was explosive remnants of war (ERW), in which category cluster munitions could be included on account of their relatively high failure rate. ¹⁹²

The high contracting parties of the CCW and Protocol V included, however, many of the world's leading producers and users of cluster munitions, which would favor their own interests over broad regulation or prohibition of the weapons. In the

¹⁸⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). International Committee of the Red Cross (ICRC). 75 UNTS 287. (1949, August 12).

¹⁸⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I). International Committee of the Red Cross (ICRC). 1125 UNTS 3. (1977, June 8).

Convention on Certain Conventional Weapons at a Glance. *Arms Control Association*. (2007). Retrieved from https://www.armscontrol.org/factsheets/CCW.

¹⁹¹ Goose, S. (2007, November 5). Convention on Conventional Weapons (CCW): Protocol V on Explosive Remnants of War. *Human Rights Watch*. Retrieved from https://www.hrw.org/news/2007/11/05/convention-conventional-weapons-ccw-protocol-v-explosive-remnants-war.

Protocol on Explosive Remnants of War (Protocol V) to the 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). (2003). 1342 UNTS 137. Retrieved from http://unog.ch.

early 2000s, the nascent advocacy network targeted these large militarily powerful states, in particular the United States, ¹⁹³ which was deploying cluster munitions at that time in Afghanistan. The issue campaign on cluster munitions was also less organized in its goals at this time. Some advocates preferred a ban on the weapons, similar to the recent Ottawa Treaty or Anti-Personnel Mine Ban Convention; others, notably Human Rights Watch and Mines Action Canada, hesitated to press governments for a comprehensive ban, arguing that a protocol for regulation of the existing weapons would be a more likely candidate to attract powerful states. 194 The lack of solidarity in mission led to different messages from different organizations early on, ranging from improvement of existing weapons to comprehensive ban and stockpile destruction. This resulted in a fairly weak message to the contracting governments about the expectations of civil society. The powerful states, for their part, and especially the United States, pressured their allies to support a Protocol V that would be favorable, 195 which meant preventing regulation on cluster munitions and prevention of any convention that would make cooperation within NATO difficult by disallowing existing NATO practices, such as the use of cluster bombs. As will be seen in the chapters to come, all four states studied in this dissertation entered the CCW Protocol V negotiations advocating the regulation, and not the elimination, of cluster munitions.

The Netherlands was active at the beginning of the Protocol V negotiations. In 2000, it co-sponsored and circulated a paper on ERW, advocating for its inclusion in the

¹⁹³ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 47.

¹⁹⁴ Borrie 2009: 146.

¹⁹⁵ Gergely, A. (2008, May 23). U.S. 'Bullying' Hurts Cluster Bomb Ban Work: Activists," *Reuters*. Retrieved from http://www.reuters.com/article/us-clusterbombs-ireland-idUSL2324179420080523.

protocol and coordinating the negotiation of the protocol's text, and the following year it met with advocates from the International Committee for the Red Cross (ICRC) and several of its allies to discuss cluster munitions. ¹⁹⁶ In 2003, at the request of the organization IKV Pax Christi, the Dutch government provided the initial funding to found the Coalition on Cluster Munitions (CMC), and Dutch Foreign Minister Jens Scheffer spoke at its launch. ¹⁹⁷ At this time, the Netherlands ostensibly supported the new norm, and it received little canvassing by early cluster munitions ban advocates.

The Dutch government was also potentially sensitive to the issue of cluster munitions in this period; just one year prior, it was involved in the cluster bombing of Niš, Serbia. During the 1999 NATO bombing of the former Yugoslavia, Dutch F-16s dropped cluster bombs targeting the Niš Airport; the bombs missed and fell near the city center, resulting in the highest civilian casualties involving cluster munitions of the entire NATO bombing campaign. ¹⁹⁸ After the Niš incident, the Dutch ceased the deployment of cluster munitions for the NATO campaign, ¹⁹⁹ and anywhere else. However, the Niš incident had little impact on official military policy, and when later questioned the Dutch government blamed NATO for the targeting of the city, ²⁰⁰ engaging in neutralizing recognition by appealing to the authority of NATO and the US.

¹⁹⁶ Borrie 2009: 47.

¹⁹⁷ Borrie 2009: 52.

¹⁹⁸ Civilian Deaths in the NATO Air Campaign – the Crisis in Kosovo. *Human Rights Watch*. (1999). Retrieved from http://www.hrw.org/reports/2000/nato/Natbm200-01.htm.

¹⁹⁹ Tucker observed the preliminary hearing of the former Dutch Prime Minister on compensation for the families of Niš cluster bombing victims. Tucker, N. (2004, January 27). Humanitarian Bombers in Court. Retrieved from http://www.natosued.org/GB/archiveEngl/040126/040126eng.html.

²⁰⁰ Ex-PM Testifies on NATO Strikes. *BBC News*. (2004, January 26). Retrieved from http://news.bbc.co.uk/2/hi/europe/3428967.stm.

The Dutch deployment of cluster munitions at this time, and the effects of cluster munitions on civilians, simply was not yet salient to the Dutch public.

So, facing few campaign activities because of its early Protocol V participation, little backlash for its NATO cluster munition deployment, and not being one of the large states targeted by the anti-cluster munitions movement at this time, the Netherlands made a case for regulation of cluster munitions rather than prohibition. The text it proposed for Protocol V in 2004, and ultimately that was accepted by the high contracting parties, addressed the issue of cluster munitions in general terms primarily by requiring post-conflict remedial measures rather than preventative measures.²⁰¹ In spite of its non-use of the weapons, the Dutch government also continued vest utility in the weapons: official Dutch policy maintained cluster munitions as part of the arsenal, produced cluster munitions through 2002,²⁰² and made plans to modernize the cluster munitions stock in 2005.²⁰³

Setting the Sights

As civil society began to solidify its expectations for state behavior change around cluster munitions, it became much clearer which states were behaving appropriately and which states were not. The states that emerged as strong on the new norm through their responses received praise from transnational civil society; the states that emerged as the heel-draggers became targets for the campaign. As the goal remains behavioral change

²⁰² Ness, L. S. & Williams, A. G. (Eds.). (2008). *Jane's Ammunition Handbook 2007–2008* (Surrey, UK: Jane's Information Group Limited).

²⁰¹ Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada. (2009): 125.

The Dutch planned to update existing weapons as well as acquire a new system. Janssen, J. (2005, October 19). Dutch Plan to Update Cluster Weapons. *Jane's Defence Weekly*. Cross-referenced in Banning Cluster Munitions: Government Policy and Practice. (2009). Mines Action Canada.

along the continuum of disarmament responses, civil society also targeted the most likely candidates for behavior change: states with a history of joining normative agreements, or that display good behavior such as cessation of use, production, or sale of the stigmatized weapon.²⁰⁴ As a result of pressure, target governments begin to become more likely to shift behavior.

From 2001, a Group of Governmental Experts (CCW-GGE)—the states charged with evaluating how to deal with ERW and particularly interested in cluster munitions—was appointed to work with NGOs on the issue through the forum of the review conferences to the protocol. Dutch Ambassador Chris Sanders co-chaired this group. The CCW-GGE advocated for a binding instrument to which states could be held, but still only called for the regulation of existing munitions models, and improvements for models with high failure rates. The company of the states could be held, but still only called for the regulation of existing munitions models, and improvements for models with high failure rates.

In 2003, the CCW remained the primary forum for discussion of any regulation of cluster munitions. The goal for the advocacy network at this time was for a freeze on the use of cluster munitions, ²⁰⁷ as opposed to a ban. Led by the United States and the other major producers and users of cluster munitions. ²⁰⁸ discussions remained fixated on

²⁰⁴ CMC Campaign Toolkit. (2010) *Cluster Munition Coalition*. Retrieved from http://www.stopclustermunitions.org/media/330852/Campaign-Toolkit-complete-kit-low-res-.pdf.

²⁰⁵ Record of Second Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or Have Indiscriminate Effects. (2001). CCW/CONF.II/2. Retrieved from http://unog.ch.

²⁰⁶ Chapter IV: Conventional Weapons Issues. *UN Disarmament Yearbook* 30. (2005). Retrieved from http://www.un.org/disarmament/HomePage/ODAPublications/Yearbook/2005/Html/ Ch%20IV.html.

²⁰⁷ Barber, M. (2005, April 20). Statement to the CCW Group of Governmental Experts. ²⁰⁸ *Landmine and Cluster Munition Monitor*, last updated September 5, 2015, http://www.the-monitor.org/en-gb/home.aspx.

issues of interest to those states. The 2003 draft of the Protocol did not regulate cluster munitions in any capacity;²⁰⁹ rather, it addressed the explosive remnants of war in general terms, which although it does include unexploded cluster munitions is intended only "to minimize the risk and effects" of unexploded ordinance.²¹⁰ While concluded in 2004, Protocol V did not obtain enough participants to enter into force until 2006. The subsequent review conferences of Protocol V, particularly the Third Review Conference in 2006, sought to include at least a substantive mandate for future work specifically on cluster munitions.²¹¹

This failure to include cluster munitions in 2006 led to Norway's initiation of a separate forum of states interested in a comprehensive cluster munitions ban specifically, the Oslo Process. This new process would eventually produce the 2008 Convention on Cluster Munitions. This forum was strongly supported by the coalescing Cluster Munitions Coalition (CMC), which as noted in the previous section was formed in 2003 with initial funding from the Dutch government. The Oslo Process was ultimately a humanitarian initiative by a group of predominantly small and medium-sized states—especially Austria, the Holy See, Ireland, Mexico, New Zealand, Norway and Peru— in partnership with, eventually, over three hundred civil society organizations under the umbrella CMC. These were not states territorially affected or potentially threatened at home by cluster munitions, but rather advocating for prevention

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²¹² Cluster Munitions Monitor 2012: 11.

²⁰⁹ Convention on Certain Conventional Weapons at a Glance. *Arms Control Association*. (2007). Retrieved from https://www.armscontrol.org/factsheets/CCW.

²¹⁰ Harrison, K. & Moyes, R. (2008, June 26). CCW Protocol V and the Convention on Cluster Munitions (CCM): Note on Coherence. Landmine Action: 1.

²¹¹ "Cluster Munitions Monitor 2012," *Landmine and Cluster Munition Monitor*, last updated September 3, 2015, http://www.the-monitor.org/en-gb/home.aspx.

of their use elsewhere in the world, and appropriate reparations in cases where they had been used already. Where many of these states began to initiate unilateral good behavior toward cluster munitions—ceasing use, production, and sale of cluster munitions, and in several cases preemptively banning the weapons at home ²¹³—others, in spite of participation in the process, behaved counter to the spirit of the negotiations and the new norm. Those states that were members of the European Union received little pressure from the supranational organization; the European Parliament recommended limitations on cluster munitions around the same time as the first unilateral bans, but little pressure.²¹⁴

While eventually it became an important mover in the Oslo Process, the Netherlands was slow to embrace the process and was not supportive of a broad prohibition on cluster munitions until the end of the negotiations on the Convention on Cluster Munitions (CCM) in the latter half of 2008. A full ban on cluster munitions represented a high cost for the Dutch government, in terms of dismantling its stocks, as well as in terms of costs to participation in NATO and cooperation with its important ally, the United States.

In 2003, its official position on cluster munitions was for an improved Protocol V that would include better post-conflict provisions specifically for cluster munitions.²¹⁵

²¹³ Belgium, Ireland, Luxembourg, and New Zealand imposed preemptive bans beginning in 2006; of these states, only Belgium ever possessed cluster munitions. US, European Banks Invest Billions in Cluster Bombs: NGOs. *AFP*. (2011, May).

There is no substantive work on this, although a Dutch graduate student has written on the role of the EU, finding that the disparate preferences of its members made it difficult for it to exert pressure as an actor. Available here: http://essay.utwente.nl/60327/

²¹⁵Borrie, J. (2008, August 1). How The Cluster Munition Ban Was Won: Oslo Treaty Negotiations Conclude In Dublin. Retrieved from http://www.acronym.org.uk/dd/

The Netherlands began reducing its stockpiles in 2005, but in spite of growing public pressure and the raising of the matter by leftist opposition Members of Parliament, the Dutch government continued to publicly maintain that cluster munitions were still legitimate and necessary weapons.²¹⁶

In October 2006, Dutch opposition parties supported the call of several civil society organizations headed by IKV Pax Christi to end Dutch possession of cluster munitions. During the same month, opposition Parliamentarians initiated a motion calling on the government to commit itself to an international agreement that "constrains or forbids" the use, production, and trade of cluster munitions. The motion was rejected. The following month, the Third Review Conference of the CCW convened, where an "urgent" meeting of the CCW-GGE was called on the matter of an agreement on cluster munitions. The Netherlands opted not to support a proposal submitted to the conference participants for a mandate to negotiate a legally binding instrument "that

dd88/88jb.htm.

²¹⁶ Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada. (2009).

²¹⁷ Boer, R., Slijper F., and Struyk, M. (2008, February). The Devil is in the Detail. *IKV Pax Christi*. Retrieved from http://www.paxforpeace.nl/media/files/the-devil-is-in-the-detail-2008.pdf. Translated with GoogleTranslate.

²¹⁸ At this time, the government was dominated by the Christian Democratic Appeal party, which was center-right; opposition MPs and particularly Labour (PdvA) backed the call.

²¹⁹ Motion by MP Bert Koenders, Labour Party (PvdA): House of Representatives, October 19, 2006, rijksbegroting.minfin.nl.

Record of Third Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or Have Indiscriminate Effects. (2006). CCW/CONF.III/2. Retrieved from http://unog.ch.

addresses the humanitarian concerns posed by cluster munitions."²²¹ Nor did it join the several dozen nations that called for a new agreement that would prohibit the use of cluster munitions in civilian areas, prohibit the use of cluster munitions that "pose serious humanitarian hazards because they are ... unreliable and/or inaccurate," and require the destruction of stockpiles of such unreliable cluster munitions.²²² Following this meeting, in November 2006, Norway announced the initiation of the Oslo Process.²²³

The Netherlands participated in many of the meetings of the Oslo Process, but it made clear that it preferred the framework of the CCW, and frequently expressed its reservations about the draft convention text, regarding provisions on interoperability, transfer, and the text for a comprehensive ban.

At the first conference in Oslo in February 2007, for example, the Netherlands made the case that Protocol V represented a convention on cluster munitions already in place. During the Lima conference in May, it stated that it was not in favor of a comprehensive ban. 225 At the Vienna conference in December 2007, the Dutch representative stated, "Since that 'founding meeting' of the Oslo Group the discussion papers tabled at the follow-on meetings in Lima and Vienna have drifted away from

²²¹ Proposal for a Mandate to Negotiate a Legally-Binding Instrument that Addresses the Humanitarian Concerns Posed by Cluster Munitions. (2006, October 25). 3rd Review Conference of the States Parties to the CCW, CCW/CONF.III/WP.1.

²²² Declaration on Cluster Munitions. (2006, November 17). 3rd Review Conference of the States Parties to the Convention on Conventional Weapons. CCW/CONF.III/WP.18. ²²³ CCW/CONF.III/WP.18 2006.

²²⁴ The Netherlands pointed to Protocol V's potential to deal with unexploded cluster munitions and its preventative measures relating to munitions quality control in production and shelf life. Statement of the Netherlands, Oslo Conference on Cluster Munitions, February 22, 2007. Notes by Cluster Munition Coalition.

²²⁵ Statement by Ambassador Johannes C. Landman, Permanent Representative to the Conference on Disarmament, Lima Conference on Cluster Munitions, May 24, 2007.

[the] original aim" of the Oslo Process: to ban those cluster munitions that cause unacceptable harm²²⁶, implying that some models did not fit that description. Dutch representatives went on to argue in favor of exceptions for cluster munitions with low failure rates and self-destruct mechanisms, and for cluster munitions containing fewer than 10 submunitions, ²²⁷ demonstrating some continuing utility for these cluster munitions. The argument for these states continued to be that not all cluster munitions have unacceptable consequences for civilians, based on measurements of reliability and accuracy.²²⁸

During the Wellington conference in February 2008, the Netherlands aligned itself with the "like-minded group," including but not limited to many of the cluster munitions producers and users that had been active during the negotiation of Protocol V—mainly military allies of the United States²²⁹—that put forward several proposals to weaken the draft text. During the Oslo Process, the United States participated as an observer and talked behind-the-scenes to its allies about specific provisions that it felt would hamper joint missions,²³⁰ and went so far as to threaten that it would be unable to cooperate on some humanitarian missions in the future if its vehicles and ships were

²²⁶ "Cluster Munition Ban Policy," Landmine & Cluster Munition Monitor, updated September 3, 2015. Retrieved from February 12, 2013, http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/2055.

Harrison, K. (2008, January). Report from the Vienna Conference on Cluster Munitions 5–7 December 2007. WILPF. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²²⁸ Borrie, J. (2008, August 1). How The Cluster Munition Ban Was Won: Oslo Treaty Negotiations Conclude In Dublin. Retrieved from http://www.acronym.org.uk/dd/dd88/88jb.htm.

²²⁹ Borrie 2008.

²³⁰ Goose, S. (2008). A Shift in U.S. Policy on Cluster Munitions? *Arms Control Today* 38. Retrieved from https://www.armscontrol.org/act/2008 01-02/goose.

incidentally carrying cluster munitions on board. 231

In addition to opposing a broad prohibition, the Netherlands and other likeminded states supported "the deletion of special obligations for past users of cluster munitions," which would lighten the load of reparations and clean up for past users, including the United States. It also endorsed a call for provisions that would facilitate "interoperability" (joint military operations with states not party) of cluster munitions. These positions became more difficult to sustain as many NGOs participating in the process—allowed to join in talks, advise, and lobby states throughout Oslo—brought mounting evidence about the dangers of cluster munitions to the table. Key at this time were reports submitted that tested the failure rates for cluster munitions used during the recent Israel-Lebanon conflict of 2006, reporting much higher failure rates and more missed targets than reported by the producers of the munitions models themselves.

During the final round of treaty negotiations prior to the treaty signing in Dublin in May 2008, still pressured by the United States, which would continue to push for

²³¹ Mull, S. D. (2008, May 21). On-the-Record Briefing on U.S. Cluster Munitions Policy. Retrieved from http://2001-2009.state.gov/t/pm/rls/rm/105111.htm.

Statement of the Netherlands. (2008, February 20). Session on Clearance, Wellington Conference on Cluster Munitions. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²³³ The general issue with interoperability was that while states were obligated to cooperate militarily in NATO, provisions of the Convention on Cluster Munitions would prohibit certain actions between allies within NATO, namely joint operations where allies not party (read: the United States) to the CCM would use or transfer cluster munitions. Discussion Paper, "Cluster Munitions and Interoperability: The Oslo-Process Discussion Text and Implications for International Operations," presented by Australia, Canada, the Czech Republic, Denmark, Finland, France, Germany, Italy, the Netherlands, Sweden, Switzerland, and the United Kingdom, Wellington Conference, February 18-22, 2008, www.mfat.govt.nz.

²³⁴ King, C., Dullum, O., and Østern, G. (2007, November). M85-An Analysis of Reliability. *Norwegian People's Aid*. Retrieved from https://www.npaid.org/content/download/1142/10896/file/m85.pdf.

cluster munitions to be addressed in the CCW until 2011, the Netherlands increased its emphasis in the Oslo Process on interoperability, arguing this would be vital to achieving consensus.²³⁵ Dutch participants argued that the Netherlands would not be able to join a convention that would affect its choice of military partners.²³⁶

In April 2008, the Dutch Ministry of Defense inquired into precision and reliability as criteria by which to distinguish "acceptable" from "unacceptable" cluster munitions. What they reported was that reliability rates of weapons depend on the context and are therefore difficult to ascertain; therefore, the government decided it was preferable to use properties such as the presence of self-destruction and self-neutralization mechanisms²³⁷ in order to categorize the weapons. In Dublin, it proposed that the convention should employ a three-tier approach to prohibition, with,

"Exemptions for munitions with a low number of submunitions; a middle range of cluster munitions which would be subject to cumulative requirements; and a bottom tier of a "massive number" of cluster munitions which would be subjected to prohibition outright."

The conversation on cluster munitions continued throughout this period in both the review conferences of Protocol V and in the Oslo Process. In part due to the competing treaty models and the work of states supporting the Protocol V framework, the Cluster

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²³⁵ Statement of the Netherlands. (2008, May 19). Dublin Diplomatic Conference on Cluster Munitions. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²³⁶ Statement of the Netherlands, Informal Discussions on Interoperability, Dublin Diplomatic Conference, May 22, 2008. Notes by Landmine Action.

²³⁷ Verhagen, M. & Middelkoop, E. (2008, April 16). Parliamentary Letter Regarding Cluster Munitions. Retrieved from www.minbuza.nl.

²³⁸ Statement of the Netherlands. (2008, May 20). Informal Consultations on Definitions, Dublin Diplomatic Conference. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

Munitions Campaign (CMC) continued to have trouble developing a united campaign call in terms of which forum was most appropriate, and which behavior was expected by the norm, and what should be included in a document on cluster munitions. However, as the two processes continued to compete, it became clear that particular states involved in Protocol V but not officially participating in Oslo were pressuring others to weaken the Oslo outcome. The United States specifically engaged in pressure but not participation, as its delegation observed but did not speak up in the meetings. The Netherlands was one of the states to receive pressure from both civil society and its allies, and it was clear from its positions that its interest in the U.S. as an ally, and NATO, limited severely its willingness to work toward a comprehensive cluster munitions ban. ²⁴⁰

Through the Oslo Process, the CMC also honed in on particular treaty provisions as imperative to the legalization of the cluster munition taboo, especially a binding and comprehensive ban on all types of cluster munitions possession, production, transfer, and use. As the Oslo meetings in 2007 and 2008 continued, member organizations of the CMC railed against any and all attempts to weaken those provisions in the Oslo Process, as a Convention on Cluster Munitions that did not comprehensively ban the weapons would be the first time in history that a weaker arms control agreement proceed a stronger one. As a result, the Dutch government became a key target for domestic and transnational civil society in the two years leading up to the 2008 Convention on Cluster Munitions.

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²⁴⁰ Nystuen & Casey-Martin 2010.

²³⁹ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 162.

Turning the Tide

Recall that according to the theory guiding this project, once governments identify their position vis-à-vis the new issue and civil society's call for action, campaigns hone in on more specific calls for change and set their sights on likely targets. With the necessary targets in sight to achieve a best possible ban agreement, transnational (and domestic) civil society ramped up the pressure on those target states, raising salience through media coverage-seeking events, the publishing of reports, and government and public canvassing. If a major event is available to which to attach the norm, the campaign will do so to raise salience even further. These activities culminate in a salience tipping point, at which the population becomes activated, or so strongly accepting of the norm as to be moved to act on behalf of the norm and join the campaign. The public, and usually some members of government, accept the norm.

While the goals of the campaign took time to solidify, the strategies were very clear: collect and present evidence, develop simple and sound byte-able arguments, educate the public, and encourage debate.²⁴¹ Of these, public education strategy received the most airtime. It focused on both indirect provision of information and campaign tools through the web, as well as direct education work including but not limited to "public meetings, debates ... may be incorporated into other events – member organization events, pop concerts, festivals and virtually any occasion open to the public." ²⁴² Regardless of venue, the message is simple and clear: "ban cluster munitions." Even early in the campaign, the "essential element of public awareness is

²⁴¹ McGrath, R. (2004, October 15). Campaigning against Cluster Munitions: Strategic Issues. *Landmines Action UK*. Retrieved from www.mineaction.org.

²⁴² McGrath 2004.

engaging the media."²⁴³ Engaging the public through media coverage, then, encourages debate. While the word salience was not openly used in official campaign strategy, what is clear is that the campaign was very aware of the need to raise salience to the public, in order to make the issue an important one, and encourage debate and finally action.

At the onset of the Oslo Process, the CMC had set the sights on Western European military powers as key targets to give any new treaty the legitimacy of their backing—including, along with France, Germany, and the United Kingdom, the Netherlands. In spite of its small size, the Netherlands possesses one of the most modern and technologically advanced military forces in the world,²⁴⁴ and is highly participatory in NATO deployment.²⁴⁵ Its greatest concern with any new cluster munitions agreement was, accordingly, the issue of interoperability. As discussed above, although they had frozen usage of the weapons, the Netherlands and other targets were against the idea of a binding and comprehensive ban on cluster munitions. The main concern for the Netherlands, rather than pressure by its military to keep the weapons, was its ability to cooperate with the United States and NATO, which were core features of its defense policy. The goals of the CMC were, of course, in favor of such a ban; further, in the Netherlands, the supporters of the norm also focused on behavior not regulated by the text of the new treaty, such as investment in cluster munitions producers.

The earliest strategies involved the production of reports on the effects of cluster munitions and who was using them. Directed by the steering committee of the

²⁴³ McGrath 2004.

²⁴⁴ The Netherlands Defense Policy & Posture. (2008). *Military Technology* 10: 128.

²⁴⁵ Although, its military did not advocate for continued possession of cluster munitions, and had learned recently in military exercises with Norway about the accuracy and efficacy of the weapons during training in 2004.

transnational campaign, Dutch domestic organizations IKV Pax Christi and Netwerk Vlaanderen became key coalition partners and produced a number of reports on the humanitarian impact of the weapons, calling in their conclusions for a comprehensive ban. ²⁴⁶ Specific to the Netherlands at this time was a focus on the issue of investment in cluster munitions, the focus of several reports and, later, a documentary film, which will be discussed later in the case study. These reports received little attention when they were first distributed.

However, during the same period that the Netherlands and other "like-minded" states were digging in their heels over munitions model failure rates and interoperability, the CMC campaign was beginning to supply more serious pressure. As the Oslo process began in earnest and a treaty document became a real possibility, member organizations of the CMC not only lobbied and advised government officials directly at each meeting, but also turned up the pressure at home, extending the campaign beyond just the members of their organizations to the general public. In addition to standard canvassing on the issue, the Dutch contingent purchased advertisements in newspapers; gathered petition signatures; published articles; published web blogs and videos; and called a series of action days, which turned out increasingly larger crowds on the Parliament square.²⁴⁷

The CMC was able to use two major events to focus attention on cluster munitions in the Netherlands, one before the drafting of the treaty, and one after, which

²⁴⁶ Cluster Munition Coalition, Campaign Resources, available at www.stopclusterbombs.org.

²⁴⁷ Campaign Materials for the 2007 Global Day of Action on Cluster Munitions, Cluster Munitions Coalition, November 5, 2007. Retrieved from http://www.stopclustermunitions.org/wp/wp-content/uploads/2009/10/gdoareport_5nov07.pdf.

will be discussed in a later section. The first was in 2007, when Dutch public television aired a documentary filmed by Dutch anti-cluster munition activists titled "The Clusterbomb Feeling," an examination of major Dutch pension funds' investment in companies involved in the production of landmines and cluster munitions produced by campaigners. The documentary found that a number of national pension programs had invested hundreds of millions (USD) in firms that produce cluster weapons and landmines. At the time of the airing, there existed no ethical guidelines for what investments were acceptable, "as long as returns (on the investment) are good." This was particularly damaging to the Dutch government, implicated in the investments—but the program also implicated a complacent public for allowing their own pension plans to be invested in this way. Memorably, the leader of Pax Christi Netherlands learned for the first time on camera that her pension plan portfolio invested in cluster munitions producers.

The program generated considerable public outcry, including thousands of complaints from pension scheme members and news media coverage, and sparked a Parliamentary debate on the issue.²⁵¹ Media coverage of cluster munitions also spiked at the airing of the film,²⁵² and data from domestic NGO- and CMC-produced reports was incorporated into much of the ensuing news coverage. Shortly after the airing of the

²⁴⁸ The Clusterbomb Feeling. Zembla, VARA/NPS Broadcasting. (2007, March). Retrieved from https://www.youtube.com/watch?v=c6nRc6Npmj0.

²⁴⁹ Bandel, C. (2007, March 19). Dutch Funds Invest in 'Cluster Bombs and Land Mines' - TV claims. *Intelligence on European Pensions and Institutional Investment*. Retrieved from https://www.ipe.com/dutch-funds-invest-in-cluster-bombs-and-land-mines-tv-claims/21620.fullarticle.

²⁵⁰ "The Clusterbomb Feeling," 2007.

²⁵¹ Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada. (2009).

²⁵² Analysis of local search terms "cluster bombs" and "Netherlands", *Google Trends*.

program, PGGM (the Dutch pension fund for nurses) and APB (the pension fund for Dutch teachers and civil servants) announced the intent to end investments in cluster munitions manufacturers, ²⁵³ regardless of whether a national ban on investment existed or not. These events sparked a cascade of disinvestment by many of the other national pension programs, including Royal Dutch Shell. ²⁵⁴ The film itself has since been used as an official campaign tool by the CMC. ²⁵⁵

These activities as a whole drove Dutch sentiment on cluster munitions to a tipping point right before the final negotiation in Dublin, which would culminate in a complete policy reversal over the course of a week of negotiations. Some Dutch citizens gathered on the Parliamentary square to demonstrate and play dead (of cluster munitions).²⁵⁶

Making the Norm Work

At the salience tipping point, with an activated public, civil society can engage in large-scale campaign activities at home such as demonstrations and mass contact with government, to an extent that would override the counterpoised concerns of the government. The scale of active participants and height of issue salience ultimately results in enough pressure on government that it will change its policy to fit the

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²⁵³ Massive Dutch Pension Fund Drops Investments in Land Mines, to Disclose All Holdings. *Associated Press*. (2007, April 6). Retrieved from https://business-humanrights.org/en/massive-dutch-pension-fund-drops-investments-in-land-mines-to-disclose-all-holdings.

²⁵⁴ Shell Pension Fund Adopts Ethical Stance. *Financial News*. (2008, June 30). Retrieved from http://www.efinancialnews.com/story/2008-06-30/shell-pension-fund-adopts-ethical-stance.

²⁵⁵ Cluster Munitions Campaign, www.stopclusterbombs.org.

²⁵⁶ Roos Boer, IKV Pax Christi, February 24, 2009. Cross-referenced from Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

prescription of the norm. This campaign activity is most effective if citizens can directly levy pressure over the material interests of government, wielding votes or investment in state institutions

The Dublin conference, at which members had agreed they would produce the text for the new treaty, was the main goal for civil society: get the strongest possible treaty, and win the key military powers' approval. According to one participant, the CMC drastically intensified its activities in the lead-up to Dublin; it tapped into government contacts it had developed in recent months, called out its expanded constituencies in those states, and "in the Conference chamber itself, the CMC was limited to a few representatives, but they made good use of their delegation with a highly effective 'front-bench' of experts, each specializing in particular issues." On the Dutch home front.

"IKV Pax Christi sent DVDs to all Members of Parliament which explained the human suffering caused by cluster munitions. Radio jingles were broadcast on Dutch radio, including messages from recognized military experts. Public (demonstrations) on the parliamentary square increased the pressure and put the issue high on the political agenda."²⁵⁸

At the Dublin conference itself, the Dutch negotiators actually increased their emphasis on the problem of interoperability and continued to try and categorize the weapons by

²⁵⁷ Borrie, J. (2008, August 1). How The Cluster Munition Ban Was Won: Oslo Treaty Negotiations Conclude In Dublin. Retrieved from http://www.acronym.org.uk/dd/dd88/88jb.htm.

²⁵⁸ Email from Roos Boer, IKV Pax Christi, 24 February 2009. Cross-referenced from Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

failure rate.²⁵⁹ However, observers in Dublin said that there were signs that these states were feeling pressure for a successful outcome at home.²⁶⁰ As the talks went on, media coverage and salience were very high at home, with citizens playing dead on the Parliamentary square in protest of cluster munitions as well as demonstrating outside the talks in Dublin. In the Netherlands, that same week, the lower house of Parliament decided to accept a motion for a comprehensive cluster munitions ban,²⁶¹ calling for "the strongest treaty possible."²⁶² Following this move, the attitude of the Dutch negotiators in Dublin began to change, and while they announced they were not entirely happy with the treaty outcome, they were willing to join consensus, adopt the agreement, and ask other states to do the same.²⁶³ The treaty would be officially signed in upcoming December.

The Netherlands also continued to support work in the CCW framework to deal with cluster munitions, but its attitude toward the weapons appeared changed. At several CCW Group of Governmental Expert (CCW-GGE) meetings following Dublin, it indicated that any CCW document weaker than the new Convention on Cluster

²⁵⁹ Statement of the Netherlands, Committee of the Whole on Article 1, Dublin Diplomatic Conference on Cluster Munitions, May 19, 2008. Notes by Landmine Action.

²⁶⁰ Borrie 2008.

²⁶¹ This motion was initiated by Angelien Eijsink, Labour Party (PvdA); interestingly, while her party is one for social issues and the environment, her work has been on matters of the Dutch military defense. The Dutch military, for its part, had been silent on cluster munitions since Niš.

²⁶² Miriam Struyk, IKV Pax Christi, April 23, 2009. Cross-referenced from Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²⁶³ Statement of the Netherlands. (2008, May 30). Closing Plenary, Dublin Diplomatic Conference. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

Munitions (CCM) would be unacceptable.²⁶⁴ In fact, it argued at a November 2008 meeting of the CCW-GGE that the CW must negotiate a real protocol rather than a proposal to avoid making the CCW "a laughing stock," and stated it would not even spend its taxpayers' money on the issue unless a protocol was negotiated.²⁶⁵ It continues to encourage a cluster munitions protocol within the CCW framework in the hopes of drawing in states not party to the CCM.

The Cluster Munitions Coalition lauded the acceptance of the CCM by many of the "like-minded" states, but did not cease their campaign. Rather, it shifted the focus to ensuring ratification and cooperation with the new treaty, and reinvigorating its campaign to ensure complete acceptance of the norm, by targeting the secondary activity of direct investment in producers or indirect investment in funds that support those producers. ²⁶⁶

Watchdogging

After the initial policy change, civil society can maintain high salience for the issue to ensure ratification of the ban and the necessary changes to meet the requirements of the agreement. This allows for effective monitoring, pressure to maintain good behavior, and even advocacy for policies befitting of the norm but above and beyond the treaty commitment. In this case, above and beyond means legally closing the loopholes for direct and indirect investment in cluster munitions, and even instating penalties for

²⁶⁴ Netherlands Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

Statements of the Netherlands. (2008, November 7 and 12). 5th 2008 Session of the CCW-GGE on Cluster Munitions. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²⁶⁶ See: www.stopexplosiveinvestments.org, subsidiary campaign of the CMC.

violators of the policy. In time, with these policies in place, the norm can become unthinking within the state.

