



DIPARTIMENTO DI SCIENZE POLITICHE

**The Ottawa Convention Banning
Antipersonnel Landmines: An Arms Control
Treaty with a Vision for Human Security**

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2017-18

Acknowledgements

I would like to thank my advisor, Roberto Virzo for guiding me through my dissertation since the summer of last year. You have set an example of excellence as a mentor and instructor. Furthermore, I will always cherish your dynamic and interesting International Law lectures which drove me to further appreciate academically and intellectually this discipline. If I chose to write this thesis it is out of the passion for the subject that you have been able to transmit to myself and my peers.

I would especially like to thank my family for the love and support I have received over the years. My father Paolo has and will always be my role model. He has continuously guided, assisted and been present for me in every situation, including this thesis. I also thank: my mother Laura, for her constant encouragement and patience, Wilma, for always being there to cook great meals and, last but not least, my brother Giulio for his unique sense of affection and logistical support. I am grateful to you all.

A heartfelt appreciation also goes to the staff members of ITF-Enhancing Human Security, especially my supervisor Katerina for her availability in answering my queries. I personally thank former director Ambassador Damjen Bergant for accepting me as an intern in the summer of last year and giving me the opportunity to visit demining operations in Bosnia Herzegovina. The experience gave me substantial insight in the field of humanitarian mine action and was instrumental in making me chose this subject in particular for my dissertation. I also extend my sincere thanks to the current director of ITF, Ambassador Tomaž Lovrenčič, for allowing me to interview him. Your comments truly helped shed light on the complex field of work.

Contents

Abstract.....	1
Introduction.....	2
PART I - Development and Human Security	4
1.1 Civilian Cost, Human Rights and Refugees	4
1.2 Economic and Environmental Impact.....	6
Part II - Ottawa Convention Legal Framework	8
2.1 Provisions	8
2.1.1 Use & Production.....	8
2.1.2 Stockpiling and Transfer.....	9
2.1.3 Land Release of Mines	9
2.1.4 Obligations of Victim Assistance	10
2.2 Norms and Customs of International Humanitarian Law Incorporated.....	11
2.2.1 International Disarmament Law and International Humanitarian Law	11
2.2.2 Weapons which are by nature indiscriminate:	12
2.2.3 Principle of Distinction Civilians and Combatants.....	13
2.2.4 Superfluous injury or unnecessary suffering	14
PART III – Codification: NGO’s, IO’s and States at Play	15
3.1 Transnational Mine Ban Movement	15
3.1.1 The International Campaign to Ban Landmines	15
3.1.2 Framing.....	16
3.2 The Negotiation	18
3.2.1 14 months of Diplomacy.....	18
3.2.2 Fast-Track Approach	21
3.3 Historical and Economic Motivations	21
3.3.1 A New Era for Security Policy	22
3.3.2 Cost-Efficiency	23
Part IV - Mechanisms of Compliance.....	25
4.1 Provisions on Compliance	25
4.1.1 Transparency Clause.....	25
4.1.2 Meeting of State Parties and Review Conferences	26
4.2 National and Supranational Institutional Mechanisms	28

4.2.1 National Legislation.....	28
4.2.2 Supranational Oversight	29
4.3 Informal Mechanisms	30
4.3.1 International Mine Action Standards	30
4.3.2 Information Flow- The ICBL MONITOR.....	31
PART V – Implementation and Evaluation.....	32
5.1 States & Trust Fund Partnerships: The <i>International Trust Fund - Enhancing Human Security</i> (ITF) as a Case Study Organization.....	32
5.1.1 History and Structure of ITF.....	32
5.1.2 The Trust Fund Mechanism.....	33
5.1.3 Beyond Demining: A True Human Security Approach.....	34
5.1.4 Mine Action Diplomacy: Building partnerships & Evolving Legitimacies.....	35
5.2 Global Progress: Identifying State Practice	36
5.2.1 Status of Landmine Free Countries.....	36
5.2.2 Mine Clearance: 1998-Present.....	37
5.2.3 Stockpile Destruction and Production	38
5.2.4 Number of Casualties.....	38
5.2.5 National Policy and Laws for Disability.....	39
5.2.6 <i>Diuturnitas</i> by Great Powers?.....	41
5.3 Evaluating Criticism of Ottawa	45
5.3.2 Technological Loopholes.....	45
5.3.3 Funding	45
Conclusion: 20 years of Progress and Legacy	48
Bibliography	50
Sintesi dell’elaborato	55

Abstract

Despite a recorded increase in antipersonnel landmine (APL) casualties in 2016, the overall trend of the past two decades indicates a decrease in the number of mine victims globally since the entry into force of the Ottawa Convention in 1999.¹ This paper will address the legal-humanitarian dimension of the treaty and discuss how its construction emanates from higher principles of customary international law but also derives from a profound grass-root activism that has been capable of influencing the global political agenda. Further, I will assess the institutional developments and mechanisms that have emerged in light of the Parties continued diplomatic engagement towards implementing and achieving the humanitarian obligations it set out to reach. I will demonstrate that the Ottawa Convention displays an innovative international law treaty—teleologically and in its modality of formation—in ways that have, over its 20-year evolution, strengthened the governance surrounding humanitarian demining and left a legacy in human security treaty-making approaches. While Ottawa has produced tangible improvements (even without the signatures of primary state actors, such as China, Russia and the USA) and contributed significantly in crystallizing norms regarding APL use, mine action remains an area that lacks the political advocacy and funding it truly needs, especially regarding victim assistance.

¹ See Figure 2

Introduction

The **Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction**² (also known as the **Ottawa Treaty, or APMBC**), signed in December 1997 and entered into force on March 1st, 1999, is widely regarded by scholars and the international community as being a milestone for arms control, humanitarian law and Human Security (HS) together. To this day countries continue to ratify the treaty (see the accession of the Palestinian State as of December 2017 as its 164th State Party),³ implying that it still represents a recognized political endeavor necessary to eradicate the (primarily civilian) threat of landmine contamination which continues to maim, injure and inflict fatal harm to thousands of civilians worldwide.

Ottawa's contemporary significance relies in it being a treaty that binds its Party Members to ban the production and use of an entire class of weapons, imposing a strict legal regime of regulation. However, it is also important because it has attempted to forward the conceptualization and application of HS principles within the international juridical order. This relatively new individual-centered understanding of "state duty" to protect the wellbeing of people takes a marked foothold in the Ottawa Convention; since antipersonnel mines (hereinafter APLs) represent a key example of a military threat that has lasting socio-economic, psycho-physical and environmental impact on the welfare of the civilian population. Several countries, namely Canada, Japan and Norway, have prioritized this aspect within their foreign policy agendas, although consensus on universalizing such a commitment remains still a distant reality. Furthermore, the concept of HS is one that has not yet garnered sufficient attention at a theoretical level within academic literature, making it a compelling area of study to elaborate on, especially when examples of applied HS, for instance by organizations like ITF - Enhancing Human Security (ITF), are practiced within humanitarian demining.

² *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 18 September 1997

³ Multilateral Treaties Deposited with the Secretary-General, United Nations, New York, available online: <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvi-5&chapter=26&lang=en>

It is important to therefore understand the direction and extent to which mine action efforts have been progressing since 1999 and how the forces at play in the achievement of such results interact and are evolving. By more fully understanding non-state actor's role as local mediators and monitoring authorities overseeing the enforcement of those obligations States are bound to uphold—regarding mine clearance, victim assistance, and transparent donation procedures—we can fully appreciate the socio-political and technical dynamics that have stemmed from of the Ottawa Convention and understand the degree of State practice.

In the first section, this paper seeks to bring forth a synthetic understanding of landmines as a multileveled hindrance to human development. In the second part, it provides a comprehensive overview of customary international humanitarian law principles forming the substantive basis of the treaty and theories regarding its development and applicability. A third section will analyze how Party Members have shaped its codification by harmonizing their interests around a common denominator, greatly guided by the International Campaign to Ban Landmines (ICBL). The fourth part discusses the various mechanisms of compliance that are provided within the treaty and those that have emerged through new institutions and entities that informally oversee a regime of constant verification. The final section will discuss the case of non-profit humanitarian organization ITF-Enhancing Human Security, in order to illustrate how non-state actors have taken on key responsibilities in the implementation of mine-action and human security building practices. This section will also look at empirical evidence of *diuturnitas* (or state practice) and *opinion juris ac necessitatis* to demonstrate the consolidation of a custom within International Law. I will conclude by evaluating certain criticisms relating to loopholes and the status of funding.

More generally, I aim to demonstrate through this paper how holistic concepts of HS can render more effective the scope of humanitarian efforts—especially within the domain of mine action—in the direction of creating a paradigm of collective political and legal international action guaranteeing greater human rights inclusion for conflict victims and protection of civilians.

PART I - Development and Human Security

This section explores how the landmine problem is inextricably linked with the question of Human Security (HS) as the nature of the threat posed by APLs impacts a wide-ranging network of factors, primarily: human suffering, the environment and economic development. By framing the mine problem through the lens of HS we can help articulate more effectively not only the extent of landmine problem, but also reinforce the theoretical premises of this “new” form of international humanitarian action that the Ottawa Convention has imparted on its Party States.⁴ This is because the HS paradigm assumes that the safety of the individual is key to global security by arguing that conflict and global threats often emerge from causes that are exacerbated by aspects like climate change, economic inequalities and poverty.⁵ I will integrate in my discourse also the way in which mine action, by acting on the removal of APLs, represents a fundamental activity in preventing these development challenges.

1.1 Civilian Cost, Human Rights and Refugees

The main issue regarding landmines is that they remain in vast majority non-identifiable under the subsoil due to the fact that they have been laid indiscriminately by armed parties over combat zones with no discernible pattern.⁶ The enduring nature of unexploded mines, even after conflict has ceased, means that they inevitably pose a persistent threat to civilian well-being in both urban and rural settings. Since the Landmine Monitor began recording mine casualties in 1999, over 110,000 have been reported—of which their status was known. The latest report in 2017, for the year 2016, recorded 8,605 mine/ERW⁷ casualties, of which at least 2,089 people were killed.⁸ 78% of casualties were civilians of, which 42% were children.⁹ A study by the International Committee of the Red

⁴ APMBC, art. 6 (3)

⁵ P. Williams, *Security Studies: An Introduction*, London: Routledge, 2012, II ed. p.340

⁶ The Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Geneva, 2014, V ed. p.123

⁷ ERW stands for Explosive Remnants of War which include explosive munitions left behind after a conflict has ended: unexploded artillery shells, grenades, mortars, rockets etc.

⁸ International Campaign to Ban Landmines, *Landmine Monitor 2017*, 2017 p.53

⁹ *Ibid*, p. 56

Cross (ICRC) shows that the likelihood of a civilian walking on a mine is ten times higher than for a soldier in combat.¹⁰

Those impacted by landmines necessitate rehabilitation procedures that are physically painful and costly. In case of amputation, artificial limbs should be replaced at regular intervals (for children, replacement is necessary at least twice a year).¹¹ Serious injury to the victims results in long-term psychological trauma and devastating psychosocial problems. As an ICBL report describes, suffering at an early age carries through to later life; education rates among child survivors are lower than average while school drop-outs are more frequent.¹² Survivors generally incur heavy disabilities, which often lead to unemployment, divorce and social exclusion. In the long run, the high cost of rehabilitation, loss of income, and socio-economic dependency weaken the individual, the family, and society as a whole.

The landmine problem, beyond having significant human costs, constitutes prevalently a question of human rights—as parties have also affirmed in subsequent status reports of the Ottawa Convention.¹³ As such, humanitarian demining missions relating to disarmament, demobilization, and reintegration (DDR) are conducted primarily to defend the *jus cogens* principle of right to life since they aim at eliminating any further loss of life or any restraint of liberty deriving from mine related oppression.¹⁴ A cardinal long-term goal of mine action is that of ultimately ensuring that citizens have the capacity to exercise and enjoy their rights.¹⁵ The only authentic bridge to peace for a conflict-affected nation can occur if states collectively recognize mine victims' legal status of right holders under international humanitarian law and provide adequate social tutelage. In 2003, the UN

¹⁰ L. Fehr, M. Clerfayt, *Mines terrestres antipersonnel et leurs conséquences humanitaires*, rapport. 7891, 1997, available online : <<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7822&lang=fr>>

¹¹ T. Lovrenčič, Personal Interview, Ljubljana, Slovenia, 8 Feb. 2018: “With mine victims there is no such ending taking care of mine victims, you have to renew prothesis every 2 years, you must give psychological support build institutions to bring children to sports and mental wellbeing, so this is a permanent job”

¹² ICBL, *Landmines and Children*, 2009 available online.

¹³ Review of the Operation and Status of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction 1999-2004." (Part II of the *Final Report of the First Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 9 Feb. 2005

¹⁴ 28th International Conference of the Red Cross and Red Crescent, Geneva, 2003, available online: <<https://www.icrc.org/eng/resources/documents/misc/5qckd3.htm>>.

¹⁵ The Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Geneva, 2014, V ed. p.66

Commission on Human Security (CHS) took a view in which mine action is about survival, livelihoods and dignity, thus protecting fundamental freedoms that are the essence of life.¹⁶

Landmines are also a root cause for civilian displacement. Mine-infested areas will render urban but mostly rural zones inhabitable, forcing people to flee their regions of origin.¹⁷ The presence of mines not only creates flows of refugees but hinders their repatriation. To return home, refugees must wait for the clearing of roads, farmland or even their own homes. In addition, Internally Displaced Peoples (IDP's) incur in frequent institutional discrimination. Around 30% of IDP's are deprived from access to medical care and legal assistance in Colombia.¹⁸ Mine action again plays an important role in letting the affected refugee population regain access to areas where they live and work. In the Strategic proposal to the United Nations Mine Action Service (UNMAS) for Development Cooperation and Humanitarian Action till 2020, initiated by Denmark, it is outlined that an objective of the international community is indeed that of promoting sustainable reintegration of IDPs in order to restore livelihood capacities and build resilience.¹⁹

1.2 Economic and Environmental Impact

Landmines also undermine the economic foundations of growth and obstruct post-conflict reconstruction.²⁰ The disruption of agriculture, tourism, and transportation prevents key infrastructure development and further worsens the stability of internal markets along with foreign investments.²¹ Production capacity is also reduced by economic dependence and the shelving of victims who have become disabled. In Bosnia Herzegovina, the most heavily mined country in the European continent, a flooding in 2014 moved land mines and other unexploded ordinance from the

¹⁶ K. Edwards, *Is Human Security Part of the International Security Agenda?*, 2016, available online: <<http://www.e-ir.info/2016/03/25/is-human-security-part-of-the-international-security-agenda/>>.

¹⁷ S. Franco, *The effects of the armed conflict on the life and health in Colombia*, Vol.11, no.2, 2006: According to official information provided by the Red de Solidaridad Social (Social Solidarity Network), a governmental organization in charge of the displacement problem, 90% of displaced people are of rural or semi-rural origin, and one third of them own or owned land in their places of origin.

