

**THE INTERNATIONAL DEPLOYMENT OF SHAME, SECOND-BEST  
RESPONSES, AND NORM ENTREPRENEURSHIP: THE CAMPAIGN TO  
BAN LANDMINES AND THE LANDMINE BAN TREATY**

Lesley Wexler\*

**I. INTRODUCTION**

The International Campaign to Ban Landmines<sup>1</sup> and the ensuing Landmine Ban Treaty<sup>2</sup> provide an interesting example of the successful articulation, deepening, and expansion of international norms. First, in simultaneously addressing governments, non-state actors, corporations, and civil society, the International Campaign to Ban Landmines (ICBL)<sup>3</sup> demonstrated the potential of norm entrepreneurs to influence a broad audience through naming and shaming.<sup>4</sup> Second, in framing the landmine issue,<sup>5</sup> the ICBL recognized the importance of capturing universal norms when attempting to convince others of the benefits of change. In order to effectively shame those who challenged a strong norm against landmine use, the ICBL pursued a process outside traditional international lawmaking forums.<sup>6</sup> The ICBL and middle power states<sup>7</sup> embraced a

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\* B.A. with Honors, 1998, University of Michigan; J.D. with Honors, 2002, University of Chicago Law School. Admitted to Maryland Bar, 2002. Clerk for the Honorable Thomas Reavley, United States Court of Appeals, 5th Circuit. Many thanks to Professor Lisa Bernstein, Professor Jack Goldsmith, Professor Philip Hamburger, Professor Cass Sunstein, the University of Chicago academic law panel, and innumerable friends for assistance with drafts and revisions.

1. For the purposes of this article, the term “landmines” will refer only to anti-personnel mines and not to anti-vehicle or anti-tank mines. Landmines or Anti-Personnel Mines (APMs) are defined as “a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.” Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, art. 2, § 2, 36 I.L.M. 1507 [hereinafter Ottawa Convention].

2. *Id.*

3. The International Campaign to Ban Landmines is a coalition of non-governmental organizations and states devoted to the elimination of landmine use, production, transfer, and stockpiles. See International Campaign to Ban Landmines, *More About the Campaign*, available at <http://www.icbl.org/info/about.html> (Apr. 2, 2002).

4. See *infra*, Part II.

5. See *infra*, Part II.A.

6. See *infra*, Part II.B.

7. Middle power states are defined as those states with a tendency to “pursue multilateral solutions to international problems . . . to embrace compromise positions in international disputes . . . and to embrace notions of ‘good international citizenship’ to guide diplomacy.” ANDREW F. COOPER ET AL., *RELOCATING MIDDLE POWERS: AUSTRALIA AND CANADA IN A CHANGING WORLD ORDER* 19 (1993).

comprehensive ban<sup>8</sup> to accelerate the development of the norm against landmine use, to bind state parties, and to shame non-state parties into “second-best responses” – instances in which states or other actors reject a specific norm, but undertake action that subscribes to the more abstract norm upon which the specific norm is based.

This article addresses the mechanisms through which the norm against landmines was articulated, internalized, and enforced, as well as the ways in which the Landmine Ban Treaty codified and reinforced that norm. In particular, it explains how the combination of a strong norm and a treaty can constrain the United States. Part I introduces concepts from behavioral law and economics to supplement the existing understanding of international norm development.<sup>9</sup> Part II then applies the concepts of shaming and norm entrepreneurship to illuminate the case study of landmines. This article analyzes the ICBL’s use of education and shaming campaigns to bring anti-personnel landmines onto the global agenda. It also explores how the ICBL successfully appealed to universal norms acknowledging civilians’ inviolability, reflecting children’s sanctity, and recognizing the environment’s fragility. To illustrate the effectiveness of its international shaming process, the article contrasts the ICBL’s push for a comprehensive weapon ban to the efforts to amend the Convention on Conventional Weapons (CCW)<sup>10</sup> and to the suggestions to negotiate at the Conference on Disarmament (CD).<sup>11</sup> It concludes that the promotion of a total ban through an alternative international framework quickly developed a norm through both positive reinforcement and negative shaming techniques. Part II also presents empirical evidence to demonstrate the success of the ICBL and the Landmine Ban Treaty in changing the behavior of state parties and other relevant actors. In constraining the United States by limiting its range of interactions with state parties and facilitating its adoption of second-best responses, Part III shows how a treaty can assist in the enforcement of an international norm. By focusing on the case study of landmines, this article provides a broad sketch of a potential

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8. In hindsight, a landmine ban may appear the obvious solution, but other options like use-based regulations, multilateral export restrictions, or unilateral moratoriums existed.

9. See generally ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* (1995); FRIEDRICH V. KRATOCHWIL, *RULES, NORMS AND DECISIONS: ON THE CONDITIONS OF PRACTICAL AND LEGAL REASONING IN INTERNATIONAL RELATIONS AND DOMESTIC AFFAIRS* (1989); EDNA ULLMANN-MARGALIT, *THE EMERGENCE OF NORMS* (1977).

10. See 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, Oct. 10, 1980, 1342 U.N.T.S. 137, 19 I.L.M. 1523 [hereinafter Convention on Conventional Weapons].

11. The Conference on Disarmament is a multilateral negotiating forum dedicated to disarmament issues. See United Nations Office at Geneva, *Conference on Disarmament: Overview*, <http://www.unog.ch/disarm/disconf.htm> (1989).

international law strategy for addressing other security issues and more broadly, for limiting other normatively undesirable state practices.

## II. NORM THEORY

A norm is “a rule that is neither promulgated by an official source, such as a court or a legislature, nor enforced by the threat of legal sanctions, yet is regularly complied with . . . .”<sup>12</sup> Domestic and international law scholars have recognized that norms can be useful in at least the following three ways: (1) shaping the development of the law; (2) encouraging compliance with the law; and (3) modifying behavior more generally.<sup>13</sup> Existing norm theory excels at isolating distinct paths and processes for norm articulation, formation, and enforcement.<sup>14</sup> Some of the specific insights of domestic law scholars about norms, however, have not been extensively applied to the international law field.<sup>15</sup> This section will briefly introduce the concept of shame as currently developed in criminal law, as well as the idea of norm entrepreneurs as mechanisms of social change. Furthermore, this section will survey current efforts to incorporate these concepts into international law scholarship.

### A. Shaming

Professors Dan Kahan<sup>16</sup> and Eric Posner<sup>17</sup> define shaming as the “process by which citizens publicly and self consciously draw attention to the bad dispositions or actions of an offender, as a way of punishing him for having those

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12. Richard Posner, *Social Norms and the Law: An Economic Approach*, 87 AM. ECON. REV. 365, 365 (1997).

13. Domestic norm theory emerged in response to Robert C. Ellickson’s seminal work on how close communities resolve their conflicts. *See generally* ROBERT C. ELICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991). The role of norms in international relations and international law scholarship might be traced back to Louis Henkin’s influential work. *See* LOUIS HENKIN, *HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY* (1979).

14. For a good introduction, *see* Robert C. Ellickson, *Law and Economics Discovers Social Norms*, 27 J. LEGAL STUD. 537 (1998).

15. *See, e.g.*, Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, available at <http://www.ciaonet.org/conf/ssr01/ssr01ak.html> (May 1998) (discussing the application of norm entrepreneurship and norm cascades to international law); Ellen Lutz & Kathryn Sikkink, *International Human Rights Law in Practice: The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHI. J. INT’L L. 1 (2001).

16. Dan M. Kahan is the Elizabeth K. Dollard Professor of Law at Yale Law School.

17. Eric A. Posner is the Kirkland and Ellis Professor of Law at the University of Chicago Law School.

dispositions or engaging in those actions.”<sup>18</sup> Thus, rather than simply imprisoning violators of criminal law, condemnation can be expressed through alternative sanctions: forcing convicted drunk drivers to identify themselves through bumper stickers; having child molesters post signs of their misdeeds; and requiring corporate offenders to print public apologies regarding their crimes.<sup>19</sup> Shame serves a dual function by influencing the behavior both of the person being shamed and of the community that witnesses the shaming.<sup>20</sup> The community should internalize the underlying norm in two ways: (1) through its aversion to suffering a similar fate as the identified violator; and (2) through the public reinforcement that the norm is widely shared.<sup>21</sup>

One advantage of shaming penalties, as compared to incarceration, is their cheapness.<sup>22</sup> While the political will to incarcerate certain types of offenders exists, the explosion of the prison population under the “war on drugs” has made this a very costly endeavor.<sup>23</sup> Allowing judges a full panoply of sentencing options may help alleviate the overpopulation problem and preserve prison space for individuals who pose the greatest risk to society. Furthermore, even while the political will to imprison violent offenders and drug dealers is strong, sentences for white-collar criminals are often low, typically consisting solely of fines.<sup>24</sup> Shaming penalties may provide a supplement to existing punishments.

Although some legal scholars are optimistic about the possibilities of shaming penalties,<sup>25</sup> their actual utility in criminal law may be rather limited. Professor Toni Massaro<sup>26</sup> cautions that shaming is most likely to be effective when: (1) offenders are part of a close community; (2) sanctions can alter their social standing; (3) the shaming is communicated to the community which in turn

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18. Dan M. Kahan & Eric A. Posner, *Shaming White-Collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42 J.L. & ECON. 365, 368 (1999).

19. Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 632-33 (1996).

20. *Id.* at 638-39.

21. *Id.* at 636.

22. See Note, *Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law*, 116 HARV. L. REV. 2186, 2189 (2003) (discussing the law and economics view that shaming sanctions are “significantly cheaper than imprisonment”).

23. See J.C. Oleson, Comment, *The Punitive Coma*, 90 CAL. L. REV. 829, 844-46 (2002) (discussing the enormous costs associated with the increasing prison population).

24. Mary Kreiner Ramirez, *Just in Crime: Guiding Economic Crime Reform After the Sarbanes-Oxley Act of 2002*, 34 LOY. U. CHI. L.J. 359, 427 (2003) (concluding that even new criminal sanctions for economic crimes may be weak given downward departures).

25. See Kahan, *supra* note 19, for a good introduction; see also *Shame, Stigma, and Crime*, *supra* note 22, at 2189-93 (2003); Katharine K. Baker, *Sex, Rape, and Shame*, 79 B.U. L. REV. 663 (1999). This work is also being extended to other fields such as corporate law. See, e.g., David A. Skeel, *Shaming in Corporate Law*, 149 U. PA. L. REV. 1811 (2001).

26. Toni M. Massaro is the Dean & Milton O. Riepe Chair in Constitutional Law at the James E. Rogers College of Law at the University of Arizona.

withdraws from the offender; (4) the shamed person fears group withdrawal; and (5) the possibility of regaining community esteem exists.<sup>27</sup> These constraints suggest that shaming will do little to change the socialization of sub-communities where punishment is seen as a badge of honor or to alter the behavior of an individual who has already been cast out of the community.<sup>28</sup> To be effective then, shame is best applied when it is tailored to the individual and the relevant community.<sup>29</sup>

### **B. Norm Entrepreneurship**

In order to develop, transmit, and promote norms, a force must be dedicated to changing the meaning ascribed to certain material practices within the relevant community. While individuals usually have little control over norm setting and social meanings,<sup>30</sup> norm entrepreneurs help to achieve social change by: “(a) signaling their own commitment to change, (b) creating coalitions, (c) making defiance of norms seem or be more costly, and (d) making compliance with new norms seem or be more beneficial.”<sup>31</sup> This concept has been further refined for international law – transnational norm entrepreneurs: (1) “mobilize popular opinion and political support both within their host country and abroad;” (2) “stimulate and assist in the creation of like-minded organizations in other countries;” (3) “play a significant role in elevating their objective beyond its identification with the national interests of their government;” and (4) often direct their efforts “toward persuading foreign audiences, especially foreign elites, that a particular [normative] regime reflects a widely shared or even universal moral sense, rather than the particular moral code of one society.”<sup>32</sup> This definition provides a useful framework through which to assess the ICBL’s efforts to change international opinion on the use of landmines. This article also argues that transnational norm entrepreneurs can be important not only in norm articulation and development, but also in norm enforcement and internalization. In particular, this article explores transnational norm entrepreneurs’ deployment of shame as a method of norm promotion and enforcement.

### **C. Applications to International Law**

While international law scholarship has used norm theory to explain how

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27. Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880, 1883 (1991).

28. *Id.*

29. *Id.* at 1905.

30. Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903, 911 (1996).

31. *Id.* at 929.

32. Ethan A. Nadelmann, *Global Prohibition Regimes: The Evolution of Norms in International Society*, 44 INT’L ORG. 479, 482 (1990).

states can be encouraged to change their behavior, shaming has thus far only been sparingly applied in international law theory within the legal discipline. Domestic law scholars' insights about how shaming penalties can exploit the expressive function of criminal law will be extended in this article to shame's role in the development of international norms and the change in state behavior.<sup>33</sup>

Professor Harold Hongju Koh's<sup>34</sup> extensive case studies, including one on landmines, highlight the abilities of transnational norm entrepreneurs to create change.<sup>35</sup> This article aims to further develop that analysis by focusing on the relationship between norm entrepreneurs' ability to name and shame and the response of state and non-state actors. This article argues that norm entrepreneurs can fill in the enforcement gap of treaties both by encouraging states and other important international players to internalize the relevant norms and also by shaming non-compliant, non-rogue states<sup>36</sup> into second-best responses. This fill-in function is important as punitive sanctions generally fail in both unilateral settings and treaty regimes.<sup>37</sup> Moreover, as sanctions often carry a high cost and are rarely employed,<sup>38</sup> shaming provides an alternative mechanism for norm enforcement – much in the same way shaming penalties function in domestic criminal law.

Similarly, in domestic law where shaming punishments can express the collective will of a society in condemning an action, this article contends that international law can possess that same expressive function. When transnational norm entrepreneurs use shame to highlight how a violation of a particular international law also violates a widely held norm, they are exploiting the expressive function of international law. To be effective, the international law or norm must be framed in such a way that dovetails with varying states' purposes and aspirations.<sup>39</sup> In so doing, the norm and the law that express it can help shape preference-formation by “instilling aversions to the kinds of behavior that the law prohibits.”<sup>40</sup> By changing their preference calculations, public stigmatization may

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33. While other scholars have begun to explore the relationship between the Chicago school of social norms and international law, I believe the application of the shaming penalties literature is new.

34. Harold Hongju Koh is the Gerard C. & Bernice Latrobe Smith Professor of International Law at Yale Law School.

35. Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623, 655-63 (1998).

36. By definition, rogue states “display no regard for international law, threaten their neighbors, and callously violate international treaties to which they are party.” National Security Council, *The National Security Strategy of the United States of America*, at <http://www.whitehouse.gov/nsc/nssall.html> (Sept. 2002).

37. CHAYES & CHAYES, *supra* note 9, at 34-108.

38. *Id.*

39. Kahan, *supra* note 19, at 597 (“Part of being rational consists in selecting actions that, against the background of social norms express social meanings appropriate to our purposes and goals.”).

40. *Id.* at 603 (This article also argues that the treaty raises the cost of using

encourage change on the part of the norm violator, as well as discourage others from engaging in prohibited behavior.<sup>41</sup> While criminal law scholars worry that not all offenders, and here by extension, not all states, are capable of being shamed,<sup>42</sup> Professor Kahan argues that “to lower the offender’s social status within that community, it is enough that the affliction convey disapproval in terms that its members understand.”<sup>43</sup> Perfect compliance is not required for the development and strengthening of a norm.