After Dublin, the CMC encouraged the Dutch government and other "like-mindeds" to advise others to sign the convention in Oslo in December 2008; it also encouraged the early destruction of stockpiles, producing reports on the status of stockpiles. By the time of the second focal event, the death of Dutch journalist Stan Storimans by a cluster munition during coverage of the 2008 Russia-Georgia conflict, the Netherlands was already talking about the importance of wide ratification of the CCM. The Dutch Minister of Foreign Affairs actually spoke of the journalist, whom he had met in Afghanistan, when he signed the CCM in December 2008. "... cluster bombs kill," he said; the convention will "attach such a stigma to cluster bombs that even countries that are not present today to sign it will think twice before using these weapons." He further encouraged states not party to the new CCM to continue work toward a cluster munitions protocol for the CCW. 270

The Netherlands signed the CCM in December 2008 but while committing to immediately begin the ratification process, did not ratify it until August 2011.²⁷¹ During this time, the Netherlands made good efforts to behave as if the treaty were already

²⁶⁷ See: *Landmine and Cluster Munition Monitor*, 2007-present. Retrieved from http://www.the-monitor.org

²⁶⁸Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada. (2009):127.

²⁶⁹ Statement by Maxime Verhagen. (2008, December 3). Convention on Cluster Munitions Signing Conference, Oslo. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²⁷⁰ Verhagen 2008.

Netherlands Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

ratified, reducing its future costs of doing so. The Dutch immediately began destroying their stockpile however; in 2011, the Netherlands sent the remainder of its cluster munition stocks to the more advanced Norwegian NAMMO destruction facility for complete destruction.²⁷² Furthermore, while transit of the munitions across Dutch soil and military cooperation with States not Party to the CCM were not technically outlawed by the treaty, it stated that transit of cluster munitions through Dutch territory will not be "appreciated,"²⁷³ and that prior to any military cooperation with States not Party to the CCM wherein cluster munitions use could not be ruled out, "certain national reservations would be made by the Dutch government."²⁷⁴

During the interim, the Dutch government received congratulations from the campaign in various cluster munitions state behavior report cards²⁷⁵ as it begun to destroy its stockpiles and encourage the same for other states. In the alternative CCW Protocol V framework, it in fact worked for three more years to negotiate a cluster munitions protocol that would include more of the states that had not participated in or signed the CCM. Regardless, the Dutch Red Cross, IKV Pax Christi, and other organizations continued to publish reports and news articles criticizing the government

²⁷² Nammo Bulletin. (2014). Retrieved from https://www.nammo.com/globalassets/pdfs/bulletin/nammo-bulletin-2014.pdf.

²⁷³ Letter from the Senate Committee on Foreign Affairs, Defense, and Development to Uri Rosenthal. (2011, June 8). Reference 147812.07u. Retrieved from www.eerstekamer.nl.

²⁷⁴ Verhagen, M. & Middelkoop, E. (2010, March 5). Approval of the Convention on Cluster Munitions Adopted on May 30, 2008 in Dublin: Note with Regard to the Report. Retrieved from zoek.officielebekendmakingen.nl.

²⁷⁵ Yearly reports by Landmine and Cluster Munition Monitor (yearly progress report for all countries, joint effort by the International Campaign to Ban Landmines and the CMC): available at: http://www.the-monitor.org; reports by Handicap International, Landmine Action, UNDIR, and ICRC Retrieved from http://www.stopclustermunitions.org

for slow ratification and pressuring it to do so quickly.²⁷⁶

However, in addition to keeping to the text of the CCM, the issue of disinvestment, was still on the table. The policy of the CMC organizations had been both to show support for states whose behavior had improved, but also to pressure these states to ensure cooperation with the spirit of the norm. In the Netherlands, from 2008 forward, the policy shifted more toward the latter. It created a new sub-campaign especially designed to target the specific behavior of bad investment or allowing bad investment, Stop Explosive Investments²⁷⁷ in which it produced campaign materials and reports specifically targeting, and directing citizens to target, both the governments that allowed the practice and the institutions or businesses that engaged in the practice. Organizations Netwerk Vlaanderen and IKV Pax Christi published a yearly report on "explosive investments," marking several Dutch companies and hundreds of foreign companies as guilty for allowing investment in cluster munitions, and calling for a ban on such investments.²⁷⁸

At the time of the CCM signing, the official Dutch government stance was that investment in producers of cluster munitions run counter to the spirit of, *but is not banned by* (emphasis mine), the CCM and further, the Convention "cannot be applied to private institutions or persons." It preferred instead to encourage transparency and self-regulation among companies, rather than impose restrictions, citing the outcry

²⁷⁶ Netherlands Hardly Takes Cluster Munition Treaty Seriously. *Ravage Digital*. (2010, July 30). Retrieved from http://www.ravagedigitaal.org/2010nieuws/juli/31/nws.php. http://www.stopexplosiveinvestments.org

Yearly reports available at the Landmine and Cluster Munition Monitor, http://www.the-monitor.org.

²⁷⁹General Affairs and External Relations, List of Questions and Answers. (2008, September 8). Netherlands Lower House of Parliament, 21501-02, No. 846, 2007–2008 Session.

against the pension funds back in 2007 as the exemplar for a more hands off policy.²⁸⁰ By 2009, only a handful of Dutch banks still engaged in the practice, having suffered loss of face and business as a result of calls, demonstrations, and media coverage of the issue. The same year, Parliament accepted a motion by MP Krista van Velzen to ban all investment by banks and pension funds in cluster munitions producers;²⁸¹ however, the government decided not to carry out the motion.²⁸²

The Netherlands was still feeling some pressure from non-CCM allies, but had grown more confident in its assertions that a comprehensive ban was necessary, whether it come from the CCW or the CCM. In response to the failure of the 2011 CCW review conference to conclude a cluster munitions protocol, a Labour Party motion was accepted which declared the Convention on Cluster Munitions to be "the standard within international law regarding cluster munitions." It requested that the CCM treaty be quickly ratified, and further requested the government to "create legislation regarding the prohibition on demonstrable direct investments in the production, sale, and

²⁸⁰ Remembering that several of the major pension funds opted to withdraw investment in funds that support cluster munitions producers as a result of the reports by Netwerk Vlaanderen, IKV Pax Christi, and "the Clusterbomb Feeling."

²⁸¹ Proposal to End Cluster Munition Investment. *De Telegraaf.* (2010, September 22). Retrieved from http://www.telegraaf.nl/binnenland/article20345589.ece.

The Ministry stated that the Dutch government would "encourage transparency in companies' governance policies," noting that a majority of Dutch financial institutions had already taken steps to prevent investments in controversial arms producers. Letter from Maarten Wammes. (2015, September 3). Cross-referenced from Cluster Munition Monitor. Landmine and Cluster Munition Monitor. Retrieved from http://themonitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²⁸³ Motion by Voordewind (Christian Union) and Eijsink (Labour Party). Voordewind, J. & van Eijsink, A. Kamerstuk. (2011, December 13). NR. 57. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

distribution of cluster munitions for all financial institutions as soon as possible."²⁸⁴ The Dutch government ratified the CCM in August that year, and the treaty entered into force for the Netherlands as the CCW conferences concluded.

In response to a publication by IKV Pax Christi on investments by Dutch financial institutions in cluster munitions producers, two Members of the House of Representatives asked for a joint response of the Finance Minister, the Foreign Minister, and the Secretary of State for Development on the conclusions of the report. In March 2012, the Minister of Finance stated, "Although there is no international consensus on this (yet), the discussion, just like the convention, is based on the central principle that an end has to be put to the humanitarian harm caused by cluster munitions. This consideration has led the cabinet to the decision to ... introduce a legal prohibition on direct investments in cluster munitions by financial institutions."

The prohibition on direct investments will be implemented by a new provision to the Financial Supervision Act that "imposes an obligation that prevents an enterprise directly supporting any national or foreign enterprise which produces, sells or distributes cluster munitions" so as to restrict, as much as possible, investments in cluster munitions producers.²⁸⁷ Any institution found to be in violation of the new law can be sanctioned

²⁸⁴ Voordewind, J. & van Eijsink, A. 2011.

²⁸⁵ "HI Update: Investment in Cluster Munitions," Handicap International, December 13, 2012. Retrieved from http://www.handicapinternational.be/en/node/2947

Jan Kees de Jager, "Letter concerning the status of the implementation of the motion Haubrich-Gooskens concerning a prohibition on direct investments in cluster munitions," Reference: Kamerstuk 32187 (R1902): March 2012, www.zoek.officielebekendmakingen.nl. Translation by IKV Pax Christi.

²⁸⁷ The regulation does not apply to transactions based on an index and transactions in investment funds operated by third parties in which companies that produce, sell, or distribute cluster munitions constitute less than 5 percent of the total. It also does not apply to investments in clearly defined projects of a cluster munitions producer insofar

with a maximum fine of €1,000,000. The law entered into effect as of January 1, 2013. A Dutch official responding to the new provision reiterated the view that investment, while not openly prohibited by the text of the CCM, is part of the "spirit" of the convention. The new bill was lauded by the "Explosive Investments" campaign as exemplary of strong action on cluster munitions, and Dutch institutions had divested to such an extent that its institutions made only "Hall of Fame" (good practices) lists in the most recent reports on cluster munitions investment. 289

Conclusion

In the case of the Netherlands, the cluster munition campaign was instrumental in changing the behavior of the Dutch government on cluster munitions, before and after the international ban. The Netherlands had little incentive to join the CCM, pressured by the United States and its NATO allies, facing costs of cleanup and stockpile destruction, as well as indirect costs to future cooperation. While some of Holland's neighbors called for the ban, many others, including close allies, opposed a limitation on cluster munitions, and the Dutch government felt pressure from the EU and the UN to shift toward humanitarianism while at the same time being pressured by the US and NATO not to. This fractured reception of the norm and the new treaty played out in both the

as such funding is not utilized for the production, sale and distribution of cluster munitions. Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²⁸⁸ Statement of the Netherlands. (2012, April 18). Convention on Cluster Munitions Intersessional Meetings. Cross-referenced from *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

²⁸⁹ Worldwide Investment in Cluster Munitions. IKV Pax Christi and FairFin. (June 2012). Retrieved from http://www.stopexplosiveinvestments.org.

European Union and in the United Nations. Throughout the Oslo Process, the Dutch made claims that only some kinds of munitions should be banned, and the attempt to categorize out other munitions shows a weak effect for the prohibitionary norm on cluster munitions as well.

In all four cases, the causal sequence began with a call from civil society to cease the use of cluster munitions due to their high failure rates. The Netherlands was an early participant in work on unexploded remnants of war in the Convention on Conventional Weapons forum, and when civil society reporting from Niš, Serbia found that RBL-755's dropped by Dutch planes killed a number of civilians and left behind unexploded submunitions in a populated area, the Dutch stopped using their cluster munitions in Serbia. However, they identified their position by stating cluster munitions were legitimate if used under existing principles of international humanitarian law, a neutralizing recognition of cluster munitions, thus making themselves a civil society target. From 2003, campaign report cards found Dutch cluster munition policy lacking year after year, and the campaign developed a rapport with and access to Parliament and the media, regularly garnering issue coverage in the Dutch media and sparking parliamentary conversations. As a result, the small campaign was able to activate large scale participation in petitions and phone call campaigns, and some participation in demonstrations, effectively applying leverage to the Dutch government up through the end of 2008. In the final days of the Dublin Conference for convention on Cluster Munitions, the *Dutch delegation reversed position*. Under the campaign's watchdogging and often with its assistance, the Dutch have seen some of the strongest compliance and over-compliance of all treaty participants, with stockpile destruction ahead of schedule and an over compliant domestic ban on cluster munition investment. In short, the process appears to hold.

In this chapter, I also considered three alternative explanations alongside the hypotheses of the dissertation: loss of cluster munition utility, convergent international interest in regulating cluster munitions, or normative suasion of the unacceptability of cluster munitions. In the Netherlands, the Ministry of Defense made claims to the legitimacy of cluster munitions through 2007, asserting that since the Dutch consider cluster munitions under a framework of international legal considerations, it was possible to use the weapons in an acceptable way. Once discussions shifted to categorizing cluster munitions according to their acceptability vis-à-vis their safety mechanisms, the Dutch delegation focused on excluding munitions, being of the position that the purpose of the Oslo Process for a ban on cluster munitions was not to ban all cluster munitions.²⁹⁰ For the Dutch, the utility of cluster munitions was also maintained to some extent based on their value for the Dutch relationship with close ally the United States; warnings from the US not to join a ban or else risk a damaged relationship also represented some of the fractured interests dividing states on the cluster munition issue. From the Convention on Conventional Weapons talks through the Oslo Process, governments were divided into like-minded states that still maintained the utility and legality of precision cluster munitions and teetotaler states asserting all cluster munitions had precision issues and thus caused unacceptable harm. This split was reflected in discussions at the United Nations and the European Union, and to some extent in the

²⁹⁰ Statement by Amb. Johannes C. Landman, Permanent Representative to the Conference on Disarmament, Lima Conference on Cluster Munitions, May 24, 2007. Notes by CMC.

Wikileaks cables between NATO states. Only at a very late hour in the Oslo Process did the Netherlands pivot toward the ban, maintaining the anti-ban language of the likeminded group up to that point rather than the normative language expected of suasion. Not until reversing course to support the Oslo treaty did the Dutch call for "the strongest treaty possible," but as argued and demonstrated in this chapter, the Dutch positional shift was the result of internal civil society pressure.

Early civil society targeting of the Dutch government allowed cluster munitions to be put on the agenda even before the treaty became a feasible option, with the public television film drawing massive attention to the issue of the pension fun investments. Large sections of the population suddenly discovered a new morally repugnant product, a product that they themselves had been unwittingly putting their own money into, and pushed back against a government that condoned such investment. The high salience of cluster munitions after this event allowed the Cluster Munitions Coalition to activate members of its subsidiary organizations to pressure the Dutch government, while at the same time it saturated the media with information about cluster munitions, as the CCM drew near. This pressure on both fronts made it infeasible not to sign the Convention.

Upon signature, pressure continued where necessary. The issue of investment, not entirely dealt with by the CCM, was maintained on the agenda by the campaign through continued production of reports, the exposure of specific institutions and report card activities, demonstrations, and calls for media coverage. With the issue of

²⁹¹ Country Profile: Netherlands, "Cluster Munition Ban Policy," Landmine & Cluster Munition Monitor, updated August 27, 2012. Email from Miriam Struyk, Senior Policy Advisor, IKV Pax Christi, 23 April 2009. Retrieved from http://www.themonitor.org/index.php/cp/display/ region_profiles/ theme/2055. Accessed February 6, 2013.

investment already especially salient to the public, inaction was not politically viable, resulting in a bill with extensive disincentives for even indirect financing of cluster munitions and a complete rejection of cluster bomb related activities in the Netherlands. From this point, the theory expects it will not be possible to go back to talking about or engaging in their use, production, sale, purchase, or investment of any kind. Future cases in which the penalties are applied will only serve to reinforce the infeasibility of these acts, and in time they will become unthinkable.

CHAPTER 4

BRITAIN'S BALANCING ACT: NATIONAL INTEREST AND HUMAN **RIGHTS**

"The United Kingdom believes that cluster munitions are legal weapons, that international humanitarian law is adequate to govern their use, and that the international community would be better served by implementing existing law in a consistent manner when using cluster munitions."

—Adam Ingram, Minister of Defense for the Armed Forces, 2006

"We want nothing less than a full global ban on cluster munitions ... There can be no place in the international community for cruel and indiscriminate weaponry such as cluster bombs."

—Gordon Brown, Prime Minister, 2010

In 1943, the United Kingdom was the second victim of cluster munitions when Germany deployed the butterfly bomb; in 2003, it was the second biggest user and producer, after the United States, of cluster munitions. ²⁹² With one of the largest defense industries in the world, ²⁹³ the United Kingdom has extensively produced, exported, and used cluster munitions, ²⁹⁴ most recently in the Falkland Islands in 1982, in Iraq and Kuwait in 1991, in the former Yugoslavia in 1999, and in Iraq in 2003.²⁹⁵ The British-made BL-755 antitank bomb has been exported to "or otherwise finally possessed by" twenty different countries, including Iran, Pakistan, and throughout the former Yugoslavia.²⁹⁶

²⁹³ Self. R. (2010). *British Foreign and Defense Policy Since 1945*. Palgrave Macmillan: Hampshire, United Kingdom, 228.

²⁹² A History of Harm: Timeline of Cluster Munition Use. *Cluster Munitions Coalition*. Retrieved from http://www.stopclustermunitions.org/the-problem/history-harm/.

²⁹⁴ United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and http://the-monitor.org/en-Cluster Munition Monitor. Retrieved from gb/reports/2015/cluster-munition-monitor-2015.aspx. ²⁹⁵ *Landmine and Cluster Munition Monitor* 2015.

²⁹⁶ Possessors of BL-755 include Belgium, Eritrea, Germany, India, Iran, Italy, Netherlands, Nigeria, Oman, Pakistan, Saudi Arabia, Switzerland, Thailand, United

The United Kingdom participated in the Oslo Process talks for a Convention on Cluster Munitions from the first meeting, but was part of the "like-minded group" that opposed a potential comprehensive treaty, which included mainly arms-producing NATO states. The UK delegation insisted that only certain types of weapons should be banned based on their precision and reliable detonation, the states should retain some stock for training, that deadlines for stockpile destruction and for removal of foreign stockpiles should be extended, that states should be allowed to continue with joint operations with states not party (interoperability), and that post-conflict assistance should be provided only to the direct victims of cluster munitions and not to their communities.²⁹⁷

Only interoperability made it into the final treaty text. However, just two days prior to the signing ceremony of the 2008 Convention on Cluster Munitions, British Prime Minister Gordon Brown issued a public statement that, "In order to secure as strong a Convention as possible in the last hours of negotiations we have issued instructions that we should support a ban on all cluster bombs, including those currently in service by the UK," and the British delegation announced at the conference that instructions had already been given to the military to withdraw all cluster munitions from service. This move was a factor in may other states' decision to support the final convention text. The United Kingdom has since ratified the Convention, and its Cluster Munition (Prohibition) Act bans all production, purchase, use, sale, and transfer in

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Arab Emirates, United Kingdom, and Yugoslavia. Hiznay, M. (2006). Operational and Technical Aspects of Cluster Munitions. *Disarmament Forum* 4: 21.

²⁹⁷ Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada. (2009): 175-177.

²⁹⁸ Mines Action Canada 2009, 177.

cluster munitions; it has further ruled that direct investment in cluster munitions producers is prohibited under the bill, although indirect investment is still under discussion.²⁹⁹

This chapter will examine the process through which the British government chose to join the comprehensive cluster munitions ban and has largely maintained compliance with the letter and the spirit of the treaty. In this case, the issue of cluster munitions has been in the public discourse since 1999, when munitions it sold to the Netherlands were used in the former Yugoslavia and resulted in civilian casualties. The London-based Cluster Munitions Coalition was able to use its network to garner media attention and raise salience during key events and discussions of the cluster munition issue inside the United Kingdom. The second causal factor, leverage, came into play after British ratification of the Convention on Cluster Munitions, pressuring the government and other institutions to comply with their commitment.

The case of the United Kingdom is key to the argument of this project. As the second biggest user and producer, and major exporter, of cluster munitions, the CCM represents for the British government the highest cost for any State Party in terms of compliance with stockpile destruction, foreign stockpile removal, ease of military cooperation with allies, loss to export income, and cost of reparations. Furthermore, the United Kingdom faced major pressure from its allies in NATO not to join, especially the United States, with which it has had a longstanding and important relationship. In the face of domestic criticism from 1999 on, it maintained the necessity and legitimacy of most of its arsenal until the final days of the CCM negotiations.

Legislation. Stop Explosive Investments. Retrieved from http://www.stopexplosiveinvestments.org/legislation.

In spite of these hurdles, the United Kingdom changed its policy at the last minute to support the agreement and has been largely compliant. This case exhibits high salience and low leverage, 300 thus the theory could expect the treaty and compliance outcomes to have gone either way. The competing explanations of a history of signing similar agreements, peer pressure from neighboring governments, or a low cost of compliance with the norm, can and will also be ruled out. As will be demonstrated, high salience maintained by the Cluster Munitions Coalition successfully activated thousands of British citizens to join shoe pyramid campaigns, to demonstrate outside Parliament, and to call their banks demanding they not invest in cluster munitions producers to the point that the status quo policy was no longer feasible, and any deviation from compliance was met with strong and organized public backlash. The following will demonstrate this process.

Before the Campaign

Cluster munitions have been on the radar for the United Kingdom since 1999. That year, NATO aircraft dropped cluster munitions containing 295,000 submunitions in Kosovo, Serbia, and Montenegro.³⁰¹ At the time, the cluster munition ban movement had only loosely begun to coalesce: only a handful of non-governmental organizations (NGOs) were working on the issue of cluster munitions, as many of the likely candidates were hesitant to divert resources from the newly created Mine Ban Treaty,³⁰² and the natural

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³⁰² Borrie 2009: 40-41.

³⁰⁰ The scale of leverage activities was much lower in the UK than in the Netherlands, with the number of Dutch petition signatures and letters to Parliament in the tens of thousands where British participation in similar activities dwindled in the thousands.

³⁰¹ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 38.

forum for the issue of cluster bombs was the Convention on Conventional Weapons (CCW), 303 at which there was no agenda to specifically include the weapons in new protocols. Reporting on the civilian casualties in Nís, Kosovo, Human Rights Watch called them variously disproportionate, a violation international humanitarian law, a violation of human rights, indiscriminate, problematic, improper, illegitimate, questionable, and misdirected, 304 deriving from the norm of disproportionate force and the legitimacy of the Geneva laws. The Human Rights Watch report called for a ban on the weapons, but "the core of the report's criticism (was) that NATO could have done more to minimize the number of non-combatants killed by its raids." 305

The main cluster munition used in former Yugoslavia was the RBL-755, modified from the original BL-755, the British cluster bomb that later became the exemplar for "dumb" weapons. The RBL-755 is dropped from an altitude safe for the pilot, and relies on the pilot's aim and gravity for targeting, which in many conditions can make it quite imprecise. It also has an 11% failure rate, which in Kosovo alone reflects 32,000 unexploded munitions, including in the controversial Dutch bombing of Niš, Serbia that struck a market and hospital when the bombs landed off target.

³⁰³ Borrie 2009: 40.

³⁰⁴ Norton-Taylor, R. (2000, February 6). RAF in Bomb Controversy. *The Guardian*, Retrieved from http://www.theguardian.com/.

³⁰⁵ Doubt over NATO's Kosovo Death Toll. *BBC News*. (2000, February 7). Retrieved from http://news.bbc.co.uk/2/hi/europe/633445.stm.

³⁰⁶ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 38.

³⁰⁷ McGrath, R. (2000). Cluster Bombs: The Military Effectiveness and Impact on Civilians of Cluster Munitions. *Landmine Action UK*: 6. Retrieved from www.mineaction.org.

³⁰⁸ Civilian Deaths in the NATO Air Campaign – the Crisis in Kosovo. *Human Rights Watch*. (1999). Retrieved from http://www.hrw.org/reports/2000/nato/Natbm200-01.htm.

After the Niš incident, civil society made the first systematic collection and examination of data on the humanitarian effects of cluster munitions.³⁰⁹ The British government faced criticism after the details of Niš surfaced. Human Rights Watch accused NATO of using an indiscriminate weapon and causing one to two hundred civilian deaths, 310 noting that while American and Dutch forces ceased the use of cluster munitions after Niš, British forces continued to use the RBL-755. 311 The Kosovo report dealt another blow to the case for cluster bomb utility, finding that unexploded ordnance from the weapons killed more NATO troops after the conflict than were killed by the Serbian forces during the conflict.³¹² In response to media coverage of the report, the British government doubled down on the military utility of the weapon, insisting cluster munitions were quite effective and that casualties could be expected even where military forces took precautions.³¹³ At a news briefing during the 1999 bombing campaign, a complaint was addressed to British Major General Wald about the number of brightly colored packages (cluster bombs) dropped in populated areas; the general responded that the sooner NATO prevailed, the fewer such packages would be left.³¹⁴

The British media focused on the casualties in the immediate aftermath of the bombing, but civil society was unable to maintain the salience of cluster munitions

³⁰⁹ Borrie 2009: 39.

³¹⁰ NATO 'violated human rights' in Kosovo. *BBC News*. (2000, February 7). Retrieved from http://news.bbc.co.uk/2/hi/europe/633909.stm.

Emphasis mine. Norton-Taylor, R. (2000, February 6). RAF in Bomb Controversy. *The Guardian*, Retrieved from http://www.theguardian.com/.

Moyes, R. (2007). Cluster Munitions in Kosovo: Analysis of Use, Coordination, and Casualties. *Landmine Action UK*: 46. Retrieved from www.mineaction.org.

Moyes 2007.

³¹⁴ The authors interpret the Major General's comments to regard speed of the mission as a higher priority than possible collateral damage. Rappert 2005: 11.

without a clear call for action and an arsenal of evidence to show the need for change. What outrage did arise over cluster munitions use died away "all too quickly." The British response marked the United Kingdom as unsympathetic to the issue of cluster munitions; as will be discussed in the next sections, the arsenal of evidence against British behavior in Kosovo and Iraq would make it a good target for the campaign. Later, this would also impact the decision to base the headquarters of the Cluster Munition Coalition in London.

Toward a New Norm

As the cluster munition issue campaign took shape, the British defended cluster bombs as more humane than alternatives. This neutralizing recognition of the problems with cluster munitions, along with continuing cluster munition use, marked the UK government as a prime target for advocates. Early campaigners pushed for increased measures to prevent casualties from cluster munitions and ultimately cessation of cluster munition use.

In 2003, during the early phase of the Second Gulf War, American and British forces used nearly seven times as many cluster munitions as they had in Kosovo during the three weeks of major combat in Iraq.³¹⁶ Hundreds of cluster munitions were fired into urban areas, leaving thousands of submunitions unexploded in Iraqi cities.³¹⁷ These

Munitions was Won. (Geneva: UN Institute for Disarmament Research): 39. 316 Roughly two million munitions were dropped, about seven times the 295,000 used in Kosovo and 248,000 used in Afghanistan (US only). A History of Harm: Timeline of Cluster Munition Use. *Cluster Munitions Coalition*. Retrieved from http://www.stopclustermunitions.org/the-problem/history-harm/.

³¹⁵ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster

Wiseman, P. (2003, December 16). Cluster bombs kill in Iraq, even after shooting ends.

USA Today. Retrieved from

munitions resulted in at least 1,000 civilian deaths. 318 When questioned about the casualties in April 2003, British Secretary of Defence Geoff Hoon responded,

"... use of all weapons involves striking a balance. All weapons are capable of damaging the civilian population as well as those against whom they are targeted. It is necessary to strike a balance between not only the risk to civilians, but equally the protection of coalition forces. In relation to the use of cluster bombs. I am confident that the right balance has been struck ",319

Secretary Hoon further asserted that the British cluster munitions deployed in Iraq were used in accordance with the international rules of proportionality and distinction, noting that they were extraordinarily effective in comparison with other more damaging or higher yield weapons.³²⁰ His neutralizing comments suggest a perception of utility in cluster munitions, although the Defence Ministry did not explain what those alternatives were. Other elements of the Ministry and the military repeated this kind of response in the media and responses to Parliament. 321

By 2003, issue advocates had ample ammunition on the British use of cluster munitions. The movement to shift British behavior, headed by Human Rights Watch, focused on compiling evidence on civilian casualties, which they would use to admonish the British administration. They argued that the humanitarian impact of cluster munitions, regardless of any military utility, was unacceptably high. According to the

http://usatoday30.usatoday.com/news/world/iraq/2003-12-10-cluster-bombcover x.htm.

These are official numbers from British and American military records, although in Kosovo and Afghanistan these numbers were underreported when checked with NGO findings. Rappert 2005: 18.

Geoff Hoon, House of Commons Hansard, London: HMSO 7 Apr 2003: Column 29. Cross-referenced in Rappert 2005.

³²⁰ Rappert 2005: 15.

³²¹ Off Target: The Conduct of the War and Civilian Casualties in Iraq. *Human Rights* Watch. (2003, December). Retrieved from http://www.hrw.org/reports/2003/usa1203 /usa1203.pdf.

December 2003 Human Rights Watch report, the use of cluster munitions in populated areas caused more civilian casualties than any other factor in the coalition conduct during the period of heavy fighting in March and April 2003. The main culprit, they argued, was the Multiple Launch Rocket System used by British forces, which can cover a half a square mile with 4,000 cluster bomblets—around 16% or 600 of which could be expected to fail. These specific munitions had brightly colored markings and arrived with tiny parachutes, much like toy army men, endangering and injuring mainly children. Due officer in Baghdad explains in the report, "bomblets are what kids pick up. There is a nice ribbon on the end. It's nice for carrying. The British also used a new munition, the L20A1, which they claimed had only a 2% failure rate; because of the low dud rate, British forces reported less reluctance to use them. This model, too, arrived with bright paint and was attractive to children, and troops on the ground even recognized children playing with the duds.

The Human Rights Watch report noted that this failure rate had enabled more careless use of the weapon, and that the British, who had promised not to use the

³²² Human Rights Watch 2003.

³²³ Pyle, R. (2003, December 12). Report: Munitions Fired by Coalition Caused More Than 1,000 Casualties. *The Day*.

³²⁴ Pyle 2003.

³²⁵ Off Target: The Conduct of the War and Civilian Casualties in Iraq. *Human Rights Watch*. (2003, December). Retrieved from http://www.hrw.org/reports/2003/usa1203/usa1203.pdf.

Borger, J. (2003, December 12). Hundreds of Iraqis killed by cluster bombs. *The Guardian*. Retrieved from https://www.theguardian.com/world/2003/dec/12/usa.iraq1.

³²⁷ "Kids were playing with Iraqi MLRS," Warrant Officer 1 Nick Pettit, British Joint Force EOD Group." Off Target: The Conduct of the War and Civilian Casualties in Iraq. *Human Rights Watch*. (2003, December). Retrieved from http://www.hrw.org/reports/2003/usa1203/usa1203.pdf.

weapons in or around Basra, were found to have done so regardless.³²⁸ The report charged both sides with the use of these weapons during the conflict, and confirmed the suspicions that the failure rates of the munitions in use were in fact significantly higher than those claimed by their manufacturers and the governments that used them.³²⁹ At its conclusion, the report called for at minimum for a moratorium on cluster munition use until the dud rate could be *guaranteed* at 1%. In response, Defence spokesman Michael Moore said, "This is a very significant report which raises some very serious issues. ... The jury may be out on the political legacy of the coalition's time in Iraq but the military legacy could be absolutely devastating."³³⁰ Parliamentary answers also confirmed that the Ministry of Defence had carried out no reviews or assessments of the civilian casualties caused by unexploded cluster bomblets used in the Gulf region, Kosovo, or Afghanistan.³³¹

The Human Rights Watch (HRW) report exemplifies a tactic deployed throughout the campaign to ban cluster munitions, in which the well-timed release of humanitarian reports picked up media attention in target states to pressure behavior change. However, these were not front-page stories, often buried in print editions or online only. The UK government's response continued to repeat the argument that other weapons would have resulted in higher casualties, in spite of the cluster bomb failure

³²⁸ Human Rights Watch 2003.

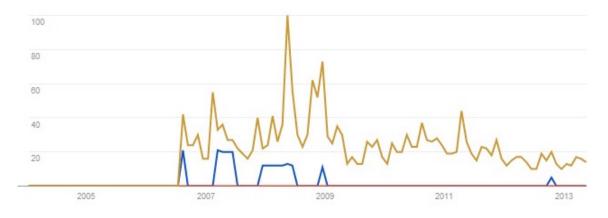
³²⁹ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 51.

³³⁰ Russell, B. (2005, November 21). The UK's Deadly Legacy: the Cluster Bomb. *The Independent*. Retrieved from http://www.independent.co.uk/news/uk/politics/uks-deadly-legacy-the-cluster-bomb-516229.html

³³¹ Russell 2005.

rate.³³² Civil society would need to build further evidence against the users of cluster munitions and ramp up the pressure to capture sufficient attention. Organization into a coalition with a specific message and goals would be key.

Figure 4: Searches for "clusterbommen" and "cluster munitie" in the Netherlands over time



Setting the Sights

In 2003, the Convention on Conventional Weapons Group of Governmental Experts (CCW-GGE), which included the UK, failed to recommend meaningful regulations on cluster munitions after the large-scale cluster bombing of Iraq. In response, advocates working on cluster munitions—many of which had been active on anti-personnel landmines—came together in 2003 to form the Cluster Munitions Coalition (CMC). That year, the first unified call came through the Coalition: the human impact of cluster bombs was unacceptable and there must be a moratorium on their use until weapons producers could guarantee a 1% or lower failure rate, which would provide the foundations for an eventual ban. From 2003 forward, this pressure would take the form of demanding proof that cluster munitions had been thoroughly tested and did in fact

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³³² Knox, K. (2004, January 21). Iraq: ICC Being Asked To Investigate Britain For War Crimes. *Global Security*. Retrieved from http://www.globalsecurity.org/wmd/library/news/iraq/2004/01/iraq-040121-rferl02.htm.

have sufficiently low dud rates. As the British would find, the burden of proof was shifting to them, and if they could not prove their cluster bombs "safe," transnational civil society would expose it. In response to a May 2004 parliamentary question about whether the government would support the calls for a moratorium on cluster munitions, Adam Ingram, Minister of State for the Armed Forces, responded, "No. Cluster bombs are legal weapons that are not indiscriminate. … In many instances, using munitions other than cluster bombs may pose a far greater risk to civilians at the time of attack."

In 2005, this began to change. At an early CCW 2005 meeting, the British delegation presented a paper on the military utility of cluster munitions, arguing that they wanted to continue to use cluster munitions but that they would commit to improving their failure rate to 1%. Going a step further, they recognized that the controversial BL-755 and RBL-755 models did not meet this standard, and would eventually be taken out of service.³³⁴ The remainder of the arsenal would be maintained as, they argued, the right balance had been struck between military utility and humanitarian concerns.³³⁵ The Coalition responded in November 2005, with a report of its own.

The report, entitled *Out of Balance*, demonstrated that the British government not only had *not* assessed the humanitarian impact of the weapon, *as it had claimed*, but also had kept inconsistent track of the numbers of cluster munitions used, where they

³³³ Ingram, A. (2004, May 12). House of Commons Hansard, London: HMSO. Column 328W. Cross-referenced in Rappert 2005.