¹⁸ P. Webster, *Health in Colombia: treating the displaced*, US National Library of Medicine, 2012, available online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3314051/>>

¹⁹ Danish Organization Strategy for UNMAS 2017-20, pub. 2016

²⁰ G. Bier, *The Economic Impact of Landmines on Developing Countries*, International Journal of Social Economics, West Yorkshire, 2003, p.408

²¹ *Ibid*, p.548

1992-1995 war, leaving 70% of flooded areas at risk. Estimates put the total economic impact of the floods and consequent landslides at 5% to 10% percent of GDP.²²

Mine action directly and indirectly seeks to favor economic inclusion and reinforce a productive civilian job market. Strategies of Community Based Demining (CBD), are aimed at recruiting deminers locally from contaminated communities. First employed in Afghanistan in 2008, CBD enables local ownership of mine action, provides employment opportunities, and allows demining agencies to operate in areas previously deemed too insecure.²³ Former combatants are granted demining training, vocational training and literacy training, as well as thirteen months of guaranteed employment. The steady income and benefits proved attractive to reintegrees, in Afghanistan 617 (75%) of deminers were still working years later, demonstrating relatively high retention rates.²⁴ It is shown, for instance with FARC members, that a key reason for return to insurgency, is motivated by economic reasons—the World Bank estimates that it costs approximately US\$1,200 to turn an ex-combatant into a civilian, with a job and a role in his or her community.²⁵ Employment as deminers is not an easy task but it can provide former combatants stable socio-economic conditions and much needed source of income for women and men who are trapped in poverty conditions.

Landmines also cause land and soil degradation, loss of biodiversity, and severely limit agricultural productivity. Long term agricultural and rural development is not possible if rivers are contaminated or if the organic subsoil is littered with APLs—inactivated mines can be lethal up to 50 years after having been buried in the soil.²⁶ Engaging in mine clearance activities and disarmament are therefore crucial in ensuring that agricultural activities return by increasing the arable land surface and increase crop yields. Many academics such as Barry Buzan, argue that environmental security is a massive part of human security in that it is “the essential support system on which all other human enterprise depends”.²⁷

²² Bertelsmann Foundation – BTI index, Bosnia and Herzegovina Country Report, 2016, available online.

²³ The Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Geneva, 2014, V ed.

²⁴ *Ibid*, p. 34

²⁵ A. Özerdem, *Reinsertion Assistance and the Reintegration of Ex-Combatants in War to Peace Transitions*. University of Bradford, Center for International Cooperation and Security, Thematic Working Paper 4 2008.

²⁶ *Ibid*, p.50

²⁷ B. Buzan, *People, states, and fear: The National Security Problem in International Relations*, Boulder, Colorado, 1991, II ed

Part II - Ottawa Convention Legal Framework

This section aims at exploring the legal dimension of the Ottawa Treaty. To do so I will analyze its fundamental provisions namely those proscribing the use, production, stockpiling, and transfer of APLs, along with the clause on regarding victim assistance. To have a more comprehensive understanding of the treaty's juridical character I shall also explore the manner in which it integrates customary principles such as: indiscriminate attacks, distinction and superfluous injury.

2.1 Provisions

2.1.1 Use & Production

Each state adhering to the Ottawa Treaty obliges itself “never, under any circumstances” to use anti-personnel landmines.²⁸ This includes all situations of armed conflict—whether between countries (international armed conflict) or a civil conflict (internal armed conflict)—as well as troubles of a lesser intensity commonly referred to as internal unrest or civil disturbances. All offensive and defensive usage is prohibited. A country cannot deploy anti-personnel mines to fortify its borders as a means of preventing unwanted persons from entering its territory or to protect important military or other installations. In ratifying the Ottawa Treaty, a country accepts that mines are no longer a legitimate weapon to be used neither in peacetime nor in time of war. There are no exceptions or derogations to this rule. Article 1, par. 1 section C emits the powerful normative obligation that no state is allowed so much as to “encourage” or “induce” other parties to resort to engaging in use of APLs.²⁹ The Ottawa Convention further prohibits the development and production of anti-personnel mines under Art.1, par. 1(b).³⁰ A country cannot manufacture the devices, nor can it initiate any projects intended to improve current models, develop new models, or generate any such weapons in the future. Such a prohibition represents a first in a humanitarian law treaty.

²⁸ *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 18 September 1997 art.1 (1) (a)

²⁹ *Ibid*, art.2 (1) (c)

³⁰ *Ibid*, art.1 (1) (b)

2.1.2 Stockpiling and Transfer

In addition, the Ottawa Treaty precludes a country from stockpiling APLs.³¹ A country is not allowed to purchase, procure, or otherwise obtain the devices. Any existing stocks must be destroyed within four years of the date on which the treaty enters into force for a given country.³² States requiring assistance to ensure the destruction of APLs within the specified time period may apply to other states parties to the treaty for such assistance.³³

A country is not allowed, in any way or under any circumstances, to transfer anti-personnel mines either directly or indirectly. According to the treaty, the term ‘transfer’ involves, in addition to the physical movement of APLs into or from national territory, the transfer of title to and control over the mines.³⁴ The prohibition on transfer considers the import and export as well as transfer of ownership of mines. There remain a narrow set of exceptions to this prohibition. First, countries are permitted to transfer APLs for the purpose of destruction. Second, they may transfer the limited number of mines allowed to be retained for training purposes but shall not exceed the minimum number absolutely necessary for such purposes.³⁵

2.1.3 Land Release of Mines

The above stated provisions are complemented by a set of legal rules regarding mine clearance. Under the APMBC, each State Party is obliged to clear all anti-personnel mines in mined areas under its jurisdiction or control within four years of joining the Treaty but not later than 10 years after it becomes a Party.³⁶ States may request that the other states parties accord them an extension period of up to 10 years and can be granted more than once.³⁷ This offers an opportunity for States requiring assistance to present their case and to seek appropriate help, whether in terms of financing, human resources or technical aid, in their mine-clearance efforts.

Each State Party is also obliged to “make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced” and perimeter-mark,

³¹ *Ibid*

³² *Ibid*, art.4

³³ *Ibid*, art.6

³⁴ *Ibid*, art. 2 (4)

³⁵ *Ibid*, art. 3 (1)

³⁶ *Ibid*, art. 4

³⁷ *Ibid*, art. 5 (3)

monitor and protect civilians from them in accordance with the minimum standards of Convention on Certain Conventional Weapons (CCW).³⁸ The Treaty's preventive attention to monitor mined areas, defined as "an area which is dangerous due to the presence or suspected presence of mines" underlines the prioritization of a people-centered security agenda.³⁹

2.1.4 Obligations of Victim Assistance

Assisting the victims and survivors of a particular weapon system, or victim assistance (VA), is a concept that first appeared in the legal text of the APMBC,⁴⁰ more specifically under Article 6. Under the APMBC, however, no encompassing legal definition is provided with regards to what exactly comprises VA. The parameters only came to be defined at the First Review Conference of the APMBC in 2004 as: physical rehabilitation, (including physiotherapy using prosthetics and assistive devices), psychological support, and socio-economic reintegration, through implementation of relevant laws and public policies.⁴¹ VA is something that is constantly evolving and progressing into a global norm and a question of fundamental rights.⁴² The principle of participation and inclusion of mine victims is a cardinal aspect of Human Security practice and it is a concept well understood in the context of the APMBC, with Parties heeding the message of 'nothing about us without us.'⁴³ The APMBC, but also other treaties like the CCW⁴⁴ and the Convention on Cluster Munitions (CCM)⁴⁵ each call upon its parties to provide technical, material and financial support for victim assistance. The tutelage of mine victims set into motion and codified into IL originally by the APMBC is one of

³⁸ *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* as amended 3 May 1996, art.5

³⁹ APMBC, art. 2 (5)

⁴⁰ United Nations, *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, 18 September 1997 art. 6 (3-e)

⁴¹ APMBC, First Review Conference of the States Parties to the Anti-Personnel Mine Ban Convention, 'Final Report', 2004, par. 59

⁴² *Ibid.*, par. 64

⁴³ APMBC. Second Review Conference of the States Parties to the Anti-Personnel Mine Ban Convention, 'Final Report', paragraph 114. CCM. *Convention on Cluster Munitions*, adopted on 30 May 2008, entered into force on 01 August 2010, Article 5, par. 2 (f). United Nations, Protocol V – Plan of Action on Victim Assistance, entry into force 2006, Action 4 (f).

⁴⁴ United Nations, *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* as amended 3 May 1996, art.5

⁴⁵ UN, *Convention on Cluster Munitions*, May 2008 art.5

Ottawa's noblest achievements and State Parties, as well as the international community, should push for a more coordinated governance in this area.

2.2 Norms and Customs of International Humanitarian Law Incorporated

2.2.1 International Disarmament Law and International Humanitarian Law

The Ottawa Convention draws on two fundamental branches of international law: disarmament law and humanitarian law (IHL).

Disarmament law generally 'seeks to maintain military stability by limiting or eliminating the numbers or types of weapons that may be lawfully produced, stockpiled or transferred'⁴⁶ and focuses on the regulation or elimination of certain weapons of war. A pillar of disarmament law can be referred to the 1869 Declaration of St. Petersburg, which prohibited the use of certain projectiles in wartime and was "the first formal agreement prohibiting the use of certain weapons in war".⁴⁷ The three Hague Conventions 1899-1907 were also key international attempts to regulate war conduct by diminishing the use of weapons causing excessive human impacts. Today, the Hague declarations are considered customary international law and as such they are also binding on states which are not formally parties to them.⁴⁸ Another core disarmament convention, of direct pertinence to landmines, is the afore mentioned CCW, adopted in 1980. The CCW exemplifies a shift from 'traditional' disarmament treaty to a more 'humanitarian' treaty striking a balance between military and humanitarian considerations.⁴⁹ Protocol II, one of the 3 additional protocols annexed to the 1980 CCW was the only existing international law regarding regulation (but not of prohibition) of anti-personnel landmines, prior to the Ottawa Convention. Protocol II was amended in 1996 in an effort to strengthen its provisions limiting the use of these weapons and requiring that some general

⁴⁶The Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Geneva, 2014, V ed. p.123

⁴⁷ ICRC, Customary IHL Database Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 1868 < <https://ihl-databases.icrc.org/ihl/INTRO/130?OpenDocument>>

⁴⁸ Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

⁴⁹ Meeting of States Parties to the CCW, 'Final Report', CCW/MSP/2010/5 (20 February 2011), p. 7, available online.

measures be taken to reduce the dangers to civilians, such as by giving warnings of attacks where feasible.

The second branch of law that governs and restricts the use of weapons IHL, which lays down the rules intended to minimize suffering in armed conflict. Indeed, when state officials show support for the Ottawa Convention, they almost invariably mention the “humanitarian objectives” or “humanitarian concerns” of the treaty.⁵⁰ The four 1949 Geneva Conventions and their two 1977 Additional Protocols are of central importance in contextualizing the Ottawa Convention as they set out the principal rules regulating the protection of the victims of war and the conduct of hostilities. Ottawa clearly has the scope of a disarmament treaty it also exhibits function of an IHL treaty. The last preambular paragraph of Ottawa Convention explicitly mentions that the parties to the Convention abide to “the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited”, citing several principles of customary IHL.⁵¹

2.2.2 Weapons which are by nature indiscriminate:

APLs are a good example of a weapon that inflicts serious damage on civilian populations in an indiscriminate and arguably disproportionate manner, violating the law of armed conflict.⁵² According to rule 71 of the ICRC, an indiscriminate weapon is a weapon that cannot be directed at a military objective or whose effects cannot be limited as required by international humanitarian law.⁵³ The prohibition of indiscriminate attacks is cited in several international agreements namely the 1994 San Remo Manual which states: “It is forbidden to employ methods or means of warfare which are of a nature to cause superfluous injury or unnecessary suffering”.⁵⁴

⁵⁰ R. Kocse, *Final Detonation: How Customary International Law Can Trigger the End of Landmines*, Georgetown Law Journal, 2015, p. 776

⁵¹ APMB, preamble

⁵² The 25th International Conference of the Red Cross in 1986 deplored “the indiscriminate attacks inflicted on civilian populations ... in violation of the laws and customs of war”

⁵³ ICRC, Customary IHL Database available online: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71>

⁵⁴ San Remo Manual on International Law Applicable to Armed Conflicts at Sea, 12 June 1994 Part 1 Section V 13 (a)

APLs also violate the customary principle of precaution. The principle of precautions in attack was first set out in Article 2(3) of the 1907 Hague Convention (IX), which provides that the commander of a military force “shall take all due measures in order that the town [under attack] may suffer as little harm as possible”.⁵⁵ It is now more clearly codified in Article 57(1) of Additional Protocol I of the 1949 Geneva Convention, to which no reservations have been made.⁵⁶ In addition, under the Statute of the International Criminal Court (ICC), “intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects ... which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated” constitutes a war crime in international armed conflicts.⁵⁷

Article 3(8) of the CCW further prohibits the indiscriminate use of the applicable weapons which is defined as any "placement which is not on or directed against a military objective".⁵⁸ Thus, many of the rules in previous treaty and customary law are equally applicable to the use of landmines, as they aim at obviating the indiscriminate effects of weapons which can cause incidental loss of life or injury to civilians.⁵⁹ The Ottawa Treaty reaffirms and develops the precautionary measures in IL.

2.2.3 Principle of Distinction Civilians and Combatants

The APMBC states that it is based on “the principle that a distinction must be made between civilians and combatants”.⁶⁰ This principle was first set forth in the St. Petersburg Declaration, which states that “the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy”.⁶¹ The principle of distinction is now codified in Articles 48, 51(2) and 52(2) of Additional Protocol I, to which no reservations have been made.⁶² The jurisprudence of

⁵⁵ Convention (IX) concerning Bombardment by Naval Forces in Time of War, The Hague, 18 October 1907, art. 2

⁵⁶ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, art. 57(1)

⁵⁷ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, art.8(2)(e)(iii).

⁵⁸ United Nations, *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) (As Amended on 3 May 1996)*, 10 October 1980 art. 3(8)

⁵⁹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, art.8(2)(b)(iv)

⁶⁰ APMBC, preamble

⁶¹ Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868, preamble

⁶² ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, art. 48 (adopted by consensus)

the International Criminal Tribunal for the Former Yugoslavia (ICTY), in particular in the *Tadić* case, provides further evidence that the obligation to make a distinction between civilians and combatants is customary in both international and non-international armed conflicts.⁶³

2.2.4 Superfluous injury or unnecessary suffering

One of the preambular paragraphs of the Ottawa Convention states that the agreement by the states parties is based on “the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering”.⁶⁴ The prohibition of the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is set forth in a large number of treaties, including early instruments such as the St. Petersburg Declaration and the Hague Declarations and Regulations. Its reaffirmation in recent treaties, in particular Article 35(2) Additional Protocol I, the Amended Protocol II of the CCW, and the Statute of the ICC, indicate that it remains a rule of customary international law.⁶⁵ In its advisory opinion, the ICC affirmed that the prohibition of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering was one of the “cardinal principles” of international humanitarian law.⁶⁶

Conclusion

What should be conveyed is that the Ottawa Treaty conforms with certain key principles grounded in IHL custom and other international law codified texts, and how the adherence to such principles has strengthened the existing norms surrounding international weapon prohibition regimes. Parties to a conflict must always distinguish between civilians and combatants, and civilians must not be attacked. Furthermore, any weapon that is inherently indiscriminate must never be used, especially if they are of nature to cause superfluous injury or gratuitous suffering. Thus, given the jurisprudence provided in previous treaty law—such as the Hague Conventions, Geneva Conventions and the CCW—it is discernible that the Ottawa Convention hinges on an ampler normative framework of humanitarian principles and furthers their codification in the international juridical corpus. It is

⁶³ *Prosecutor v. Dusko Tadić (Appeal Judgement)*, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 15 July 1999

⁶⁵ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, art. 35(2), Article 3(3) APMBC, preamble; ICC Statute

⁶⁶ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1. C.J. Reports 1996, p. 226

furthermore clear how the Human Security approach is woven intrinsically in the scope of the Ottawa Convention, representing a broadening of the global security agenda.