To be effective, domestic law must choose the proper form and degree of punishment, for instance, a tailored shaming penalty, to express condemnation for the wrongdoer.<sup>44</sup> This article contends that effective international deployment of shame depends on similar criteria, namely, the forum where decisions are made and the substance of those decisions. As the goal of international law is often to change state behavior rather than the behavior of individuals, the ability to affect the psyche or ego of the individual is not really at issue.<sup>45</sup> Some states do, however, express concern over their reputations and whether they are perceived as good or fair neighbors in the international community.<sup>46</sup> Thus, even if a state cannot “feel” shame in the same way as an individual, it can respond to domestic and international pressure to avoid or compensate for a shaming incident. Those interested in deploying international shame need to be mindful of similar constraints as those encouraging the use of domestic shaming penalties. These constraints include whether: (1) the international community is acting as a unified community in a given instance; (2) the status of those states that decide to flout a particular international law can be altered; (3) the international community’s feeling of disapprobation is appropriately conveyed to the violating states; (4) the violating states care about the international community’s esteem; and (5) the violating state can regain the community’s esteem either by future adherence to the law it has violated or by engaging in second-best responses.

## II. LANDMINES: A CASE STUDY

The International Campaign to Ban Landmines and Landmine Ban Treaty provided fertile ground for the application of norm theory to international

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landmines.).

41. *See id.* at 631-41.

42. *See, e.g.,* Massaro, *supra* note 27, at 1916-28.

43. Kahan, *supra* note 19, at 636-37.

44. Dan M. Kahan, *Punishment Incommensurability*, 1 *BUFF. CRIM. L. REV.* 691, 695 (1998).

45. *See* Massaro, *supra* note 27, at 1900-03 (addressing the importance of individuals in shaming).

46. *See* George W. Downs & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 *J. LEGAL STUD.* 95, 95-96 (2002) (discussing the “centrality of reputation” in explanations of why states honor their international agreements).

law scholarship. Landmines presented an interesting case study as the ICBL succeeded on several fronts: (1) the education about and framing of a security issue to fit within abstract humanitarian norms; (2) the deployment of shame to develop and enforce norms; and (3) the expansion of the audience for international norms beyond state actors. Moreover, the ICBL and middle power states abandoned existing international law structures in favor of a fast-track forum devoted to a strong norm against landmine use. The Landmine Ban Treaty proved that strong norms can be quickly codified in and reinforced by international law.

### **A. Norm Entrepreneurship: Education and Agenda Setting**

The International Campaign to Ban Landmines presents a valuable case study of transnational norm entrepreneurship. Through a variety of actions, the ICBL mobilized public opinion, created like-minded organizations, elevated an issue beyond simple concerns of national interest, and persuaded a global audience to change their practices based on appeals to universal norms. First, various non-governmental organizations (NGOs), acting as transnational norm entrepreneurs, raised awareness of the landmine issue – in this instance, a necessary precursor to norm articulation and development.<sup>47</sup> Then, they drew on that awareness to begin a more direct stigmatization and shaming campaign of states and companies involved in landmine trade and use.<sup>48</sup> In conjunction with developing a norm to prohibit landmine use, the ICBL challenged the overall military utility of landmines in order to effectively quash a competing norm.<sup>49</sup> Once the norm against landmine use was firmly entrenched in the Landmine Ban Treaty, the ICBL sought to expand the scope of the norm by lobbying non-state actors to join the landmine ban through a deed of commitment.<sup>50</sup> Thus, the ICBL both developed and widened the norm against landmine use – a helpful lesson for future campaigns.

#### **1. Publicizing the Harms of Landmines**

Some minimal education efforts on landmines started in the 1970s, but the ICBL claimed NGOs, governments, and citizens were not ready to focus on the security problem posed by landmines until the Cold War ended.<sup>51</sup> Previously, “security” was defined as the defense of states from external threats. In the 1990s,

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47. *See infra*, Part II.A.1.

48. *See infra*, Part II.A.2.

49. *See infra*, Part II.A.3.

50. *See infra*, Part II.A.4.

51. Jody Williams & Stephen Goose, *The International Campaign to Ban Landmines*, in *TO WALK WITHOUT FEAR* 20, 21 (Maxwell A. Cameron et al. eds., 1998) (“Efforts to ban AP mines or at least control their use, had begun in the 1970s . . . . Governments remained largely unaware of the degree of the landmine epidemic until the end of the Cold War.”).



the ICBL proposed a more expansive view that posited security in terms of everyday harm to individual citizens.<sup>52</sup> The ICBL actively portrayed landmines as a progressive issue that could only be addressed by abandoning the realist assumptions of the Cold War.<sup>53</sup> In this way, the ICBL elevated the landmine issue beyond a particular state's national interest. It emphasized existing abstract norms about the inviolability of civilians,<sup>54</sup> the protection of children,<sup>55</sup> and the preservation of the environment.<sup>56</sup> It then demonstrated how existing patterns of landmine use violated those universal norms. Even though post-Cold War optimism is waning with traditional security concerns reignited across the globe,<sup>57</sup> it seems that concern for a basic level of humanity, even in warfare, has not eroded and may even be heightened as a result of increased media scrutiny.<sup>58</sup> Thus, this humanization of security issues may prove to be a useful tool for future education campaigns.<sup>59</sup>

The ICBL performed the traditional educational function of human rights NGOs in order to strengthen the nascent norm against landmines. Two organizations that helped found the ICBL, Human Rights Watch and Physicians for Human Rights, issued public reports documenting the harms of landmines.<sup>60</sup>

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52. See Andrew Latham, *The Politics of Stigmatization: Global Cultural Changes and the Transnational Campaign to Ban Antipersonnel Landmines*, Address Before the International Studies Association, available at [www.ciaonet.org/isa/laa01/](http://www.ciaonet.org/isa/laa01/) (Feb. 16 - 20, 1999) (arguing that the new discourse of "human security" made possible the awareness of the landmine issue).

53. See DON HUBERT, *THE LANDMINE BAN: A CASE STUDY IN HUMANITARIAN ADVOCACY* 29 (2000), available at <http://www.watsoninstitute.org/pub/op42.pdf> ("[O]nly after the fall of the Berlin Wall and the end of the Cold War did a prohibition [of landmines] become a possibility.").

54. JUDITH GAIL GARDAM, *NONCOMBATANT IMMUNITY AS A NORM OF INTERNATIONAL HUMANITARIAN LAW* (1993).

55. Cass R. Sunstein, *Television and the Public Interest*, 88 CAL. L. REV. 499, 562 (2000) (discussing "protection of children" as a basic norm of society).

56. DANIEL A. FARBER, *ECO-PRAGMATISM: MAKING SENSIBLE ENVIRONMENTAL DECISIONS IN AN UNCERTAIN WORLD* 199 (1999) (describing environmentalism's fundamental norm as the presumption that all persons are "entitled to a safe environment and to the preservation of nature").

57. John Zarocostas, *Iran Seen Ready to Develop Nuclear Arms; Middle East, Korea Are Danger Zones*, WASH. TIMES, May 12, 2003, at A13 (discussing "heightened global security concerns" such as Iranian and North Korean nuclear proliferation).

58. For instance, the United States developed civilian friendly cluster bombs that only detonate in the presence of enemy vehicles. These were deployed in the latest conflict in Iraq. See Michael Woods, *'Smart' Cluster Bomb Debuts Against Tanks in Iraq*, PITTSBURGH POST GAZETTE, Apr. 3, 2003, at A11.

59. See *infra*, Part II.A.5.

60. See, e.g., HIDDEN DEATH: LAND MINES AND CIVILIAN CASUALTIES IN IRAQI KURDISTAN (Human Rights Watch ed., 1992); PHYSICIANS FOR HUMAN RIGHTS, HIDDEN ENEMIES: LAND MINES IN NORTHERN SOMALIA (1992); HUMAN RIGHTS WATCH ARMS PROJECT & PHYSICIANS FOR HUMAN RIGHTS, LANDMINES: A DEADLY LEGACY (Human

In 1991, they began by illustrating the devastation landmines had wreaked in Cambodia.<sup>61</sup> This initial dissemination of information prompted the U.S. Congress to commission global reports on landmines in 1994<sup>62</sup> and 1998.<sup>63</sup> The ICBL also released a monumental global survey of the landmine problem with focused case studies on the most affected regions, which bolstered the conclusions of the congressional studies.<sup>64</sup> This survey, *After the Guns Fall Silent*,<sup>65</sup> provided a comprehensive, qualified source of data that both furthered education and strengthened arguments in favor of a ban.<sup>66</sup> In addition to these studies, the ICBL was able to garner significant coverage in national media.<sup>67</sup> The landmine issue was prominently featured in such diverse magazines as *Newsweek International*,<sup>68</sup> *Scientific American*,<sup>69</sup> *The Bulletin of Atomic Scientists*,<sup>70</sup> and *Vanity Fair*.<sup>71</sup> The ICBL also disseminated its message through some unconventional means. Coordinating with DC Comics, the ICBL issued a *Batman* comic<sup>72</sup> devoted to garnering support for the ban and issued a *Superman* comic<sup>73</sup> designed to assist landmine awareness programs.

The ICBL's framing of the landmine issue also contributed to the strength of the education campaign. For example, when discussing the victims of landmine use, the ICBL appealed to the public's strong concern for the vulnerability and innocence of children.<sup>74</sup> Campaign literature usually displayed

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Rights Watch ed., 1993).

61. ERIC STOVER & RAE MCGRATH, *LANDMINES IN CAMBODIA: THE COWARD'S WAR* (1991).

62. U.S. DEP'T OF STATE, *HIDDEN KILLERS: THE GLOBAL LANDMINE CRISIS, REPORT TO THE US CONGRESS ON THE PROBLEM WITH UNCLEARED LANDMINES AND THE US STRATEGY FOR DEMINING AND LANDMINE CONTROL* (1994).

63. U.S. DEP'T OF STATE, *HIDDEN KILLERS: THE GLOBAL LANDMINE CRISIS, REPORT TO THE U.S. CONGRESS ON THE PROBLEM WITH UNCLEARED LANDMINES AND THE U.S. STRATEGY FOR DEMINING AND LANDMINE CONTROL* (1998).

64. SHAWN ROBERTS & JODY WILLIAMS, *AFTER THE GUNS FALL SILENT: THE ENDURING LEGACY OF LANDMINES* (1995).

65. *Id.*

66. *See id.*

67. Williams & Goose, *supra* note 51, at 23 (“[M]ajor media sources in almost all regions of the world began to endorse the concept of a global ban on AP mines.”).

68. *It's Not a Pretty Picture*, *NEWSWEEK INT'L*, Mar. 8, 1999, at 26.

69. Gino Strada, *The Horror of Landmines*, *SCI. AM.*, May 1996, at 40.

70. Jim Wurst, *Ten Million Tragedies, One Step at a Time*, *BULL. ATOMIC SCI.*, July-Aug. 1996, at 14.

71. *Jody Williams*, *VANITY FAIR*, Dec. 1997, at 275; *A Little Peace*, *VANITY FAIR*, Nov. 1998, at 260.

72. Jenette Kahn et al., *Batman: Death of Innocents: The Horror of Landmines* No. 1 1996 (on file with author).

73. Maxwell A. Cameron et al., *To Walk Without Fear*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 1, 15 (“Even Batman and Superman joined the campaign, with comic book stories that helped explain the AP mine issue to children.”).

74. *See, e.g.*, Miguel de Larrinaga & Claire Turenne Sjolander, *(Re)presenting*

graphic pictures of children missing eyes, arms, and legs.<sup>75</sup> The campaign also drew particular attention to “butterfly mines” which, because of their wings and bright colors, attracted children to pick them up.<sup>76</sup> Narratives of sympathetic civilian victims were heavily publicized.<sup>77</sup> The repetition of horrific statistics conveyed emphasized how anti-personnel landmines could devastate an entire community.<sup>78</sup>

The ICBL also maintained its focus on civilian harms to distinguish APMs from other weapon systems or war itself. Opposition to landmines was not to be equated with opposition to warfare in general.<sup>79</sup> The ICBL continually emphasized the indiscriminate nature of APMs,<sup>80</sup> while acknowledging that most other weapons had clear military benefits. By tapping into universal norms about the need to protect civilians and especially children, the ICBL emphasized how the harms of landmines ought to overwhelm any consideration of their military utility.<sup>81</sup>

While the ICBL did not accommodate diverse opinions on strategies to eliminate landmine use, it did appeal to disparate, yet deeply held norms in order to build one of the largest, most diverse NGO coalitions ever. For example, to entice the environmental movement, the ICBL frequently described landmines as “a pollutant in the environment”<sup>82</sup> and explained that “land mine pollution may in some cases have the effect of pushing people who cannot return to their own land out into otherwise unused land.”<sup>83</sup> To gain military support, the ICBL specifically emphasized the discrete military harms resulting from landmines and explained how their use violated widely shared precepts of just war.<sup>84</sup> When appealing to

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*Landmines from Protector to Enemy: The Discursive Framing of a New Multilateral Discourse*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 365, 376.

75. Richard Price, *Reversing the Gun Sights: Transnational Civil Society Targets Land Mines*, 52 INT’L ORG. 613, 624-25 (1998).

76. See, e.g., Cameron et al., *supra* note 73, at 3.

77. Larrinaga & Sjolander, *supra* note 74, at 376.

78. Price, *supra* note 75.

79. See, e.g., *Crossfire* (CNN television broadcast, Oct. 10, 1997) (statement of Jody Williams) (“The point of this campaign is not to abolish war. The point of this campaign is to point out that certain conduct in war is illegal, that certain weapon systems are illegal.”).

80. J. Bryan Hahir, *Landmines: A Political-Moral Assessment*, in *CLEARING THE FIELDS: SOLUTIONS TO THE GLOBAL LAND MINES CRISIS* 97, 103 (Kevin Cahill ed., 1995) (“[Landmines are] inherently indiscriminate...in terms of time and targets.”); Kenneth Anderson, *An Overview of the Global Land Mines Crisis*, in *CLEARING THE FIELDS*, *supra*, at 17 (“Landmines are aptly described as weapons that cannot distinguish between the boot of a soldier and the footfall of a child.”).

81. See Price, *supra* note 75, at 629 (explaining how the landmine ban movement drew on other weapon taboos like chemical weapons).

82. Anderson, *supra* note 80, at 21.

83. *Id.*

84. Kristian Berg Harpviken & Mona Fixdal, *Landmines: Just Means of War?*, 28 SECURITY DIALOGUE 271, 271-72 (Sept. 1997).

arms control advocates and the peace movement, the ICBL referred to landmines as a “weapon of mass destruction in slow motion.”<sup>85</sup> In building a diverse constituency for the ban, the ICBL appealed to different audiences through the deployment of “incompletely theorized agreements” — which facilitate convergence on a particular rule while maintaining divergent theoretical perspectives.<sup>86</sup>

The ICBL’s education strategy was able to create widespread support for a total ban. In 1995, when various perspectives on how to address harms of landmine use were compiled in *Clearing the Fields*,<sup>87</sup> the Secretary-General of the UN, Boutros Boutros-Ghali, urged “[t]he aim should be to build widespread support for an international agreement on a total ban on the production, stockpiling, transfer, and export of [landmines] and their components.”<sup>88</sup> Groups from opposing political, social, and disciplinary camps were persuaded to support this ban by the documentation of the many distinct harms of landmines and how those harms violated existing norms.<sup>89</sup>

## 2. Shaming the Responsible Parties

The ICBL transitioned from documenting the harms of landmines to focusing upon the responsible actors and the need to change particular practices. In this way, they performed the “name and shame” function of NGOs.<sup>90</sup> The ICBL began publicizing and shaming the companies and states responsible for landmine production and use in order to develop and promote the norm against landmines. This section first explores the ICBL’s stigmatization campaign against landmine producers and then details the efforts to shame the United States for failing to join the Landmine Ban Treaty.

