

When Humanitarianism Dictates Disarmament Policy:
Controversy over the Definition of Antipersonnel Landmines under
the 1997 Antipersonnel Landmine Ban Treaty

by

Naoko Kumagai

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This manuscript has been read and accepted for the
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| <u>Professor Susan L. Woodward</u> | | <u>May 20, 2009</u> |
| Chair of Examining Committee | Signature | Date |

| | | |
|-------------------------------|-----------|---------------------|
| <u>Professor Ruth O'Brien</u> | | <u>May 20, 2009</u> |
| Executive Officer | Signature | Date |

Professor Susan L. Woodward

Professor Peter Liberman

Professor Thomas G. Weiss
Supervision Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

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by

Naoko Kumagai

Advisor: Professor Susan L. Woodward

This research seeks to examine the discursive influence of humanitarian advocacy groups on a government's decision about the balance between military necessity and civilian protection, with the case of the dispute over the definition of anti-personnel (AP) mines under the 1997 AP Mine Ban Treaty. Between the two main disputed definitions, humanitarian advocacy groups have advocated the effect-oriented definition over the design-oriented definition since the former covers and prohibits anti-vehicle (AV) mines with potential AP effects. Based on the recognition of the state's reluctance to accept any external interference in armament policy and the two potential defects of humanitarian advocacy groups, insufficient access to the decision-making process and insufficient availability of military and technological information on weapons, I posit that the humanitarian advocacy discourse, which highlights the cruel impact of such mines on civilians, is more effective than the technological advocacy discourse, which disputes governments' theoretical argument for the functional reliability of controversial AV mines.

First, the quantitative study on the twenty-six developed states with liberal democracy as of 2002 demonstrates the strong impact of the military stake in AV

mines on government definition of AP mines. Second, a qualitative comparative study of two governments from each definition group, Austria and Canada from the effect-oriented definition and Germany and France from the design-oriented definition, during the period from 1998 through 2002, confirms the weak influence of technological advocacy discourse. Lastly, the qualitative text analysis of two governments with the design-oriented definition of AP mines, France and Germany, during the period of 2003 through 2005, demonstrates the positive correlation between the humanitarian discourse and a government's adoption of the effect-oriented definition of AP mines. Still, the rationalist alternative explanations based on the German government's technological capacity to produce more advanced AV mines leave the extent of effectiveness of humanitarian discourse unconfirmed. A new finding from the successful case of Germany, the importance of the utilization of international norms as a factor to make the humanitarian discourse more effective, suggests further research on the detailed conditions and mechanism for successful humanitarian advocacy discourse.

Acknowledgements

The original question of this study comes from my curiosity about how people are organized and how ideas and norms could change the political organization of people. In contemporary context, the questions are on how the territorial state, anchored by the possession of the organized armed forces, could protect people inside and outside of its territorial border and on whether the idea of territorial security has been changing. Under the growing international awareness toward human-centric ideas such as human rights norms, the idea of human development, and especially the norm of human security, the humanitarian milestone of the conclusion of the 1997 Anti-Personnel (AP) Mine Ban Treaty especially drew my attention. I decided to examine the possibilities and limitations of state commitment to humanitarianism with the case of the dispute over the definition of anti-personnel landmines under the 1997 AP Mine Ban Treaty among signatories, and the involvement of humanitarian advocacy groups in this discourse. The dispute was a good window through which to examine how states which already displayed a certain level of commitment to humanitarianism might carry that commitment even farther by accepting the stricter prohibition of AP mines under the broader definition of AP mines. In other words, it is a question on whether and to what extent a state tilts the balance between civilian protection and military necessity toward the former.

The tentative answer I have gotten through my research is that humanitarian advocacy groups' humanitarian discourse is more effective than technological discourse in shifting a government toward a stronger protection of civilians. Still, it

needs further study on the mechanism of humanitarian discourse itself. This puzzle I will continue to work on.

The process of the dissertation, from its proposal to the completion of writing, was very long. Throughout the preparation of this work during the long period, I have received valuable advice, assistance, and encouragement from so many people at various stages. First of all, a special word of gratitude must go to my academic mentors, most especially Prof. Susan Woodward, Prof. Peter Liberman, and Prof. Thomas Weiss. Prof. Woodward's very sharp observation of facts always alerted me to where I had gotten careless with my own observations or prematurely believed that I had grasped certain concepts. This leads to another important point I learned from her: a very rigorous approach to methodology, conceptualization, and theorization. She has helped me to gain a stronger sense of the manner of research and thinking in political science. Prof. Liberman's very logical thinking made me mindful of any logical incoherence in my arguments, and his sense of humor relaxed me during the tough process of dissertation writing. Prof. Weiss's keen awareness about the bridge between what is happening in the field and abstract critical reflection saved me from losing myself in a sea of countless concepts and theories. Also, as an accomplished scholar with a strong humanitarian mission, he taught me always to think why and how a particular fact I am dealing with is important and why I have to read a particular piece or article. On top of their academic advice, their incredibly rigorous professionalism as scholars and educators has inspired me and will continue to serve as my guide for my professional career in the future.

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List of Abbreviations

| | |
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| AAMV | Austrian Aide for Mine Victims |
| ABM | Anti-Ballistic Missile |
| AP mines | Anti-personnel landmines |
| AV mines | Anti-vehicle landmines AV mines |
| CBW | Convention on Biological Weapons of 1972 |
| CCMAT | Canadian Centre for Mine Action Technology |
| CCW | Convention on Conventional Weapons |
| CDU | Christian Democratic Union of Germany |
| CIDA | Canadian International Development Agency |
| CNEMA | National Commission on the Elimination of Anti-Personnel Mines |
| DAFIT | Department of Foreign Affairs and International Trade Canada |
| ERW | Explosive Remnants of War |
| ETA | Basque Fatherland and Liberty |
| FMLN | Farabundo Martí National Liberation Front |
| GIBL | German Initiative to Ban Landmines |
| GICHD | Geneva International Center for Humanitarian Demining |
| HIK | Heidelberg Institute on International Conflict Research |
| ICRC | International Committee of the Red Cross |
| ICBL | International Campaign to Ban Landmines |
| MAC | Mines Action Canada |
| MOTAPM | mines other than anti-personnel mines |
| NGO | non-governmental organization |

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| OECD | Organisation for Economic Co-operation and Development |
| PKK | Kurdistan Workers' Party |
| SIPRI | International Stockholm Peace Research Institute |
| SPD | Social Democratic Party of Germany |
| UNDP | United Nations Development Programme |
| UNMAS | United Nations Agency of Mine Action Service |
| UNHCR | United Nations High Commissioner for Refugees |

Chapter 1 Growing Concern for the Protection of Civilians before, during, and after Armed Conflict?

1. Introduction

This thesis originates in the question of whether the traditionally held idea of territorial security for the state is shifting to a more human-centered notion of security. I will examine this question from the aspect of the state's disarmament policy: how a government strikes a balance between military utility and civilian protection in disarmament policy. I will approach this question from the examination of the discursive influence of humanitarian advocacy groups on government in the norm interpretation dispute over the definition of anti-personnel (AP) mines in the 1997 AP Mine Ban Treaty.¹ Scholars have demonstrated the humanitarian advocacy groups' discursive power to tilt the balance between military utility and civilian protection toward the latter in the international disarmament agreement on AP mines. Humanitarian advocacy groups disproved the military utility of AP mines and disseminated harsh facts about human sufferings from AP mines, which led to the international agreement on the ban on AP mines. In this research, I will go further with the study of the discursive influence of humanitarian advocacy groups by examining whether humanitarian advocacy groups' discourses facilitate the internalization of the norm on the ban on AP mines. I will specifically focus on advocacy discourses in the debate over the scope of the interpretation of AP mines under the treaty, which has been debated among its signatories since the negotiation stage. Humanitarian advocacies are urging governments to take a wider definition, a

¹ The full name of the treaty is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and On Their Destruction.

more humanitarian definition, of AP mines so that many more mines will be prohibited under the treaty. This research will clarify the conditions and extent under which humanitarian advocacy groups successfully persuade governments toward a wider definition of AP mines.

2. Civilian Protection as the Core of Humanitarianism

International humanitarian law, also known as “the laws of war,” has historically protected civilians by regulating the preparation and methods of armed conflicts based on a delicate balance between military necessity and civilian protection. For the purpose of minimizing human suffering during the armed conflicts, international humanitarian law judges measures of warfare to be legitimate if they are relevant and proportional to the achievement of a specific military objective. Two humanitarian principles command the assessment of the legality of all weapons and means of warfare: discrimination and proportionality. Discrimination means that the use of weapons should not be aimed at civilians; proportionality means that soldiers should not cause greater injury to either soldiers or civilians than is deemed necessary for the achievement of the military objective.

International humanitarian law always has been based on the sensitive balance between civilian protection and military necessity. In many cases, the balance was tilted more toward the advantage of military necessity due to a state’s strategic calculations in the face of the power balance among states in an international system without any central authority.

The difficulty in striking the balance of military utility and civilian protection appears in almost all the stages of norm generation, agreement, and implementation. A government's strategic calculations of military utility have often come at the expense of consideration for civilian protection. The value placed on military utility comes from the notion that the use of force is indispensable to the territorial state's self-preservation. As a territorially based political entity with the highest political authority both in domestic and international arenas since the seventeenth century, the nation-state's supreme aim has traditionally been to protect its territorial integrity and political independence from external attacks. The idea of civilian protection most represents the idea that individuals have rights and a level of importance that could compete with the importance of the state and its territorial security. In other words, the humanitarian idea could temper the state's right to pursue its state interests and territorial security with the belief in respect for the lives of individuals.²

The difficulty in balancing between civilian protection and military necessity was also the case in disarmament negotiations. Disarmament in international humanitarian law was an object of highly self-interested political bargaining.³ For example, in the Geneva Conference in 1932-1934, high skepticism and hostility between France and Germany after the First World War aborted efforts to distinguish between defensive and offensive weaponry and to eliminate those forces categorized as offensive. France, eager to maintain its security against Germany, was reluctant to agree to any type of military limitation. On the other hand, Germany, whose military

² Martha Finnemore, "The International Red Cross and Rules of War," in John Boli and George M. Thomas eds., *Constructing World Culture: International Nongovernmental Organizations Since 1875*, pp. 151-52.

³ Ove Bring, "Regulating Conventional Weapons in the Future—Humanitarian Law or Arms Control?" *Journal of Peace Research*, Vol. 24, No. 3, 1987, p. 275.

power the Treaty of Versailles had severely limited, called for the rest of the world to be disarmed down to the German level. Germany claimed that, otherwise, it had the right to rearm and achieve military equality.

Humanitarian efforts were often used to camouflage strategic calculation of national interest in disarmament negotiations. For example, the Hague Peace Conferences of 1899 and 1907, the first systematic effort to limit armaments on an international scale, was said to be organized from the humanitarian concerns of Tsar Nicolas II of Russia. However, he had also a hidden strategic motivation to prevent wealthier great powers from modernizing their armed forces.

A recent case indicating the effect of political calculations on the formulation of humanitarian law is the Convention on Conventional Weapons (CCW) of 1980,⁴ which restricts the use of conventional weapons. Among the CCW's additional protocols, total prohibition on use exists only with regard to a weapons category whose perceived military utility is lower ("fragments which in the human body escape detection by x-rays," in Protocol I of the CCW). Other CCW protocols on landmines, booby-traps, incendiary weapons, and blinding laser weapons⁵ only restrict their use, falling short of the prohibition of production and stockpiling of such conventional weapons. Without a total ban on production and stockpiling, the danger that the weapons regulated may, under some circumstances, be resorted to — as has

⁴ The official name is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

⁵ Protocol II, III, and IV to the CCW, respectively.

occurred on several occasions — will not disappear as long as these weapons remain in the arsenals of states.⁶

When a humanitarian treaty is more successful in the ban on a weapon, it tends to suffer from an insufficient system of supervision. Despite its status as the first successful case in a total ban on weapons of mass destruction,⁷ the Convention on Biological Weapons of 1972 (CBW) has failed to establish an international monitoring institute to verify governmental compliance with the treaty as of July 2007.⁸ The recent attempt to establish a monitoring institution in December 2001 during the fifth review conference of CBW failed partly because of the opposition of the United States, whose Republican government tightened its guard for national security against external interference especially after the September 11th terrorist attacks on the US in 2001. Furthermore, the administration feared violation of the intellectual property rights of the U.S. biochemical industry.⁹

3. The Emergence of the Norm of Humanitarian Disarmament

However, since the early 1990s, the value of civilian protection has started to place military utility under much stricter scrutiny than before. The conclusion of the 1997 AP Mine Ban Treaty represents a milestone in humanitarian international law. The 1997 AP Mine Ban Treaty has acquired the strongest ever civilian-protection

⁶ Jozef Goldblat, *Agreements for Arms Control—a Critical Survey*, Stockholm: International Peace Research, 1982, p. 89.

⁷ Weapons of mass destruction include nuclear weapons, chemical weapons, and biological weapons.

⁸ The full title is the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

⁹ Boudewijin de Jonge, “A Socio-Legal Analysis of the Failed Establishment of the Organisation for the Prohibition of Biological Weapons,” University of Amsterdam, Institutional Governance and Reform, January 2006.

measures. It is the first humanitarian treaty banning the *production* of a specific category of *conventional weapons*. The CCW only prohibited or restricted the *use* of conventional weapons. A total ban on *production* of an entire category of certain weapons had been set only for weapons of mass destruction: chemical weapons and biological weapons, signed in 1993 and 1972, respectively. A prohibition on *production* has greater humanitarian implications than that of *use*, due to the danger that weapons which exist but are prohibited for use may still under certain circumstances be used. Furthermore, the 1997 AP Mine Ban Treaty obliged states to cooperate not only in short-term victim assistance but also in long-term socio-economic reintegration of mine victims.

Disarmament efforts more for the protection of potential victims than for strategic military balance have been conceptualized as humanitarian disarmament.¹⁰ Humanitarian disarmament assesses the protection of civilians not only from preventive but also from remedial points of view as some scholars conceived humanitarian disarmament as a program to alleviate these worst effects of war on civilians. The concept of humanitarian disarmament has started to be used by an increasing number of international and national governmental officials in international meetings.¹¹ Humanitarian disarmament efforts have extended to other issue areas since the conclusion of the 1997 AP Mine Ban Treaty. Newly agreed Protocol V of the CCW of 2005 regulates states' responsibilities to clear and destroy

¹⁰ John Borrie, "Disarmament as Humanitarian Action: from Perspective to Practice," *Disarmament as Humanitarian Action: from Perspective to Practice*, New York: United Nations, 2006, pp. 7-22. See European Commissioner for External Relations and European Neighbourhood Policy, Benita Ferrero-Waldner's speech, "Human Security and Aid Effectiveness: The EU's challenges," on October 26, 2006. Overseas Development Institute-All Party Parliamentary Group on Overseas Development Lunchtime Meeting Series, SPEECH/06/636.

¹¹ A seminar by the French Foreign Affairs Ministry and the Defense Ministry, "Conventional arms control today: may we speak of 'humanitarian disarmament'?" June 6-7, 2008.

explosive remnants of war (ERW) after a cease fire since ERW do harm to civilians. Explosive remnants of war are the unexploded or abandoned artillery shells, hand grenades, mortars, cluster submunitions, rockets and other explosive ordnance that remain on the battleground after the end of an armed conflict. In May 2008, a total ban on cluster munitions was internationally agreed. Cluster munitions are weapons which are air-launched or ground launched and release dozens or hundreds of smaller submunitions. One third of all recorded cluster munitions casualties are children. Sixty percent of cluster bomb casualties are persons injured while undertaking their normal activities.¹² The Convention on Cluster Munitions bans the use, production, stockpiling, and transfer of cluster munitions and places obligations on countries to clear affected areas, assist victims, and destroy stockpiles.

4. Difficulty in State Commitment to the Norm of Humanitarian Disarmament

The difficulty of the balance between military utility and civilian protection arises also at the implementation level of the norm of humanitarian disarmament. A representative case is the ongoing controversy over the definition of AP mines in the AP mine ban norm under the 1997 AP Mine Ban Treaty. The dispute over the definition of AP mines is whether the definition of AP mines includes AV mines with anti-handling devices that could be activated by the unintentional contact of a person and thus should prohibit such AV mines. Article 2 of the treaty legalizes AV mines with anti-handling devices based on the definition that anti-handling devices are activated when *tampered or intentionally* disturbed. However, many advocacy groups insist that there exist anti-handling devices that are sensitive enough to be activated

¹² Report by the Cluster Munitions Coalition. <http://www.stopclustermunitions.org/the-problem>.

by the *unintentional* contact of a person. AV mines with such sensitive anti-handling devices that can be activated by the *unintentional* contact of a person have anti-personnel effects. Still, Article 2 of the 1997 AP Mine Ban Treaty does not clarify the status of AV mines with such anti-handling devices that could be *unintentionally* activated. The two main definitions are the effect-oriented definition of AP mines and the design-oriented definition of AP mines. The effect-oriented definition of AP mines includes AV mines with such anti-handling devices that could be unintentionally activated in the category of AP mines since such AV mines have anti-personnel effects on civilians. The design-oriented definition of AP mines excludes AV mines with such anti-handling devices that could be unintentionally activated from the category of AP mines since such AV mines are designed to activate from the contact of vehicles, not that of persons. The effect-oriented definition of AP mines is more humanitarian since it covers many more types of mines, thus prohibiting them under the 1997 AP Mine Ban Treaty. An agreed-upon definition of AP mines is key to norm internalization with respect to the ban on AP mines so that the humanitarian achievement of the treaty does not end up as an empty treaty with insufficient compliance.

The dispute has been continuing since the Austrian government's first draft of the treaty was submitted to governments for negotiation in February 1997. A narrow definition of AP mines, to which states of major AV mine producers, such as Germany, France, and Japan, adhere, allows states to keep certain kinds of mines that actually function as AP mines. An international NGO coalition, the International Campaign to Ban Landmines (ICBL), which monitors state compliance with the 1997

AP Mine Ban Treaty, has continued to insist that state parties accept a wider definition of AP mines for more effective humanitarian results from the treaty.

Governments with a narrow definition of AP mines legitimize their interpretation based on the increased military utility of AV mines with anti-handling devices due to the treaty's total ban on AP mines. AP mines were used to prevent AV mines from being removed by the enemy. Now that AP mines are totally banned, it is expected that anti-handling devices play the role of AP mines to protect AV mines from being removed. Thus, the treaty represents another case of the state's balance between military utility and civilian protection.

In this research, I will further study the case of the norm-interpretation dispute over the definition of AP mines in order to see the condition and extent of state commitment to the norm of humanitarian disarmament. An agreed-upon definition of a norm is a process toward complete state compliance with the norm since it clarifies the behavior prescribed by the norm. In the case of AP mines, an agreed-upon definition of AP mines specifies the types of mines signatory states should remove from their territories and arsenals and destroy. The type of definition each government chooses is a measurement of the state's commitment to the 1997 AP Mine Ban Treaty. The adoption of the effect-oriented definition of AP mines indicates a stronger commitment to the treaty.

First, I will examine the variation of states' stances toward the definition of AP mines and seek the elements behind the variation. Major states are mainly divided into the two groups of the design-oriented definition and the effect-oriented definitions during the period 1999 through 2002. Among the signatories to the 1997

AP Mine Ban Treaty with membership to the Organization of Economic Cooperation and Development (OECD), the governments of Denmark, France, Germany, Japan, Spain, Sweden, Turkey, and the United Kingdom are committed to the design-oriented definition of AP mines.¹³ I will examine and find that the pattern of definition corresponds with the level of realist elements of territorial security and the number of types of controversial AV mines produced. I will further examine the discursive influence of advocacy groups with the comparison of the Canadian and the Austrian cases with the German and French cases during the period of 1999 through 2002. Next, I will conduct qualitative study on the role of humanitarian discourse of a German advocacy group in the German government's change in its attitude in 2005 in comparison with the French government's attitude. In 2005, the German government changed the definition of AP mines from the design-oriented definition to the effect-oriented definition under the 1997 AP Mine Ban Treaty. German humanitarian advocacy groups were among the most engaged in the issue of the definition of AP mines. Yet the question remains whether German advocacy groups had an influence on the German government's stance shift. How can we explain the humanitarian initiative of the big AV mine producer and possessor, the German government, to reach practical standards on AV mines? More generally, can the German case tell us anything about what ultimately determines which definition a government will embrace?

¹³ The governments of Australia, Austria, Belgium, Canada, Czech, Greece, Hungary, Iceland, Ireland, Italy, Mexico, Netherlands, New Zealand, Norway, Portugal, Slovakia, and Switzerland adopt the effect-oriented definition of AP mines. OECD states of Finland, South Korea, and the United States have not signed the 1997 AP Mine Ban Treaty. The government of Poland has not ratified the treaty. The position of the government of Luxembourg was not known.

Thus, the focus of the study is specifically on the influence of discursive power of NGOs in the norm-interpretation dispute over the definition of AP mines. As presented below, scholars have demonstrated the role of the discursive power of NGOs in the emergence of the norm of humanitarian disarmament.

5. The Growing Discursive Skills of Advocacy Groups in Humanitarian Disarmament

The advocacy role of NGOs in international humanitarian law has been limited. The International Committee of the Red Cross (ICRC) has been the main promoter and guardian of international humanitarian law since its establishment in 1864. The ICRC, albeit a private institution, has been expected to protect the victims of international and internal armed conflicts when states fail to do so. Most international humanitarian treaties were negotiated and agreed upon at the initiative of the ICRC. Other NGOs have been active rather in other issue areas of human rights and economic development.

Humanitarian NGOs as well as the ICRC, however, exerted much influence on the successful conclusion of the 1997 AP Mine Ban Treaty. Scholars pointed out the role of humanitarian NGOs to influence governments through large-scale public demonstrations, media activities, information sharing, and networking with like-minded political and social leaders.¹⁴ Special attention in the advocacy study was to

¹⁴ Don Hubert, "The Landmine Ban: A Case Study in Humanitarian Advocacy," Occasional Paper #42, the Thomas J. Watson Jr. Institute for International Studies, 2000. Kenneth R. Rutherford, "The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines," *World Politics*, Vol. 53, No. 1, October 2000, pp. 74-114. Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization*, Vol. 52, No. 3, Summer 1998, pp. 613-644.

the tactic of discourse, which, scholars explained, overwhelmed a government's intractable armament policy. NGOs' narrative and analytical discourses and dissemination of quantitative data on the far-reaching and long-lasting inhumane effects of AP mines have changed governments' assessment of the balance between the military utility of AP mines and the protection of civilians from AP mines.

ICRC conducted research and disproved the military utility of AP mines. NGOs also gathered military information and views of retired generals and officers and generated military knowledge to disprove the long-believed military utility of AP mines. NGOs' humanitarian discourse tilted the balance between military utility and human suffering toward the prevention of human suffering even though the military perspective was still accepted as the point of departure for negotiations on landmines. Humanitarian NGOs, many of whom were engaged in demining and victim assistance in mine-affected countries in the field and witnessed problems caused by AP mines to an unaccountable number of civilians, conducted fact-finding, compiled statistics demonstrating the high rate of civilian casualties in mine incidents and the high rate of post-ceasefire mine incidents, and disseminated episodes on civilian mine victims and socio-economic difficulties in mine-affected communities in many international fora. Advocacy groups formed a transnational network in order to share and strengthen their advocacy appeal for a ban on AP mines. Humanitarian NGOs warned against the danger of AP mines for civilians, emphasized AP mines' violation of humanitarian principles of discrimination and proportionality, and set an agenda to ban AP mines. They used such military and humanitarian information and knowledge to make persuasive arguments to governments and emphasized the violation of

international humanitarian law in terms of the two humanitarian principles of discrimination and proportionality.

The argument of military utility had gradually become an increasingly untenable position.¹⁵ The idea of humanitarianism in landmine cases expanded to include assistance for victims suffering from long-term physical and psychological wounds from landmines, away from its original project merely to provide immediate relief to wounded victims.¹⁶ Consequently, positing landmines as legitimate weapons of war with military utility became difficult since mines' immediate battlefield utility could be shown to be outweighed by the long-term costs to civilian populations.¹⁷

6. Brief Overview of the Argument

Studies on the discursive power of humanitarian advocacy groups have demonstrated the emergence of the norm to ban AP mines. Still, more detailed characteristics of humanitarian advocacy groups and institutional constraint they face need to be clarified in order to examine the discursive power of humanitarian advocacy groups in enhancing government commitment to the norm of humanitarian disarmament.

I propose that humanitarian advocacy groups' discursive power can influence government policy when they conduct humanitarian discourse strengthened through norm linkage. Humanitarian advocacy groups would face two difficulties, information secrecy in armament policy and a government's exclusive decision-making process because a government is highly hesitant to receive internal and external interference in its armament policy since territorial security is the most

¹⁵ Price, 1998.

¹⁶ Article 6 of the 1997 AP Mine Ban Treaty.