PART III – Codification: NGO’s, IO’s and States at Play

To have a more comprehensive understanding of how the obligations of the APMBBC developed and in which capacity relevant actors engage today in meeting the objectives of the Treaty, it is of fundamental importance to discuss the Ottawa Process itself. The distinct humanitarian provisions it manifests emerged as a result of years of campaigning by a core group of NGOs coalesced into the International Campaign to Ban Landmines (ICBL). Along with the coordination of UN agencies and the leadership of certain progressive governments, they were capable of guiding the movement, framing the landmine problem and expanding public support for the cause. The process of achieving the APMBBC is therefore innovative, or to say the least, alternative given the extensive presence of nonstate actors in the constitution of the treaty.

3.1 Transnational Mine Ban Movement

3.1.1 The International Campaign to Ban Landmines

The alarm for banning landmines was set off initially by the surgeon staff of the International Committee of the Red Cross (ICRC), which denounced the sharp increase during the 1980’s in the number of limb amputations on civilian landmine victims.⁶⁷ While the ICRC voiced this concern, the problem remained invisible to public and government attention.⁶⁸ This was not until a key group of NGOs—Human Rights Watch, Handicap International, Medico International, Mines Awareness Group and the Vietnam Veteran of America Foundation (VVAFF)—launched the ICBL in 1992,

⁶⁷G. Strada, “The Horror of Landmines”, *Scientific American*, Issue, 1996, ed. II p. 43

⁶⁸K. Anderson *The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organizations and the Idea of an International Civil Society*, EJIL, 2000, vol.11 no.2, p.97

establishing its own internal Steering Committee.⁶⁹ By 1997 the ICBL coalesced over 1,200 non-governmental entities in more than seventy states.⁷⁰ Their aim was to expand the recognition of the landmine problem to ultimately push states, as the only entities with international legal personality capable of modifying international law, to adopt a series of amendments to the CCW. For many mine victims and humanitarian agencies working in mine fields, the provisions set under the CCW were deemed too weak and therefore responded to the perceived failure of the previous IL arms control regime.⁷¹

But why NGOs? Given their localized nature, NGOs are capable of noticing inadequacies in policy implementation and can quickly react to them. Indeed, one of the reasons for the ICBL's success is that it was primarily structured as an 'experts' organization. The NGOs composing the ICBL were those most in contact with the human and technical realities of the problem, operating directly in mine-infested areas. Hence, they would be the first entities to carry out extensive statistical work and develop systematic indicators relating to the human suffering provoked by APLs. As such, they gradually became perceived by policy makers as authentic sources of information and platforms for assessing the mine problem, which then became necessary for state delegates while drafting the treaty.⁷²

3.1.2 Framing

The ICBL's approach to framing the mine problem was organized strategically to maximize its outreach at a grass root level, at UN level and ultimately at governmental level—becoming a formal pressure group. A key aim of the ICBL was elevating the concern for the mine problem to the highest social level through education campaigns and by marketing to the public daunting statistical observations.⁷³ The message had to resonate transnationally and above all to the people, because obtaining popular backing was the only way to solicit sufficient governmental attention.⁷⁴ In parallel,

⁶⁹ K. Rutherford, B. McDonald, R. Matthew, *Landmines and Human Security*, State University of New York Press, 2004, p.21

⁷⁰ *Ibid*, p.52

⁷¹ *Ibid*, p.53

⁷² V. Jo-Anne, *Stage Three Of The Ottawa Process: The Oslo Diplomatic Conference*, The Acronym Institute for Disarmament Diplomacy, Issue No. 18, September 1997

⁷³ K. Rutherford, B. McDonald, R. Matthew, *Landmines and Human Security*. New York. State University of New York Press, 2004 p.43

⁷⁴ In May of 1994 at the Second International Conference on Landmines in Geneva VVAF President Bobby Mueller argued that the ICBL "must go beyond the structures of government...if we continue the path of courting

the ICBL focused on expanding its networks with other NGOs in Africa, Asia and, with more difficulty, Eastern Europe so as to extend its audience outreach and demonstrate that the landmine ban represented a true global effort.⁷⁵ Hence, the ICBL absorbed within its movement also NGOs engaged in a wider range of issues including human rights, refugee assistance, social development, communication and public relations while, and this is important, remaining unified in their message. The clarity and focality of the ICBLs message—that of banning landmines—was an effective prerogative to get States to more easily comprehend its mission, all while enhancing the organizations' credibility. This aspect would reveal itself crucial during the phase of codification by preventing many incongruities and loopholes from being created.⁷⁶

Thus, by the early 90's the movement had garnered sufficient popular support and international traction that it could no longer be disregarded by governments. The ICBL was engaged in a moral crusade along with a bloc of "middle powers" and became an institutionalized lobbying force. According to Bryan McDonald, the ICBL became a direct mediator of landmine concerns to decision-makers and diplomats.⁷⁷ By 1994, the UNICEF, UNHCR, Vatican and Canada all pledged their support for a mine-free world, with the then Secretary General of the UN Boutros-Ghali who submitted a report in support of establishing a UN demining trust fund, which would later become the UNMAS.⁷⁸ This enthusiasm was paralleled by the continued mediating and advocacy efforts of certain influential figures such as the Queen Noor and Princess Diana that heightened the visibility of the campaign. According to Dave McCracken, head deminer at the VVAF, the unifying force was instrumental in keeping funds flowing: the "campaign brought more money to demining than ever".⁷⁹

In March of 1995, Belgium became the first country to pass a law banning the production, use and trading of landmines. 2 months later, the Council of the European Union decided to adopt the "Common Action" which was a common moratorium on the export of anti-personnel landmines.⁸⁰ This shows that by the mid-late 1990's an international mood for a landmine ban was already being

the military and political figures we are on an insiders game basis, we will lose". Extracted from *Landmines and Human Security* p.59

⁷⁵ The steering committee of the ICBL expanded to include the Kenyan and South African landmine campaigns in June 1997

⁷⁶ V. Jo-Anne, *Stage Three Of The Ottawa Process: The Oslo Diplomatic Conference*, The Acronym Institute for Disarmament Diplomacy, Issue No. 18, September 1997

⁷⁷ K. Rutherford, *supra* note p. 53

⁷⁸ *Ibid*, p. 65

⁷⁹ *Ibid*, p.121

⁸⁰ Joint Action of 1 October 1996 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on anti-personnel landmines Official Journal L 260 , 12/10/1996

shaped and the prospects of furthering an international legal regime of arms control, such as the Ottawa Convention, was espoused by a concerted degree of political willingness, especially within the EU, as a number of states had accepted to voluntarily implement domestic legislation prohibiting APL use.⁸¹

These international efforts brought to the First Review Conference of the 1980 CCW, in Vienna in 1995. However, according to the ICBL no satisfactory framework was stipulated. Only a fully revisited treaty, encompassing the total prohibition of use but also destruction of APL arsenals would be capable of addressing the mine problem.⁸² To this avail, at the closing of the Review Conference in May 1996 the Canadian delegation announced that Canada would host a meeting of pro-ban States later in the year to develop a strategy to move the international community towards a global ban on APLs.

3.2 The Negotiation

3.2.1 14 months of Diplomacy

States, NGOs and IOs realized that they had to capitalize swiftly while public momentum for the cause was at its highest. The Ottawa Process hence took place within a remarkably brief period of time, lasting 14 months between October of 1996 and December of 1997. In this window of time 4 high profile regional negotiations took place chronologically in Ottawa, Vienna, Bonn, Brussels, Oslo and, to ceremoniously officiate the Treaty, again in Ottawa.

The first Diplomatic Conference (DC) began with the “International Strategy Conference: Towards a global ban on anti-personnel mines” hosted in Canada by Foreign Minister Lloyd Axworthy. The October Conference in Ottawa resulted in a declaration by 50 governments including Sweden, Austria, Belgium, France, Canada but also “southern” states like the Philippines and South Africa agreeing to enhance cooperation to achieve the earliest possible conclusion of a legally binding

⁸¹ EUROPE/CENTRAL ASIA - Human Rights Watch, Reports, 1999, available online.

⁸² K. Rutherford, *supra* note p. 60

international agreement to ban anti-personnel mines.⁸³ The initiative and leaderships role of such “middle powers” is widely considered to have been instrumental in pushing the cause to new international heights while weakening the opposition made by bigger states.

In November 1996, a few weeks after the closing of the Ottawa Conference, the Austrian Government circulated through its embassies a first draft of a treaty. In December 1996, the UN General Assembly adopted its landmark resolution 51/45S (157 votes in favor, 10 abstentions and none against) in which States were urged to “pursue vigorously an effective, legally binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines with a view to completing the negotiation as soon as possible”.⁸⁴ The first preparatory session for Ottawa was hosted in Vienna in February 1997. The Austrian Conference (or the Vienna Expert Meeting), drafting the preliminary treaty provisions, enabled States to exchange views on its content and acted as back bone for all later negotiations. It was attended by representatives of 111 governments.

The 1997 Bonn Conference (also, The International Expert Meeting on Possible Verification Measures to Ban Anti-Personnel Landmines in Bonn), was the second formal follow-up gathering to the 1996 Ottawa Conference and was attended by 121 governments. The German “Options Paper for a possible verification scheme for a convention to ban anti-personnel landmines” suggested significant and intrusive verification measures common in disarmament treaties.⁸⁵ Indeed, the issue of verification of compliance with the treaty was subject of very detailed debate. Conflict rifted among those States which thought that little or no verification was necessary to oversee what was essentially a humanitarian treaty, and those which felt very strongly about the security implications of a ban and therefore pushed for comprehensive verification procedures similar to those provided for in earlier disarmament agreements. Ultimately, a “balanced formula” of effective verification was put in place so that the treaty did not become merely an expression of good intentions.⁸⁶ The stipulated provisions legally obliged States to achieve within a given time frame the objectives of

⁸³ S. Casey-Maslen, *The context of the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction*, Audio Visual Library of International Law, 2009, p. 31, available online.

⁸⁴ General Assembly resolution 51/45, An international agreement to ban anti-personnel landmines, A/RES/51/45 (6 December 1996) available online.

⁸⁵ S. Casey-Maslen, *The context of the adoption of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction*, Audio Visual Library of International Law, 2009, p. 33, available online

⁸⁶ *Ibid*, p.37

full mine removal but also, in consideration of the logistical difficulties that some developing countries might encounter, allows for certain extension periods (which will be discussed in more detail in part 4.1).

The subsequent DC was held in Brussels in June 1997, where a total of 97 signed the declaration affirming that the essential elements of a treaty to ban APLs would include a comprehensive ban on their: use, stockpiling, production and transfer. The DC also came to the agreement of enshrining within the text a clause regarding the obligation of constantly pursuing efforts of international cooperation and assistance in the area of mine clearance and victim assistance in affected countries.⁸⁷

The last DC was hosted in Oslo in September 1997. It should be noted that only those States which had formally supported the Brussels Declaration were officially recognized and entitled to vote—therefore instilling a process of exclusion and stigmatization to non-adherents from the outset. The Oslo conference managed to achieve a satisfactory clarification to the majority of State Parties on interpretations surrounding the definition of what constituted “transfer” and “antipersonnel mines”. Regarding the definition of transfer, the Ottawa Treaty ended adopting the exact definition contained in the Amended Protocol II CCW, which was in turn was based on the definition of “transfer” used since 1993 for the UN Register of Conventional Arms. Regarding the definition for landmines, several States pushed for the exemption of those anti-vehicle mines (AVMs) that are not capable of detonation under the weight of a person and of command-detonated directional fragmentation mines (Claymore-types).⁸⁸ Ultimately the Convention prohibited explosive devices that could be “improvised” or “adapted” to serve as anti-personnel mines (including trip-wires) while conceding the two exceptions. In spite of certain derogations, NGOs were clinical throughout the Process in drafting unambiguous language both for the declarations and the action plans, in order to ensure that no compromise would be made on essential elements of the mine ban.⁸⁹

The Process ended, as stated in Article 15, when the Convention was opened for signature in Ottawa at a formal treaty signing conference. In total 121 states signed. The rounds of negotiation witnessed an increasing number of state and non-state participants. From the mere 50 in October 1996, the December conference in Ottawa was attended by over 400 NGOs and 157 countries.

⁸⁷ APMBC, art. 6

⁸⁸ EUROPE/CENTRAL ASIA - Human Rights Watch, Reports, 1999, available online.

⁸⁹ K. Rutherford, *supra* note p. 69

3.2.2 Fast-Track Approach

The rapidity of adherence was made possible through the innovative adoption of a “fast-track” negotiating principle. This implied that decisions on specific provisions did not follow the traditional method of arms control treaty negotiation of “consensus” but rather were taken based on a majority rule.⁹⁰ This decision was crucial to the Ottawa Process since the ‘consensus rule’ applied in the CCW negotiations was the factor that according to Shireen Daft mostly caused the failure of CCW Review Conferences.⁹¹ While theoretically a consensus approach seems to foster the universality of shared notions and responsibility, it is something that allows states to water down their commitments and find compromises by requesting a list of their packaged demands to be approved if a treaty is to find success. As such, the lack of a consensus principle allowed states to find the lowest common political denominator in pursuit of an authentic arms control regime without diluting the core humanitarian aims. To this end, negotiations were conducted outside the formal UN structure. Negotiators could not allow protracted discussions (as happened with the CCW), something which would have happened if they had been operating within the UN forum and through their specialized bodies (Office of Disarmament Affairs etc.)

3.3 Historical and Economic Motivations

The moral motivations of the treaty should not be understated, as they were the precondition for the pro-ban cause to garner support and have a strong leverage in negotiations.⁹² NGOs were effective in displaying moral arguments by stressing the humanitarian dimension and largely managed to architect the treaty on this basis. While morality seems to be one of the most justifiable reasons for joining the Ottawa Convention, it was not the sufficient condition for which such a widespread agreement was reached. As Mike Croll argues in *The History of Landmines*, countries that would use landmines in the mid 1990’s were stigmatized by public opinion (see 1995 petition against

⁹⁰ According to Article 69 of the Final Recommendation of the Helsinki Consultations of the Conference on Security and Cooperation in Europe the term ‘consensus’ is defined as ‘the absence of any objection expressed by any representative and submitted by him as constituting an obstacle to the taking of a decision’

⁹¹ S. Daft, *The Relationship between Human Security Discourse and International Law: A Principled Approach*, Routledge, 2018, p.168

⁹² K. Rutherford, B. McDonald, R. Matthew, *Landmines and Human Security*. New York. State University of New York Press, 2004 p.119

Mitterrand), but this has not prevented them from banning their use outright.⁹³ It is important in this sense to analyze the historical and economic motivations as well.