### a. Stigmatizing the Producers

The ICBL realized the importance of garnering acceptance for its norms

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85. See Kenneth Roth, *Sidelined on Human Rights: America Bows Out*, FOREIGN AFF., Mar.-Apr. 1998, at 2.

86. See CASS R. SUNSTEIN, LEGAL REASONING AND POLITICAL CONFLICT, 168-82 (1998).

87. See generally CLEARING THE FIELDS, *supra* note 80.

88. Boutros Boutros-Ghali, *Foreword to CLEARING THE FIELDS*, *supra* note 80, at xiv.

89. Kenneth Anderson, *The Ottawa Convention Banning Landmines, the International Non-Governmental Organizations and the Idea of International Civil Society*, 11. EUR. J. INT’L L. 91, 105, available at <http://www.ejil.org/journal/Vol11/No1/art8.html> (2000) (“It was a striking part of the campaign that diverse NGOs could find bases on which to support the ban campaign drawing upon their own organizational mandate.”).

90. See Jose Batila, *Are Human Rights NGOs Becoming Elitist?*, at [http://www.room17.org/ngo\\_elitists](http://www.room17.org/ngo_elitists) (Mar. 28, 2003) (reiterating NGOs’ obligation to name and shame irresponsible governments).

at every level from landmine component workers, to company heads, to heads of states. Unlike some NGOs that had separated raising issue awareness from the support for specific actions, the ICBL implemented an integrated strategy in regard to landmine manufacturers. For instance, Human Rights Watch simultaneously informed the American public about the relationship between U.S. companies and landmine production<sup>91</sup> and prompted many companies into renouncing that relationship.<sup>92</sup> By exposing the forty-seven companies involved in landmine manufacturing, Human Rights Watch debunked the Department of Defense's claim about limited domestic production.<sup>93</sup> The report issued by Human Rights Watch, *Exposing the Source*, also launched the ICBL's "stigmatization" campaign, which was designed to shame companies into voluntarily ending their involvement in the landmine trade.<sup>94</sup> In compiling data about domestic landmine production, letters were sent to each company urging that it immediately renounce any future involvement in the production or assembly of landmines and landmine components.<sup>95</sup> The report directed supporters to lobby companies by writing letters, submitting shareholder resolutions, and holding vigils.<sup>96</sup> Companies that had already renounced landmine use were encouraged to develop industry-wide codes of conduct opposing landmine production, pressure non-compliant companies, and limit the award of demining contracts to non-mine producing companies.<sup>97</sup> The United States Campaign to Ban Landmines (USCBL) also issued *Stigmatization Campaign Updates* identifying specific producers and urging concerted action.<sup>98</sup>

The stigmatization campaign achieved immediate results. The mere investigation into the companies' practices prompted seventeen producers to immediately renounce any future involvement in the landmine trade.<sup>99</sup> By the close of 1997, two more companies ended their landmine production.<sup>100</sup> The stigmatization campaign also sent a strong signal to global producers that

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91. See generally Human Rights Watch, *Exposing the Source: U.S. Companies and the Production of Antipersonnel Mines*, at <http://www.hrw.org/hrw/campaigns/mines/index.html> (Apr. 1997).

92. *Id.* at <http://www.hrw.org/campaigns/mines/IV.4.renouncing.html> (seventeen companies pledged the elimination of all involvement in APM trade and production).

93. *Id.* at <http://www.hrw.org/campaigns/mines/IV.1.investigation.html>.

94. *Id.* at <http://www.hrw.org/campaigns/mines/summary.html>.

95. *Id.* at <http://www.hrw.org/campaigns/mines/IV.1.investigation.html>.

96. Human Rights Watch, *Exposing the Source: U.S. Companies and the Production of Antipersonnel Mines*, at <http://www.hrw.org/campaigns/mines/V.html>.

97. *Id.*

98. See, e.g., United States Campaign to Ban Landmines, *Stigmatization Campaign Update #2*, at <http://www.icbl.org/prelease/1998/june22a.html> (June 22, 1998); United States Campaign to Ban Landmines, *Stigmatization Campaign Update #3*, at <http://www.icbl.org/prelease/1998/oct8.html> (Oct. 7, 1998).

99. Human Rights Watch, *supra* note 91, at <http://www.hrw.org/campaigns/mines/summary.html> (n.d.).

100. *Stigmatization Campaign Update #2*, *supra* note 98.

companies, not just states, would be targets of the campaign against landmines.

The creation of like-minded organizations soon followed with the development of stigmatization campaigns in other countries. The Italian Campaign to Ban Landmines (ICBL) persuaded workers from one of the largest global landmine producers to issue a statement of their support for a landmine ban.<sup>101</sup> ICBL led a march to the Valsella production facility and held a rally there.<sup>102</sup> Capitalizing on the theme of children's innocence, four women at the Valsella plant held a banner declaring that they should not have to produce weapons that kill others' children in order to feed their own.<sup>103</sup> This resulted in the town council in Castenedolo joining the ban campaign.<sup>104</sup> This type of internal struggle took on added significance since landmine producers often lobbied the governments to avoid regulation.<sup>105</sup>

The stigmatization campaigns demonstrated the power of transnational norm entrepreneurs. Rather than waiting for possible regulation, companies changed their behavior in response to a newly developing norm against landmines. Their wish to avoid being labeled landmine producers suggests the strength of the ICBL's norm promotion.

#### b. Shaming the United States

While the ICBL initially courted the United States to join the Landmine Ban Treaty, it eventually shamed the United States in order to both force its compliance with broader landmine norms and to make an example of holdout states as "rogue states." While the United States was attacked on several grounds, this article identifies two particular grounds upon which the United States was shamed: (1) its lack of leadership; and (2) its disregard for rule of law values. This article does not argue that leadership and rule of law values are inherently necessary or sufficient grounds for shaming, only that they are illustrative of how to implement shaming.

When ICBL coordinator Jody Williams was awarded the Nobel Peace prize in 1997, she began to vigorously shame the United States for refusing to sign the Landmine Ban Treaty. Williams and the ICBL capitalized on the Clinton administration's rhetoric about landmine leadership by using it to show hypocrisy and a lack of commitment. For instance, on *Crossfire*, Williams commented, "Clinton just missed an opportunity to be a true world leader on this issue. You

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101. Williams & Goose, *supra* note 51, at 29.

102. This was particularly notable since Valsella had previously ignored mine export embargoes during the Iran-Iraq war. Rae McGrath, *Trading in Death: Anti-Personnel Mines*, LANCET, Sept. 11, 1993, at 628, 629.

103. *Id.*

104. Williams & Goose, *supra* note 51, at 29.

105. See, e.g., Catherine Capellot & Anne Marie Cusac, *Meet the People Who Make Landmines*, THE PROGRESSIVE, Nov. 18, 1997, at 18, 19-20. Alliant Tech has been actively opposed to both the U.S. export moratorium and the landmine ban.

cannot be outside the Ottawa Process which has just negotiated a ban treaty and still call yourself a leader. You're either in the process or you're not. You can't lead from the rear."<sup>106</sup> Williams also made numerous similar comments in the press.<sup>107</sup> She also likened the United States to a rogue state by linking it to other traditional treaty holdouts like Iran, Iraq, and China.<sup>108</sup> While this type of shaming might not be very meaningful to a state like Iraq who is often labeled a bad actor, the United States sees itself as an international leader that promotes cooperation and positive norm development.<sup>109</sup> Thus, the ICBL tailored its shaming strategy to the values of its target.

Similarly, Jody Williams and the ICBL emphasized rule of law values to both isolate U.S. decision-makers and remind them how the Landmine Ban Treaty fits with the United States' conception of itself. Williams emphasized that landmines were considered to be "illegal" under international law; she argued:

[T]he world has recognized [landmine use] as illegal. The United States says that even it believes it's illegal and is looking for alternatives so that it can stop using this weapon. Now if it recognizes that the weapon should be abolished, it should abolish it now like the rest of the world. It either is or

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106. *Crossfire*, *supra* note 79 (statement of Jody Williams). See also, *CNN Morning News*, (CNN television broadcast, Oct. 10, 1997) (statement of Jody Williams) ("I think it is unfortunate that the United States still wants to call itself a leader in . . . the movement to eliminate landmines, and it's one of the few countries that is not part of the process. It confuses me about what leadership, then, means.").

107. For instance, Jody Williams, speaking for the campaign, said:

Leadership means taking a risk and not worrying what the others think. Unfortunately, the early leadership in the United States, which is still being carried on in the Senate, has not been shown by all branches of the administration . . . it's the view of the international community that did not accept this administration's view that its needs should be accommodated.

*CNN Special Event: "Prize for Peace '97": The Fight to Remove Land Mines*, (CNN television broadcast, Dec. 15, 1997) (on file with the author).

108. *Crossfire*, *supra* note 79 (statement of Jody Williams) ("It [the world community] is going to ban this weapon and the United States is going to remain in the company of China, Cuba, Iran, Iraq."). See also, *id.* (statement of Bill Press) ("A hundred nations are going to sign it. It looks like not the United States and that puts us in the company of China, Cuba, North Korea, Iraq, Iran and Pakistan. Isn't it kind of embarrassing to be running around with that crowd?").

109. "In a fashion and to an extent that is unique in the history of Great Powers, the United States defines its strength – indeed its very greatness – not in terms of its ability to achieve or maintain dominance over others, but in terms of its ability to work with others in the interests of the international community as a whole." Samuel Huntington, *The Lonely Superpower*, FOREIGN AFF., Mar.-Apr. 1999, at 35, 38.

is not illegal.<sup>110</sup>

Again, not all states care equally about adherence to international law, but the United States seems very concerned that its actions are not labeled illegal.<sup>111</sup> The success of this shaming campaign will be explored in Part III, section C, where this article argues the combination of norm internalization and international shaming caused the United States to adopt second-best responses.

### 3. Refuting Military Utility

Many skeptics questioned the wisdom of pursuing a comprehensive Landmine Ban Treaty and doing so outside commonly used international law and arms control channels.<sup>112</sup> Defense analysts argued that landmines were necessary to “secure military installations, to divert enemy forces, [and] to deny areas of strategic interest to the enemy.”<sup>113</sup> Domestic opponents contended that the United States would be left without a weapon vital to preventing the North Koreans from overrunning the demilitarized zone,<sup>114</sup> while rogue regimes would either stay

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110. *Crossfire*, *supra* note 79.

111. For instance, even in renouncing ratification of the International Criminal Court, the United States complied with international law by respecting the provision in the Vienna Convention that treaties can become international law even for non-ratifying states unless the state specifically disavows it. See Curtis A. Bradley, *U.S. Announces Intent Not to Ratify International Criminal Court Treaty*, ASIL INSIGHTS, May 2002, at <http://www.asil.org/insights/insigh87.html>. The United States also took great pains to defend military tribunals and detention of Al-Qaida soldiers in Guantanamo as compliant with international law. The United States steadfastly refuses to openly flout international law. See Stephen Kaufman, *Establishment of Military Tribunals Is Debated in U.S.*, at <http://usinfo.state.gov/topical/pol/terror/01112803.htm> (Nov. 26, 2001).

112. See, e.g., Jodi Preusser Mustoe, *The 1997 Treaty to Ban the Use of Landmines: Was President Clinton's Refusal to Become a Signatory Warranted?*, 3 GA. J. INT'L & COMP. L. 541 (1991). Bob Bell, National Security Council senior director for defense policy and arms control under President Bill Clinton argued, “[O]ur best shot at this in terms of achieving the President's goal of a global ban . . . is to take it to the CD where we have a proven track record.” See Sarah Walking, *U.S. Favors CD Negotiations To Achieve Ban on Landmines*, ARMS CONTROL TODAY (Jan.-Feb. 1997), available at [http://www.armscontrol.org/act/1997\\_01-02/mines.asp](http://www.armscontrol.org/act/1997_01-02/mines.asp).

113. See Rae McGrath, *The Reality of the Present Use of Mines by Military Forces*, in INT'L COMM. OF THE RED CROSS REPORT OF THE SYMPOSIUM ON ANTI-PERSONNEL MINES 7 (1993).

114. See, e.g., Robert Mason Beecroft, *An Outline of U.S. Security Policy Aims on Small Arms, Landmines and Other Issues*, available at <http://usinfo.state.gov/topical/pol/arms/stories/bcroftsl.htm> (2000). (Deputy Assistant Secretary of State for Security Operations arguing that protection of the DMZ blocks the United States' accession to the Landmine Ban Treaty, stating “The fact is that the United States has international obligations and responsibilities that prevent us from signing the convention at this time. In



outside the treaty regime or defy the treaty's mandates.<sup>115</sup> These claims were often coupled with a plea to either maintain the status quo or to pursue reforms through existing arms control and laws of war structures.<sup>116</sup> Given the strength of both the military utility arguments and the demands for traditional avenues of change, the International Campaign to Ban Landmines had to mount a very effective campaign to gain widespread state acceptance of the Landmine Ban Treaty.

Part of the ban movement's education strategy refuted the military utility of landmines.<sup>117</sup> The traditionally neutral International Committee of the Red Cross (ICRC), aligned with the ICBL in all but name, published a comprehensive study about the myth of landmine utility.<sup>118</sup> This review explored the defensive and offensive use of landmines, the possibility of landmine alternatives, and the variety of conflicts in which landmines had been or could be deployed.<sup>119</sup> The data compiled in the study shattered widely held assumptions about the strategic value of landmine warfare.<sup>120</sup> The authors, including many current and former U.S. military commanders, unanimously concluded that "(t)he limited military utility of AP landmines is far outweighed by the appalling humanitarian consequences of their use in actual conflicts."<sup>121</sup> Moreover, the study's participants all endorsed the immediate pursuit of a comprehensive landmine ban.<sup>122</sup> The ICBL followed up with the "sixty-four stars letter," that is, a full page ad in the *New York Times* from sixteen four-star generals, urging the President to

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Korea, the North Koreans have more than a million soldiers poised only 35 kilometers north of Seoul. The United State[s] and the Republic of Korea bear the responsibility for holding that line.").

115. See, e.g., Frank J. Gaffney, *Preempting Bush*, Jewish World Review, <http://www.jewishworldreview.com/cols/gaffney.html> (Dec. 5, 2000) (statement by Head of the Center for Security Policy).

116. See Jarvis D. Lynch, Jr., *Landmines, Lies, and Other Phenomena*, PROCEEDINGS, May 1998, at <http://www.usni.org/Proceedings/Articles98/PROlynch98.htm>.

117. Assessing the relative truth of the ICBL's claims about military utility exceeds the scope of this article.

118. See Patrick Blagden, *Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines*, available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/C2951729922B4364C1256B6600599BF2> (Mar. 1, 1996) (concluding that the utility of landmines was vastly overstated because, among other things, the risks of losing one's troops to one's own landmines from either line movement or opposition reuse).

119. *Id.*

120. *Id.*, Introduction, ¶ 1 ("[T]he military value of AP mines has almost always been accepted without question. It appears that no systematic studies of whether their actual military effects have lived up to expectations under past combat conditions have been undertaken by professional military organizations or military analysis.").

121. *Id.*, § XI, ¶ 8.

122. *Id.* ("On this basis their prohibition and elimination should be pursued as a matter of utmost urgency by governments and the entire international community.").

sign the Landmine Ban Treaty and denying the conventional wisdom about the military utility of landmines.<sup>123</sup>

The ICBL effectively challenged the status quo through reliance on the high quality of evidence documenting the relative disutility of landmines. By emphasizing the ways that landmines had been counter-productive in peacekeeping efforts, warfare, and post-war reconciliation, ban supporters posed a multi-front attack on APM supporters.<sup>124</sup> Discrediting landmines as a valuable tool in conflicts allowed the ICBL to distinguish its efforts to ban landmines from those calling for more general disarmament.<sup>125</sup> This saved the ICBL from being portrayed as a naïve, utopian movement unaware of pragmatic considerations.