Working Paper on the Military Utility of Cluster Munitions. (2005, February 21). 10th 2005 Session of the CCW Group of Governmental Experts (GGE) on Explosive Remnants of War, CCW/GGE/X/WG.1/WP.1.

³³⁵ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 62.

were used, how many casualties had been caused, and how many had been removed. It concluded that the government, rather than carefully assessing humanitarian concerns had systematically given preference to the military. This attracted significant media attention in the United Kingdom and the Independent ran a full front-page cover story, UK's Deadly Legacy: the cluster bomb. It raised concerns that the Ministry of Defence had met the questions of Parliament concerning cluster bomb use in former Yugoslavia and Iraq with equivocation. The government responded to the report with "stony silence," but would for the next several months continue to make the case that existing humanitarian law was sufficient to deal with cluster munitions, provided they not be used in civilian areas. During the CCW preparatory meetings, the British delegation made several appeals to the CCW not to address cluster munitions outside existing international humanitarian law, arguing that existing law was sufficient to deal with explosive remnants of war, and by extension, cluster munitions. Creation of a new international law, they argued, would be "counterproductive" and "unnecessary."

The August CCW meeting was punctuated by news of Israel's "massive and horrifying" use of cluster munitions in Lebanon in August 2006,³⁴¹ with a majority of shelling during the ceasefire negotiations. *In spite* of massive media attention on the cluster bombing, multiple statements from the CMC, and pleas for action from the UN

³³⁶ Rappert 2005: 2.

³³⁷ Rappert 2005: 2.

³³⁸ Russell 2005.

³³⁹ Borrie 2009: 63.

³⁴⁰ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 131.

³⁴¹ Williams, J., Goose S., and Wareham, M. (Eds.). (2008). *Banning Landmines: Disarmament, Citizen Diplomacy, and Human Security*. Lanham: Rowman and Littlefield: 225.

Emergency Relief Coordinator, the Lebanese Ambassador to Geneva, and the Holy See delegation, cluster munitions were barely mentioned by CCW participants.³⁴² The CMC highlighted the humanitarian impact in southern Lebanon by presenting images of unexploded cluster munitions hanging from trees and lying in homes, driving home the need to act, either with the CCW or without it.

In the United Kingdom, the CMC picked up issue coverage with the BBC, the Independent, and the Guardian, and began to find its political allies. Just prior to the Review Conference, British International Development Minister Hilary Benn wrote to the cabinet in a leaked letter that the government should reconsider its cluster munitions policy "in view of their humanitarian effects." He stated in the letter that the United Kingdom should go into the review conference advocating for an effective ban of "dumb" cluster munitions. Sata Significantly, he did not call for a ban of all cluster munitions. However, the Ministry of Defence continued to maintain the stance that existing law was sufficient to regulate their use into the Review Conference and that no outside treaty was necessary. They had made a shift that many other anti-ban states would follow, by separating their older and less reliable models from the newer ones. Since they would be removing the "dumb" models from the arsenal, they argued, the humanitarian impact would already be minimal and could be addressed in the framework of the CCW. In response to parliamentary questioning by several members

³⁴² Borrie 2009: 131.

³⁴³ Benn Slams Cluster Bombs. *Sunday Times*. (2006, November 5). Retrieved from http://www.thesundaytimes.co.uk/sto/news/uk news/article167228.ece.

³⁴⁴Benn calls for cluster bomb ban. *BBC News*. (2006, November 5). Retrieved from http://news.bbc.co.uk.

of the House of Lords³⁴⁵ as to whether the United Kingdom would join a ban on cluster munitions, Lord Triesman replied, "Lords, we have no such plans. Cluster munitions are legitimate weapons when used in accordance with international humanitarian law."³⁴⁶ There was also an unsuccessful attempt to introduce ban legislation in the House of Lords, tabled over defining "dumb" cluster bombs.³⁴⁷

The Cluster Munition Coalition had cultivated relationships from 2005 on with British parliamentarians, in both the Houses of Commons and Lords, including MP Roger Berry (Labour), MP Frank Cook (Labour), Lord Rodney Elton (Conservative), Lord Alfred Dubs (Labour), Lord David Ramsbotham (Independent), and Lord David Hannay. These parliamentarians would be important allies, raising the issue of cluster munitions and making early attempts at regulative legislature thereof; the Labour members of this group were also significant in that their party position was supportive of maintaining the weapon, and they would provide pressure from within against this stance. They would be well equipped early on with the rhetoric of the campaign, including the Out of Balance report that showed neither "dumb" nor "smart" cluster munitions had been adequately tested to make the claim that they were not indiscriminate. The language used in the House of Lords in 2006 reflects the stance of the CMC:

³⁴⁵ Lord Dubs, Lord Elton, Lord Bishop of Coventry, Baroness Whitaker, and Lord Howell of Guildford, all of whom would be "troublemakers" on cluster munitions as the campaign continued.

³⁴⁶ Statements by Lord Triesman (Labour), Parliamentary Under-secretary of State, Foreign and Commonwealth. (2006, October 12). House of Lords, Hansard. (London: HMSO) Columns 355-358. Retrieved from www.publications.parliament.uk.

³⁴⁷ United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

"As a result of the use of cluster bombs, there are hundreds of thousands of unexploded munitions, causing intolerable risks and dangers to the civilian population. Surely it is time to put cluster bombs in the same category as anti-personnel landmines and ban their use." 348

With the conversation on cluster munitions turning in their favor, the campaign approached the November 2006 Review Conference expecting action on cluster bombs but prepared to leave the CCW forum if necessary. However, as noted in the previous case, the States Parties to the conference failed to make any meaningful commitment. Under instruction from London to take the lead at the negotiations, the British caused trouble at the Review Conference, opposing the proposals from ban advocates such as Sweden and Norway to negotiate a mandate for a ban on cluster munitions. While they agreed that certain cluster munitions with high failure rates should be removed from service, they chose not to join the 25 states calling for prohibition on cluster munitions.³⁴⁹ and offered their own proposal that included the same rhetoric they had been repeating for the past year: to apply existing law on explosive remnants of war and cluster munition design, reliability, and humanitarian impact. 350 The major cluster munition users and producers participating in the CCW, especially the United States, supported the document, and it was ultimately the proposal adopted by the Review Conference. The main action to come out of the Review Conference was a weak agreement to continue work on negotiating a proposal on cluster munitions within the CCW in the future.

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³⁴⁸ Statement by Lord Dubs, House of Lords, Hansard (London: HMSO, October 12, 2006) Column 357, www.publications.parliament.uk.

United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

John Borrie, Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (UN Institute for Disarmament Research, 2009): 136.

This prompted Norway, with support from the Cluster Munition Coalition, to initiate a separate process outside of the CCW framework. With the issue out of their hands, the British delegation were disappointed, but accepted Norway's invitation to participate in the negotiation of the Oslo mandate. In her reply, British Foreign Minister Margaret Beckett made clear, however, that "we would not want to create a parallel track of the ongoing, valuable and essential activity within the CCW," in spite of the goal of the Oslo Process to do just that. Defense Minister Ingram also reiterated after the Review Conference the position that cluster munitions were legal and could be addressed through existing international law. ³⁵²

It was felt by both the Campaign and Norwegians that the British would be important to have on board with the Oslo Process, as a key U.S. ally and NATO member that could help other NATO states to feel more comfortable with joining the Oslo Process. Civil society would work closely with the Norwegians and others to help push the British delegation in the right direction. There was also a sense among campaigners that because the British government had made claims to be playing a leading role on cluster munitions internationally—in reference to its work in the CCW—that it should be held accountable for those claims, ³⁵³ by responding appropriately to the issue of cluster munitions. Civil society was still working for the behavior change, but the meaning of possible had gone from regulation to prohibition, and the sights were clear. The British, and many others, were going to have to give up their cluster munitions.

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³⁵³ Borrie 2009: 262-263.

³⁵¹ Borrie 2009: 142.

³⁵² Statement by Adam Ingram. (2006, November 23). House of Commons, Hansard. (London: HMSO) Column 804. Retrieved from http://www.publications.parliament.uk.

Turning the Tide

With the expected participation of the British government in negotiations, it was time for the Cluster Munition Coalition to ramp up the pressure with media attention, reports, and canvassing both of government and the British public. The focus would be on canvassing, strategic use of the media, and public events targeting individual policymakers, using the Oslo Process meetings as focal events. The instigation of a few Members of Parliament (MPs) with evidence from the Campaign kept the issue of cluster munitions on the table for discussion at home while the Oslo Process continued abroad. The CMC also now had a clear goal: a complete ban on cluster munitions, destruction of cluster munition stockpiles, and an ambitious timeline for both.

For its part, the British government was reticent on several key issues, including the definition of cluster munitions themselves, a timeline for their removal from service and destruction, and several issues involved in cooperating with states not party—mainly the United States—that would come to be collectively called interoperability. The U.S. government leaned heavily on the British during the process, but domestic campaigners promised to impose political costs on the government should it fail to support the Oslo Process for a ban.³⁵⁵ The road to Oslo would culminate in a high salience point for the discussion on cluster munitions at the Dublin meeting, and with so much attention to the issue both at home and abroad, the British would ultimately

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This strategy confirmed in an interview with Thomas Nash, former CMC campaign coordinator, July 2013. Mr. Nash discussed allying with particular MPs that could "cause trouble" in Parliament by asking tough questions of target MPs and government, and keeping the discussion of cluster munitions going throughout the Oslo Process. John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won.* (UN Institute for Disarmament Research, 2009): 143.

³⁵⁵ Thomas Nash, former CMC Campaign Coordinator, interviewed by Taylor Benjamin-Britton, July 2013.

join.356

Campaigners determined that having France, Germany, and especially the United Kingdom on board was critical to a successful comprehensive ban on cluster munitions, however these governments were of the position that cluster bombs could be classified according to their failure rate, with the so-called "smart" models excluded from any resultant treaty on cluster munitions. In December 2006, prior to the first Oslo Process meeting, the British announced that they would remove their "dumb" cluster munitions from service, including the controversial RBL-755 and M26, within ten years. This marked a shift in British behavior from just neutralizing recognition of cluster munitions to concessions, meant to justify the remaining, "safer" arsenal.

The first Oslo Process meeting gathered nearly fifty states and a handful of non-governmental organizations together to draft the mandate for a Convention on Cluster Munitions. Borrowing a tactic from the International Campaign to Ban Landmines, CMC campaigners chipped away at the utility of cluster munitions through the sharing of survivor stories³⁵⁸ and video footage of cluster munitions in Lebanon clearly failing to self-destruct,³⁵⁹ redirecting the conversation toward humanitarian concerns.

The British participated cautiously in Oslo. After their previous insistence on cluster munitions being addressed by Convention on Conventional Weapons (CCW), they lobbied for reference in the text to ongoing work "in other fora" which would allow

³⁵⁹ Borrie 2009: 152.

³⁵⁶ None of these reservations would be in the final treaty text, with the exception of some lenient language on the issue of interoperability.

of Commons, Hansard. (London: HMSO) Column 1WS. Retrieved from http://publications.parliament.uk.

John Borrie, Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (UN Institute for Disarmament Research, 2009): 149.

for the inclusion of all major users and producers of cluster munitions, 360 which the new text could not promise without participation from states like the US. The British also made clear that their goal for the meetings was not to produce a categorical ban but rather a ban of certain types of cluster munitions, and that facilitation of any of these goals would require a generous transition period.³⁶¹ The United Kingdom and other "like-minded states" were concerned that prior to Oslo, the agenda had been "those" cluster munitions that caused unacceptable harm, while at Oslo the word "those" had been dropped. This created the possibility that through the process it was possible that all cluster munitions would be subject to the Oslo declaration. The NATO participants were particularly nervous about joining such a declaration, due to American pressure and concerns about NATO cooperation, as will be discussed below. In London, there were last-minute consultations between the Foreign Office, the Ministry of Defence, and the Department for International Development, with Development Minister Benn again working to persuade his counterparts that the United Kingdom should join. 363 The final declaration called for a legally binding instrument that would "prohibit the use, production, transfer, and stockpiling of cluster munitions that cause unacceptable harm to civilians."364 With the proviso that a transition period would be needed to arrange for

³⁶⁰ United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

³⁶¹ Statement by Ambassador John Duncan. (2007, February 23). Oslo Conference on Cluster Munitions. Cross-referenced in *Landmine and Cluster Munition Monitor*.

³⁶² Borrie 2009: 155.

³⁶³ John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won.* (UN Institute for Disarmament Research, 2009): 155.

³⁶⁴ Declaration of the Oslo Conference on Cluster Munitions. (2007). Retrieved from www.regjeringen.no/upload/UD/Vedlegg/Oslo%20Declaration%20(final)%2023%20Fe bruary%202007.pdf.

an alternative to cluster munitions, ³⁶⁵ the British joined the Oslo Process.

A month later, Defence Secretary Des Browne announced that the United Kingdom would be withdrawing its "dumb" cluster munitions, not in ten years, but with immediate effect. Some cluster munitions address (humanitarian) concerns including through inbuilt self-destructing or self-deactivating mechanisms, reducing the risk of harm to civilians, he argued. "Dumb cluster munitions do not." However, he also stated that other types would be retained, and that they were "legitimate weapons with significant military value," again neutralizing precision cluster munitions while making a concession with imprecise munitions. The Cluster Munitions Coalition responded that the decision to keep "smart" bombs in the arsenal was worrying, as even they could fail. Secretary Browne reiterated that the government preference was for the CCW:

"We continue to press for wider agreement to ban dumb cluster munitions through the convention on certain conventional weapons (CCW) and complementary initiatives like the Oslo conference on 23 February, where we, alongside other nations, agreed to work towards an international ban in 2008." 370

In May 2007, Oslo Process participants would meet for a second time in Lima, Peru, at which twenty-seven new states participated, most of which endorsed the purpose of the

³⁶⁵ Statement by Ambassador John Duncan. (2007, February 23). Oslo Conference on Cluster Munitions. Cross-referenced in *Landmine and Cluster Munition Monitor*.

³⁶⁶ United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.
³⁶⁷ Statement by Des Browne. (2007, March 20). House of Commons, Hansard (HMSO:

London). Retrieved from http://www.publications.parliament.uk.

Statement by Des Browne. (2007, March 20). House of Commons, Hansard (HMSO: London). Retrieved from http://www.publications.parliament.uk.

³⁶⁹ Nash, T. (2007, March 20). Britain's Military Bans Cluster Bombs without Self Destruct Capabilities. *Associated Press*.

³⁷⁰ Statement by Secretary of State for Defence Des Browne, House of Commons, Hansard (HMSO: London, March 20, 2007): http://www.publications.parliament.uk.

Oslo declaration, and there was wide support for the "easier" issues of victim assistance, submunition clearance, stockpile destruction, international cooperation and assistance, and deadlines for clearance and stockpile destruction. These states, during the Lima meeting, the governments that would become known as the like-minded group coalesced into a bloc to challenge proposals seen as overly stringent. These states, mainly European NATO states and US allies, the British had several concerns beyond strict definitions, including longer transition periods to replace stocks, retaining munitions for military training purposes, and the issue of interoperability—or cooperation with states not party to the treaty, particularly the U.S., that might use cluster munitions. Referring to the Oslo Process as complementary to the CCW rather than the main forum for work on cluster munitions, the British sought an international treaty that reflected existing domestic policy rather than costly changes.

A month later, discussion in the British parliament revealed that the Ministry of Defense had revised its definition of cluster munition.³⁷⁴ In 2006, the British CR-V rocket equipped with nine M73 submunitions was a cluster munition,³⁷⁵ but in June 2007

³⁷¹ CMC 2008.

³⁷² CMC Report on the Lima Conference and Next Steps. Cluster Munitions Coalition. (2008, May 15). Retrieved from http://www.stopclustermunitions.org/wp/wp-content/uploads/2008/05/ cmc-report-on-the-lima-conference-23-25-may.pdf.

³⁷³ United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

³⁷⁴ Landmine and Cluster Munition Monitor 2015.

³⁷⁵ Statement by Minister of Defense for the Armed Forces Adam Ingram, House of Commons, Hansard (London: HMSO, November 23, 2006): Column 804, http://www.publications.parliament.uk.

its direct-fire capability and low number of submunitions made it a "smart" weapon.³⁷⁶ Asked about the CR-V system, Minister of Defense for the Armed Forces Ingram stated:

"So-called 'dumb' cluster munitions are those containing numerous submunitions, each with an explosive content but without either a target discrimination or self-destruct, self-neutralization or self-deactivation function ... the two systems that met this definition ... have now been withdrawn from service. We retain our other cluster munition, the 'non-dumb' M85."³⁷⁷

This response was in line with the ongoing attempt by the like-minded group to exclude weapons from the cluster munition treaty text.

Over the summer of 2007, a flurry of independent media coverage driven by civil society reports began to increase the salience of the British cluster munition arsenal, noting parliamentary calls for legislation and highlighting the government's past use of cluster munitions. As major outlets picked up the story, ³⁷⁹ critically, they echoed the framing of civil society through statements from the Red Cross and information about why cluster munitions were on the table for a ban. ³⁸⁰

Civil society was also engaged in frequent dialogue with staff at the Foreign Office, the Ministry of Defence and the Department for International Development, advisors in the Labour government ministers of these departments, and the Prime

Statement by Adam Ingram. (2007, June 19). House of Commons, Hansard. (London: HMSO) Column 1756W. Retrieved from http://www.publications.parliament.uk.

³⁷⁶ Statement by MP Bob Ainsworth (Labour). (2007, July 16). House of Commons, Hansard. (London: HMSO) Column 22W. Retrieved from http://www.publications.parliament.uk.

³⁷⁸Briggs, B. (2008, January 20). The Legacy of the War in Lebanon. Retrieved from http://www.billybriggs.co.uk/legacy-of-war-in-lebanon.html.

Analysis of Google News results for "British cluster munitions" and "United Kingdom cluster munitions", October 28, 2013.

³⁸⁰ US Plans Cluster Bomb Task Force. *BBC News*. (2008, January 16). Retrieved from http://news.bbc.co.uk/2/hi/americas/7192716.stm.

Minister's office on the issue of cluster munitions.³⁸¹ In August 2007, two Select Committees in the House of Commons produced reports recommending the withdrawal of the remaining cluster munitions still in service.³⁸² The report by the Foreign Affairs Committee requested that, "the Government state whether it is prepared to accept that the failure rate of 'smart' cluster munitions could be as high as 10%, and if so, how it justifies continuing to permit UK armed forces to hold such munitions."³⁸³ The Defense, Foreign Affairs, International Development and Trade and Industry Committees report went further, calling on government to "withdraw 'smart' cluster bombs, provided that an operational alternative is available."³⁸⁴ In response, the Defense Ministry argued that doing so would "impose serious capability gaps on our Armed Forces,"³⁸⁵ showing a split in government on the utility of cluster munitions.

In November 2007, Prime Minister Gordon Brown said in his first foreign policy speech after taking office, "having led the way by taking two types of cluster munitions out of service, we want to work internationally for a ban on the use, production, transfer

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³⁸¹ John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won.* (UN Institute for Disarmament Research, 2009): 263.

United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

383 Global Security: the Middle East. (2007, July 25). House of Commons, Foreign

Affairs Committee, Eighth Report of Session 2006-07: 7. Retrieved from http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/363/363.pdf.

³⁸⁴ Strategic Export Controls: 2007 Review. (2007, August 7). House of Commons, Defense, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2006-07, 15. Retrieved from http://www.publications.parliament.uk/pa/cm200607/cmselect/cmfaff/117/117.pdf.

United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

and stockpiling of cluster munitions that cause unacceptable harm to civilians."³⁸⁶ It was not entirely clear by this statement whether he was referring to all cluster munitions or using the intentionally vague language of the Oslo Process, by which certain munitions might still be excluded. Especially since, at the next meeting in Vienna in December 2007, the British again insisted that only certain munitions needed to be prohibited. The models they wanted to exclude either contained a limited number of submunitions (such as the CR-7) or met "specified reliability benchmarks."³⁸⁷

In Vienna, in addition to the exclusion of its favored cluster bombs, the British also raised again the issues of transition time and interoperability, expressly arguing that the latter would be a major concern for states operating in multinational military coalitions with states not party. It also added the concern that on the issue of victim assistance, while the need for victim care was clear, the legal provisions for such care could be "discriminatory" toward past cluster munitions users, and place obligations thereupon, if based on the mechanism of injury. See Civil society was well organized and active in Vienna, and brought with them an important report on the M85 cluster submunition, a model which the British and other like-minded states continued to support as "smart". The report analyzed the M85, which has an advanced self-destruct

³⁸⁶ Brown, G. (2007, November 12). Lord Mayor Banquet Speech. Retrieved from http://www.number10.gov.uk.

³⁸⁷ Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

³⁸⁸ Statement of the United Kingdom. (2007, December 6). Vienna Conference on Cluster Munitions. CMC/WILPF. Cross-referenced in *Landmine & Cluster Munition Monitor*.

³⁸⁹ Borrie, J. (2008, August 1). How The Cluster Munition Ban Was Won: Oslo Treaty Negotiations Conclude In Dublin. Retrieved from http://www.acronym.org.uk/dd/dd88/88jb.htm.

mechanism, as used in Lebanon, where Israeli forces had deployed it extensively. The report found that in use, the M85 had on average a 10% failure rate, which was well above the 1% rate that manufacturers and states users claimed made it an acceptable weapon. According to those present, the presentation of this report had a strong impact on many participants and made difficult further claims to the legitimacy of even "smart" cluster munitions. 91

The United Kingdom would continue to argue in favor of these "smart" weapons regardless. ³⁹² They were concerned that they were not at the heart of these negotiations, and they were at risk of "being taken hostage" by a process that they had not been able to shift to suit their interests. ³⁹³ It was clear that the negotiations were moving in the direction of a comprehensive ban and did not address British concerns about stockpile destruction deadlines, victim assistance, and interoperability. "Our concern in Wellington …" a British diplomat later stated, "was that the text should not get any worse … if that text had become any worse … we would have had great difficulty signing up to the Dublin process." ³⁹⁴

In January, the CCW Group of Governmental Experts (CCW-GGE) met to begin negotiating a definition of cluster munitions. The final product of the meeting established only a basis for further negotiations, and the participants had such difficulty with the definition that the outcome draft contained over forty bracketed terms on which

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³⁹⁰ M85: An Analysis of Reliability. (2007, December). Colin King Associates Ltd., the Norwegian Defence Research Establishment, and Norwegian People's Aid. Retrieved from http://www.landmineaction.org/resources/M85%20report.pdf.

³⁹¹ Borrie 2008.

³⁹² Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 186.

³⁹³ Borrie 2009: 212-213.

³⁹⁴ Ambassador John Duncan, cross-referenced in Borrie 2009: 213.

they could not yet agree.³⁹⁵ After the abortive CCW-GGE meeting, the CMC had the opportunity to lobby the British Ministers of the Foreign Office, the Ministry of Defense, and the Ministry of Trade and International Development. Defense Minister Browne defended the need to keep certain cluster munitions, but it also became clear that "the government wanted to be part of the eventual cluster munition treaty."³⁹⁶ This encouraged the campaign to "lobby hard" for the British to join a comprehensive treaty at the final meeting in Dublin.³⁹⁷

At the penultimate meeting in Wellington in February 2008, the United Kingdom and other like-mindeds reiterated their reservations from previous meetings, but his time were met by an opposition "teetotaler" group of states that would accept no cluster munition exceptions in the final treaty. As a result of fractured agendas between the groups, proposals from both sides were included as a compendium to the draft to be considered at the final meeting in Dublin.

A further complication, emanating from the United States, was pressure not to join or to disrupt the treaty process, marked by the State Department warning that "cooperation within NATO is in the crosshairs of the Oslo treaty."³⁹⁸ State Department official Richard Kidd further remarked,

"In this process NGOs are given the same prominence as state

³⁹⁵ Cluster Munitions. (2008, June 16). Group of Governmental Experts to the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or Have Indiscriminate Effects, CCW/GGE/2008-III/2.

³⁹⁶ Borrie 2009: 263.

³⁹⁷ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 263.

³⁹⁸ Kidd, R. (2008, April 28). Remarks at the 'Connect US Fund' Roundtable Dialogue at the Aspen Institute. Retrieved from March 2014, http://2001-2009.state.gov/t/pm/rls/rm/104697.htm.

delegations and ... these NGOs were allowed to heckle state delegations in plenary and surrounding venues ... to attack the positions of other state participants. Is this the kind of international system that any administration wants to work in?"³⁹⁹

It was known that the United Kingdom was under notice from the Americans to resist a ban on cluster bombs. Defence officials stated that a range of issues was at stake for their relationship, including munitions stored at U.S. bases in Britain and the legal status of British soldiers serving alongside Americans where the U.S. uses cluster munitions.⁴⁰⁰

British parliamentary "trouble makers" also kept the discussion on cluster munitions fresh at home. In oral evidence from Lord Malloch-Brown, the House of Commons learned the Government was still reluctant to give up its arsenal. House of Commons learned the Government was still reluctant to give up its arsenal. House of responded that this exclusion was inconsistent, calling for a categorical rejection of cluster munitions. House British position specifically had attracted detailed coverage in the British and international media. Landmine Action conducted a poll of 2,000 Britons the week before the Dublin meeting, which reported that 79% of Britons wanted the UK to support an international ban; House said they would be "very disappointed" if the government failed to do so. House Sold their political contacts, based on these findings, that it would be a public relations disaster if the British walked away from a treaty in Dublin, which was a sore point for the Brown government, having recently also

³⁹⁹ Kidd 2008.

⁴⁰⁰ Sengupta, K. (2007, May 19). Britain Obstructs Global Ban on Use of Cluster Bombs. *The Independent*. Retrieved from http://www.independent.co.uk/news/uk/politics/britain-obstructs-global-ban-on-use-of-cluster-bombs-830577.html.

⁴⁰¹ Human Rights Annual Report 2007. House of Commons, Foreign Affairs Committee, Session 2007-08. (2008, July 9).

⁴⁰² Kate Allen, Director Amnesty International UK. Human Rights Annual Report 2007.

⁴⁰³ Norton-Taylor, R. (2008, May 19). Military Chiefs Urge UK to Ban Cluster Bombs. *The Guardian*. Retrieved from http://www.theguardian.com/.

⁴⁰⁴ Borrie 2009: 264.

suffered a poor election outcome.⁴⁰⁵ These conversations would come to a high point in May 2008, with media coverage, civil society action, and the final negotiations in Dublin. The cluster munitions ban was all but a reality.

Making the Norm Work

With the United Kingdom still dragging its heels on issues of definition, victim assistance and interoperability, the Cluster Munitions Coalition gave a major push at the end of the Oslo Process, with major activity in Parliament, public engagement, and media coverage at home, and major engagement with diplomats at the Dublin negotiations. The salience of cluster munitions to policymakers, and the media attention to both the Dublin meeting and the British position would make it extremely difficult for them to maintain their unpopular stance on cluster munitions. There was already division within the government on the ban, with the Defense Minister Browne against a categorical ban, Foreign Office minister for Africa, Asia and the UN Lord Brown "uncomfortable" about a partial ban, and Environment Secretary Hillary Benn in favor. 406 The Prime Minister, too, was under pressure to fulfill his campaign promise for a ban on the cluster munitions that cause unacceptable harm, and it was less clear whether this meant all cluster munitions. On the other hand, as was later revealed, in conversations with the U.S. the British Ministry of Defence claimed that it valued its cluster bombs and assured the Americans that their participation in Dublin was only a "tactical maneuver." 407 Lobbying from the Campaign and debate from supportive

⁴⁰⁵ Borrie 2009: 264.

⁴⁰⁶ Sengupta 2007.

⁴⁰⁷ Front: UK Secretly Allowed US to Keep Cluster Bombs at Base. *The Guardian*. (2010, December 2. Retrieved from http://www.guardian.co.uk.

elements within Parliament, however, would tip the balance in favor of joining the Convention on Cluster Munitions on the final day of negotiations.

On the opening day of negotiations, British policymakers were greeted by a letter in the Times, signed by nine British former commanders, calling on them to give up their remaining cluster munitions and agree to the "strongest possible ban on the weapon in the treaty negotiations in Dublin." The former commanders clearly appealed to elements in the Ministry of Defence, but they also referred to the casualties to both civilians and soldiers. They argued that,

"If we are to be accepted as legitimate users of force then we must demonstrate our determination to employ that force only in the most responsible and accountable way. Our current standing in the world suggests that our leadership of moves to ensure an international ban on cluster munitions will not only be respected and recognized, but will also strengthen our ability to use force effectively in the modern world.",409

It was not in the language of the norm, but it appealed rather to the perception of British legitimacy in the world. Civil society responded to the letter, "We hope that the UK government will listen to the appeal of its senior former commanders and take a stand to protect the innocent and the vulnerable." The Independent took a much stronger stance on the letter, stating that the British Government stands accused of being "the

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⁴⁰⁸ Signatures included General Sir Hugh Beach, Field Marshal Lord Bramall, Major-General Patrick Cordingley, Lieutenant-General Sir Roderick Cordy-Simpson, Lieutenant-General Sir Jack Deverell, Major-General The Rev Morgan Llewellyn, General Lord Ramsbotham, General Sir Michael Rose, and General Sir Rupert Smith. Cluster bombs don't work and must be banned. *The Times*. (2008, May 19).

⁴¹⁰ Astrid Bonfield, chief executive of the Diana, Princess of Wales Memorial Fund, an organization that funded of several of the CMC's reports. Norton-Taylor, R. (2008, May 19). Military Chiefs Urge UK to Ban Cluster Bombs. *The Guardian*. Retrieved from http://www.theguardian.com/.

chief obstacle to the signing of a treaty to ban cluster bombs."⁴¹¹ Former British Army soldier and director of Landmine Action Simon Conway argued, "Insisting on keeping some weapons and saying they are not negotiable is a deal breaker ... the position of the UK is a huge stumbling block to achieving a comprehensive treaty."⁴¹²

Against this backdrop, the British approached the Dublin Diplomatic Conference. In spite of the media attention, they pushed initially for many of the same arguments they had been pursuing throughout the Oslo Process. They lobbied for changes to the text that would support interoperability, and supported a proposed addition that could address "Relations with States not Party." They pushed for exemptions on several types of cluster munitions, including devices that included safety mechanisms, "direct fire" munitions, weapons with less than a certain number of cluster submunitions, and weapons to be used only in an "air defense" capacity. It also sought to retain munitions for clearance and military training purposes. These provisions collectively would allow the United Kingdom to keep their remaining arsenal roughly intact. Finally, they sought to weaken the provisions on victim assistance, by defining victim narrowly to the affected individual rather than extending it to family and community, and reducing the obligation to past cluster munitions users from a legal to a

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⁴¹¹ Sengupta 2007.

⁴¹² Sengupta 2007.

⁴¹³ Proposal by Germany, supported by the Czech Republic, Denmark, France, Italy, Slovakia, Spain, and the UK, for the amendment of Article 1. (2008, May 19). Dublin Diplomatic Conference on Cluster Munitions, CCM/13.

August 31, 2012. Retrieved from http://www.themonitor.org/index.php/cp/display/region profiles/ theme/3135.

political one. 415 As it was clear that the position was indefensible to other delegates, they would consent to the broader definition of "victim" early in the negotiations.

The Campaign buttressed this work with a public advertising campaign showing images of injured cluster munitions survivors, 416 public action with prominent Irish civil society members, the establishment of a satellite link to provide footage for news organizations and participants elsewhere in the conference, making campaigners available for interview at short notice, and uploading campaign video and materials in new media such as YouTube. 417 Their message was for a cluster munitions treaty with "NO exceptions, NO delays, and NO loopholes,"418 speaking loud and clear to the likeminded that the kinds of issues they had pushed for in Oslo, Vienna and Wellington were simply not going to fly in Dublin. The pressure of the campaign seemed to be having effect, as early in the first week of negotiations, the Prime Minister's office issued the following statement:

"The Prime Minister had issued instructions to our negotiators in Dublin that we should work intensively to ban cluster bombs that cause unacceptable harm to civilians. We had already gone further than other permanent members of the Security Council by banning two types of cluster bombs ... The Prime Minister had asked the Ministry of Defence to assess the remaining munitions to ensure there was no risk to civilians

The Prime Minister's statement was received as a move in the right direction by

⁴¹⁵ Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munitionmonitor-2015.aspx.

⁴¹⁶ Branagan, B. & Holt, G. (2008). Head, Shoulders, Knees and Toes. Retrieved from http://vimeo.com/3985931.

⁴¹⁷Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 260.

⁴¹⁸ Borrie 2009: 273.

^{419 &}quot;Afternoon press briefing from 21 May 2008," May 22, 2008. Available at www.number-10.gov.uk/output/Page15599.asp.

civil society, which responded with, "we now expect the UK to give up the M-85 and the M-73," the remaining British cluster munitions. The definition the delegates finally agreed to did exclude weapons designed to disperse flares or smoke, and a certain type of cluster munition: a model with under ten submunitions, electronic self-detonation, *and* "direct-fire" munitions that could "engage a point target in a pre-defined area." Such a definition would outlaw the entire British arsenal, and every model that the like-mindeds sought to exclude.

The other issues which the British fought much harder on were interoperability and the hosting of stockpiles, which would affect their cooperation with the U.S. The text as it arrived in Dublin outlawed assistance in any activity prohibited to a State Party to the Convention, which meant both interoperability and stockpiling, which the British in their treaty compendium statements strongly disagreed with.

The U.S. had stated it would be unable to cooperate with any ally that had signed a treaty that outlawed interoperability in cases where cluster munitions might be used, particularly the British. There was a concern that it was likely the Americans had cluster munitions stockpiled in their bases on British soil that, if the British signed the convention, would place them in violation. ⁴²² The draft text further obligated States Parties to discourage other states not to use cluster munitions, on which the British were not particularly comfortable engaging the Americans. They held firm on both issues through the negotiations. However, it was also clear that both issues were going to move forward, with or without the British onboard.

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⁴²² Borrie 2009: 289.

⁴²⁰ Borrie 2009: 271.

⁴²¹ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 274.

By the second week of negotiations, the United Kingdom was unhappy with the text, and there was a split in the Cabinet between the Defence Minister and the others on joining. They seemed to recognize the game was up for most of their concerns, at least in Dublin. They had participated publicly and at high levels throughout the Oslo Process, and the high cost of exiting now and the media coverage it expected if it did so were too high. With the exception of the issue of interoperability, it had relaxed its demands for the treaty, and on the final day of negotiations, the Prime Minister announced,

"In order to secure as strong a Convention as possible in the last hours of negotiation we have issued instructions that we should support a ban on all cluster bombs, including all those currently in service by the UK."