¹⁷ Shawn Roberts and Jody Williams, *After the Guns Fall Silent*, Oxford: Oxfam Publishing, 1995.

crucial issue for it. Humanitarian advocacy groups can utilize their skills and resources to overcome these two difficulties. First, military information on the functioning and the reliability of weapons is protected and is only partially disclosed though such military information is crucial to disprove the military utility of the weapon at issue. Then, humanitarian advocacy groups could change the discourse from military-based to humanitarian-based one. The use of humanitarian information on human suffering over which humanitarian advocacy groups have comparative advantage over military information guarantees a more persuasive argument. Humanitarian advocates excel in collecting and processing information on victims of the weapons. As scholars have demonstrated theoretically and empirically, humanitarian advocacy groups can use tactics of shifting the focus of discourse from the functioning of the weapon to the actual and potential suffering of civilians.¹⁸ This way, humanitarian advocacy groups conduct their discourse based on civilian protection, which they have the information to support.

Humanitarian discourse could be reinforced through the advocacy appeal's linkage with related norms with domestic salience. A new norm acquires legitimization through its genealogical and historical connection with already internalized norms.¹⁹ The generation of a new norm through norm linkage is also explained as issue-resonance and nesting.²⁰ By internalized norms, the research means norms that are domestically established to the extent that they constitute the

¹⁸ Price, 1998. Rutherford, 2000.

¹⁹ Richard Price, "A Genealogy of the Chemical Weapons Taboo," *International Organizations*, Vol. 49, No. 1, Winter 1995, pp. 73-103.

²⁰ Harald Müller, "The Internalization of Principles, Norms, and Rules by Governments: The Case of Security Regimes," in *Regime Theory and International Relations*, edited by Volker Rittberger, pp. 361-88, Oxford: Oxford University Press, 1993.

value system of the government and are repeatedly implemented with little room for controversy over behavioral proscription and prescription.²¹ Linkage of a new norm with existing internalized norms provides the new norm legitimacy and turns the burden of proof on governmental officials. With an advocacy appeal linked with domestically established norms, it is almost impossible for governmental officials to deny it because the domestically established norms serve as a frame of reference for transnational advocacy groups to persuade the government.

Second, advocacy groups are usually outside of the decision-making process of armament policy. As Cortell and Davis explained, when the decision-making process is heavily centralized in the defense ministry and the foreign ministry, which is the case in the policy-making on armaments, there are two ways for outsiders to gain access to the decision-making process. First, the outsider gain connection and cooperate with like-minded governmental officials within the policy-making circle. The like-minded governmental officials could bring the outsider's appeal into the policy-making process. Or, second, the outsider cooperates with legislators. Humanitarian advocacy groups could gain channels to access the decision-making process through cooperation with parliamentarians, who are widely considered to be representatives more of the general public than of the government, and thus bring the agenda to the legislature. In this manner, advocacy groups increase their access to a legitimate arena for extracting governmental information and conduct inquiries in public, albeit in an indirect way via parliamentarians. Cooperation between

²¹ Andrew P. Cortell and James W. Davis, Jr., "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Association*, Vol. 40, No. 4, 1996, pp. 451-478, pp. 456-57.

humanitarian advocacy groups and parliamentarians is frequently observed and encouraged in liberal democracies.

A successful influence of humanitarian advocacy groups on the government depends on whether advocacy groups can overcome the secrecy and exclusiveness of the government's decision-making process in armament policy. The way of overcoming these difficulties are the change of discourse from military to humanitarianism and cooperation with like-minded government officials and/or legislators.

7. Plan of the Dissertation

In the following chapters I will explore further the theoretical arguments, formulate hypotheses, and conduct empirical examinations of them. Chapter 2 explains the idea of humanitarian disarmament and introduces the case of the 1997 AP Mine Ban Treaty as a milestone in the development of humanitarian disarmament. At the end of the chapter, I will consider the structural background of human-centric governance, from which the treaty emerged. This section particularly pays attention to advocacy groups' roles as norm entrepreneurs.

In chapter 3, I will present theoretical arguments on the role of advocacy groups in disputes over norm interpretation. The focus here is the complementing roles that international legal scholarship and international relations play for each other. I first take a fresh look at the issue of norm interpretation disputes, from a perspective suggested by the management school of legal studies, and confirm the crucial role advocacy groups can play in their discourse with the government from the

concept of transnational legal process advanced by a legal scholar. Then, I will explore the domestic institutional constraints that advocacy groups will face through their discourse with their governments.

Chapter 4 will discuss the research methods for the empirical test of the hypotheses put forth in chapter 3. The dependent variable of the research is government definition of AP mines. The effect-oriented definition of AP mines is more humanitarian than the design-oriented definition since the former covers many more types of mines, thus prohibiting them and reducing the possibility of civilian injuries and killings. The two independent variables are as follows: the extent of stakes a government has in AV mines with potential AP effects and humanitarian advocacy discourse. The two measures of the extent of military stakes a government has in AV mines with potential AP effects are (1) the number of AV mines with AP effects the government produces and (2) the extent of the threat to territorial security the government has perceived over fifteen years. The measurement of the second independent variable, advocacy discourse, is the quality and amount of information that advocacy groups use for argumentative discourse and the use of them for norm linkage. I will narrow down sample governments to those which are members of both OECD and the 1997 AP Mine Ban Treaty. The OECD's two basic membership qualifications, free market and democracy, can control for two elements in my research. The condition of advanced economies under free market narrows the sample down to donor governments and enhances the possibility of the existence of anti-landmine-related norms with domestic salience. Advanced economies guarantee a certain level of involvement in foreign assistance, especially mine action and

development. Democracy guarantees some room for advocacy work in the domestic arena.

Chapter 5 tests the first independent variable, the influence of realist elements on government definitions of AP mines. The comparison of governments with the effect-oriented definition of AP mines with those with the design-oriented definition of AP mines will demonstrate the positive correlation between the government's choice of definition and the extent of military stakes a government has. Governments with the design-oriented definition of AP mines tend to have a higher extent of military stakes in AV mines. The realist empirical test draws a tentative conclusion on the effectiveness of realist elements, namely the military stakes a government has in holding AV mines, on that government's definition of AP mines. The research will show that governments with the effect-oriented definition of AP mines tend to have a lower extent of military stakes in AV mines.

Chapter 6 expands upon the results of the realist-based empirical test by adding the element of humanitarian advocacy work to the empirical research on government definition of AP mines. I will compare four governments, two with the design-oriented definition of AP mines and two with the effect-oriented definition, to demonstrate that advocacy discourse based on military information does not hold a high level of effectiveness in persuading the government, even if advocacy groups overcome their disadvantages of the availability of military information and the access to the legislature. Governments with the effect-oriented definition of AP mines did not face humanitarian advocacy groups with ample military information and close access to the decision making, while governments with the design-oriented

definitions of AP mines faced stronger humanitarian advocacy groups both in terms of military information and access to the decision-making process. The research concludes that humanitarian advocacy groups' military discourse even with close access to the decision-making process cannot overwhelm a government's armament policy.

In Chapter 7, I will examine the effect of humanitarian discourse, and compare two governments with the design-oriented definition of AP mines, France and Germany. The German advocacy group's change of discourse and the reinforcement of civilian-focused discourse successfully changed the German government's definition of AP mines from the design-oriented one to the effect-oriented one. The comparative case study demonstrates the positive correlation between the humanitarian advocacy discourse and a government's adoption of the effect-oriented definition of AP mines in the German case. Still, the rationalist alternative explanations based on the German government's technological capacity to produce more advanced AV mines leave the effectiveness of humanitarian discourse unconfirmed. A new finding from the successful case of Germany, the importance of the utilization of international norms as a factor to make the humanitarian discourse more effective, suggests further research on the detailed conditions and mechanism for successful humanitarian advocacy discourse.

Chapter 2 Humanitarian Disarmament: Historical and Theoretical Context

This chapter examines the concept of humanitarian disarmament in its own right, as the first step toward the research's ultimate task of examining the conditions and extent of state commitment to humanitarian disarmament. Humanitarian disarmament can be defined as any efforts made to lower military deployment for purposes of minimizing the negative humanitarian impact of weapons on civilians and to better protect civilians from such impact.

First, I describe the origin and development of humanitarian disarmament, especially in its relation to other long-established concepts of humanitarianism and human rights. This section focuses on the increasing convergence of humanitarianism and human rights norms throughout the development of international humanitarian law.

Scholars and political leaders have started to use the term "humanitarian disarmament" to describe the total ban on antipersonnel landmines in 1997 and the subsequent international and transnational efforts to restrict negative humanitarian effects of weapons, such as cluster munitions, small weapons, and light arms.²²

However, I discuss humanitarian disarmament in the broader context of those humanitarian efforts which have been made since the nineteenth century by states, international organizations, and non-governmental organizations to employ disarmament measures with a view toward protecting civilian lives and minimizing

²² John Borrie, "Disarmament as Humanitarian Action: from Perspective to Practice," *Disarmament as Humanitarian Action: from Perspective to Practice*, New York: United Nations, 2006, pp. 7-22. European Commissioner for External Relations and European Neighbourhood Policy, see Benita Ferrero-Waldner's speech, "Human Security and Aid Effectiveness: The EU's challenges," on October 26, 2006. Overseas Development Institute-All Party Parliamentary Group on Overseas Development Lunchtime Meeting Series, SPEECH/06/636.

civilian casualties. This allows me to treat the historical development of consciousness about humanity in humanitarian treaties.

Next, I will explore the practical aspect of humanitarian disarmament, considering what kinds of actors have been involved in the reinforcement of humanitarian disarmament. I analyze the phenomenon of humanitarian disarmament in a larger context of human-centric governance. The chapter concludes with an analysis of the case of the ban on antipersonnel landmines in 1997 as the first major act to embody fully the idea of humanitarian disarmament.

1. What is Humanitarian Disarmament?

The core idea of humanitarian disarmament is to lower the level of military deployment of weapons for the purpose of protecting civilians from a threat from such weapons. Humanitarian disarmament, as an outgrowth of international humanitarian law, addresses the protection of people from the day-to-day threat during and after armed conflicts from weapons. While international humanitarian law, also called “the laws of war,” seeks to limit the effects of armed conflicts through the protection of civilians and soldiers who are no longer participating in the hostilities and the regulation of the means and methods of warfare, humanitarian disarmament focuses on the improved protection of civilians during the pre- and post-conflict periods as well as during the armed conflicts in the face of the increasing number of civilian casualties in modern warfare. The changing nature of armed conflicts; the increasing use of aerial bombing and the increasing number of irregular warfare, such as civil wars and guerrilla warfare; and the rise of weapons of mass destruction,

which have the capability to extinguish human beings as a species, have continuously raised concerns for stricter control on the deployment and use of weapons to protect civilians better. For the humanitarian purpose of protecting civilians, humanitarian disarmament involves transnational and international efforts to take measures to control governments' armament policies. Due to its civilian-centered notion, humanitarian disarmament is also referred to as "disarmament as humanitarian action."²³

The idea of using disarmament measures for humanitarianism has emerged in response to the growing awareness of the converging ideas of humanitarianism and human rights. Humanitarian disarmament seeks to prevent or at least alleviate the plight of civilians suffering from longer-term effects of armed conflicts in a wider dimension of their lives during the post-conflict period. Humanitarian law alone, which applies only to situations under armed conflict, cannot alleviate or prevent such post-conflict suffering of civilians. The idea of human rights to respect the inherent dignity of all human beings at all times needs to be incorporated to strengthen humanitarian law.

Humanitarian disarmament further strengthens human rights norms through traditional disarmament measures which pursue international stability through military balance among states. The conviction of humanitarian disarmament strengthens the traditional presumption and recently growing awareness that armed conflicts violate human rights, addressing the plight of people, especially civilians, during the post-conflict period. International peace and security as a result of

²³ John Borrie, "Disarmament as Humanitarian Action: from Perspective to Practice," *Disarmament as Humanitarian Action: from Perspective to Practice*, New York: United Nations, 2006, pp. 7-22.

disarmament efforts guarantees the underlying condition for the full observance of human rights,²⁴ even though few disarmament efforts in the past went beyond international stability to achieve the protection and enhancement of human rights.

In the following section, I explore the ideal dimension of humanitarian disarmament. After that, I will explore the background of the emergence of humanitarian disarmament with the concept of human-centric governance, with a special focus on the humanitarian norm of the ban on antipersonnel landmines.

2. Humanitarian Disarmament at the Ideal Level: the Convergence of International Humanitarian Law and Human Rights

The ideal core of humanitarian disarmament lies in the merger of international humanitarian law and human rights. Legally speaking, humanitarian disarmament indicates the beginning of the convergence of international humanitarian law and human rights law. International humanitarian law protects civilians during armed conflicts while human rights measures protect people's inherent dignity at all times. Humanitarian disarmament applies not only to pre-conflict and armed conflict periods, but also to post-conflict periods, addressing the negative effects of weapons on civilians during post-conflict periods. Humanitarian disarmament obliges belligerent parties to clear those weapons left on the battlefield, to refrain from the use of certain weapons during armed conflict, and to provide relief and assistance to victims of these weapons.

²⁴ For example, the preamble of the Universal Declaration of Human Rights affirms that the recognition of human rights, the equal and inalienable rights of all members of the human family, is the foundation of peace in the world. The General Assembly Resolution A/RES/217 A (III) (1948).

International humanitarian law, whose codification started in the mid-nineteenth century, and human rights had been independent of each other for more than two decades after the institutionalization of human rights under the United Nations in 1945. They are different in terms of context, purpose, and function. International humanitarian law refers to the laws of war which regulate the means and methods of warfare, balancing the military requirements of the state with humanitarian concerns. Human rights law applies to more normal situations. The difference in application between international humanitarian law and human rights law is expressed in the contrast between the Geneva Conventions of 1949 and the Universal Declaration of Human Rights of 1948. The Universal Declaration of Human Rights of 1948 does not touch upon the situation under armed conflict, nor do the 1949 Geneva Conventions touch upon the types of human rights treated in the Universal Declaration.²⁵ States explicitly decided at the Diplomatic Conference of Geneva of 1949 not to situate the 1949 Geneva Conventions in the human rights discourse.²⁶ Consequently, there existed an institutional division of labor of human rights and international humanitarian law between United Nations agencies and the International Commission of the Red Cross (ICRC). At the United Nations, the International Law Commission and the Human Rights Commission²⁷ paid scant attention to international humanitarian law while the development and application of international humanitarian law were largely left outside the United Nations for the

²⁵ Robert Kolb, "The Relationship between International Humanitarian Law and Human Rights Law: A Brief History of the 1948 Universal Declaration of Human Rights and the 1949 Geneva Conventions," *International Review of the Red Cross*, No.324, pp. 409-419.

²⁶ David Forsythe, *The Humanitarians: The International Committee of the Red Cross*, Cambridge: Cambridge University Press, 2005, p. 254.

²⁷ The Human Rights Commission was replaced by the Human Rights Council in April, 2006. A/RES/60/251.

first twenty-five years of the organization's existence. Instead, the ICRC retained its traditional role as the guardian and promoter of international humanitarian law. Up until the late 1960s, international humanitarian law remained separate from human rights.

International humanitarian law has a much longer history than international human rights law. The idea of humanitarianism to value people's lives and to minimize human suffering in armed conflicts has long existed as the "cultural regulation of violence" in virtually every civilization on record.²⁸ As early as the second millennium B.C. there were rules on the conditions of the initiation of war (*jus ad bellum*) in the Egyptian and Sumerian wars.²⁹ In the middle ages in Europe, there were unwritten rules such as codes of chivalry and Christian customs pertaining to conduct in battle, though the law applicable in armed conflicts was limited in both time and space in that it was legally binding for only one battle or specific conflict.³⁰ The universal institutionalization of humanitarian law started when Henri Dunant initiated systematic efforts to help wounded soldiers in armed conflicts and subsequently established the ICRC in 1863, encouraging the formation of national voluntary relief organizations to help nurse wounded soldiers in the case of war and calling for the development of international treaties to guarantee the neutrality and

²⁸ Michael Howard, "Constraints on Warfare," in Michael Howard, George J. Andreopoulos, and Mark R. Shulman eds., *The Laws of War: Constraints on Warfare in the Western World*, New Haven: Yale University Press, 1994.

²⁹ Hammurabi King of Babylon, 1728-1686 BC, wrote the 'Code of Hammurabi' for the protection of the weak against oppression by the strong and ordered that hostages be released on payment of a ransom. SunTzu noted that it was forbidden to injure an enemy previously wounded or to strike elderly men. For a brief introduction of the history of rules of warfare, see Leon Friedman, *The Law of War: A Documentary History*, Volume I, Random House: New York, 1972, pp. 3-15.

³⁰ Christopher Greenwood, "Historical Development and Legal Basis," Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflicts*, 1995, pp. 1-38. For the history of humanitarianism in non-Western world, see Institut Henry-Dunant and UNESCO, *International Dimensions of Humanitarian Law*, 1988.

protection of those wounded on the battlefield as well as medics and field hospitals. The idea that individuals should be properly protected in a systematic and organized way in the course of armed conflicts was then gradually codified,³¹ starting in 1864 with the first Geneva Convention for the Amelioration of the Wounded in Armies in the Field, which guaranteed the neutrality of the humanitarian staff and medical workers, thus requiring states to protect and respect them.

In contrast, most human rights law dates from the 1940s and thereafter. It was after 1945 when the language of human rights became visible in international relations. With the establishment of the United Nations in 1945, which reaffirmed its faith in fundamental human rights, and its subsequent attention to specific human rights issues, the concept has gradually been constituted as part of state policies in international relations.

Most importantly, international humanitarian law and human rights had different points of reference. The point of reference of human rights has been individuals while that of international humanitarian law has been the state, though the duty to implement both international humanitarian law and human rights law lies with states. Human rights are the entitlement of individuals and human rights law regulates the relationship between the state and its own nationals, while international humanitarian law originally employed the language of state obligations regarding victims and medical matters since states are the parties able to participate in war. Under international humanitarian law only states were legal subjects of the law, inasmuch as only states had full legal personality or legal subjectivity, whereas under

³¹ International humanitarian law is not always codified as written agreements among states. It is also contained in customary rules, which consist of state practice considered by states as legally binding.

international human rights law individuals and groups can expect or claim certain behavior from governments. Under international humanitarian law, individuals and groups of individuals were considered passive objects that might be affected by public authority and public law with no rights in the international public domain. Even Geneva Convention IV, which obliges state parties to protect civilians in time of war, does not apply to the relations of the state with its own nationals. It governs only the relations between belligerent and enemy civilians who, as a result of the occupation of the territory of the state of which they are nationals, are under the control of the occupying belligerent.³²

The tendency toward the convergence of international humanitarian law and human rights law can be traced to 1968, when the UN Conference on Human Rights and the UN General Assembly called for further attention to “human rights in armed conflict,”³³ rather than just to state duties to observe certain restraints for the benefit of passive victims.³⁴ In this declaration, the General Assembly invited the Secretary-General, in consultation with the ICRC and other appropriate international organizations, to study steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts.

There are three main reasons for the convergence of international humanitarian law and human rights law. One is the limitations of humanitarian law, which applies only to situations under armed conflict. The increase in the proportion of civil wars in the 1980s and 1990s have created such conditions of internal

³² Commentary on the Fourth Geneva Convention. Available at <http://www.icrc.org/ihl.nsf/COM/380-600088?OpenDocument>.

³³ United Nations General Assembly Resolution 2444 (XXIII), December 19, 1968.

³⁴ Théodore Meron, “The Humanization of Humanitarian Law,” *American Journal of International Law*, 94, No. 2, April 2000, pp. 239-78.

violence, disturbances, tensions, and public emergencies that cannot be categorized as armed conflicts in the traditional sense but that could generate grave, systematic, human rights violations. Neither humanitarian law nor human rights law can address systematic human rights violations by insurgent groups under a low-intensity civil war. In 1992, the United Nations Independent Expert on El Salvador, which was created to observe the human rights conditions in El Salvador, used the idea of human rights' applicability to ordinary situations to assess the human rights conditions in El Salvador after the civil war between the government and the insurgent group, the Farabundo Martí National Liberation Front (FMLN). The Independent Expert's report declared that the protection granted by international humanitarian law remains in effect throughout the period of cessation of the armed conflict. The application of international humanitarian law in the post-conflict period is clearly against the applicability of international humanitarian law since it applies only until the general close of hostilities. The human rights standard enabled a longer-term application of international humanitarian law so that the protection granted by international humanitarian law would remain in effect after the cessation of the armed conflict.³⁵

Second reason is the limitations of human rights doctrine, which imposes obligations to protect human rights only on states and not on private individuals or groups, absent any incitement, complicity, or tolerance on the part of some public official or authority. The United Nations Truth Commission on El Salvador, which

³⁵ Daniel O'Donnell, "Trends in the application of international humanitarian law by United Nations human rights mechanisms," *International Review of the Red Cross*, No. 324, pp. 481-503, March 9, 1998 [Electronic version]. <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jpga?opendocument.A/47/596>, para 105.

was also created following the peace agreement between the El Salvadorian government and the FMLN in January 1992, used international humanitarian law standards to condemn the conduct of the insurgent group. It reported that the FMLN's abduction of the then president's daughter and her exchange for a number of wounded guerillas constituted hostage taking, in violation of humanitarian law.³⁶ The UN Truth Commission on El Salvador referred to Additional Protocol II to the Geneva Conventions, which binds all parties to an armed conflict whether states or non-state actors, in order to condemn the hostage-taking by the FMLN.³⁷ All parties to an armed conflict whether states or non-state actors are bound by international humanitarian law. The taking of hostages is prohibited by international humanitarian law.³⁸

The third reason is the similarity at the normative level between humanitarian law and human rights; both strive to protect the lives, health, and dignity of individuals, albeit in very different contexts. Many cases of the violation of humanitarian law also constitute violations of human rights. The UN Commission on Human Rights' Special Rapporteur³⁹ on Iraq in 1993 pointed out that mines had been laid in order to prevent the civilians from living and farming in their traditional ways and to move them into other villages built by the Iraqi government. Though the

³⁶ The First Report of the United Nations Observer Mission in El Salvador (ONUSAL) Human Rights Division, A/45/1055-S/23037, Annex, paras. 17-25.

³⁷ The state is responsible for the implementation of international humanitarian law first and foremost. However, Additional Protocol II to the Geneva Conventions, which protects individuals in internal armed conflicts, regulates that all parties to an armed conflict whether states or non-state actors, including dissent armed forces, are responsible for the protection of individuals who do not take part in the fighting.

³⁸ Article 34, Fourth Convention; Article 3 common to the Geneva Conventions; Article 75 (2c), Additional Protocol I; and Article 4 (2c) of Additional Protocol II to the Geneva Conventions.

³⁹ Special Rapporteurs of the UN Commission on Human Rights are to examine, monitor, advise, and publicly report on human rights situations in specific countries or territories.

Special Rapporteur's original focus would have been on the violation of the socio-economic right to choose a place to live, the Special Rapporteur drew attention to the Land Mines Protocol,⁴⁰ Protocol II to the Convention on Conventional Weapons (CCW),⁴¹ designed to protect civilians from the effects of mines. About the use of chemical weapons against Kurdish villages in northern Iraq, the Special Rapporteur on Iraq in 1994 not only saw it as incompatible with the right to life and the right to health, but also pointed out the Iraqi government's responsibility for serious breaches of the 1925 Geneva Protocol for the prohibition of the use in war of asphyxiating poisonous or other gases and of bacteriological methods of warfare.⁴² Reference to humanitarian law serves to emphasize the gravity of the offence: not only does a particular act violate human rights law, but it also violates humanitarian law. There is a generalized perception that international humanitarian law is designed to cover war, whereas human rights law is designed to cover ordinary situations; and since more is permitted in wartime than in peacetime, the affirmation that humanitarian law has been violated connotes greater moral reprobation.⁴³

The convergence of international humanitarian law and human rights since the late 1960s increases the understood responsibility of the state for civilians as well as wounded soldiers. The state is responsible not only for its conduct during armed conflicts, but also for its military deployment and for its conduct during a post-conflict period. Humanitarian law is perceived less as a code of honor for combatants

⁴⁰ Protocol II to the Convention on Conventional Weapons. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II).

⁴¹ 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.

⁴² O'Donnell, 1998.

⁴³ O'Donnell, 1998.

than as a means of sparing non-combatants as much as possible from the horrors of war.⁴⁴ As will be elaborated in the following section, the 1978-1980 UN Conventional Weapons Conference and Convention (CCW) reflected the increasing humanitarian concern about the use of conventional weapons and considered a variety of proposed prohibitions and restrictions on conventional weapons that caused excessive injuries or had indiscriminate attacks on civilians in the Indochina conflict, such as mines, incendiary weapons, and high-velocity small-arms projectiles.⁴⁵

3. The Growing Significance of Humanitarian Disarmament in the Progress of International Humanitarian Law

The language of humanitarian disarmament as a sign of the convergence of international humanitarian law and human rights theory since the late 1960s calls for a tightening of control over armament policy and an enhancement of the state's responsibility to protect civilians. The convergence of international humanitarian law and human rights affects the balance on which humanitarian law traditionally stands: it is the balance between humanitarian concerns and the military requirements of the state. As do the laws of war, humanitarian law reflects the military requirement of the state as well as humanitarian concerns. The balance between the protection of civilians (and wounded soldiers) and military requirements is a reflection of states' military strategies and reciprocal calculations which ultimately pursue the protection of territorial integrity and political independence of the country. At the same time the

⁴⁴ Ouisse Doswald-Beck and Sylvain Vit , "International Humanitarian Law and Human Rights Law," *International Review of the Red Cross*, No. 293. pp. 94-119.