By producing well-reasoned and well-researched arguments against the benefits of landmines, the ICBL encouraged militaries to reevaluate their positions. For instance, in 1996, General John Shalikashvili ordered the Pentagon to undertake a landmine review.<sup>126</sup> The Pentagon's final report, while discouraging the United States from joining the Landmine Ban Treaty, did observe the potential for development of landmine alternatives.<sup>127</sup> In 2001, several former U.S. military commanders with experience in Korea concluded that landmines were unnecessary in the demilitarized zone.<sup>128</sup> This military utility debate demonstrates the significant ability of NGOs, acting as norm entrepreneurs, to spark a reevaluation of the conventional wisdom that underpins existing norms.

#### 4. Expanding to Non-State Actors (NSAs)

The ICBL recently expanded the audience of the norm against landmines to include non-state actors.<sup>129</sup> Many conflicts currently being waged involve

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123. *An Open Letter to President Clinton*, N.Y. TIMES, Apr. 3, 1996, at A9.

124. Robert J. Lawson, *Ban Landmines! The Social Construction of the International Ban on Anti-Personnel Landmines 1991-2001* (Apr. 2002) (Ph.D. dissertation), available at [http://www.icbl.org/index/download/social\\_construction\\_of\\_ban.pdf](http://www.icbl.org/index/download/social_construction_of_ban.pdf) at 186-88 (discussing the influence of a report designed to debunk military utility arguments).

125. Price, *supra* note 75, at 632 ("Many proponents of a ban have been careful to frame the issue in terms of searching for an earnest balance between legitimate military objectives and humanitarian concerns, rather than risk being portrayed [and perhaps dismissed] by states as peace advocacy groups perpetually seeking world disarmament").

126. Friends Committee on National Legislation, *Chronology of U.S. Policy and International Mine Ban Treaty Events*, [http://www.fcnl.org/issues/arm/sup/lan\\_chron.htm](http://www.fcnl.org/issues/arm/sup/lan_chron.htm) (last visited Jul. 23, 2002).

127. Caleb Rossiter, *Debunking Korea Landmine Exception*, at <http://www.prgs.ca/pages/lm/1d970212.htm> (Feb. 12, 1997).

128. Bob Keeler, *U.S. Loses Moral Ground on Land Mine Ban*, NEWSDAY, Oct. 21, 2002, at A24.

129. Non-State Actors are defined as "organizations with less than full international recognition as a government who employ a military strategy." Margaret Busé, *Non-State Actors and Their Significance*, 5 J. MINE ACTION (Jan. 2003), available at [http://maic.jmu.edu/journal/5.3/features/maggie\\_buse\\_nsa/maggie\\_buse.htm](http://maic.jmu.edu/journal/5.3/features/maggie_buse_nsa/maggie_buse.htm).

NSAs.<sup>130</sup> NSAs are now more frequent users of APMs than states, and their improvised landmines can pose a greater threat to deminers and civilians than commercially produced landmines.<sup>131</sup> The frequent deployment of APMs by NSAs has been cited by many states as their reason for either refusing to join the Landmine Ban Treaty or to carry out their treaty obligations.<sup>132</sup> The ICBL quickly responded to this objection against the ban treaty by establishing a “Non-State Actors Working Group.” This group trained individual country campaigns to engage NSAs<sup>133</sup> and developed a deed of commitment for NSA adherence to the main tenets of the Landmine Ban Treaty.<sup>134</sup> This deed committed NSAs to a ban on use, production, stockpile, and transfer of landmines as well as permitting monitoring and verification by relevant organizations.<sup>135</sup> Thus far, twenty NSAs have signed the deed.<sup>136</sup> Preparations for technical assistance and verification of compliance with the deed are underway.<sup>137</sup>

### 5. Lessons for Future Education and Shaming Campaigns

The education and shaming campaigns of the ICBL provide a powerful model for future social movements. This campaign to end landmine use was not the first convergence of the laws of war and humanitarian issues, nor was it the first time that the choice to use particular weapons was taken away from individual leaders or militaries.<sup>138</sup> Yet, because the ban supporters sought to prohibit weapons that were in militaries’ everyday arsenals, the Landmine Ban Treaty differs in important ways from other weapons restrictions. The formation

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130. *Id.*

131. *Id.*

132. *Id.*; Geneva Call, *Statement of Geneva Call to the Fourth Meeting of State Parties to the Ottawa Convention*, available at <http://www.genevacall.org/home/18sep2002.htm> (Sept. 18, 2002).

133. *Id.*

134. Geneva Call, *Deed of Commitment Under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*, available at <http://www.icbl.org/wg/nsa/library/GCDeed.html> (Nov. 1, 2002).

135. *Id.*

136. Geneva Call, *Statement of Geneva Call to the First Session of Standing Committee Meetings*, available at <http://www.genevacall.org/home/> (Feb. 3, 2002).

137. Geneva Call, *Report of the Geneva Call Mission to the Moro Islamic Liberation Front in Central Mindanao, Philippines*, available at <http://www.genevacall.org/home/> (Apr. 30, 2002).

138. See Hague Declaration Concerning Expanding Bullets, July 29, 1899, 1 A.J.I.J. 157-59 (Supp.) (banning the use of dum-dum bullets); Protocol for the Prohibition of the Use of War in Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571. See also, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Jan. 13, 1993, S. Treaty Doc. No. 21 (1993), reprinted in 32 I.L.M. 800 (1993).

and ratification of the Landmine Ban Treaty suggests that civil society and international law have a role to play not only in restricting the use of weapons to be developed in the future,<sup>139</sup> but also in encouraging the rejection of weapons in current use. Ban opponents fear that anti-vehicle landmines, small caliber munitions, depleted uranium rounds, fuel air explosives, naval mines, and even nuclear weapons might be eliminated using the ICBL and Landmine Ban Treaty as a template.<sup>140</sup> While this concern seems overstated, some evidence suggests that the combination of education and shaming techniques are being adopted by those seeking a change in the methods of modern warfare.

For instance, the emerging movement to ban cluster bombs is drawing on the lessons of the ICBL in many ways. Adherents of the cluster bomb ban are publicizing the issue, humanizing a security concern, drawing on the strength of NGO networks, and isolating specific users and sellers. Studies are being issued that document the harms to civilians from cluster bombs.<sup>141</sup> Appeals to U.S. leadership are being made.<sup>142</sup> For instance, thirty-seven NGOs belonging to the ICBL have initiated a “Call for a Moratorium on Cluster Bomb Use, Manufacture, Sale and Transfer.”<sup>143</sup> This new movement explicitly links cluster bombs and landmines in order to capitalize on the strong stigma already attached to landmines.<sup>144</sup>

This model is also being applied by the nascent movement to ban depleted uranium bullets and armor. A loose international coalition of like-minded NGOs is emerging.<sup>145</sup> Studies and reports detailing the possible harms of

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139. See, e.g., Protocol on Blinding Laser Weapons (Protocol IV), Oct. 13, 1995, 35 I.L.M. 1206, 1218 (1996) (entered into force July 30, 1998) (prohibiting a weapon that had never been used on the battlefield).

140. Center for Security Policy, *‘Let Us Count the Ways’ The Landmine Ban Would Disserve U.S. Interests*, available at [http://www.centerforsecuritypolicy.org/index.jsp?section=papers&code=97-D\\_18](http://www.centerforsecuritypolicy.org/index.jsp?section=papers&code=97-D_18) (1997).

141. Mines Action Canada, *The Campaign Against Cluster Bombs: Key Considerations for Mines Action Canada*, available at [http://www.minesactioncanada.org/documents/ct\\_cb\\_7june01.htm](http://www.minesactioncanada.org/documents/ct_cb_7june01.htm) (Mar. 2001).

142. Letter from Mennonite Central Committee to Colin Powell, <http://www.mcc.org/clusterbomb/powell.html> (Nov. 4, 2002).

143. National Council of Churches, *NCC, CWS Call on U.S. to Ban Landmines and Cluster Bombs*, <http://www.nccusa.org/news/00news107.html> (Dec. 5, 2000).

144. For example, Reverend Bob Edgar, General Secretary of the National Council of Churches commented, “The moral outrage generated by cluster bombs is just beginning to take shape and must be as contagious as the moral outrage generated by the landmines campaign.” *Id.* Reverend John McCullough, Executive Director of Church World Service added, “The senseless use of landmines and cluster bombs turns fertile land into killing fields . . . . The US and other military forces around the world must rethink their use of both of these weapons.” *Id.*

145. See, e.g., International Action Center, *Meeting Launches Movement Against Depleted Uranium*, at <http://www.iacenter.org/>. (Nov. 30, 2000) (describing the international actions undertaken in opposition to depleted uranium).

depleted uranium are proliferating.<sup>146</sup> Striking visual images of victims are being presented,<sup>147</sup> as are appeals to recognize the heightened vulnerability of children to depleted uranium's carcinogenic effects.<sup>148</sup> Comprehensive critiques of the government's defenses and studies on depleted uranium are being issued.<sup>149</sup> Activists are calling for a comprehensive ban.<sup>150</sup> The movement is also beginning to recognize the need to contest the claims concerning depleted uranium's military utility.<sup>151</sup> Shame is being directed at the United States for its involvement in the use and sale of depleted uranium.<sup>152</sup> The opponents of depleted uranium weapons have the same potential of creating a wide coalition of support ranging from the medical field, to veterans, to environmental and human rights groups.

More broadly, the International Campaign to Ban Landmines might influence actors working on entirely different agendas.<sup>153</sup> For instance, it has been suggested that the ICBL model be applied as a means of encouraging nations such as the United States to join the treaty to outlaw child soldiers and to join the International Criminal Court.<sup>154</sup> Similarly, environmentalists may simultaneously educate about the dangers of climate change while shaming the United States for staying outside the Kyoto Protocol.<sup>155</sup> While it is outside the scope of this article to predict when other movements will enjoy the same successes, the ICBL provides a valuable example of the benefits of: (1) expanding the focus of norm articulation, internalization, and enforcement from states to include corporations and non-state actors; (2) creating an information asymmetry in favor of a particular position; and (3) deploying shame effectively against holdout states.

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146. See, e.g., INTERNATIONAL ACTION CENTER, *METAL OF DISHONOR: HOW THE PENTAGON RADIATES SOLDIERS AND CIVILIANS WITH DEPLETED URANIUM* (John Catalinotto & Sara Flounders eds., 1997).

147. TAKASHI MORIZUMI, *A DIFFERENT NUCLEAR WAR: THE CHILDREN OF THE GULF WAR* (2002).

148. Michael Chossudovsky, *Low Intensity Nuclear War*, at <http://www.ratical.org/radiation/LowIntensityNW.html> (Jan. 2001).

149. Tod Ensign, *Burying the Past, Protecting DU Weapons for Future Wars*, in *METAL OF DISHONOR*, *supra* note 146, at 67.

150. Ramsey Clark, *An International Appeal to Ban the Use of Depleted Uranium Weapons*, in *METAL OF DISHONOR*, *supra* note 146, at 21.

151. Dan Fahey, *Science or Science Fiction? Facts, Myths, and Propaganda in the Debate over Depleted Uranium* 26, available at <http://www.antenna.nl/wise/uranium/pdf/dummyths.pdf> (Mar. 12, 2003) ("The myth that DU saved thousands of lives and the suggestion it is indispensable to the US arsenal serve to both justify the continued use of DU munitions and dampen concerns about the health and environmental effects of DU.").

152. Helen Caldicott, *A New Kind of Nuclear War*, in *METAL OF DISHONOR*, *supra* note 146, at 18-19.

153. For instance, some have suggested its extension of the ICBL model to assault rifles. *Beyond Landmines*, *THE NATION*, Nov. 3, 1997, at 3.

154. HUBERT, *supra* note 53, at 41.

155. See Conference of the Parties to the Framework Convention on Climate Change: Kyoto Protocol, 3rd Sess., U.N. Doc. FCCC/CP/1997/L.7/Add.1, 37 I.L.M. 22 (1997).

## **B. Forum Choice**

In encouraging international law formation outside traditional channels, the ICBL effectively capitalized on international law's expressive function to deepen and hasten the formation of an international norm against landmines. While those states interested in either burying the landmine issue or preserving opposition to a total ban continued to work through Protocol II of the UN Convention on Conventional Weapons and the Conference on Disarmament, middle power states and the ICBL were able to construct a new treaty-making framework known as the Ottawa Process.<sup>156</sup> States that joined the Ottawa Process signaled their support for a robust international norm, while simultaneously shaming those outside the regime.<sup>157</sup>

### **1. Convention on Conventional Weapons (CCW) and Conference on Disarmament (CD)**

Made through existing arms control venues, the early attempts to develop a norm against landmine use failed. The first diplomatic forum to regulate landmines, the UN Convention on Conventional Weapons, accomplished virtually nothing.<sup>158</sup> First, it was a mistake to choose a forum with few members. As of 1994, the Convention only had forty-one state parties.<sup>159</sup> These state parties represented only a small portion of landmine users and producers. Second, Protocol II, the part of the CCW that directly restricted landmine use, did not apply to domestic conflicts. This limited scope failed to address the conflicts in which landmine use was likely to be particularly devastating.<sup>160</sup> Third, Protocol II also ignored the incentives of states to continue use and of companies to maintain production of cheap mines. Without a strong norm against landmines, states might not see the need to use the more expensive self-destructive landmines.<sup>161</sup> Finally, while Article 3, section 3 of Protocol II forbade the "indiscriminate use" of landmines, the subsequent reliance on "feasible precautions . . . which are practicable or practically possible taking into account all the circumstances ruling at the time" rendered the prohibition practically meaningless.<sup>162</sup>

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156. *See infra*, Part II.B.2.

157. *Id.*

158. Lawson, *supra* note 124, at 149-59.

159. W. Hays Parks, *The Humanitarian Law Outlook*, in *CLEARING THE FIELDS*, *supra* note 80, at 45, 52.

160. Roberts & Williams, *supra* note 64, at 4.

161. Parks, *supra* note 159, at 55 (comparing self-neutralizing landmines at thirty dollars apiece whereas dumb landmines cost a mere fifty cents each).

162. Richard Falk, *Walking the Tightrope of International Humanitarian Law: Meeting the Challenge of Land Mines*, in *CLEARING THE FIELDS*, *supra* note 80, at 69, 78-79.

In addition to the weak restrictions on actual use, Protocol II lacked verification or enforcement procedures. Protocol II failed to outline mechanisms for either state or individual complaints.<sup>163</sup> No system existed to detect violations and, once discovered, even material breaches lacked any consequences.<sup>164</sup> In response to the consensus that Protocol II failed at reducing civilian casualties,<sup>165</sup> a review conference of the CCW was conducted in 1996.<sup>166</sup> The review conference tightened some of Protocol II's previous restrictions, yet it made little real progress toward a ban.<sup>167</sup>

Protocol II was a "paper-tiger" for a variety of reasons. A strong presumption in favor of landmine use allowed military concerns to dominate the drafting of Protocol II. Challenging this assumption within the existing law-making framework proved difficult. The CCW lacked effective norm entrepreneurship – the ICBL had not yet formed strong relations with pro-ban states.<sup>168</sup> Moreover, while non-enforcement need not devastate treaties, it was particularly troubling here as the underlying substantive norms about the reprehensibility of the use and sale of APMs were not firmly entrenched. No powerful state encouraged "fence-sitters" to ratify the CCW.<sup>169</sup> Also, the consensus-based amendment system meant any participating state could veto changes to the CCW.<sup>170</sup> Again, with only a weak norm against landmines, there was little political cost to employing these vetoes.