3.3.1 A New Era for Security Policy

The fall of the Soviet Union opened the possibility for states to diversify if not re-orient their security agendas towards aspects like humanitarian development and Human Security approaches, as opposed to solely focusing on the protection of strategic national interest and international stability. States realized that the dynamics of conflicts in the 1990's were changing: traditional "militarization" of armed forces played less significant roles while civilians became increasingly targets of indiscriminate or inhumane weapons. Certain states decided to fully embrace a new ideology and method of thinking international relations.⁹⁴ Canada was one those countries that took HS at the core of its foreign policy agenda. The roots of HS in Canada go deep into Canadian diplomatic traditions, back through Prime Ministers Mulroney (the Bosnian intervention and the Convention on the Rights of the Child), Trudeau (the Helsinki Process) and Pearson (the post-war treaty system). In the late 90s, Canada was looking for a policy term that would encapsulate the innovative security agenda under Lloyd Axworthy's leadership. It was, in essence, a "people-protection" agenda aimed at considering a vast array of threats, including protection of children, education and gender parity. Axworthy called for extension of the security beyond the traditional concept of inviolability of state. He had already mentioned the term in speeches made after taking office in 1996 and was a fervent advocate of this concept. It is no surprise therefore that Canada took on key leadership and mediating role in occasion of the Ottawa Convention.

Around the same time, HS became a cornerstone of Japan's foreign policy which wanted to develop a new way to define its overseas development assistance policy. Under Obuchi's rule, Japan adopted what can be summarized as a comprehensive, multi-faceted approach to security: "In our times, humankind is under various kinds of threat. Environmental problems such as global warming are grave dangers not only for us but also for future generations".⁹⁵ The Canadian and Japanese views to

⁹³ M. Croll, *The History of Landmines*, Pen and Sword, 1998, p.96

⁹⁴ E. Remacle, *Approaches to Human Security: Japan, Canada, and Europe in Comparative Perspective*, The Journal of Social Sciences, 2008, p. 10, available online.

⁹⁵ *Ibid*, p.16

HS were different although not contradictory. Rather than Japan's wide "freedom from want" approach, Axworthy proposed a narrow "freedom from fear" agenda considered as more feasible and more adapted to Canadian traditions and political position.

3.3.2 Cost-Efficiency

Governments were incentivized to adhere to Ottawa once they realized that banning landmines would not create considerable negative repercussions. The elimination of APLs as a class of weapons represented no overwhelming economic threat to defense contractors and there is now a rather established consensus amongst military scholars that landmines have become rather futile instruments of war.⁹⁶

More importantly states rapidly became aware that funding mine action, through channels of expert organizations, presented a financially advantageous strategy for achieving national foreign policy objectives. By partnering with trust funds states can cut back on a large sum of operational costs of implementing mine action, while attaining more efficient results.

As Ambassador Lovrenčić explains:

*“...donors are saying that it [mine action] is actually an investment and find it even financially attractive, because if we finance demining and mine victim assistance then conditions for socio economic development are met, people stay where they are, they don't migrate and secondly, as far as radicalism is concerned, it prevents to some extent the return to violent methods”.*⁹⁷

Hence, what appear to be charitable contributions actually reflect the necessity to pursue a core pillar of country's national security strategies. The words of former Secretary of State Colin Powell illustrate this best: “When the USA assists other countries in clearing landmines and caring for refugees we serve America's long-term interests and remain true to the values upon which our country was founded”.⁹⁸

⁹⁶ Ibrahim Bin Mohammed Al Arifi, Brigadier Gen., Saudi Delegation, Statement at the First Review Summit of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Dec. 3, 2004.

⁹⁷ T. Lovrenčić, Personal Interview, Ljubljana, Slovenia, 8 Feb. 2018

⁹⁸ K. Rutherford, B. McDonald, R. Matthew, *supra* note p.63

Conclusion

This part shows that the landmine ban, from something that looked highly improbable, in a relatively brief period of time gained global attention and was codified under international law. Indeed, no major instrument of humanitarian law has attracted such widespread adherence from the outset as much as the Ottawa Convention did—it suffices to recall that it took states decades to ratify the 1925 Geneva Gas Protocol. This outcome was mainly the result of the coordinated multilateral efforts among NGO's, IOs and the support of certain key “middle” powers.

However, the global mobilization by NGOs, acting as self-identifying players under the banner of the ICBL, played an integral part in the stipulation of the Ottawa Treaty and should be given special credit. Together, they created an unconventional “bottom-up” form of diplomatic engagement, demonstrating an alternative approach to international lawmaking. While it remains far-fetched to describe the Process as a “democratization” of IL, since the treaty continues to affirm the centrality of State sovereignty and the primary responsibility for the implementation of treaty and mine action, the hybrid dynamics of non-state actor involvement remains unprecedented.⁹⁹ The innovative aspects were also that the disarmament proceedings were negotiated unlike major arms control treaties, outside the UN system and bypassing the traditional consensus rule.

⁹⁹ APMBC, art. 20 (2)

Part IV - Mechanisms of Compliance

Critics of the Ottawa Convention often claim that the treaty lacks coherent and powerful enough enforcement measures.¹⁰⁰ However, this fails to recognize that the Ottawa treaty actually incorporates a set of well-defined legal instruments designed to create a constant regime of verification and compliance.¹⁰¹ In this section I will analyze such implementation mechanisms and explore how the Convention is further reinforced by a supranational framework of institutions and standards that monitor and ensure Party's adherence to Ottawa's humanitarian objectives.

4.1 Provisions on Compliance

4.1.1 Transparency Clause

The ICRC noted that compliance monitoring would be an important element to end the use of APLs and suggested that the best method would be for the obligation to annually share and confront statistics on demining progress being made.¹⁰² This provision refers to article 7 regarding "Transparency" and is inserted in light of the principle of 'cooperation' enshrined in article 6 of the APMBC. According to Article 7 State Parties must submit to the United Nations Secretary-General a comprehensive report (no later than 30 April of each year) detailing the amount and type of mines stockpiled, the locations of mined areas under their respective jurisdictions, and the status of both mine-destruction programs and the decommissioning of mine-production.¹⁰³ These transparency reports provide the basic information essential for any concrete form of mine action and effective implementation of the Convention as they permit a continuing assessment of progress. Transparency reports are therefore a very valuable tool in facilitating the delivery of international assistance to mine-affected countries and meeting the reporting obligations helps build confidence in the Convention overall.

¹⁰⁰ S. Groves, T. Bromund, *The Ottawa Mine Ban Convention: Unacceptable on Substance and Process*, The Heritage Foundation, no.2496, 2010

¹⁰¹ ICRC, *Improving Compliance with International Humanitarian Law*, International Humanitarian Law Research Initiative, Cambridge, 2004

¹⁰² L. Maresca and S. Maslen, *The banning of anti-personnel landmines: the legal contribution of the International Committee of the Red Cross*, New York, NY: Cambridge University Press, 2000, p.97

¹⁰³ APMBC, art. 7

While there are no procedures in the treaty for determining the veracity of ‘Article 7 reports’, there are mechanisms for verifying suspected cases of non-compliance. These mechanisms are detailed in Article 8 on ‘Facilitation and Clarification of Compliance’. This article prescribes essentially that a mutual monitoring mechanism exists *de facto* between state parties, which must jointly decide on a case-by-case basis what action to take in case of non-compliance with the provisions of the Convention. Furthermore, while the states are given the possibility of requesting an extension for the completion of their duties under article 5, the same article, under paragraph 4 lays down a highly specific and rigid obligation of states to justify the incapacity of achieving the results within the prescribed time frame, furthering an environment of constant action rather than inaction.¹⁰⁴

If a state party is suspected of violating any treaty prohibition, the Convention allows for any other state party to submit a ‘Request for Clarification’ to the suspected state. The requested state party is required to respond within 28 days.¹⁰⁵ If a response is not received, or is deemed unsatisfactory by the requesting state, it may submit the matter to the next MSP. This is done through the mechanisms of “fact finding missions” which is found under Article 8 par. 7. Such missions aim to clarify any doubts as to the compliance with the treaty by a state party. For obvious reasons, this was a difficult provision to negotiate and it is easily the longest article in the treaty for it requires a team of up to six independent experts, mandated by a voting majority of State parties at a Meeting or Special Meeting of State parties, to assess matters of alleged non-compliance, *de facto* overviews and possibly verifying the juridical implementation process of another State. The ‘host’ State must take all precautionary and protective measures to safeguard the delegation of experts which are granted immunities established under Article 6 of the Convention on the Privileges and Immunities of the United Nations.¹⁰⁶

4.1.2 Meeting of State Parties and Review Conferences

The requirement to submit annual transparency reports is done within the framework of the annual Meetings of the States Parties (MSPs). This is a critical mechanism incorporated in the Convention. It was agreed under Article 11 that states parties would meet annually following the treaty’s entry

¹⁰⁴ APMBC, art. 5 (4)

¹⁰⁵ APMBC, art. 8 (2)

¹⁰⁶ *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, art. 6

into force up until the date of the First Review Conference, scheduled to take place five years after the treaty comes into force, but praxis has since established that state parties meet yearly.¹⁰⁷ MSPs act as crucial fora of dialogue but primarily of condemnation. The reunion of the international community is one that aims firstly at strengthening the general observance and promotion of the Convention's norms and objectives, which includes stigmatizing those who fail to uphold or in some cases violate these norms.

Invited as official observer to the 16th MSP, Ambassador Lovrenčič reveals that: *“it was wonderful to see that a community of countries strongly criticized countries that were having second thoughts on implementation (...) this is what international law should really be about. It's not a cafeteria that you take what you like. You are adhering to an entire text in its totality and there is a system that makes sure that you implement it and you can be sure that if you start being a partial implementor you will come under pressure by other participants”*.¹⁰⁸

It was further agreed that beyond meeting annually, Review Conferences would take place every five years, as per Article 12 par. 1 of the APMBC. Review Conferences are convened by the Secretary-General of the United Nations, provided that the interval between Review Conferences shall in no case be less than five years.¹⁰⁹ All states parties to the Convention are invited to each Review Conference along with official observers, granted under Article 11 par. 4 (this is also applicable for MSPs). The purpose of the Review Conference is to review the operation and status of this Convention, to take decisions on granting extension periods for mine clearance submitted by state parties, as provided for in Article 5. The most recent Review Conference was held in the Maputo, Mozambique in 2014 which stipulated an action plan to chart the path to renew political efforts and develop a more concrete legal framework for mine victim assistance. Over 1,000 representatives of states and non-governmental organizations met in Maputo.¹¹⁰

In spirit of furthering the continued coordination of demining efforts parallel conferences and intersessional meetings are held. The Convention indicates that the states parties “shall meet regularly in order to consider any matter with regard to the application of implementation of the Convention”¹¹¹ and does not legally prevent extemporaneous encounters and voluntary associations

¹⁰⁸ T. Lovrenčič, Personal Interview, Ljubljana, Slovenia, 8 Feb. 2018

¹⁰⁹ APMBC, art 12 (1)

¹¹⁰ APMBC, Third Review Conference Maputo, June 2014

¹¹¹ APMBC, art 11

of MSs from taking place.¹¹² It is now praxis for states to hold 2 informal intersessional meetings each year in Geneva. This underlines how extensively states have taken their responsibilities, going beyond what has been textually prescribed under the Convention.

4.2 National and Supranational Institutional Mechanisms

4.2.1 National Legislation

The Ottawa Convention, under Article 9, foresees the immediate adoption of national legislation to ensure domestic compliance of adopted measures. This article was subject of large debate during negotiations. At the Oslo Diplomatic Conference, countries like Switzerland wanted to introduce a proposal for compulsory jurisdiction over any national of a State Party who has used anti-personnel mines or ordered them to be used. Unfortunately, and perhaps because of the largely disarmament background of many of the negotiators, this proposal was not retained.¹¹³ The provision finally adopted is largely that contained in the second Austrian draft, and therefore normally — though not always — requires the adoption of national legislation. However, states, as shown in Part 5, have nonetheless extensively integrated national laws in compliance with Article 9.

While not provided specifically under the Convention, an implicit purpose of mine action legislation is that of institutionalizing a National Mine Action Authority (NMAA). NMAAs are vested with the authority of policy, regulation and overall management of a national mine action program, as well as resource mobilization, particularly from the government.¹¹⁴ The NMAA is typically an inter-ministerial body and is ultimately responsible for all phases and facets of a mine action program within its national boundaries, including the national mine action strategy, national mine action standards and technical instructions. The existence of such an entity is defined to the precise legislative scope given by the national authorities and can thus be dissolved as states deem fit. Almost

¹¹² K. Rutherford, B. McDonald, R. Matthew, *Landmines and Human Security*. New York. State University of New York Press, 2004 p.74

¹¹³S. Maslen, P. Herby, *An international ban on anti-personnel mines: History and negotiation of the "Ottawa treaty"*, International Review of the Red Cross, No. 325, available online: <<https://www.icrc.org/eng/resources/documents/article/other/57jpjn.htm>>

¹¹⁴ Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Geneva, 2014, V ed, p. 88

all APMBC state parties with contamination have a national mine action program or institutions that are assigned to fulfil the state's clearance obligations, although some countries are lagging behind in the process, namely Turkey, that activated the Turkish Mine Action Center (TURMAC) only in 2015.¹¹⁵ As of December 2013, a total of 25 States had declared that they had completed implementation of their mine clearance obligations under the APMBC and therefore ended their NMAA's. Only 12 states not party do not have national mine action programs with some of them being most contaminated countries in the world.¹¹⁶ This underlines the importance of striving for the universalization of the Ottawa Convention in order to address the threat posed by APLs.

4.2.2 Supranational Oversight

The official verification system detailed in the treaty is further reinforced by the institutional structures that have developed in light of the provisions, therefore instilling the notion of normative law producing a governance structure. Unlike other arms control treaties, the Ottawa Treaty does not create, or mandate an existing body to act as a secretariat. Instead, institutional responsibility for receiving and disseminating states' declarations on their compliance and for instituting the mechanisms for clarifying and determining compliance is vested in the UNSG. In practice, responsibility for implementing these procedures is devolved to the UN Department for Disarmament Affairs (UNDDA) and the UN Mine Action Service (UNMAS).¹¹⁷ The UNDDA's mandate is to advise the UNSG and member states on disarmament matters, develop and strengthen disarmament norms and agreements, and promote transparency and confidence-building in all aspects of disarmament. The UNSG avails himself of the Implementation Support Unit (ISU), which was established at the Third MSP in 2001 in order to ensure effective administrative support to State parties in Intersessional Work Programs and Standing Committees.¹¹⁸ The organ is authorized to manage, collect and provide independent compliance related information to facilitate monitoring.

¹¹⁵APMBC, art. 7 Report (for calendar year 2016), Form H; statement of Turkey, Mine Ban Treaty Intersessional Meetings, Committee on Enhancement of Cooperation and Assistance, Geneva, 8 June 2017; and email from Lt.-Col. Halil Şen, TURMAC, 21 June 2017.