⁴⁵ Michael Matheson, "Current Developments: The Revision of the Mines Protocol," *American Journal of International Law*, Vol. 91, No.1, January 1997, pp. 158-167. p. 158.

balance reflects the humanitarian purpose to minimize human suffering during the conduct of hostilities: means of warfare are justified only if they are relevant and proportional to the achievement of a specific military objective. The legality of all weapons and means of warfare is to be measured based on the two principles of the use of armed force during warfare: discrimination and proportionality. The use of weapons should not be aimed at civilians (discrimination) and should not cause excessive injury or indiscriminate effects on soldiers and civilians (proportionality).

The inclusion of the human rights element in the balance necessarily heightens the standard of discrimination and proportionality, and then tilts the balance toward the direction of humanitarian concerns. Even though institutionalized international humanitarian law is based on states' strategic calculations, the balance, if tilted more toward humanitarianism, could temper the right of the state to maintain its autonomy in armament policy with the mandate to respect the lives of individuals.⁴⁶

The progress of international humanitarian law reflects the growth of concern for the protection of civilians and wounded soldiers in more concrete specific conditions and is shown by the increasingly tight restrictions on the conduct of armies since 1864. The Hague Conventions of 1899 and 1907 set the rules for practices of war on land and naval warfare. The 1925 Geneva Protocol banned the use of asphyxiating gases on the battlefield. The four Geneva Conventions of 1949 specify categories of war victims entitled to protection: (1.) the sick and wounded; (2.) persons shipwrecked; (3.) prisoners of war; and (4.) civilians in the hands of the

⁴⁶ Martha Finnemore, "The International Red Cross and Rules of War," in John Boli and George M. Thomas eds., *Constructing World Culture: International Nongovernmental Organizations Since 1875*, pp. 151-52.

adverse party and, to a limited extent, all civilians in the territories of the countries in conflict.

The CCW adopted in October 1980 was the first international humanitarian law to regulate conventional weapons, whereas most disarmament efforts so far had focused on weapons of mass destruction, such as nuclear, biological, and chemical weapons. The ICRC-led diplomatic conference in 1974-77 on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict made no rules on specific weapons, though it led to the enactment of two additional Protocols to the 1949 Geneva Conventions. The CCW, the first humanitarian treaty concluded under the auspices of the United Nations, and its three specific protocols prohibit or restrict certain types of conventional weapons: Protocol I on Prohibition of Non-Detectable Fragments, which have a wounding effect and which escape detection by X-rays; Protocol II on Prohibition or Restrictions on the Use of Mines, Booby-Traps and Other Devices; and Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons.

As an umbrella convention, the CCW can be amended through the creation of additional protocols that deal with specific weapons. The Fourth Additional Protocol to the CCW, concluded in 1995, prohibits the employment and transfer of laser weapon systems specifically designed to cause permanent blindness. This reflects the frequently reported incidents of laser weapons since the 1970s and the concern over the easy availability of anti-personnel laser weapons, which are inexpensive, sold openly in some Third World countries, and capable of producing catastrophic results if used against aircrews and sensors in flight. The Federation of American Scientists

lists the occasional use of anti-personnel laser weapons by conflicting parties.⁴⁷ In the 1970s it was claimed that Chinese soldiers were blinded by Soviet-built laser systems during the China-Vietnam War. In the 1982 Falklands War, Argentine pilots reported being dazzled by lasers from British ships. During the Iran-Iraq War, over 4,000 Iranian soldiers sustained injuries due to Iraqi laser systems. In the early 1980s, the Soviet Union was long suspected of directing lasers at US spy planes. In 1989 a US-USSR bilateral agreement imposed restrictions on the use of low-energy lasers. In 1989, the ICRC called for multilateral controls of laser weapons.

The further development of humanitarian disarmament was achieved by in the conclusion of the 1997 Antipersonnel Landmine Ban Treaty, which comprehensively banned antipersonnel landmines. I will analyze this treaty extensively later in the chapter. Before that, I will examine the structural background for the generation of humanitarian disarmament.

4. Background of the Generation of Humanitarian Disarmament: Human-Centric Governance

4-A. Human-Centric Governance

Behind the generation of the norm of humanitarian disarmament lies human-centric governance. Human-centric governance is a dynamic arena of practices to protect and to promote the principle of humanity, which is a normative recognition of the inherent dignity of human beings in all aspects of their existence. Accordingly, actors in human-centric governance, including the state, politicians, scholars, and NGOs, which are non-profit organizations and individuals working for what they believe as

⁴⁷ Federation of American Scientist. <http://www.fas.org/nuke/control/ccw/>.

the common good, see many more aspects of people's daily living conditions. Actors have engaged in a variety of issue areas of human rights, refugees, women's rights, children's rights, emergency humanitarian relief operations in conflict zones, socio-economic development, and environment. They might find a new issue area to deal with for the purpose of the ultimate goal of the well-being people.

Actors in human-centric governance try to respond promptly to new challenges to humanity, to provide relief in the field, to adjust and to cooperate in one another's operations and policies, and to take the initiative in generating new human-centric norms. Remarkable recent phenomena at the field level under human-centric governance are reflected in the growing participation of nonprofit humanitarian agencies in humanitarian aid and relief operations in conflicts areas in Somalia, Haiti, Rwanda, and the former Yugoslavia in the 1990s.⁴⁸ This phenomenon indicates also the deepening operational relationship among the state, international organizations, and NGOs. Operational relationship was first between relief agencies and the deteriorating governments in these areas. NGOs and international organizations tried to minimize the negative effects of the deterioration or complete collapse of central government authority under civil wars in these areas and to provide food and place to temporarily stay for people in these areas. The other operational relationship was between relief agencies and donor governments. NGOs and international organizations involved in aid and relief operations had played a complementary role of donor states partly due to their governments' avoidance of the risk of political-military approaches to conflicts and their use of humanitarian assistance as a useful

⁴⁸ Ian Smillie, *Relief and Development: The Search for Synergy*, Providence: War and Humanitarianism Project, Brown University, 1998.

substitute strategy.⁴⁹ Some NGOs have also acted as sub-contractors to UN agencies. Thus, NGOs with humanitarian missions have been developed as primary organizations in the international community's response to civil war in the 1990s.

Human-centric governance functions also at policy and advocacy level, and accordingly reflects a changing policy direction in the international state system as a whole, in which daily foreign policies are conducted based on the calculation of interests from the state's macro-perspectives. Sovereign states have been theoretically the entities responsible for people's lives and dignity since the seventeenth century in Western Europe.⁵⁰ In practice, awareness of the need to protect people's lives and dignity had gradually extended from the domestic to the international arena.

Still, such awareness developed first mainly as state-centered international regimes of human rights and humanitarianism. Regimes are sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations.⁵¹ Regimes are static and mainly generated and managed by states and, especially in humanitarianism, by the ICRC. International concern over the lives and dignity of people in the context of armed conflict has risen in the nineteenth century, resulting in the establishment of the ICRC to guard and generate international humanitarian law in the context of armed conflict, and also in the mid-twentieth century in the institutionalization of

⁴⁹ Astri Suhrke, "Human Security and the Interests of States," *Security Dialogue*, Vol. 30, No. 3, September 1999, p. 268, pp. 265-276.

⁵⁰ For example, John Locke's *Two Treatises of Government* in 1689 and Jean-Jacques Rousseau's *The Social Contract* in 1762.

⁵¹ Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in Krasner ed., *International Regimes*, Ithaca: Cornell University Press, 1983, pp. 3-4. 1983. Most regime studies focus on single-issue areas, such as human rights, development, environment, trade, etc.

human rights,⁵² even though the state has remained primarily responsible for the achievement and the maintenance of the protection of lives and dignity of its citizens. Humanitarian and human rights norms have been instituted and protected as part of the generation and growth of international society, made up of states which have established common goals and rules for the conduct of their relations and have recognized their common interest in maintaining these arrangements.⁵³

Under human-centric governance at the policy-making level, non-state actors, including NGOs and scholars, are increasingly participating in agenda-setting and advocacy work. Certainly the role of international organizations and the ICRC matters in human-centric governance. However, they assume more of a public nature; international organizations are composed of governmental delegations and the ICRC is composed of both governmental and private members.⁵⁴ Furthermore, the ICRC works as the custodian and monitor of the Geneva Conventions of 1949 and the Additional Protocols of 1977 and also performs an observer role in the General Assembly.⁵⁵ The observer status means that the ICRC has access to the meetings of the General Assembly and its committees, and that the ICRC can deliver statements on subjects within its competence. Two other organizations with observer status at the

⁵² Most notably the United Nations Commission on Human Rights, the European Commission of Human Rights, the European Court of Human Rights, the Inter-American Commission on Human Rights, the Office of the United Nations High Commissioner for Human Rights, and Office for Democratic Institutions and Human Rights at the Organization for Security and Co-operation in Europe (OSCE).

⁵³ Hedley Bull and Adam Watson, "Introduction," in Bull and Watson, *Expansion of International Society*, New York: Oxford University Press, 1984, pp. 1-9. Hedley Bull, *The Anarchical Society: A Study of Order in World Politics*, New York: Columbia University Press, 1977, p.4.

⁵⁴ More than seventy percent of the ICRC budget is from donor governments. In 2005, contribution from governments was 72.6% of the total contributions. In 2006, government contribution was 79.7% of the total contributions. *ICRC Annual Report 2006: Finances*, P. 16.

⁵⁵ United Nations General Assembly Resolution, A/RES/45/6, "Observer status for the International Committee of the Red Cross, in consideration of the special role and mandates conferred upon it by the Geneva Conventions of 12 August 1949," October 16, 1990.

General Assembly are the International Federation of Red Cross and Red Crescent and the Order of Malta.⁵⁶

Some NGOs in human-centric governance put their observation and convictions gained from field operational experiences into various levels of the policy-making process at the national and global levels through lobbying national legislators and international governmental officials and educating and empowering local people.⁵⁷ For example, Oxfam was concerned about the effects on low-income groups of Government and World Bank policy to charge user fees for health care. Oxfam started research on how user fees were pricing the poor out of the health care system and damaging people's health. Even though Oxfam's original intention was not to start direct advocacy, the research result changed the World Bank's policy in 1995 on user fees in Zimbabwe.⁵⁸ As another example, Save the Children International Union drafted the first declaration of the rights of the child in 1924, which became the seed for 1959 United Nations Declaration of the Rights of the Child.⁵⁹ The Informal NGO Ad Hoc Group on the Drafting of the Convention of the Rights of the Child was formed in 1983 and participated in the Working Group set up by the Commission on Human Rights to draft a convention on children's rights, which was concluded in 1989.

⁵⁶ Anna-Karin Lindblom, *Non-Governmental Organisations in International Law*, Cambridge: Cambridge University Press, 2006, pp. 371-372.

⁵⁷ Marc Lindenberg and Coralie Bryant, "The Evolving Role of Advocacy," *Going Global: Transforming Relief and Development NGOs*, Virginia: Kumarian Press, 2001. Thomas G. Weiss and Leon Gordenker, "Pluralizing Global Governance: Analytical Approaches and Dimensions," in Weiss and Gordenker eds., *NGOs, the UN & Global Governance*, Boulder: Lynne Rienner, pp. 38-40.

⁵⁸ David Bryer and John Magrath, "New Dimensions of Global Advocacy," *Nonprofit and Voluntary Sector Quarterly*, Vol. 28, No. 4, Supplement 1999, pp. 168-177, p. 170.

⁵⁹ Cynthia Price Cohen, "The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child," *Human Rights Quarterly*, Vol. 12, No.1, February 1990, pp. 137-147.

Human-centric governance does not necessarily indicate a smooth progress of governance function at the global level even though the increasing participation of normatively driven NGOs and scholars. Activities in human-centric governance do not necessarily bring about natural harmony among participants, such as more efficient field operations, stronger policy agenda, and more effective policy implementation. As Cooley and Ron pointed out, there exist negative effects of the growing number of NGOs as well as international organizations in a certain transnational sector, such as increasing uncertainty, competition, and insecurity for all organizations in the sector.⁶⁰ They demonstrated that inter-international organizations and international NGO competition strengthened local military commanders' attempts to prevent the international protection of prisoners of war in Bosnia.⁶¹ Furthermore, there exists a doubt on the legitimacy of NGOs as advocates for the poor and marginalized people.⁶² Human-centric governance also includes such a process through which participating actors reflect, adjust, and improve their activities and gear toward better achievement of the dignity of humanity.

4-B. The Generation of Human-Centric Norms through Norm Entrepreneurship and Norm Linkage

One of the remarkable functions in human-centric governance is the generation of a growing number of people-centered ideas and norms. Human-centric governance,

⁶⁰ Alexander Cooley and James Ron, "The NGO Scramble: Organizational Insecurity and the Political Economy of Transnational Action," *International Security*, Vol. 27, No.1, 2002, pp. 5-39.

⁶¹ *Ibid.*, pp. 31-36.

⁶² Michael Edwards, "Legitimacy and Values in NGOs and Voluntary Organizations: Some Skeptical Thoughts," in D. Lewis ed., *International Perspectives on Voluntary Action: Reshaping the Third Sector*, London: Earthscan, 1999, pp. 258-267.

based on the principle of humanity, reflecting both human rights and humanitarianism, generates various norms. In fact, the principle of humanity has developed into new norms reaching a wide range of issue areas, such as development, trade, and arms control. Norms develop through a variety of venues which open and flexible human-centric governance has offered.

Human-centric governance strengthens two paths of norm development, which differ from the traditional norm development through the state's rational calculation of state interests. These two reinforced venues, not exclusive to each other, rely on the initiatives and practices of nonstate actors: (1) norm development from norm entrepreneurs, such as advocacy groups, political leaders, or scholars; and (2) norm development through norm linkage. The two paths have become more open under human-centric governance even though all the norm development paths, including the state's rational calculation of national interest, overlap one another to some extent.

Traditional rationalist explanations of norm generation emphasize material incentive and cost/benefit calculations of states. Realists consider the emergence of any new international norms a mere reflection of balance-of-power politics in the forms of power balancing⁶³ or of hegemonic rules.⁶⁴ Robert Gilpin proposed a hegemonic regime, which reflects an uneven distribution of power among states; a hegemonic state constructs international regime(s) in order to maintain and enhance its national interests. Neoliberal institutionalist Robert Koehane sees norms from a wider perspective, suggesting norms as insurance-oriented regimes, which are mutual

⁶³ Hans J. Morgenthau, *Politics among Nations*. sixth edition, revised by Kenneth W. Thompson, New York: Alfred A. Knopf, 1985.

Kenneth N. Waltz, *Theory of International Politics*. Boston: Addison-Wesley, 1979.

⁶⁴ Robert Gilpin, *The Political Economy of International Relations*, Princeton: Princeton University Press, 1987.

agreements emerging from states' long-term cost/benefit calculations.⁶⁵ An insurance-oriented regime functions to keep the cost of agreements under the regime less than that of any *ad hoc* agreement since the regime provides the framework and improves the quantity and quality of information available to states, thus reducing transaction costs and the uncertainty of other states' behaviors in the international system in which there is no ultimate authority to enforce norms.⁶⁶

Norms in human-centric governance also develop from ideas and initiatives of norm entrepreneurs, individuals or organizations that set out to change the behavior of others.⁶⁷ Norm entrepreneurs could teach a new concept of states' interests⁶⁸ or redefine certain activity as problematic, such as the slave trade, and deligitimize it.⁶⁹ An illustrative case of norm generation through scholarly entrepreneurship is human development. Two renowned South Asian economists, Amartya Sen and Mahbub ul Haq, provided the conceptual foundation for human development, which is a human-centric approach to put people back at the center of the economic development process. Human development is the multidimensional expansion of people's choices and capabilities in income, health, education, environment, and employment.⁷⁰ The concept of human development comes from recognition of the defect of setting aggregate economic growth as the final objective. The standard of aggregate

⁶⁵ Keohane calls a hegemonic regime a control-oriented regime in contrast to mutually agreed insurance-oriented regime. "The Demand for International Regimes," *International Organization*, Vol. 36, No. 2, Spring 1982, pp. 325-355, p. 327.

⁶⁶ Robert Keohane, *After Hegemony*, Princeton: Princeton University Press, 1984, pp. 85-98.

⁶⁷ Ann Florini, "The Evolution of International Norms," *International Studies Quarterly*, Vol. 40, No. 3, 1996, p. 375.

⁶⁸ Martha Finnemore, *National Interests in International Society*, Ithaca: Cornell University Press, 1996.

⁶⁹ For example, the role of Thomas Clarkson, one of the first advocates of abolition. Ethan A. Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society," *International Organization*, Vol. 44, No. 4, 1990, pp. 479-526.

⁷⁰ United Nations Development Programme (UNDP), *Human Development Report 1990*, New York: Oxford University Press, 1990.

economic growth neglected the distributional consequences between the rich and the poor within an economy. With the initiative of Mahbub ul Haq, the United Nations Development Programme (UNDP) encouraged states to achieve social and economic development in terms of life expectancy, educational attainment, and income.

Mahabub ul Haq also initiated in the conceptualization of a human-centric norm, the norm of human security, a people-centered approach to security, in the 1994 Human Development Report.⁷¹ The norm was generated through the norm linkage of development and security, seeking both the freedom from want and freedom from fear underpinned by the human-centric perspective. The notion of security in human security includes not only the territorial protection of the state but also the protection of individuals; the meaning of security is multidimensional in that it is not just a protection from military violence but also from economic and social violence, such as hunger and poverty. The UNDP's emphasis on people-centered development under human development has emphasized the alleviation of poverty, in which 1.2 billion people live on less than a dollar a day,⁷² and has shed light on the threat of dire poverty, thus expanding the meaning of security to include not only physical security, as in protection from violent threats, but also economic security in terms of protection from non-violent threats. The UNDP pointed out the insufficiency of the traditional concept of state security to protect people's social and economic security.⁷³ With its catch phrase "freedom from hunger and from fear," the UNDP argued that people suffer not only from the actual violence of warfare and civil war,

⁷¹ UNDP, *New Dimensions of Human Security*, New York: Oxford University Press, 1994.

⁷² World Bank, "Global Poverty Monitoring," April 2001. Available at <http://www.worldbank.org/research/povmonitor>.

⁷³ UNDP, 1994.

but also from “non-violent” threats including poverty and collateral damage from warfare such as social and economic disruption, drug trafficking, and infectious diseases. Human security policy includes not only the short-term protection of individuals, as humanitarianism suggests, but also the long-term protection of people and the empowerment of people so that they have the capability to enhance their long-term ability for human fulfillment. The idea of the long-term protection of people has further helped scholars and researchers identify the mutual correlation of poverty and war. A sustainable political stability, especially in the post-conflict phase, requires stable social and economic conditions. At the same time, sustainable social and economic development requires political stability without significant armed conflict.⁷⁴ The recognition of the correlation between poverty and war underlying the norm of human security was later utilized by a German anti-landmine advocacy group when it tried to generate an idea that disarmament, the abolition of landmines, serves as a way of poverty reduction because the abolition of landmines reduces the chances of armed conflicts and the possibility of the destruction of social and economic life for individuals and the society.⁷⁵

The norm of human security was further interpreted in many ways by scholars.⁷⁶ A representative study of human security exploring the concept of security,

⁷⁴ Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security*, London: Zed Books, 2001. UNDP, 1994.

⁷⁵ The Zagreb Initiative by the German Initiative to Ban Landmines. See chapter 7.

⁷⁶ King and Murray emphasized the freedom from need aspect of human security, seeking a measurable definition of human security based on life span outside a state of generalized poverty. Gary King and Christopher J.L. Murray, “Rethinking Human Security,” *Political Science Quarterly*, Vol. 16, No. 1, 2001-2002, pp.585-610. Roland Paris presented human security as a broad category of research on military and non-military threats to societies, groups, and individuals, “Human Security: Paradigm Shift or Hot Air?” *International Security*, Vol. 26, No. 1, 2001, pp. 87-102. There is also an attempt to summarize and advance the understandings of human security by scholars in the Special Section, “What is ‘Human Security?’” of *Security Dialogue*, Vol. 35, No. 3, September 2004.

centered on people, not on states, is *Human Security Now* by the Commission on Human Security.⁷⁷ It is a report in response to the Secretary-General's proposal in the Millennium Summit for a world "free of want" and "free of fear" to study further the concept of human security. The report presents a holistic analysis of the changing nature of threat to the state, new types of threats from people's viewpoint, and possible institutional modifications and arrangements at the national, transnational, and international levels to protect people from the new threats. It recognizes rising and interconnected threats in the twenty-first century to the state and people as a result of the political, economic, and human linkages across borders: civil war, violent conflict, poverty, displacement, epistemic diseases, human trafficking, ill health, lack of sustainable livelihoods, natural disasters, economic and financial crises, and lack of education. These conditions have not always been classified as threats to state security. Thus, the norm of human security in the report is a comprehensive norm which includes multidimensional aspects of people's security and addresses that the effective protection of an aspect of people's security requires consideration for other aspects of people's security.

The human-centric perspective of security also showed a widening sovereign states' range of responsibility for security. A sovereign state's responsibility for security expands from the protection of its territory and people to that of people worldwide. The International Commission on Intervention and State Sovereignty, an independent commission organized in response to the Secretary-General's proposal in his Millennium Report to study the emerging doctrine of humanitarian intervention,

⁷⁷ The Commission on Human Security, *Human Security Now*, New York, 2003. Available at www.humansecurity-chs.org/index.html. The Commission was composed of scholars, politicians, government officials, and international government officials.

has proposed the idea of the responsibility of the community of states to protect citizens of other states when the governments of the states are unwilling or unable to protect their own citizens from avoidable catastrophe.⁷⁸

Thus, in human-centric governance newly emerging human-centric principles and norms proposed by NGOs and scholars challenge the traditional notion of the range and extent of states' influence on their citizens. In the following sections I will introduce and explore the representative case of humanitarian disarmament, the ban on anti-personnel landmines, and the process of the generation of the norm of the ban on anti-personnel landmines under human-centric governance.

5. Representative Case of Humanitarian Disarmament: The 1997 Anti-Personnel Mine Ban Treaty as Humanitarian Disarmament

The 1997 Anti-Personnel (AP) Mine Ban Treaty⁷⁹ represents the most advanced case of humanitarian disarmament. The treaty has emphasized individuals as referent points of security—especially individuals as landmine victims. Its serious concern for landmine victims sets a total ban on AP mines and protects the well-being of landmine survivors for their social and economic reintegration.

Humanitarian disarmament efforts have always expressed the sentiment of humanity against horrors of cruel armed conflicts and weapons, especially weapons of mass destruction, and have gradually imposed stricter control on the use of disparate types of weapons. Disarmament efforts in the context of humanitarian law

⁷⁸The International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa: International Development Research Centre, December 2001.

⁷⁹ The official title is the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

have continued since the ban on the use of asphyxiating gases in 1925,⁸⁰ followed by the ban on biological weapons in 1972,⁸¹ the regulation of conventional weapons in 1980 (CCW), and the ban on chemical weapons in 1993. Disarmament efforts before the 1997 AP Mine Ban Treaty have already gone beyond the intention of traditional disarmament purposes of international peace and stability supported by military balance among states. The preamble of the Geneva Protocol of 1925 starts with the confirmation of the general opinion of the civilized world's condemnation of the use of poisonous gases. The biological weapons convention of 1972 warned against biological weapons' potential against humanity, expressing that the use of biological weapons "would be repugnant to the conscience of mankind."⁸² The chemical weapons convention of 1993 seeks to exclude the possibility of the use of chemical weapons for the sake of all mankind.

However, humanitarian disarmament efforts, even though out of concern for humanity, started with the examination of military utility and ended in technological regulations rather than the minimization of humanitarian sufferings of both civilians and soldiers. A comparison of two treaties regarding AP mines, the 1996 Amended Protocol II to the CCW and the 1997 AP Mine Ban Treaty, illustrates this point. Amended Protocol II to the CCW, which regulates the use of landmines, assumes the military utility of AP mines and relies extensively on mostly enforceable technological regulations of AP mines, such as requirements that AP mines be detectable, attached with a self-destruction system, and monitored, which have

⁸⁰ Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. June 17, 1925.