Several states interested in developing support for a landmine ban, including the United States, France, and the United Kingdom, urged the use of the Geneva Conference on Disarmament (CD).<sup>171</sup> Steeped in traditional interstate diplomacy and an emphasis on consensus, negotiations in the CD drew many powerful countries to the table.<sup>172</sup> This process gave strong states an effective veto over proposals they did not support, which clearly weakened the chances for a comprehensive ban.<sup>173</sup> The attempts to negotiate nuclear reductions also stalled

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163. *Id.* at 79.

164. *Id.*

165. Michael Dolan & Chris Hunt, *Negotiating in the Ottawa Process: The New Multilateralism*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 400.

166. Friends Committee on National Legislation, *supra* note 126, [http://www.fcnl.org/issues/arm/sup/lan\\_chron.htm](http://www.fcnl.org/issues/arm/sup/lan_chron.htm) (n.d.).

167. Cameron et al., *supra* note 73, at 6.

168. HUBERT, *supra* note 53, at 16-17.

169. Cyrus Vance & Herbert S. Okun, *Eliminating the Threat of Land Mines: A New U.S. Policy*, in *CLEARING THE FIELDS*, *supra* note 80, at 198, 201 (explaining that the lack of U.S. leadership contributed to the reluctance of other states to ratify).

170. *See* Convention on Conventional Weapons, *supra* note 10, art. 8.

171. Brian W. Tomlin, *On A Fast Track to a Ban: The Canadian Policy Process*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 185, 195.

172. Dolan & Hunt, *supra* note 165, at 404.

173. Thomas Hajnoczi et al., *The Ban Treaty*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 293-94.

this process.<sup>174</sup> The United States even failed to get landmines onto the 1997 CD agenda.<sup>175</sup>

The ICBL was skeptical of the CD's ability to achieve a total ban. It viewed President Clinton's commitment to the CD's slow track approach as a way to provide political cover for his desire to retain APMs in Korea.<sup>176</sup> Moreover, many landmine-infested countries were reluctant to join the CD because they felt it was so dominated by first world powers.<sup>177</sup> The ICBL attacked the early decision of the United States, United Kingdom, and France to use the CD as the sole forum for negotiations on a landmine ban<sup>178</sup> and instead urged that all countries should join the Ottawa Process.<sup>179</sup> This decision turned out to be a fortuitous one as the CD conducted no negotiations between 1999 and 2001.<sup>180</sup>

## 2. Ottawa Process

Unlike Protocol II, the Ottawa Process relied on a strong norm against landmine use and used regional strategies to gain support for its underlying norms. In late 1996, several states, along with the ICBL, decided to initiate a fast-track strategy for developing a ban treaty.<sup>181</sup> This strategy, known as the Ottawa Process, represented a new approach to treaty-making. Several regional meetings were conducted prior to the actual treaty negotiations to pressure states to participate in the final drafting process.<sup>182</sup> In some areas, NGOs were highly important, while in others, more traditional routes of diplomacy were utilized.<sup>183</sup> As compared to Protocol II and the CD, the Ottawa Process's regionally tailored strategies massively increased state involvement in the ban.<sup>184</sup> The Ottawa conference represented a milestone in treaty-making. One hundred and twenty-

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174. *Mexico Blocks Conclave on World Land-Mine Ban*, WASH. POST, Jun. 13, 1997, at A33.

175. Mary Wareham, *Rhetoric and Policy Realities in the U.S.*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 212, 228.

176. A. Maureen Rouhi, *Landmines: Horrors Begging for Solutions*, CHEM. & ENG. NEWS, Mar. 10, 1997, at 22; *see also*, HUBERT, *supra* note 53, at 19, 38.

177. HUBERT, *supra* note 53, at 19.

178. *See* Wareham, *supra* note 175, at 228.

179. Stephen Goose, *Antipersonnel Landmines and the Conference on Disarmament*, available at <http://www.icbl.org/resources/goosefeb99.html> (Feb. 1999).

180. Wade Boese, *Conference on Disarmament Begins 2002 Session*, ARMS CONTROL TODAY (Mar. 2002), available at [http://www.armscontrol.org/act/2002\\_03/cdmarch02.asp](http://www.armscontrol.org/act/2002_03/cdmarch02.asp).

181. Dep't of Public Information, United Nations, *Fighting Landmines: The Ottawa Process and the United Nations Role*, at <http://www/un.org/NewLinks/mine2.htm> (Dec. 15, 1997).

182. Robert J. Lawson et al., *The Ottawa Process and the International Campaign to Ban Landmines*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 160, 173.

183. HUBERT, *supra* note 53, at 35.

184. *Id.* at 22.



two states attended the conference supporting the ban with the intent to sign a treaty that had been developed in only one year.<sup>185</sup>

Under the Ottawa Process, NGOs were actively involved in negotiations and the development of the treaty text. When conducting meetings to allow states to comment on the ban, NGO involvement was solicited.<sup>186</sup> Both the ICRC and the ICBL were invited to the meetings, and played a large role in all stages of the treaty-making process.<sup>187</sup> As the ICBL was firmly committed to a total ban, its involvement during the treaty-making process was important. The ICBL could identify and publicize states that were trying to undermine the movement toward a quick, comprehensive ban. Its involvement in the Ottawa Process demonstrates the potential of NGOs to play a greatly enhanced role in both norm maintenance and future international law formation.<sup>188</sup>

### 3. Lessons for Future Campaigns

Social movements must choose a forum for international change. For existing campaigns concerned with weapon systems, the choice is rapidly approaching. For example, in the current debate over cluster bombs, some advocates suggest the expansion of the Landmine Ban Treaty to include cluster bombs,<sup>189</sup> while others prefer more traditional mechanisms like the CCW<sup>190</sup> where its review conference is already beginning to address the harms of cluster munitions.<sup>191</sup> In another example, depleted uranium opponents currently face the choice of whether to expend their resources trying to regulate depleted uranium through the Geneva Convention, while others instead suggest adding it to the Landmine Ban Treaty.

Emerging campaigns to ban particular weapon systems, or those trying to achieve global change more generally may benefit from utilizing fast-track,

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185. 122 States Sign Ottawa Landmine Treaty, ARMS CONTROL TODAY (Nov.-Dec. 1997), available at [http://www.armscontrol.org/act/1997\\_11-12/briefnov.asp#brief4](http://www.armscontrol.org/act/1997_11-12/briefnov.asp#brief4).

186. Lawson et al., *supra* note 182, at 173.

187. Williams & Goose, *supra* note 51, at 43; Stuart Maslen, *The Role of the International Committee of the Red Cross*, in *TO WALK WITHOUT FEAR*, *supra* note 51, at 80, 91-94.

188. John King Gamble & Charlotte Ku, *International Law – New Actors and New Technologies: Center Stage for Ngos?*, 31 LAW & POL'Y INT'L BUS. 221, 236 (2000) (lamenting that while NGOs traditionally help in "issue identification and value setting," they have had real "difficulty finding a seat at the table of authoritative decision making.").

189. Carmel Capati, Note, *The Tragedy of Cluster Bombs in Laos: An Argument for Inclusion in the Proposed International Ban on Landmines*, 16 WIS. INT'L L.J. 227, 240-43 (1997).

190. Virgil Wiebe, *Footprints of Death: Cluster Bombs as Indiscriminate Weapons Under International Humanitarian Law*, 22 MICH. J. INT'L L. 85, 152-57 (2000).

191. Edward Cummings, *Explosive Remnants of War*, at <http://www.ccw-treaty.com/ccw0405.html> (Apr. 5, 2001) (discussing proposals to regulate cluster munitions within the context of the CCW).

independent treaty regimes. Within two years, the Ottawa Process yielded a ratified treaty with a comprehensive ban. Effective transnational norm entrepreneurship may help explain the difference between the success of the Ottawa Process and the failure of Protocol II and the CD. By welcoming the participation of NGOs, an independent treaty regime may better allow norm entrepreneurs to maintain focus on the underlying norm. Independent treaty regimes also forgo consensus style negotiations – the lack of veto power by hard power states is particularly important to those seeking to change existing security practices. Independent treaty regimes may also possess the diplomatic flexibility to allow norm entrepreneurs to pursue regional strategies to gain support for the underlying norms.

### III. OVERCOMING UNITED STATES' INTRANSIGENCE

Without ratification by the United States, some states and scholars were skeptical of the Landmine Ban Treaty's ability to entrench a norm against landmine use. Although the United States did not vocally oppose the end goal of the Landmine Ban Treaty, (at the close of the Ottawa Process) it made clear that it would not be joining for quite some time, if ever.<sup>192</sup> Middle power states and NGOs took the lead in developing a norm against landmine use and in creating a treaty that reinforced that norm. This section provides early empirical evidence suggesting that the treaty has met with widespread, though not universal, compliance by state parties. The following section also chronicles the United States' deployment of second-best responses and other ways that its behavior has been constrained by the Landmine Ban Treaty. The case study of landmines suggests that the United States' increasing reluctance to join important treaty regimes need not deter those who seek change through international law.

#### **A. Norm Promotion: Alternatives to U.S. Leadership**

In the post-Cold War world, optimism about the United States' ability and willingness to lead international law on human rights, the environment, and arms control issues has waned.<sup>193</sup> The United States has declined to join many important treaty regimes such as the Law of the Sea, the prohibition against child soldiers, the Kyoto Protocol, the Biological Weapons Convention, the International Criminal Court, international death penalty prohibitions, and the Convention on Biological Diversity.<sup>194</sup> Furthermore, President George W. Bush

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192. Karl Inderfurth, *Eliminating Landmines: A Time for Action*, 3 USIA ELEC. J. (July 1998), at <http://usinfo.state.gov/journals/itps/0798/ijpe/pj38inde.htm> (explaining that the United States would only join by 2006 if it fielded suitable APM alternatives).

193. See Huntington, *supra* note 109, at 39-42 (articulating American unwillingness to accept unilateral global leadership).

194. Third United Nations Convention on the Law of the Sea, Dec. 10 1982, 1833

has signaled an unwillingness to change this path in the future.<sup>195</sup> The case study of landmines provides hope that the United States' increasing disdain for treaty regimes need not prevent the use of treaties to reinforce norms to change existing international practices.

### I. Middle Power States

Middle power states – dedicated to multilateral diplomacy, compromise, and good international citizenship<sup>196</sup> – are well suited to entrench emerging international norms in law. Middle power states that possess little hard power<sup>197</sup> can instead use soft power and diplomatic savvy to induce states to join their efforts.<sup>198</sup> While previous arms control treaties, like the Non-Proliferation Treaty and the Chemical Weapons Convention, have been driven by the United States and other hard powers, middle powers provided the momentum for the Landmine Ban Treaty.<sup>199</sup> Austria, Belgium,<sup>200</sup> Canada, Denmark, Norway, Philippines, South Africa, Sweden,<sup>201</sup> and Switzerland led many of the actions and negotiations.<sup>202</sup> These states spearheaded the diplomatic efforts to get recalcitrant

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U.N.T.S. 3, 397, 21 I.L.M. 1261 (entered into force Nov. 16, 1994); Convention on the Elimination of All Forms of Discrimination Against Women, Mar 1, 1980, 1249 U.N.T.S. 13, 19 I.L.M. 33 (entered into force Sept. 3, 1981); United Nations Convention for the Rights of the Child, U.N. GAOR, 44th Sess., U.N. Doc. A/RES/44/25, 28 I.L.M. 1448 (1989); Kyoto Protocol, *supra* note 155; Biological Weapons Convention, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.N.T.S.163, 11 I.L.M. 309; Rome Statute of the International Criminal Court, Jul. 17, 1998, UN Doc A/ CONF. 183/9, 37 I.L.M. 999 (1998); Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at Abolition of the Death Penalty, G.A. Res. 44/128, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/824 (1989); Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818.

195. For instance, the current administration has been reticent to join the newly forming tobacco treaty regime. David Lazarus, *Tobacco Treaty in Limbo*, SAN FRANCISCO CHRON., May 25, 2003 at 11; *US May Reject Tobacco Treaty*, FIN. TIMES (London), Mar. 3, 2003, at World News 9.

196. COOPER ET AL., *supra* note 7, at 19.

197. Hard power consists of the reliance on the possibility of force and economic sanctions to exert influence, whereas soft power is the deployment of “the complex machinery of interdependence.” Joseph S. Nye, Jr., *The Misleading Metaphor of Decline*, THE ATLANTIC MONTHLY, Mar. 1990, at 86.

198. Wareham, *supra* note 175, at 230-33.

199. Human Rights Watch, *Human Rights Watch World Report 1998: Arms Project*, at [http://hrw.org/hrw/worldreport/Back-02.htm#P148\\_28019](http://hrw.org/hrw/worldreport/Back-02.htm#P148_28019) (July 28, 1998) (“[T]he ‘Ottawa Process’ . . . [was] driven not by the ‘big’ powers but by middle and smaller states, including those from the developing world.”).

200. Williams & Goose, *supra* note 51, at 27 (noting that Belgium was the first state to simultaneously ban the use, production, trade, and stockpiling of landmines).

201. *Id.*

202. HUBERT, *supra* note 53, at 20.

countries to attend the meetings and join the Ottawa Process.

Canada presented a striking example of middle power leadership. Canada joined the ICBL in calling for a full landmine ban at the conclusion of the CCW review conference.<sup>203</sup> At the Ottawa Conference of 1996, Canadian Foreign Minister Lloyd Axworthy announced his goal for negotiating a ban treaty within one year.<sup>204</sup> Never before had either an arms control or humanitarian treaty been negotiated on such an accelerated timetable. The ICBL credited Axworthy's diplomatic courage with creating the momentum to achieve the speedy signing and eventual ratification of the Landmine Ban Treaty.<sup>205</sup>

In fairness, the United States often promoted the goal of a ban – it was not clear it would reject the Landmine Ban Treaty until the last moments leading up to the Treaty's first signatures.<sup>206</sup> The United States had emerged as an early leader in the fight against landmines.<sup>207</sup> In 1992, the U.S. Senate approved a one-year unilateral moratorium on all exports, sales, and transfers of landmines.<sup>208</sup> In 1993, it extended the moratorium for another three years.<sup>209</sup> Even the ICBL initially cited the leadership of the United States as essential to the ban.<sup>210</sup> Ultimately, the United States was unwilling to commit to a total ban. Instead, it wanted an explicit exception for landmine use in Korea<sup>211</sup> and a lengthy delay of the treaty's entry into force so it could continue to deploy landmines.<sup>212</sup> The United States also argued for a supreme national interest clause that would allow easy withdrawal from its treaty obligations.<sup>213</sup> While the United States attended the treaty negotiations, it refused to back down on these demands.

Some realists have argued that security concerns dictated the leadership of middle power states.<sup>214</sup> Under this account, the security interests of states like

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203. Cameron et al., *supra* note 73, at 6.

204. *Id.*

205. *Id.* at 7 (“Moreover, courageous leadership was critical: the ban would not have been achieved, at least not with such spectacular speed, without Canadian Foreign Minister Lloyd Axworthy's willingness to go out on a diplomatic limb.”).

206. Wareham, *supra* note 175, at 232-33.

207. Jody Williams, *Landmines – We Must Ban Them Now!*, in *BATMAN: DEATH OF INNOCENTS*, *supra* note 72.

208. Vance & Okun, *supra* note 169, at 202.

209. *Id.*

210. *Id.* at 208 (The ICBL commented “[T]here would not be a chemical weapons treaty today had it not been for strong support from the United States . . . . As the world's most powerful nation, the United States has both a responsibility, and an opportunity, to press for a solution to eliminate the land mine threat . . . . With strong American leadership, we believe a complete ban . . . is possible.”).