¹¹⁶ I. Mansfield, *Building National Mine Action Capacity: It Is No Myth*, The Journal of ERW and Mine Action, 2002, p. 15

¹¹⁷ The Geneva International Centre for Humanitarian Demining, *A Guide to Mine Action*, Geneva, 2014, V ed. p.75

¹¹⁸ A. Woodward, *Verifying the Ottawa Convention*, Verification Yearbook 2001, 2001

However, the primary institutional body for coordinating mine action globally is the UNMAS, established in March 1998. Since the signing of the treaty it was clear that a structure was needed to effectively coordinate the resources for mine action while at the same time bolstering the status for mine action at a United Nations level. Since, UNMAS has acted as a focal point for mine action in the UN system, providing services and assessment of mission and a facilitator of dialogue in the triple arrangement between state officials, donors and mine action agencies. As of today, UNMAS provides direct support and assistance to 17 countries.¹¹⁹ The United Nations role in mine action is rooted in the UN Charter and further defined in UN resolutions, which consider “mine action to be an important component of United Nations humanitarian and development activities”.¹²⁰

4.3 Informal Mechanisms

4.3.1 International Mine Action Standards

Another important feature governing implementation of the APMBC are International Mine Action Standards (IMAS) which are non-binding normative guidelines to ensure the application of national mine standards in conformity with certain legal, humanitarian and political criteria. These global guidelines have been developed to document good practices in the area of international standards and to aid their coherent translation into national standards. Thus, standards provide information on existing regulations and treaties affecting mine action, particularly those referring to basic human rights, clearance requirements, hazard marking and general safety issues. UNMAS, is the office within the United Nations responsible for the development and maintenance of IMAS.¹²¹ This helps recall that mine action takes place within a context of well-defined international legal instruments and a mature set of policy standards.¹²²

In this framework, policymakers realized that there was a need to standardize impact survey and other assessment procedures. Landmine Impact Surveys (LIS) are now applied universally and can be used to have more coordinated reporting methods of demining progress.¹²³ These mechanisms

¹¹⁹ United Nations, The Strategy of the United Nations on Mine Action 2013-2018, 2012, available online: <http://www.mineaction.org/sites/default/files/publications/mine_action_strategy_mar15.pdf>

¹²⁰ GA Resolutions A/RES/53/26 (1998) - GA/RES/66/69 (2011).

¹²¹ United Nations Mine Action Service, *Guide for the application of International Mine Action Standards (IMAS)* as amended 2013, New York, 2013, II ed.

¹²³ K. Rutherford, B. McDonald, R. Matthew, *Landmines and Human Security*. New York. State University of New York Press, 2004 p.71

developed in light of the Ninth Meeting of the states parties held in 2008 which specifically stated that “for many state parties (...) imprecise identification and significant overestimation of the size of mined areas has led to inappropriate allocations of time and resources”.¹²⁴ Mine Action is an extremely difficult task, beyond its apparent dangers, it is also technically difficult to identify mines. For this reason, more thorough technical and non-technical standardization surveying methods are needed.

4.3.2 Information Flow - The ICBL MONITOR

Unlike in other disarmament regimes, civil society monitoring and verification is not just tolerated by states parties, but actively encouraged. The Landmine Monitor, an initiative of the ICBL, is now a major, integral part of the verification system and it produces an annual Landmine Monitor Report on state party compliance, signatory adherence and non-state party observance of the ban since 1999. The Monitor continues publishing reports assessing global mine clearance, counseling states and of course also pressuring them by commenting on their relative verification-relevant information that would otherwise not be available.¹²⁵ Thus, the Monitor has an important function in determining State compliance by corroborating the necessary evidence of state demining progress.¹²⁶ As Vines and Thompson have noted, the establishment of a civil society-based monitoring network for an international agreement is unprecedented.¹²⁷

Conclusion

Given the comprehensive normative and legal environment of verification that the Ottawa Convention avails itself of, the treaty does not concede many compromises. What is furthermore clear is that beyond the formal verification mechanisms, there exist other informal mechanisms such as the IMAS and the Landmine Monitor which amplify the legal regime monitoring disarmament progress.

¹²⁴ APMBC (2008) Ninth Meeting of the States Parties to the Anti-Personnel Mine Ban Convention, ‘Final Report’, APLC/MSP.9/2008/4, 75

¹²⁵ ICBL, Comments and Expectations Mine Clearance Deadline Extension Request, 13th Meeting of States Parties to the Mine Ban Treaty, December 2013.

¹²⁶ G. Ulfstein, *Making Treaties Work: Human Rights, Environment and Arms Control*, New York, 2007, p.80

¹²⁷ A. Vines and H. Thompson, *Beyond the Landmine Ban: Eradicating a Lethal Legacy*, Conflict Studies, 1999, no. 316 p. 75

PART V – Implementation and Evaluation

5.1 States & Trust Fund Partnerships: The *International Trust Fund - Enhancing Human Security (ITF)* as a Case Study Organization

The mission of eradicating landmines is one that no government, international agency or private group can solve on its own. Indeed, while the Ottawa Convention codifies the norm of cooperation under Article 6, the complex dimension of mine action is one that inherently requires combined efforts. This is because states often lack the *savoir faire* on the field, while NGOs (which do have technical expertise) need funding to conduct their operations. In this section I will examine more closely the dynamic interaction between public and private entities at play in the funding and implementation of the Conventions objectives, namely through the case study of ITF.

5.1.1 History and Structure of ITF

The ITF is a humanitarian non-profit organization that was established by the Government of Slovenia in March 1998 to assist Bosnia and Herzegovina in implementing the Dayton Agreement of December 1995 by raising funds, providing services and managing mine action projects. Since its inception, the ITF has focused its fundraising activities and support to humanitarian mine action in South East Europe, while maintaining its mission of aiding countries in post-conflict reconstruction. As the European Commission acknowledged, ITF is a reference model of regional organization in mine action.¹²⁸ It currently operates globally in conflict regions—which are consequentially also mine-affected—such as: Cyprus, the South Caucasus, Central Asia, Latin America and the Middle East.

ITF is structured as a hybrid organization, adopting characteristics between a governmental entity, and a non-governmental entity. It is so in the prior sense because it is rooted as a governmental agency (with close ties to the Ministry of Defense), and its board of advisors (BoA) is presided by the Ambassadors present on Slovenian soil representing the community of donor countries to ITF. The BoA draws attention to matters that are important to the donors and guides their desire to provide

¹²⁸ ITF Enhancing Human Security, *Interim and Final Review Terms of Reference for Evaluation Consultant/Consultant Team, 2012*, available online.

further assistance in relation to ITF's future projects. Equally, ITF is a full humanitarian non-profit which allows it to access politically sensitive and destabilized areas as a neutral actor, fostering a connection with the local mine-affected population more proactively.

According to ITF Director Ambassador Lovrenčič, ITF tries:

*“...to bring the best of both worlds together. On one hand the “trustworthiness” which is enhanced by the governmental support and on the other the “flexibility” and “grass root” action expected by an NGO (...) this structure allows us to function well both with donors (typically states) and recipients which in many cases are non-state recipients”.*¹²⁹

ITF is therefore in the unique position of dialoguing alongside important supranational bodies and at the same time perform local demining operations.¹³⁰ Such entities can play important standard-setting and policy-shaping roles in their relationships with governments and the mine-related bodies inside the United Nations system, to influence the nature and levels of financing.¹³¹

ITFs' operational actions manifest the liaison mechanisms translating the provisions set under the higher legal text of international law into practice. The figures are telling of this reality. Since, 1998, ITF cleared over 148 million square meters of mine and UXO contaminated land in South East Europe, Lebanon and Azerbaijan. Macedonia (2006) and Albania (2009), thanks to demining efforts have achieved mine impact free status. Cumulatively, a total of 431,868,742.00 USD of donations have been entrusted to ITF for managing over 3,100 programs and projects in 31 countries.¹³²

5.1.2 The Trust Fund Mechanism

ITF is one of the longest standing and most specialized organizations in the practice of managing and implementing donations. It does so in accordance with its two main strategic pillars. Donations go either towards projects of mine clearance (Pillar I), or towards long-term development, capacity building, victim assistance/mine risk education projects (Pillar II). In the prior case, ITF adopts a

¹²⁹ T. Lovrenčič, Personal Interview, Ljubljana, Slovenia, 8 Feb. 2018

¹³⁰ ITF was an official observer at the 20th annual meeting of Mine Action National Programme Directors and United Nations Advisers, and the at the 16th MSP. In 2017 it also cooperated closely with the EU Trust Fund for Colombia with the Representatives of the European Commission - Development & Cooperation - EuropeAid, representatives of EU member states and other relevant institutions in the field.

¹³¹ D. Atwood, *Implementing Ottawa: Continuity and Change in the Roles of NGOs*, Disarmament Forum, 1999, p.24.

¹³² ITF- Enhancing Human Security, Annual Report 2017

public tender (or contract-winning) procedure by assigning the task of demining contaminated land lots, identified by local Mine Action Authorities, to the most competent private or public demining agencies.¹³³ ITF has established efficient verification procedures for donations through a series of financial management and internal controls.¹³⁴ This is crucial because a fundamental base of mine action is built on a transparent donor relationship, since it is in the interest of the recipient of the donation as well as the donor to ensure that every dollar is well spent.¹³⁵

Furthermore, through its Regional Project Managers, ITF covers the phase of surveillance and monitoring of clearance operations by remaining in direct contact with the local demining agencies. ITF therefore carries responsibilities to evaluate and report on the month or year-long progress made on individual lots, depending on the mandated time frame, before handing decontaminated land over to national authorities.¹³⁶ Allowing local municipalities to retake ownership over their territories is often one of the most substantial indicators of successful humanitarian demining.

5.1.3 Beyond Demining: A True Human Security Approach

ITF has developed into an agency that takes at heart the holistic concept of Human Security applied to mine action.¹³⁷ As such its intervention areas go beyond the scope of ordinance clearance and stock pile management of ERWs but it is true to fulfilling the encompassing humanitarian dimension outlined by the Ottawa Convention regarding Mine Risk Education (MRE), Victim Assistance, and Advocacy. The strategic objectives of the ITF are thus in line with the objectives of the APMBC. This can be said in particular reference to the article 6 par. 3 of the Convention stating: “Each State Party in a position to do so shall provide assistance for the care and

¹³³ As I have had the chance to see in person during a field trip organized by **ITF**, in Bosnia-Herzegovina at a mine location in Gorazde (95km south of Sarajevo) demining is conducted mostly by private companies. While BiH Armed Forces and the Civil Protection Agency are present and hold over 60% of the demining equipment, commercial companies such as DOK-ING, POINT, UEM D.O.O (among several others) are considered much more efficient for the task.

¹³⁴ ITF- Enhancing Human Security, Annual Report 2017 p. 22

¹³⁵ K. Rutherford, B. McDonald, R. Matthew, *Landmines and Human Security*. New York. State University of New York Press, 2004 p.131

¹³⁶ APMBC, art.5 (4) (b) (i)

¹³⁷ T. Lovrenčič, Personal Interview, Ljubljana, Slovenia, 8 Feb. 2018: “*Our role has been much wider than just demining, and it is a permanent task*”

rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs...”¹³⁸

Figures, relating to its most recent annual report, are telling of this. ITF has provided and funded rehabilitation treatment to 1,303 mine survivors in Slovenia, Bosnia and Herzegovina and Lebanon. Over 17,500 mine survivors and other disabled persons have received psycho-social assistance.¹³⁹ Further, nearly 1,450 children mine survivors attended summer and winter rehabilitation camps, while over 910 mine survivors that were engaged in socio-economic programs received either economic assets, loans or scholarships.¹⁴⁰

5.1.4 Mine Action Diplomacy: Building Partnerships & Evolving Legitimacies

Partnerships are an integral part of mine action, especially when they are manifested in field. For instance, during 2017, ITF collaborated with more than 30 partners—UN bodies, regional organizations, international and local NGOs and other implementing agencies.¹⁴¹ This requires diplomatic negotiation and strong networking capabilities. Building solid partnerships is crucial if effective implementation of donations is to occur. This is why ITF strives to provide logistical and administrative support, also known as *capacity building*, to national mine action centers to ensure that appropriate institutions can develop autochthonously.

As said by Ambassador Lovrenčič: “*We have 163 people on pay roll in Afghanistan (including Director of Afghan mine action service). 41 people on pay roll in Libya. We have been instrumental in setting up MACs in BH, Albania, Serbia, Croatia and we just opened an office in Bogota, setting up national capacity similar to MAC’s*”¹⁴²

As can be seen through the case of ITF, non-state actors are indispensable players for implementation of treaty law. NGOs have undeniably taken responsibility over the coordination mechanisms of mine action, interestingly showing how State duty is vehiculated through tertiary institutions.

It should be said that this was a foreseeable dynamic. However, what could not really be foreseen is the extent to which NGO’s have evolved as figures involved not only in ensuring and monitoring

¹³⁸ APMBC, art. 6 (3)

¹³⁹ ITF- Enhancing Human Security, Annual Report 2017 p. 86

¹⁴⁰ *Ibid*, p. 90

¹⁴¹ ITF- Enhancing Human Security, Annual Report 2017 p. 19

¹⁴² T. Lovrenčič, Personal Interview, Ljubljana, Slovenia, 8 Feb. 2018.

compliance in full observance of the Treaty's requests, but also in their penetration as mediators within post-conflict scenarios. NGO's, in the field of mine action, have become implementers, allocators, and standard-setters of great relevance. These organizations including ITF, the *Halo Trust Fund* or *Norwegian People's Aid*, have also broadened the intervention of stakeholders and various interested parties, fostering the widened human security dimension. This can be further demonstrated by the creation of the *Working Group on Victim Assistance* by the ICBL which, comprising more than 25 international humanitarian and development organizations, has developed a set of programmatic guidelines to help shape and promote comprehensive rehabilitation for thousands of landmine survivors worldwide.¹⁴³

In essence, NGOs should be expected to strengthen norms of universal acceptance of minimum standards of human security and can be expected to continue to support the *de jure* and *de facto* universal adherence to the APMBBC's principles by publicly condemning and stigmatizing any evidence of breach of the AMPBC by any actor, state or non-state, inside or outside the Convention.

5.2 Global Progress: Identifying State Practice

Having discussed the legal and institutional framework that the Ottawa Convention hinges on it is important to analyze empirically the global extent of progress in giving effect to the rules contained in the Treaty. To do so, I will rely primarily on the information given through the 2017 Landmine Monitor and observe both the actual rate of landmine decontamination and the degree of national legislative implementation of laws and policies.¹⁴⁴

5.2.1 Status of Landmine Free Countries

Twenty-eight states parties have completed implementation of Article 5 of the Ottawa treaty since 1999, the most recent of which was Algeria in February 2017.¹⁴⁵ In addition, states not party Nepal and Taiwan have completed clearance of known mined areas since 1999. Jordan has declared

¹⁴³ International Campaign to Ban Landmines, *Guiding Principles for Victim Assistance* (compiled by Working Group on Victim Assistance), 2000, available online.