⁸¹ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

⁸² Preamble of the biological weapons convention of 1972.

proven difficult to enforce, rather than prohibiting the use of certain weapons altogether. In contrast, the 1997 AP Mine Ban Treaty seeks to remedy these defects of heavily technology-oriented legal regulations. Advocates for a total ban on AP mines successfully overthrew the tenaciously maintained argument for the military utility of AP mines since they successfully emphasized that AP mines' posited long-term costs to civilian populations outweigh the military utility of AP mines.⁸³

The 1997 AP Mine Ban Treaty has a comprehensive scope in its efforts to eliminate or minimize any kind of landmine effects. It seeks complete elimination of any existing AP mines by establishing the obligation of mine clearance and stockpile destruction. Article 5 of the treaty requires signatory governments to destroy all AP mines within their territories as soon as possible and no later than 10 years after the entry into force of the treaty for each state party. It is the first humanitarian treaty banning the *production* of a specific category of *conventional weapons*. The Amended Protocol to the CCW only restricts the *use* of mines. A total ban on *production* of an entire category of certain weapons had been set only for weapons of mass destruction: chemical weapons and biological weapons, signed in 1993 and 1972, respectively. The Convention of Chemical Weapons, however, does not prohibit the use of them. A prohibition on *production* strengthens the humanitarian implication of the prohibition of *use*, since the prohibition of production totally eliminates the possibility of the use of the weapons at issue.

The 1997 AP Mine Ban Treaty heightened the level of protection of landmine victims over and above the provisions of other humanitarian disarmament treaties. The treaty preamble refers to the negative effects of AP mines on economic

⁸³ Shawn Roberts and Jody Williams, *After the Guns Fall Silent*, Oxford: Oxfam Publishing, 1995.

development and reconstruction for years after emplacement and cease-fire, and expresses its wish to provide socio-economic assistance as well as care and rehabilitation for mine victims. None of the earlier humanitarian disarmament treaties of the Biological Weapons Convention, the Chemical Weapons Convention, and the CCW address the severe long-term and far-reaching consequences to victims of these weapons. Based on the recognition that landmines continue to kill people after a ceasefire, to which the 1996 Amended Protocol II to the CCW did not refer, the 1997 AP Mine Ban Treaty takes both preventive and compensatory measures for the well-being of landmine survivors, for their social and economic reintegration. The treaty requires all signatory governments to cooperate not only in landmine destruction but also in long-term service assistance for landmine survivors. The 1997 AP Mine Ban Treaty established the legal foundation of a victim-centered approach to pursue a rights-based approach to survivor assistance.⁸⁴ The treaty provides state parties, though not individual survivors, the right to seek and receive assistance to perform the duties in the treaty. Section 3 of Article 6 of the treaty obliges state parties in a position to do so to provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims.

6. The Generation of the Norm of Banning AP Mines in Human-Centric Governance

The total ban on AP mines resulted successfully in an international norm through initiatives and cooperation of NGOs, international organizations, and like-minded

⁸⁴ Kristen Young, "Participation and Partnership: A Rights-Based Approach to a Weapon's Legacy," International Council on Human Rights Policy and International Commission of Jurists, Workshop, International Human Rights Standard-Setting Processes, Geneva, February 13-14, 2005.

governments through the linkage of their people-centered perspectives surrounding landmine issues. A high level of cooperation on the issue of security in the decision-making process between NGOs and like-minded states sustained the initiative and strengthened the Canadian government-led campaign, the Ottawa Process, toward the conclusion of the 1997 AP Mine Ban Treaty. The ICBL was given a seat at the table as a full participant in the Ottawa Conference of 1996,⁸⁵ in which the Canadian government initiated the campaign to ban AP mines, and was also involved in drafting the conference's final declaration and the action plan.⁸⁶ In contrast, other major disarmament treaties of the Biological Weapons Convention, Chemical Weapons Convention, and Nuclear Weapons Treaty were negotiated at the request of major powers; agenda-setting and negotiation processes of these conventions did not include NGOs.⁸⁷

Strong initiatives and commitment on the part of NGOs played a significant role in promoting the campaign to ban AP mines. Many NGOs recognized the problem of landmines through their humanitarian and development field operations. Experiences of pioneers of mine ban advocacy groups provide many episodes of such cases.⁸⁸ Demining experts and humanitarian NGOs working in Cambodia and Afghanistan after 1980, such as the Coalition for Peace and Reconciliation, Handicap International, and Mines Advisory Group, witnessed the serious effects of landmines on a large scale and started to take a proactive approach to the landmine crisis. A

⁸⁵ The conference, "Towards a Global ban on Anti-Personnel Landmines," was held in Ottawa, Canada, on 3-5 October, 1996.

⁸⁶ Jody Williams and Stephen Goose, "The International Campaign to Ban Landmines," Maxwell A. Cameron, et al., *To Walk without Fear: The Global Movement to Ban Landmines*, 1998, p. 35.

⁸⁷ Kenneth R. Rutherford, "The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines," *World Politics*, Vol. 53, No.1, October 2000, pp. 74-114, p.76.

⁸⁸ Jody Williams and Stephen Goose, 1998, pp. 20-21.

former British army sergeant launched humanitarian mine clearance programs in response to the difficulty that abandoned mines on the ground were posing for executing agricultural development programs. The Women's Commission on Refugee Women and Children saw the problem through its operations to care for landmine victims in refugee camps on the Thai-Cambodia border. The Vietnam Veterans of America Foundation, which had opened its first prosthetics clinic in Cambodia in the summer of 1991, joined forces with Medico International to launch an advocacy campaign to ban AP mines. Operations of providing prosthetic limbs to mine victims in dozens of countries motivated Handicap International to venture for the first time into political advocacy. Handicap International launched its campaign to "Stop the Coward's War" with a petition calling for increased restrictions on mine use, in cooperation with the Mines Advisory Group in England and with an American NGO, Physicians for Human Rights.

These individual and independent initiatives and field operations by diverse array of NGOs merged together into a transnational network, the International Campaign to Ban Landmines (ICBL). Six NGOs⁸⁹ agreed to initiate an international campaign by issuing a Joint Call to Ban Antipersonnel Landmines and hosting the first NGO-sponsored international landmine conference in May of 1993 with the objective of a comprehensive ban on AP mines.⁹⁰ The ICBL eventually grew to

⁸⁹ These six NGOs had divergent focuses of human rights, rehabilitation, health, demining, landmine victim assistance in general; these were Human Rights Watch, Handicap International, Medico International, Mines Advisory Group, Physicians for Human Rights, and the Vietnam Veterans of America Foundation.

⁹⁰ Other objectives are to establish an international fund, administered by the United Nations, to promote and finance mine victim aid programs and demining, and to ensure that landmine producing or exporting states contribute to the fund.

include over 1,000 NGOs from over 60 states, a network of social groups and organizations that transcends national boundaries.

The diverse composition of the network naturally reflected the overall negative humanitarian perspectives of AP mines from medical, educational, social, and economic aspects of victims' lives since the ICBL brought the plight of the most vulnerable victims of war to the attention of the media and public opinion around the world. The mixture of different concerns helped to constitute a comprehensive idea to protect civilians from all the possible negative effects of AP mines: their integrated idea called not only for a total ban but also for increasing resources for humanitarian mine clearance and for victim assistance.

Norm initiative by the ICBL reinforced itself through its cooperation with the ICRC, UN agencies, and like-minded governments, especially the Canadian government. The ICRC contributed legal arguments to call for a comprehensive ban on AP mines. The ICRC reemphasized its original legal argument made in the 1970s, especially after the Vietnam War, that military utility needs to be balanced against humanitarian costs in determining the legality of a weapon.⁹¹ The ICRC's 1992 publication *Mines: A Perverse Use of Technology* urged the need to strengthen the regulation of the use of AP mines from a technological perspective and to remove mines which had already been laid. After its two expert meetings on AP mines, the ICRC declared its support for a global ban on AP mines in February 1994. In

⁹¹ Don Hubert, *The Landmine Ban: A Case Study in Humanitarian Advocacy*, the Watson Institute, Occasional Paper #42, 2000.

November 1995, the ICRC launched an international media campaign for a ban on AP mines, seeking to stigmatize the production, stockpiling, transfer, and use.⁹²

In the United Nations system, various agencies had shown concern about the large scale of landmine problems. On top of Secretary-General Boutros Boutros-Ghali's concern about the inhumane effects of AP mines left in former conflict zones,⁹³ the Department of Humanitarian Affairs started to deal with the issue of AP mine problems in 1992 and was calling in for a complete ban by 1994. Out of concern for the deleterious effects of mines on children, the United Nations Children's Fund (UNICEF) also called in for a complete ban in September 1993, setting landmines to be a priority issue. The UN High Commissioner for Refugees (UNCHR) joined UNICEF in this advocacy in May 1994.⁹⁴

What reinforced and integrated all these initiatives by international organizations and NGOs were the initiatives of the then Canadian Foreign Minister, Lloyd Axworthy. Disappointed with the modest improvement in AP mine restriction in the review conference of the CCW in May 1996, Axworthy called for negotiations toward a comprehensive ban on AP mines in October 1996. When the Canadian government started the Ottawa Process, a "fast-track" diplomatic process toward the conclusion of a comprehensive ban treaty,⁹⁵ the ICBL helped in the planning and execution of a series of conferences: to ensure maximum attendance by governments and to help with the drafting of the precise language of both the final declaration and

⁹² ICRC, "ICRC Launches Media Campaign against Anti-Personnel Mines," *International Review of the Red Cross*, No. 309, pp. 667-668, December 31, 1995. It was the first time since the campaign against chemical weapons following WWI that the ICRC publicly lobbied for a cause. Don Hubert, 2000, pp. 14-15.

⁹³ Boutros Boutros-Ghali, "An Agenda for Peace," 1992. A/47/277.

⁹⁴ Ibid., p. 10-11.

⁹⁵ The Ottawa Process successfully ended with the conclusion of the 1997 AP Mine Ban Treaty in only fourteen months, beginning from October 1996 to December 1997.

the action plan. The Ottawa conference, which concluded the treaty in December 1997, was attended by over 400 delegates from NGOs and international organizations as well as from 157 participatory states.

The Ottawa Process was held outside the normal diplomatic fora of international humanitarian law of the CCW and the Conference of Disarmament. In the Ottawa Process NGOs could gain extra communication channels to governmental officials. The ICBL held parallel NGO meetings, press conferences, and exhibitions during the inter-governmental meetings in the course of the Ottawa Process.

The ICBL's most remarkable contribution to the successful conclusion of the 1997 AP Mine Ban Treaty was the incorporation of the developing world and mine-affected states in the negotiation process through the encouragement of the participation of these states in regional workshops. The ICBL helped to launch national campaigns, especially in mine-affected states such as Mozambique, Somalia, and Angola. Organizing and hosting workshops to provide capacity-building and campaign skills, the ICBL helped to build public awareness with a bottom-up approach. The success in concluding the international treaty for the complete ban on AP mines stimulated further efforts toward humanitarian disarmament. The ICRC launched a public appeal in September 2002 titled "Biotechnology, Weapons and Humanity." It pays attention to the stage of weapons development rather than merely to the weapons themselves, and calls for attention to the risk of the abuse of biotechnology which, though initially developed to benefit humanity, can be used for hostile purposes. Another case is the campaign against cluster munitions. An international civil society movement, the Cluster Munition Coalition, has been

campaigning since 2003 against the use of cluster munitions. Cluster munitions are defined as a munitions container that breaks open in mid-air and disperses hundreds of small submunitions that are designed to explode on impact, just before impact or a short time after impact. The campaign addressed the issues of proportionality and discrimination of cluster munitions and warned against the inhumane effects on civilians during the post-conflict period. Cluster munitions spread sub-munitions widely over several thousand square meters, the size of several football fields, with a high percentage failing to explode right away but threatening to explode later, thus posing significant danger to civilians and impediments to the delivery of humanitarian assistance. The campaign successfully led to the adoption of the Convention on Cluster Munitions in May 2008. The convention prohibits all use, stockpiling, production and transfer of cluster munitions. NGOs and ICRC's initiatives successfully incorporated the serious post-conflict humanitarian problems of explosive remnants of war (ERW), part of which includes cluster munitions, into the CCW framework, resulting in Protocol V to the CCW in 2003.⁹⁶ Protocol V obliges states, when parties to an armed conflict, to facilitate the marking and clearance, removal or destruction of ERW.⁹⁷

7. Conclusion

The idea of humanitarian disarmament has gradually strengthened, culminating in the complete ban on AP mines in 1997. Behind the acceleration of the strength of

⁹⁶ Rosy Cave, "Disarmament as Humanitarian Action? Comparing Negotiations on Anti-Personnel Mines and Explosive Remnants of War," John Borrie and Vanessa Martin Randin, eds., *Disarmament Action: From Perspective to Practice*, UNIDIR, 2006, pp. 51-78.

⁹⁷ Protocol on Explosive Remnants of War (Protocol V to the CCW). November 28, 2003.

humanitarian disarmament in the 1990s exists the unprecedented level of participation and cooperation of NGOs and international organizations with governments, which was possible through relatively free vertical and horizontal communication under human-centric governance.

Humanitarian disarmament poses a challenge to states, which have traditionally dominated armament policy for their own territorial security, since the idea of humanitarian disarmament is to use disarmament measures to protect people from potential immediate and long-term suffering caused by armed conflicts or abandoned weapons during the post-conflict period. Humanitarian disarmament requires governmental officials to shift their policy-making process from a state-centered mode toward people-centered mode. The stronger the norm of humanitarian disarmament becomes, the tighter restrictions it demands of governments in their armament policies. The next chapter will explore a question which occurs naturally from the remarkable growth of the norm of humanitarian disarmament: under which conditions and to what extent governments will implement a humanitarian disarmament norm.

Chapter 3 Transnational Humanitarian Advocacy Groups' Influence on Governments in Norm-Interpretation Disputes

1. Introduction

The chapter seeks to clarify the conditions and extent of the influence of the principle of the humanitarian disarmament on a government. As demonstrated in the previous chapter, the principle of humanitarian disarmament draws efforts to increase civilian protection from potential negative humanitarian effects of the use of weapons. The principle of humanitarian disarmament imposes more responsibility on the state. The state is responsible not only for stricter disarmament measures at the stage of military deployment but also for the removal and destruction of weapons left on the ground during a post-conflict period.

From the perspective of international humanitarian law, the principle of humanitarian disarmament widens the applicability of the two basic humanitarian law principles of discrimination and proportionality in terms of a tempo-spatial dimension. The principle of discrimination, which requires the protection of the civilian population during armed conflict, is applied also to the post-conflict protection of the civilian population as well. The principle of proportionality, which requires that the collateral civilian losses resulting from military action should not be excessive in relation to the expected military advantage, has a more inclusive interpretation of collateral civilian casualties. Civilians' longer-term socio-economic protection will be counted in the consideration of proportionality.

This chapter examines the process of government's norm internalization as a signal of the influence of humanitarian disarmament on the state. For the purpose, I will explain the logic of discursive exchange between governments and humanitarian

advocacy groups over the interpretation of a disarmament norm. Norm-interpretation provides a good issue on which to examine norm compliance, for two reasons: first, clear and agreed-upon interpretation of a norm is an important key to norm compliance and policy implementation; and second, many burgeoning human-centric norms lack stable internationally agreed-upon definitions and remain overly vague for inclusion in a policy agenda, thus resulting in sporadic or disparate policy implementation.

The contrast between burgeoning new ideas and inconsistent interpretations is a distinctive aspect of human-centric governance. The concept of human security illustrates a case in point. Since the United Nations Development Programme's (UNDP) proposal in 1994 of the norm of human security, in the spirit of "freedom from want" and "freedom from fear,"⁹⁸ many states have adopted the norm in their foreign policies.⁹⁹ Though there exists a general consensus among states on the necessity to pay more attention to human-centered security as well as the territorial security of the state, there exists no agreed-upon interpretation of human security, especially regarding the type of threats from which people are protected, the type of

⁹⁸ United Nations Development Programme, *New Dimensions of Human Security*, New York: Oxford University Press, 1994.

⁹⁹ For example, in 1999 thirteen governments formed the Human Security Network, which include Austria, Canada, Chile, Costa Rica, Greece, Ireland, Jordan, Mali, the Netherlands, Norway, Switzerland, Slovenia, Thailand and South Africa as an observer are participating. Members of the Human Security Network pursue people-centered security policies that focus on the protection and security requirement of the individuals through promoting freedom from fear and freedom from want. <http://www.humansecuritynetwork.org/network-e.php>. Though the Japanese government is not a member of the Human Security Network, it has its own human security policy. The Japanese government started an open-ended discussion circle, "Friends of Human Security," in which member states of the United Nations and relevant international organizations can participate. The purpose of the discussion circle is to seek a common understanding of human security. In the meeting of October 2006, representatives from twenty-four states participated: Argentina, Austria, Bangladesh, Canada, Chile, Finland, France, Germany, Ghana, Greece, Indonesia, Ireland, Japan, Kenya, Mexico, Mongolia, Norway, the Republic of Korea, Slovenia, South Africa, Sweden, Switzerland, Thailand, and Viet Nam. http://www.mofa.go.jp/policy/human_secu/index.html

agent mainly responsible for the protection, and the method of protection. Due to the lack of consensus on interpretation, the norm fails to provide a single guiding concept for foreign policy. Human security might mean protection of people from violent and non-violent threats,¹⁰⁰ such as poverty and environmental pollution, or merely from physically violent threats.¹⁰¹ Within the inclusive connotation of human security, different focus exists in terms of both threat and agent to protect human security. For instance, the Chinese government urges state-sponsored protection of people from newly emerging economic and social problems, such as environmental pollution, the spread of epidemic diseases, and cross-border crimes, especially drug smuggling, human trafficking, and terrorism, as threats to human security.¹⁰² In contrast, developed states tend to use the concept of human security for international cooperation on the political and military protection of people from war and violence. For example, the Canadian government, defining human security as a people-centered approach to foreign policy, focuses on the improvement of legal and physical conditions of civilians at every stage of armed conflict. The Human Security Program, established within the Department of Foreign Affairs and International Trade in the government of Canada, and has sought to take initiatives that reduce the risks civilians face in all stages of conflict. The program provided financial support for the United Nation's Mission in Sierra Leone from such a people-centered perspective, especially in the Truth and Reconciliation and Human Rights Commissions, and

¹⁰⁰ UNDP, 1994.

¹⁰¹ Keith Kraus, "The Key to a Powerful Agenda, If Properly Delimited," Special Section: "What is 'Human Security?'" *Security Dialogue*, Vol. 35, No.3, September 2004, pp. 367-68.

¹⁰² For example, the speech by Chinese Foreign Minister Yang Jiechi and Commerce Minister Bo Xilai in the 19th Ministerial Meeting of the Asia-Pacific Economic Cooperation (APEC), September 10, 2007. The Kunming Declaration of China, Cambodia, Laos, Myanmar, Thai, and Vietnam for a stronger GMS (the Greater Mekong Subregion Economic Cooperation Program) Partnership for Common Prosperity. July 5, 2005.

programs for re-integrating war-affected children into the education system.¹⁰³

European states' newly established doctrine for human security encompasses wider threats to people, including EU protection of individuals from insecurity caused by gross human rights violations.¹⁰⁴

The chapter proceeds as follows. First, it locates the issue of norm-interpretation disputes in the context of norm compliance in international law scholarship. With the managerial approach to norm compliance, I will demonstrate epistemological issues in norm interpretation. Second, I will explore the mechanism of transnational humanitarian advocacy groups' influence on governments in norm-interpretation disputes, in which the advocacy groups appeal for a more human-centered definition of a humanitarian disarmament norm.

With an examination of the characteristics of humanitarian disarmament, the study will identify institutional and discursive conditions for transnational advocacy groups' effective influence on governments. Due to the two characteristics associated with the issue of humanitarian disarmament, information secrecy and an exclusive decision-making process, advocacy groups' successful advocacy will depend on how they overcome these difficulties. Discourse based on military utility is highly unlikely to succeed to persuade a government because of the advocacy groups' comparative disadvantage on military information sources. Above all, it is highly unlikely that advocacy groups gain access to the decision-making process for armament policy.

¹⁰³ "Canada Achieves Protection of Civilians in UN Resolution Establishing Peacekeeping Mission in Sierra Leone," October 22, 1999, No. 230.

¹⁰⁴ A Human Security Doctrine for Europe, "the Barcelona Report of the Study Group on Europe's Security Capabilities." Presented to EU High Representative for Common Foreign and Security Policy Javier Solana, Barcelona, September 15, 2004.

I propose that advocacy groups' success depends on discourse change, cooperation with the legislature, and norm linkage of humanitarian advocacy appeal. Discourse change from military utility to civilian protection provides advocacy groups comparative advantage in information and allows the negotiation arena to be shifted from the closed circle of the executive to the legislature. Cooperation with the legislature provides advocacy groups legitimate access to the decision-making process. Lastly, advocacy's discourses gain legitimacy through norm linkage with already internalized norms.

2. Norm-Interpretation Dispute as a Process of Norm Compliance: The Managerial Approach to Norm Compliance

A norm-interpretation dispute is an important process toward norm internalization. In other words, the internalization process of the norm of humanitarian disarmament can be measured in terms of norm-interpretation disputes. A norm interpretation dispute occurs usually when a government actually translates the norm into action. Such a dispute involves arguments on the legitimate meaning of treaty language and leads to an agreed-upon meaning of treaty language, thus facilitating state compliance with the norm with few controversies.

In approaching the question of how the norm compliance problem is solved, there are two main approaches in international law scholarship: the enforcement model of compliance and the managerial model. While the managerial model relies primarily on a cooperative, problem-solving approach instead of a coercive one, the enforcement model relies on coercive enforcement measures, such as military and economic sanctions. In practice, enforcement measures have demonstrated their

inefficiency and ineffectiveness in serving the goal of norm compliance. This is due, in part, to the deficiencies of military and economic sanctions in terms of cost and legitimacy. Sanctions heavily depend on political exigencies and are applied on an *ad hoc* basis. Most importantly, sanctions do not commonly promote a change in the behavior of states and, even when they do, the results are slow.¹⁰⁵ The theoretical question of this study starts with the managerial model since the enforcement model ignores the legal process in which the parties involved interact and negotiate to interpret and elaborate norms.

International law scholars Abraham Chayes and Antonia Chayes emphasize the managerial model as an effective alternative. This model facilitates compliance by correcting technical and administrative mistakes and accommodating shifting state interests through dialogue and negotiations among the parties involved. These legal scholars support the managerial approach based on the assumption that the state has an inclination to comply. They understand that treaties usually reflect the involved states' interests. They confirm the understanding through their observation that most governments comply with treaties and that egregious violation is rare.¹⁰⁶ For them, if the problems of noncompliance are endemic, the real problem lies in the negotiating process which did not succeed in accommodating the interests of the negotiating parties.¹⁰⁷ Therefore, Chayes and Chayes argue that insufficient compliance is usually caused by a management problem of insufficient mutual understandings, especially in treaty language, incapacity of the government due to insufficient

¹⁰⁵ Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, Cambridge: Harvard University Press, 1995, pp. 29-108.

¹⁰⁶ *Ibid.*, 1995, pp.3-9.

¹⁰⁷ *Ibid.*, 1995, pp. 4-7.

personnel and financial resources, or a delay in administrative procedures to change social or economic systems, as mandated by treaties. In other words, it is not an issue of the government's willful manipulation of norm interpretation that causes a noncompliance problem. According to Chayes and Chayes, even if states' interests are altered due to changes in political and socio-economic circumstances, managerial measures of dialogue and negotiations among state parties should adjust state strategies to observe the treaty under the modified interests.¹⁰⁸ The managerial model contributes greatly to the question of norm compliance; it describes subtle technical and administrative problems that governments can face in norm compliance.

The main managerial measures suggested by Chayes and Chayes are the provision and sharing of data and information through reporting, data collection, monitoring, and verification, capacity building, and dispute settlement. These measures merge as persuasion and iterative processes of discourse among the involved states, the treaty organization, and the wider public, which process involves policy review and assessment. Iterated interactions are expected to reestablish, in the microcontext of the particular dispute, the balance of advantage that brought the agreement into existence by facilitating mutual trust.¹⁰⁹

Most cases Chayes and Chayes present as managerial problems, such as administrative delays and insufficient mutual understanding, could be solved through technical distribution of information and subsequent negotiations. International relations scholars explain the mechanism with the functional role of international regimes. International regimes, which are sets of implicit or explicit principles, norms,

¹⁰⁸ Ibid., p.25.

¹⁰⁹ Ibid., p. 25.

rules, and decision-making procedures around which actors' expectations converge in a given issue area of international relations,¹¹⁰ function to enhance certainty and to reduce transaction costs, thus facilitating state cooperation.¹¹¹ Like regimes, a managerial measure of the provision of data and information increases transparency which influences strategic interaction among parties to the treaty in the direction of compliance. Transparency as the availability of and access to information regarding state compliance increases the probability that conduct departing from treaty requirements will be discovered, thus enhancing assurance expectations about the decisions by others, reducing uncertainty, and deterring noncompliance. Chayes and Chayes's detailed empirical studies on the functions of various management measures such as reporting and data collection, verification, and monitoring demonstrate the importance of transparency to facilitate compliance.¹¹²

These managerial solutions seem to provide tools for solving norm-interpretation disputes. Provision and exchange of information on norm interpretation among states would dissolve misunderstandings among them and facilitate an agreement among them, especially when states need a clear definition of a norm in a particular context. A norm, as a determinant of zones of permissibility,¹¹³ is ambiguous and does not necessarily prescribe a specific behavior, and thus does not lead a government to any particular policy in relation to it. It is usually impossible for

¹¹⁰ Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," Krasner, ed., *International Regimes*, Ithaca: Cornell University Press, 1983, pp. 1-21.