The single concession given to the like-minded group in the final day was the issue of interoperability. The text of the Convention on Cluster Munitions permits States Parties to cooperate and engage in operations with cluster munitions users provided they do not possess, use, or have control over the selection of cluster munitions among alternatives in any joint operation. States Parties are however obligated to notify their allies of their obligations to the Convention, and to encourage allies to join. The media did pick up on the loopholes for smart weapons and for interoperability. The Convention on Cluster Munitions is binding, of unlimited duration, and subject to no reservations.

As a result of high pressure from civil society within and without the Dublin

⁴²³ Thomas Nash, former campaign coordinator for the Cluster Munitions Coalition, interviewed by Taylor Benjamin-Britton, London, November 2014.

⁴²⁴ PM Press Briefing. (2008, May 28). Retrieved from http://www.number-10.gov.uk.

⁴²⁵ Convention on Cluster Munitions. (2008, May 30). 26 UNTC 6. Entered into force August 1, 2010. Retrieved from http://www.clusterconvention.org/.

⁴²⁶ The Banning of Cluster Bombs. *Irish Times*. (2008, May 30). Retrieved from http://www.irishtimes.com.

negotiations, the attention of both the domestic and international media, and the discussion in the British Parliament and Cabinet, the cost of not joining the Convention on Cluster Munitions became very high. The cluster bomb issue was quite salient, peaking in May 2008. As a result, the United Kingdom was among the first thirty states to commit to the Convention in Dublin on May 30, 2008.

Watchdogging

After the British signed the Convention on Cluster Munitions (CCM), the work of the Coalition was not over. They would be instrumental in encouraging relatively rapid implementation of domestic legislation on cluster munitions required for treaty ratification, and with the Convention and domestic law in place, they would also have new ammunition with which to pressure the British government. After ratification, civil society would also push for compliance with not only the letter but also the spirit of the new cluster munitions taboo, by monitoring and calling out the British government on any behavior counter to the new norm. This would entail compliance with the Convention on Cluster Munitions and also investment in cluster munitions, by both public and private institutions. It was during this "watchdogging" phase that the mechanism of leverage would also come into play.

Upon signing the Convention on Cluster Munitions in Oslo in December 2008, British Foreign Secretary Miliband called the treaty a "remarkable achievement," and pledged the support of the United Kingdom to "encourage those countries not here today to accept that the world has changed, and that we have changed it." This reflects the

⁴²⁷ Statement by David Miliband. (2008, December 3). Convention on Cluster Munitions Signing Conference. Cross-referenced in *Landmine and Cluster Munition Monitor*.

continuing desire by the British to be seen as at the forefront of the issue, and the continued rhetoric would be used by civil society as a tool to later help enforce the British government's international commitment. In March 2009, they stated that the next step would be to implement the necessary legislation for ratification.⁴²⁸

British Parliament enacted the Cluster Munitions (Prohibitions) Act in March 2010 with little resistance; the law includes criminal punishments for the use, production, acquisition, possession, sale or transfer of cluster munitions. (Cluster munitions) (Cluster muni

⁴²⁸ United Kingdom Cluster Munition Ban Policy. (2015, September 15). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/engb/reports/2015/cluster-munition-monitor-2015.aspx.

Acts are punishable by up to 14 years prison, a fine, or both. (UK) Cluster Munitions (Prohibitions) Act 2010, 2010 Ch. 11. Retrieved from March 2015, http://www.legislation.gov.uk/ukpga/2010/11/section/2.

⁴³⁰ UK Outlaws Cluster Bombs, Calls for Global Ban. *CNN*. (2010, March 25). Retrieved from http://www.cnn.com/2010/WORLD/europe/03/25/uk.cluster.bombs/.

⁴³¹ Vientiane Action Plan. (2010, November 12). 1st Meeting of States Parties, Convention on Cluster Munitions. Vientiane.

⁴³² Vientiane Action Plan 2010.

Ostensibly, the British had accepted the new cluster munitions taboo and were on their best behavior. However, several revelations in recent years have exposed some backsliding, which the Cluster Munitions Coalition (CMC) has sought to draw attention to and made calls for better compliance with the letter and the spirit of the Convention.

The first event involved American cluster munitions on British soil, a concern for the British during the CCM negotiations that returned to haunt them. In December 2010, it came to light via Wikileaks that the U.S. and the United Kingdom had agreed, "any U.S. cluster munitions currently stored on British territory (Diego Garcia) would be permitted to stay until 2013, while any new cluster munitions ... would require the temporary exception." The possibility that new cluster munitions might arrive on British soil after the CCM entered into force was particularly troubling. As the CCM does not permit "temporary exceptions" or new acquisition by any agreement, the deal went against of the spirit of the Dublin Declaration, violated the Convention on Cluster Munitions, and contradicted multiple statements made by the British government after May 2008. This agreement was made at the highest levels, leaving Parliament out of the discussion, as Parliamentarians continued to promise that all foreign stockpiles would be gone from British soil by the agreed deadline in 2013; they were unaware that their statements might be untrue.⁴³⁴

The backlash to this revelation was major, attracting front-page attention from the Guardian, the Times, the Telegraph, and the BBC, as well as foreign coverage by CNN, the Washington Post, the New York Times, and other outlets. The Coalition

⁴³³ US Embassy Cables: UK and US Officials Discuss Cluster Bombs. *The Guardian*. (2010, December 1). Retrieved from http://www.theguardian.com/.

⁴³⁴ The Guardian. December 1, 2010.

immediately responded, "It's disturbing that the US is seeking to determine British policy on cluster munitions. Britain is bound by the Convention on Cluster Munitions and should not be assisting the US, or any other country, in using the weapons."

"This was embarrassing for the British, they looked stupid," Nash noted in a later interview. "But nothing can be done about the Americans." Parliament, which had been sidestepped, responded by calling on government not to,

"Allow the United States' to use or store any cluster munitions on Diego Garcia itself, nor to allow any United States ships carrying such munitions access to the island and further to arrange international arms inspectors to check and to confirm that all such munitions have been removed from Diego Garcia."

The American stockpile at Diego Garcia was removed by mid-2012.

The second British embarrassment involved cluster munitions on display at a British arms fair. Two stalls at the Defence and Security International fair (DSEi) in London promoted artillery-launched cluster munitions. Similar concerns about these companies were raised during the 2009 DSEi arms fair: "It was totally unacceptable when cluster bombs were promoted at DSEi in 2009, but it's frankly baffling that the DSEi can have made the same mistake two years later." Just a week prior, government delegates were attending the Second Meeting of States Parties to the

⁴³⁵ Nash, T. (2010, December 10). CMC Responds To Leaked Cable on US-UK Cluster Bomb Policy Talks. Cluster Munition Coalition. Retrieved from http://www.stopclustermunitions.org/news/?id=2762.

⁴³⁶ Thomas Nash, former campaign coordinator for the Cluster Munitions Coalition, interviewed by Taylor Benjamin-Britton, London, November 2014.

⁴³⁷ Cluster Munitions and Diego Garcia. Early Day Motion. (2011, February 17). Retrieved from http://www.parliament.uk/edm/2010-12/1478.

⁴³⁸ UK Arms Fair Under Scrutiny Over 'Cluster Munitions' Stall. *The Observer*. (2011, September 17). Retrieved from http://www.theguardian.com/world/2011/sep/18/uk-arms-fair-cluster-munitions.

⁴³⁹ The Observer 2011.

Convention on Cluster Munitions in Beirut, where they reaffirmed their commitment to bring all countries on board the treaty and to eradicate cluster munitions completely. The British ambassador had stated, "the fact that countries are still using cluster munitions should enrage us." Civil society's response to the cluster munitions display was swift and organized, with scathing press releases and a demonstration outside the arms fair that resulted in the stalls being closed down.

The final embarrassment for the British involved investment in cluster munitions by Oxford University and a number of British banks, particularly the Royal Bank of Scotland, in 2011. It is in this case that civil society rallied public support to use material leverage against government, in several ways: through media coverage, and citizen engagement. The former can be seen clearly in a glance at media coverage of cluster munitions in 2011:

April 2011 cluster bombs: 100

Figure 5: Searches for "cluster bomb" and "cluster munition" in the UK over time

Source: Google Trends, November 2013.

In 2011, United Kingdom legislation did not include a prohibition on investment in, or the provision of financial services to, companies involved in the production of cluster munitions. In 2009, in response to Parliamentary questions, the government

⁴⁴⁰ The Observer 2011.

issued a Ministerial Statement confirming that, "under the current provisions of the (UK) bill, the direct financing of cluster munitions would be prohibited. The provision of funds directly contributing to the manufacture of these weapons would therefore become illegal." However, the statement went on to say that the Convention did not prohibit indirect financing of cluster munitions—that is, funding or investment in companies that produce goods potentially including cluster munitions and cluster munitions components—and committed the government to working with the financial sector, NGOs, and other parties to promote a "voluntary code of conduct to prevent indirect financing". 442

The British government has faced considerable public pressure over the issue, raised by civil society, largely as part of the Stop Explosive Investments Campaign that followed on the success of the Ban Cluster Bombs campaign. Domestic groups, including Amnesty International United Kingdom and the Church of England, have submitted to Parliament that they do not consider investment in companies that produce cluster munitions appropriate.⁴⁴³

In 2011, the government faced a public movement to boycott the British Census over its ties to Lockheed Martin, a cluster munition and nuclear weapon producer, with protestors willing to pay up to a \$1,500 USD fine for failure to submit.⁴⁴⁴ The 2011 report "Worldwide Investments in Cluster Munitions," released by Netherlands

Statement by MP Chris Bryant. (2009, December 7). House of Commons, Hansard. (London: HMSO) Column 2WS. Retrieved from http://www.publications.parliament.uk.

⁴⁴² Bryant 2009.

⁴⁴³ The Church Commissioners. Retrieved from www.churchofengland.org.

⁴⁴⁴ Boycott the UK Census over Links to Lockheed Martin, Protestors Say. *The Guardian*. (2011, February 19). Retrieved from https://www.theguardian.com/uk/2011/feb/19/census-boycott-lockheed-martin.

organizations IKV Pax Christi and Netwerk Vlaanderen fingered 12 UK financial institutions for continued investment in cluster munitions or including Aberdeen Asset Management, Aviva, Barclays, Baring Asset Management, Henderson Global Investors, HSBC, Invesco, Lloyds Banking, Newton Investment Management, Prudential, Royal Bank of Scotland, and Veritas Asset Management. The report named the Royal Bank of Scotland as the top British financial institution for investing in companies involved in cluster munitions. Lloyds TSB, Barclays and HSBC were also named as major violators, which caused HSBC to alter its policy to cut ties with the arms trade outright. Student activists at Oxford University also found that the university had invested an average £4.5 million per year into arms dealers, including cluster bomb manufacturers. This resulted in further public protest over the issue, and Handicap International United Kingdom organized a letter campaign targeting the British banking regulation minister specifically on banning domestic cluster munitions investment. To date, Oxford has continued to defend these investments.

The Royal Bank of Scotland (RBS), one of the world's largest global banking

⁴⁴⁵ UK Government Should Stop Banks Financing Cluster Bombs. (2011, May 25). *Article36*. Retrieved from http://www.article36.org.

⁴⁴⁶ Powers, P. (2011, December 14). British Banks Fund Cluster Bomb Makers. *Express UK*. Retrieved from http://www.express.co.uk/news/uk/289195/British-banks-fund-cluster-bomb-makers.

⁴⁴⁷ Harrington, J. (2011, September 2). RBS Backs Away From Cluster Bombs After Amnesty Campaign. *EcoFinan*. Retrieved from http://www.ecofinan.com/rbs-backs-away-from-cluster-bombs-after-amnesty-campaign/.

⁴⁴⁸ MacKinnon, R. (2011, December 5). Cable Urged to Ban Weapon Funding. *Morning Star*.

⁴⁴⁹ Campaigners Question the UK's Commitment to Banning Cluster Bombs Due to Lack of Action on Investments by UK Banks. *Handicap International United Kingdom*. (2011, December 5). Retrieved from http://www.clusterbombs.org.uk/latest-news/.

⁴⁵⁰ Oxford University Invests £630,000 in US Firm that Profits from Cluster Bombs. *The Independent*. (2011, October 17). Retrieved from http://www.theindependent.co.uk.

groups and majority owned by British citizens, has been especially hard-pressed by the campaign to cease its investments in cluster munitions. Named by Amnesty International United Kingdom for using a loophole in British law to continue financing the manufacturers of cluster munitions, RBS initially denied alleged investments. In an embarrassing investigation by Amnesty International United Kingdom and Channel 4 News, an RBS executive was caught on film stating that the bank makes an average of £20 million profit per annum in such investments. The employee disdained any notion of not lending to companies who manufacture them. Following this scene, the narrator states, They (the funders of cluster bomb producers) don't have to listen to us, but you're their customers, and they have to listen to you (emphasis added)."

The British section of the human rights group called on its members to email RBS' CEO demanding that the bank stop providing financial services to producers of cluster munitions. Two weeks, a social media campaign, and 15,000 angry written demands later, the financial services company announced in a statement:

"We have identified some defense sector clients whose activities could be considered to be outside the spirit of the Convention. As a result, we will be suspending all further services to any client where we cannot be certain that they are in compliance with our policy."

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⁴⁵⁵ Deutsche Welle 2011.

⁴⁵¹ British Bank U-Turns Over Cluster Bomb Financing. *Deutsche Welle*. (2011, September 16). Retrieved from http://www.dw.com/en/british-bank-u-turns-over-cluster-bomb-financing/a-15390749.

⁴⁵² RBS Stops Lending to Cluster Bomb Manufacturers. *Channel 4 News*. (2011, September 1). Retrieved from http://www.channel4.com/news/rbs-stops-lending-to-cluster-bomb-manufacturers.

⁴⁵³ Harrington, J. (2011, September 2). RBS Backs Away From Cluster Bombs After Amnesty Campaign. *EcoFinan*. Retrieved from http://www.ecofinan.com/rbs-backs-away-from-cluster-bombs-after-amnesty-campaign/.

⁴⁵⁴ Booming Business: British Banks and Cluster Bombs. *Amnesty TV*. (2011, August 16). Retrieved from https://www.youtube.com/watch?v=VGZsm6C9s2g.

The RBS Group has since written to thousands of customers and campaigners, including 10,000 Amnesty International members, declaring its intention to stop lending money to cluster munitions manufacturers. 456 It stated that the Group would no longer knowingly support funding or financial services for companies that would lead to "contravention of the Oslo Convention on cluster munitions." Thus far, it has followed through with this commitment. Major firms Aviva, the Lloyd's Banking Group, and the Co-op have followed the RBS example; Barclays and HSBC are also expected to follow. 458 It is the clearest example in the British case of material leverage by citizens, effectively pressuring institutions to comply with not only the letter of the Convention on Cluster Munitions, but also its spirit.

Conclusion

In the case of the United Kingdom, the Cluster Munition Coalition was instrumental in changing the behavior of the British government on cluster munitions, before and after the international ban. At the onset of the process, the British had more incentives to keep cluster munitions than to give them up. It was one of the heaviest users and the second largest producer of the weapons, and was under pressure by the U.S. and NATO to maintain a relationship in which this use and production could continue without hindrance. While it felt some pressure from the Norwegian government and its neighbors, the British tendency to give priority to its Transatlantic relationship over European interests took precedence through 2007 and early 2008. It wanted to be seen as

⁴⁵⁶ Harrington 2011.

⁴⁵⁷ Harrington 2011.

⁴⁵⁸ Carrell, S. (2012, April 9). UK Banks and Insurers Blacklist Cluster Bomb Manufacturers. *The Guardian*. Retrieved from https://www.theguardian.com/business/2012/apr/09/uk-banks-blacklist-cluster-bomb-manufacturers.

a leader in international action, and did so by giving up some of its cluster munitions and participating in two international processes on cluster munitions, while at the same time attempting to legitimize the remainder of its stockpile.

As in the Dutch case, the British entered into the process with a vested interest in its cluster munitions—as the largest producer to join the ban, disarmament represented for the UK the highest cost. When civil society called for the British to stop using cluster munitions in former Yugoslavia, not only did they not do so and responded without recognizing any problems with their cluster munitions, but they went on to use them in large scale in Iraq just a few years later. The British non-response to cluster munitions marked that government as a target for the campaign very early on; early reports targeting the UK, including Out of Balance in 2005. 459 highlighted equivocation on the part of the Defense Ministry about cluster munition failure rates, forcing a response of neutralizing recognition. With this successful shift, the campaign continued with annual shaming, working with Parliamentarians across parties and Houses of Parliament to garner support, and generated some attention in the press to raise the salience of cluster munitions. Unlike in the Dutch case, however, there was not the same kind of large scale public outcry; the campaign compensated for the relatively weak leverage by directly targeting Defense Ministry officials in their home districts and strategically campaigning to give the sense of larger scale public participation. 460 Under regular, embarrassing attention, the British government also pivoted to disarmament in the final days of the treaty negotiations in Dublin. Absent strong leverage, the UK government has backslid

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⁴⁵⁹ Brian Rappert, "Out of Balance: The UK government's efforts to understand cluster munitions and international humanitarian law," Landmine Action (2005).

⁴⁶⁰ Amy Little, Cluster Munition Coalition, interviewed by Taylor Benjamin-Britton, London, November 2015.

some on its cluster munition policy, necessitating watchdogging in the UK more so than in the Netherlands or France, drawing attention to treaty violations to successfully dissuade government from continuing those behaviors.

Three alternative explanations were also considered in this chapter, again the potential loss of cluster munition utility, the convergence of international positions around a cluster munition ban, and moral suasion of the unacceptability of cluster munitions. Throughout the British case, the Ministry of Defense repeated regularly that cluster munitions had utility, and that they were legal and legitimate weapons; this assertion continued into 2007, well into the negotiation of the Convention on Cluster Munitions. The British had frequently and regularly used cluster munitions, but also the large scale sales of the weapon were part of the high cost of disarmament. The utility of the status quo remained high for the British. As in the Dutch case, international convergence also played little role for British behavior change: the UK's major investment in cluster munitions sales relationships abroad as well as pressure from the US and NATO to avoid a cluster bomb ban tempered the strength of calls from organizations like the EU and the UN to disarm or declare moratoria, calls to which the British did not respond. Finally, regarding moral suasion, the British discussion of cluster munitions has been relatively devoid of normative language, calling at the Dublin conference for the "strongest possible" treaty rather than to prevent civilian harm. 461 After the treaty, backsliding behavior has also not been indicative of moral suasion, as

⁴⁶¹ PM Press Briefing. (2008, May 28). Retrieved from http://www.number-10.gov.uk.

the government has required pressure to cease noncompliant behaviors such as storing American cluster munitions. 462

Status quo behavior marked the United Kingdom as a problem government for the civil society campaign, but its attempt to take a leadership role would be used by civil society to leverage pressure on the United Kingdom to live up to the image it seemed to want to maintain. Strong and well-organized campaign elements in London were able to cultivate relationships in parliament and in the British press, to bring the issue of cluster munitions frequently to fore. This allowed the Campaign to raise salience at home, while also organizing at the meetings of the Convention on Conventional Weapons talks and the Convention on Cluster Munitions negotiations. The strong media attention to the issue, in conjunction with campaign lobbying, made resistance to the Convention on Cluster Munitions difficult to resist, and were ultimately successful. After signature and ratification, this campaign organization was put to use to bring the population into the conversation through boycotts, demonstrations and letter campaigns that directly pressured institutions behaving counter to the cluster munitions taboo. By the time of the Explosive Investments campaign, the issue of cluster munitions was able to draw three times the coverage of the Dublin negotiations, 463 and the response institutions to public protest was quite strong. The use of issue salience was key throughout the negotiation of the new norm and after, while the use of leverage came into play after the Convention and the norm were in place. Future violations of the

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⁴⁶² US Embassy Cables: UK and US Officials Discuss Cluster Bombs. *The Guardian*. (2010, December 1). Retrieved from http://www.theguardian.com/.

⁴⁶³ Google Trends, 2013.

taboo are likely to receive similar response, and the United Kingdom is expected to continue along the trajectory toward unthinkingness of such violation.

CHAPTER 5

SELF-CONSTRAINT IN THE FRENCH SENAT, OR: THE BENEFITS OF BEING GOOD

"Cluster weapons are legal under international law. They are considered militarily essential for the neutralization of surface military objectives."

—French Ministry of Defense, 2006⁴⁶⁴

"France is very attached to the Oslo convention on cluster munitions and its universalization. ... The damage caused by these weapons is an unacceptable effect. No consideration of defense or security can justify the proliferation of unexploded munitions that continue to injure and kill many years after the end of conflict."

—French Ministry of Foreign Affairs, 2012⁴⁶⁵

France is a former user, producer, importer and exporter of cluster munitions.⁴⁶⁶ According to its Ministry of Defense, France has not exported cluster munitions since 1989, last deployed them in 1991, and ceased production in 1992.⁴⁶⁷ In response to

⁴⁶⁴ "Cluster weapons are legal under international law. They are considered essential militarily for neutralizing surface military targets. / Les armes à sous-munitions sont légales au regard du droit international. Elles sont estimées indispensables sur le plan militaire pour la neutralisation d'objectifs militaires de surface." Response by the Ministry of Defense to MP Yves Détraigne (Centrist Alliance): *Questions*, Senat 12th Legislature, 2002-2007. December 28, 2006. Translated with Google Translate.

^{465 &}quot;France is very attached to the Oslo Convention on munitions weapons and its universalization. ... The damage caused by these weapons is an unacceptable effect. No consideration of defense or security can justify the proliferation of unexploded munitions that continue to injure and kill many years after conflicts end / France est très attachée à la convention d'Oslo sur les armes à sous-munitions et à son universalisation. ... Les dommages causés par ces armes sont en effet inacceptables. Aucune considération de défense ou de sécurité ne saurait justifier la multiplication des sous-munitions non explosées qui continuent de blesser et de tuer plusieurs années après la fin des conflits." Response by the Ministry of Foreign Affairs to MP Christiane Taubira (and MPs Socialist, Radical and various left). (2012, October 1). *Questions*, National Assembly, 13th Legislature, 2007-2013. Translated in Google Translate.

⁴⁶⁶ France Cluster Munition Ban Policy. *Landmine and Cluster Munition Monitor*. (2015, September 3). Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁴⁶⁷ Landmine and Cluster Munition Monitor 2015.

parliamentary questions, this sequence of policy choices is frequently characterized as exemplary: the government contends that France has been mobilized for years, both domestically and internationally, to fulfill its responsibilities regarding the humanitarian consequences of cluster munitions. However, the claims of the Ministry of Defense are weakened in the face of its approach to regulation of cluster munitions in the Convention on Conventional Weapons, the Oslo Process, and the 2008 Convention on Cluster Munitions. France would not come to support the cluster munition ban until after intense and ongoing action by domestic civil society.

France was not as active as, for instance, the United Kingdom or the Netherlands, in early discussion of cluster munitions. But like those states, it preferred the forum of the 1980 Convention on Certain Conventional Weapons (CCW), which privileged states and generally relegated civil society to the lobby, for discussion of cluster munitions. France participated in the CCW Group of Governmental Experts (CCW-GGE) on explosive remnants of war (ERW), where it presented in 2002 on minimizing the impact of cluster projectiles through self-destruct mechanisms and standardized markings. In that paper France recognized that cluster munitions "can have an appreciable failure rate and consequently occasion a significant humanitarian risk to civilians," but also suggested that these safety upgrades would mitigate such effects and justified existing French policy. In 2003, the CCW-GGE mandate was

⁴⁶⁸ Response by the Ministry of Defense to MP Georges Hage (MPs Communists & Republicans). (2005, July 26). *Questions*, National Assembly, 12th Legislature 2002-2007.

⁴⁶⁹ Working Paper: Technical Improvements to Submunitions. (2002, July 10). 2nd Session of the CCW Group of Governmental Experts (GGE) on ERW, Geneva. CCW/GGE/II/WP.6.

⁴⁷⁰ CCW/GGE/II/WP.6.

expanded to striking "the right balance between humanitarian concerns and military utility of mines other than anti-personnel mines" (MOTAPM)⁴⁷¹, implicitly targeting cluster munitions. It was understood however that a ban was not a feasible outcome for most participants, and that would not be a goal of CCW-GGE work,⁴⁷² but talks nevertheless did move in the direction of a ban.

As France favored weak requirements for ERW cleanup, it did not endorse any of the proposals on either ERW or MOTAPM in the 2003-2004 meetings. It had last used cluster munitions in 1991 in Iraq and Kuwait, along with other coalition forces, including the United States and the United Kingdom. During those operations, Iraq, Kuwait, and Saudi Arabia were heavily contaminated with cluster munitions; any agreement on ERW with post-conflict decontamination requisites for past users would implicate France and the others in an extensive and expensive cleanup operation.

However, France's recognition of cluster munitions' humanitarian impact coupled with hesitance on regulation would mark it early on as a potential target for the Cluster Munitions Coalition. In 2003, founding member Handicap International committed to the goal of a ban on cluster munitions, and added ERW and cluster munitions to the cause of its annual shoe pyramid demonstrations for landmine victims, drawing thousands of participants in 30 cities across France.⁴⁷⁴ The following year, issue

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⁴⁷¹ Excerpts from the Report of the Meeting of the States Parties in 2002, as Contained in CCW/MSP/2002/2. United Nations Office at Geneva. Retrieved from http://unog.ch/.

⁴⁷² Mines Other Than Anti-Personnel Mines. (2003). CCW/GGE/WG.2/WP.1. Retrieved from http://unog.ch/.

⁴⁷³ A History of Harm: Timeline of Cluster Munition Use. *Cluster Munitions Coalition*. Retrieved from http://www.stopclustermunitions.org/the-problem/history-harm/.

⁴⁷⁴ Dufournet, H. (2011). Governing Without Choosing: Between Moral Restraint and Political Realism: French Involvement in the Process to Ban Cluster Munitions / Gouverner sans choisir: entre contrainte morale et réalisme politique: l'engagement

champion Francois Rochebloine proposed a bill in the National Assembly to expand the ban on landmines to include weapons with the same effect as landmines, including cluster munitions⁴⁷⁵; while the bill failed to pass, it launched an ongoing conversation on the issue between parliamentarians and government, through questions and debates, that would continue through 2008. For its part, the Ministry of Foreign Affairs replied that France did not consider the problem sufficient to require an international ban, but rather, that cluster munition issues could be mitigated through the application of existing international law (the Geneva Conventions) and responsible military practices (in which France considered itself already engaged).⁴⁷⁶ When pressed on the 2004 European Union resolution for a moratorium on cluster munitions, the Ministry of Defense stated it did not intend to follow the call.⁴⁷⁷

At the Third Review Conference of the CCW, in November 2006, the UN Secretary-General urged States Parties to "devise norms that would immediately reduce and ultimately eliminate the humanitarian and economic impact of cluster munitions," with the goal of including cluster munitions in the recent Protocol V on ERW. The Review Conference, however, failed to produce such an outcome. France did not support Norway's call to work on cluster munitions outside the CCW, and just one

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français dans le processus d'interdiction des armes à sousmunitions. Unpublished dissertation, ENS Cachan. Retrieved from https://tel.archives-ouvertes.fr/tel-00621041. Translated with GoogleTranslate.

⁴⁷⁵ Banning Cluster Munitions: Government Policy and Practice, Human Rights Watch and Mines Action Canada, (Ottawa, Mines Action Canada: 2009): 74.

⁴⁷⁶ Response by the Ministry of Defense to MP Gilbert Biessy (MPs Communists & Republicans). (2003, April 14). *Questions*, National Assembly 12th Legislature, 2002-2007.

⁴⁷⁷ Response by the Ministry of Defense to MP Joel Giraud (Socialist). (2005, July 26). *Questions*, National Assembly 12th Legislature, 2002-2007.
⁴⁷⁸ Convention on Cluster Munitions. (2012). UN Audiovisual Library of International

^{4/8} Convention on Cluster Munitions. (2012). UN Audiovisual Library of International Law. Retrieved from http://legal.un.org/avl/pdf/ha/ccm/ccm_ph_e.pdf.

month later, the French Senate Committee on Foreign Affairs and Defense produced an official report that echoed previous governmental responses that called for better implementation of existing international humanitarian law, characterized its current policy as exemplary, and urged continuing work in the CCW.⁴⁷⁹ So, when Norway initiated the Oslo Process at the end of the Review Conference, it saw France as unsupportive of its goal (to achieve a ban on cluster munitions) and did not initially invite it to participate.⁴⁸⁰ In late 2006, the Ministry of Defense expressed weak support for the alternative process, but stated that the appropriate forum for dealing with cluster munitions was still the CCW⁴⁸¹; ultimately, however, the French would not be left out of the Oslo meetings.

Throughout the Oslo Process, along with the rest of the like-minded group, the French delegation negotiated heavily on the definition of a cluster munition, aiming to exclude certain favored systems from the treaty. It continually referred to the CCW as the premier forum for dealing with cluster munitions, even after Protocol V failed to address the weapons. In addition, the French pushed for a longer transition period for stockpile destruction, interoperability with states not party, fewer responsibilities for past users in cluster munition cleanup, and partial stockpile retention (for training). It pushed for these policies even in spite of a major domestic anti-cluster munition campaign spearheaded by Handicap International France that began back in 2003.

⁴⁷⁹ Banning Cluster Munitions: Government Policy and Practice, Human Rights Watch and Mines Action Canada, (Ottawa, Mines Action Canada: 2009): 74.

Response by the Ministry of Defense to MP Fabienne Keller (UMP). (2006, November 30). Senat 12th Legislature, 2002-2007.

⁴⁸¹ Response by the Ministry of Defense 2006.

In the end, two French weapons were not considered cluster munitions: the BONUS system, co-produced with Sweden, falls short of the requisite number of submunitions, and the Apache-KRISS anti-runway system is considered too heavy to count as a cluster munition. 482 However, as will be the focus of this chapter, domestic campaigning from civil society, and large-scale public participation in campaign tactics, made non-signature of the final Oslo document an untenable option for the French government and ultimately it caved to that pressure.

As discussed in previous chapters, the strength of the domestic civil society campaign, high issue salience for both politicians and the public, and effective use of leverage tactics contributed to the shift in the French position. Throughout the Oslo Process, France was the target of a strong campaign by at least 25 NGOs⁴⁸³, headed by Handicap International and L'observatoire des Armaments, with a dual focus on both government and corporate responsibility with regard to cluster munitions. Handicap International's call back in 2003 for a ban, and government responses of both recognition of the problem of cluster munitions and justification thereof, identified France as a prime target. With a strong campaign, French parliamentarians took up the issue earlier and with greater intensity than observed in the previous cases; intensive

⁴⁸² "A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics: (i) Each munition contains fewer than ten explosive submunitions; (ii) Each explosive submunition weighs more than four kilograms; (iii) Each explosive submunition is designed to detect and engage a single target object; (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism; (v) Each explosive submunition is equipped with an electronic self-deactivating feature." By this definition, BONUS, which only contains two submunitions, and Apache, whose submunitions weigh about 10kg, are excluded. Convention on Cluster Munitions. (2008, May 30). 26 UNTC 6. Entered into force August 1, 2010. Retrieved from http://www.clusterconvention.org/.

⁴⁸³ Cluster Bombs: Landmines By Another Name. Agir ICI N° 71. (2005). Retrieved from http://obsarm.org/campagnes/munitions/doc-campagne-ang.pdf.

lobbying in parliament sparked over 100 questions on cluster munitions in 2005, and nearly that many in 2006. 484 At the same time, the campaign garnered the support of half a million French citizens in petition for a ban, and Shoe Pyramid demonstrations in dozens of French cities drew tens of thousands of participants annually. With such strong participation, media coverage was no problem for the campaign: mainstream media sources not only covered the issue but endorsed the campaign. Thus, the government faced a strong campaign as well as major leverage from its public. Like the Netherlands and the United Kingdom, the government made a concession to dismantle its older cluster munition, the M26 Rocket, but rather than relieving pressure this only encouraged further campaign pressure for the ban, leading up to and through the Oslo Process. In spite of expressing preferences for the alternative forum of the CCW and discomfort with the restrictive new treaty, at the end of final negotiations in Dublin, French Minister of Foreign Affairs Bernard Kouchner declared, "Yes we can! We can ... sign this treaty!" France has since ratified and is in full compliance with its treaty commitment, and it even considers both direct and indirect investment in the weapons banned, 485 although the treaty does not require this distinction for compliance. Finally, it has built facilities to receive and destroy cluster munitions to aid in its own as well as others' compliance. Unlike the UK, France has not violated any of its commitments since ratification; as of this writing, France has over-complied with the 2008 Convention on Cluster Munitions. Thus, vis-à-vis the other cases, the French policy turnaround on cluster munitions has been the strongest and most comprehensive. This chapter will

⁴⁸⁴ France. Parliament. National Assembly. *Questions*, 12th Legislature, 2002-2007. Legislation. Stop from Investments. http://www.stopexplosiveinvestments.org/legislation.

uncover the sources of ongoing French resistance and demonstrate in depth the impact of the Campaign to Ban Cluster Munitions on France's policy U-turn.

Pushing the Norm

As a participant to the CCW-GGE, France recognized back in 2002 the potential dangers involved with cluster munitions use. In the working paper it presented at the July 2002 meeting, France stated that cluster munitions represent a majority of the challenges posed by explosive remnants of war, due to their high failure rates; however, in the next line, it also suggested that there was no more efficient weapon to use in the neutralization of particular targets. 486 The purpose of the paper, and the meetings, was to discuss potential means of ameliorating the after-effects of cluster munitions contamination, which the French paper suggested could be done by modifying the weapons rather than reducing stockpiles. 487 The technical fixes offered in the French paper would form the basis for reasoning in both the CCW, and later in the Oslo Process, that munitions over a threshold of size and submunition count, and those without safety mechanisms such as self-destruct or recognizable color designations, constituted the problems with cluster munitions. 488 Weapons that accounted for these particular issues by design did not suffer the same downsides, and thus, their utility outweighed their potential harm. Cluster munitions were not yet a salient issue,

⁴⁸⁶ "Amelioration Techniques for Cluster Munitions / Ameliorations Techniques des Sous-Munitions," presented by France, 2nd Session of the CCW Group of Governmental Experts (GGE) on Cluster Munitions, Geneva. CCW/GGE/2/WG.1/WP.6, July 2002, 1. Translated in Google Translate.

⁴⁸⁷ CCW/GGE/2/WG.1/WP.6.