¹⁴⁴ The data collected by the monitor is the most comprehensive and widely-used annual, and global, dataset of casualties caused by mines/ERW

¹⁴⁵ International Campaign to Ban Landmines, *Landmine Monitor 2017* (ICBL-CMC), 2017, p.2

completion of clearance under the Mine Ban Treaty (in 2012) but is still finding APL contamination and therefore does not appear in Figure 1 below. Nigeria declared completion of clearance in 2011, however there have been reports of new contamination resulting from recent use of antipersonnel mines by a non-state armed groups (NSAGs) such as Boko Haram.¹⁴⁶

COMPLETION OF ARTICLE 5 IMPLEMENTATION

On 10 February 2017, Algeria announced that it had completed clearance.³¹

States Parties that have completed Article 5 implementation since 1999

Albania	Denmark	Guinea-Bissau	Rwanda
Algeria	France	Honduras	Suriname
Bhutan	FYR Macedonia	Hungary	Swaziland
Bulgaria	Gambia	Malawi	Tunisia
Burundi	Germany	Montenegro*	Uganda
Congo	Greece	Mozambique	Venezuela
Costa Rica	Guatemala	Nicaragua	Zambia

*Montenegro still has to formally report completion of Article 5 implementation, but is not believed to have any antipersonnel mine contamination left.

Figure 1 Available online: http://www.the-monitor.org/media/2615219/Landmine-Monitor-2017_final.pdf

5.2.2 Mine Clearance: 1998-Present

It is not possible to provide a global estimate of the total area contaminated by landmines, due to the highly irregular accessibility of data for countries experiencing conflict, especially as of 2016. The Landmine Monitor confirmed new use of antipersonnel mines by the government forces of Myanmar and Syria, neither of which are party to the Mine Ban Treaty, but also in Yemen, which is a state party. The capacity of assessment on the status of landmines is further undermined by the emergence of NSAGs which have been reported to possess stocks of landmines taken from government facilities in both states party and non-party.¹⁴⁷ At any rate, in 2016 about 170 km² of land was reported to be cleared of landmines—a significant increase from 2015 results. The largest total clearance of mined areas in 2016 was achieved in Afghanistan, Croatia, Iraq, and Cambodia, which together accounted

¹⁴⁶ *Ibid*, p.15

¹⁴⁷ In States Parties: Afghanistan, Iraq, Nigeria, Ukraine, and Yemen; and in states not party: India, Libya, Myanmar, North Korea, Pakistan, and Syria it has been reported through eye witnesses that NSAGs in 2016 and/or 2017 have used APLs.

for more than 83% of recorded clearance.¹⁴⁸ Over the past five years (2012–2016), approximately 927 km² of mined areas have been cleared, some 1.1 million antipersonnel mines and more than 68,000 antivehicle mines have been destroyed in the context of mine and battle area clearance.¹⁴⁹

5.2.3 Stockpile destruction and production

At least 157 of the 164 states parties do not stockpile antipersonnel mines since 1999. This includes 92 states that have officially declared completion of stockpile destruction and 65 states that have declared they never possessed antipersonnel mines (except in some cases for training in detection and clearance techniques).¹⁵⁰ In 1999, states stockpiled about 160 million antipersonnel mines, but today the global total may be less than 50 million.¹⁵¹ Forty-one states have ceased production of antipersonnel mines, including four that are not party to the Mine Ban Treaty: Egypt, Israel, Nepal, and the US.

Collectively, states parties have destroyed more than 53 million stockpiled antipersonnel mines, and in 2016 alone more than 232,000 antipersonnel mines and some 29,000 antivehicle mines were destroyed.¹⁵² Belarus completed the destruction of its stockpiles in April 2017 after being in violation of the convention since 2008. This is significant as it shows how despite extensions, countries remain committed to the task of eradicating APLs.¹⁵³

5.2.4 Number of casualties

Casualties were identified in a total of 56 states and other areas in 2016, with casualties decreasing in 31 states but increasing in 30 states from 2015.¹⁵⁴ Declining casualty rates were recorded in Cambodia and Colombia in 2016, two States Parties that in the past were among those with the highest number of casualties. With global increases in casualties each year since 2013, the total of 8,605 mine/ERW casualties recorded in 2016 mirrored the high casualty numbers documented in the early of the Treaty. This is reflected in an average incidence rate of 23 mine/ERW casualties per day in 2016, compared to less than 10 casualties per day in 2013, the year for which the lowest number

¹⁴⁸ Landmine Monitor, *supra* note, p. 21

¹⁴⁹ *Ibid*, p. 22

¹⁵⁰ *Ibid*, p.25

¹⁵¹ *Ibid*, p.25

¹⁵² *Ibid*, p.26

¹⁵³ *Ibid*, p.3

¹⁵⁴ *Ibid*, p.52

of annual casualties were recorded by the Monitor.¹⁵⁵ While these figures are alarming it should be underlined that in early years of reporting in 1999, the number of improvised mine casualties (also recorded as victim-activated IED casualties) was largely underreported.

Number of mine/ERW casualties per year (1999–2016)⁴

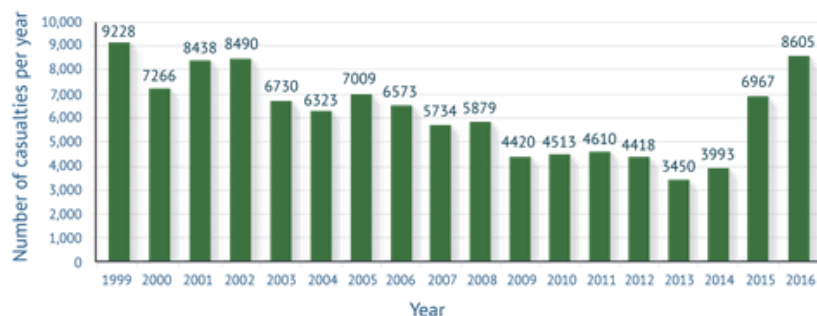


Figure 2 Available online: <http://www.the-monitor.org/en-gb/reports/2017/landmine-monitor-2017/casualties.aspx>

Largest increases in mine/ERW casualties 2015–2016

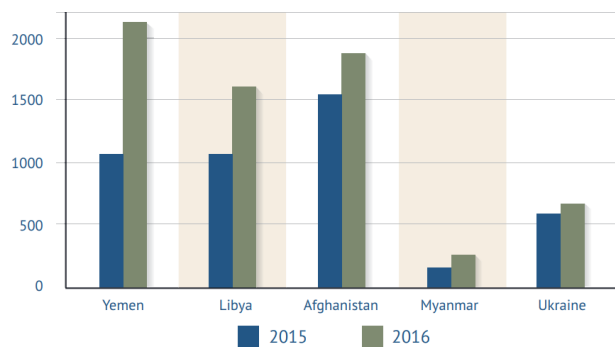


Figure 3 Available Online: http://www.the-monitor.org/media/2615219/Landmine-Monitor-2017_final.pdf

5.2.5 National Policy and Laws for Disability

Countries answer differently if mine victims have acquired rights. A number of countries say that there is no such thing as a mine-victim per se and therefore there is no obligation of the state towards these people, which are often abandoned, neglected and forgotten. However, enacting legislation and laws concerning disability rights does not only pursue the provision under Article 9 of the APMBC,

¹⁵⁵ *Ibid*, p.54

it is crucial for the rehabilitation and reintegration back into the community of mine victims, which is the ultimate goal of mine action and development. The legal framework and qualitative assessments surrounding VA policies were reinvigorated with the 2008 Convention on the Rights of Persons with Disabilities and reiterated at the 2014 Maputo Action Plan.¹⁵⁶

The Landmine Monitor includes detailed country profiles examining progress and trends in victim assistance in some 70 countries, including both states parties and states not party to the APMBC, but focuses on the 31 most mine-affected nations.

In 2016, only 13 of the 31 nations (sampled as the most-affected countries) had victim assistance or relevant disability plans in place, and another two had draft plans.¹⁵⁷ In 2016–2017, broad disability plans with relevance to mine/ERW survivors were adopted in Albania and BiH. As of now, 20 of the 31 states parties had active victim assistance coordination mechanisms or disability coordination mechanisms that considered the issues relating to the needs of mine/ERW survivors.¹⁵⁸ In Croatia, cooperation between a pharmacy and a national foundation resulted in the donation of products for treating the health problems of people affected by mines/ERW.¹⁵⁹ Medical care services for mine/ERW survivors were strengthened in some countries in the Sub-Saharan Africa region, including in Burundi, Chad, and Mozambique. However, access to medical care remained limited in the DRC, Guinea-Bissau, Senegal, and Zimbabwe, with survivors having to travel long distances in order to access services or being unable to access primary healthcare services at all. In Somalia, ongoing conflict damaged health facilities and continued to weaken an already fragile health system. In Sudan and South Sudan, emergency healthcare services were mainly provided by international organizations and NGOs.

These figures suggest that there is a need for continued work with the state law making bodies to ensure that all landmine victims are given basic humanitarian disability benefits. However, what is also represented is that with the victim assistance norms propagated by the Ottawa Convention mine

¹⁵⁶ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, art. 1

¹⁵⁷ Landmine Monitor, *supra* note, p. 28

¹⁵⁸ C. Loughran, S. Sutton, *MAG: Clearing Improvised Landmines in Iraq*, *The Journal of Conventional Weapons Destruction*, Vol. 21, Issue 1, April 2017, available online.

¹⁵⁹ APMBC, Third Review Conference Maputo, June 2014, available online.

victims have gained unprecedented levels of participation and inclusivity¹⁶⁰ in decision making policies.¹⁶¹

5.2.6 *Diuturnitas* by Great Powers?

The United States

To date, the United States of America remains the world's largest donor in the area of mine action. In 2016, the United States (US) contributed more than \$152 million to 27 countries (19 states parties, seven states not party, and one signatory).¹⁶² The US prohibited production of antipersonnel mines in 2014 under its mine ban policy, the US has foresworn future production or acquisition of antipersonnel landmines.¹⁶³ In September 2014, the US committed to not use APLs outside of the Korean Peninsula and not to assist, encourage, or induce other nations to use, stockpile, produce, or transfer antipersonnel mines outside of Korea.¹⁶⁴ In April 2015, Secretary of State John Kerry said the US “will begin destroying its anti-personnel landmine stockpiles not required for the defense of the Republic of Korea”.¹⁶⁵ The US exported more than 5.6 million APLs to 38 countries between 1969 and 1992. US law has prohibited all exports since 23 October 1992, through a series of multi-year extensions of the moratorium.¹⁶⁶

Russia

The Russian Federation also has declared that it suspended most of its mine production. It further stated in October 2017, “...we do not exclude our possible accession to Ottawa Convention in the future”.¹⁶⁷ Russia is party to the CCW and Amended Protocol II and V on mines, and thus submits

¹⁶⁰ In addition, since 2007, Colombia has a National Disability System composed of representatives of the Ministry of Health and Social Protection and of the National Disability Council, which assesses, monitors, and evaluates the SND and the national disability policy. The SND also includes department and municipal councils in which victim assistance actors participate, working to advance the rights of persons with disabilities.

¹⁶¹ The United Nations Policy on Victim Assistance in Mine Action (2016 update), p. 9, available online.

¹⁶² Email from Steve Costner Deputy Office Director Weapons Removal and Abatement to the Landmine Monitor, US Department of State, 30 October 2017.

¹⁶³ The June 27 landmine policy announcement was made by the US ambassador to Mozambique at the Mine Ban Treaty's Third Review Conference and detailed in a White House fact sheet.

¹⁶⁴ The September 23 landmine policy announcement was made by President Obama in an address at the Clinton Global Initiative in New York and detailed in a White House fact sheet. See, Office of the Press Secretary, “Remarks by the President at Clinton Global Initiative,” The White House, 23 September 2014; and Office of the Press Secretary, “Fact Sheet: Changes to U.S. Anti-Personnel Landmine Policy,” The White House, 23 September 2014.

¹⁶⁵ Statement by John Kerry, US Secretary of State, 3 April 2015.

¹⁶⁶ Editorial Board, “A Step Closer to Banning Landmines”, *The New York Times*, 26 September 2014.

¹⁶⁷ Statement by Vladimir Yermakov, UN General Assembly (UNGA) First Committee Debate on Conventional Weapons, New York, 20 October 2017

its national annual reports as required by Article 13, including in 2017.¹⁶⁸ In its transparency reports for 2016, Russia reported that its armed forces engineering units conducted demining and explosive ordnance disposal in 80 regions of the country. In total, more than 306,616 explosive devices were destroyed, including 20,698 improvised explosive devices.¹⁶⁹ In November 2004, Russia released official information for the first time on the number of antipersonnel mines in its stockpiles, when then-Minister of Defense Sergei Ivanov cited a figure of 26.5 million. The minister forecast that approximately 23.5 million of these antipersonnel mines would be destroyed between 2005 and 2015.¹⁷⁰ As invitees of the APMBC 10th MSP, Russia declared that it has destroyed 10 million mines, including antipersonnel mines.¹⁷¹ In 2010 only, more than 464,000 antipersonnel mines that did not meet international requirements were also destroyed.¹⁷²

China

The People's Republic of China has declared reduction in APL production limited to those which are compliant with CCW Amended Protocol II.¹⁷³ On 5 December 2016, China voted in favor of UN General Assembly (UNGA) Resolution 71/34, calling for the universalization and full implementation of the Mine Ban Treaty, as it has every year since 2005.¹⁷⁴ Although China has always maintained its opposition to join the Mine Ban Treaty it, however, has also stated that it “supports the ultimate objective of comprehensive prohibition of antipersonnel landmines”, and “ascribes to the goal and principles of the convention and highly appreciates the humanitarian spirit embodied in the convention”.¹⁷⁵ While China does not disclose its information publicly, in June 2014 Chinese representatives informed the Monitor that no new antipersonnel mines had been used in the country in the past decade and acknowledged antipersonnel mines no longer play a prominent role

¹⁶⁸ Russia has often said this in the past. The diplomat also asserted that Russia fully abides by the requirements of CCW Amended Protocol II. Interview with Georgy Todua, Minister Counsellor of the Russian Embassy in Colombia, Mine Ban Treaty Second Review Conference, Cartagena, 4 December 2009

¹⁶⁹ CCW Amended Protocol II Article 13 Report (for 2016), Form B; and Protocol V Article 10 Report (for 2016), Form A

¹⁷⁰ Statement by Sergei Ivanov, Parliamentary Hearings on Ratification of CCW Amended Protocol II, 23 November 2004.

¹⁷¹ Statement of Russia, Mine Ban Treaty Tenth Meeting of States Parties, Geneva, 2 December 2010. Notes by ICBL.

¹⁷² Article 13 Report, Form B, 2011

¹⁷³ Statement of China, “Summary record of 18th Annual Conference of High Contracting Parties to CCW Amended Protocol II,” CCW/AP.II/CONF.18/SR.1, Geneva, 30 August 2016.

¹⁷⁴ ICBL, *Landmine and Cluster Munitions Monitor: China Man Ban Policy*, 28 October 2014, available online.