¹¹¹ Robert O. Keohane, *After Hegemony*, Princeton: Princeton University Press, 1984.

¹¹² Chayes and Chayes, 1995, pp. 154-228.

¹¹³ Friedrich V. Kratochwil, "How Do Norms Matter?" chapter 3 in Michael Byers ed., *The Role of Law in International Politics: Essays in International Relations and International Law*, Oxford: Oxford University Press, 2001, p. 63.

treaty language to capture meaning with precision since drafters cannot foresee all the possible applications.¹¹⁴

However, Chayes and Chayes's explanation on managerial measures leaves several points unclear. Are managerial problems, such as norm ambiguity, the only sources of norm-interpretation disputes? Do the managerial measures solve the problem when norm-interpretation disputes require adjustments in state interests, especially territorial security? How would norm-driven humanitarian advocacy groups' persuasion of government, which facilitates a different evaluation of information, instead of the distribution of information, function?

The question about the involvement of state interests in norm-interpretation disputes assumes a change in state interest over time. When state interests change as a result of cumulative shifts in the unpredictable international environment, Pareto optimality, a point of interest allocation in which every involved state sees no further allocation could make any individual better off without any other individual worse off, might have changed and states require renegotiation of the treaty even with transaction costs. As John Ruggie and Friedrich Kratochwil insightfully point out, international regimes, which include international treaties, include more than the prescribed operations of formal institutions, such as the performance of obligations and decision-making processes. Treaties exist somewhere between the level of formal institutions and their actual performance and roles reflecting the actual power balance among states.¹¹⁵ To be sure, Chayes and Chayes also recognize the flexibility of international treaties and argue that states usually accept certain deviations as long as

¹¹⁴ Chayes and Chayes, 1995, p.10-11.

¹¹⁵ Friedrich Kratochwil and John Gerard Ruggie, "International Organization: A State of the Art on an Art of the State," *International Organization*, Vol. 40, No. 4, autumn, 1986, pp. 763-775.

they are within a zone of acceptable compliance, a zone within which deviations are accepted as adequately conforming.¹¹⁶ Still, a significant change in state interests might require a considerable modification in the acceptable level of compliance. At this point, states would require renegotiation of a treaty or uncompromising disputes over norm interpretation as worthy of the transaction costs of governmental resources for policy analysis and decision making required for a new Pareto-optimal solution. Such negotiations could be so political, involving the accommodation of state interests, that enhancing transparency and reducing transaction costs through information will not necessarily solve a norm-interpretation dispute.

Such negotiation might be more difficult especially when state interests involved are in the issue area of territorial security, in which the state is more reluctant to compromise its sovereignty. In such a case, states are presumably less willing to accommodate their state interests. Such political negotiations are complex also in that they take place not only at the international level but also at the domestic level among domestic branches of government in each state, as occurred in the United States over the interpretation of the Anti-Ballistic Missile Treaty (ABM Treaty). The Reagan Administration reinterpreted the bilateral ABM Treaty, which the United States and the Soviet Union signed in 1972 during *détente* when tensions between the two major powers were reduced. Though the ABM Treaty prohibited the development of space-based systems for the territorial defense of each state, the Reagan Administration, whose main foreign policy opposed the euphoria of *détente*, proposed in 1983 to reinterpret the treaty to permit the Strategic Defense Initiative, which amounted to a space-based antiballistic missile system for American territorial

¹¹⁶ Chayes and Chayes, 1998, pp. 17-22.

defense. The Soviet Union naturally opposed it. The solution to the ABM treaty dispute involved not only an exchange of information between the two states but also an eight-year heated domestic negotiation in the United States between the opponents of the new interpretation, such as the Senate and former governmental officials, including six former secretaries of defense, and the proponents of the new interpretation in the Reagan and Bush Administrations.¹¹⁷

Chayes and Chayes suggest the justification role of norms and the role of international organization as reinforcing elements to such cases of the accommodation of state interests beyond technical adjustment. Chayes and Chayes see that norms assume the function to induce justification from violators. When an actor takes questionable actions in light of a norm, the burden of proof lies with the actor with such actions. The existence of the norm requires the actor to justify the questionable actions.¹¹⁸ According to Chayes and Chayes, international organizations provide a focused and intensified arena of public justification.¹¹⁹ The elements of shaming, pressure, and international interdependence, which international organizations can produce, highlights the justification process and function to facilitate persuasion of the violator.¹²⁰ Chayes and Chayes introduce several patterns from disparate cases, such as a strong secretariat's leadership to mobilize the political impetus to exert pressure as done by the International Monetary Fund or the

¹¹⁷ Harold Koh, "Transnational Legal Process," *Nebraska Law Review*, Vol. 75, No. 181, 1996, pp. 181-208, pp. 195-196.

¹¹⁸ Chayes and Chayes, 1998, pp. 25-26.

¹¹⁹ Abram Chayes, *The Cuban Missile Crisis: International Crises and the Role of Law*, Lanham, Md.: University Press of America, 1987, pp. 104. Cited in Chayes and Chayes, 1998, P.125.

¹²⁰ Chayes and Chayes, 1998, pp. 26-28.

International Labor Organization, a treaty's leading states' initiatives, and unilateral action by a signatory.¹²¹

However, Chayes and Chayes do not explain the mechanisms of such discourse through justification. They do not include the role of transnational advocacy groups, whose influence as watchdog of states' norm compliance is growing. How will transnational humanitarian advocacy groups, without legal status and limited resources, legitimize and strengthen their own argument, especially when territorial security is involved? In this process, how is information mobilized and used for persuasion and argument?

Another international law scholar, Harold Koh, reinforces Chayes and Chayes's argument about management measures for compliance from two perspectives: a constructivist understanding of the process of compliance and the focus on transnational actors, especially transnational advocacy groups.¹²² Koh sees the legal process as part of norm internalization, in which an actor incorporates a norm in its own internal value system. The legal process facilitates a new constitution of state interest and identity. Koh advances four progressive steps of norm internalization: coincidence, conformity, compliance, and obedience.¹²³ Obedience is the stage of completion of norm internalization, in which an actor adopts rule-induced behavior because the actor has incorporated the norm into its own internal value system. Koh understands compliance as instrumental acceptance of a norm. In compliance, an actor is aware of the rule and consciously accepts its influence, but

¹²¹ Chayes and Chayes, 1995, pp. 20-22, pp.118-127, pp.250-285.

¹²² Transnational advocacy groups are NGOs; however, they work rather as activists for voluntary collective action across state borders in pursuit of what they deem the wider public interest.

¹²³ Koh, "How Is International Human Rights Law Enforced?" *Indiana Law Journal*, Vo. 74, No. 1397, 1999, pp. 1397-1418, pp. 1401-1409.

does so in order to gain specific rewards or to avoid specific punishments. Koh's constructivist perspective reveals the noninstrumental process of norm compliance. As Jeffrey Checkel has correctly pointed out,¹²⁴ the process through which actors comply with norms is confusingly explained both by instrumental logic and by normative logic, whether micromechanisms explained are social networking¹²⁵ or norm entrepreneurs' teaching of governmental officials.¹²⁶ This blurs the distinction between the instrumental process based on cost/benefit calculation and the noninstrumental process based on social learning.¹²⁷ Rationalist analysis of interest-oriented interactions ends up in methodological individualism,¹²⁸ in which actors use information and data to alter their interaction strategies, but not their identities and interests. Koh's distinction between compliance and obedience casts light on argumentative persuasion, which influences the understanding of facts and modifies actors' identities and interests through mutually constitutive communication.

Koh's other contribution is an understanding of the transnational aspect of the legal process. Like Chayes and Chayes, Koh sees the importance of the legal process, complex legal discourse, and diplomatic interaction on the international level. However, he sees the legal process in norm internalization from a wider perspective beyond international organizations, including interaction among transnational actors

¹²⁴ Jeffrey T. Checkel, "Why Comply? Social Learning and European Identity Change," *International Organization*, Vol. 55, No. 3, Summer 2001, pp. 553-588.

¹²⁵ Kathryn Sikkink and Margaret Keck, *Activists beyond Borders: Advocacy Networks in International Politics*, Ithaca: Cornell University Press, 1998.

¹²⁶ Martha Finnemore, *National Interests in International Society*, Ithaca: Cornell University Press, 1996.

¹²⁷ Checkel, 2001, p. 557.

¹²⁸ *Ibid.*, pp. 560-62.

in various law-declaring fora¹²⁹ involving social, political, and legal dimensions.

Social internalization starts when a norm acquires so much public legitimacy that there is widespread general adherence to it; political internalization takes place when the political elites accept an international norm and advocate its adoption as a matter of governmental policy; legal internalization occurs when an international norm is incorporated into the domestic legal system through executive action, legislative action, judicial interpretation, or some combination of the three.¹³⁰

Koh's holistic grasp of the legal process leads him to shed light on the role of all the possible actors involved in the legal process, both domestic and transnational actors in the discourse of norm interpretation. According to Koh, norm interpretation involves not only governmental negotiations at the horizontal level, but also transnational negotiations at the vertical level, involving judicial courts, the legislature, and advocacy groups, sometimes in cooperation with their transnational and international counterparts.¹³¹ Interactions among international and transnational actors form an "interpretive community,"¹³² which generates an interpretation of a norm in a particular context. An interpretive community can define, elaborate, and test the definition of particular norms and their violation.

Koh's empirical studies present various functions of interpretive community, such as transnational issue networks, transnational norm entrepreneurship, governmental norm sponsoring, bureaucratic compliance processes, and issue

¹²⁹ Harold Koh, "The 1998 Frankel Lecture: Bringing International Law Home," *Houston Law Review*, Vol. 35, No. 623, Fall 1998, p. 645. Such fora include treaty regimes, domestic, regional and international courts, ad hoc tribunals, domestic and regional legislatures, executive entities, commissions of international publicists, and nongovernmental organizations. P. 649.

¹³⁰ Koh, 1998, pp. 642-645.

¹³¹ Harold Koh, "The 1994 Roscoe Pound Lecture: Transnational Legal Process," *Nebraska Law Review*, Vol. 75, 1996, pp.181-208.

¹³² Koh, 1999, p.1411.

linkages.¹³³ Among them, Koh pays special attention to transnational norm entrepreneurs' initiative. In an example, norm entrepreneurs, U.S. human rights lawyers, used domestic law suits in order to facilitate U.S. acceptance of the UN Torture Convention. Successive lawsuits by US human rights lawyers over torture facilitated the US government's acquiescence in US ratification of the UN Torture Convention.¹³⁴ These human rights lawyers repeatedly brought a series of domestic lawsuits against foreign violators under an eighteenth century statute, the Alien Tort Statute, to promote the legal and political incorporation of the norm against torture. Court rulings that torture is a violation of international law as well as U.S. law encouraged Congress to enact a Torture Victim Protection Act in 1991, which successfully persuaded the senior Bush Administration to acquiesce in US ratification of the UN Convention against Torture.¹³⁵ In this case, the international norm against torture was internalized in the U.S. government through successive domestic lawsuits and court rulings in the United States.

Although intricate and subtle, Koh's argument does not identify a mechanism for how a normative discourse is conducted. He shows the constructivist effect of norms through advancing the four phased norm-internalization levels: coincidence, conformity, compliance, and obedience. However, his argument, like Chayes and Chayes' argument, does not explain the mechanisms for the shift from one phase to another toward obedience. Especially how does advocacy groups' argumentative

¹³³ Koh, 1998, pp. 646-655.

¹³⁴ The official title is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A/RES/39/46. December 10, 1984. The convention entered into force on June 26, 1987.

¹³⁵ Koh, 1999, p. 1415. Though the Senate gave its consent to treaty ratification in 1990, the deposit of its instrument of ratification with the UN was in October 1994, under the Clinton Administration, after certain implementing legislation was passed.

persuasion work to lead a government to the level of obedience? What kind of institutional and informational skills will actors use to justify their argument?

Robert Keohane provides a clue to this puzzle by emphasizing the characteristics of liberal democracy as important elements to facilitate transnational advocacy groups' discourse in the domestic arena. Understanding that the driving force behind transnational advocacy groups is an inconsistency between the values of state elites and those of their publics, Keohane advances the following structural attributes which highlight the inconsistency: transparency in the decision-making process, connections among professionals and/or advocacy groups to strengthen theoretical and moral foundations of their argument, and the accountability of elites to publics.¹³⁶ These structural attributes are commonly observed in a liberal democratic system, which guarantees civil and political rights of individuals and the rule of law.

This point Koh has underestimated. Indeed, Koh also admits that the structural attributes of a liberal democratic system undeniably make them more generally open to some kinds of norm internalization.¹³⁷ However, Koh did not see liberal democracy as a necessary condition for transnational advocacy groups' successful influence on governmental officials. Koh argues that it is rather the level of transaction, a series of interaction not only at the inter-governmental levels but also at the transnational levels involving international non-governmental organizations and academics, than the liberality of the domestic legal system that matters in the process of vertical internalization, presenting some cases in which illiberal states internalized

¹³⁶ Robert O. Keohane, "Commentary: When Does International Law Come Home?" *Houston Law Review*, 35, No. 699, 1998, pp. 699-714.

¹³⁷ Koh, 1998, p. 676.

international commercial rules, the law of the sea, and diplomatic immunity.¹³⁸ The level of transaction decides the level of internalization. He does not provide a systematic explanation about what kind of particular transactions in certain illiberal states facilitated the internalization of these commercial and diplomatic laws. He presents two contrasting cases of human rights internalization: a case in Egypt, which is not particularly liberal, and that in the United States, which is supposed to be liberal. While the rule against female genital mutilation has start becoming entrenched in Egypt through executive and judicial action, the liberal US system has not internalized the rule against the execution of minors.¹³⁹ However, the illustration of these cases does not explain the types of transactions which brought such consequences in the two states. The importance of liberal democracy for norm compliance is also supported by Ann-Marie Slaughter, who highlights the potential of the transnational dialogue among governmental institutions to facilitate further legal cooperation and international norm compliance.¹⁴⁰

According to Keohane, transnational advocacy groups can take advantage of the transnational norm cleavage, which does not follow national boundaries, between a few elites and their own people who favor the views of transnational advocacy groups. When norm cleavages follow national boundaries, the transnational advocacy groups will not be able to influence governmental officials. In this case, transnational advocates are isolated and stigmatized as antinational.¹⁴¹ Keohane supports this argument with the case of the failure to abolish the death penalty in the United States,

¹³⁸ Koh, 1998, p. 674.

¹³⁹ Koh 1998, pp. 674-75, note 257.

¹⁴⁰ Ann Marie Slaughter, "International Law in a World of Liberal States," *European Journal of International Law*, Vol. 6, No. 1, 1995, pp. 503-38.

¹⁴¹ Keohane, 1998, p.713.

in which an inconsistency followed national boundaries and in which advocates for a ban on the death penalty could not persuade the US government to abolish the death penalty.¹⁴²

Still, two of the Keohane's four liberal democratic characteristics that contribute to the clarification of norm cleavage could fail to function perfectly in humanitarian disarmament. And it is necessary how these two affect the functioning of liberal democracy in the domestic arena. The exclusive decision-making process in the executive branch and information secrecy, which are associated with the issue of humanitarian disarmament, affect the extent of transparency and that of accountability of liberal democracy. In the next section, I will elaborate these two characteristics and demonstrate how they are translated into the structural configuration of the domestic decision-making process.

3. Difficulties with Transnational Humanitarian Advocacy: Insufficient Military Information and Limited Access to the Decision-Making of Process

3-A. Government Reluctance in International Cooperation on Armament Policy

Governments of modern territorial states have been most sensitive to the protection of their territorial sovereignty and thus reluctant to accede to any external influences on their armament policies since armed forces best guarantees the protection of territorial sovereignty. Other elements perceived as the important elements of state power, such as population size, national character, national morale, quality of diplomacy, quality of government, geography, natural resources, and industry capabilities are important resources used prior to the last resort of military powers, or used for military

¹⁴² Ibid., p.713.

preparation and effective execution of military policies.¹⁴³ Armed forces provide a government with political power to influence others states and to fend off external interventions. Even if a government does not use armed forces at hand in practice, the possibility of the use of force assists a government to achieve its political and military purpose through threatening to use armed forces, thus limiting other governments' manipulations and moderating their demands.¹⁴⁴

Accordingly governments have been reluctant to accede to any external influences on their armament policies. The difficulty in international cooperation occurs also in security policies as well as disarmament efforts. The idea of the collective protection of territorial sovereignty through forming an alliance or organizing collective security has been difficult to carry out. Even if governments succeed in the formation of an alliance or collective security system, it is only when member states share common interests or have common adversary states.¹⁴⁵

Realist scholars have attributed the lack of state cooperation to the competitive nature of states struggling for power¹⁴⁶ or to the structure of the anarchic international system in which states strive for survival.¹⁴⁷ Charles Lipson explains that the lesser extent of cooperation in the issue area of territorial security than in that of economic matters is due to the two elements lying in relatively less

¹⁴³ Hans J. Morgenthau, *Politics among Nations*. sixth edition, revised by Kenneth W. Thompson, New York: Alfred A. Knopf, 1985, pp. 115-169.

¹⁴⁴ Waltz, *Theory of International Politics*, Reading, Massachusetts: Addison-Wesley Publishing Company, 1979, p. 113.

¹⁴⁵ The collective security system under the United Nations works only when the permanent members of the Security Council, five major powers of China, France, Russia, the United Kingdom, and the United States, agree to take enforcement measures against the threat to the peace. See article 27 and chapter 7 of the United Nations Charter.

¹⁴⁶ Morgenthau, 1985.

¹⁴⁷ Waltz, 1979.

transparent strategic interaction: (1). military imbalances cause immediate danger to a weaker player; (2). If a player's attempts to cooperate is not reciprocated, the possibility of immediate and potentially grave losses to the player is high.¹⁴⁸

Governments' cautiousness with disarmament appears even in conventional weapons, which do not seem to pose as immediate and significant a threat as do weapons of mass destruction. In practice, governments have been reluctant to compromise their armament policy of such weapons that will pose little immediate threat to their territorial security, even when they possess viable alternatives to their use. Even in the relatively successful case of the agreement to ban anti-personnel landmines, governments of major industrial powers, notably France, Japan, and the United Kingdom, were slow to accept the total ban on anti-personnel landmines, a relatively marginal weapon, though they have advanced technology to protect their borders with little reliance on anti-personnel landmines.¹⁴⁹

The participation pattern of the 1997 Antipersonnel (AP) Mine Ban Treaty also demonstrates states' persistent concerns about territorial security and the difficulty of international cooperation in conventional weapons. Non-signatories to the treaty justify their decisions based on their territorial security. Many of the thirty-seven non-signatory governments have been involved in conflicts of higher intensity.¹⁵⁰ Many of them insist on the necessity of AP mines for the defense of their

¹⁴⁸ Charles Lipson, "International Cooperation in Economic and Security Affairs," in David A. Baldwin, ed., *Neorealism and Neoliberalism: The Contemporary Debate*, New York: Columbia University Press, 1993, pp. 60-84.

¹⁴⁹ The British government expressed its support for a total ban on AP mines in May 1997, and the French government did in June 1997. The Japanese government expressed its first support for a total ban in October 1997, only two months before the conclusion of the treaty and after the treaty text was adopted.

¹⁵⁰ Non-signatory status of these governments is as of April 23, 2008. These non-signatories are governments in Armenia, Azerbaijan, Bahrain, Burma, China, Cuba, Egypt, Finland, Georgia, India,

long territorial borders and the unavailability of alternative weapons and defense systems due to insufficient financial and technical capabilities.

3-B. Exclusive Decision-Making Process and Information Secrecy in Armament Policy

The state's serious concern about its territorial security leads to relatively exclusive and secretive decision-making process of armed forces, which presumably serve as the best and ultimate measure to protect territorial security. Governments maintain relatively high decision-making autonomy in armament policy as well as security policy and keep some portion of their military information secret from the legislature, the general public, and external governments.¹⁵¹ Scholars generally agree on the relative independence of the decision-making process in territorial security policy. Stephen Krasner once noted that “[t]he points of access for interest groups can be hundreds of times greater for a decision involving tariffs than for one about diplomatic or military action.”¹⁵² Even the extent of the influence of the military industrial complex linking business, military, and political interests was proved limited beyond the weapons-procurement process.¹⁵³

By exclusiveness of the decision-making process, I mean the decision-making process involved by defense and foreign ministries. Even though there is a concept of

Iran, Israel, Kazakhstan, North Korea, South Korea, Kyrgyzstan, Laos, Lebanon, Libya, Micronesia, Mongolia, Morocco, Nepal, Oman, Pakistan, Poland, the Russian Federation, Saudi Arabia, Singapore, Somalia, Sri Lanka, Syria, Tonga, Tuvalu, United Arab Emirates, the United States of America, Uzbekistan, and Vietnam.

¹⁵¹ James M. Lindsay, “Congress, Foreign Policy, and the New Institutionalism,” *International Studies Quarterly*, Vol. 38, pp. 281-304, 1994.

¹⁵² Stephen Krasner, *Defending the National Interest*, Princeton: Princeton University Press, p. 491.

¹⁵³ Thomas Risse-Kappen, “Public Opinion, Domestic Structure, and Foreign Policy in Liberal Democracies,” *World Politics*, Vol. 43, 1991, pp. 479-512, p. 491.

military autonomy to describe that the military is institutionally autonomous from other governmental branches in terms of expertise and organization culture,¹⁵⁴ I assume that both defense and foreign ministries constitute the exclusive decision-making process. This is because research focuses on the decision-making process in disarmament policies, which involves political considerations as well as military strategy ones.

Certainly, a government occasionally invite outsiders to the decision-making process. Scholars and civilians occasionally participate in the decision-making procedure of armament policy when their technical and scientific expertise is required for the formulation of armament policy, especially as part of military strategy, which entails analyses of world affairs and theoretical understanding about the military-political characteristics of weapons. In this case, external participants join rather at the request of the government than with pressure on the government.

Scholars and civilian scientists invited to the decision-making are different from advocacy groups in terms of the quality of knowledge they possess and connection to the bureaucracy. Such scholars and civilian scientists rather belong to epistemic communities, which are “networks of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.”¹⁵⁵

Epistemic communities provide governments with knowledge and information for such problems that governments recognize as needing to be solved.

¹⁵⁴ For political and institutional analyses of military autonomy, see David Pion-Berlin, “Military Autonomy and Emerging Democracies in South America,” *Comparative Politics*, Vol. 25, No. 1, October 1992, pp. 83-102.

¹⁵⁵ Peter Haas, “Introduction: Epistemic Communities and International Policy Coordination,” *International Organization*, Vol. 46, No. 1, 1992, pp. 1-35, p. 1, p. 3.

Members of an epistemic community identify and share common causal beliefs, which advocacy group members do not necessarily share with each other.¹⁵⁶ They have political resources of knowledge based on professional training, which sometimes adds prestige and reputation for expertise, and knowledge supported by tests of validity. Based on their common causal beliefs, members of an epistemic community frame the context of an issue, define state interests, and present policy options.

For instance, scientists participated in the nuclear policy in the United States were different from anti-nuclear advocates. Due to nuclear weapons' significant political impact and complexity of military strategy, these scientists were required to present the science of nuclear strategy and the operation of weapons in various hypothetical nuclear deterrence scenarios, including the analysis of perception and deterrent psychology.¹⁵⁷ Moreover, the deductive process of nuclear war strategic thinking required theoretical input from scholars of international behavior all the more due to the lack of prior experience of nuclear war and the resultant lack of empirical reference points and data banks.

Furthermore, case studies of epistemic communities show that members tend to have a close relationship with governmental officials.¹⁵⁸ A case of the US epistemic communities of nuclear weapons, which contributed to the success of the conclusion of the ABM Treaty between the United States and the Soviet Union

¹⁵⁶ Ibid., pp. 16-20.

¹⁵⁷ Emanuel Adler, "The Emergence of Cooperation: National Epistemic Communities and the International Evolution of the Idea of Nuclear Arms Control," *International Organization*, Vol. 46, No. 1, 1992, pp. 101-145, p. 107.

¹⁵⁸ Epistemic communities are different from technical bureaucracies, though some members of epistemic communities include governmental and international governmental officials. Members of epistemic communities, sharing principled and causal beliefs, are not merely policy entrepreneurs which governmental officials are. Haas, 1992, pp. 19-20.

illustrates the point. Emanuel Adler demonstrates that the stature of scholars and strategists of the US nuclear arms control epistemic community provided for such individuals to have easy access to the decision-making process. Some strategists have personal links with political leaders. Scientists in the epistemic community had already been members of the Presidential Science Advisory Committee in the late 1950s under the Eisenhower administration for the test ban treaty talks.¹⁵⁹

On the other hand, many transnational humanitarian advocacy groups hardly have a seat in the decision-making process. First of all, value-motivated, advocacy groups seek a modification of governmental policy, whether the target government perceives it as a problem to be solved or not, especially when the issue involves political rather than technical arguments.¹⁶⁰ Advocacy groups are occasionally uninvited participants.