211. HUBERT, *supra* note 53, at 24.

212. Lawson et al., *supra* note 182, at 177.

213. *Id.*

214. Patricia S. Huntington, *Landmines and U.S. Leadership: A View from the Field*, National Committee on Foreign Policy, <http://www.ncafp.org/security/landmines.htm> (Dec. 2000).

the United States, Russia, and China had made promotion of the ban against their self interests, while active ban supporters were traditionally weak military powers not likely to be drawn into conflagrations.<sup>215</sup> Admittedly, no Ottawa Process leader had flash-point borders to protect like China, Russia, South Korea, or Israel. Yet, these factors only explain the unwillingness of powerful states to lead, not the motivation of middle powers to create an entirely new forum. Middle states knew that the United States actively opposed a full ban, but pursued the fast-track approach nonetheless.<sup>216</sup> They recognized that the power to create a global consensus opposing the use of landmines could prevent diplomatic retaliation from even the strongest states. This suggests that international regimes can indeed successfully develop, even in the face of minimal support or even active hostility from the United States.

## 2. Non-Governmental Organizations (NGOs)

In addition to the striking leadership of middle powers, the ICBL demonstrated the increasing potential of NGOs to work together to initiate change. The ICBL, starting with six NGOs, eventually grew to encompass over a thousand groups worldwide.<sup>217</sup> The ICBL forged links across a variety of interests, including groups with primary interests such as human rights, arms control, humanitarian assistance, the environment, veterans' affairs, women's and children's rights, demining, and victim rehabilitation.<sup>218</sup> Even though the groups had different reasons to be concerned about the landmine problem, they shelved their disagreements and peripheral concerns to reach a consensus on pursuing a comprehensive ban.

The diffuse leadership structure of the ICBL also distinguished it from many other NGO coalitions. There was no central headquarters or authority per se – the USCBL did not dictate the direction of campaigns in other nations.<sup>219</sup> At the same time, the ICBL coalition accomplished much more than mere information sharing. ICBL landmine conferences conducted training and campaign capacity building workshops.<sup>220</sup> As ICBL coordinator Jody Williams explained, “[m]embers of the ICBL always meet regularly to plot out overall strategies and plan joint actions, but beyond that each NGO and each National Campaign was free to develop its own work best suited to its mandate, culture, and circumstances.”<sup>221</sup> Much in the same way that the Ottawa Process focused on the

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215. See DAVID LENARCIC, *KNIGHT-ERRANT? CANADA AND THE CRUSADE TO BAN ANTI-PERSONNEL LAND MINES* 31 (1998).

216. Wareham, *supra* note 175, at 234.

217. Human Rights Watch, *supra* note 199.

218. *Id.*

219. Williams & Goose, *supra* note 51, at 28.

220. *Id.* at 25.

221. Jody Williams, *Landmines Ban: From Vision to Reality*, at <http://www.icbl.org/resources/fromvisiontoreality.html> (1998).

inclusion of all state actors and discouraged domination by first world powers, the ICBL promoted the active involvement of global civil society and avoided the cultural imperialism that often accompanies human rights campaigns.

This sensitivity to local conditions provides a good model for future NGO coalitions. It reflects the constructivist precept that local and national identities do matter, as not all states are driven by the same interests or act in the same way.<sup>222</sup> The leaders of each local campaign can tailor their movement to the values of their domestic audience.

The ICBL also exercised a unique role in the treaty-making process. At the Oslo negotiations, the ICBL was an official observer.<sup>223</sup> This type of access to treaty negotiations was unprecedented in both arms control and humanitarian law treaties.<sup>224</sup> While the ICBL could not vote, it attended all the working group sessions and informally suggested treaty language.<sup>225</sup> During the negotiations, the ICBL focused its publicity and shaming on states that did not support a total ban.<sup>226</sup> The *Ban Treaty News*, published by the ICBL, kept the conference participants abreast of all the relevant actions and statements discouraging the ban.<sup>227</sup> If diplomacy follows this approach, the future of treaty-making could be radically altered. The inclusion of NGOs in treaty negotiations could raise the stakes for states that want to publicly appear supportive of initiatives, while quietly maneuvering during working sessions to weaken them.

### 3. Empirical Success: Norms and Verification

The Landmine Ban Treaty has locked in a commitment to the abolition of landmine use through the combination of norms and verification procedures. In order to strengthen the norm against landmine use, supporters pursued a comprehensive ban rather than restrictions and regulations. Ban adherents realized that under Protocol II, the balancing of military and humanitarian interests failed to yield an effective norm against landmine use.<sup>228</sup> Thus, they decided there would be exceptions neither for metallic landmines nor for

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222. Stephen D. Krasner, *What's Wrong with International Law Scholarship?: International Law and International Relations*, 1 CHI. J. INT'L L. 93, 97 (2000) ("Constructivists have argued that this is far too simple, that the behavior of actors, even in an anarchic environment, depends upon their identities and their underlying values. Not all states act in the same way. National culture can be consequential.").

223. Williams & Goose, *supra* note 51, at 43.

224. Kenneth Roth, *New Minefields for N.G.O.'s*, THE NATION, Apr. 13, 1998, at 22 ("In recognition of those important roles, governmental proponents of a landmines ban insisted that the N.G.O. campaign be granted access and the right to comment during final treaty negotiations – a first for any arms control or humanitarian law negotiation.").

225. HUBERT, *supra* note 53, at 25-26.

226. Dolan & Hunt, *supra* note 165, at 411.

227. *Id.*

228. *See supra*, Part II.B.1.

technologically sophisticated self-destructing landmines.<sup>229</sup> Powerful countries would not be granted limited exceptions like the one the United States sought for border defense in Korea.<sup>230</sup> Also, states would not be permitted to use landmines in internal conflicts.<sup>231</sup> Instead, the ICBL and middle power states pursued a strategy of “no exceptions, no reservations, no loopholes.”<sup>232</sup>

This insistence for total ban strengthened support for a global norm against landmine use. First, simple mandates were easier for states to follow as “a blanket taboo [was] much easier to understand than complex restrictions on how landmines could be used.”<sup>233</sup> Second, it was less burdensome to verify compliance with a total ban than a partial ban. Inspectors did not have to determine if landmines employed working self-destruct mechanisms or possessed the required metal content. Once stockpiles were destroyed, enforcement agents only had to determine whether capacity was being rebuilt, rather than having to continually monitor particular stockpile reductions. Third, in achieving parity among states, a total ban appeared fair, which in turn, increased its acceptability.<sup>234</sup> Wealthy states were not permitted to retain technologically sophisticated APMs,<sup>235</sup> and powerful states were not allowed exceptions for border defense. With its total prohibition, the Landmine Ban Treaty sent a strong message that landmine use was indefensible in every context.

Because of the strength of the norm against landmine use, there has been quick and widespread acceptance of the treaty. One hundred and forty-seven countries have signed the ban, and of these, one hundred and thirty-four countries have ratified or acceded to the treaty,<sup>236</sup> including every member of NATO, with the exceptions of the United States and Turkey.<sup>237</sup> While there are some very important non-signatories such as China, Russia, India, Pakistan, Iraq, and the

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229. See HUBERT, *supra* note 53, at 34 (“The failure of the so-called smart mine regime to become the principal international response to the landmine crisis can be attributed largely to effective ICBL campaigning.”).

230. Williams & Goose, *supra* note 51, at 36.

231. *Id.*

232. *Id.*

233. Richard Price, *Compliance with International Norms and the Mines Taboo*, in TO WALK WITHOUT FEAR, *supra* note 51, at 347.

234. THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS* (1995).

235. On the other hand, it may be more painful to poorer countries to lose such a cheap weapon with no meaningful access to the more expensive alternatives. Even so, poorer countries seemed to feel parity would come from depriving all states of the weapon. Surely drafting a treaty asking poor countries to give them up, while enshrining the United States’ ability to retain them, would be the worst of all worlds.

236. Wade Boese, *The Ottawa Convention at a Glance*, ARMS CONTROL TODAY (June 2003), <http://www.armscontrol.org/factsheets/ottawa.asp?print>.

237. International Campaign to Ban Landmines, *Landmine Monitor Report 2001*, Executive Summ. 5 (2001), available at <http://www.icbl.org/lm/2001/execsum.pdf> [hereinafter *Report 2001*].

United States, most of the non-signatories felt compelled to vocally oppose landmines, if not support a comprehensive ban.<sup>238</sup> For instance, China has gone so far as to renounce production for landmine exports, a major accomplishment, as it was one of the largest global exporters.<sup>239</sup>

To enforce the norm against landmine use and the treaty's substantive mandates, the Landmine Ban Treaty contained detailed transparency measures and provided resources to detect violations. Article 7 committed each state party to report on their national implementation measures,<sup>240</sup> their landmine stockpiles,<sup>241</sup> the location of all mined areas,<sup>242</sup> the status of conversion of landmine production facilities,<sup>243</sup> landmine destruction,<sup>244</sup> and the technical characteristics of all previously used or produced landmines.<sup>245</sup> The Landmine Monitor, consisting of a "global reporting network, a central database, and an annual report," was established to detect violations.<sup>246</sup> The Landmine Monitor's investigators visited other countries, collected information on possible landmine use and production, and compiled an annual report.<sup>247</sup> The information and publicity generated by these reports enabled the ICBL and other ban supporters to pursue a shaming strategy against treaty violators.

While empirical data on the effects of the Landmine Ban Treaty is difficult to acquire, the Landmine Monitor reports suggest widespread compliance with treaty mandates as to transparency, production, transfer, stockpiles, and use.<sup>248</sup> First, the overwhelming majority of state parties have complied with initial transparency requirements.<sup>249</sup> This early compliance is important as it makes ongoing verification of treaty compliance easier by providing clear baselines of comparison. Second, landmine production has been significantly reduced. Forty-one states, including "eight of the twelve biggest producers and exporters over the

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238. *Id.*

239. Bob Keeler, *U.S. Loses Moral Ground on Land Mine Ban*, *NEWSDAY*, Oct. 21, 2002, at A24.

240. Ottawa Convention, *supra* note 1, art. 7 § a.

241. *Id.* art. 7, § b.

242. *Id.* art. 7, § c.

243. *Id.* art. 7, § e.

244. *Id.* art. 7, § f.

245. Ottawa Convention, *supra* note 1, art. 7, § h.

246. International Campaign to Ban Landmines, *Call for Landmine Monitors*, at <http://www.icbl.org/prelease/july25.html> (July 25, 1998).

247. *Id.*

248. "[T]here is decreased use of antipersonnel mines, a dramatic drop in production, an almost complete halt to trade, rapid destruction of stockpiled mines, fewer new mine victims in key affected countries, and more land demined." International Campaign to Ban Landmines, *Landmine Monitor Report 2002: Introduction*, at <http://www.icbl.org/lm/2002/intro/> (last modified Aug. 23, 2002) [hereinafter *Report 2002*].

249. Human Rights Watch, *Landmine Monitor Fact Sheet: Status of Implementation of the 1997 Mine Ban Treaty*, at <http://www.icbl.org> (May 19, 2003).



past thirty years,” have completely eliminated the production of APMs.<sup>250</sup> This leaves only thirteen producing states.<sup>251</sup> Third, landmine exports have been almost entirely eliminated. Since the Landmine Ban Treaty, there have not been any verified shipments of landmines between countries.<sup>252</sup> Moreover, there has been “a virtual absence of mines – legitimate or otherwise – at arms shows and military equipment exhibitions this year . . . even the nonsignatories to the Mine Ban Treaty seem to feel the need to appear politically correct.”<sup>253</sup> All nations, except for Iraq, formally state that they do not export landmines.<sup>254</sup> Of non-signatories, many have official export moratoriums or bans in place.<sup>255</sup> Russia and China both allow exports as consistent with the CCW, but their last known significant exports were in 1995.<sup>256</sup> Fourth, major stockpile reductions are also underway. Approximately 27,000,000 AP landmines have been destroyed in recent years.<sup>257</sup> Between state parties and signatories, about 16,000,000 to 18,000,000 more landmines are slated for destruction.<sup>258</sup> Only seven state parties have not begun the process, whereas several states have already completed destruction of their stockpiles.<sup>259</sup> Finally, the overall use of landmines has been reduced compared to the early 1990s and the trend is toward further reductions.<sup>260</sup> In the last reporting period, the Landmine Monitor has only confirmed landmine use by one treaty signatory.<sup>261</sup> Even such important non-signatories as Israel and Kyrgyzstan did not use landmines in the last reporting period.<sup>262</sup> Given the extensive use of landmines prior to the treaty, establishing a complete and immediate taboo against

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250. *Report 2001*, *supra* note 237.

251. *Id.*

252. *Id.* at 13.

253. JANE’S, JANE’S MINES AND MINE CLEARANCE 2000-2001, 22-23 (5th ed. 2001).

254. *Report 2001*, *supra* note 237, at 9.

255. *Id.* at 10.

256. *Id.*

257. *Id.* at 12.

258. International Campaign to Ban Landmines, *Landmine Monitor Report 2003*, available at <http://www.icbl.org/lm/2003/findings.html> (2003) [hereinafter *Report 2003*].

259. Human Rights Watch, *supra* note 249.

260. *See Report 2002*, *supra* note 248, at <http://icbl.org/lm/2002/intro/banning.html>.

Since the antipersonnel mine ban movement began to take hold in the mid 1990s, there has been a marked drop in global use of antipersonnel mines. In recent years, antipersonnel mines have been used by fewer countries and in lesser numbers than seen from the 1960s through the early 1990s, when the global landmine crisis was created. There have been notable aberrations from the general pattern of decreased use, but the overall trend has been positive, even with respect to non-States Parties, as the international norm against the antipersonnel mine has spread.

*Id.*

261. *Id.*

262. *Id.*

their use would be an impossible task.<sup>263</sup> However, the implementation of the treaty's mandates suggests strong support exists for the development of a norm against landmine use, production, stockpile, and transfer.

These changes described above also demonstrate a real commitment to the longevity of the Landmine Ban Treaty. The combination of stockpile reductions and export restrictions increase the costs to state parties to break out of the treaty. In a world with a treaty, states no longer have easy access to landmines; rather they must incur greater political and economic costs to acquire them. While landmines once accompanied security assistance packages,<sup>264</sup> previous recipients must now invest in self-production, and if they are members to the treaty, they must do so covertly. Raising the costs effectively reduces the attractiveness of landmine use.<sup>265</sup> The treaty also takes the decision whether to use landmines away from militaries and subjects it to the democratic process.<sup>266</sup> Third, now that the ban is in place, producers of foam, anti-tank landmines, and other possible APM replacements have a greater incentive to aggressively develop those alternatives. The combination of these factors suggest the durability of the Landmine Ban Treaty and the norm against landmines.

### **B. Norm Enforcement: Treaty Limitations as Constraints on the United States**

This section argues that state parties can use the Landmine Ban Treaty to indirectly force the United States to forego landmine use in many situations. The Landmine Ban Treaty might be read to preclude the United States from prepositioning landmines on the soil of state parties, transferring landmines through the jurisdiction of state parties, or engaging in joint operations with state parties while employing landmines. Of course, any state is always free to prohibit the United States from undertaking these actions. Widespread accession to the

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263. Kevin Cahill, *Introduction to CLEARING THE FIELDS*, *supra* note 80, at 1, 2-3 (suggesting that every country and dissident group can possess the technological know-how to produce APMs.).

264. HUMAN RIGHTS WATCH ARMS PROJECT & PHYSICIANS FOR HUMAN RIGHTS, *supra* note 60, at 63, 105-06.

265. Kenneth Anderson & Monica Schurtman, *The United Nations Family: Challenges of Law and Development: The United Nations Response to the Crisis of Landmines in the Developing World*, 36 HARV. INT'L L.J. 359, 362 (1996) (“[T]otal compliance is not the issue. It is . . . a matter of how most effectively to raise the cost of landmines to end-users in the field. A large part of what constitutes the ‘crisis’ in land mines arises from the fact that they are a pure commodity – cheap and available to any combatant in limitless supply.”).