¹⁷⁵ “Statement at the Third Review Conference of the Anti-Personnel Mine Ban Convention by Madame Dong Zhihua, China” 26 June 2014, available online at <http://www.maputoreviewconference.org/daily-summaries-statements/>

in China's defense doctrine.¹⁷⁶ Also in June 2014, China informed Landmine Monitor that it currently stockpiles 5 million APLs, a great reduction from the 110 million previously cited by the Monitor.¹⁷⁷

China has also been active in mine clearance operations. In early November 2015, it embarked on a further demining operation along the border with Vietnam. According to media accounts, this phase of clearance on the border was set to be completed by the end of 2017, with the clearance of more than 50 minefields covering an area of more than 50km² in six counties along the border, in areas home to over 50,000 people.¹⁷⁸

Norm development

So does the behavior of non-state parties indicate the crystallization of a norm regarding a banning of APLs? Certainly, states' awareness to the use of APLs has changed, in what can be identified as a pattern of denial by states facing allegations of landmine use. For instance, in 2001 15 countries were accused of using APL mines and the majority (9 States) denied such use. As an example, Angola, which signed the Convention in 1997, refused the accusations of having used APLs, "until it could no longer deny such use in 2001".¹⁷⁹

However, to establish the concept of a norm, customary international law requires the combination of both *diuturnitas*, i.e. the material element and the *opinio juris*, i.e. the legal element. Beginning with the material element, "to establish a rule of customary international law, state practice has to be virtually uniform, extensive ... representative" and it has to repeat over time.¹⁸⁰ There are not precise time requirements, however some time, even short, is considered necessary to crystallize a customary norm.¹⁸¹ The development of a rule of customary international law depends also on the conviction that the state behavior is not only morally or socially justified but also legally binding.

¹⁷⁶ Monitor interview with Ji Haojun, Deputy Director, Ministry of Foreign Affairs, and Col. Wu Gang, Policy Division, Ministry of Defense, in Maputo, 24 June 2014.

¹⁷⁷ The estimate is based on interviews with non-Chinese government officials involved in CCW Amended Protocol II discussions in 1995 and 1996.

¹⁷⁸ X. Wei, "Mine clearance mission on China-Vietnam border," *China Daily*, 3 November 2015; and Z. Tao, "China launches 3rd mine clearance mission along China-Vietnam border," China Military Online, 2 December 2015.

¹⁷⁹ R. Price, *Emerging customary norms and anti-personnel landmines*, Cambridge Studies in International Relations, Cambridge University Press, 2004, p. 108

¹⁸⁰ "Assessment of Customary International Law", ICRC, available online.

¹⁸¹ International Court of Justice, North Sea Continental Shelf, Judgment, ICJ Reports, 1969, p. 43, available online: <<http://www.icjij.org/docket/index.php?p1=3&p2=5&p3=-1&y=1969>>.

According to Richard Price the fact that States generally have ceased to defend the use of APLs, all confirm the building of an “international consensus on the issue”.¹⁸² However, while a customary norm can be said to exist if states generally cease to defend the use of landmines there are many States that prevent the development of the *opinio juris*.¹⁸³ Egypt, India, Pakistan, Iran, Iraq, North and South Korea, Cuba, Israel, Libya, Syria are just a few examples of States that oppose a global ban on APLs.¹⁸⁴ While it is true that they maintain opposition to a comprehensive ban, they have never “unambiguously and persistently” rejected the norm, so as to be qualified as persistent objectors.¹⁸⁵ An example of this “ambiguous” position is that of Israel. According to Price, the lack of persistent objectors means that even those non-states parties are “in important respects participating in normative and legal change”.¹⁸⁶

At present, the status of both the *opinio juris* and state practice can be interpreted as being in favor of an emerging customary norm, and to verify the establishment of such a norm the supporters of the campaign against APLs should request an advisory opinion to the ICJ.¹⁸⁷ Nevertheless, it is fundamental to remain objective since, as remarked by the ICJ in the advisory opinion on nuclear weapons, a large number of States that declare their support is not sufficient to create *opinio juris*.¹⁸⁸ For example, the ICBL has recently reported the use of APLs by the Ukrainian and Russian forces in the Ukrainian town of Slovyansk in July 2014, while Russia is not party to the Convention, Ukraine became a State Party in 2006, hence it is obliged not to use APLs.¹⁸⁹ There were reports in 2009 and 2010 of US forces in Afghanistan using Claymore directional fragmentation mines.¹⁹⁰ Since 2012, the Syrian army has used mines of Soviet/Russian origin, including PMN-2 and PMN-4 antipersonnel mines and TMN-46 and TM-62 antivehicle mines, along its borders with Lebanon and Turkey.¹⁹¹ This indicates that states are still able and if necessary willing to use landmines although

¹⁸² R. Price, *supra* note, p. 123

¹⁸³ S. Benesch, G. Mc Grory, C. Rodriguez, R. Sloane, “International Customary Law and Antipersonnel Landmines: Emergence of a New Customary Norm”, in *Landmine Monitor Report 1999*, p.195

¹⁸⁴ *Ibid*, 121

¹⁸⁵ R. Price, *supra* p.122

¹⁸⁶ *Ibid*, p.129

¹⁸⁷ S. Benesch, *supra* note p. 592

¹⁸⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1. C.J. Reports 1996, p. 226

¹⁸⁹ “Information submitted by Ukraine to the Third Review Conference of the Ottawa Convention”, 18 June 2014, available online: <<http://www.maputoreviewconference.org/documents/>>.

¹⁹⁰ CJ. Chivers, “Turning Tables, U.S. Troops Ambush Taliban with Swift and Lethal Results,” *New York Times*, 17 April 2009; and “Taliban displays ‘US weapons,’” *Aljazeera*, 10 November 2009.

¹⁹¹ Human Rights Watch, “Syria: Army Planting Banned Landmines: Witnesses Describe Troops Placing Mines Near Turkey, Lebanon Borders,” Press Release, 13 March 2012.

their use remains undoubtedly stigmatized at a global level in purview of an ever-expanding customary rule against APLs.

5.3 Evaluating Criticism of Ottawa

One of the greatest criticism attributed to the Ottawa Treaty remains that certain high-profile States, namely the United States, Russia and China, are not signatories of the treaty and the fact that they are not is seen as something that undermines the universalization of the Treaty's objectives. However, we have just seen that these three great powers have nevertheless made arrangements that are in harmony with the objectives of the Convention. There are certain other criticisms that ought to be pointed out to nonetheless.

5.3.2 Technological Loopholes

While states have pledged to get rid of APLs as defined by the Ottawa Treaty many are seeking to produce new weapons that perform the same function of 'area denial'. As discussed in Part 3, AVMs and remotely detonated explosives are deemed admissible under the Ottawa Convention, but with the oncoming generation of high-end technologies new weapon systems threaten to bypass the Treaty.¹⁹² Starting in 2018, the US Army will reportedly field the Spider 1A man-in-the-loop setup system. From 2023 through 2027, it will field the "Gator Landmine Replacement" described as a networked munition system to "deny enemy access and use non-lethal means to keep civilians away from dangerous areas".¹⁹³ It is also revamping the Volcano vehicle and helicopter landmine dispenser systems it originally used in the 1990s. While their use will not be widespread and are reported to be compliant with the APMBC, these are weapon systems that should be subjected to the same moral objections as APLs. This fundamentally calls into question the fact that the APMBC should perhaps be more stringent on its terminology if it is to remain a relevant treaty in the future.

5.3.3 Funding

Donors and affected states contributed approximately \$564.5 million in international and national support for mine action in 2016, an increase of \$39.3 million (7%) from 2015.¹⁹⁴ While there has been a general increase in pledges and donations, funding remains inadequate for the 2025 goal of

¹⁹² These are for instance: grenade launchers, multiple mortar delivery systems, and claymores.

¹⁹³ J. Judson, "US Army Dusting off Volcano Mine Dispensers," *DefenseNews*, 21 December 2016.

¹⁹⁴ International Campaign to Ban Landmines, *Landmine Monitor 2017 (ICBL-CMC)*, 2017 p.86

having a mine-free world that the UN has called for. Lack of mine clearance and victim assistance projects are prevalent in developing countries that are often most mine affected. In Cambodia, for instance, a national NGO was forced to stop providing services including wheelchairs and assistive devices due a lack of funding and donor constraints.¹⁹⁵ Ambassador Lovrenčić explains that it reflects also certain societal problems:

*“Even in countries where there is huge wealth, certain elites think that help towards demining or victim assistance is any of their business, despite them being perfectly capable of financing that work”.*¹⁹⁶

Inadequate funding was cited as a challenge to achieving Article 5 implementation deadlines by the following states parties: Afghanistan, Angola, BiH, Cambodia, Chad, Iraq, Niger, Serbia, Sudan, Tajikistan, Yemen, and Zimbabwe. As of October 2017, only four states parties that have requested extension deadlines appear on track to meet their clearance deadlines, while 17 appear not to be on track, and the status of two is unclear.

International support for mine action: 2006–2016

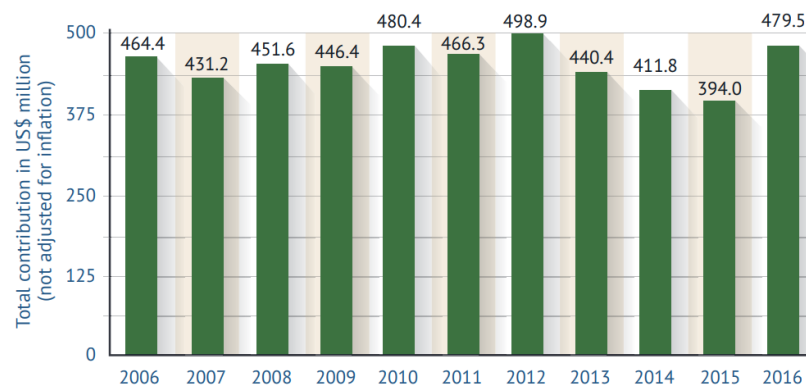


Figure 4 Available online: http://www.the-monitor.org/media/2615219/Landmine-Monitor-2017_final.pdf

Despite the efforts for strengthening financial governance and transparency within the ISU, as adopted by the 14th Meeting of the state parties, there is still some financial opacity surrounding financing of mine action programs. As of October 2017, 47% of states parties had submitted annual

¹⁹⁵ *Ibid*, p.73

¹⁹⁶ T. Lovrenčić, *supra* note

reports for calendar year 2016, an increase from the previous year (45%); however, 85 states parties have not submitted a report for calendar year 2016.¹⁹⁷ Of this latter group, most have failed to submit an annual transparency report for two or more years.

Conclusion

With perfection unattainable, it should be acknowledged that any degree of meaningful progress made by relevant at-risk states in taking charge of these matters will be a major advance. The Ottawa Convention, after all, was about expanding the traditional understanding of state responsibility, with states accepting they have important human-security responsibilities. With the help of large NGOs and Trust Funds and various degrees of state presence the lives of landmine victims are improving steadily. The record of implementation of the Ottawa Convention suggests that some of the defining characteristics of the Ottawa process have been sustained two decades since the 1997 signing ceremony. While it is true that 2016-17 recorded an increase in mine related victims, this should not be indicative of the failure of the Ottawa Convention. The general trend of victims has been declining (see Appendix 1), production and stockpiling has decreased if not ceased in many countries. It is also significant to see the efforts of mine clearance even through non-State Parties, as it is indicative of the efficacy of the global norm that the Convention has instilled. In sum, mine use by government forces remains a rare phenomenon since 1999.

However, not all states parties are on track to fulfill their Mine Ban Treaty obligations in a timely fashion. Missed stockpile destruction deadlines and missed deadlines for extensions of mine clearance deadlines raise at times certain compliance concerns. Additionally, new landmine use, particularly the widespread use of so-called improvised mines by NSAGs, is resulting in a significant increase in casualties and threatening to undermine the progress toward the long-held goal of a landmine-free world.

The general outlook is one of compliance with some loopholes and objectors. However, neither of these exceptions can detract from the overall benefits that the Ottawa process and the Treaty have brought. The attitudes and actions of States have been transformed, which has fostered the establishment of a *diuturnitas* and *opinion juris*.

¹⁹⁷ Landmine Monitor 2017, *supra* note, p.90

Final Conclusion: 20 years of Progress and Legacy

The Ottawa Convention is clearly one of the success stories in multilateral disarmament diplomacy. It has managed to achieve a strong global norm with impressive results on the ground with regard to humanitarian protection, stabilization, development and disarmament. Tens of thousands of human lives have been saved and victims' needs are more systematically addressed with a view to ensuring the full, equal and effective participation of mine victims in society. Nearly 30 countries that were previously heavily contaminated are now mine-free and vast areas have been cleared, demonstrating the overall outstanding level of compliance by states party, with certain important non-party states abiding to the norm of prohibiting APL use. Also, the fact that since 1997, 43 other nations have fully acceded to the Treaty (as of May 2018) is also sign of the pursued global interest for attaining a mine free world.

The international community has learned from mine action the importance of systematically recording and collating evidence of human harm resulting from different types of weapons. Mine action is a fundamental condition for sustainable development of a State. It allows economic growth to take place through securing trade routes and allowing agricultural production to refunction. Mine action, as a holistic exercise of humanitarian action, also foresees the financing of psycho-social rehabilitation of victims and their socio-economic re-integration in society. It also is the key step towards environmental preservation. Mine action serves beyond efforts of mine clearance but is there to act as an instrument facilitating and mediating peace-building in many post-conflict situations. The current reconciliation between FARC and government forces in Colombia testifies, even if often overlooked, the essential role of mine action in sustaining local institutions and restoring confidence among conflicting parties.¹⁹⁸ Indeed, with 37 municipalities cleared from landmines since 2016, in just 2 years Colombia drops from second to tenth on the list of countries with the most mine victims.¹⁹⁹

However, new large-scale contamination by APLs have reported in countries such as Iraq, Libya, Nigeria and Syria. This has resulted in a reversal of the downward trend in the number of global mine casualties for the second year in a row since the entry into force of the Convention. This however,

¹⁹⁸ Geneva International Centre for Humanitarian Demining, *Mine Action and Land Issues in Colombia*, 2013, available online: <<https://drc.ngo/media/1608698/mine-action-land-issues-colombia-2013-1-.pdf>>.

¹⁹⁹ M. Ortega, Colombia Declares Municipalities Free of Anti-personnel Mines, *Dialogo Digital Military Magazine*, 22 May 2018, available online.

should be seen more as a form of State failure than a weakness of the Ottawa Treaty itself. Indeed, I would argue that the Human Security approach that the Ottawa Convention incorporates, has the objective of permeating a norm ensuring certain minimal standards of human dignity universally. HS puts human recipients (citizens) at a level which is at least as high as national security. This is conceptually innovative and important especially in consideration of the recurrent phenomenon of failed states in the international system, in which millions of citizens are not guaranteed any form of basic services or security.²⁰⁰ While elements of HS are in some ways codified in IL and there exist valid moral arguments to be made in favor of a global governance driven by HS, in practice it remains a vision that has not gained global traction. Even Lloyd Axworthy himself believes that governance in HS remains inadequate with weak institutions.²⁰¹ It would be a noble goal for the international community to further efforts in establishing a legal framework governing the decisions of States to intervene on the ground based on the criminal and human rights laws and practices of international mine action.²⁰²

This kind of legal shift would not be counter-indicative *vis-à-vis* the general tendency of international arms control law moving from pure disarmament to a humanitarian approach emphasizing remedial measures to prevent and mitigate suffering caused to civilians. The Ottawa Convention has had a fundamental role in shaping this new way of interpreting IL to the extent that other weapons related conventions have adopted clauses regarding ‘victim assistance’. Indeed, the 2008 CCM expanded the codification of such principle as did the 2008 Convention on the Rights of Persons with Disabilities²⁰³ and the most recent 2017 Treaty on the Prohibition of Nuclear Weapons.²⁰⁴

This paper concludes that NGO presence in both the codification, operationalization and compliance of the Ottawa Treaty has been necessary to strengthen the international legal norm prohibiting APLs by seeking a preventive and proactive approach to the control of weapons which go against international humanitarian law. What is certain is that the role of interdependence-driven coalition building among states, NGOs and IOs with their flexibility, pragmatism and innovation will remain extremely relevant in ensuring the fulfillment of the Conventions’ humanitarian promise.