The type of information and expertise advocacy groups have is different from that of epistemic communities. Being value-oriented, advocacy groups share a principled belief. However, advocacy groups do not necessarily share a single voice for a causal belief, which provides guides on how to achieve objectives.¹⁶¹ To be sure, transnational humanitarian advocacy groups collect field-based information; however, their focus is rather on disseminating it than on generating such knowledge that would lead to the clarification of causal-relationship and policy options. Such knowledge requires meticulous validity tests and long-term research.

¹⁵⁹ Adler, 1992, p. 114.

¹⁶⁰ About the difference between NGOs as outside critical agents and epistemic communities as partners of governments, see Clair Gough and Simon Shackley, "The Respectable Politics of Climate Change: the Epistemic Communities and NGOs," *International Affairs*, Vol. 77, No. 2, 2001, pp. 329-345.

¹⁶¹ Haas, 1992, pp. 16-20.

This leads to the second point in this section, information secrecy in armament policy. Advocacy groups' research ability in weapons technology heavily relies on government information, which is occasionally confidential and kept from the public. Transnational humanitarian advocacy groups gain scientific data on weapons reliability under different uses and circumstances from governments. Some parts of military information about weapon design, the strength and weaknesses of weapons systems, the number and location of specific weapons and plans, and military plans are kept secret from the public so that the information will not leak to governments of other states. In a norm-interpretation dispute over specific prescriptions and proscriptions of a weapon, however, transnational humanitarian advocacy groups need quite detailed and specific empirical data to persuade governments: the weapon's design and characteristics (the types of targets, its means of destruction, damage, or injury), the technical performance (the accuracy and reliability of targeting mechanism, including failure rates, the sensitivity of unexploded ordnance), the area covered by the weapon, and the weapon's foreseeable effects in time or space. Though there are international efforts to enhance military transparency, they are partial and do not impose binding obligations. Furthermore, international efforts for disclosure of military information for the purpose of enhancing military transparency are focused rather on the information on weapons trade than on particular functions of weapons.¹⁶² Even if information is available, it is often partial since data disclosure in the international arena is basically voluntary. This is also the case of the most universal registry of conventional weapons, the United Nations Register of Conventional Arms, which urges all United Nations

¹⁶² The first regional Code of Conduct on Arms Export is the EU Code of Conduct on Arms Export.

member states to provide an annual report to the Secretary-General on imports and exports of arms and available background information regarding their military holdings, procurement, and relevant policies.¹⁶³ Many reports are incomplete. For example, in 2006, while the German government reported all the required information on imports, exports, and background information regarding its military holdings, the French government reported only the data on exports and background information without submitting data on imports. The Japanese government submitted an incomplete report without the data on imports or exports.¹⁶⁴

In the domestic arena, transnational humanitarian advocacy groups could directly inquire of governments about the data on weapons at issue. Still, there is no guarantee that governments will respond to them with complete information. Most states have some form of legislation to protect classified security and intelligence information for the purpose of defense and gaining an advantage, in relation to potential internal and external enemies and rivals. Most wealthy democracies, such as the United Kingdom and the United States, have legislation to protect intelligence information for national defense. The United Kingdom has the Official Secrets Act and the United States has Executive Order 13292, “Further Amendment to Executive Order 12958, as amended, Classified National Security Information.”

Therefore, the likelihood that advocacy groups will be able to gain access to the government decision-making process in armament policy and to gain military

¹⁶³ United Nations General Assembly Resolution, A/RES/46/36 L, December 6, 1991. The Register comprises seven categories of major conventional arms: battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, including submarines. The Register also includes missiles and missile-launchers. See the website at <http://disarmament.un.org/cab/register.html>.

¹⁶⁴ http://disarmament.un.org/UN_REGISTER.NSF.

information to conduct persuasive discourse with governments is low. So, how do transnational humanitarian proponents engage in norm-interpretation disputes, in the face of the two obstacles of the lack of the availability of military information and the inability to access the policy-making process? The next section will demonstrate how these two conditions affect the discourse of advocacy groups in the domestic arena.

4. The Domestic Decision-Making Process in Humanitarian Disarmament

Andrew Cortell and James Davis provide a useful domestic political matrix of the decision-making arena which reveals the possibility of access to the decision-making process for transnational humanitarian advocacy groups and a route for effective argumentative persuasion. Cortell and Davis view the process of norm internalization as one in which governmental officials and societal groups appeal to international rules and norms to further their own interests in the domestic political arena.¹⁶⁵ As shown in Figure 1, two elements in the domestic structure affect the extent of norm influence: (1) the structure of decision-making authority and (2) the pattern of state-society relations. According to Cortell and Davis, the former depends on the number of bureaucratic agencies, ministries, or other arms of the governmental apparatus that are accorded authority over an issue.¹⁶⁶ The latter, the pattern of state-society

¹⁶⁵ Andrew P. Cortell and James W. Davis, Jr., "How Do International Institutions Matter? The Domestic Impact of International Rules and Norms," *International Studies Quarterly*, Vol. 40, No. 4, 1996, pp. 451-478, p.456.

¹⁶⁶ Cortell and Davis, 1996, p. 454. Thomas Risse-Kappen also suggests types of domestic political structures in order to show the patterns of transnational actors' influence on government policy. Risse-Kappen suggests three elements to decide domestic structures: the political institutions of the state, societal structures, and the policy networks linking the two. The first and the third elements of political institutions and the policy networks correspond to the two elements identified by Cortell and Davis, structure of decision-making authority and pattern of state-society relations. I do not include in the research Risse-Kappen's second element of societal structures about whether there exist ideological or cultural cleavages because the element on societal structures matters only for political mobilization.

relations, captures the institutional arrangements that grant societal actors access to and participation in the formation of a particular area of policy.¹⁶⁷ The pattern includes the extent of participation of societal actors as advisory bodies and the existence of national laws that accord them legal rights by which to transmit their interest to the policy process.

The figure below illuminates the domestic structural obstacles that transnational groups face in humanitarian disarmament norm-interpretation discussion. The decision-making process in humanitarian disarmament is usually located in Type I, the category that combines a centralized structure of decision-making authority and a pattern of distant state-society relations. The structure of decision-making authority related to humanitarian disarmament, as part of international humanitarian law, would be among some branches of the foreign ministry and the defense ministry and it hardly includes the legislature. The interpretation of an international treaty by the executive branch in particular does not require the legislature's approval, unlike norm adoption which requires ratification by the legislature.¹⁶⁸ The pattern of state-society relations is rather distant since governments hardly provide transnational actors, unlike epistemic communities

For instance, if society is consensual with fewer cleavages, it is easier to mobilize a large number of people for transnational actors' political causes. However, political mobilization is not the focus of my research. This research seeks the conditions of advocacy groups' "discursive" influence on governments and does not seek the conditions of advocacy groups' conditions for successful "pressure" on government. Thomas Risse-Kappen, "Bringing Transnational Relations Back In: Introduction," in Thomas Risse-Kappen ed., *Bringing Transnational Relations Back In*, New York: Cambridge University Press, 1995, pp. 3-33.

¹⁶⁷ Cortell and Davis, 1996, p. 454.

¹⁶⁸ The legislature can exert influence on the executive in treaty ratification as Robert Putnam pointed out the influence of ratification/ domestic powers (win-set) on the decision-makers' likelihood of achieving international agreement. Robert D. Putnam, "Diplomacy and Domestic Politics: the Logic of Two-Level Games," *International Organization*, Vol. 42, No.3, Summer 1988, pp. 427-60, p. 449.

which are invited to the decision-making process by the government, the opportunity to participate in the policy-making process on the issue of territorial security.

Fig. 3-1 A Typology of Domestic Political Matrix of the Decision-Making Process ¹⁶⁹

| | | Pattern of state-society relations | |
|--|---------------|------------------------------------|----------------|
| | | Distant | Close |
| Structure of decision-making authority | Centralized | I (difficult) | II (easy) |
| | Decentralized | III (less difficult) | IV (less easy) |
| | | | |

For transnational humanitarian advocacy groups, the only possibility of influencing governmental officials in a Type I structure is when governmental officials are predisposed to the prescriptions and proscriptions embodied in the appeal of the advocacy groups. In this case, the process of norm influence is largely instrumental; the government accepts the advocacy appeal because it calculates that the acceptance of the advocacy groups' appeal matches its state interest or at least does not harm it. Even though the appeal of the advocacy groups is better equipped with scientific data on weapons at issue, the comparative advantage of information lies with the government because the government possesses all the information on the weapon and can control the release of information to its advantage.

The other possible successful route in Type I is the existence of personal links between advocates and like-minded political leaders. Transnational humanitarian

¹⁶⁹ Cortell and Davis, 1996, p. 455.

groups could rely on contingency in order to gain any direct channel to like-minded governmental officials. For example, Handicap International, a French humanitarian non-governmental organization (NGO), was able to influence then French President François Mitterrand's initiative to tighten the regulation of landmines by sending its letter of petition to Mrs. Danielle Mitterrand and bypassing diplomatic and political advisors. In this way they were able to reach the president successfully.¹⁷⁰ Despite examples, such as this, of luck, such opportunities are infrequent. In fact, even if some governmental officials themselves are sympathetic to the cause of transnational humanitarian advocacy groups and are from an institution authorized by the state, these officials find it difficult to mobilize their institutions, unless they are powerful leaders, since governmental officials' remit is strictly regulated under the hierarchy of bureaucracy.

The effectiveness of cooperation with like-minded political leaders or governmental officials, albeit its low likelihood, can also be explained from the psychological point of view. From inductive studies of social psychology and communications, Jeffrey Checkel tentatively hypothesized a psychological condition of smooth argumentative persuasion. He posited that argumentative persuasion is more likely to be effective when the persuader is an authoritative member of the in-group to which the persuadee belongs.¹⁷¹ Transnational humanitarian advocacy groups' argumentative persuasion, if it is reinforced with the prestige and authority of like-minded governmental officials and political leaders, will facilitate the government's acceptance of the argumentative persuasion.

¹⁷⁰ Philippe Chabasse, "The French Campaign," Maxwell A. Cameron et al, *To Walk without Fear: The Global Movement to Ban Landmines*, Oxford, Oxford University Press, 1998, P. 62.

¹⁷¹ Checkel, 2001, p. 563.

5. Argumentative Persuasion: Discourse Change, Cooperation with the Legislature, and Linkage with Related Norms with Domestic Salience

As discussed above, humanitarian advocacy groups have difficulties in gaining access to the decision-making process and in having a comparative disadvantage in military information. Access to government officials depends on contingency. The inequality in the possession of military information between the target government and transnational humanitarian advocacy groups will work more to the disadvantage of the latter since norm-interpretation disputes on humanitarian disarmament occur in a particular context and engage the review of the legality of a certain weapon at issue. To explain the influence of transnational humanitarian advocacy groups requires a clarification of how transnational humanitarian advocacy groups can overcome these two shortcomings. The following section explains the importance of discourse change, cooperation with legislators, and norm linkage.

5-A: Access to the Decision-Making Process through the National Legislature

Advocacy groups' cooperation with legislators allows advocacy groups to participate in the decision-making process. In the matrix of the domestic decision-making process, cooperation shifts discourse arena from type I to type III: from the centralized to the decentralized structure of decision-making authority, thus giving transnational humanitarian advocacy groups access to the decision-making process. The decentralized structure of decision-making in type III could include the national

legislature as well as multiple governmental ministries participating in the decision-making process.

The legislature provides transnational humanitarian advocacy groups legitimate and easy access to the official policy-making process. First of all, cooperation between advocacy groups and parliamentarians provides the advocacy agenda legitimacy in the domestic context and facilitates communication of advocacy groups with the governments. Governments would be more open to inquiries from parliamentarians than those from advocacy groups and thus more responsive to the former. Parliamentarians have the right to inform themselves of the status of negotiations in the executive branch, to put written and oral questions to ministers on progress made in negotiations, to debate the issue in parliament, and even to accompany the minister to the negotiations and thus get a better idea of the progress made. As an arena scrutinizing the executive branch, parliaments can take positions on budget allocations, amend laws, and adopt new ones. Thus, advocacy groups' cooperation with the legislature provides advocacy groups more, albeit indirectly, access to the executive through questioning and inquiries.

Cooperation among NGOs and the legislature is quite common in liberal democracies. As the national representative body of various issues and interests, legislatures in many states encourage civic engagement and cooperate actively with NGOs. Some legislatures regard NGOs which represent specific issues as the most appropriate vehicle for conveying the views of voters and they send specific invitations to organizations known to have an interest in the particular legislation or

enquiry under consideration, inviting their submissions.¹⁷² Some legislatures have regular channels through which all submissions from civil society are conducted. For example, the German parliament has specific rules stipulating that groups wishing to express or defend their interest before the legislature must be entered on a register.

5-B: Discourse Change from Military Utility to Civilian Protection

When transnational humanitarian advocacy groups cooperate with parliamentarians, they can use the tactics of discourse change. The issue of humanitarian disarmament contains two discursive elements: military and civilian protection. Discourses based on civilian protection, instead of military utility, allow transnational humanitarian advocates to take advantage of their information sources, including not only episodes and data on the immediate negative effects of weapons on innocent civilian victims, but also those on long-term effects on their health-related and socio-economic aspects of victims' lives. Making the most of their rich sources of information and field episodes of immediate and longer-term human suffering, transnational humanitarian advocates can prepare systematized information about civilian victims and persuade government officials to recognize the negative humanitarian impact of weapons at issue on civilians, as did advocacy groups for the total ban on AP mines toward the conclusion of the 1997 AP Mine Ban Treaty.¹⁷³ Indeed, various reports on the low level of military utility of AP mines also worked to shift the focus of argument from

¹⁷² An open invitation for submissions in the New Zealand Parliament; special invitations to submissions from organization with an interest in the particular legislation in the Turkish Parliament; the Czech Republic's public hearings of representatives of the professional and civic sector in relation to bills; an NGO-Parliament contact office in the Former Yugoslav Republic of Macedonia. Inter-Parliamentary Union, "Parliament and Democracy in the Twenty-First Century: A Guide to Good Practice," 2006, pp. 92-94.

¹⁷³ Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization*, Vol. 52, No. 3, Summer 1998, pp. 613-644.

the military utility of AP mines to civilian protection by disproving the long-held assumption of the military utility of AP mines, thus turning the burden of proof from the proponents of the mine ban to the opponents of the mine ban.¹⁷⁴ However, it was the pro-ban group's issuing of anecdotal narratives, data, and pictures of humanitarian negative effects on innocent civilians that added the "burden of extra political, legal, and moral baggage"¹⁷⁵ to the category of AP mines, cast light on how the high human cost outweighs AP mines' military value, and led to the international agreement on the ban on AP mines.

Transnational humanitarian advocacy groups' comparative advantage in the information on mine victims will provide such a condition that should induce a compromise from governmental elites who have comparative advantage in the information on military weapons. One of Jeffrey Checkel's inductive hypotheses about argumentative persuasion supports this argument. The condition of the newness of information for the persuadee will induce more effective persuasion. Up-to-date facts and episodes which advocacy groups can incorporate in their argumentative persuasion of governmental officials will be more likely to succeed in persuading when governmental officials are receptive with few prior assumptions or information on mine victims.¹⁷⁶

¹⁷⁴ One of the crucial reports to demonstrate the low level of military utility of anti-personnel landmines was the "Military Use and Effectiveness on Anti-personnel Mines," commissioned and published by the ICRC in 1996. The empirical report found that in no conflicts over the past fifty-five years did the use of anti-personnel landmines play a major role in determining the outcome of a conflict. International Committee of the Red Cross, "Anti-personnel Landmines—Friend or Foe? A Study of the Military Utility and Effectiveness of Anti-personnel Mines." 1996.

¹⁷⁵ Price, 1998, p. 633.

¹⁷⁶ Checkel, 2001, p. 563.

5-C: Linkage of the Humanitarian Advocacy Appeal with Related Norms with Domestic Salience

Advocacy groups can reinforce their appeal through norm linkage, linking the appeal with already established norms in the domestic arena. Cortell and Davis, who explain norm internalization process in the domestic arena, argue that the societal groups' appeal to a target government succeeds when the group's appeal (an international norm or a particular interpretation of it) is linked with a norm with domestic salience. The domestic salience of a norm means that the norm has legitimacy in the domestic political context. At this stage, the norm is already internalized and presumptively accepted as a guide to conduct and a basis for criticism. The norm functions to give rise to a sense of obligation. Thus the norm's prescriptions hardly spawn controversy among policymakers. If policymakers try to push forward a policy against the norm, they are asked for explanation since the norm already constitutes a legitimate standard in the domestic arena. The norm's domestic salience could be observed in declaratory statements by authoritative actors as well as concrete policy choices. These policies and statements provide an indication of the level of domestic commitment to the norm.¹⁷⁷

To link an advocacy appeal with a norm with domestic salience functions to invoke the norm's legitimacy and to accord the advocacy group the norm's legitimacy.¹⁷⁸ This establishes a sense of obligation on the part of the government to observe the norm and requires the government to justify its option when the government opposes the appeal legitimized by the norm with domestic salience.

¹⁷⁷ Cortell and Davis, 1996, p. 456.

¹⁷⁸ Cortell and Davis, 1996, pp. 456-457.

Thus, the advocacy appeal, when linked with a norm with domestic salience, is more likely to be accepted by the government.

Cortell and Davis introduced the case of some U.S. congressmen's successful norm linkage. In the face of Iraq's invasion of Kuwait in August 1990, they linked their appeal to prevent U.S. unilateral enforcement of the trade sanctions at the Gulf and the U.S. forces' allegedly planned offensive actions against Iraq with the internalized norm of collective security. The international norm of collective security mandates multilateral action against threats to the peace under the authorization by the United Nations Security Council and has already been enmeshed in the American domestic political context. The linkage functioned to legitimize Congressmen's appeal and to deligitimate the U.S. government's planned enforcement actions against Iraq.¹⁷⁹ Subsequently, Congress successfully forced President George Bush senior to abandon the planned unilateral strategies and to seek the United Nations Security Council's authorization for collective action against Iraq. Cortell and Davis also indicated that the norm of collective security worked to the advantage of the then U.S. president. By appealing to the collective security norm, the then U.S. president could gain congressional approval of his proposal of any U.S. offensive action to reverse the Iraqi invasion of Kuwait under the framework of the United Nations. His appeal to the norm of collective security persuaded many members of the Democratic majority who opposed the use of force itself.¹⁸⁰

Norm linkage is also valid at the international level. Richard Price explained it with the term of grafting, which refers to the mixture of genealogical heritage and

¹⁷⁹ Cortell and Davis, 1996, pp. 464-470.

¹⁸⁰ Cortell and Davis, 1996, p. 469.

conscious manipulation in normative rooting and branching.¹⁸¹ Richard Price explains a pattern of norm emergence in terms of genealogical and historical sequential and contingent combination of interrelated elements, which constitute the international normative fabric. Moral entrepreneurs intentionally manipulate a discourse to connect the new norm they are advocating with the already existing norms. Price demonstrates that the taboo of the use of chemical weapons emerged from the historical and genealogical understandings of related norms: the notion that chemical weapons are weapons against which there is no defense; the assertion that chemical weapons are against a notion of civilized conduct; the generally shared idea that chemical weapons are a weapon of the weak akin to poison; and the existence the taboo promoted and practiced by political leader.¹⁸²

A linkage with a norm with domestic salience will persuade the government more effectively than a linkage with international norms. This is because norm interpretation dispute in the course of norm internalization occurs at the level of the translation of a norm into governmental policy, simply at the domestic level. Discourses of norm implementation as the formulation of domestic policy heavily involve domestic actors, domestic conditions, and domestic procedures. Thomas Risse-Kappen has demonstrated the growing significance of domestic advocacy groups as the level of a government's acceptance of an international norm advances from surface acceptance based on convenience to norm internalization.¹⁸³ Thus,

¹⁸¹ Price, 1998, p. 628.

¹⁸² Richard Price, "A Genealogy of the Chemical Weapons Taboo," *International Organizations*, Vol. 49, No. 1, Winter 1995, pp. 73-103.

¹⁸³ Thomas Risse-Kappen and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction," in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink eds., *The Power of Human Rights: International Norms and Domestic Change*, 1999, pp. 34.

advocacy groups' linkage of their appeal with the government's related past policies and statements should provide stronger legitimacy with the advocacy appeal and place a stronger burden of proof on the government when the government refuses the advocacy appeal. To base an advocacy appeal on such international norms that are not internalized might fail to establish a sense of obligation on the part of the government since there would exist few governmental policies that could serve as reference points.

In the case of norm disputes in humanitarian disarmament, which are usually about the type of weapons restricted or about the use of them, transnational humanitarian advocacy groups' appeal (a more human-centered interpretation) can be linked with domestically established policies to which the government is committed. Since humanitarian disarmament pursues civilian protection from weapons from wider longer perspectives, protecting civilians not only from the immediate effects of the use of force, but also from the long-term effects of the use of force, advocacy appeals could gain legitimacy when they see the advocacy appeals include the same idea of a wider protection of civilians in governmental policies. In the case of the dispute over the definition of AP mines, the legitimacy of the humanitarian appeal, the effect-oriented definition of AP mines, could be established when linked norms include elements of a wider protection of victims, such as the provision of the care and rehabilitation and socio-economic reintegration of mine victims. Such norms could be social and economic human rights, such as the right to work and to technical and vocational guidance and training,¹⁸⁴ the right to social security,¹⁸⁵ the right to be

¹⁸⁴ Article 6. International Covenant on Social, Economic, and Cultural Rights.

¹⁸⁵ Article 9. International Covenant on Social, Economic, and Cultural Rights.

free from hunger,¹⁸⁶ the right to an adequate standard of living,¹⁸⁷ and the right to the enjoyment of the highest attainable standard of health.¹⁸⁸

6. Conclusion and Hypotheses

This study's original purpose is to examine the conditions and extent of government compromise of territorial security for people-centered security. I narrowed down the question to the condition and extent of the influence of humanitarian advocacy groups on a government in norm-interpretation disputes. Transnational humanitarian groups appeal for a more civilian-protection-oriented interpretation of a humanitarian disarmament norm to a government that tries to minimize any restrictions on armament policy. The issue of norm-interpretation provides an excellent case to examine norm internalization processes in humanitarian disarmament for two reasons: inconsistent norm-interpretations are quite prevalent in many burgeoning human-centric norms and the issue of norm-interpretation dispute is one step in a process toward total norm internalization.

The legal process school of international law presents an intricate analysis of management cooperation among governments toward norm compliance. Chayes and Chayes argue that a problem in norm compliance is the result of each government's insufficient functioning or capacities of management skills and then such problems are solved through information distribution, procedural arrangements, and persuasion. Harold Koh elaborated the transnational aspect of such negotiation processes by

¹⁸⁶ Article 11. International Covenant on Social, Economic, and Cultural Rights.

¹⁸⁷ Article 12. International Covenant on Social, Economic, and Cultural Rights.

¹⁸⁸ Article 6, Section 3. The 1997 AP Mine Ban Treaty. Article 8, Section 2. Protocol on Explosive Remnants of War.

emphasizing the role of advocacy groups in the domestic arena. However, their arguments do not explain the conditions under which transnational humanitarian advocacy groups can influence governmental officials in humanitarian disarmament.

International relations scholarship complements international legal scholars' arguments by providing political and institutional conditions under which norm-driven transnational humanitarian advocacy groups influence a government. Robert Keohane argues for the importance of liberal democratic systems for the effective functioning of transnational advocacy groups' persuasion of governmental officials. Liberal democratic systems allow the voice of people to be reflected in government policy and to ally with transnational advocacy groups, if a schism within the state is between the public and government elites. This enables transnational advocacy groups to take advantage of a division over the advocacy issue between the public and state elites and to add the voice of the public to strengthen the advocacy appeal.

Still, the two characteristics associated with government security and armament policy, information secrecy and the centralized and exclusive decision-making process, condition the functioning of liberal democracy systems and thus restrict the influence of transnational humanitarian advocacy groups. Transnational humanitarian advocacy groups have difficulties in obtaining substantial accurate military information that could be used to persuade governmental officials and in accessing the largely insulated military decision-making process.

Under these structural restrictions in the domestic arena, two patterns exist for the effective influence of transnational humanitarian advocacy groups on the government. First, the advocacy groups' interpretation of a humanitarian

disarmament norm matches the preference of the government. This means that the government has a lower level of concern about a change in armament policy. Second, advocacy groups could gain access to the channels of the decision-making process mainly through cooperation with the legislature. Third, transnational humanitarian advocacy groups can persuade the government through shifting the focus of their humanitarian appeal from military utility to civilian protection, thus taking advantage of the advocacy groups' rich sources of humanitarian information in order to modify the government's evaluation of military information. Furthermore, transnational humanitarian advocacy groups could strengthen their appeal through linking it with domestically established norms since such a link enhances the legitimacy of the advocacy appeal and turns the burden of proof on the government.