⁴⁸⁸ CCW/GGE/2/WG.1/WP.6: 2-3.

however, and the first question on cluster munitions or ERW in the French parliament would not come until 2004. 489

Several founding members of the Cluster Munition Coalition, including Handicap International France, were also present at these meetings. Over the early months of 2003, concerned NGOs met twice in Ireland, looking to form a coalition modeled on the success of the AP landmines movement; in June, they called for a moratorium on cluster munitions until adequate long-term measures could be negotiated. That same month, many of the same NGOs that attended the CCW-GGE meeting reconvened to make the call again—to little effect on the outcome of the meetings. 490 So, it was time to get to work.

At this early stage, campaigners relied on the tactics and resources of the relatively recent successful International Campaign to Ban Landmines, culminating in the Ottawa Treaty, to which France was Party. In October 2003, Handicap International held its 9th annual Shoe Pyramid demonstration, initiated in the mid-90s to create public awareness for the humanitarian concern of anti-personnel (AP) landmines. ⁴⁹¹ The populace was encouraged to publicly donate old pairs of shoes, resulting in a "pyramid," to recognize limbs and lives lost due to AP landmine contamination. This year, in 30 cities across France and for thousands of French citizens, the Pyramids also symbolized a new concern: the dangers of unexploded remnants of war and cluster munitions. ⁴⁹² While France had last used the weapons in the First Gulf War, the use thereof had the

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⁴⁸⁹ Response by the Ministry of Defense to MP Gilbert Biessy (MPs Communists & Republicans). (2003, April 14). *Questions*, National Assembly 12th Legislature, 2002-2007.

⁴⁹⁰ Dufournet 2011.

⁴⁹¹ Dufournet 2011.

⁴⁹² Dufournet 2011.

potential to be relevant domestically, as at the time CCW negotiations for the Protocol V on ERW were discussing potential ways to address cluster munitions therein, and the US and the UK were again using cluster munitions in Iraq.

In November, the United Nations Inter-Agency Standing Committee issued a call to the Parties to the CCW for an immediate freeze on the use of cluster munitions. ⁴⁹³ It expressed extreme concern that "little has been done to regulate the use of these terrible weapons," and cited disturbing Human Rights Watch and Mines Action reports, and its own decontamination efforts, of casualties from cluster munition use in Afghanistan and Iraq. ⁴⁹⁴ The outcome of the Protocol V document would not explicitly speak to cluster munitions, but it did require Parties to clean up ERW contamination in all territories under their control. States Parties, including France, found the Protocol satisfactory as an instrument to address cluster munitions. ⁴⁹⁵ It was not yet a salient issue at home, and in spite of this activity at the CCW, the first question on ERW or cluster munitions in the either house of the French parliament would not be raised until 2004. ⁴⁹⁶

In early 2004, the National Commission for the Elimination of Antipersonnel Mines (CNEMA) met in Paris to discuss implementation of the Mine Ban Treaty, where attendant NGOs raised similarities between anti-personnel landmines and cluster

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⁴⁹³ Statement by the Inter-Agency Standing Committee (IASC) to the Meeting of State Parties to the Convention on Prohibitions of Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. (2003, November 27): 1. Retrieved from http://www.humanitarianinfo.org/iasc/.

⁴⁹⁴IASC 2003.

⁴⁹⁵ Dufournet 2011.

⁴⁹⁶ Response by the Ministry of Defense to MP Gilbert Biessy (MPs Communists & Republicans). (2003, April 14). *Questions*, National Assembly 12th Legislature, 2002-2007.

munitions. 497 The campaign continued in this theme, stressing the similarity between the two weapons, and initiated a public petition calling for a prohibition on the use, production or transfer of cluster munitions until the humanitarian problems arising from those weapons were resolved, garnering over 60,000 signatures by September 2004. 498 That same month, Deputy Francois Rochebloine, with the support of thirty other parliamentarians, filed a bill seeking to expand the implementation powers of CNEMA and to include in its jurisdiction a new weapon with "the same functions" as landmines: cluster munitions. 499 While the bill was tabled, just days later, the 10th annual Shoe Pyramid action drew citizens in 35 French cities, with the focal call this time on a cluster munitions ban. 500 With this flurry of actions, the campaign was able to raise the salience of the issue in France much earlier and reach a larger audience than in the previous cases, but their work was far from over. In November, the CCW-GGE, including France, met again to renew the mandate on explosive remnants of war, but included no new mandate on cluster munitions.

Setting the Sights

Clearly, the campaign had gained some traction in 2004. Like the Netherlands and the UK, France made some concessions on its cluster munitions early in 2005. In March, it announced that it had destroyed its stock of BL-66 Belouga rockets, which it had used in Iraq and Kuwait, and stated that it intended to cease use of its M26 multiple launch

Munition Monitor. Retrieved

⁴⁹⁷ Country Profile: France, "Cluster Munition Ban Policy," Landmine & Cluster from http://www.the-

monitor.org/index.php/cp/display/region profiles/theme/2055 Accessed January 2015.

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⁴⁹⁸ Dufournet 2011: 401.

⁴⁹⁹ Submission by François Rochebloine, Bill N° 1821. (2004, September 22). National Assembly 12th Legislature, 2002-2007. Retrieved from http://www.assembleenationale.fr/.

⁵⁰⁰ Dufournet 2011: 402.

(MLRS) rockets, which have a 16% failure rate—but only until they were modernized. For it joined a multi-state program, including among others the UK and the United States, to develop guided MLRS rockets with self-destructing submunitions. This concession was not enough.

That spring, Handicap International, Agir Ici and the Observatory of Arms Transfers launched the next phase of the domestic campaign, "Cluster Munitions: antipersonnel landmines that don't say their name," and called for a total ban, no longer including the earlier qualifier of a moratorium *until* the humanitarian concerns could be addressed. In April, coalition partners Handicap International Belgium, Human Rights Watch, and Netwerk Vlaanderen organized a briefing in Brussels on the European banks and companies involved in the production and financing of cluster weapons, garnering a large amount of media interest. The Human Rights Watch report, released in July, pointed to several French companies for investing in cluster munitions—BNP Paribas, Calyon, CIC, and Société Générale—and defense companies MBDA and Thales, the latter of which produced several models through its subsidiary Thomson Brandt Armaments. Following this release, the European Parliament adopted a resolution calling for a ban on investment in the production of landmines and cluster munitions; when questioned as to whether France would follow this call, the Ministry of Defense

⁵⁰¹ Worldwide Investment in Cluster Munitions. IKV Pax Christi and FairFin. (June 2012). Retrieved from http://www.stopexplosiveinvestments.org.

⁵⁰² IKV Pax Christi and FairFin 2012.

⁵⁰³ "Sous-munitions: des mines antipersonnel qui ne disent pas leur nom." Translated with GoogleTranslate.

⁵⁰⁴ Dufournet 2011: 402.

⁵⁰⁵ "Worldwide Production and Export of Cluster Munitions," Human Rights Watch Briefing, April 7, 2005.

responded that it had no intention of doing so. 506 State positions on a cluster munition ban would remain fractured in the EU through 2008.

Around the release of the Human Rights Watch report, campaigners in France met with members of both houses of parliament and in both major coalitions⁵⁰⁷, encouraging over 100 questions on cluster munitions submitted in 2005. 508 These questions speak to the humanitarian consequences of cluster munitions, often in the language of the campaign; government responses, for their part, repeated the argument for the legality of cluster munitions under international law and the legitimacy of their use where existing principles of international law are applied. 509

In early September, Handicap International met with representatives of weapons producer MBDA, and then with the Minister of Defense at Matignon, to appeal on the issue of cluster munitions. From the Defense Ministry, the campaign found that France was primarily interested in technical improvements to its existing munitions, and that it was still opposed to a ban on the production, use and transfer of the weapons. 510 Further, Defense Minister Michele Alliot-Marie said in a letter to Handicap International cluster munitions are "legal weapons which to this day remain essential for our armies," 511 echoing similar claims made by the Dutch and British governments. When the CCW-GGE met again in August, they renewed yet again a mandate without cluster munitions.

In response, in the lead-up to the 11th annual Shoe Pyramid, the campaign sought

Dufournet 2011: 404.

⁵⁰⁶ Response by the Ministry of Defense to MP Gérard Voisin (UMP). (2003, July 26). Questions, National Assembly 12th Legislature, 2002-2007.

On the center-left, this is headed by the Socialist Party; on the center-right, the UMP.

⁵⁰⁸ Questions, National Assembly 12th Legislature, 2002-2007.

Ouestions, National Assembly 12th Legislature, 2002-2007.

^{511 &}quot;Armes légales dont la possession demeure à ce jour indispensable pour nos armées." Dufournet 2011: 404.

to activate more of the French populace. Its international petition had garnered by this time over 100,000 signatures, a majority of which originated from the campaign in France. In October 2005, Handicap International organized a symposium on the issue of cluster munitions in the French Senate to seek further political support in that house; on this occasion, the representative of the Ministry of Defense argued it would be unreasonable to give up the weapons carelessly, and that technical improvements to existing munitions were an effective solution to the problem. The next day, members of the Cluster Munition Coalition met in Paris to discuss effective lobbying of government and prepare for the Shoe Pyramids.

On October 8th, the Pyramids were raised in 36 cities across France, asking citizens to reiterate their commitment to banning cluster munitions and to call upon the French government to join such a ban. In that one day, the Handicap International petition was able to gather 71,710 signatures in favor of a land without mines and cluster bombs, bringing the international petition to over 200,000 signatures total.⁵¹³ With such a large and rapid response from the public, one would expect some attention from government; in November, Deputy Georges Hage filed a new bill to extend the landmines ban to cover cluster munitions, which was also tabled.⁵¹⁴ At the November CCW meeting of States Parties, however, cluster munitions were again left aside. Thus, activists in France determined to turn up the pressure on the French government through 2006 and early 2007.

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⁵¹² Statement by General Jean-Jacques Scellos. Dufournet 2011: 399.

⁵¹³ Dufournet 2011

Submission by Georges Hage (Communist). Bill N° 2640. (2004, November 9). National Assembly 12th Legislature, 2002-2007. Retrieved from http://www.assembleenationale.fr/.

The 2007 election would be a focal point for the coalition in France, which devoted major effort to winning parliamentary commitments from multiple parties in the lead-up. In addition, November 2006 would see the Third Meeting of States Parties to the CCW, at which the coalition hoped to see the negotiation of a specific mandate on cluster munitions. To these ends, in early 2006, the campaign met with representatives of the major French political parties in order to persuade them to include the issue of a cluster munition ban in their platform for next year's presidential election; they garnered support from the Communists, the Greens, and the centrist Union for French Democracy. 515 Communist Senator Hélène Luc went two steps farther, proposing yet again a to broaden the domestic landmine ban to address cluster munitions and additionally the formation of a special committee on cluster munitions under the Senate Committee on Foreign Affairs, Defence and Armed Forces, 516 the latter of which committed to producing a report on the status of cluster munitions by that fall. These acts reflected a split between the left and the center on the issue of cluster munitions, with the left favoring stronger and swifter government action than the center, which would be reinforced in parliamentary debates throughout 2006. For its part, in spite of recent concessions on the BL-66 and the M26, it was clear that the French still wanted to keep their cluster munitions and would not support the call of the campaign. Thus, it was time to step it up.

Turning the Tide

In the summer of 2006, at the height of the Israeli-Lebanese conflict and the largest

⁵¹⁵ Dufournet 2011: 142-143.

France. Parliament. Senate. *Bill N° 253*. 12th Legislature, 2002-2007. Tabled in the Senate, March 15, 2006. Retrieved from http://www.senat.fr/leg/ppl05-253.html. Translated with GoogleTranslate.

deployment of cluster munitions in recent history, the CMC launched a media canvass in France, purchasing Internet, print, television and radio spots. Rather than highlight the ongoing casualties from cluster munitions use that summer, the ad campaign highlighted Belgium's new law, the world's first domestic cluster munition ban, and asked, "What is France doing?" Later in the summer, the call also addressed moratorium initiatives in Norway, Austria and Germany as they occured. At the same time, the campaign targeted domestic insurance companies, in particular the insurance giant AXA Group, challenging them to divest in cluster munitions. ⁵¹⁸

At the end of the summer, in a letter published in Le Monde, the CEO of Handicap International called out the excessive use of cluster munitions by Israel, seizing the moment to point out the failed implementation of existing international humanitarian law during the 2006 July War. Against that backdrop, he highlighted French opposition to regulation of cluster munitions hitherto that point, and called on presidential candidates to take action. Several days after the *Le Monde* article, Handicap International submitted an appeal for a ban to Parliament, backed by the signatures of 37 members from both houses, representing multiple parties, as well as authors, professors, musicians, and other prominent French personalities, which was also

February 2006, Belgium voted against a law against BASMs. What is France doing?" TV Spot, Handicap International, July 2006. https://www.youtube.com/watch?v=IRsem2Keojw Translation by Christine M. Leah, Yale University.

⁵¹⁸ Dufournet 2011: 144.

⁵¹⁹ Richardier, J. (2006, September 11). Weapons Ban as Soon as Possible / Des armes à banner au plus vite. *Le Monde*. Retrieved from http://www.lemonde.fr/idees/article/2006/09/11/des-armes-a-bannir-au-plus-vite-par-jean-baptiste richardier 811746 3232.html. Translated with GoogleTranslate.

⁵²⁰ Richardier 2006.

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Retrieved

from

International pour l'interdiction des bombes à sous-munition. (2006, September 14).

http://www.godf.org/index.php/actualite/details/liens/position/nom/

⁵²¹ The full list includes: Jean-Pierre Abelin, MP (UDF); Akhenaton rapper; Jane Evelyn Atwood, photographer; Raymond Aubrac, a former Resistant; Isabelle Autissier sailor; Claude Bartolone, MP (PS); Pascal Bataille, producer, TV presenter; Ghaleb Bencheikh, President of the World Conference of Religions for Peace; Stéphane Bern, host TV; Jean-Louis Bianco, MP (PS); Enki Bilal, author, screenwriter and cartoonist; Juliette Binoche, actress; Jane Birkin, actress, singer; Christian Boiron, an entrepreneur; Jérôme Bonaldi, TV presenter; Pascal Boniface, director of the Institute of International and Strategic Relations; Nicole Borvo, Senator (CP); Jean-Hervé Bradol, president of Médecins Sans Frontières; Brauman, former president of Doctors Without Borders; Robert Bret, Senator (CP); François Brottes, MP (PS); Jean-François Chossy, MP (UMP); Philippe Cochet, MP (UMP); Yves Cochet, MP (Greens); CharlElie Couture, musician, singer; Sophie Davant, TV host; Jean-Arnold de Clermont, president of the Protestant Federation of France; Jacques Delors, former minister; Michèle Demessine, Senator (CP); Jean-Pierre Denis, Director of Writing Life; Diam's singer; Evelyne Didier, Senator (CP); Jean Dionis du Séjour, MP (UDF); Jean-Pierre Dufau, MP (PS); Frédéric Dutoit, MP (PC); Guy Fischer, Senator (CP); Laurent Fontaine, producer, TV presenter; Jean-Pierre Foucault, TV presenter; Mickaël Furnon (Mickey 3D): musician, singer; André Gerin, MP (PC); Anouk Grinberg, actress; Philippe Haddad, writer; Barbara Hendricks, opera singer; Pierre Hériaud, MP (UMP); Stéphane Hessel, Ambassador of France; Francis Hillmeyer, MP (UDF); Robert Hue, Senator (CP); Michel Hunault, MP (UDF); Jean-Pierre Jeunet, director; Maryse Joissains-Masini, MP (UMP); Pierre Jolivet, Director; Christian Kert, MP (UMP); Bernard Kouchner, former Minister; Christian Lacroix, fashion designer; Dominique Lapierre, writer; Jean-Marie Le Guen, MP (PS); Marc Lévy, writer; Martine Lignières-Cassou, MP (PS); Jean-Pierre Luminet, astrophysicist, Research Director at CNRS; Christmas Mamère, MP (Greens); Bruno Masure, journalist; Denis Metzger, president of Action against Hunger; Pierre Micheletti, President of Physicians of the World; Hélène Cute, MP (PS); Danielle Mitterrand, President of the Fondation France Libertés; Hervé Morin, MP (UDF); Roland Muzeau, Senator (PC); Erik Orsenna writer, member of the French Academy; Daniel Paul, MP (PC); Valérie Pécresse, MP (UMP); Etienne Pinte, MP (UMP); Professor Yves Quéré, physicist; Jean-Michel Quillardet, Grand Master of the Grand Orient of France; Axelle Red, singer; Ivan Renar, Senator (PC); Alain Rey, lexicographer, writer; Michel Rocard, former Prime Minister; François Rochebloine, MP (UDF); Philippe Ryfman, professor of political science at the Sorbonne; Mariane Satrapi, author, screenwriter and cartoonist; Odile Saugues, MP (PS); Patricia Schillinger, Senator (PS); Patrick Segal, Inspector General of Social Affairs, writer; Geneviève Sevrin, President of Amnesty International France; Sister Emmanuelle; Tomer Sisley, humorist; Bertrand Tavernier, director; Nils Tavernier, Director; Philippe Tourtelier, MP (PS); Francis Vercamer, MP (UDF); Gérard Voisin, MP (UMP); Olivier Weber, journalist, refer to Point; PTA author, screenwriter and cartoonist. Handicap International Calls for Ban on Cluster Bombs / Appel d'Handicap

Commission on Human Rights (CNCDH), charged with monitoring France's human rights compliance, also adopted a position on cluster munitions. Recognizing claims by the government that cluster munitions could be addressed through existing law, the CNCDH recommendations invited the government to demonstrate its commitment to international humanitarian law by doing more on cluster munitions. 522 The CNCDH document recognized the role of growing civil society mobilization and over a hundred questions to government on the issue of cluster munitions. 523 It argued that existing French policy, which was presently to ratify CCW Protocol V—which addressed explosive remnants of war but not cluster munitions—was not sufficient to the problem, and called on it to enact a national moratorium as well as to act in favor of a legally binding international law on cluster munitions. 524

Boosted by this recognition, the campaign maintained its mobilization through the fall. On September 30th, the 12th annual Shoe Pyramid action called on France to follow Belgium's example and garnered 65,000 signatures that day. 525 In October, encouraged by the campaign, a number of prominent political cartoonists produced pieces on cluster munitions. 526

Prise-de-position/slug/appel-d-handicap-international-pour-l-interdiction-des-bombes-asous-munition. Translated with GoogleTranslate.

⁵²² Opinion on the munition weapons systems / Avis portant sur les systèmes d'armes à sous-munitions. (2006, September 21). Commission Nationale Consultative des Droits de L'Homme (CNCDH). Translated in GoogleTranslate.

⁵²³ Many of these questions, for instance No. 75501 by Philippe Tourtelier, note that several organizations, and particularly Handicap International, have drawn their attention to the issue of cluster munitions. CNCDH 2006: 2.

⁵²⁴ CNCDH 2006: 3-4.

⁵²⁵ Dufournet 2011: 400.

⁵²⁶ Cartoonists noted include Trondheim, Delvallé, Delvigne, Chimulus, Bengrrr, and Samples of Davy. the cartoons can be found online at

Figure 6: French political cartoons about cluster munitions

PARCE QU'IL YA DÉS COUPS DE PIED

AU CUL QUI SE PEDDENT...

UNE BOMBE (BASM)

C'EST COMME UNE URNE

QUI S'OUVEIRAIT ET QUI

LÂCHERAIT PLEIN DE

MÉCHANTS PETITS BULLETINS

QUI SERAIENT CONTRE VOUS!

AVEC HANDICAP INTERNATIONAL

DITE NON AUX BOMBES

A SOUS-HUNTIONS

A SOUS-HUNTIONS

LES POLITIQUES IL FAUT SAVOIR LEUR PARLER

UNE BOMBE (BASM)

C'EST COMME UNE URNE

QUI SERAIENT CONTRE VOUS!

LES POLITIQUES

LES PO

Issue champion Armand Jung (Socialist) also filed, unsuccessfully, the first of several bills that he would submit on cluster munitions.⁵²⁷ The tone of government in responses to parliamentary questions changed somewhat during this time as well; while it continued to reiterate its commitment to upholding existing international law, it also began to note the work it had commissioned toward updating the existing arsenal to meet safety expectations, and made a concession to the campaign: it announced the phasing out of its M26 multiple launching rocket system (MLRS).⁵²⁸ This policy concession happened much earlier in France than in the Netherlands or the UK, which both announced similar phase-outs in the following year.

The momentum leading up to the CCW Review Conference continued into November with a new Handicap International report on cluster munition impact worldwide, highlighting France's past uses and ongoing issues. Coinciding with and

http://www.courrierinternational.com/galerie/2009/09/17/des-cartoons-contre-les-bombes

⁵²⁷ Bill N° 3345. 12th Legislature, 2002-2007. Submission by Armand Jung (Socialist). October 3, 2006.

⁵²⁸ The MLRS M26 contains over 600 submunitions. Response by the Ministry of Defense to MP Yvan Lachaud (Union for French Democracy). (2006, October 3). *Questions*, National Assembly 12th Legislature, 2002-2007.

citing that report, the well-circulated daily *Libération* ran a multi-page cover story on the problem of cluster munitions, echoing the calls of the campaign to a broad audience. By November, the campaign had also managed to secure support for a ban from all but one of the French presidential candidates: Nicolas Sarkozy (UMP), who reiterated ongoing government claims that cluster munitions did not violate existing international law, and stated that they should not be prohibited. Sarkozy

However, in spite of the flurry of campaign activity at home, at the CCW Review Conference, over which France presided, it made no move in the direction of a moratorium. Recall the weak mandate proposed by the British, which was supported by the United States and other major arms producers, to discuss cluster munitions within the CCW framework but not the concerns for humanitarian harm. France made its support for the British proposal loud and clear, which was significant given its position at the conference and given its opposition to most of the other European delegations. In the face of backing from 15 European Union members for a mandate on cluster munitions, France chose not to support the mandate, and nor did it support the initiative of Norway, which announced at the end of the conference it would seek a new framework outside the CCW, which would later be called the Oslo Process. To the chagrin of civil society, the French delegation continued to reiterate the position that existing international legal instruments were sufficient and that a new ban was not necessary. The French government again reiterated this position in December 2006, with

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⁵²⁹ The Small Bomb that Kills Delayed / La petite bombe qui tue à retardement. *Libération*, (2006, November 2). Translated with GoogleTranslate.

⁵³⁰ Dufournet 2011: 401.

⁵³¹ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 137. ⁵³² Borrie 2009.

the release of the Senate Committee on Foreign Affairs, Defence and Armed Forces report on the status of cluster munitions. ⁵³³ The report recommended strict implementation of existing law, future development of technologies to ameliorate contamination issues, and a preference for the CCW over the outside Norwegian process. ⁵³⁴ The leftist parties in particular criticized the report, several of which encouraged its members to abstain on its findings. ⁵³⁵

With the CCW Review Conference failure on cluster munitions and the disappointing Senate report, the domestic campaign turned to getting France on board with the Oslo Process. Given its past rhetoric on cluster munitions, Norway did not initially invite the French to Oslo;⁵³⁶ indeed, not having received an invitation as of November 2006, the French declared they would not be participating.⁵³⁷ Not to be left out, France later had to ask to be invited.⁵³⁸ In spite of having shown no support for a ban prior to the first meeting on cluster munitions, France was one of a handful of cluster munition producers to attend and participate in the February 2007 Oslo conference. It would find the dynamic in Oslo much different from the CCW: the NGOs were not just in the room; sometimes they were even leading it.

At the Oslo conference, the French made their reluctance obvious, stating at the start of the conference that the CCW was the "most relevant forum" to deal with the

⁵³³ Information report of the Committee on Foreign Affairs, Defence and Armed Forces. No. 118 (2006-2007). (2006, December 13). Retrieved from http://www.senat.fr/rap/r06-118/r06-1181.pdf. Translated with Google Translate.

⁵³⁴ Committee on Foreign Affairs, Defence and Armed Forces 2006.

⁵³⁵ Dufournet 2011: 401.

⁵³⁶ Response by the Ministry of Foreign Affairs to MP Fabienne Keller (UMP). (2006, March 1). *Questions*. Senate 12th Legislature, 2002-2007.

⁵³⁷ Dufournet 2011: 267.

⁵³⁸ Dufournet 2011: 270.

problem of cluster munitions, and arguing for the benefits for having more users, producers and exporters on board. 539 Somewhat counter to the purpose of the conference, France also called for restrictions on cluster munitions on a national basis, rather than an international one. 540 It echoed this sentiment in government responses at home, reiterating its feelings that the guarantor of effectiveness in the CCW was its universality. 541 The French delegation would maintain this position well into the Oslo Process, in addition to further demands on definition and interoperability; the latter concern is particularly interesting as France was at the time not part of the NATO military command and had less reason to be concerned with interoperability. Unexpectedly, the French delegation decided to join the Oslo Declaration, which committed participants to draft a cluster munition ban by the end of 2008, but they made their support contingent on recognition of the work being done in the CCW. 542 The commitment provided the campaign with a series of major events around which to focus major activity in France. That France had taken a backseat to other states in the new process did not go unnoticed at home, as for instance MP Christine Taubira pointed out after Oslo that France's voice has been inaudible on the international stage (regarding cluster munitions). 543

That spring, the presidential election also loomed large, and the prospect of

⁵³⁹ Dufournet 2011: 270.

⁵⁴⁰ Dufournet 2011: 270.

⁵⁴¹ Response by the Ministry of Foreign Affairs to MP Maxime Gremetz (MPs Communists and Republicans). (2007, February 27). *Questions*, National Assembly 12th Legislature, 2002-2007.

⁵⁴² "Banning Cluster Munitions: Government Policy and Practice," the Monitor, Mines Action Canada (2009): 75.

⁵⁴³ Response by the Ministry of Foreign Affairs to MP Christiane Taubira (and MPs Socialist, Radical and various left). (2012, October 1). *Questions*, National Assembly, 13th Legislature, 2007-2013.

holding the candidates to their word would be key. The campaign continued to challenge all candidates to support an international ban of cluster munitions, maintaining the salience of the issue with regular media activity. 544 The only candidate not to endorse the call, Nicholas Sarkozy, wrote to Handicap International in March indicating his willingness to change his mind. 545 Outgoing president Jacques Chirac also wrote to HI in the spring, recognizing the need for France to commit to an international ban. 546 In April 2007, on the eve of the election, Handicap International and media research company IPSOS conducted a poll that found 87% of French wanted their next president to prohibit cluster munitions immediately after election. 547 When the elections went to a second round, Handicap International successfully challenged the two remaining candidates to pledge their support for a ban if elected.⁵⁴⁸ Nicholas Sarkozy arrived in office already committed, at least by his word, to the goals of the campaign. Telling of the shifting tide, his election also ushered in an unusual Foreign Minister, Bernard Koucher, co-founder of Medecins Sans Frontieres, who would be highly invested and participate heavily in the Oslo Process going forward.

In time for the presidential election and the next Oslo Process meeting, the Coalition also released a new report that focused on the humanitarian disaster of cluster munitions, culminating in the finding 98 percent of recorded casualties from cluster

⁵⁴⁴ Asensi notes that the question of a prohibition repeats regularly in the news. Question by MP François Asensi (MPs Communists and Republicans) to the Ministry of Defense. (2007, February 27). *Questions*, National Assembly 12th Legislature, 2002-2007.

⁵⁴⁵ Dufournet 2011: 402.

⁵⁴⁶ Dufournet 2011: 402.

⁵⁴⁷ Dufournet 2011: 402.

⁵⁴⁸ Dufournet 2011: 402.

munition casualties were civilian.⁵⁴⁹ Finally, the Coalition took its targeting of the private sector to a new level: unable to get a response to its calls on the Axa Group to divest from companies that produce landmines and cluster munitions, Amnesty International France and Handicap International France made the high leverage move of terminating their insurance contracts with Axa.⁵⁵⁰ A few months later, Axa would announce its decision to divest with the statement, "While no international convention banning cluster bombs is yet in place, the Axa Group acknowledges that there is an emerging international consensus around the banishment of certain types of cluster bombs."

In April 2007, the hundreds of parliamentary questions, which to this point had met with standardized responses on existing French policy, began to receive a different kind of response, denoting the beginnings of a sea change in the government's position. The Ministry of Foreign Affairs called the Oslo conference an occasion to mark growing international conscience on the "humanitarian scourge of the use of the most dangerous cluster munitions" to provide impetus for future work. ⁵⁵² In the same response, while recognizing the problem and growing consensus around it, the French government also declared that the future international instrument to come out of the Oslo Process should

⁵⁴⁹ Circle of Impact: the Fatal Footprint of Cluster Munitions on People and Communities. *Handicap International*. (May 2007). Retrieved from http://www.handicap-international.org.uk/.

⁵⁵⁰ Handicap International 2007.

⁵⁵¹ Banning Cluster Munitions: Government Policy and Practice, Human Rights Watch and Mines Action Canada, (Ottawa, Mines Action Canada: 2009): 75.

⁵⁵² "The use of submunition weapons that can cause the most dangerous humanitarian scourge / Du fléau humanitaire que peut entraîner l'usage des armes à sous-munitions les plus dangereuses." Response by the Ministry of Foreign Affairs to MP Maxime Gremetz (MPs Communists and Republicans). (2007, February 27). *Questions*, National Assembly 12th Legislature, 2002-2007. Translated in GoogleTranslate.

take the form of another protocol to the CCW, ⁵⁵³ a position it would repeat throughout the negotiations, and this regular vocalization helped identify and update its position for the campaign. For instance, in response to parliamentary questions in April, the Ministry of Foreign Affairs stated that it had made a "major political commitment" to a legally binding international instrument to ban the worst cluster munitions and to diplomatically engaging cluster munition users, producers and stockpilers not party to the negotiations. ⁵⁵⁴ But then the response goes on to detail how this would be best done through the CCW. ⁵⁵⁵

In mid-May, the new French government and the presidency of Nicholas Sarkozy commenced; the new Ministers of Foreign Affairs and Defense were both signatories to Handicap International's call to government for a ban, and Sarkozy himself reiterated his commitment to a ban. The questions from parliament on cluster munitions now included both members of the left and the right coalitions, that the UMP held control of government. With policy-makers moving in a favorable direction for a ban, the French delegation's behavior just days later at the next cluster munitions meeting seemed mismatched. At the opening of the Lima conference, France

⁵⁵³ Ministry of Foreign Affairs, February 2007.

This is a major political commitment / Il s'agit là d'un engagement politique majeur." Response by the Ministry of Foreign Affairs to MP Marcel Reinaud (Socialist). (2007, April 19). *Questions*, Senate 12th Legislature, 2002-2007.

⁵⁵⁵ Ministry of Foreign Affairs, April 2007.

⁵⁵⁶ Dufournet 2011: 401.

⁵⁵⁷ For instance: MP Giran asks what France is doing to rapidly reach a treaty on cluster bombs, citing their unacceptable toll on civilians. This language mirrors campaign rhetoric and earlier questions from the left. Question by MP Jean-Pierre Giran (UMP) to the Ministry of Foreign Affairs and Human Rights. (2007, August 7). *Questions*, National Assembly 13th Legislature, 2007-2012.

⁵⁵⁸ UMP, the major coalition of the right, has to this point been more oppositional to the notion of a ban than the left.

challenged the agenda on the floor, proposing to move weapon definitions to the top of the list, supported by the Netherlands, the UK, and others. Especially from Lima onward, the French delegation gravitated toward the like-minded group, which consisted of NATO members and other US allies with concerns about categorization, stockpile destruction deadlines, and interoperability with states not party. Specifically, the French supported a partial ban for only the most dangerous weapons, calling for exclusions for cluster bombs with 10 or less submunitions and for weapons with self-neutralization mechanisms. They called for a transition period between entry into force and compliance deadlines, and warned that too-ambitious stockpile destruction deadlines would deter states from participation. And they called into question the legitimacy of the Oslo process by continuing to express their wish to return talks to the CCW, the only "universal" forum to address cluster munitions. This was challenged by the left, which noted that the statements from the French delegation in Lima suggested a return to the last government position, to oppose any prohibition of cluster munitions.

At the end of the summer, the Coalition called on France in its annual Shoe Pyramid action to remove any ambiguity about its support for the Oslo Process and to work toward the adoption of an international treaty banning cluster munitions, collecting

⁵⁵⁹ Borrie, J. (2009). Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions was Won. (Geneva: UN Institute for Disarmament Research): 174.

⁵⁶⁰ Statement of France. (2007, May 24). Session on Definition and Scope, Lima Conference on Cluster Munitions. Cross-referenced in *Landmine and Cluster Munition Monitor*.

⁵⁶¹ Banning Cluster Munitions: Government Policy and Practice, Human Rights Watch and Mines Action Canada, (Ottawa, Mines Action Canada: 2009): 75.

Dufournet 2011: 402.
 Question by MP Martine Faure (MPs Socialist, Radical, Citizen and various left) to the Ministry of Foreign and European Affairs. (2007, August 7). *Questions*, National Assembly 13th Legislature, 2007-2012.

77,500 signatures in one day.⁵⁶⁴ A major ambiguity in French policy was whether it would continue to work in both the Oslo Process and also in the CCW, which made cluster munitions a major agenda for its November meeting. The dominant position at the CCW emanated from the United States delegation, which promoted "a negotiation on cluster munitions within the CCW framework, which is most likely to achieve a result that balances humanitarian concerns with military and is, therefore, likely to have a more substantial impact than a result that fails to garner the support of many military powers."⁵⁶⁵ The French shared this position.

After the CCW meeting, the government revealed its priority was a legally binding agreement with the "principal military powers" to ban the most dangerous cluster munitions. ⁵⁶⁶ Boldly, the Ministry of Foreign Affairs and Human Rights claimed French credit for the new CCW mandate to negotiate a protocol on cluster munitions, and declared France's intent to participate in both the Oslo Process and the CCW, contending that they were "mutually reinforcing." ⁵⁶⁷ A month later, at the Vienna conference on cluster munitions, the French delegation pushed for a treaty model that would categorize cluster munitions according to their severity: the worst ("dumb" or imprecision) weapons should be banned outright, the weapons that could cause unacceptable harm if used in populated areas which should be banned "eventually," and

⁵⁶⁴ Faure 2007.

⁵⁶⁵ Bettauer, R. J. (2007, November 7). Opening statement by Mr. Bettauer to meeting of states parties to CCW Convention. Meeting of States Parties, Convention on Certain Conventional Weapons, Geneva. Retrieved from http://2001-2009.state.gov/s/l/2007/113055.htm.

⁵⁶⁶ Question by MP Jean-Pierre Giran (UMP) to the Ministry of Foreign Affairs and Human Rights. (2007, August 7). *Questions*, National Assembly 13th Legislature, 2007-2012.