266. Paul Lightfoot, *The Landmine Review Conference: Will the Revised Landmine Protocol Protect Civilians?*, 18 FORDHAM INT'L L.J. 1526, 1561 (1995) (“Rather than placing restrictions on the choices made by military forces, the problem must be addressed at its root. In order to prevent the damage inflicted upon civilians by landmines, efforts must be made to eliminate the availability of landmines for military use.”).

treaty, however, allows a state to prohibit these actions by pointing to a binding, collective obligation. In this way, the treaty is a plus factor to an already developing norm. It lowers the cost of enforcement by aggregating disesteem for the norm violator.<sup>267</sup> While the costs of expressing disapproval may be too high to sanction the United States in a given instance,<sup>268</sup> a treaty helps shift the balancing of costs.

Disagreement currently exists on these interpretive issues,<sup>269</sup> but this section argues the treaty language can fairly be read in support of a robust norm against landmines. According to the Vienna Convention on Treaties, which governs the interpretation of treaties, “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given of the terms of the treaty in their context and in the light of its object and purpose.”<sup>270</sup> The Landmine Ban Treaty’s preamble, which provides a sense of context and purpose, favors restricting a non-state party’s ability to rely on state parties to facilitate their own landmine use. For instance, the preamble exhorts that the state parties are “[d]etermined to put an end to the suffering and casualties caused by anti-personnel mines” and “urg[e] all States to pursue vigorously an *effective*, legally binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines.”<sup>271</sup> These purposes are best served by interpreting the treaty to preclude state parties from aiding, by any means, non-state parties with their landmine use. The comprehensiveness of the treaty, mentioned in the preamble and enshrined in the text, also suggests the desire to avoid loopholes that allow some states to continue landmine use.

Given the object and purpose of the treaty to enforce a strong norm against landmines, there are several pieces of relevant treaty language that may dictate that state parties constrain the actions of the United States. For instance, Article 1, Section 1(b) states that “[e]ach State Party undertakes never under any circumstances: to develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel landmines.”<sup>272</sup> In addition, Section 1(c) mandates that state parties never “*assist*, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this convention.”<sup>273</sup> Furthermore, Article 4 dictates that “each State Party undertakes

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267. Richard McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 393-94 (1997).

268. W. Bradley Wendel, *Mixed Signals: Rational-Choice Theories of Social Norms and the Pragmatics of Explanation*, 77 IND. L.J. 1, 15-16 (2002) (criticizing Professor McAdams for ignoring the costs of disapproval).

269. See Christian M. Capece, Note, *The Ottawa Treaty and its Impact on U.S. Military Policy and Planning*, 25 BROOK. J. INT’L L. 183 (1999).

270. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 332, 340.

271. See Ottawa Convention, *supra* note 1, pmbl. (emphasis added).

272. *Id.* art. 1, § 1(b).

273. *Id.* art. 1, § 1(c) (emphasis added).

to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are *under its jurisdiction or control*, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.<sup>274</sup> While none of this language explicitly prohibits joint operations, foreign stockpiles, or non-state party transit, it does not strain the text's plain language to read them that way.

The United States' continued use of landmines depends, in part, on whether states will choose to interpret and enforce the treaty as being in opposition to foreign stockpiles, non-state party transit, or joint operations. For instance, as to the stockpiling issue, several states have already acted based on the assumption that the treaty prohibits state parties from maintaining foreign stockpiles. After ratifying the treaty, Italy removed U.S. landmines from its territory.<sup>275</sup> Brazil has stated that it interprets the treaty to exclude stockpiles of non-state party landmines as stockpiles would be "incompatible with the spirit and letter of the convention."<sup>276</sup> Norway concluded an agreement with the United States that its landmines be removed by Norway's treaty compliance deadline in 2003.<sup>277</sup> Even if the state parties remain divided on this issue,<sup>278</sup> moving stockpiles to different countries may reduce their utility in conflict or raise the cost of their use.

Closely related to the stockpiling question is whether the prohibition on assistance in 1(c) or the ban on transfer in 1(b) extends to the transit of landmines by non-state parties through state party territory. The ICBL, the ICRC, and several state parties believe allowing transit is a clear violation.<sup>279</sup> Meanwhile, several important U.S. allies like Canada, Germany, and Japan have indicated that they think transit is permissible.<sup>280</sup> This is an area where the ICBL may want to focus its future norm entrepreneurship. Again, unless this is conclusively resolved in favor of non-violation, the potential transfer ban raises the cost of landmine use to the United States and may incur ill will by those who believe it to be a violation.

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274. *Id.* art. 4 (emphasis added).

275. *Report 2002*, *supra* note 248.

276. Standing Committee on the General Status and Operation of the Convention, *Meeting Report 4* (Feb. 1, 2002), available at [http://www.gichd.ch/pdf/mbc/SC\\_jan02/Detailed\\_Report\\_GSJan\\_02.pdf](http://www.gichd.ch/pdf/mbc/SC_jan02/Detailed_Report_GSJan_02.pdf) [hereinafter *Meeting Report*].

277. *Report 2003*, *supra* note 258, at <http://www.icbl.org/lm/2003/Norway/html>.

278. *Id.* at [http://www.icbl.org/lm2003/intro/banning.html#Heading 596](http://www.icbl.org/lm2003/intro/banning.html#Heading_596) (Germany, Japan and the United Kingdom allow U.S. stockpiles, because they do not believe the stockpiles to be under their jurisdiction or control).

279. The countries currently opposed include Austria, Croatia, Czech Republic, Denmark, France, Guinea, Italy, New Zealand, Portugal, Slovakia, South Africa, Spain, and Switzerland. Human Rights Watch, *Landmines Fact Sheet: Stockpiling and Transit of Foreign Antipersonnel Mines*, available at [http://www.icbl.org/lm/factsheets/stock\\_transit\\_foreign\\_jan\\_2002.html](http://www.icbl.org/lm/factsheets/stock_transit_foreign_jan_2002.html) (last visited Feb. 1, 2002).

280. *Id.*

If the United States deploys landmines, the Landmine Ban Treaty may also be interpreted to prevent state parties from participating in joint operations with the United States. For instance, several countries have stated their opposition to any rules of engagement that allow the use of APMs.<sup>281</sup> Even if it does not prevent interoperability of forces, U.S. military officials fear that state party coalition officers will not authorize U.S. troops to use landmines for fear of violating article 1(c).<sup>282</sup> Countries might feel that if coalition parties gain a tactical advantage from another coalition partner's emplacement of landmines, that action would violate the word "use" in article 1.<sup>283</sup> In line with their other positions, Brazil believes joint operations would violate the spirit and integrity of the treaty.<sup>284</sup> On the other hand, some states believe that joint operations with landmine-using non-party states would not violate the treaty.<sup>285</sup> For instance, upon ratification of the Landmine Ban Treaty, Australia declared that it interprets "assists" to mean the "actual and direct physical participation in any activity prohibited by the Convention, but does not include permissible indirect support such as the provision of security for the personnel or a non-state party to the Convention engaging in such activities."<sup>286</sup> Canada and the United Kingdom echoed similar understandings.<sup>287</sup>

The intersessional committees of the Landmine Ban Treaty are currently encouraging state parties to "clarify [their] views on legality of joint operations with non-signatories using landmines, foreign stockpiling and transit and outline national policies."<sup>288</sup> Thus, these interpretive issues might be resolved in the near future. Even if the interpretive issues remain open, they still may exert a positive influence on the United States. The continued existence of interpretive questions may encourage the United States to eventually join the treaty regime<sup>289</sup> in order to influence the outcome.<sup>290</sup>

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281. See Stephen Goose, *Interventions on Articles 1, 2, 3, 7, and Compliance*, at <http://www.icbl.org/news/2003/345.php> (May 16, 2003).

282. Capece, *supra* note 269, at 200-01.

283. See Ottawa Convention, *supra* note 1, art. 1, § 1a ("Each State Party undertakes never under any circumstances: to use anti-personnel mines.").

284. *Meeting Report*, *supra* note 276, at 4.

285. Ottawa Convention, *supra* note 1, Declarations.

286. *Id.*

287. *Id.*

288. Elizabeth Berstein & Stephen Goose, *Letter from ICBL to All Government Delegates to the Second Meeting of the Mine Ban Treaty's Standing Committee of Experts (SCE) on the General Status and Operation of the Convention*, at <http://www.icbl.org/sce/5/sce5ltrmay2000.php3> (May 2000). See also Goose, *supra* note 281; Susan Walker, *Intersessional Process Update 10*, available at <http://www.icbl.org> (Jan. 18, 2002).

289. For instance, the United States may want to weigh in on whether anti-vehicle mines with anti-handling devices are or will be banned by the treaty. See Goose, *supra* note 281.

290. Koh, *supra* note 35, at 638-39 (explaining how the United States' exclusion from

Early evidence suggests the Landmine Ban Treaty and the norm against landmine use are already beginning to constrain the United States. There was intense scrutiny as to whether the United States would choose to use landmines in Afghanistan and Iraq.<sup>291</sup> While the United States did announce that it felt free to use landmines,<sup>292</sup> it chose not to use them in either conflict.<sup>293</sup> Britain forced the United States to keep its landmines off the shore of Diego Garcia by prohibiting their prepositioning on the island.<sup>294</sup> Canada, Germany, and Norway all made clear they would comply with the Landmine Ban Treaty during any operations undertaken in Afghanistan.<sup>295</sup> Similarly, Britain referenced its treaty obligations when telling U.S. officials that its forces would not lay APMs in Iraq.<sup>296</sup> The norm against landmine use in conjunction with treaty obligations was able to raise the costs enough to make the United States forgo their use in these instances.<sup>297</sup>

### **C. Second-Best Responses: Norm Internalization and Signaling by the United States**

This section argues that the combination of norms and shame can motivate the United States into voluntarily undertaking second-best responses as both evidence of norm internalization and as a signal of its desire to continue as an esteemed international player. Social norm theory suggests that individuals, or here states,<sup>298</sup> engaged in repetitive interactions undertake signaling actions to demonstrate or maintain their reputations as future cooperators.<sup>299</sup> Once a norm is developed, through a treaty or other means, states may become more likely to go

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the Law of the Sea Treaty worked to its disadvantage in evolving issues of interpretation and international law development regarding the laws of the sea).

291. Ross Kerber, *US Is Criticized for its Plans to Use Landmines with Timers*, BOSTON GLOBE, Mar. 20, 2003, at A32; Human Rights Watch, *supra* note 330; Human Rights Watch, *Landmines in Iraq: Questions and Answers*, available at <http://www.hrw.org/campaigns/iraq/iraqmines1212.htm> (Dec. 2002).

292. Tom Squiteri, *U.S. Set to Use Mines in Iraq*, USA TODAY, available at [http://usatoday.com/news/world/2002-12-20-landmines-usat\\_x.htm](http://usatoday.com/news/world/2002-12-20-landmines-usat_x.htm) (Dec. 10, 2002).

293. Goose, *supra* note 281 (relaying that the United States did not use APMs in either Afghanistan or the latest conflict in Iraq).

294. Mike O'Brien, *Foreign and Commonwealth Affairs*, <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmhansrd/cm030113/text> (Jan. 13, 2003).

295. See Goose, *supra* note 281.

296. Wade Boese, *U.S. Might Use Landmines in Iraq*, ARMS CONTROL TODAY (Apr. 2003), available at [http://www.armscontrol.org/act/2003\\_04/landmines\\_apr03.asp](http://www.armscontrol.org/act/2003_04/landmines_apr03.asp).

297. "The lack of [U.S.] use [in Iraq and Afghanistan] shows that the international norm we have created against the antipersonnel mine is indeed taking hold." Goose, *supra* note 281.

298. "I believe a key overlooked factor [in explaining national obedience of international law] has been a nation's repeated participation in the transnational process." Koh, *supra* note 35, at 635.

299. ERIC A. POSNER, LAW AND SOCIAL NORMS 18-27 (2000).

out of their way to identify norm violators.<sup>300</sup> This identification may itself both serve to shame and to help the international community further internalize the norm. As explained earlier, shaming is least likely to change those already on the margins of a community and is most likely to alter the behavior of those that desire the community's esteem.<sup>301</sup> Given that constraint, shaming might provoke states like the United States to undertake actions to signal their willingness to continue as international cooperators, even if they decide not to join a particular treaty.

The example of landmines provides empirical support for the use of second-best responses as a signal of acceptance of a broad norm in the face of international shaming. While both President Bill Clinton and President George W. Bush declined to sign the Landmine Ban Treaty, the ICBL and the Landmine Ban Treaty altered United States' behavior in several important ways. The United States responded to shaming and internalized the norm against landmines by: (1) increased domestic funding for global demining efforts; (2) promotion of international landmine regulations; (3) adherence to a unilateral moratorium on landmine use; and (4) research on feasible replacement weapons.

### 1. Substituting Demining Leadership for Landmine Ban Leadership

As a result of domestic and international attention to the harm of landmines, the United States positioned itself to take the lead on the landmine issue. Numerous times, administration officials claimed the United States was a leader on this issue.<sup>302</sup> Yet, as it became increasingly clear the United States would not join the Landmine Ban Treaty, the ICBL and state parties attacked the United States for its empty rhetoric. In an attempt to deflect the shame directed at it and demonstrate its support for the abstract norms upon which the Landmine Ban Treaty rests, the United States deployed a second-best response by substituting demining leadership for ban leadership.

Just months before the Landmine Ban Treaty was opened for signatures, President Bill Clinton announced the Demining 2010 Initiative with its ultimate goal "to end the threat of landmines to civilians by the year 2010."<sup>303</sup> To carry out

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300. McAdams, *supra* note 267, at 362-64.

301. *Id.* at 355-76.

302. See e.g., Human Rights Watch, *supra* note 91, at <http://www.hrw.org/campaigns/mines/summary.html> (statement of Bill Clinton) ("Today I am launching an international effort to ban antipersonal landmines . . . The United States will lead a global effort to eliminate these terrible weapons and to stop the enormous loss of life."); *Secretary Albright Says Landmine Crisis Can Be Solved*, USIS Files, at <http://members.ozemail.com.au/~usissyd/hyper/WF980522/epf509.htm> (May 22, 1998) (statement of Madeline Albright) ("Of course, the best leadership is often by example – and as the world's demining leader, the United States will continue to ramp up our own financial commitment.").

303. Colleen Pettit, *State Department: The Demining 2010 Initiative*, 2 J.

this promise, the United States assembled donors, demining experts, and affected countries to share demining information, increase funding, and more efficiently allocate resources.<sup>304</sup> The United States also provided \$80,000,000 in demining funding.<sup>305</sup> Furthermore, President Bill Clinton appointed a special representative for Global Humanitarian Demining<sup>306</sup> and the United States hosted a conference to bring other participants on board.<sup>307</sup>

The Department of Defense, which vigorously opposed the United States' commitment to the Landmine Ban Treaty,<sup>308</sup> actively supported Demining 2010 by compiling and releasing information to make demining a substantially safer endeavor. For instance, they provided unclassified, free CD-ROMs to help "identify[], recover[] and dispose[] of unexploded ordnance and landmines,"<sup>309</sup> as well as disseminating results from a U.S.-led multinational test and evaluation on demining technology.<sup>310</sup> The U.S. Department of State also collected statistics of demining injuries in order to facilitate better demining equipment and training.<sup>311</sup> These efforts all closely followed the United States' refusal to sign the Landmine Ban Treaty in 1997.

The U.S. government used the demining initiatives as a way to maintain leadership and deflect criticism.<sup>312</sup> While it is possible that the Demining 2010 initiative might have been developed in a world without the ICBL and the ensuing Landmine Ban Treaty, in a world without a treaty regime, the United States could have called itself a leader based on its 1992 landmine export moratorium and the paltry sums it had previously appropriated to demining. By way of comparison, in 1993, the United States contributed \$10,000,000 to humanitarian demining. The Landmine Ban Treaty was opened for signatures in 1997. In 1998, the U.S.