Based on the arguments above, I draw the following three hypotheses.

H1: The extent of the stake a government has in a weapon affects the government's interpretation of disarmament policy of the weapon. If it is high, the interpretation is less likely to be oriented toward civilian protection. If it is low, the interpretation is more likely to be oriented toward civilian protection.

H2: When a government has a higher degree of military stake in the weapon, the humanitarian advocacy groups' military and technological discourse for a more civilian-oriented interpretation of the disarmament policy is not likely to persuade the government even if the advocacy groups have access to the decision-making process.

H3. Even when a government has a higher extent of stake in the weapon, a change in the humanitarian advocacy groups' discourse from a focus on military to humanitarian issues, which are linked with already established domestic norms, will influence the government's disarmament policy to shift toward more civilian protection.

In the three following chapters, I will conduct empirical research to test the three hypotheses. These hypotheses will be tested with the case of the disputes over the definition of AP mines under the 1997 AP Mine Ban Treaty. The first part of the empirical research will demonstrate two patterns of definition which reflect the extent of each government's stake in AV mines. The second empirical study tests the first and second hypotheses, to demonstrate the ineffective influence of advocacy groups' military-based argument. The third empirical research tests the influence of argumentative persuasion linked with domestically established human rights norms.

Chapter 4 Methodology and Case Study Selection

This chapter presents the method of empirical testing of the arguments, put forward in the previous chapter, on the discursive influence of humanitarian advocacy groups on governments. In order to prove my arguments, I will use the case of the dispute over the definition of anti-personnel (AP) mines under the 1997 AP Mine Ban Treaty.¹⁸⁹ I will test how humanitarian advocacy groups' arguments for the effect-oriented definition of AP mines could influence governments' definition of AP mines. In this chapter, first, I will explain why the selection of the 1997 AP Mine Ban Treaty case best suits my purpose of examining the subtle balance of possibilities and limitations of governmental commitment to humanitarian disarmament. Second, I will examine the meaning of the effect-oriented definition of AP mines (dependent variable) and its measurement. Third, I will reintroduce the hypotheses of the argument. And, lastly, I will examine the two independent variables.

1. The 1997 AP Mine Ban Treaty.

The 1997 AP Mine Ban Treaty represents both a historic milestone in humanitarian progress and the limitations of humanitarian disarmament. It totally bans the production, stockpiling, transfer, and use of AP mines. Behind the successful conclusion of the humanitarian treaty lie the grave problems of landmines beyond the calculation of the balance between civilian protection and military utility of AP mines.

¹⁸⁹ The official title is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer or Anti-Personnel Mines and on Their Destruction.

The treaty was the product of increasing concern over the mounting negative humanitarian effects of AP mines on civilians. A landmine is an explosive device designed to destroy or damage military equipment or personnel. A landmine is designed to explode with the weight of either a person (AP mine) or a vehicle (anti-vehicle mine). A landmine can inflict unspeakable destruction on human beings due to the way in which it is detonated by the action of its target. When triggered by a person or a vehicle, a landmine scatters metallic fragments. Landmine blasts, especially those triggered by a person, cause injuries like blindness, burns, shrapnel wounds, and destruction of limbs.

The cruelty of landmines also lies in that they continue to harm civilians even after a ceasefire. Landmines that were not detonated during armed conflicts remain dormant until a person or animal triggers their detonating mechanism or steps on them, at which time they explode. On many occasions, civilians who hardly have any knowledge of minefields step on them. This is often due to the fact that any armed conflict was in the past. Thirty-six of the sixty-five countries and areas that suffered new mine casualties in 2005-2006 had not experienced any armed conflict.¹⁹⁰

Landmines have caused a large number of civilian casualties. Landmines kill or injure civilians, soldiers, peacekeepers and aid workers alike who step into the minefield after a cease-fire. The vast majority (eighty-one percent) of new landmine casualties in 2005 were civilian. The 2005 total included at least 1,518 children

¹⁹⁰ International Campaign to Ban Landmines, *Landmine Monitor Report 2005*. Available at <http://www.icbl.org/lm/2005/>.

(twenty-one percent) and 347 women (five percent). Only nineteen percent of the reported casualties were identified as military personnel (1,404).¹⁹¹

Civilian casualties are particularly serious with AP mines, which are designed to kill or injure enemy combatants as opposed to destroying vehicles. AP mines are sensitive enough to explode by the weight of a person. AP mines cannot distinguish between the footfall of a soldier or a child. Their small size, often less than 10 centimeters in diameter -- small enough to be grasped by the hand-- and light weight worsen humanitarian problems. Children mistake AP mines for toys and their contact causes an explosion.

Landmine injuries require long-lasting treatment, which is not always available and, even if available, often costs a substantial amount of money. Those who survive and receive medical treatment often require amputations, long hospital stays, and extensive and various types of rehabilitation, such as physical and mental rehabilitation, physiotherapy, and training with orthotics (rehabilitation equipment). Disabled victims need to use prosthetics (artificial body parts). If victims are children, they have to change prosthetics quite often as they grow up. Whereas emergency care is mostly free of charge, continuing medical care, rehabilitation, counseling, and socioeconomic services are not always free, especially for the uninsured. Landmine victims, most of whom live in rural areas away from urban areas, have to transport themselves to rehabilitation centers which are usually located in urban areas. Most of them have difficulty in finding transportation. Even if they find it, they can hardly afford transportation fees. Many health and rehabilitation facilities in each

¹⁹¹ International Campaign to Ban Landmines, "Landmine Casualties and Survivor Assistance," Executive Summary, *Landmine Monitor Report 2005*. Available at <http://www.icbl.org/lm/2006/es/survivor.html#Heading754>.

community need upgrades and new equipment, and many have difficulty maintaining sufficient supplies.

Landmines have widespread social and economic ramifications. Landmines deprive people in some of the poorest states of the most basic needs, such as food, clean water, work, housing, and education: people cannot cultivate fields with landmines; people cannot go to fetch water if the way to the river is landmine-affected; injuries from landmines deprive victims of various kinds of employment opportunities and thus of a means to earn an income; people cannot rebuild their houses on mine-affected land; and children whose landmine-victim parents or household breadwinners lose jobs have to work, instead of going to school, in order to support their families. Landmines also delay the repatriation of refugees and internally displaced persons. Angolan refugees eager to return home from neighboring Zambia and the Democratic Republic of Congo after three decades of civil war have been hindered by landmines. This was seen, for example, in the slow repatriation process of Angolan refugees and internally displaced persons during 2002 and early 2003.¹⁹²

To remove landmines in order to eliminate, minimize, and prevent these widespread effects costs time, money, and human life. First of all, by the 1990s the scale of the problem had become enormous as recognized by non-governmental organizations (NGOs) which were conducting field missions in Afghanistan, Azerbaijan, Cambodia, the Thai-Cambodia border, Iraq, the Lao People's Democratic Republic, and Vietnam. It was reported that in 1994 there were up to 110 million

¹⁹² Landmine Monitor Report 2004, "Angola." Available at <http://www.icbl.org/lm/2004/angola.html>.

mines deployed in sixty-two countries.¹⁹³ In the face of the huge number of landmines laid, any serious demining efforts seem inadequate. Demining efforts had removed about 100,000 landmines annually by the mid-1990s; at that rate, it was estimated that it would take 1,100 years to clear those already in place if no more mines were deployed.¹⁹⁴ In the case of heavily mine-affected Afghanistan, despite the efforts of over twenty-five demining teams in Afghanistan, it was estimated in 1994 that it would take 4,300 years to remove all the landmines in that devastated country.¹⁹⁵

Second of all, the cost of demining is huge. Mines which cost as little as \$3 each on the open market cost up to \$1,000 each to clear.¹⁹⁶ The use of indigenous personnel is less expensive than employing foreign specialists, at least on the surface. With the cost of a single foreign demining specialist, which is almost \$150,000 per year, between 20 and 25 indigenous deminers can be hired.¹⁹⁷ Still, the employment of indigenous people ends up expensive since they need to receive demining training and management skills, which usually only foreign technical advisers can provide. In addition, not only is there a monetary cost, but there is a human cost to demining. Demining efforts always carry risks for the deminers. The Landmine Monitor, a civil society based monitor network of government compliance with the 1997 AP Mine

¹⁹³ United States State Department, *Hidden Killers 1994: The Global Crisis*. Chapter 1: The Problem. Available at http://www.state.gov/www/global/arms/rpt_9401_demine_toc.html.

¹⁹⁴ *Report of the United Nations Secretary-General*. A/49/357, September 6, 1994.

¹⁹⁵ International Committee of the Red Cross, "Annex I: Results of the Montreux Symposium on Anti-Personnel Mines from the Report of the International Committee of the Red Cross for the Review Conference of the 1980 United Nations Convention." *International Review of the Red Cross* No. 299, 1994, p.28. Available at <http://www.icrc.org/web/eng/siteeng0.nsf/d268e7e7eea08ab74125675b00364294/cf1317ddb4ee2152c1256b660059240e!OpenDocument.0>.

¹⁹⁶ US State Department, *Hidden Killers 1994: The Global Crisis*, Chapter 1.

¹⁹⁷ Don Hubert, "The Challenge of Humanitarian Mine Clearance," in Maxwell A. Cameron, et al. eds., *To Walk without Fear*, pp. 314-335. P.326.

Ban Treaty, recorded more than 100 casualties among deminers in accidents during clearance operations in 2005.¹⁹⁸

The 1997 AP Mine Ban Treaty responded to the huge scale of this multidimensional humanitarian crisis. The treaty's humanitarian focus requires a total ban on the production, transfer, stockpiling, and use of AP mines. In the course of negotiations toward the conclusion of the 1997 AP Mine Ban Treaty, humanitarian concerns over the grave effects of landmines overcame the argument for the military utility of AP mines held by military personnel and negotiating governments. Although another humanitarian law on landmines, the amended Protocol II of the Convention on Conventional Weapons (CCW), called for regulation in the use of AP mines, to map and mark mine fields and to keep them detectable,¹⁹⁹ this proved insufficient to solve the enormous humanitarian problems of landmines, especially AP mines.

The 1997 AP Mine Ban Treaty has a comprehensive scope in its efforts to eliminate or minimize any kind of landmine effects. It seeks complete elimination of any existing AP mines by establishing an obligation to commit to mine clearance and stockpile destruction. Article 5 of the treaty requires state parties to destroy all AP mines within their territories as soon as possible and no later than ten years after the entry into force of the treaty for each state party.

¹⁹⁸ International Campaign to Ban Landmines, *Landmine Monitor Report 2005*. Available at <http://www.icbl.org/lm/2005/>.

¹⁹⁹ The official title is the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980.(Amended Protocol II to the CCW)

The treaty reflects humanitarian concerns and protects the well-being of landmine survivors with the goal of social and economic reintegration. The treaty requires all signatory governments to cooperate not only in landmine destruction but also in long-term service assistance for landmine survivors. Governments in a position to do so are required to provide any human and financial resources necessary for medical and rehabilitation services and for mental care of landmine victims in other signatory countries.²⁰⁰

The treaty has earned widespread support from many states, though some governments of major powers, such as India, China, Russia, and the United States, have not signed the treaty yet. As of October 2008, the treaty had 151 member governments, which counts well over three-quarters of the world's nations. The governments of Poland, the Marshall Islands, Iraq, Kuwait, Montenegro, and Bhutan have signed but not ratified the treaty yet. Forty governments have not signed the treaty.²⁰¹

2. Debate over the Interpretation of AP mines

An agreed-upon definition of AP mines is key to a coherent and thorough implementation of the treaty. The definition of AP mines affects every step of mine-ban implementation: which mines are to be destroyed; which mines will not be produced, transferred, or used; which mines will be saved for training, and research

²⁰⁰ The 1997 AP Mine Ban Treaty, Article 6.

²⁰¹ These forty governments are: Armenia, Azerbaijan, Bahrain, Burma, China, Cuba, Egypt, Finland, Georgia, India, Iran, Iraq, Israel, Kazakhstan, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Micronesia, Mongolia, Morocco, Nepal, Oman, Pakistan, Palau, Russia, Saudi Arabia, Singapore, Somalia, Sri Lanka, Syria, Tonga, Tuvalu, United Arab Emirates, the United States, Uzbekistan, and Vietnam.

and development purposes. Furthermore, disagreement over the definition of AP mines undermines the momentum the treaty gained for the ban on AP landmines and poses challenges to governmental commitment to the newly achieved humanitarian disarmament treaty to ban AP mines. In other words, the controversy over the definition of AP mines sheds light on the limitations of governmental commitment to humanitarian disarmament.

The issue of the definition of AP mines will gain even more importance in the future since many governments and armies are relying more on anti-vehicle (AV) mines with anti-handling devices, now that the military utility of anti-handling devices has been enhanced with the total ban on AP mines. AP mines were used to protect AV mines from being tampered by the enemy. Anti-handling devices attached to AV mines play the same role of AP mines: Anti-handling devices activate when an attempt is made to tamper with or disturb the AV mine.

Controversies over the definition of AP mines under the 1997 AP Mine Ban Treaty have existed since the negotiation processes toward the conclusion of the treaty. The debate is whether AV mines with anti-handling devices are prohibited if such devices can be activated by the unintentional contact of a person, thus functioning like AP mines.

Article 2 of the 1997 AP Mine Ban Treaty distinguishes AP mines from AV mines with anti-handling devices since some governments raised a concern over how the possible expansion of the ban to AV mines might discourage the majority of governments from accepting the treaty. Certainly, AV mines' detonation mechanism is different from AP mines'. AV mines are designed to require the enormously heavy

weight of a vehicle to trigger an explosion. The weight of a person will not be able to explode an AV mine. Article 2 defines AP mines as “designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons” (Article 2, Section 1), while AV mines are mines to be exploded with the contact of a vehicle (Article 2 Section 1).

The problem, however, is that many AV mines with anti-handling devices have anti-personnel functions since these devices are designed to protect AV mines from military countermine clearance and are designed to explode when lifted or removed. This could include explosion upon the unintentional removal by a civilian. Some AV mines can be expediently equipped with anti-handling devices in the field using common ordnance items such as firing devices (igniters). Firing devices work through either the application or release of pressure or tension (anti-lift and anti-removal fuses). Some firing devices are activated by the release of as little as 2.25 kilograms of pressure. Some anti-handling devices are built into the mine and no deliberate action is necessary to activate them during the mine’s employment.

The concluded treaty did clarify whether AV mines with anti-handling devices that detonate from “unintentional” effect are prohibited or not. The treaty defines anti-handling devices as those activated when “tampered with” or “intentionally disturbed,” and these are permitted under the treaty (Article 2, Section 3). However, advocacy groups insist that some types of anti-handling devices can be activated by the *unintentional* contact of a person. The problem is that the treaty does not clarify whether AV mines with such anti-handling devices that could be activated by the *unintentional* contact of a person are prohibited or not. There are two different

interpretations. From the point of view of a focus on the effect of the mine's blast, an AV mine is an AP mine if it has an anti-personnel "effect" of injuring or killing a person from the unintentional disturbance by a person (the effect-oriented definition of AP mines). From the point of view of a focus on the design of an AV mine, the AV mine is legal under the 1997 AP Mine Ban Treaty since it is "designed" as a mine that targets vehicles (the design-oriented definition of AP mines.). An agreed upon definition has been called for since it will determine the treatment of AV mines under the treaty. It is estimated that between fifteen percent and seventy-five percent of existing AV mines are equipped with anti-handling devices.²⁰²

The case of an anti-tank mine, M 21, will illustrate the subtle difference between the two interpretations. The M21 mine is an anti-tank mine designed to be activated by 290 pounds of vertical pressure on top of a fuse attached to the mine. Therefore, an ordinary person's step on it cannot activate the explosion. It could, however, also be detonated by only 4 pounds of pressure against a 21 inch long extension rod attached to the M21 mine. The International Campaign to Ban Landmines (ICBL), a network of civil society groups working for a global ban on landmines, and Human Rights Watch argue that if a fusing mechanism for an AV mine is sensitive enough to be activated by the unintentional contact of a person, it could have an anti-personnel effect, thus falling into the category of AP mines.²⁰³

The debate has continued with no resolution. Governmental representatives meeting in Oslo, engaging in the last negotiation before the conclusion in Ottawa in

²⁰² German Initiative to Ban Landmines and Landmine Action, "Alternative anti-personnel mines: The next generations," March 2001.

²⁰³ Human Rights Watch Backgrounder, "Antivehicle mines with Sensitive Fuzes or Anti-Handling Devices," 2002, p. 1.

December 1997, did not go into any further detailed discussion on the issue of definitions since they were keen to avoid losing the support and momentum for a ban on AP mines and derailing the negotiations.²⁰⁴ Humanitarian advocacy groups and some like-minded states support the effect-oriented definition of AP mines since it is more humanitarian than the design-oriented definition in that the former includes many more types of mines under the jurisdiction of the total ban. Subsequently, humanitarian advocacy groups that were involved in the Ottawa Process have continue to advocate for the effect-oriented definition of AP mines since the conclusion of the treaty. Still, as of October 2008, almost ten years after the conclusion of the treaty, disagreement among signatories over the definition of AP mines continues. Some governments hold the design-oriented definition, by which AV mines with anti-handling devices are exempted from the treaty since they are designed as AV mines as opposed to AP mines. Their interpretation focuses on the design of a mine and the distinction between AV mines and AP mines. On the other hand, other governments emphasize the actual effects of a mine, supporting the effect-oriented definition, maintaining that, insofar as an AV mine or its anti-handling device is activated by the unintentional contact of a person and thus functions with anti-personnel effects, it is prohibited under the treaty.

²⁰⁴ Thomas Hajnoczi, Thomas Desch, and Deborah Chatsis, "The Ban Treaty," Maxwell A. Cameron, et al eds., *To Walk without Fear*, pp.297-298.

Table 4-1 Two interpretations of the definition of AP mines under the 1997 AP Mine Ban Treaty

| The design-oriented definition of AP mines | The effect-oriented definition of AP mines |
|--|--|
| AV mines with anti-handling devices that activated when tampered with or intentionally disturbed are prohibited. | AV mines with anti-handling devices are exploded with an unintentional contact of a person are prohibited. |

The governments of Denmark, France, Germany, Japan, Spain, and the United Kingdom have persistently upheld the design-oriented definition of AP mines, maintaining that AV mines with anti-handling devices are not prohibited under the treaty. They decline to respond to the ICBL’s call for signatory governments to publicly acknowledge that AV mines with anti-handling devices that explode from an unintentional act are banned by the 1997 AP Mine Ban Treaty. The Foreign Ministry of Spain noted that Spain’s national legislation upholding the 1997 AP Mine Ban Treaty does not treat AV mines with anti-handling devices as AP mines.²⁰⁵ The German government also holds that AV mines with anti-handling devices do not fall within the scope of the 1997 AP Mine Ban Treaty. The German Foreign Ministry emphasizes the distinction between AP mines and AV mines rather than the interpretation of anti-handling devices. It points out the treaty’s Article 2 section 1, which states that AV mines with anti-handling devices are not considered AP mines, was added to the article in order to separate AV mines, which are designed to be

²⁰⁵ Cited in Human Rights Watch Backgrounder, “Antivehicle Mines With Antihandling Devices,” February 25, 2002, p.4. Prepared by Mark Hiznay and Stephen Goose for the First Meeting of the Standing Committee of Experts on the General Status and Operation of the Convention. This is a revised version of the memorandum originally distributed for delegates to the fifth Meeting of the Standing Committee on the General Status and Operation of the 1997 AP Mine Ban Treaty.

detonated by the presence, proximity, or contact of a vehicle as opposed to a person, from prohibited AP mines.

In contrast, many other governments, in response to questions from Human Rights Watch and the ICBL, express their support for the effect-oriented definition of AP mines. The Italian government noted that its national legislation banning AP mines (Law 374/97) does not permit AV mines with anti-handling devices.²⁰⁶ These governments support the effect-oriented definition of AP mines from their understanding that the humanitarian spirit of the treaty and the negotiation process in Oslo will naturally lead to the interpretation that anti-handling devices which explode from the innocent contact of a person are prohibited.

Part of the reason why governments have failed to agree upon the definition so far is due to the complex and highly technical nature of the debate. The debate requires close examination of each sensitive fuse and anti-handling device, which involves highly specialized technological expertise. And there exist a wide range of sensitive fuses and anti-handling devices with various functions: trip wires, break wires, tilt rods, pressure-actuated fuses, magnetic fuses, acoustic fuses, vibration fuses, infra-red fuses, double and triple-fuses, and anti-clearance fuses. The complexity of the issue increases when AV mines are equipped with a mixture of fuses and sensors. A mixture of fuses and sensors is a result of technological efforts to create AV mines that are safe for civilians and effective against enemies. AV mines with sensitive fuses or anti-handling devices should react against their intended targets but ideally they should be impervious to countermeasures (demining) and to

²⁰⁶ Statement of the Italian delegation at the Standing Committee meeting on February 1, 2002. Cited in Human Rights Watch, 2002, p. 4.

accidental activation by people, animals, or natural environmental influences. An example of a mixture of fuses is the case in which acoustic and/or seismic sensors are used to “wake up a mine,” while infrared and/or optical sensors seek targets before ultimate detonation of the mine.²⁰⁷ In addition, there is no standardized test or common standard to decide the safety of an anti-handling device or a sensitive fuse for a person. A test could be under a circumstantial setting based on the existence and movement of people or a purely ideal condition. It is necessary to identify various types of behaviors and practices which might cause unintentional contact.

3. Variation in the Interpretation of AP mines and Its Potential Causes

Governments were divided as to which of the two definitions of AP mines they adhered, as of December 2004, seven years after the conclusion of the treaty. A general look at the pattern of variation illustrates that a government’s stance corresponds with the size of its military power. Signatories with the design-oriented definition, such as France, Germany, Japan, Spain, and the United Kingdom, are major powers with advanced technology and abundant stock of AV mines. On the other hand, governments with the effect-oriented definition, such as Austria, Canada, the Netherlands, are middle or small powers. Still, the element of humanitarian advocacy work cannot be dismissed as a contributing factor to which definition a government chooses to adhere. Advocacy groups in each state have worked, albeit to a different extent, to persuade their government towards the effect-oriented definition of AP mines. International NGOs also did research and persuaded governments to

²⁰⁷ German Initiative to Ban Landmines and Landmine Action., 2001, p.23. Available at http://www.landmine.de/fix/english_report.pdf.

adopt the design-oriented definition of AP mines in the Meetings of State Parties and the Standing Committee Meetings of the AP Mine Ban Treaty. Domestic advocacy groups and international NGOs occasionally cooperated in joint research and advocacy.

In practice, there were slight changes in the pattern in 2005. The governments of Germany and Australia, whose domestic advocacy groups were active on the issue of the definition of AP mines, changed their position from the design-oriented definition to the effect-oriented definition of AP mines. The German government had shown concerns about the issue and initiated a discussion to reach an international agreement on the definition based on concrete technical parameters.²⁰⁸

First, in 2001 the German government took the initiative in setting practical standards for anti-handling devices at the meetings of the Convention on Conventional Weapons and has led a discussion since then. As the first step to a common understanding of certain standards on AV mines with fuses, the German government collected and summarized each government's information on existing fuse mechanisms in order to establish an overview of relevant data on fuse technology. In 2005, the German government changed the definition of AP mines from the design-oriented definition to the effect-oriented definition under the 1997 AP Mine Ban Treaty. German humanitarian advocacy groups were among the most engaged in the issue of the definition of AP mines. Yet the question remains whether German advocacy groups had an influence on the German government's stance shift. How can we explain the humanitarian initiative of the big AV mine producer and

²⁰⁸ Working Paper prepared by the Delegation of Germany, "Food for Thought" on Mines other than Anti-Personnel Mines (MOTAPM) for the second meeting of experts in July 11, 2002. CCW/GGE/II/WP.5.

possessor, the German government, to reach practical standards on AV mines? More generally, can the German case tell us anything about what ultimately determines which definition a government will embrace?

In the following chapters, I will examine how some governments chose the effect-oriented definition of AP mines and others did not, and why some governments, such as Germany, have started to show a change in their attitude. In the next chapter, I will start with an observation and study of patterns of governmental attitudes toward the solution of inhumane effects of AV mines with anti-handling devices. And in the subsequent chapter, I will examine the cause of these attitudinal patterns. Still, before moving on to this empirical research, I will sketch my research plan, in the section below, with regard to the measurements of the dependent variable and the independent variables, and case selection.