⁵⁶⁷ Ministry of Foreign Affairs and Human Rights, August 2007.

the acceptable models.⁵⁶⁸ This position of categorizing cluster munitions protected at least three weapons in the French arsenal, and was supported by members of the "likeminded" states that preferred the weakest treaty provisions. Foreign Minister Bernard Kouchner made an effort to sell this position to the public in an article published in *Libération*, in which he argued for the benefit of working with the United States, Russia, China, India, Brazil and Israel—by name—at the CCW, and also the benefit of the Oslo Process, stating, "those States do not participate because it is bolder." He categorized the French dual effort as exemplary vis-à-vis other states. Handicap International CEO Richardier replied to Kouchner in the same publication days later, challenging the government to pick amongst the two agreements, one of which clearly would weaken the other. The campaign would continue to the view work in the CCW as weaker and less committal, dominated as it was by the major military powers and arms producers, and to challenge the French attempt to straddle both processes.

In February 2008, France took a leading role among the like-minded states⁵⁷¹ at the penultimate meeting of the Oslo Process in Wellington. The French demanded, additional to its ongoing calls for the exclusion of particular munitions from the treaty definitionally and continued the use of some munitions for a transition period, weaker requirements for past users in cleanup assistance, and provisions to allow

⁵⁶⁸ France possessed at the time munitions in all three of its proposed categories: M26 rockets, OGR grenades, and the Apache and BONUS systems. Dufournet 2011: 401.

Kouchner, B. (2008, January 22). Stop the cluster bombs / Stop aux bombes à sousmunitions. *Libération*. Retrieved from http://www.liberation.fr/tribune/2008/01/22/ stop-aux-bombes-a-sous-munitions_63226. Translated with Google Translate.

⁵⁷⁰ Richardier, J. (2008, January 31). Moratorium on cluster munitions / Moratoire sure les BASM. *Libération*. Retrieved from http://www.liberation.fr/tribune/2008/01/31/moratoire-sur-les-basm 63909. Translated with Google Translate.

⁵⁷¹ Australia, Canada, Denmark, Finland, France, Italy, Japan, Netherlands, Czech Republic, United Kingdom, Slovakia, and Switzerland.

interoperability with non-parties using cluster munitions.⁵⁷² The French pushed very hard for its proposals to be added to the Wellington declaration, which outlined the general contents of the ultimate treaty text to be signed in Dublin in May. These demands reflected concerns raised by like-minded states in the CCW framework, in particular the concern that the Oslo treaty would impede cooperative NATO operations, and as the negotiations moved toward a comprehensive ban, the like-minded doubled down on their demands. At the conclusion of the Wellington conference, France made a statement on behalf of the like-minded group expressing dissatisfaction with the conference, which it contended did not take the various participants' views into account in a balanced wav.⁵⁷³

With only three months until the treaty was to be signed, the French government still had not shifted to a favorable policy position, in spite of the election-time claims of many major players. The Cluster Munition Coalition had maintained issue salience around the French position through the Oslo Process and was even able elicit the sentiment from the French delegation that, "the French public is concerned over the use of cluster munitions,"574 but it would need to make major efforts up to the finish line.

The French "Tipping Point"?

The government of France would not make a visible shift in its policy stance until after it had signed off on the final treaty text in Dublin, but it had already made a public

⁵⁷² Dufournet 2011: 402.

⁵⁷³ Banning Cluster Munitions: Government Policy and Practice. Mines Action Canada.

⁵⁷⁴ Baker, K. French Thoughts on Norwegian Cluster Munitions Conference. Wikileaks. Wikileaks cable: 07PARIS1312. Retrieved from http://wikileaks.info/.

pledge to the policy preference of the campaign (for a ban) through the campaign commitments of its major ministers—to keep its promise, it simply needed to join the convention. In March and April 2008, Handicap International continued its media work with TV and radio spots, and strategic advertising, to remind the new government to follow through as the final Oslo Process meeting approached. Figure 7 shows a spike in salience in the second half of 2006, around the release of reports of cluster munition casualties in Lebanon, and then two secondary, weaker spikes in attention to cluster munitions bookending the Oslo Process, showing a jump in media coverage at those times.

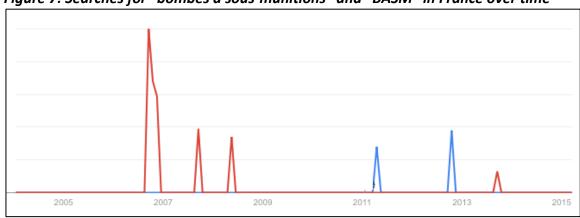


Figure 7: Searches for "bombes à sous-munitions" and "BASM" in France over time

In parliament, champion MP Gerin and 18 other Communist MPs submitted a bill calling on the government to join the agreement concluded by the Oslo Process; the Gerin draft named all four cluster munitions in the French stockpile as targets of this proposed prohibition.⁵⁷⁵ Following the failure of this proposal, the campaign decided to

nationale.fr/. Translated with Google Translate.

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⁵⁷⁵ The four munitions are the M26, the OGR, the BONUS, and the Apache-KRISS missile. Submission by Andre Gerin (Communist). Bill N° 806. (2008, April 15). National Assembly 13th Legislature, 2007-2012. Retrieved from http://www.assemblee-

bring the case right to parliament:

A month before the Dublin conference, a joint effort between Handicap International, MP Etienne Pinte (UMP), and the Irish Ambassador to France organized a panel debate on cluster munitions at the Palais Bourbon. The goal of the "conferencedebate" was to fully inform MPs on the issue of cluster munitions prior to the Dublin conference, and to challenge again the position of France to support both the Oslo Process and the CCW. At the parliamentary debate, it was noted "the current political climate seems favorable for our country is heading towards a ban," specifying the broadening support in both major French coalitions and noting past promises from President Sarkozy, Foreign Minister Bernard Kouchner, and Defense and Veterans Affairs Minister Jean-Marie Bockel to support a ban on cluster munitions. ⁵⁷⁶ In reply, Foreign Ministry representatives reaffirmed that while France was committed to the Process, it did not support a total ban on cluster munitions and reiterated the intent to negotiate exceptions, mentioning issues of excluding "smart" cluster munitions and interoperability.⁵⁷⁷ To drive the point home one more time before the May conference, Handicap International CEO Richardier and two Serbian cluster munition victims, both mine clearance technicians, presented the French parliament with a book of over 500,000 signatures collected by Handicap International on behalf of the international ban, the majority of which were unique French signatures. 578

⁵⁷⁶ "Ban on cluster bombs Global Day of Action against cluster bombs Conference-Debate in the National Assembly / Interdiction des bombes à sous-munitions Journée mondiale d'action contre les BASM Conférence-Débat à l'Assemblée nationale," Press Release, Office of MP Armand Jung (Socialist): April 18, 2008. Translated in GoogleTranslate.

⁵⁷⁷ Dufournet 2011: 402.

⁵⁷⁸ Dufournet 2011: 403.

In Dublin, owing to its role as the voice of the like-minded, France was named one of the Vice-Presidents of the Conference. During the negotiations (and the demonstrations outside), the French Ministers of Foreign Affairs and Defense released a statement announcing that their government had decided rather than to transition out the M26 eventually to immediately withdraw the rockets from operational service, accounting for over 90% of France's cluster munitions.⁵⁷⁹ However, after making its concession on the M26, the French continued to push for interoperability, and played a key role in extending the stockpile destruction deadline, raising the number of ratifications to trigger entry into force, and weakening the retroactive cleanup commitments.⁵⁸⁰ Two French weapons with submunitions were also not captured by the definition of a cluster munition, the BONUS system and the Apache-KRISS missile.

Having successfully weakened part of the treaty, France was able to comfortably fulfill its commitment both to the international community (via its Dublin signature) and to the French public (via its 2007 campaign promises) to join the final Dublin document, and it was among the governments to commit to signing the treaty at its official ceremony in December. Such treaty weakening is not telling of normative persuasion, but rather calculated protection of the arsenal and of the sanctity of existing domestic policy, which France would not have to change very deeply. However, having France on board was still a victory for the campaign, as the shift in France toward supporting the ban provided a base from which to direct future desirable policy choices, and also provided cover for weaker NATO states and US allies who also wished to do so. France

⁵⁷⁹ Dufournet 2011: 403.

France Cluster Munition Ban Policy. *Landmine and Cluster Munition Monitor*. (2015, September 3). Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

had also revealed another interest, which was the universalization—to the extent that it was possible—of the 2008 Convention on Cluster Munitions. That is, France wanted to ensure commitment from as many states as possible, which helps to explain in part its preference to work in both the CCW and the CCM, which had only partial membership overlap.

France would seek the support of civil society to act on its commitment to treaty universalization, as it recognized the power of voices like Handicap International on the issue, and would continue to shift policy on cluster munitions. As it noted at the July meeting of the CCW-GGE, France expressed a wish that the negotiations would lead to concrete results (which had been unsuccessful thus far) and also a concern that the Oslo Process had discredited the work being done in the CCW.⁵⁸¹ As would be made very clear by the campaign, the CCW protocol was seen at best as a distraction, and at worst an attempt to undercut the Oslo treaty. To this end, in July 2007, Minister of Foreign Affairs Kouchner proposed a joint approach between French embassies and Handicap International to promote the treaty in Oslo in December; by autumn, the joint effort was active in 34 French embassies.⁵⁸² For its part, Handicap International viewed this as a step in the right direction, as it allowed HI to have a greater role in treaty implementation, particularly on the universalization issue. In November, the Ministry of Foreign Affairs and Handicap International held a joint press conference announcing that France would sign the Oslo treaty next month. 583 France also announced the

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⁵⁸¹ Dufournet 2011: 403.

⁵⁸² Dufournet 2011: 402.

⁵⁸³ Dufournet 2011: 403.

withdrawal of its OGR shell from operational service,⁵⁸⁴ as it fell within the category of weapons that would be banned when the treaty entered into force. Regardless, in December Foreign Minister Kouchner signed the 2008 Convention on Cluster Munitions in Oslo, and declared in his speech, "Yes we can. Yes we can. The US can sign this treaty, Russia can sign, China can sign this treaty!"⁵⁸⁵ And France signed the treaty, rapidly implemented into domestic law, and has continued to strengthen both its relationship with the domestic cluster munition network as well as its interpretation of the new law.

(No Need for) Watchdogging

Within months, France ratified the Convention on Cluster Munitions (in June 2009), passing unanimously in the Senate. Senate. It rapidly implemented the convention into domestic law, with the 2010 Law on the Elimination of Cluster Munitions, which included some proposals from civil society and was unanimously adopted by both houses of parliament. During consideration of the proposed text, Defense Minister Hervé Morin said that France intended to finish destruction of its stocks in 2016, two years before the deadline imposed by the Convention.

⁵⁸⁴ France Cluster Munition Ban Policy. *Landmine and Cluster Munition Monitor*. (2015, September 3). Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

Cluster Munitions. *France Diplomatie*. (2009). Retrieved from http://www.diplomatie.gouv.fr/en/france-priorities_1/clustermunitions 6114/index.html.

France Cluster Munition Ban Policy. *Landmine and Cluster Munition Monitor*. (2015, September 3). Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁵⁸⁸ Dufournet 2011: 404.

outlawed domestic direct investment in cluster munitions, declaring that "any financial assistance directly or indirectly, knowingly, to a manufacturing or trading activity of cluster munitions would be considered as an assistance, encouragement or inducement (of the domestic cluster munition law) falling within the scope of criminal law."⁵⁸⁹ In 2010 it ruled that all investment in cluster munitions, including indirect investment, was illegal under the law.⁵⁹⁰

On the issue of universalizing the Convention on Cluster Munitions, France expressed at the 2011 UN General Assembly First Committee, that it "deplore(s) the fact that the countries which have the largest stockpiles of antipersonnel mines or cluster munitions feel unable to ratify the Ottawa (Mine Ban Treaty) and Oslo (Convention on Cluster Munitions) conventions in the near future."⁵⁹¹ The ongoing partnership with Handicap International to broaden treaty membership continues through the French embassies, as mentioned by Minister of Foreign and European Affairs Alain Juppé in 2011, "we will continue to work in that direction through a permanent mobilization of our diplomatic network."⁵⁹² The Handicap International Shoe Pyramids are still staged annually, and the petition has now reached over two million signatures, maintaining regular support and visibility for the cause.⁵⁹³

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⁵⁹³ Dufournet 2011: 404.

⁵⁸⁹ France Bans Investment on Cluster Munitions. *Handicap International UK*. (2010. July 6). Retrieved from http://www.handicap-international.org.uk/resources/latest_news/landmines_cluster_munitions/press_060710.

⁵⁹⁰ Handicap International UK 2010.

Statement by Ambassador Eric Danon. (2011, October 18). UN General Assembly First Committee on Disarmament and International Security. Retrieved from http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com/1/statements/18Oct France.pdf.

⁵⁹² Statement by Ambassador Eric Danon, on behalf of Alain Juppé, Second Meeting of States Parties, Convention on Cluster Munitions, Beirut, September 12, 2011.

At available opportunities, the French have indeed made strong showings of their commitment to the Convention on Cluster Munitions. For instance, on the issue of interoperability, for which the French strongly negotiated during the Oslo Process, France has avoided cluster munitions use in its joint operations. At the outset of joint military operations in Libya in 2011, France notified parties to the operation of its obligations under the convention to not use cluster munitions or assist in their use, informed them that it opposed any use of cluster munitions, and called on non-signatories to join the convention. Whether or not due to France's request, cluster munitions were not used by the coalition in Libya. 595

France also continued to work toward a CCW Protocol VI on cluster munitions; to challenge this, the campaign encouraged parliamentary questions on whether any new Protocol would weaken the fledgling Convention on Cluster Munitions, published a joint op-ed in *Le Monde* on the government's position at the CCW, and sent letters to several key cabinet members. ⁵⁹⁶ At the CCW Fourth Review Conference, Juppé explained that a protocol on cluster munitions was necessary as the "Convention on Cluster Munitions only applies to States that possess around 10% of the worldwide stockpile of cluster

⁵⁹⁴ Statement of France. (2011, June 30). Convention on Cluster Munitions Intersessional Meeting, Session on Other Implementation Measures. Cross-referenced in *Landmine and Cluster Munition Monitor*.

⁵⁹⁵ But it should be noted that Libya *was* deploying cluster munitions at the time, especially in populated areas. Furthermore, at least one of the munitions he deployed came from France, although this was not determined until later. Libya: Gaddafi Forces 'Using Cluster Bombs in Misrata'. *The Guardian.* (2011, April 15). Retrieved from https://www.theguardian.com/world/2011/apr/15/libya-cluster-bomb-misrata.

⁵⁹⁶ Different political parties put forward a total 53 parliamentary questions requesting clarification on France's role in, and objectives for, the proposed CCW protocol. France Cluster Munition Ban Policy. *Landmine and Cluster Munition Monitor*. (2015, September 3). Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

munitions,"⁵⁹⁷ expressing the anxiety that major users and producers such as the United States were outside the Convention. The Review Conference ended without adopting a protocol and with no proposals to continue negotiations, marking the end of CCW work on cluster munitions. Afterward, France nonetheless expressed its willingness to continue working on cluster munitions in the CCW, stating that the Convention on Cluster Munitions "is not enough."⁵⁹⁸

France is expected to complete its cluster munition stockpile destruction by 2018, and has suggested it could finish ahead of schedule; the expected cost of destruction is estimated between €30 and €35 million.⁵⁹⁹ France declared a stockpile of approximately 35,000 cluster munitions (15 million submunitions) that will be destroyed in accordance with the convention.⁶⁰⁰ It has to date completed the destruction of its OGR shell; destruction of the M26 is ongoing. In addition, France will receive and destroy munitions from throughout Europe. Recall defense company MBDA, which was targeted as one of France's cluster munition-producing companies: in 2011, it won a contract with NATO's Maintenance and Supply Agency to destroy 33,000 cluster munitions from NATO member states by 2017.⁶⁰¹ For MBDA, "demilitarization of

⁵⁹⁷ Landmine and Cluster Munition Monitor 2015.

⁵⁹⁸ Statement of France. (2011, November 25). Convention on Conventional Weapons 4th Review Conference. Cross-referenced in *Landmine and Cluster Munition Monitor*.

⁵⁹⁹ Cluster Munition Stockpiles and their Destruction: Implementation of Article 3 of the Convention on Cluster Munitions. (2011). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org.

⁶⁰⁰ France Cluster Munition Ban Policy. *Landmine and Cluster Munition Monitor*. (2015, September 3). Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁶⁰¹ France's Cluster Weapons Dismantling Plant to Destroy 15 Million Bomblets for NATO. *Defense Update*. (2011, November 25). Retrieved from http://defense-update.com/20111125_a-new-cluster-weapons-dismantling-plant-to-destroy-15-million-bomblets-until-2017.html.

complex weapons has become a new strategic activity",602 As to the two "cluster munitions" remaining in the French arsenal, BONUS and Apache: BONUS (Mark II) has been outfitted with infrared heat detection as well as an electronic safety fuse, greatly increasing its precision; and neither weapon has been deployed since the French won their exclusion from the 2008 Convention on Cluster Munitions. Compared with the implementation efforts of the Netherlands and the UK, French compliance has been exemplary.

Conclusion

The Cluster Munition Coalition, spearheaded in France by Handicap International, was key to the development of the French policy change on cluster munitions. Like the Netherlands and the United Kingdom, France had a preference to keep its weapons and resisted pressure to abandon them throughout the Oslo Process. The resistance of the French government is particularly interesting vis-à-vis the other cases, as the French had fewer incentives to keep their cluster munitions. They possessed and had exported fewer munitions than many NATO states, and unlike the Netherlands and the UK, France was not part of the NATO military command again until 2009, which presented it with fewer opportunities for concern about interoperability. However, as the Coalition began its campaign in France back in 2003, with an ongoing relationship with the media which it frequently engaged, and highly effective public participation via the Shoe Pyramids and the Handicap International petition, cluster munitions were a much more salient issue in France than in the previous cases.

As in the other cases, France became a civil society target due to a vested interest

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⁶⁰² Statement by Antoine Bouvier, MBDA CEO. *Defense Update* 2011.

in its cluster munition arsenal. When asked in 2006 about cluster munitions, the government gave *neutralizing recognition* that the weapons were legal under international law. This *identified the French government as a potential target* for the campaign, and invited civil society pressure going forward. Using familiar tactics from the landmine ban campaign, civil society made the issue of cluster munitions *highly salient*, garnering hundreds of questions in parliament and mass public participation in petitions and the Shoe Pyramid campaign, effecting the strongest leverage over the French government seen in the four cases. As a result, after 2007, the French government pivoted the earliest of the four governments, locking herself into a ban after that year's presidential elections and abandoning its arsenal. France went on on to become a 2008 champion of the Convention on Cluster Munitions and its universalization, cooperating closely with civil society rather than needing to be watched.

The three alternative explanations considered did little explanatory work in the French case. The French used and sold cluster munitions, giving them some utility, but veered away from the language of utility, instead defending the legality of the weapons; dismantling the arsenal still represented a cost both financially and within the NATO relationship, which was less important to the French than the Dutch and British. Convergent practices also did not hold in the French case: when asked explicitly about their intentions to follow the EU or UN calls for moratoria, the government responded that it had no such intentions, and made no mention of the actions of other states in its justifications for status quo policy. Finally, regarding moral suasion, at least prior to joining the convention, the French government did not use moral language. However, as

noted in the theory section, once behavior changes it is likelier to become unthinking over time; as the French shifted behavior, French language about cluster munitions from 2008 especially has begun to adopt a normative bent about the humanitarian harm of cluster munitions.

In general, the issue generated far more parliamentary questions in France than in the other cases and multiple debates on cluster munitions were staged, forcing more frequent responses from government. Further, the 2006 Handicap International call made cluster munitions a campaign issue and later promise for many French politicians, to which it promised to (and did) hold them accountable. The French government committed to the Oslo agreement back in 2007, and regardless of its efforts to weaken the agreement, non-signature of the Convention on Cluster Munitions was not a tenable option. As the government discovered during the Oslo Process, its efforts to weaken treaty provisions would not go unnoticed at home. Encouraged by the campaign, which made its own shaming efforts through the media, parliamentarians regularly challenged the position of the government. Effective media use also maintained regular bombardment of the public with the issue of cluster munitions as well.

Civil society was unable to persuade the French that all cluster munitions cause unacceptable harm, as demonstrated by the successful French efforts to exclude two weapons definitionally from the agreement. For the French, these are simply not cluster munitions, or they do not have the same harmful effects as the munitions not excluded

⁶⁰³ After the Lima negotiations, for instance, at least five parliamentarians asked why the French position seemed "out of step" with the international work being done. This particular language comes from the campaign, a less-antagonistic but nonetheless effective application of naming and shaming. National Assembly and Senate. *12th Legislature 2002-2007, and* 13th Legislature 2007-2012.

from the treaty. Both weapons retain their utility as anti-tank and anti-runway munitions respectively; interestingly, neither has ever been deployed by the French as of this writing. The calls from both the European Union and the United Nations between 2004 and 2008 were also met with firm statements from France that it did not intend to follow the calls, showing the weakness of the socialization happening in those organizations, fractured by the disparate positions of their respective member states. The French found their support in the like-minded group, other NATO states party to the Oslo Process that had concerns about their future with the number one cluster munition user, the United States. Regardless of pressure from the US, France would face political issues at home if it failed to join the convention.

Ultimately, the French government kept its promise to commit to the Oslo treaty, and since ratification it has made remarkable efforts toward stockpile destruction and treaty universalization, marked by the invitation to Handicap International to participate in and monitor the future implementation of French cluster munition policy. The relationship between government and civil society on this issue continues to date, and since 2010 France has been one of the Convention on Cluster Munitions' most vocal state advocates.

⁶⁰⁴ As of March 6, 2015.

CHAPTER 6

POLAND'S RIGHT TO CLUSTER MUNITIONS

"From a military point of view, cluster munitions are a very effective means of struggle, which have no current alternatives ... The Polish Armed Forces are, and in the foreseeable future will be, equipped with cluster munitions."

—Poland Secretary of State, Pawel Kowal, 2007⁶⁰⁵

"The Polish position states that cluster munitions causing unacceptable humanitarian consequences, especially without the possibility of self-liquidation or self-neutralization, should be prohibited. On the other hand, we recognize the right of states to use modern, highly reliable cluster munitions for defense purposes."

—Poland Foreign Affairs Ministry home page, 2012

The Republic of Poland is not Party to the 2008 Convention on Cluster Munitions as of this writing, nor has it taken any steps toward accession to the treaty; it has, however, regularly *participated in* the legalization of the cluster munition taboo through the Convention on Conventional Weapons as well as the Oslo Process for a ban on cluster munitions. Under international scrutiny, over the past decade, Polish policy has evolved from silence on the issue to what I have called neutralizing recognition ⁶⁰⁶ of the potential harm caused by cluster munitions to self-regulation to mitigate that harm.

⁶⁰⁵ Pawel Kowal, Response to Interpellation No. 6992 Ministry of Foreign Affairs, March 27, 2007. http://orka2.sejm.gov.pl/IZ5.nsf

Recall from Chapter 2 that neutralizing recognition is the justification of a behavior, which is understood to be undesirable within a community, through the appeal to a higher authority, with the goal of mitigating the damage to image done by committing the undesirable behavior (Sykes and Matza 1959). In disarmament terms, justifying the use or sale of a weapon through the appeal to existing international law, a legal gap, or the rights of sovereignty would constitute neutralizing responses. Neutralizing recognition is also evidence of acknowledgement of the existence of a norm, through recognition of its import to other actors, and demonstrates measurable influence of even weak norms on the state.

Examining the evolution of the Polish national position offers a glimpse into how under the influence of even a small ban campaign the government moved progressively toward legalizing the cluster munition taboo, even though its policy to date falls short of the other governments examined in this project. Examining the evolution of the Polish national position offers a glimpse into how under the influence of even a small ban campaign the government moved progressively toward legalizing the cluster munition taboo, even though its policy to date falls short of the other governments examined in this dissertation. By comparison with the other states examined so far, Poland has been the subject of neither a strong anti-cluster munition campaign, nor high leverage. Poland's very weak response to the humanitarian disarmament campaign to ban cluster munitions also stems from the relative weakness of its domestic civil society, which consists of far fewer organizations for its relative size to the other cases examined in this project as well as the relative youth of Polish civil society since liberation from direct Soviet influence. The existing civil society organizations have had less time to garner domestic memberships, as well as to develop channels of access with government, media rapport, and citizen interest in the issues of humanitarian disarmament surrounding cluster munitions. Further, only one of the major gatekeeper organizations engaged in the transnational campaign, the Polish Red Cross, was active at all throughout the period studied here and in large part it acted alone, with the exception of the Ban Bus event, which will be detailed below, in which transnational campaigners visited multiple newer democracies throughout Europe on the eve of the signing of the 2008 Convention on Cluster Munitions.

Wary of an assertive Russia, and highly dependent on the support of the United States for national security, Polish governments of various party affiliations have resisted the transnational movement to ban cluster munitions and the very weak domestic campaigning that accompanied it. In the Netherlands, the UK, and France, as has been demonstrated, similar resistance was eventually broken down by sustained civil society mobilization. In post-communist Poland, however, civil society was underdeveloped, and the kinds of groups that had pressured other governments to abandon cluster munitions were absent or relatively weak. As predicted, therefore, the Polish government's response to the imperatives of humanitarian disarmament has been the weakest of the four cases in the study, limited to denial and neutralizing recognition.

It is therefore unsurprising that the Polish government has little shifted its position regarding the relative utility and security provision of cluster munitions, an argument civil society would have to make vis-à-vis humanitarian concerns, and had made little and incremental process toward the humanitarian disarmament of cluster munitions relative to the other cases. Nevertheless, there has been small campaign in Poland, which as we shall see has moved the Polish government at least a few stages along the continuum, from denial toward neutralizing recognition, and Poland has a detailed national policy guiding cluster munitions use for training purposes only. The Polish Foreign Affairs Ministry's home page suggests a perceived "right" to cluster munitions, appealing to the low failure rate of the existing arsenal (3%, a weaker standard than most other national moratoria.) Poland's policy response, while weak, is dynamic and likely to continue evolving. Understanding this case in the context of the theorized process of policy change elucidates that even where a shift is unlikely due to

national capacity or concerns of relative security disadvantage that civil society groups can still create marginal costs for government and guide policy in a progressive direction along the continuum of potential responses.

Poland has incentives both to join the cluster bomb ban, and not to join. On one hand, it is not a major user or producer of cluster munitions; yet on the other hand, it is situated in the vicinity of states that absolutely are, with which Poland has a tenuous relation ship, most notably, the Russian Federation. Since 2008, late in the campaign the ban cluster munitions, Poland has repeatedly acknowledged to varying degrees the potential for humanitarian harm associated with cluster munition use, and expressed support for the aims of the Convention on Cluster Munitions. Burdened with a nearly 1 billion USD clearance effort of World War II-era unexploded ordnance, ⁶⁰⁷ and sustaining new casualties as recently as 2014, ⁶⁰⁸ Poland might be expected to have particular empathy for victims of unexploded remnants of war; in fact, the Polish Sejm only ratified the Mine Ban Treaty in 2012 after much debate over the merits of landmines in a region where landmines are still commonly stockpiled (Eastern Europe) and ultimately the decision to phase them out. ⁶⁰⁹ The Polish Armed Forces possess

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⁶⁰⁷ After WWII, Poland was the most landmined country in the world; it has cleared nearly 80% of its contamination at a cost of \$877 million USD. To humanitarian war the prohibition of landmines and cluster munitions / Do wojny humanitarnej - zakazu min przeciwpiechotnych i broni kasetowej. (2008, November 12). Amnesty International. Retrieved from http://www.stopclustermunitions.org/engb/media/news/2008/the-ban-bus-from-the-balkans-to-oslo,-1-oct.aspx. Translated in GoogleTranslate.

⁶⁰⁸ Poland Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁶⁰⁹ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. (1997, September 18). 26 UNTC 5. Entered into force March 1, 1999.

cluster munitions confirmed still in production as of 2010, and are the sole recipient of munitions from Polish Defense Holding, the largest national defense firm, majority owned by the national government. According to the Ministry of Foreign Affairs, the types of cluster munitions it lists as being in the Polish arsenal are produced by the Polish companies exclusively for the needs of the Polish Armed Forces. It As government interest is directly tied to the arsenal, replacing cluster munitions with a more humanitarian alternative represents for Poland not only the cost of finding new arms dealers, but also a partial reformation of the national military-industrial complex. As will be further explicated, Poland's perceived cost for giving up cluster munitions is also compounded by the strong interest in its relationship with the United States and NATO and regular cluster bombing by historically antagonistic Russia against other similar states in the region.

Polish civil society has organized only weakly around cluster munitions: there are no Polish organizations in the Cluster Munition Coalition (CMC), the coordinating organization that steered the success of ban campaigns in many other states, and only three domestic NGOs joined international efforts in Poland during the Oslo Process (in 2008 or after). With minimal and late organization around the issue, the national media only sporadically covered transnational civil society's reports of Poland's failure to support the Convention on Cluster Munitions at different stages in its development, and absent domestic civil society activity, national press coverage reproduced the Polish national security rhetoric rather than the transnational humanitarian frame.

⁶¹⁰ Poland Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁶¹¹ Kobieracki 2009.

Given these several obstacles to policy change, and the weak pressure from domestic civil society to do so, it is unsurprising that Poland has yet to join the Convention on Cluster Munitions. However, understanding the slow and minor evolution of the policy of ban-resistant states does make clear that, even while civil society may not achieve its intended goal of persuading the state to ban, it can still exert an influence on the state and could continue to do so in the future. To this point, Poland has gone from non-recognition to recognition, and engages the taboo with claims that its cluster munitions are acceptably harmful given self-imposed national restrictions on their use. It has conceded in official policy that "cluster munitions causing unacceptable humanitarian consequences ... should be prohibited;" Poland does not meet the normative prescription in its assertion, however, that states have a right "to use modern, highly reliable cluster munitions for defence purposes." In the following sections, I will demonstrate that the Polish position is shifting toward a more humanitarian frame in spite of even stronger incentives to maintain the status quo.

Pushing the Norm (Away)

Poland is a stockpiler and producer of cluster munitions, although it claims never to have used them in a combat situation.⁶¹³ While it possesses some weapons it refers to as "obsolete," Poland also continues to produce its own cluster munition models for its own

⁶¹² Cluster Munitions. (2012) Ministry of Foreign Affairs, Republic of Poland. Retrieved from http://www.msz.gov.pl/en/foreign_policy/security_policy/conventional disarmament/cluster munitions/.

⁶¹³ Poland Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

"defensive" use. 614On paper, the Republic of Poland has been a longtime and active participant in efforts to mitigate the harm caused by explosive remnants of war (ERW), which can be caused by cluster munitions in the form of unexploded munitions, and the Polish delegation has participated in nearly every Convention on Conventional Weapons (CCW) meeting on that issue. However, upon further examination Polish national policy falls short, showing only weak support for mitigating ERW harm and near silence in the negotiating fora, signaling little if any recognition of the nascent cluster bomb taboo even as recognized by other powerful states.

In 1999, as a new NATO member and eager to cooperate, Poland quickly adopted NATO standards for weapons and targeting, including for its cluster munitions; Poland was not on the cluster munition campaign's radar as a potentially supportive or persuadable state, and was not receiving any campaign pressure. In spite of claims to the purely defensive nature of its cluster munition stockpile, Poland very likely had cluster munitions on hand in 2001 during its participation in allied operations in Afghanistan. In 2002, as the Afghanistan conflict continued, Poland joined the CCW Group of Governmental Experts (CCW-GGE) on ERW that ultimately gave rise to CCW work on the issue of cluster munitions, but the Polish delegation observed rather than engaged with the CCW-GGE, making only two official statements between 2002 and 2005.

⁶¹⁴ Kobieracki 2009.

⁶¹⁵ Polish Armor in Cluster Bombs / Polska zbroi się w bomby kasetowe. *TVN 24*. (2008, September 4). Retrieved from http://www.tvn24.pl/wiadomosci-z-kraju,3/polska-zbroi-sie-w-bomby-kasetowe,69613.html. Translated with Google Translate.

CCW delegates on the humanitarian effects of cluster munitions,⁶¹⁶ but within the CCW forum rather than at the national level,⁶¹⁷ thus Poland was receiving some but minimal exposure to the humanitarian frame and much exposure to the interests of other armsproducing member states of the CCW.

Poland's first actual participation in the discourse around cluster munitions came shortly after the call by the European Parliament in 2004 for member states to sign and ratify the CCW Protocol on ERW, the Mine Ban Treaty, and to impose moratoria on cluster munitions until an agreement on them could be negotiated. In late 2004, Poland declared its intent to ratify CCW Protocol V on ERW as well as the 1997 Mine Ban Treaty. Poland's intent to take these actions demonstrated her national commitment to humanitarian principles. While the EU resolution may have incentivized a response on landmine policy, it instilled no need for Polish elites even to mention cluster munitions in official fora, which went undiscussed in government and parliament that year. The Polish government in the post-Communist period had been controlled by the post-Soviet Solidarity Party, although it collapsed in 2001, Page 1001, Pa

⁶¹⁶ Fourteen NGOs joined in the 2003 meetings of the CCW, in addition to representatives of the UN Office of Disarmament, allotted time to make statements (near the end of) the meetings. Procedural Report of the Group of Governmental Experts of the States Parties to the CCW. (2003, July 8). CCW/GGE/V/3: 1-4. Retrieved from http://unog.ch.

⁶¹⁷ The CCW forum privileges state interests over civil society or human interests by restricting the number of civil society participants allowed in official discussions, and requiring only minimal compliance in exchange for rule-making benefits (for states).

⁶¹⁸ Joint Motion for a Resolution on Cluster Munitions. (2004, Octover 28). B6-0108/2004, B6-0111/2004, B6-0112/2004, B6-0120/2004, B6-0123/2004, B6-0125/2004. Retrieved from http://eu-un.europa.eu/articles/en/article_3974_en.htm.

⁶¹⁹ "Landmine Monitor Report," Landmines Action (2007): 765-767.

⁶²⁰ Kramer, M. (2011, December 12). The Rise and Fall of Solidarity. New York Times. Retrieved from http://www.nytimes.com.

the mid-2000s, after Poland was obligated by alliance to support two international military operations in Afghanistan and Iraq, and Polish politics were increasingly dominated by conservatives with pro-NATO military stances. However, the two winning parties in 2005 (Law and Justice, center right, and Civic Platform, center left) were unable to form a coalition that year, rendering policy solidarity and thus policy formation on major national issues much less on cluster bombs difficult.