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HUMANITARIAN DEMINING (1998), <http://www.hdic.jmu.edu/journal/2.1/statedept.htm>.

304. *Id.*

305. Dennis Barlow, "Demining 2010"- *A Challenge to the Demining Community*, 2 J. HUMANITARIAN DEMINING, available at <http://www.hdic.jmu.edu/hdic/journal/2.2/editors/editors/director.htm> (1998) ("[T]he U.S. effort [to lead demining] will be highlighted by a commitment of close to \$80 million in 1998.").

306. Pettit, *supra* note 303.

307. *Id.*

308. Jody Williams, *Where is US Landmine Policy Headed?*, at [http://www.icbl.org/amb/williams/policy\\_2002.html](http://www.icbl.org/amb/williams/policy_2002.html) (Jan. 16, 2002) (discussing the Department of Defense suggestions that President George W. Bush abandon attempts to comply with the Landmine Ban Treaty; end its commitment to phasing out dumb landmines; and cease funding for landmine alternatives).

309. Dep't of State, *Fact Sheet: Milestones in Humanitarian Demining*, available at <http://www.uspolicy.be/Issues/Defense/fsdemining.022202.htm> (Feb. 22, 2002).

310. *Id.*

311. *Id.*

312. For example, in promoting Demining 2010, Secretary of Defense William Cohen commented, "We [the United States] have been the leader in being part of the solution [to the landmine problem]. What this initiative is to ask other countries to join with us in becoming part of the solution . . . ." Pettit, *supra* note 303.



contribution reached \$44,900,000,<sup>313</sup> and in 2001, the figure rose to \$98,000,000.<sup>314</sup> The United States also increased the reach of its demining assistance. While the United States initially provided demining assistance to seven countries, by 2000, the number receiving aid had expanded to thirty-seven.<sup>315</sup> After the initiation of ban efforts, more substantial action was necessary to appear truly concerned about the issue. The Landmine Ban Treaty itself contains several provisions for direct assistance to alleviate the harms associated with landmine use.<sup>316</sup> Empirical evidence suggests that many state parties have increased demining funding after joining the treaty.<sup>317</sup> Thus, the Clinton administration needed a massive demining effort in order to claim continued leadership on APMs.<sup>318</sup>

This second-best response has meaningfully alleviated the harms of landmines. Demining resources, attributable in large part to Demining 2010,<sup>319</sup> have been expended in major clearance operations. In conjunction with decreased

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313. Human Rights Watch, *Mine Action Funding*, <http://www.icbl.org/lm/2001/exec/funding.html> (1999).

314. *Id.*

315. *Id.*

316. Financially able state parties must provide: (1) for the “care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs; (2) assistance for demining; and (3) information to the U.N. demining database. Ottawa Convention, *supra* note 1, art. 6.

317. Human Rights Watch, *supra* note 313.

318. Some important qualifications need to be made. While the United States clearly donates the most money to humanitarian demining, the United States ranks as only the eleventh donor on a per capita basis. More seriously, a significant percentage of the money goes for logistical aspects like travel and personnel allowances rather than physical demining and equipment acquisition. Even so, it is clear that the massive capital infusion has reduced landmine casualties and freed up land for agricultural or other uses. See Human Rights Watch, *The United States and Antipersonnel Mines 2001*, available at <http://www.hrw.org/press/2001/03/lmfacts.htm> (2001).

319. Some critics argue that the Ottawa Process siphoned off funding from demining in order to fund ban conferences and that funding has decreased after the adoption of the Landmine Ban Treaty. See, e.g., Paul A. S. Jefferson, *Landmines, Damn Lies and Statistics*, Demining Research, available at <http://www.mech.uwa.edu.au/jpt/demining/info/lies.html> (last modified Jan. 2000) (“Heightened public awareness of the mines issue has not resulted in a major increase in funding in demining”); see also Mustoe, *supra* note 112, at 557. Yet as explained above, the ICBL has been essential to educating governments and the public about landmines. This awareness is responsible for much of the increased demining funding in the 1990s. Also, resources are not zero-sum. Governments concerned about landmines could both send delegates to the ban conferences and increase funding for demining efforts. Moreover, as explained above, the United States may have been determined to be a demining leader because it felt it could not join the Landmine Ban Treaty and wanted to offset the appearance of indifference. Even if non-signatories contribute more, it is still the ICBL and the Landmine Ban Treaty that are ultimately responsible for that funding increase. *Id.*

landmine use, demining efforts have caused landmine casualties to decline from 26,000 a year to less than 10,000.<sup>320</sup> Thus, even as a non-signatory, the United States has upheld the norm underlying the Landmine Ban Treaty.

## 2. Amending the Convention on Conventional Weapons

Similarly, while the United States did not exercise landmine leadership by supporting a comprehensive ban, it instead successfully pushed for changes in other fora. At the 1996 Review Conference of the CCW, the United States won acceptance for its proposals to amend the Landmine Protocol to require: (1) that all landmines be detectable; (2) that all remotely delivered landmines be equipped with self-destruct fuses; and (3) that all hand-placed landmines either contained self-destruct devices or were placed in marked and monitored fields.<sup>321</sup> When implemented, each of these provisions reduced landmine fatalities. For example, in order to gain a military advantage, countries were increasingly using plastic landmines.<sup>322</sup> As conventional demining equipment often relied on the presence of metal, many countries feared landmine removal would either be impossible or prohibitively expensive.<sup>323</sup> The detectable landmine limitation guarantees easier future demining, which leads to fewer casualties and more access to land. Similarly, effective self-destruct fuses reduce the net amount of demining that needs to be done. Marked fields both accelerate demining and allow early, effective warnings to civilians.

These proposals gained acceptance where the Landmine Ban Treaty failed. Both Russia and China, two major landmine-using states and non-signatories to the Landmine Ban Treaty, agreed to these changes.<sup>324</sup> Persuading states unwilling to join the Landmine Ban Treaty to instead implement the Amended Mines Protocol is an important achievement.<sup>325</sup> While Protocol II submits rogue states to a regime that suffers from limited enforcement mechanisms,<sup>326</sup> pragmatism dictated the recognition that some states were unlikely

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320. U. S. Dep't of State, *To Walk the Earth in Safety: The United States Commitment to Humanitarian Demining*, at <http://www.state.gov/t/pm/rls/rpt/walkearth/2001/> (2001).

321. Michael J. Matheson, *Filling in the Gaps in the Conventional Weapons Convention*, ARMS CONTROL TODAY (Nov. 2001), available at [http://www.armscontrol.org/act/2001\\_11](http://www.armscontrol.org/act/2001_11).

322. Trends in Japan, *Clearing Landmines: New Detector Promises Safety and Efficiency*, at <http://jin.jcic.or.jp/trends00/honbun/tj990625.html> (June 29, 1999) (“[S]ince the Vietnam War plastic landmines have moved into the mainstream, and it is difficult to track these down with conventional metal detectors.”).

323. HUMAN RIGHTS WATCH ARMS PROJECT & PHYSICIANS FOR HUMAN RIGHTS, *supra* note 60, at 27, 342-43.

324. Matheson, *supra* note 321.

325. In addition to Russia, China, and the United States, India, Pakistan, Israel, and South Korea have all ratified the amended protocol. *See id.*

326. *See id.* (discussing that the procedure for review and inspection included in the

to ever join the Landmine Ban Treaty. One should not make the perfect the enemy of the good.

### 3. Adhering to a Unilateral Moratorium and Investing in Landmine Ban Treaty Compliance

Education and shaming on the landmine issue also caused the United States to make some unilateral changes. In 1996, President Bill Clinton announced a moratorium on the military's use of non self-destruct landmines with a limited exception for their use in South Korea.<sup>327</sup> This renunciation of "dumb landmines" prevented civilian casualties from potential future landmine use by the United States. To commit the United States to this moratorium, millions of dumb landmines were destroyed.<sup>328</sup> Although Amended Protocol II compliant "smart landmines" still have a dud rate that guarantees some landmines will not properly self-destruct, they are generally safer for civilian populations than dumb landmines.<sup>329</sup> The United States has upheld its commitment thus far, it has not utilized landmines since the Gulf War in 1991.<sup>330</sup>

The Landmine Ban Treaty also acted as a technology-forcing device for the United States. President Bill Clinton decided to make a non-binding commitment to comply with the Landmine Ban Treaty by 2006.<sup>331</sup> By setting out a clear definition of landmines for compliance purposes,<sup>332</sup> states had notice as to what types of landmines would become impermissible and thus needed to be replaced with alternate weaponry and strategies. Similarly, to give meaning to his non-binding commitment, President Bill Clinton looked to the treaty to guide the development of alternatives.<sup>333</sup> As a result, the United States is currently developing landmines that can only be activated once an enemy's presence is verified.<sup>334</sup> Congress committed resources to this venture,<sup>335</sup> and by Fiscal Year

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Ottawa Convention as being superior to that of Amended Protocol II).

327. U.S. Dep't of State, *Fact Sheet: Milestones in Humanitarian Demining*, at <http://www.usinfo.state.gov/topical/pol/arms/minechron.htm> (Feb. 22, 2002).

328. *Id.*

329. Patrick Blagden, *The Use of Mines and the Impact of Technology*, in *CLEARING THE FIELDS*, *supra* note 80, at 112, 144.

330. Human Rights Watch, *Landmines in Iraq: Questions and Answers*, at <http://www.hrw.org/campaigns/iraq/iraqmines1212.htm> (Dec. 2002).

331. Price, *supra* note 233, at 357.

332. "'Anti-personnel mine' means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped." Ottawa Convention, *supra* note 1, art. 2, § 1.

333. U.S. Dep't of State, *Clinton Statement on Landmines*, <http://usinfo.state.gov/topical/pol/arms/stories/01011920.htm> (Jan. 19, 2001).

334. Kerber, *supra* note 291.

2002, funding for landmine alternatives exceeded funding for humanitarian demining.<sup>336</sup> For example, the development of “self healing” anti-tank landmines is underway to eliminate the need to use anti-personnel landmines to protect anti-tank landmines.<sup>337</sup> International commentators speculate that “[t]he USA is funding this project primarily so that it can move closer to signing the Landmine Ban Treaty that bans the use of anti-personnel landmines.”<sup>338</sup> When the Army tried to cut off funding for landmine alternatives, Congress protested and the Office of the Secretary of Defense reversed the decision.<sup>339</sup> Thus, the existence of a treaty and a developing norm, rather than just a norm alone, seems to have accelerated U.S. research.

While President George W. Bush is conducting a landmine policy review, it seems unlikely that the moratorium will be rolled back without a contentious political fight.<sup>340</sup> One hundred and twenty-four members of the House of Representatives wrote President George W. Bush a letter urging him to reject possible Department of Defense recommendations to abandon the dumb mine ban and eventual Landmine Ban Treaty adherence.<sup>341</sup> They strongly oppose any move to reduce funding for the development of APM alternatives.<sup>342</sup> The ICBL has run advertisements and has been otherwise vocal in its opposition to this possible change in U.S. policy.<sup>343</sup> Similarly, strong domestic and international pressure against landmine use in Iraq has arisen.<sup>344</sup> Even if President George W. Bush or a future leader decides to use dumb landmines again, once stockpiles are exhausted, production would have to be restarted. This too would incur costs since few U.S. companies are willing to produce landmines<sup>345</sup> and the United States cannot

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335. See Friends Committee on National Legislation, *House Letter to President Bush Regarding Landmine Policy Review*, available at [http://www.fcnl.org/issues/arm/sup/landmine\\_bush1220-01.htm](http://www.fcnl.org/issues/arm/sup/landmine_bush1220-01.htm) (Dec. 18, 2001).

336. Human Rights Watch, *The United States and Antipersonnel Mines-2001*, at <http://hrw.org/press/2001/03/lmfacts.htm> (2001).

337. *Walking Landmines Expected to Reduce Need for Anti-Personnel Mines*, Jane's, available at <http://www.janes.com> (Sept. 14, 1999).

338. *Id.*

339. Lia Testa, *Bush Review Points Toward US Refusal to Support Landmine Treaty*, available at <http://www.woafrica.org/landmines4.htm> (Jan. 30, 2003).

340. *Id.*

341. The letter is reprinted in Friends Committee on National Legislation, *House Letter*, *supra* note 335.

342. *Bush Urged To Redirect Landmine Policy Review*, ARMS CONTROL TODAY (Jan.-Feb. 2002), available at [http://www.armscontrol.org/act/2002\\_01-02/briefsjanfeb02.asp](http://www.armscontrol.org/act/2002_01-02/briefsjanfeb02.asp).

343. Williams, *Where is US Landmine Policy Headed?*, *supra* note 308.

344. Kerber, *supra* note 291; United States Campaign to Ban Landmines, *Congressmen McGovern, Quinn, and Evans Urge President Bush to Prohibit AP Mine Use in Iraq*, at [http://www.banminesusa.org/news/948\\_prohibitmines.htm](http://www.banminesusa.org/news/948_prohibitmines.htm) (Feb. 4, 2003); Squiteri, *supra* note 292.

345. See *infra*, Part II.A.2.a.

purchase from any state party to the Landmine Ban Treaty.<sup>346</sup> Thus, the ICBL and Landmine Ban Treaty have effectively raised both the political and economic costs of using landmines, while lowering the barriers to the deployment of alternatives.

#### **D. Lessons for Future Campaigns**

NGOs and middle powers can lead international law when the United States refuses. Moreover, the Landmine Ban Treaty suggests that the combination of norms and a treaty can be used to constrain and alter the United States' behavior. When there is a clear and deeply held underlying norm, a treaty can help promote actions in favor of the norm, even by non-state parties. For example, if the United States declines to undertake a unilateral ban on depleted uranium munitions, a depleted uranium treaty might force the United States to adopt a variety of second-best responses. As depleted uranium munitions currently litter Iraq, a strong push for a treaty might encourage the United States to fund removal and decontamination efforts. A depleted uranium treaty might also have technology-forcing effects, causing the United States to seriously consider the deployment of seek and destroy ammunition reliant on tantalum.<sup>347</sup> Similarly, a treaty might force the United States to forgo depleted uranium in coalition military efforts if other states emphasized their treaty obligations not to undertake joint operations with forces deploying depleted uranium.

### **IV. CONCLUSION**

The ICBL and the Landmine Ban Treaty provide a useful case study to understand the mutually reinforcing nature of norms and treaties. The education and shaming strategies of the ICBL illustrate the potential of transnational norm entrepreneurs to reconstitute state agendas and practices. The Ottawa Process suggests that with strong norm maintenance, fast international action is possible even in the face of major power resistance. A comprehensive treaty can help accelerate and develop a specific norm – here, renouncing landmines – and reinforcing a more abstract norm like the inviolability of noncombatants. Moreover, effective shaming campaigns coupled with a treaty may encourage non-signatories to deploy second-best responses that fulfill the abstract norm, if not the more specific one. The combination of second-best responses and treaty limitations suggest that a comprehensive ban can make progress towards its underlying goals even where the United States resists joining the treaty regime.

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346. Ottawa Convention, *supra* note 1, art. 1, § b.

347. Jack Spencer & Michael Scardaville, *Dispelling the Myths about Military Use of Depleted Uranium*, Heritage Foundation Executive Memorandum No. 721, at [http://www.heritage.org/library/exec\\_memo/em721.html](http://www.heritage.org/library/exec_memo/em721.html) (Feb. 20, 2001).

Thus, the United States need not spearhead treaty agreements and its lack of involvement will not doom a treaty's contribution to international norm development.