²⁰⁰ The 2017 Fragile State Index developed by the Fund For Peace estimates over 60 dysfunctional states available online.

²⁰¹ K. Rutherford, *supra note*, p.134

²⁰² S. Tadjbakhsh, *Human Security: Concepts and Implications with an Application to Post-Intervention Challenges in Afghanistan*, Centre d'études et de recherches internationales Sciences Po, 2005

²⁰³ UN General Assembly, *Convention on the Rights of Persons with Disabilities*, 24 Jan 2007, art. 4 (1)

²⁰⁴ UN General Assembly, *Treaty on the Prohibition of Nuclear Weapons*, New York, 7 July 2017, art. 6

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Sintesi dell'elaborato

Questo elaborato ha come scopo quello di illustrare la dimensione giuridica nonché teorica ed istituzionale del mondo dello sminamento umanitario. La discussione viene incentrata sulla Convenzione di Ottawa poiché è il trattato internazionale che ha delineato le obbligazioni giuridiche (e per alcuni anche morali) per la totale interdizione delle mine antiuomo sotto il profilo del loro uso, produzione, stoccaggio e trasferimento. Ratificato ad oggi da 164 Stati, 43 in più dall'anno della sua entrata in vigore nel 1999, la Convenzione rispecchia il raggiungimento di un obiettivo che rimane elogiato nel diritto internazionale. A 20 anni di distanza è possibile osservare come continui ad essere un trattato quasi universalmente rispettato anche dagli stati non-membri a dimostrazione di come abbia sostanzialmente cambiato gli atteggiamenti degli Stati nell'utilizzo di questa tipologia di armamenti letali e con effetti indiscriminati sulle popolazioni civili.

La tesi cura tre macro-aspetti. Il primo è focalizzato sul contenuto sostanziale del trattato per meglio individuarne il carattere giuridico. Il secondo analizza il processo realizzativo della codificazione del trattato anche perché la modalità della sua formazione rimane un caso unico nella storia. Il terzo aspetto tratta i procedimenti pratici dell'implementazione della convenzione che vengono attuati sia tramite le disposizioni del trattato sia attraverso delle entità terze che si sono sviluppate nel corso degli anni.

In maniera da offrire una comprensione più dettagliata ed olistica dei macro-aspetti, l'elaborato va a suddividersi in cinque parti.

Nella prima parte verrà dimostrato come le mine antiuomo rappresentano un ostacolo principale e molteplice per lo sviluppo umano poiché la minaccia posta da tali armi ha un impatto sul costo umano incommensurabile ma anche sul piano ambientale e socioeconomico non indifferente. Questo illustra come il problema delle mine antiuomo sia inestricabilmente legato alla teoria della Human Security—riproposta nel corso dell'elaborato—poiché evidenzia una minaccia persistente per il benessere degli individui negando talvolta dei diritti umani fondamentali. Pertanto, il lavoro di sminamento umanitario non si limita alla pratica di localizzare e neutralizzare gli esplosivi (sebbene di primaria importanza), ma è rivolto anche a consentire la riabilitazione delle vittime consentendo il loro re-inserimento nel mondo lavorativo. Questo è un punto cardine per la c.d 'mine-action'. Questa forma di intervento umanitario consiste nel creare condizioni di pace e sicurezza,

promuovendo al contempo la giustizia e la coesione sociale in paesi lacerati dalla guerra al fine di prevenire l'esacerbarsi della violenza armata causata dalla povertà ciclica.

Nella seconda parte vengono esaminate le disposizioni di legge che contraddistinguono la Convenzione per affrontare i summenzionati problemi umanitari derivanti dall'impatto delle mine. Queste includono le più note prescrizioni che vietano l'uso, lo stoccaggio, la produzione e il trasferimento delle mine, ma anche una riguardante la cooperazione sull'assistenza alle vittime. Per quanto siano misure decisamente innovative, ciò che tento di mostrare è che il Trattato di Ottawa integra certi principi chiave del diritto internazionale consuetudinario, particolarmente in materia del diritto umanitario, già precedentemente codificati. Ad esempio, il principio che le parti in conflitto devono sempre distinguere tra civili e combattenti e che le mine antiuomo rappresentano un'arma indiscriminata capace di causare lesioni superflue e sofferenze gratuite—come citato nel preambolo del documento— è un chiaro richiamo alla giurisprudenza evidenziata nelle Convenzioni dell'Aja e di Ginevra. La Convenzione di Ottawa si basa dunque su un quadro normativo più ampio di principi umanitari ma in tal modo ha anche ulteriormente promosso e rafforzato la loro codificazione nel corpus giuridico internazionale.

La terza parte analizza come gli Stati Membri abbiano determinato la codificazione del trattato armonizzando i loro interessi attorno ad un denominatore comune mediante dei sistemi di negoziazione innovativi tra cui meccanismi 'fast-track', la liquidazione della regola del consenso e la decisione di condurre le conferenze diplomatiche al di fuori delle strutture delle Nazioni Unite. Una lettura del processo negoziale della Convenzione di Ottawa non può non considerare gli sforzi di interlocuzione, mediazione e attivismo del movimento *International Campaign to Ban Landmines (ICBL)*, composto da ONG e società civile—tra cui spicca il nome di Gino Strada—che insieme hanno contribuito alla stesura del trattato in maniera sostanziale. Questa parte intende dimostrare che in un arco di tempo relativamente breve si è riuscito non solo a porre la questione (quanto mai complessa) dell'interdizione delle mine antiuomo al centro dell'agenda globale, ma anche a renderla codificata nel diritto internazionale. Il coinvolgimento di Stati, Organizzazioni Internazionali e ONG, hanno decisamente alterato la forma convenzionale del processo legislativo, data la partecipazione estensiva di quest'ultime entità. Mentre sarebbe eccessivo descrivere il processo come una "democratizzazione" del diritto internazionale, poiché il trattato afferma la centralità della sovranità degli stati conferendogli la responsabilità primaria nell'attuazione del trattato, è innegabile osservare

che la dinamica ibrida tra attori internazionali rimane senza precedenti. Maggiore analisi sul ruolo delle ONG viene affrontata nella quinta parte.

La quarta parte approfondisce i vari meccanismi di ‘verifica’ previsti dalle disposizioni del trattato, nonché quelli informali—emersi con lo sviluppo di nuove istituzioni—in modo da creare un organismo capace di esercitare un’azione di sovrintendenza rigorosa e costante, assicurando l’adempimento degli obblighi in capo agli stati membri. Vengono dunque illustrati gli strumenti giuridici di cui dispone e di cui si avvale il trattato. Di primaria importanza sono gli Articoli 7, 8 e 9 che prescrivono delle misure di trasparenza per cui ogni Stato è tenuto a fornire pubblicamente dei rapporti di autovalutazione dei progressi fatti nell’arco di un anno da essere in seguito depositati presso il Segretario Generale dell’ONU. Per rafforzare e consentire una più efficace espletazione dei doveri elencati nell’articolo 5, vi è inoltre un sistema informale, ma che ormai ha assunto una valenza importante nella prassi, cioè l’incontro annuale degli stati membri. L’obiettivo è quello di creare un foro di dialogo e confronto aperto affinché gli stati possano mantenere una linea condivisa e univoca tenendo fede agli impegni umanitari posti dalla Convenzione. Altri meccanismi di verifica formale risiedono in alcune autorità sovranazionali come l’UNMAS e l’INMAS che stabiliscono un maggiore coordinamento dei progetti di sminamento. Infine, il *LandMine Monitor* dell’ICBL, che consiste in una rete di monitoraggio annuale basata su rapporti di varie ONG, è un altro elemento fondamentale nell’amplificare l’osservanza del Trattato.

La quinta ed ultima parte è di importanza fondamentale e risponde al terzo macro-aspetto della tesi. Si focalizza dunque sulle pratiche svolte per l’implementazione dello sminamento, delucidando il meccanismo istituzionale che traduce le disposizioni legali del trattato in azione realizzativa. È preso come caso studio l’organizzazione umanitaria *ITF-Enhancing Human Security (ITF)*, presso cui ho svolto uno stage estivo nel 2017. L’ITF è più precisamente un fondo fiduciario tra i più longevi e riconosciuti nel campo. Nasce di fatto nel 1998, a ridosso della Convenzione di Ottawa per prestare aiuto alle autorità della Bosnia Erzegovina per effettuare progetti umanitari, in particolare di sminamento. Vengono così analizzate le diverse procedure coinvolte nell’effettuazione dei progetti, ma viene anche discusso il ruolo diplomatico di tale organizzazione. Ciò che desidero esporre è il fatto che gli attori non statali hanno indiscutibilmente assunto delle responsabilità importanti nell’attuazione delle pratiche dello sminamento, nonché nell’attuazione delle disposizioni del Trattato.

Va detto che il coinvolgimento di entità terze era una dinamica prevedibile e necessaria. Tuttavia, ciò che non poteva essere realmente previsto è la misura in cui le ONG si sono evolute ricoprendo il ruolo non solo di figure garanti dell'osservanza del Trattato, ma anche di mediatori negli scenari postbellici. In maniera più generale, questa sezione tenta di spiegare come il dovere statale sia veicolato attraverso istituzioni alternative per garantire un più efficace coordinamento ed allocazione delle loro risorse finanziarie e materiali. Ci si aspetta dunque che le ONG rafforzino la norma contro l'uso delle mine antiuomo e continuino a sostenere l'adesione universale *de jure* e *de facto* ai principi del Trattato, condannandone le violazioni.

Procedendo in questa direzione la quinta parte si sofferma sulle considerazioni riguardanti la formazione di una norma consuetudinaria sulle mine antiuomo. Andando ad analizzare i requisiti che sono necessari affinché una norma possa essere definita consuetudinaria, si è tentato di esaminare la questione dell'esistenza di una norma consuetudinaria che proibisce l'uso delle mine antiuomo e ciò è stato fatto analizzando diversi esempi di *opinio juris* e di *diuturnitas* a partire dall'adozione del Trattato di Ottawa fino ai giorni nostri. Si osserva, attraverso i dati empirici disponibili nell'ultimo rapporto redatto dal *LandMine Monitor*, che gli ultimi 20 anni hanno dimostrato una tendenza che conferma sempre più progressivamente la cristallizzazione di una norma consuetudinaria. Particolare attenzione è rivolta ai principali stati non-firmatari: Russia, Stati Uniti e Cina, ed è possibile dedurre che anche loro abbiano nel corso del tempo armonizzato le loro politiche interne ed estere con le regole della Convenzione.

In ultimo luogo sono svolte delle considerazioni critiche sulle lacune della Convenzione ed il livello inadeguato di finanziamento globale. Tali carenze sono principalmente legate all'assenza di una ridefinizione più stringente delle mine antiuomo. Ciò ha consentito ad alcuni stati nel corso degli anni di sviluppare delle tecnologie di armamenti con impatti e scopi simili alle mine antiuomo, ma che talvolta non rappresentano una violazione del trattato. Inoltre, non tutti gli stati membri sono in perfetta linea con i tempi richiesti per adempire agli obblighi previsti. La Convenzione, consentendo la possibilità di estendere le tempistiche vede numerosi stati non rispettare le scadenze proposte, sollevando in tal modo dei problemi di conformità al trattato. Inoltre, l'uso sempre più diffuso di mine antiuomo da parte da parte di gruppi armati non statali (NSAG), tra cui Boko Haram e ISIS (a causa di un mancato controllo territoriale da parte delle autorità dello stato in cui operano) rischia di compromettere i progressi sin qua raggiunti dalla Convenzione. Esprimo anche il parere che nonostante gli sforzi svolti per il rafforzamento della governance finanziaria e la trasparenza, come adottato nella 14° riunione degli Stati membri, vi è ancora un sostanziale carenza di fondi rispetto

ai livelli che sarebbero necessari per completare l'obiettivo di un mondo senza mine per l'anno 2020 come voluto dall'ONU.

Questo elaborato giunge ad una conclusione complessivamente positiva riguardo la Convenzione di Ottawa, esprimendo l'opinione che il trattato rappresenta un'innovazione nel diritto internazionale, sia per via del suo scopo che per la sua modalità di formazione ed implementazione. Tramite la cooperazione di ONG, Organizzazioni Internazionali, fondi fiduciari e vari gradi di presenza statale, il resoconto suggerisce che la Convenzione si è rivelata un successo importante che ha perdurato per due decenni e che continua a manifestare ottimi risultati. Nonostante sia vero che nel 2017 si è registrato un notevole aumento delle vittime dalle mine antiuomo, ciò non dovrebbe essere considerato indicativo del fallimento della Convenzione di Ottawa. La tendenza generale delle vittime è in netto calo, la produzione e lo stoccaggio sono diminuite se non cessate in molti paesi. Inoltre, le vite delle vittime delle mine antiuomo stanno migliorando costantemente con l'implementazione da parti di vari stati di nuove leggi tese a garantire sempre più diritti e margini di inclusione socioeconomica, come peraltro previsto dalla Convenzione. In ultima analisi, questa tesi considera la Convenzione di Ottawa come un buon punto di riferimento ed un ottimo modello di trattato di disarmo (con un complesso di regole giuridiche di carattere umanitario) da cui si possono trarre numerose lezioni. Tuttavia, il lavoro non è ancora finito e quindi esorto la comunità internazionale a portare a termine la sfida dell'abolizione delle mine antiuomo per il presente e per il bene della posterità.

Nota Finale:

Oltre ad usare numerose fonti accademiche e giuridiche di natura primaria e secondaria, sosterrò la mia tesi attraverso gli estratti di una intervista che ho personalmente condotto con l'Ambasciatore TOMAŽ LOVRENČIČ, Direttore di ITF Enhancing Human Security, organizzazione umanitaria non-profit con sede in Slovenia per la quale ho svolto un tirocinio formativo durante l'estate del 2017. Nel corso della mia permanenza presso l'ITF ho curato le relazioni esterne e la gestione dei fondi destinati per l'implementazione di alcuni progetti umanitari. Inoltre, mi è stato concesso di visitare i loro uffici amministrativi in Bosnia Erzegovina ed assistere ad alcune operazioni di sminamento di esplosivi risalenti alla guerra del 1992-5. Tale esperienza mi ha mostrato i pericoli, le sfide e i costi umani ed economici coinvolti nel c.d. sminamento umanitario, e di come il problema delle mine persista al giorno d'oggi anche nel continente Europeo. Ho in seguito pubblicato un articolo sul giornale universitario GlobeTrotter documentando il ruolo e le attività dell'ITF nel quadro della regione balcanica. Di maggior rilievo, mi ha colpito l'ampia rete internazionale composta da ONG e Organizzazioni Internazionali che sono coinvolte ad espletare le attività di

rimozione delle mine e di come questa pluralità di attori, a loro volta, sia in grado di coordinarsi per procurare assistenza umanitaria e consentire lo sviluppo socioeconomico delle zone colpite dalle mine. Tale realtà mi ha spronato a scrivere questa tesi di laurea in quanto volevo esplorare e capire più a fondo la funzione e gli attori coinvolti nelle pratiche dello sminamento umanitario.