When the Polish delegation to the CCW responded to a civil society questionnaire conducted in the CCW-GGE on the efficacy of existing humanitarian law in addressing ERW, 621 they argued submunition weapons "constitute no breach of the 'principle of distinction' ... the number of such submunitions (potential explosive remnants of war) ... constitutes a negligible percentage of the submunitions used in military operations (according to estimates 1.0% - 1.5% of such mechanisms will fail)."622 In short, while responding at all constituted a neutralizing acknowledgement of the issue, Poland clearly staked its position that cluster munitions were, in its view, legal. A second response came in mid-2005, arguing for the adequacy of existing international law and reiterating that the "use of submunitions during a military operation does not per se constitute a breach of international humanitarian law."623 The second statement, responding to a civil society humanitarian disarmament questionnaire distributed at the CCW, locates the potential for harm from submunition weapons use in inappropriate targeting by military leadership, or inappropriate understanding of the

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⁶²¹ Statement of Poland. (2004, November 18). Meeting of the States Parties to the 1987 Convention on Conventional Weapons. Cross-referenced in *Landmine and Cluster Munition Monitor*.

Responses to Document CCW/GGE/X/WG.1/WP.2. (2005, March 8). CCW/GGE/XI/WG.1/WP.3: 1-2. Retrieved from http://unog.ch.

⁶²³ Response from Poland. Responses to Document CCW/GGE/X/WG.1/WP.2 2005.

effects of the terrain on the efficacy of the weapons, rather than in the design of the weapon itself; nowhere in either statement does Poland specifically name cluster munitions, make claims to their acceptability, or justify their use. Polish response to cluster munitions remained thus in the language of national interest and existing law rather than in the humanitarian frame.

Of the states negotiating in the CCW during this time, none mention Russia and Chechnya's exchanges of (specifically, cluster munitions) fire in 1999 and 2004 in their official statements, but post-Soviet states shared a concern that Russian aggression would not be limited to Chechnya, which was founded by further aggression through the 2000s. Given its short but shared border with Russia and the nearness of the Soviet memory, Poland was sensitive to the potential for Russian sights to be turned elsewhere, and as a new NATO member, it aligned its policy with the United States, the number one user of cluster bombs. Thus, through 2005, Poland's government did not engage the cluster munition taboo at all and, when questioned, responded with a defense of the weapons; however, with the rising prominence of the issue in the CCW, as well increasing support of certain EU states, Poland would soon shift to a stronger but still neutralizing recognition of the norm. Poland was only weakly being reached by civil society at this time, however, via civil society participation at the CCW, but not via domestic civil society organizations, which had yet to begin to lobby the Polish government; as will be noted below, this did not begin until early 2008. Equally important is that due to Poland's early silence on the issue, it marked itself as a nonsupporter to the Campaign to Ban Cluster Munitions, and was not targeted by civil society activism until much later than in other states. Poland's stockpile was shamed in international scorecards, ⁶²⁴ but that shaming was not well followed through with domestic distribution of the information through the media as was done in the Netherlands, the United Kingdom, and France. There was less a history of disarmament organization in Poland than in the other cases, as Poland had not seen a domestic campaign for a ban on landmines in the 1990s and did not have a broad array of domestic humanitarian organizations ready to join the Cluster Munition Coalition. Under the guiding theory of this project, without domestic activity from civil society groups to raise issue salience and public participation in leverage, Poland had no incentives via attention or reputational loss to reconsider its calculation of the utility of cluster munitions vis-à-vis humanitarian harm and thus that government's behavior should in fact be expected to maintain the status quo.

(Not Really) Setting the Sights

By 2005, the Netherlands, the United Kingdom, and France were already responding to the cluster munition taboo with neutralizing recognition; they were making the policy concessions of phasing out less-precision cluster munitions and making justifications for their remaining arsenal based in existing humanitarian law and the safety mechanisms of the weapons themselves. All of them appealed to their ability to effectively apply the existing principle of distinction on the battlefield without the need for new international law to constrain them. During this time, however, while making statements about its commitment to international humanitarian principles, the Polish government did not try to justify its cluster munitions in the same way. As recognition of the norm spread in the international community, however, this would change.

⁶²⁴ See: Banning Cluster Munitions: Government Policy and Practice 2009, the Landmine and Cluster Munition Monitor 2015, and Stop Explosive Investments 2015.

In early 2005, Pax Christi Netherlands asked Poland to clarify its national position on cluster bombs; in its reply, the government stated that the Ministry of Defense had a requirement of a less than 2.5% failure rate for all cluster munitions acquired, 625 reflective of NATO and US standards at the time. However, as mentioned previously, of the hundreds of organizations consisting the Cluster Munition Coalition network by the end of the Oslo Process for a cluster bomb ban, none were Polish; all Polish engagement with civil society on cluster munitions during this time happened in the forum of the CCW, where civil society groups have limited access. In spite of the increasing international salience of the weapons, Polish media coverage of cluster munitions at this time was also virtually nonexistent, outside of independent blogs, 626 the contents of which discuss the relative merits of cluster munitions within the context of modernizing the Polish army in the post-Soviet era. Without the voice of civil society, cluster munitions did not become a salient issue in Poland at the same time as other states saw a shift. Excepting its questionnaire responses at the CCW, Poland was silent through the remainder of CCW meetings that year, rendering surprising its election as one of the vice presidents of the upcoming 2006 CCW Third Review Conference, 627 at

⁶²⁵ The information was provided to Pax Christi Netherlands with the proviso that the "content of the paper does not necessarily reflect the official position of Poland." Communication from the Polish Ministry of Defense to Pax Christi Netherlands. (2005, February 14). Cross-referenced in *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/.

⁶²⁶ Source: www.google.pl and Lexis Nexis Academic. Date range 01/01/2001 to 01/01/2007. Search terms: "kasetowa amunicja," "kasetowa bomba," "kasetowa bombki," "pocisk kasetowy," and "Polska kasetowa amunicja." Translations of "cluster ammunition, cluster munition, cluster bomb, cluster missile," generated by Google Chrome and Google Translate.

Report of the Third Review Conference. (2006, November 17). 3rd Review Conference to the 1987 Convention on Conventional Weapons, Geneva. Retrieved from http://unog.ch.

which cluster munitions were to be the focal issue. As Poland would soon learn, international pressure for new policy on cluster munitions was coming to a head, in the form of the Campaign to Ban Cluster Munitions, and silence on cluster munitions would become an increasingly difficult option.

At the 2006 Third Review Conference, Poland was the least participatory vice president of ten that along with the President constituted the drafting committee for the conference; that is, Poland submitted not a single proposal to the draft. During the meetings, states still had the greatest access and power by design of the CCW structure, but civil society groups had gained greater access in the form of more participants in the room, increasing the capacity for pressure inside the conference and marking the beginning of a trend of increasing civil society presence both inside and outside the CCW. In spite of a flurry of activity around expanding the Convention on Conventional Weapons (CCW) to create a Protocol on cluster munitions, civil society demonstrations in the lobby, and nearly 100 statements by other governments and organizations, Poland did not make a single official statement during the entire conference or declare its support officially for any of the outcome documents. Further, it made no mention of the massive Israeli cluster bombing of Lebanon in August 2006, as many other

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⁶²⁹ The Cluster Munition Coalition and Human Rights Watch—present at meetings since 2003—were joined at the 2006 Review Conference by Handicap International, the ICRC, and Mines Action Canada.

⁶³⁰ Report of the Third Review Conference. (2006, November 17). 3rd Review Conference to the 1987 Convention on Conventional Weapons, Geneva. Retrieved from http://unog.ch.

⁶³¹ Report of the Third Review Conference 2006.

delegates did (many with harsh condemnation). 632 Not only did the Polish delegation fail to recognize the large scale harm underway, but they also failed to recognize the import that cluster munition use held for a large section of the international community. Accordingly, Poland was not among the group of states that supported Norway in its declaration to initiate a new legal process for a ban on cluster munitions. 633 Norway's announcement provided states a chance to stake their position on cluster munitions: Poland again chose silence. However, silence would mean exclusion from work on the development of new international law, and many states were forced at this time to reevaluate their approach to cluster munitions.

Turning the Tide (a Little)

Up through 2007 there was a dearth of civil society activity on humanitarian issues in Poland in general, as the landscape of Polish civil society was still developing and it had not yet seen the opening of national offices of key organizations such as Human Rights Watch or Handicap International, and the Polish government's response toward cluster munitions would change little in the face of virtual non-discussion of the issue. The national policy remained that the deployers of cluster bombs, explicitly commanders in the Polish army, must use their discretion regarding the terrain that might affect the bombs' performance, 634 and did not recognize the humanitarian effects of cluster munitions. In short, this policy was concerned with the ability of commanders to effectively use cluster munitions. The conservative Sejm and Senate offered no

⁶³² Report of the Third Review Conference 2006.

⁶³³ Statement of Norway. (2006, November 17). 3rd Review Conference of the CCW. Cross-referenced in *Landmine and Cluster Munition Monitor*. Retrieved from http://themonitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁶³⁴ Survey of Cluster Munition Policy and Practice. *Human Rights Watch*. (2007).

questions to government about cluster bombs up to 2007. In fact, the government had planned to purchase new cluster munition rockets that year, the Feniks ZK-300 and 98mm mortars of the type deployed in Afghanistan. However, the Sejm also voted to dissolve itself in 2007 over corruption charges, resulting in a political shake-up: Civic Platform (center left) won a majority of seats in October that year, potentially opening the government up to a more liberal direction. Potentially with a change in party campaigners might have greater success in eliciting a statement closer to the humanitarian disarmament perspective, as has been seen in the other cases, although without a domestic campaign in place this could not be tested. The lack of activist presence at that time was clear through in the near total lack of civil society voice in Polish news coverage of the deployment of cluster munitions in the Middle East or the Polish government's plans to purchase new ones, which was thin at best. But as the Oslo Process picked up speed, civil society's silence ended and the tone of coverage changed with it.

In early 2007, at the beginning of the Oslo Process, Marek Nowicki, founder of the Polish branch of the Helsinki Committee for Human Rights and a Polish human rights lawyer, sent an open letter to Prime Minister Kaczynski (Law and Justice Party, center right) demanding the withdrawal of the entire active Polish cluster munition

⁶³⁵ From 2007-2014, Poland's government was right or center-right; the right and center-right parties also encompassed over 2/3 of the Sejm and Senate during these years.

Kowalcyzk, K. (2007, March 20). "Polish army will be equipped with an inhumane weapon / Głowice kasetowe: Polska armia zostanie wyposażona w nieludzką broń," *Vistula*. Retrieved from http://wisla.naszemiasto.pl/archiwum/glowice-kasetowe-polska-armia-zostanie-wyposazona-w,1413608,art,t,id,tm.html. Translated with GoogleTranslate.

arsenal and that Poland support a ban on cluster munitions, 637 which did not receive a response. In reply to a parliamentary question as to why Poland had not supported Norway's declaration to draft a new convention by 2008, the government gave recognition to the norm through a laundry list of appeals to other authorities, including existing international law, national sovereignty, and military utility. Secretary of State Pawel Kowal (Law and Justice Party, center right) made clear that the government preferred to address cluster munitions through the CCW, because it included the world's major users and producers, and because it was not "convinced of the rightness of the proposed solutions in Oslo." Further, the Defense Ministry saw its weapons a "very effective means of struggle with no alternatives," which were not prohibited, and thus permitted, by international law. 639 The statement closed with the justification that Poland's cluster munitions produce only between 1-3% explosive remnants of war, and the claim that Poland "supports steps to reduce the amount of loss and suffering for the civilian population," ⁶⁴⁰ falling short of connecting that suffering with cluster munitions. The minister also elucidated one other fact in his reply, which was that Poland, like France, was not invited to Oslo; but also like France, they attended anyway. In fact, prior to the Oslo meetings, Poland strategized with US counterparts on how best to

⁶³⁷ Kowalcyzk, K. (2007, March 20). "Polish army will be equipped with an inhumane weapon / Głowice kasetowe: Polska armia zostanie wyposażona w nieludzką broń," *Vistula*. Retrieved from http://wisla.naszemiasto.pl/archiwum/glowice-kasetowe-polska-armia-zostanie-wyposazona-w,1413608,art,t,id,tm.html. Translated with GoogleTranslate.

⁶³⁸ Pawel Kowal, Response to Interpellation No. 6992 Ministry of Foreign Affairs, March 27, 2007. http://orka2.sejm.gov.pl/IZ5.nsf. The translation of "struggle" comes from the Cluster Munition Monitor, which has also used this interpellation to examine the Polish position in its annual report.

⁶³⁹ Kowal 2007.

⁶⁴⁰ Kowal 2007.

argue *against* the Oslo Process should it gain potential to disrupt NATO cooperation, which it saw as paramount to Warsaw.⁶⁴¹

This small sea change in position drew transnational civil society's attention to Warsaw, and following the March exchange, both activism and media coverage of cluster munitions increased. As a recently democratized state, Poland has fewer established domestic humanitarian organizations than many of its European counterparts; there is no national office for Human Rights Watch or Handicap International, some of the largest and most influential NGOs in the cluster munition ban process. Via their Polish national offices, however, the International Committee of the Red Cross and Amnesty International joined Poland's Helsinki Committee for Human Rights in shaming Poland's cluster munition policy from the inside in a campaign of three.

While unsupportive of the ban, Poland made clear a preference to participate in international lawmaking by continuing to attend Convention on Conventional Weapons meetings on cluster munitions, as well as the Oslo negotiations by joining as an observer in all but one meeting of the Process, a mode it has continued at the meetings of States Parties to the Convention on Cluster Munitions (CCM).⁶⁴² But over the course of the two-year-long Oslo Process, Poland made just one statement: the Oslo Process should

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⁶⁴¹ In the cable exchange, Poland speculated that if the Oslo process culminated in a treaty, then Poland and other European states would face steadily increasing political pressure to comply with it and thereby abandon the CCW as a forum for dealing with cluster munitions. If so, a unified argument from NATO states about the issue of interoperability might be the most effective response. Cluster Munitions: Poles Want to Counter Oslo Process ASAP. *Wikileaks*. Wikileaks cable: 07WARSAW2368. Retrieved from http://wikileaks.info/.

⁶⁴² Poland Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

find commonality with the CCW to achieve substantial progress.⁶⁴³ At the February 2007 Conference, Poland joined only two other states present (Japan and Romania) not to endorse the declaration to conclude a cluster munition treaty by 2008; Japan later joined, but Romania remains outside the convention due to a concern it shares with Poland and its other neighbors about recent Russian behavior.

Polish interest in Russia's cluster munitions continued to increase through 2008, when Russian and Georgian forces exchanged cluster fire. 644 During this time the Polish media reflected the government's reasoning for remaining outside of the Oslo Process, including the absence of the largest producers of cluster munitions in the Oslo talks and the aggression of Russia against Polish ally Georgia. Fee it also opened some space for a civil society voice. Foreign Affairs Minister Radoslaw Sikorski (no party) defended Poland's position to a civil society challenge about why Poland did not support the Oslo Process with an explicit mention of Russia's behavior, noting accession would be premature in light of this. Sikorski in particular was unapologetic on the issue of cluster munitions, claiming he had survived a cluster bombardment, and that it was "not

⁶⁴³ Statement of Poland. (2007, May 23). Lima Conference on Cluster Munitions. Cross-referenced in *Landmine and Cluster Munition Monitor*.

⁶⁴⁴ This is an interesting event because it involved much less civil society outcry than the Israeli bombing in 2006; potentially, the lack of news coverage in the region contributed to the dampening of its effect on the cluster ban process.

Cluster munitions were condemned / Amunicja Kasetowa Zostala Potepiona. *Altaire Agencja Lotnicza*. (2008, March). Retrieved from http://www.altair.com.pl/news/view?news_id=2100. Translated with GoogleTranslate. G46 "The Cluster Bomb Ban without a Polish Signature / Konwencja o zakazie broni kasetowej bez podpisu Polski," *TVP*, March 12, 2008. Retrieved March 2016, http://www.tvp.info/318658/konwencja-o-zakazie-broni-kasetowej-bez-podpisu-polski, Translated with Google Translate.

so bad" because they have less power than other weapons. The latter statement proved an embarrassing one, as the ensuing media coverage overlaid the statement with the civil society message about the harm caused by cluster munitions, highlighting the deep insensitivity of the remark. Several outlets also accused him of guarding the need to possess cluster munitions in the event of a defensive need; while Sikorski would not explicitly name Russia as his reason, the media had no compunctions with doing so. In an April 2008 NATO meeting, the Polish delegate explicitly raised the absence of Russia and other users from the meetings in Dublin, and stated that "the Oslo process was flawed and that they fully support ongoing negotiations in the Convention on Conventional Weapons (CCW)."

When asked in Parliament why Poland did not sign by one of the most prominent leftist Sejm members, Izabella Sierakowska (SdPI, left), the Defense Ministry again cited the precision nature of its munitions, the Polish policy of no exports, ⁶⁵⁰ and a preference to work in the CCW to "strike a balance between the needs of military and humanitarian consequences of the use of cluster munitions." In fact, Warsaw was also

⁶⁴⁷ Sikorski: Cluster bombs are not so onerous / Sikorski: bomb kasetowych nie są tak uciążliwe. *TV 24* (2008, September). Retrieved from http://www.tvn24.pl/wiadomosci-z-kraju,3/sikorski-bomby-kasetowe-nie-sa-tak-uciazliwe,69418.html.

More than 100 countries sign the ban on the use of cluster bombs / Ponad sto krajów podpisuje zakaz używania bomb kasetowych. *Gazeta*. (2008, March 12). Retrieved from http://wiadomosci.gazeta.pl/wiadomosci/1,114873,6019850,Ponad_sto_krajow_podpisuje zakaz uzywania bomb kasetowych.html. Translated with GoogleTranslate.

⁶⁴⁹ Allies Support U.S. Request for NATO Military Advice on Impact of Oslo Cluster Munitions Ban. *Wikileaks*. Wikileaks cable: 08USNATO143.

⁶⁵⁰ Poland only uses cluster munitions for defense and training purposes. Poland Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁶⁵¹ Bogdan Klich, Ministry of Defense, Response to Interpellation No. 6918. January 6, 2009. Retrieved March 2016, http://orka2.sejm.gov.pl/IZ6.nsf

under instruction from Washington to counter the Oslo treaty; further, the Americans threatened not to "militarily support Allies who sign up to something that criminalizes interoperability," which was of particular concern to Warsaw while Moscow was deploying cluster munitions against ally Georgia. Thus, while the Polish were willing to recognize the import of the norm to other states by participating in talks about the ban, their strategic need to keep Washington close weighed heavily in the ultimate decision not to support it.

Against a backdrop of little national attention and even less government support, in May 2008, Poland attended the signing ceremony of the Convention on Cluster Munitions at the Dublin Diplomatic Conference on Cluster Munitions. During the conference, Poland made no statements and did not sign. In spite of strong government resistance and only neutralizing recognition of the norm, transnational civil society arrived in Warsaw in the "Ban Bus," a team of international campaigners from the Cluster Munition Coalition, in a push for universalization of the Convention on Cluster Munitions across Europe. The Ban Bus actions, over two days, captured the attention of the media in print and film through multiple, high-salience events aimed at convincing Poland to join both the Mine Ban Treaty and the Convention on Cluster Munitions. Over three days, the actions were intended to bring Poland onboard the Convention through a public demonstration and seminar; a "Miss Landmine" photo exhibit showing victims of landmines; and meetings with the Prime Minister, Minister of Foreign

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⁶⁵² Allies Support U.S. Request for NATO Military Advice on Impact of Oslo Cluster Munitions Ban. *Wikileaks*. Wikileaks cable: 08USNATO143.

⁶⁵³ Poland Cluster Munition Ban Policy. (2015, September 15). *Landmine and Cluster Munition Monitor*. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

Affairs, the Minister of Defence, Marshal of the Sejm (speaker), and the President of the Polish Bishops' Conference. ⁶⁵⁴ Unfortunately, none but the President of the Bishops' Conference made time for the campaign during its actions. ⁶⁵⁵ In return, Amnesty International Poland leafleted the Sejm and Senate with cluster munition-shaped holiday decorations asking Poland to join the Convention on Cluster Munitions anyway.

Figure 8: Cluster Munition Campaign Materials in Poland



"It is not a decorative bauble; it is a cluster bomb, BLU-63.

Children who survive such an explosion will never decorate a Christmas tree for the holidays ...

Every year hundreds of innocent people lose their arms and legs becoming the victims of cluster munitions.

On December 3, half of the countries of the world acceded to the new Oslo Convention eliminating the use and production of cluster munitions ... Why isn't Poland among them?"

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This kind of exchange highlights the weak relationship between civil society and government in Poland, and renders somewhat unsurprising Poland's weak policy. As there was little discourse between the government and the weak civil society campaign, and little media coverage of cluster munitions policy in Poland as a result, the issue never reached a sufficient level of salience to incentivize any change in cluster munition policy, and only a weak recognition of the norm through bare bones participation in the Oslo Process. Poland, like France, the Netherlands, and the UK, also came under

⁶⁵⁴ BanBus - bus to a world without cluster munitions and landmines. *Amnesty International*. (2008, November 20).

⁶⁵⁵ However, campaigners did meet with deputies from the offices of Foreign Affairs and National Defense, who told them Poland would not be signing the CCM because it has cluster munitions with a very low dud rate (2%): and that it would only use cluster munitions for defensive purposes inside its own territory. *Banning Cluster Munitions: Government Policy and Practice*, Mines Action Canada (2009): 226.

⁶⁵⁶ Translated with GoogleTranslate, will need a professional translation.

pressure from Washington not to compromise on cluster munitions. Unlike those states, however, Poland had no strong domestic civil-society movement and no use of domestic leverage to move the government from its status quo position toward one in favor of the ban.

Watchdogging, Eventually?

After the failure of the Convention on Convention Weapons to conclude an acceptable Protocol on cluster munitions, major cluster munition users and producers, and stolid NATO allies, continued to meet and discuss the creation of such a Protocol. After Oslo concluded a treaty, Poland also found its voice in international fora, speaking up but still justifying the alternative CCW agreement as a model for states in transition to follow as they modernized their arsenals. In September 2008, Poland claimed that when the Convention on Conventional Weapons finished its work, there would be two humanitarian legal regimes, the Convention on Cluster Munitions and a CCW protocol for cluster munitions, and that those countries that have adopted a higher standard on cluster munitions should have no problem with others adopting a lesser one. "For those adopting the lesser standard, it should be seen as a time of transition." As Poland is concerned, a potential CCW agreement on cluster munitions would be complementary rather than contradictory to the Convention on Cluster Munitions.

In short, the Polish government has moved only incrementally along the continuum of humanitarian disarmament behavior. As in the Netherlands, the UK, and

Cluster Munition Monitor.

⁶⁵⁷ Statement of Poland. (2008, September 2). 4th 2008 Session of the Group of Governmental Experts (GGE) on Cluster Munitions. Cross-referenced in *Landmine and Cluster Munition Maniton*

⁶⁵⁸ Statement of Poland. (2009, February 16). 1st 2009 Session of the CCW-GGE on Cluster Munitions. Cross-referenced in *Landmine and Cluster Munition Monitor*.

France, the Polish government identified its cluster munition position in response to a civil society questionnaire at the CCW, as clearly non-supportive. This identified Poland as a potential target, but with few domestic civil society organizations present in post-communist Poland, there were few domestic resources into which the transnational campaign could tap. Absent the domestic campaign, salience remained low in Poland and the campaign did not effect leverage activities over government. With such little campaign investment in Poland, the government has made only incremental behavior change.

This dissertation was attentive to three main alternative explanations: the loss of utility for cluster munitions, the convergence of state preferences for regulating cluster munitions, and persuasion of the prescriptive status of a cluster munition taboo. Polish behavior can be partially explained by at least one alternative explanation: cluster munitions still had utility for Poland. Where in the other cases, civil society was able to chip away at the utility of cluster munitions, the Polish government retains that cluster munitions provide it with an irreplaceable source of security. In the absence of a wellestablished civil society and domestic issue campaign to construct the humanitarian concerns of cluster munitions relative to the utility of cluster munitions, this position is unlikely to change. Further, geopolitical considerations in the region remained an influence on the Polish stance in part in the absence of very much domestic civil society activity. The consideration of converging interests as a potential explanation serves to highlight the split nature of the cluster munition debate between the major users and producers of cluster munitions and states that wished to ban cluster munitions; Poland ultimately participated in both competing for that resulted from fractured interests, but sided with cluster munition producers including the United States in the negotiations and has participated in the Convention on Conventional Weapons framework after the entry into force of the Convention on Cluster Munitions. Finally, regarding normative persuasion, Poland has yet to use any normative language regarding cluster munitions in official statements or in the domestic media, although it has acknowledged that in difficult terrain cluster munitions might misfire and cause unintended damage, demonstrating little constraining effect for a cluster munition taboo.

Poland has shifted in its response to cluster munitions from one of total acceptance of and silence on the weapons, to one that recognizes a consistent pattern of harm with particular models and misuse of the weapons, and self-regulation modeled on the stronger international standard. However, Poland remains firm that the best forum to address cluster munitions is the CCW, and sees little need to update its current policy. Perhaps an indicator of effective locations of pressure in that majority-Catholic state in the future, campaigners saw it as a major victory to have a statement from the Conference of Bishops, (unsuccessfully) asking Poland to accede. It will require much greater organization from civil society in the future, and the participation of the Polish public, to shift government attention away from its security concerns and toward new humanitarian law however.

In the Polish case, a weak civil society, and hence weak campaign strength and leverage, predicts the observed failure to embrace humanitarian disarmament by the

⁶⁵⁹ The campaigner report noted that meeting with the Bishops coincided with the transnational campaign's visit to Poland in the effort of apply maximum pressure around the same time, and while the meeting garnered support from the Church, it did not generate further pressure to change Polish policy.

BanBus - bus to a world without cluster munitions and landmines. *Amnesty International*. (2008, November 20).

Polish government as of this writing. Examining this case, however, does provide some useful insights into decision-making within states that are fall in the middle of the democratization continuum or have recently democratized as well as the marginal effects of weak civil society activity. First, as successful humanitarian campaigns hinge on the number of organizations and amount of resources brought to bear by the group, small campaigns or external campaigns that rely on minimal resources will have accordingly less success in creating enough incentive for government to make policy concessions such as voluntary moratoria or treaty signature. In the Polish case, only three organizations, and among these only one domestic organization, were able to canvass that government, and they did so from a pool of resources intended to canvass multiple national governments where larger domestic campaigns did not exist as part of the transnational campaign. Second, where the voice of civil society is not loud enough or frequent enough to become prominent in the national discussion of humanitarian issues, the media will cover the issue from the available perspectives. Absent the civil society frame through much of the debate in Poland, the media reported only the government's position on the issue of cluster munitions, shielding the Polish government the need to justify (or neutrally recognize) its cluster munition arsenal or policy to a national or international audience. Third, national defense arguments, absent a strong rebuttal from humanitarian campaigns, are simply easier to make. In Poland, there was little challenge to Prime Minister defending the need to keep having cluster munitions in the face of regional aggression, as in other states in the region with similar concerns including Lithuania and Greece, which are Parties to the Convention on Cluster Munitions.

In short, without strong humanitarian campaigns able to raise issue salience and

create political pressure, governments have few reasons to acknowledge new humanitarian norms and even fewer incentives to do so. The stronger the campaign civil society groups can bring to bear, the more likely it is that governments will evolve their policies, and so in Poland the route to a cluster munition ban must begin at home. The campaign to date has created few costs to the Polish government for maintaining its status quo policy, aside from naming Poland on shaming report cards (which are reported on internationally, but much less so in Poland), and will need to devote serious resources in order to reasonably expect much policy change in Poland's future with cluster munitions. Given Poland's recent lurch toward conservatism and the resurgence of the conservative Law and Justice Party, which takes no stance on the cluster munition arsenal or the Convention on Cluster Munitions whatsoever in its platform and has historically supported keeping the arsenal, and new concerning Russian aggression in Ukraine (and Syria), this may prove more than challenging.

CHAPTER 7

CONCLUSION: AN ALTERNATIVE MODEL FOR CONVENTIONAL ARMS CONTROL?

As argued throughout this dissertation, domestic civil society campaigning has helped guide states toward greater practice of humanitarianism, and particularly observation of the cluster bomb ban, in recent years. While a cluster munition taboo has spread since the drafting of the Convention on Cluster Munitions, it is not yet universal, as exemplified by the number of cluster munition producers still outside of the treaty. During the 2015 First Review Conference to the Convention on Cluster Munitions, over ninety states remain outside the convention (including a number of which have never used, possessed, or been victims of cluster munitions) five governments were currently or had used cluster munitions in armed conflict in the past year. 660 Particularly contentious in September 2015 was ongoing Saudi use of American-made cluster bombs on Yemeni cities, not because the Saudis or the Americans were violating an international norm, but because signatories Canada, Australia, and the United Kingdom refused to condemn their non-signatory ally at the Review Conference. Under article 21, Parties are obligated to "promote the norms (the Convention on Cluster Munitions) establishes and ... discourage States not party to this Convention from using cluster munitions."661 Those states faced condemnation from state and civil society delegations at the Review Conference, labeled as the "Friends of the United States" for prioritizing

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⁶⁶⁰ Syria, Ukraine, Russia, Libya, and South Sudan. These are not parties to the convention on cluster munitions, although South Sudan is making efforts toward accession. Author observation from the 2015 First Review Conference to the Convention on Cluster Munitions, Dubrovnik, Croatia.

⁶⁶¹ Convention on Cluster Munitions. (2008, May 30). 26 UNTC 6. Entered into force August 1, 2010. Retrieved from http://www.clusterconvention.org/.

US interests over their commitment, and by the end of the conference gave begrudging condemnation of the Saudi cluster munition deployment. ⁶⁶² Among civil society campaigners, association with the United States holds also the negative connotation of unwillingness to participate. ⁶⁶³ These states' reticence to fully comply with their treaty commitment to condemn all use highlights the weakness of the treaty and the norm that it embodies to elicit compliance without civil society pressure to maintain compliance, the potential weakness of some states' commitments, and the utility of pressure in facilitating improved humanitarian compliance.

The project began by identifying the puzzling turn to humanitarian disarmament, wherein powerful, arms-dealing states have shifted increasingly to prioritizing human security issues over national security concerns in the formulation of new laws of war, although not uniformly across all policy areas. Humanitarian disarmament agreements ban weapons deemed to be unnecessarily harmful to the human person, rendering the onus to prove the acceptability of weapon choice onto the user. Parties to the new humanitarian disarmament agreements include many former users and producers of these weapons. The question driving this research is why these states, enjoying the material benefits of weapons sales or deployment, would be willing to undertake the costly action of dismantling their arsenals. While governments may have a vested interest in arms as defense instruments, weapon utility and regional security concerns, much behavior change has been observed that cannot be explained by these factors.

⁶⁶² Observation by author, First Review Conference to the Convention on Cluster Munitions, Dubrovnik, Croatia, September 13, 2015.

⁶⁶³ Author observation from the 2015 First Review Conference to the Convention on Cluster Munitions, Dubrovnik, Croatia.

In preceding chapters, I have developed and tested a new theory explaining this behavior: domestic civil society activism which, through attracting media attention increases the salience of new issues, activates public participation in the application of pressure on governments, making those governments most likely to shift from state-centric arms control to humanitarian disarmament. The following sections summarize the findings of the project, conclusions drawn from this research, potential relevance of the research, and recommendations for policy practice and avenues for future research.

Findings

In this dissertation, four cases were examined—the Netherlands, the United Kingdom, the Republic of France, and the Republic of Poland—selected for variation in the relative campaign strength and leverage application by domestic cluster bomb ban campaigners. Low strength and high leverage were experienced by the Dutch government, the United Kingdom was targeted with high strength but low leverage, high levels of both strength and leverage were applied in France, and Poland saw low levels of strength and leverage. Respectively, they also demonstrate variegated outcomes, as greater evolution along the spectrum of policy choice is observed where campaigns effectively apply both strength and leverage. This section first reviews the outcomes in each state, then compares the four cases across treatment and outcome, and finally offers discussion of the comparative strength of causal factors in each case.

The Kingdom of the Netherlands

In Chapter 3, a relatively weak campaign targeted the Dutch government, but with largescale citizen involvement it also applied strong leverage over Holland's national cluster munition policy. The Dutch stance on cluster munitions in the last century derived from being a major producer and a close ally of the largest producer and user thereof, the United States. As such, from early negotiations on explosive remnants of war and cluster munitions at the 2001 meetings of the Convention on Conventional Weapons (CCW) to address growing concerns about the weapons, the Dutch delegation was unwilling to entertain the idea of a ban and referred to the legality of the weapons. Dutch participation in negotiations on cluster munitions at the CCW from 2001 to 2006 leaned toward the "like-minded group" of arms producing states, which was dominated by and aligned with US interests. While Amsterdam gave neutralizing recognition of the harm caused by cluster munitions by making claims to how they should be used, from the early 2003 CCW meetings, the Dutch position would not evolve further without the intervention of issue advocates.

Inside the Netherlands, a small but active contingent of civil society organizations headed by Pax Christi Netherlands and Netwerk Vlaanders created costs to maintaining the status quo cluster munition policy and guided it toward progressive policy evolution, beyond recognition to policy concessions and rule-making on cluster munitions. This campaign registers as "weak" due to its small size, but was able to effectively apply much leverage to the Dutch government. After initial parliamentary questions and calls for policy change from a minority of leftist MPs were unsuccessful from 2005 on, the Dutch campaign revised its call to clarify that its goal was a comprehensive ban on the unacceptable weapon. Further, campaigners designed a cluster bomb divestment campaign tailored to the Netherlands that would ultimately become a central part of the broader international campaign that made cluster munitions

an issue of national responsibility. With clarified demands it was easier to recommend preferred policy as an acceptable alternative to existing policy, but more critical was the ability to create credible costs to maintaining the status quo; with clarified calls, government could also gauge whether a policy choice would elicit praise or shame.

While few organizations formed the core of the Dutch ban campaign, they were able to create public awareness about the effects of cluster munitions and the "badness" of those effects that renders cluster munitions unacceptable. Campaigners highlighted individual-level responsibility for the national policy by tying everyday activities of Dutch citizens⁶⁶⁴ to the use of cluster munitions and creating visibility for the cluster munition issue. But they also cultivated champions across benches in parliament to keep discussion of the cluster bomb issue ongoing between 2006 and 2008, which began to recommend concessions and soft rules such as dismantling the outdated parts of the arsenal. The centerpiece of the domestic campaign was a 2007 primetime documentary featuring ban campaigners called "the Cluster Bomb Feeling," which uncovered the investment of multiple of the Dutch national pension funds in weapons producers. Tens of thousands of calls and letters in protest of this investment alerted the government to citizen interest in the cluster munition issue, and that leverage, coupled with regular canvassing of parliamentarians, pro-ban radio jingles and pro-ban demonstrations outside Parliament, made a pro-cluster bomb position unpopular or even damaging to the Dutch political reputation. Heightened public participation strengthened the otherwise small campaign, particularly around the issue of investment in cluster bombs,

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⁶⁶⁴ Specifically, they showed that many Dutch national pension funds had investment stakes in cluster and nuclear weapons producers, which was unacceptable for many Dutch citizens.

and fomented a national sense of personal responsibility for investment in unnecessarily harmful weapons. The government abandoned older, less precise cluster munition models as a concession to ban advocates in 2006, and shifted to participating in all available fora on the issue. While even at the final treaty negotiations for a ban Dutch participants argued that the Netherlands would not be able to join a convention that would affect its choice of military partners⁶⁶⁵ and attempted to create categories of acceptable and unacceptable munitions, the Netherlands ultimately was among the first to sign and ratify, signaling a shift to compliance with the Convention on Cluster Munitions. In 2013, the Dutch implemented one of the first domestic bans on investment in cluster munitions, and has been both a model and an advocate for universalizing the convention as well as overcompliance activities such as the investment ban.

The United Kingdom

In contrast, upon examination in Chapter 4, the British case exemplifies a much less orderly path from status quo arms control to the abandonment of cluster bombs, and a less complete transition from a state-centric to a humanitarian arms policy. The United Kingdom was home to the headquarters of and one of the main targets of the international Campaign to Ban Cluster Munitions. While a large and well-resourced domestic campaign descended on the British government between 2004 and 2014⁶⁶⁶, it

⁶⁶⁵ Statement of the Netherlands, Informal Discussions on Interoperability, Dublin Diplomatic Conference, May 22, 2008. Notes by Landmine Action. Cross-referenced from Cluster Munition Monitor. (2015, September 3). Landmine and Cluster Munition Monitor. Retrieved from http://the-monitor.org/en-gb/reports/2015/cluster-munition-monitor-2015.aspx.

⁶⁶⁶ The Cluster Munition Coalition housed its headquarters in London during this time, seeing the UK as critical to persuading other NATO states to join the Convention on Cluster Munitions. It has since relocated to Geneva, Switzerland.

was less able to raise issue salience for cluster munitions vis-à-vis other national issues in order to elicit the large-scale calls or participation in demonstrations from the public seen in the Dutch case. This resulted in a policy shift that has been unstable and has necessitated ongoing civil society pressure to ensure the British government's compliance. In 2001, the United Kingdom was the second largest producer of the weapons, was in the midst of broadly deploying cluster munitions over Afghani territory, would use them again in Iraq in 2003, and recognized cluster munitions only in a neutralizing manner as legitimate, legal and necessary weapons. The British campaign, with dozens of NGOs, registers as a strong one, although it struggled to get large-scale participation in its leverage activities, thus registering weak leverage. Shifting the cluster munition policy of the second largest cluster munition producer of the time at all, with unreliable public support, however, was no small accomplishment.

In the years preceding the 2008 international cluster munition ban, the domestic UK campaign released a number of reports and media events highlighting the role of the British government in disseminating cluster munitions globally, with damning attention to large-scale harm as a result of British cluster munition deployment in Afghanistan. The UK government defended its position into 2008 with the argument that cluster munitions were legal and potentially preventive of unnecessary harm vis-à-vis alternative weapons into 2008. In the face of this resistance, campaigners courted Lords and MPs who would act as "trouble makers" in Parliament by questioning the British national policy and declaring their support for the alternative policies (such as the international ban) proffered by the civil society campaign. While campaigners were able to generate a basic public awareness of what cluster munitions were and why they were

harmful in the UK,⁶⁶⁷ they were unable to create the sense of national responsibility that helped cultivate mass participation in leveraging phone calls and petition signatures in other cases. Without this support, the UK government was slow to shift from neutralizing recognition to early concessions with the abandonment of their "dumb" cluster munitions in 2007. While the British government regularly vocalized a preference for the CCW, it was however willing to work in all available fora to engage in rule making on cluster munitions.

Thus, with low participation, the British ban campaign shifted to directly targeting key parliamentarians and government ministers from 2007, applying leverage without the public participation seen in the Netherlands or France—less successfully toward the goal of real policy change than in cases where leverage on a larger scale was available. Activists developed a relationship with Prime Minister Brown, and directly targeted reticent ministers like Foreign Minister David Miliband, calling for cluster bombs to be "Milibanned" and papering his district with information about his position on the new treaty. During the final days of treaty design in Dublin in May 2008, the British dropped their verbal reservations and switched from to support of a ban under direction from London, shifting to hard rule making and signaling a willingness to comply in the future. Under pressure from civil society groups, the UK elected to be among the first thirty governments to sign the Convention on Cluster Munitions, but only after the inclusion of a provision that would allow for it to engage in military joint operations with cluster munition users.

⁶⁶⁷ In a Landmine Action poll of Britons, almost 80% preferred the government to support an international ban of cluster munitions. Norton-Taylor, R. (2008, May 19). Military Chiefs Urge UK to Ban Cluster Bombs. *The Guardian*. Retrieved from http://www.theguardian.com/.

Without broader application of leverage from the general public through participation in the demonstrations at Parliament or mass scale letters of protest to instill a sense of ongoing public interest in the issue, the government's compliance with the treaty has at times been problematic. Since ratification, Pakistani cluster munitions have been spotted illegally for sale at UK government-sponsored arms fairs and American munitions stocks have been hosted at British military base Diego Garcia. These acts, which violate key convention provisions prohibiting the sale or possession of cluster munitions respectively, were only ceased after civil society organizations brought attention to and shamed the government in the British media. When the British government completed its stockpile destruction in 2013, it refused invitations from the Cluster Munition Coalition to highlight and celebrate the achievement (to be praised rather than shamed in scorecards of cluster munition policy), instead preferring completion to pass unnoticed. 668 With a strong campaign but weak leverage, civil society is compelled to remain active in the United Kingdom well after the ratification of the treaty in order to guide the government, through maintaining the salience of cluster munition policy, toward compliance. Nevertheless, the British government shifted greatly between 2004 and 2008, evolving from only basic recognition of the harm caused by cluster munitions to concessions such as voluntary abandonment to rulemaking through the CCW and Oslo Process to compliance in general, with the continued involvement of domestic civil society advocacy for humanitarian disarmament in Britain. Compliance in this case, has been partial at times, demonstrating the importance

⁶⁶⁸ Author conversation with Mary Wareham and Steve Goose, Human Rights Watch, at the September 2015 First Review Conference to the Convention on Cluster Munitions.

of ongoing campaign vigilance and pressure as a driver of compliance in states that have not fully shifted toward humanitarian disarmament.

The Republic of France

In Chapter 5, the case of the French government's policy evolution toward cluster munitions demonstrates the greatest possible effect of a strong campaign paired with high application of leverage on states' approach to international disarmament policy. While France has historically produced, used, and distributed cluster munitions on a large scale, it stopped doing so in 1992, earlier than the other three cases presented in the project. French participation in early international legal development around cluster munitions focused on standardized markings and self-detonation features to improve the safety of munitions that the French military argued at the time to be "essential." From the early nineties, the French government has engaged in neutralizing the problems with cluster munitions, displaying a (now longstanding) recognition of the tabooness of their use, and this behavior identified that government as a candidate for persuasion to shift policy closer to ban advocate preferences. Seizing on the recognition, French campaigners that had been recently active on the issue of anti-personnel landmines tapped into existing the issue salience of a weapon with similar humanitarian concerns to make cluster munitions a prominent issue in French politics and clarify acceptable cluster munition policy.

⁶⁶⁹ Response by the Ministry of Defense to MP Yves Détraigne (Centrist Alliance). (2006, December 28). *Questions*, Senat 12th Legislature, 2002-2007. Translated with Google Translate.

From the early 2000s, France participated closely with the like-minded group in the forum on the Convention on Conventional Weapons (CCW) to keep conversations about cluster munitions to the scope of existing international law. Over the course of the international movement for a ban on cluster munitions, the French government and parliament were targeted by a strong campaign of over twenty-five NGOs headed by major international NGO Handicap International. Ban advocates in France focused on making cluster munitions a regular issue in parliamentary conversation and finding broad support across political parties for their preferred policy changes, and at the same time garnering regular public participation in leveraging actions on the issue. The twopronged advocacy approach to parliamentarians and the public was extremely successful in raising not only awareness about cluster munitions, but also in spreading advocates' particular understanding of the weapons' unacceptable effects. In 2004, MP Rochebloine proposed a bill to include cluster munitions in existing French legislation on landmines due to the similarity of their effects. Advocacy in both the Senate and National Assembly resulted in dozens of questions on cluster munitions in 2005, over one hundred in 2006, and nearly one hundred in 2007, questioning the government's official position and demanding a stronger French response to the international ban process. However, until late 2006, the government position did not move past the basic concessions of recognizing harm and proposing technical fixes, and thus France was not initially invited to participate in the Oslo Process for a ban on cluster munitions. Unwilling to be left out, France sought out the ability to participate in the Oslo Process, shifting from basic concessions on cluster munitions to soft rule making through

participating in all fora for policymaking on the issue rather than just its preferred one (the CCW).

Between 2004 and 2008, domestic campaigners also deployed targeted leverage actions in France that linked the existing public understanding of the harm caused by landmines to the harm caused by cluster munitions and turned large portions of the public in favor of a ban. This was made clear in the massive annual participation in the Shoe Pyramid campaign in which citizens gathered and piled their old shoes in solidarity with the victims of landmines and cluster munitions, which erected massive pyramids in town squares across France and collected hundreds of thousands of unique French signatures calling for a ban. Like the Netherlands and the UK, France also made the concession of promising to dismantle its older, "dumb" cluster munitions ahead of being legally obligated to do so. In light of the display of public support for the ban, campaigners were able to make cluster munitions an election year issue in 2007, stage a pre-election debate on cluster munitions, and garner explicit promises from all of that year's presidential candidates that France would sign a comprehensive cluster munition ban. In making cluster munitions acts such as the Shoe Pyramids and the live debate, campaigners were able to call on French leaders to promise to act on cluster munitions, constraining their future policymaking to conform to this promise or face substantial public castigation or even loss of public support. In this way, when Sarkozy was elected president in 2007, he had already publicly obligated himself and his government to support the international cluster munition ban process and join the treaty that would result.

While French delegates worked hard to successfully exclude two French weapons from the treaty that fell short (but not very short), of the official definition of a cluster munition, Foreign Affairs Minister Kouchner was among the first thirty leaders to sign the Convention on Cluster Munitions and perhaps most visibly excited, exclaiming "Yes we can! Yes we can sign this treaty!" Since signature, France has ratified and fully complied ahead of schedule with its obligation to destroy its stockpile, has built a state of the art cluster munition disassembly plant to receive munitions from across Europe for destruction, and has been among the most active advocates for treaty compliance and universalization. While France does not have overcompliant cluster munition laws as do the Dutch, banning indirect investment in cluster munitions, it considers both direct and indirect investment in the weapons banned in its interpretation of the Convention. 670 In complying fully with the agreement, France has not only not necessitated watchdogging by civil society as in the UK, but rather the French government has developed a close relationship with its humanitarian disarmament advocates, inviting them to give information sessions to parliamentarians, to participate in the celebration of milestones in compliance, and to advise French delegates in the ongoing interpretation and global implementation of the Convention on Cluster Munitions.

The Republic of Poland

Finally, in Chapter 6, the dissertation turned to Poland, which, while a member of many of the same international institutions as the other governments studied in this project and a participant in the Oslo Process, has experienced the weakest campaign, has seen

⁶⁷⁰ Legislation. Stop Explosive Investments. Retrieved from http://www.stopexplosiveinvestments.org/legislation.

almost no citizen participation in the application of leverage, and has shifted policy little toward a framework of humanitarian disarmament. Unlike the other cases, Poland still possesses a cluster munition arsenal, as it has yet to accede to the Convention on Cluster Munitions. Arms control in Poland is still guided primarily by national security concerns over humanitarian ones, but the government has shifted from total non-recognition of the harmful effects of cluster munitions to neutralizing recognition, concessions, and soft rule making to begin to constrain its cluster munitions. As the most landmine contaminated country in Europe, ⁶⁷¹ it might be expected that Poland would have greater sensitivity toward issues regarding explosive remnants of war (ERW). The Polish government claims to have never used cluster munitions in a combat operation and that its stocks have only been used for training purposes on training grounds; it has even described the existing arsenal as obsolete and anticipates no future use, outside the context of training. 672 In other outlets, Polish officials have claimed that their cluster munitions conform to a failure rate of no greater than 3%, which classifies them as modern and reliable (and therefore acceptable). 673 This mixed response to cluster munitions denotes several competing influences on Polish national policy, from NATO pressure and concerns about Russian aggression (in Eastern European states particularly) to stay armed, and from civil society and the EU to disarm over humanitarian concerns. Examination of this case reveals that even where humanitarian campaigns are likely to

⁶⁷¹ Circa WWII.

⁶⁷² Kobieracki 2009.

⁶⁷³ This particular standard falls short of other national moratoria on "unreliable" cluster munitions standardized by the United States at 1%. "Cluster Munitions," Poland Ministry of Foreign Affairs, last updated 2012. Retrieved March 2016, http://www.msz.gov.pl/en/foreign_policy/security_policy/conventional_disarmament/cluster munitions/.

have little impact on policy output, activism can still affect a partial shift toward more progressive cluster munition policy along the continuum of potential national responses.

Like the other cases, the Republic of Poland participated in all of the Convention on Conventional Weapons (CCW) meetings on explosive remnants of war, but in spite of regular presence the Polish delegation made only one submission to these conferences between 2001 and 2006. At this time, Poland was a new NATO member 674 sensitive to American interests, with its cluster munitions on hand in during coalition actions in Afghanistan 675, and pressure in order to maintain its assurance against Russian aggression. 676 After the 2004 EU call for national moratoria on cluster munitions and EU-wide universalization of the Mine Ban Treaty, Poland declared she would ratify the latter, but instead of rejecting cluster munitions, Poland instead ratified CCW Protocol V on explosive remnants of war, the US-preferred response to cluster munitions. In response to a CCW questionnaire the following year, Poland stated submunition weapons "constitute no breach of the 'principle of distinction'," appealing to existing international principles to justify its cluster munitions, giving the issue neutralizing recognition. Transnational civil society during this time saw Poland as unreceptive to the nascent cluster munition norm and, while shaming Poland in its international policy scorecards and reports, did not follow this through with domestic campaigning.

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⁶⁷⁴ The Republic of Poland became a member of NATO in 1999.

⁶⁷⁵ Poland claims the weapons were ultimately never deployed by Polish forces. Polish Armor in Cluster Bombs / Polska zbroi się w bomby kasetowe. *TVN 24*. (2008, September 4). Retrieved from http://www.tvn24.pl/wiadomosci-z-kraju,3/polska-zbroi-sie-w-bomby-kasetowe,69613.html. Translated with Google Translate.

⁶⁷⁶ At this time, conflicts with Dagestan, Chechnya, and Georgia were cause for concern for former Warsaw pact states. Poland shares a short border with the Russian Federation. "Responses to Document CCW/GGE/X/WG.1/WP.2, March 8, 2005," CCW/GGE/XI/WG.1/WP.3, Poland, July 4, 2005.

While activity on cluster munitions (from both states and civil society) in the CCW increased greatly from 2005, and Poland joined every meeting of States Parties and the Group of Governmental Experts on ERW through 2006, Poland made not a single statement, even to condemn the massive 678 Israeli deployment of cluster munitions in Lebanon in the summer of 2006. This silence signaled strong reticence to the cluster munition taboo, and Poland was not initially invited by Norway to join the Oslo Process in late 2006. In fact, without domestic civil society activity, there were no questions in parliament on cluster munitions until late 2007, in spite of the fact that Poland had plans to purchase new models late that year, when the head of the Helsinki Foundation for Human Rights⁶⁷⁹ called on the government to abandon the arsenal. While the letter went without response, MPs began to submit questions on cluster munitions in late 2007, to which the government responded with neutralizing appeals to multiple other authorities, including existing international law, Polish national sovereignty, and military utility. Like France unwilling to be left out of the Oslo Process, Poland secured an invitation—and strategized with US counterparts on how best to argue against the Oslo Process should it potentially disrupt NATO cooperation. ⁶⁸⁰ At the same time, Warsaw was directing its diplomats to focus on the NATO-preferred CCW framework to address cluster munitions while participating at both the CCW and the Oslo Process.

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⁶⁷⁸ The IDF dropped millions of cluster submunitions on southern Lebanon during the final three days of the conflict, while the ceasefire was under negotiation.

⁶⁷⁹ While this NGO worked on cluster munitions in Poland from 2007, it never became a member of the Cluster Munition Coalition.

⁶⁸⁰ In the cable exchange, Poland speculated that if the Oslo process culminated in a treaty, then Poland and other European states would face political pressure to comply and thereby abandon the CCW as a forum for dealing with cluster munitions. Cluster Munitions: Poles Want to Counter Oslo Process ASAP. *Wikileaks*. Wikileaks cable: 07WARSAW2368. Retrieved from http://wikileaks.info/.

To counter this, a coalition of three domestic NGOs, while not officially part of the coalition on cluster munitions, pushed the Polish government to shift policy through domestic release of international humanitarian scorecards and greater and more direct contact with Parliamentarians. This did not greatly impress upon Polish cluster munition policy, which was to support the CCW over Oslo, silently, in the face of Russo-Georgian exchange of cluster munition fire in 2008. Transnational civil society visited Poland in its Ban Bus tour, conducting a whirlwind of events on cluster munitions and landmines in Poland over two days, but while the events presented by the Ban Bus brought attention to cluster munitions, it was too little too late to shift the position of the government ahead of the treaty signing. While present at the final drafting and signing of the Convention on Cluster Munitions (CCM), Poland was one of only two governments not to join.

The Polish media began to cover the issue of cluster munitions more deeply from 2008, questioning Foreign Affairs Minister Sikorsky why Poland did not support the ban on cluster munitions, and challenging the government to defend herself against the notion that fear of Russia was preventing Poland from joining the CCM. Civil society has also become more active on the issue after the Convention has entered into force, with the goal of a Polish accession, but because Polish civil society groups became active so late on the issue vis-à-vis the other cases, Poland is also very early in the process of civil society pressure, clarifying its position on the weapons in response to civil society calls. Publicly, Minister Sikorsky excused Poland's stance because of the missing major cluster munition producers—including Russia—in the CCM framework, and he continues to downplay the harmful effects of cluster munitions as "not that

bad."681 Poland shifted its cluster munition policy from one of total acceptance of and silence on the weapons, to one that recognizes a consistent pattern of harm with particular models and misuse of the weapons, and self-regulation modeled on the stronger international standard. Further, Poland has acceded to the CCM's sister agreement, the 1997 Mine Ban Treaty. However, Poland remains firm that the best forum to address cluster munitions is the CCW, maintains its own national standard of a 2% failure rate for cluster munition arsenal, and sees no need to update the current policy. While Poland has shifted only a little along the continuum of humanitarian policy progression, examining this case closely reveals that even with weak pressure from transnational civil society, policy cannot remain totally static, and Polish policy has been no exception.

Alternative Explanations

There are three major competing explanations for the observed shift toward humanitarian disarmament of cluster munitions: loss of the military utility of cluster munitions, convergent ideas in the international community about how to address cluster munitions, or suasion⁶⁸² of the appropriateness of abandoning the weapon due to its indiscriminate nature. Loss of utility would manifest in the form of phasing the weapon out due to obsolescence; convergent ideas would be observable as increasing international unanimity on the idea of cluster munitions as a problem, and on how and in which forum to best address them; suasion would be visible in the adoption by target states of new policy as articulated by persuasive actors, both state and non-state, without

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⁶⁸¹ "Cluster bombs are not so bad," *Dziennik*, February 9, 2008. Translated with GoogleTranslate.

⁶⁸² Suasion is a moral appeal in order to influence or change behavior. Any actor in the international community can engage in suasion, to varying efficacy.

otherwise being pressured to do so. Each of these causal factors plays some role in the policy outcome for each of the four cases examined in this project, but as explicated further below, do not fully (or in some of these cases nearly at all) explain humanitarian disarmament policy outcomes.

First, utility plays a role for all four governments examined in this project, and in the case of Poland it continues to be of import. From the early 2000s, at the beginning of the civil society campaign, all four states made claims to the utility of cluster munitions and the lack of commensurate alternatives. The Dutch government argued for the "necessity" of the weapons through 2005; the British government presented a paper to the CCW Group of Governmental Experts on the utility of cluster munitions and continued to make claims to utility through 2006 in the formulation of the "essential capacity" of cluster munitions; and while the French government did not make statements of its own on utility, it supported Group of Governmental Experts submissions on the utility of cluster munitions made by other states as late as 2007. In each of these three cases, the argument could be made that older models of cluster munitions had lost their utility, as the Netherlands, the UK, and France easily offered the concession of destroying "dumb" cluster munitions in 2005 and 2006; however, each government also fought hard to definitionally exclude certain of their own munitions from the Convention, and the UK and France did so successfully. Poland, on the other hand, still recognizes "the right of states to use modern, highly reliable cluster munitions for defense purposes," 683 which while not formulated in the language of utility, demonstrates clearly that cluster munitions retain some utility for the Polish government.

⁶⁸³ Republic of Poland, Ministry of Foreign Affairs, "Cluster Munitions," last updated 2012.

In short, we can reject the hypothesis that states have abandoned cluster munitions because those weapons have lost their utility; instead, to the extent that some of the countries in the study have indeed given up cluster munitions, they have done so *in spite* of their continued utility on the battlefield.

Second, the international community might have been converging on whether, how, and where to address cluster munitions, but as demonstrated in the output of international institutions and the national responses of states at this time, convergence played a weak role in the shift toward humanitarian disarmament of cluster munitions. In 2004, the European Parliament voted unanimously to call for its member states to impose national cluster munition moratoria until a more permanent solution could be reached: when asked if they intended to follow this call, all four governments and nearly every EU state declined. In 2006, the UN Secretary General Annan appealed to members of the CCW to "freeze" the use of cluster munitions, and later that year a UN Commission recommended prohibition of cluster munitions based on its observations in southern Lebanon, neither of which call received any official response from the four governments studied here. 684 The United States and other major producers of cluster munitions offered a competing narrative in the fora of the CCW and NATO that cooperation with the US would be difficult for those states that took on international legal obligations regarding cluster munitions. The competing institutions of the CCW protocols on explosive remnants of war and the Convention on Cluster Munitions embody the fractured nature of international opinion on cluster munitions. That is, while there is emerging convergence around addressing cluster munitions, it is not universal,

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⁶⁸⁴ "Annan calls for freeze on cluster bomb use," (2006, November 7). Reuters *AlertNet*.

and through today remains divided between parties to the cluster bomb ban and major arms producers and their allies, and has thus played little role in the shift to humanitarian disarmament.

Finally, suasion has the capacity to persuade governments of the moral merit of new behaviors and policy, however, the dearth of moral statements made by any of the four governments prior to the entry into force of the CCM shows that suasion, too, had a weak impact at best. Rather than being shamed, states have shifted behavior as a result of social pressure. While civil society carefully formulated their argument about cluster munitions to focus on their inability to target discriminately, and the consequences of this for civilians in particular, they used existing interpretations of international humanitarian law and the rights of civilians in conflict zones which they instantiate to make that case to states, rather than appealing to the rightness or justness of doing so. As a result, while the language of the four governments observed shifted away from national interest arguments they did not adopt normative language about cluster munitions until after being subjected to much pressure by the civil society campaign. The Netherlands did not speak to the "stigma" against cluster munitions until the CCM signing ceremony in December 2008, years into the Dutch domestic campaign; the British government called the CCM a "remarkable achievement," but did not make a normative statement about its decision to join; and the French delegation celebrated its ability and the ability of other users to join the convention at signing, but without moral language. Poland has recognized that certain cluster munition under certain environmental conditions can cause civilian harm, but has taken no stance on whether or not this is acceptable. At the national level, there is no evidence of suasion, as the language used by target states remains in a mode of national ability or interest, or has only after vigorous civil society activity begun to use the language of stigma and "should"

In sum, while the factors of utility loss, convergent ideas, and normative suasion exist in the case of cluster munitions and across the cases observed in this dissertation, they played a minor role in shaping outcomes in each. While older⁶⁸⁵ cluster munitions have lost their utility as demonstrated by their easy abandonment as a concession to civil society pressures, each of the four governments demonstrated a vested utility in at least one type of cluster munition. While ideas seemed to converge within the EU and other institutions, competing arguments about cluster munitions also emanated from the arms producing world, and states demonstrated fractured understandings about whether, how, and where to address cluster munitions by working in the fora of both the CCW and the Oslo Process, even years after Oslo culminated in the Convention on Cluster Munitions. Normative suasion, finally, has been unable to shift policy alone, and has necessitated strong and persistent civil society campaigns that successfully turn out publics to apply political leverage over governments in order to elicit normative positions on cluster munitions. These competing causal explanations have served at best to explain delays in the shift toward humanitarian disarmament of cluster munitions by elucidating that the international community has not converged on whether or now to address them, because cluster munitions do still have military utility for some states, and normative arguments are not persuasive enough alone to outweigh these considerations, but rather in these cases necessitated ongoing pressure in order to achieve actual policy change.

⁶⁸⁵ This generally refers to Cold War-era submunition weapons.

The United States

One alternative explanation that this project did not set out with but that has arisen multiple times in the project is geopolitics, specifically the geopolitical closeness of the four cases to, or their reliance on, the United States. Poland, on the front line of the former Soviet Union, could potentially be more susceptible to pressure from Washington, as well as more inclined toward the broadest possible NATO arsenal in the event of a Russian attack. The British position, as evidenced by cables with Washington, also responded American disarmament preferences, although clearly this was not enough to prevent the British joining the Convention. While it has not been a focus of this dissertation, it is my explicit goal to examine American responses to humanitarian disarmament in my next project.

Contributions to the Study of International Relations

In this project, I have demonstrated that understanding the rise of humanitarian disarmament as an alternative to state-centric arms control requires an examination of internal state processes, in particular domestic civil society campaigns and domestic political leverage over the issue. Particularly in democratic states, the capacity for civil society groups to evoke outcry and create potential political costs can coerce governments to select more favorable humanitarian policies in order to relieve that pressure. As new international humanitarian norms often emanate from democratic states, correctly locating humanitarian currents and drivers of policy change inside the state is key. Further, as humanitarian policy change may be at least in part a result of pressure, we might also consider norm diffusion as potentially being rooted in pressure

as well, which should inform our understanding of international decision-making or at least foster regular, deep examination of the drivers of behavioral change.

This project contributes to the existing body of work in several ways. First, I identify *humanitarian disarmament*, a new form of international law that parts ways with conventional arms control to privilege humanitarian concerns and civilian protections over national security interests. This mode is distinct from traditional state-centric arms control in that human rights protection rather than state protection forms the basis of the agreement. The 2008 Convention on Cluster Munitions exemplifies this new legal mode.

Second, I locate the choice to ban particularly harmful weapons of war within a specific coercive *process* through which civil society campaigns generate domestic issue salience and activate public participation in the organized application of political pressure. Most of the research in this area focuses on pressuring illiberal regimes to improve their human rights policy: this research compliments our understanding of international policy formation by shedding light on how democratic states approach (and are approached by) arms control and humanitarian disarmament interests. The process I offer in this project demonstrates that civil society is key in guiding humanitarian policy, but that in order to do so effectively, it must be able to activate the domestic population to participate in its campaign. By understanding how democratic and nondemocratic states receive civil society and other pressures differently, we might improve our understanding and prediction of patterns of norm legalization at the international level.

Third, this project introduces a template for understanding state responses to the legalization of new international norms, which I argue is a *continuum of potential*

responses rather than a dichotomous outcome of humanitarian treaty ratification or not. The continuum of policy responses to humanitarian disarmament introduced in this project can be applied broadly to transnational issues to clarify whether and the extent to which policy evolution is taking place as a result of transnational advocacy, improving our understanding of when, where, and how effective transnational issue advocacy is in a given state on a given issue. In a broader sense, the continuum of policy outcomes from silence to overcompliance can inform our understanding of international behavior by serving as a template for patterns of or collective shifts among governments toward the humanitarian end of the spectrum.

Fourth, I appropriate from sociology the concept of *neutralizing recognition*, which is an action taken by an agent to reduce harm to self image that a delinquent behavior would otherwise incur, and is done through appeals to existing authority for justification. This concept can be used throughout the study of norms in international relations not only to give name to a regularly observed behavior, but also to clarify our understanding of whether and to what extent states recognize norms. As argued in this project, the act of neutralizing recognition denotes that the state recognizes the value that others vest in the new norm, even if the state does not vest that same value itself, and thus neutralizing recognition is the first albeit weakest observable instance of norm recognition by states. As shown in this project, neutralizing language also signals to civil society a potential foundation for future policy evolution.

Fifth, I introduce the concept of *over-compliance*, policy made in the spirit of an international agreement but not expressly required by its provisions. While compliance is regularly observable in the area of disarmament, compliance not accompanied by

regular civil society watchdogging often slips into under-compliance or outright treaty violations. In a state of "over-compliance," the state relationship with civil society and its interests in the issue are so closely tied that civil society leaders may already be party to the policy-making process in an advising or even policy-making capacity, and domestic political elements are willing to go beyond the letter of the international law to fulfill the spirit of the agreement. In the case of cluster munitions, this manifested in the abandonment of munitions that were defined out of the Convention and the creation of domestic legal bans on investing in companies that invest in cluster munitions. ⁶⁸⁶ These new concepts and frameworks expand our toolkit for understanding international relations outcomes.

Theoretical Implications

The research presented in this project contributes to and reinvigorates the research agenda for scholars of civil society, transnational activism, international law, and norms in international relations. While previous work has established the effects of transnational advocacy on the human rights practices in non-democratic states, here is provided the other half of the picture of how advocacy shapes international policy in the democratic world, and the role of domestic politics within these states in shaping that policy. Also elucidated is an understanding of the drivers of humanitarian policy specifically, challenging the notion that new norms based in the sanctity of human life will be automatically amenable with even the most democratic states' foreign policy.

⁶⁸⁶ While direct investment in producers is banned under the CCM, the issue of indirect investment arose in states with strong and early civil society campaigns, and there are a number of unilateral indirect investment bans in place throughout Europe, the strongest of which is in the Netherlands.

The nature of the national policy evolutions observed in this project further challenge our understanding of ostensibly normative policy developments such as new humanitarian agreements. This implies the need for new theoretical development and research in several areas.

New work in the study of human rights and humanitarian advocacy should be sensitive to the fact that new humanitarian norms tend to emanate from within democratic states, but not necessarily from those governments, and should thus take care to make claims about the drivers of humanitarian policy without deep empirical examination of domestic politics and the domestic process of policy-making. As the ostensibly normative behavior of even powerful Western states can be coerced by pressure from domestic constituencies at the behest of issue advocates, scholars might also consider re-examining their understanding of the role of pressure in the diffusion of international norms. Because the observed policy changes have in part been coerced, this also creates implications for understanding compliance with international agreements. Compliance may be pressured not only at the moment of signature or ratification, but continuous state compliance may also hinge on civil society's maintenance of coercion in the form of watchdogging and shaming, as was the case in the United Kingdom. More broadly, future research must also consider the different roles of civil society in democratic and nondemocratic states, the different approaches to each type of state, and the influence of this two-pronged approach to the international community on new international law.

As the preceding paragraph suggests, we may have an incomplete understanding of how and which norms states recognize, as well as how this shapes the legalization

thereof and the form that the new international law might take. Several questions for future research arise. How do civil society groups decide which normative issues around which to structure new transnational campaigns? Why are certain norms successfully legalized and others met with resistance? If new international arms control agreements are tending toward humanitarian considerations, if not at least in part increased humanitarian campaign activity, explains this pattern? Application of the framework of the domestic pressure process and the continuum of state responses to humanitarian pressure can provide a template for the understanding of transnational humanitarian movements and their domestic and international legal outcomes. The study of advocacy and outcomes in other transnational issue areas such as environmental or distributive justice may also provide a fruitful avenue for understanding what about the humanitarian disarmament movement has been so successful, how activists in these other issue areas might learn from the model, and why, so far, they have not. A final avenue for future research is the susceptibility of nondemocratic governments to such domestic or transnational campaigns.

Policy Implications

This project also has implications for practitioners of humanitarian issue advocacy and humanitarian disarmament (as well as for, as suggested above, issue advocates working in other areas). First, advocates seeking to maximize an issue campaign's success should focus on building strength through creating the largest possible coalition of domestically active NGOs in the target state(s), especially if major international NGOs such as Human Rights Watch or Handicap International are available, thus consolidating the largest possible reserve of campaign resources. Second, issue advocates should focus

those resources on developing public interest in and responsibility for the issue by publicly linking individuals and/or their representative government thereto through informative issue reporting in the media, increasing issue salience as well as the potential for public opinion development and potential participation in actions on the issue. Third, where campaigns directly target governments through lobbying rather than through public participation in leveraging actions such as demonstrations, then undercompliance and treaty violation by the government become a greater risk. Thus, governments are likeliest to progressively shift their humanitarian policy and maintain compliance where its public, under civil society groups' encouragement, petitioned for or voted on the issue. Finally, due to the inherent stringency of most NGO budgets, this also implies a need for strategic planning very early in the issue campaign to determine in which states to apply resources domestically to their greatest effect. As suggested by this project, even the interests of the most powerful states can be overcome with the support of other influential governments guided in part by transnational civil society.

Conclusion

While existing scholarship has advanced our understanding of how transnational civil society advocacy can guide the human rights practices of non-democratic governments, this dissertation gives insight into how the same kind of pressure, applied differently, can operate to shape policy in the democratic world, from which human rights protections would be expected to emanate. It is clear from this project that ostensibly humanitarian positions from states on the international stage may sometimes be shaped by internal and ongoing civil society pressure. In studying international humanitarian

outcomes we must be attentive to both the internal and external drivers of international policy and, through a careful tracing of events, correctly locate the sources of new humanitarian ideas, properly understand their international diffusion, and potentially even predict the development of new international humanitarian law.

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