4. Dependent Variable

The dependent variable of the research is government compliance with the AP mine ban norm as a measure of norm internalization. The dependent variable is measured by the government's definition of AP mines under Article 2 of the AP 1997 Mine Ban Treaty. The governmental definition of AP mines under the 1997 AP Mine Ban Treaty is whether a government supports the effect-oriented definition or the design-oriented definition of AP mines. The effect-oriented definition is more humanitarian than the design-oriented definition since the former covers many more types of AV mines with anti-handling devices under the treaty. A government's definition of AP mines can be known from the government's official statements and documents

submitted to the Meeting of States Parties and the Standing Committee Meeting. A government's stance is also measured by the government's responsiveness to any inquiries, requests, and recommendations, possibly from humanitarian advocacy groups and international organizations, toward the implementation of the effect-oriented definition of AP mines.

To be sure, some governments could make efforts to set any practical standards of anti-handling devices to minimize harm to civilians even if the efforts are outside of the arena of the 1997 AP Mine Ban Treaty, notably in the arena of the CCW.²⁰⁹ However, the style and procedure of CCW negotiation tend to produce slow progress. Negotiation in the CCW would take a longer time for an agreement due to the consensus-based decision-making process, which requires certain time for a formation of a consensus.²¹⁰ In contrast, the Ottawa Process, a negotiation process toward the conclusion of the 1997 AP Mine Ban Treaty, took the majority-vote-system. Furthermore, negotiations in the CCW arena tend to take an incremental approach and seek to be more cautious in achieving a balance between military utility and civilian protection. In terms of participation, the CCW is more state-centered, excluding humanitarian NGOs from preparatory negotiations, while the Ottawa Process has been more inclusive, having NGOs get involved in drafting the final declaration and the action plan of conferences. Accordingly, negotiations in the CCW

²⁰⁹ Main regulations are as follows: AP mines should be equipped with self-destruction and self-deactivation systems (Article 5 Section 1); AP mines which are not detectable are prohibited (Article 4). The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) of the Convention on Conventional Weapons.

²¹⁰ The President of the Second Review Conference of the CCW commented: "With regard to Rule 34 of the Rules of Procedure, it is affirmed that, in the deliberations and negotiations relating to the Convention and its annexed Protocols, High Contracting Parties have proceeded on the basis of consensus and no decisions have been taken by vote." Cited in p.7, CCW/CONF.II/2. Also see CCW/CONF.II/PC.1/1.

tend to reflect less the element of civilian protection than the weight of military utility. It was actually the slow and limited progress on the regulation of AP mines in the CCW 1996 review conference that drove like-minded states and advocacy groups to the initiation of the Ottawa Process and led to the 1997 AP Mine Ban Treaty.²¹¹ Then it is difficult to expect that a negotiation in the CCW will reach a progressive ban on AV mines with anti-handling devices that could be activated by the *unintentional* contact of a person.

5. Independent Variables

As discussed in the previous chapter I will examine two possible elements that may affect the variation in government stances toward AV mines with potential AP effects. These are the extent of military stakes in landmines and the persuasion of humanitarian advocacy groups. First, I will test the influence of the extent of military stakes in landmines on the definition of AP mines. I will classify sample governments into the two categories of the effect-oriented definition of AP mines and the design-oriented definition of AP mines. Then, I will compare the average extent of military stakes in landmines in each category. Second, I will examine the influence of the military technological discourse of humanitarian advocacy groups in each group. At this stage, I will compare governments with higher degrees of military stakes in

²¹¹ The Amended Protocol II of the CCW agreed in 1996 just imposed technical restrictions on the use of AP mines in spite of the surmounting awareness of the inhumane effects of AP mines. The original Protocol II regulated only the use of mines in general: it is obliged that mines should not be used against the civilian population (Article 3 and 4) and that measure, such as the issue of warnings or the provision of fences, be taken to protect civilians from their effects (Article 4 Section 2 (B)). The Amended Protocol II added an independent section on AP mines and added technical regulations on them; it is obliged that AP mines be detectable (Article 4), equipped with self-destruction and self-deactivation systems (Article 5 Section 2), monitored (Article 5 Section 2 (a)), and cleared before the area is abandoned (Article 5 Section 2 (b)).

landmines with the design-oriented definition of AP mines and those with lower degrees of military stakes in landmines with the effect-oriented definition of AP mines. Then I will examine the strength of military technological advocacy discourse in each group.

First of all, the extent of military stakes in landmines will definitely affect a government's definition of AP mines. As advanced by realism, which assumes the territorially-based state motivated by power as the main actor in the international system, a government sees military force as the ultimate means to protect the territorial integrity of the state. Consequently, a government's military stakes in landmines will greatly influence government's definition of AP mines.

Second of all, the influence of humanitarian advocacy groups on a government's landmine policy could be limited. Due to government concern over territorial security, it is assumed that a government tries to maintain its autonomy in the decision-making process over landmine policy, thus excluding external domestic and international actors from the process. Accordingly, humanitarian advocacy groups face two main difficulties: access to the policy-making procedure and the availability of military information. The way for humanitarian advocacy groups to influence a government is through overcoming these two obstacles. First, humanitarian advocacy groups could cooperate with like-minded government officials or with parliamentarians to access the legislature, an arena of the official decision-making procedure, though the former is highly unlikely to occur. Second, humanitarian advocacy groups could take a tactic not to rely on military information, which they have difficulty in obtaining since a government is reluctant to disclose.

Instead, humanitarian advocacy groups could use humanitarian information on human sufferings by changing the focus of discourse from military technology of landmines to civilian protection. In other words, when claiming the danger of AV mines with anti-handling devices, humanitarian advocacy groups could emphasize such landmines' long-lasting inhumane effects on civilians instead of demonstrating the danger of the technological mechanism of the AV mines. A strategy of norm linkage of the humanitarian appeal with domestically established norms, which the government has put into practice repeatedly leaving little room for controversy, would further reinforce the humanitarian appeal. This way, governmental officials would have difficulty in resisting the advocacy appeal since the appeal is based on already well practiced governmental policies. This strengthens the legitimacy of the humanitarian disarmament norm at issue and places the extra burden of proof on the part of the government.

The above argument leads to the following three hypotheses.

H1: The extent of the stake a government has in landmine policy affects the government's interpretation of AP mines. If it is high, the interpretation is more likely to be design-oriented. If it is low, the interpretation is more likely to be effect-oriented.

H2: When a government has a higher degree of military stake in landmine policy, the humanitarian advocacy groups' military and technological discourse for the effect-oriented definition of AP mines is not likely to persuade the government even if the advocacy groups have access to the decision-making process.

H3. Even when a government has a higher extent of stake in landmine policy, a change in the humanitarian advocacy groups' discourse from a focus on military to humanitarian issues, which are linked with already established domestic norms, will

influence the government to shift from a design-oriented to effect-oriented definition of AP mines.

Measurements of the Independent Variables

5-A. The Extent of Landmine Policy Stakes

The government assessment of armament policy is composed of two elements: (a) perceived and actual threats of international and internal conflicts, including experience of war; and (b) the number of types of AV mines in production.²¹² The first element reflects governmental evaluation of the necessity of landmines to protect and maintain territorial security and to react to potential armed conflicts in the future. The second element indicates a general sense with which a government requires landmines and also the extent of financial and technological modification required by the transnational groups' interpretation of AP mines.

5-A-(1) The Perceived and Actual Threats of International and Internal Conflicts: Experience of Conflicts

A government's assessment of territorial security is based on the perceived and actual threats to the government, and the experience of internal and external armed conflicts. Thus, a government's current sense of territorial security reflects the existence of past and current conflict(s) and perspectives of potential armed conflicts. Perceived threats are what a government senses as factors endangering territorial security even if there is no actual military invasion or conflicts in the territory or exchange of fire with the invader or rebels. Perceived threats serve as a sign of increasing political tensions,

²¹² Though the training of mine clearance constitute an element of the planning and necessity of AV mines, its element is neglected in the research since the number of AV mines for training purposes is quite small.

which might lead to the outbreak of an armed inter-state or intra-state conflict. War is merely a continuation of politics.²¹³ Thus, perceived threats constitute an important part of a government's assessment of territorial security.

Governments increase the development, production, and possession of armaments in response to increasing political tensions with potential adversaries. Snyder and Diesing also argue for the behavioral effect of the expectation of war on the state. In peacetime, the expectation of war is low and its effects on the state are hard to observe, whereas in a crisis, the expectation of war is elevated and it affects the state's behavior toward serious military preparation.²¹⁴ Even without any ongoing explicit armed conflict, as the Cold War showed, increasing political tensions enhance government perception of the necessity of reinforcing its armed forces.

The other measurement, the existence of past and/or ongoing internal or international conflicts, including conventional wars and guerrilla wars, matters since it is perceived that the experience of armed conflicts might increase the perception of the need for landmines for strategic and tactical purposes. Landmines have been used for both defense and offense, though landmines constitute only a part of many kinds of military weapons in a whole military strategy. For defense, landmines deny enemy access to areas and provide an efficient use of force capabilities so that all combat power available is used as effectively as possible.²¹⁵ For offense, landmines encourage the enemy to focus its movement into areas where the enemy can be

²¹³ Carl von Clausewitz, *On War*, Book I. Indexed Edition. Edited and Translated by Michael Howard and Peter Paret. Princeton: Princeton University Press, 1984.

²¹⁴ Glenn H. Snyder and Paul Diesing, *Conflict among Nations*, Princeton: Princeton University Press, 1977, p. 4.

²¹⁵ Commission on Engineering and Technical Systems, *Alternative Technologies to Replace Antipersonnel Landmines*, Washington: National Academies Press, 2001, p.26.

attacked effectively, thus restricting the enemy's mobility during the escape from attack. Landmines can also disrupt the enemy's logistic transfer function.²¹⁶

In particular, AV mines with anti-handling devices has enhanced military utility especially after the ban on AP mines since anti-handling devices play the alternative role of banned AP mines. Anti-handling devices enact when touched by a hand in order to protect AV mines from being removed. The main role of AV mines has been border protection and area denial during military conflicts in which the military cannot supervise to protect the removal of mines. AP mines used to be laid with AV mines so that AP mines protect AV mines from being removed by enemy troops. Anti-handling devices attached to AV mines play the roles of AP mines to protect AV minefields from being removed by the enemy. After the ban of AP mines in 1997, anti-handling devices attached to AV mines function to protect AV mines from being removed.

The military utility of AV mines with anti-handling devices still remains high especially since the research and development of alternatives to AP mines are still in progress. In other words, there exist only a few types of AV mines which fare quite well on the humanitarian criteria without the explosion of unintentional personal contact and which can perform as well without AP mines that normally protect them. Some types of weapons developed as more humanitarian versions of AV mines are equipped with sensor and communication links along with lethal or non-lethal munitions and allow detonators to distinguish between soldiers and civilians, through

²¹⁶ ICRC, "Report of the ICRC for the review conference of the 1980 UN conventions on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects," *International Review of the Red Cross*, No. 299, April 30, 1994, pp. 123-182.

warning the tactical information system of intrusions and enemy movements. Still, it is reported that they have vulnerabilities in their communication sensor systems, and the reliability can be lowered by possible information traffic jams, delays, and disruptions that often affect communications systems.²¹⁷

Internal conflicts, including conventional and guerrilla wars, as well as international conflicts constitute a type of threats national governments perceive. There is a vicious circle of mining in internal conflicts. Guerrillas use mines as offensive and defensive weapons since many of them are unable to achieve their military goals in close combat. They employ mines and booby traps for their effectiveness as harassment weapons with a view to demoralizing the opposition, including the civilian population. When government forces are too weak to defeat guerrillas, they respond by emplacing defensive minefields to protect key economic and military infrastructure. For instance, the Angolan government protected its military installations with mines from attacks by rebel groups during the civil war (1975-1991). This vicious circle of mining continues until maneuver is restricted to key areas and routes which are strictly controlled by the one side or the other.²¹⁸ Thus, the experience of internal conflicts as well as international armed conflicts affects governmental considerations of the geopolitical situation in the longer term, which then affects armament policy.

In order to measure a government's perception of territorial security, the research probes the existence of any internal or international political disputes and

²¹⁷ Commission on Engineering and Technical Systems, *Alternative Technologies to Replace Antipersonnel Landmines*, Washington: National Academies Press, 2001.

²¹⁸ Canadian Army Lessons Learned Centre, *The Dispatches*, "Mine Warfare in Peace Support Operations," Vol. 2, 1997.

armed conflicts in each government over the past fifteen years, between 1992 and 2006. The fifteen-year time period allows the element of a time lag between armed conflict and armament policy, which reflects a government's perception of territorial security. The time period also reflects a government's increasing concern about territorial security in a potential future armed conflict.

There is usually a time lag between armed conflict and armament policy. Armament policy does not necessarily coincide closely with an outbreak or the end of armed conflict. Tensions between adversaries grow or relieve gradually. Worsening political relations warn governments and lead them to further armament. A certain time lag exists between a ceasefire and the scale down of armament policy. A ceasefire does not necessarily lead a government to scale down the level of armament policy since a ceasefire is not always followed by a politically stable relationship with inherent mutual trust and the confident expectation that any further political tension can be resolved by peaceful negotiation. The building of mutual confidence between former adversaries takes time, and even the process of building mutual confidence does not always proceed smoothly; tensions and skepticism between adversaries sometimes revive.

To examine the existence and level of conflicts, I refer to the databases on major armed conflicts and violent and non-violent conflicts available from the International Stockholm Peace Research Institute (SIPRI).²¹⁹ The databases allow classifying the level of tensions among governments since they use the conflict intensity index developed by the Heidelberg Institute on International Conflict

²¹⁹ Available at <http://first.sipri.org/index.php?page=step3&compact=true>.

Research (HIIK),²²⁰ which provides detailed criteria to measure the intensity of conflicts, including both non-violent and violent conflicts. According to the HIIK, the conflict intensity index distinguishes five stages: (1) latent conflict, (2) manifest conflict, (3) crisis, (4) severe crisis, and (5) war. The first two levels, latent conflict and manifest conflict, indicate the level of perceived threats. At the latent level, there is no violence, and demands of some sort are articulated by one of the parties and perceived by the other as such. Manifest conflict, the second level, is the preliminary stage of violent force, including verbal pressure, threatening of violence, or the imposition of economic sanctions. At the third level, crisis, the level of violence heightens with a tense situation in which at least one of the parties uses violent force in sporadic incidents. At the fourth level, severe crisis, the conflict level is high, and violent force is repeatedly used in an organized way. At the fifth level, a war exists in which violent force is used strategically with certain continuity in an organized and systematic way. These categories include the state of violence of guerrilla groups even though the use of force in guerrilla warfare, which is conducted by small, scattered bands of raiders with mobile tactics, is not organized or systematic, unlike the regular army. At the fourth and fifth levels, guerrillas' use of force is organized and systematic in the sense that guerrillas decide to resort to force in order to realize their political purposes. The extent of destruction is massive and the duration is long. For the summary of the conflict intensity index, see Table 4-2.

²²⁰ Available at <http://www.hiik.de/methodik/index.html.en>.

Table 4-2 Conflict Intensities²²¹

| State of Violence | Level of Intensity | Name of Intensity | Definition |
|------------------------------------|--------------------|-------------------|---|
| non-violent (perceived threats) | 1 | Latent Conflict | A positional difference over values of national meaning. The difference is recognized by each party. |
| | 2 | Manifest Conflict | The use of measures that are located in the preliminary stage to violent force, including verbal pressure, threatening explicitly with violence, or the imposition of economic sanctions. |
| violent | 3 | Crisis | A tense situation in which at least one of the parties uses violent force in sporadic incidents. |
| | 4 | Severe Crisis | Violent force is repeatedly used in an organized way. |
| | 5 | War | Violent force is used with certain continuity in an organized and systematic way. The extent of destruction is massive and of long duration. |

5-A-(2) The Number of Types of AV Mines in Production

The level of a government's stake in landmines can also be measured by the number of types of AV mines with anti-handling devices in production. The number of types of AV mines with anti-handling devices simply indicates the scale of necessity of AV mines based on the government assessment of geopolitical conditions.

The measurement of the level of a government's stake in landmines by the number of controversial AV mines in possession, instead of production, would be ideal since it directly indicates each government's necessity for AV mines. The measurement by the number of possession would also allow for controlling for a government's economic incentives, which would influence the level of landmine production especially when a government permits to export landmines. However, the measurement by the number of possession is impossible due to the unavailability of

²²¹ Constructed by the Heidelberg Institute for International Conflict Research. Available at http://www.hiik.de/methodik/methodik_ab_2003.html.en.

full data on government possession of AV mines. Most governments are reluctant to disclose all the details on the possession of landmines. Still, the measurement of a government's stake in landmines by the production of controversial AV mines has a merit in that it could include the factor of the cost of research and development for alternative measures. The number of types of AV mines with anti-handling devices in production also corresponds with the extent of the cost of research and development for alternative measures. The more a government relies on the use of AV mines with anti-handling devices, the more the government would need to develop alternative weapons.

The number of AV mines in production can be learned from multiple reports. A report from Human Rights Watch in 2000 lists the number and types of mines with potential AP effects held by each government.²²² For the purpose of reaching an agreement upon the types of anti-handling devices permissible under the treaty, the Human Rights Watch report addresses the unresolved ambiguities about the types of anti-handling devices to be banned under the 1997 AP Mine Ban Treaty, and identifies the types of anti-handling devices which can explode from an unintentional act and thus pose dangers for innocent civilians.

A complete list of AV mines with anti-handling devices is difficult to construct since governments usually restrict, for national security purposes, the dissemination of production and export data on armaments to some extent. Though there are multiple reports by several organizations, the Human Rights Watch report of 2000 provides the most comprehensive list in that it is constructed from all the

²²² Human Rights Watch Fact Sheet, "Anti-Vehicle Mines With Anti-handling Devices," prepared by Mark Hiznay and Stephen Goose for the First Meeting of the Standing Committee of Experts on the General Status and Operation of the Convention, January 10-11, 2000.

available major data sources, such as the US Department of Defense's and the State Department's ORDATA and MINEFACTS, the International Campaign to Ban Landmines, and the International Committee of the Red Cross, and Jane's Information Group.²²³

Furthermore, the Human Rights Watch report's two-level classification of AV mines with anti-handling devices helps to measure more minutely the types of AV mines governments wish to retain. The report assesses each AV mine with an anti-handling device based on the two categories of primary concern and secondary concern. Mines of "primary concern" are those AV mines in the inventory with design features or capabilities that are judged to pose the greatest threat of exploding or detonating as the result of the unintentional act of a person. The other category, "secondary concern," lists those mines with design consequences or capabilities that have a possibility for explosion as the result of an unintentional act, though final judgment requires more scientific data regarding the stimuli or forces necessary to activate the mine's explosion mechanism.²²⁴ The two-level classification helps to distinguish anti-handling devices with serious risks from less dangerous ones. This clarifies government attitude toward AV mines with anti-handling devices since anti-handling devices have too many types to be in a single category in terms of potential risks to people.

²²³ ORDATA is a US government database of landmines and other unexploded ordnance developed to assist humanitarian demining work; MINEFACTS is data collected jointly by the US Department of Defense and the US Department of the State, containing every landmine the intelligence community could identify as ever having been put in the ground anywhere in the world in any kind of conflict; and *Jane's Mines and Mine Clearance*, by Jane's Information Group, a global intelligence consultancy, is the report on mines includes details and analysis of mines, booby traps and fuses found all over the world.

²²⁴ Human Rights Watch, 2000.

5-B. Advocacy Argument

Three elements that affect the effectiveness of advocacy argument are: (1) argument based on military information; (2) argument in cooperation with legislators; and (3) humanitarian discourse.

5-B-(1) Argument based on Military Information

The effectiveness of advocacy based on military information depends on data collection on the functioning of sensitive fuses and anti-handling devices and the use of collected information. The amount and quality of data matters since a successful persuasion of a government requires advocacy groups to prove its argument about the level of the military utility of AV mines and the danger of anti-handling devices and sensitive fuses for civilians. In terms of the use of military information, effective persuasion depends on the concreteness of the argument and persistence in inquiries and verification. The use of military information plays an important role especially in making follow-up questions in response to a government's unclear or insufficient response, disputing the argument of the government, and making a counterargument against a government's claim to the safety of these fuses.

The extent of research and the use of information depend on each advocacy group's policies and strategies. Some advocacy groups fully utilize all the information available to point out the danger of some types of AV mines, dispute governments' arguments, present counterevidence, and argue for the effect-oriented definition of AP mines. Several sporadic remarks by humanitarian advocates cannot constitute a persistent commitment. Some do not necessarily fully utilize the information

available since they place relatively lower weight on the definition issue among other mine-related issues, which include victim assistance, mine risk education, demining, rehabilitation of victims, and the reconstruction of mine-affected local communities. In order to measure the level and extent of advocacy commitment to military technology discourses, I perform a qualitative content analysis of each advocacy group's basic agendas, newsletters, reports, and specialist publications.

I will pay special attention to advocacy groups' data collection and research since the width and depth of research corresponds with the use of information. Advocacy groups could rely on publicly available government documents and do their own independent research. Publicly available documents are government reports under Article 7 of the 1997 AP Mine Ban Treaty and data published by NGOs, mainly the ICRC and Human Rights Watch. The annual Article 7 report is a mandatory report to the Secretary-General mandatory under the 1997 Mine Ban Treaty. Article 7 obliges that member states report to the Secretary General, about the total of all destroyed, retained, transferred, and stockpiled AP mines, including a breakdown of the technical characteristics, quantity, and lot number of each type of AP mines, and the status of programs for the destruction of AP mines. Still, Article 7 report is weak in that reporting governments, especially governments with the design-oriented definition of AP mines, do not necessarily include the information on AV mines with anti-handling devices. Reports from the ICRC and Human Rights Watch complement information in Article 7 reports since they specifically did research on the functioning and government status of anti-handling devices and sensitive fuses.

The ICRC constructed systematic inquiries of government interpretation of AV mines, providing each government's reasoning of the definition of AP mines.

Advocacy groups could further conduct independent or joint research to acquire military data and knowledge. This is important especially since the data in the annual Article 7 report is not confirmed or verified. The United Nations' Department of Disarmament Affairs as the depository of Article 7 report is limited to compiling the information provided by state parties and distributing it to other states parties. Through research, advocacy groups could make direct inquiries with governmental officials especially when there is an alleged violation of the treaty by the government. Information sharing is an important part of data collection. For research, advocacy groups could utilize reports, documents, and newsletters from the department of defense from each state, the media, UN agencies involved in mine actions, notably the United Nations Agency of Mine Action Service (UNMAS), the United Nations Development Programme (UNDP), and the United Nations High Commissioner for Refugees (UNHCR), and other mine-related NGOs.

5-B-(2) Access to the Decision-Making Process

Advocacy groups could access the decision-making process through cooperation with legislators or with like-minded political leaders. Cooperation can be in exchanging and sharing information and in accommodating agendas and strategies. Thus, cooperation takes the forms of meetings and workshops, a joint resolution or declaration, and legislators' inquiries with governmental officials. Joint meetings and workshops provide an arena to generate a common recognition of the problem to deal

with and to formulate agendas and strategies. These types of cooperation can be known from parliamentary documents, legislators' websites, and advocacy newsletters and reports.

5-B-(3) Discourse Change and Norm Linkage with Domestically Internalized Norms

Humanitarian Discourse

A humanitarian advocacy group's discourse change means a switch in reasoning and in the types of evidence to legitimize the group's humanitarian appeal, the effect-oriented definition of AP mines. The humanitarian advocacy groups can legitimize the appeal for a ban on AV mines that could harm civilians by shifting the focus of reasoning from the technological disproving of the safety of AV mines to the emphasizing of the inhumane effects of AV mines on civilians. Accordingly, advocacy groups can shift the evidence from military technological evidence to the information and knowledge about AV mines' inhumane effects on people.

The discourse change from military technology to human suffering could be measured by the types of evidence humanitarian advocacy groups employ to persuade a government. Advocacy groups can employ episodes from all the results of mine incidents. An episode could convey the difficulty in humanitarian delivery, such as the suspension of badly needed humanitarian relief shipments and civilian traffic for peacekeeping units in areas where roads are mined and alternative forms of transport are not practical. Or an episode can also tell the long-lasting effects of AV mines on socio-economic lives of civilians. Powerful stories about the danger of AV mines

with anti-handling devices to citizens will challenge the claims to safety of AV mines propounded by scientific and theoretical data. Advocacy groups could use the statistics about the frequency and impact of incidents of civilian-involved landmine incidents.

Norm Linkage

Norm linkage that advocacy groups use to appeal for the effect-oriented definition of AP mines involves linking the humanitarian appeal with already established norms related to the appeal. Related norms have the same principled belief as the humanitarian appeal, the protection of civilians. Civilian protection could be grasped in a wider context as the preamble of the 1997 AP Mine Ban Treaty refers to a longer-term concern of landmine victims through addressing the negative effects on economic development and reconstruction and the repatriation of refugees and internally displaced persons. Thus, norm linkage could be made through emphasizing various aspects of mine actions each government is committed to: humanitarian delivery, humanitarian demining of agricultural areas, the reconstruction of social infrastructure, such as schools, hospitals, and roads, economic and political reconstruction, and the reestablishment of community services in war-torn countries. For instance, if a government's focus of post-conflict humanitarian assistance is on the rebuilding of social infrastructure, advocacy groups could link their appeal for the effect-oriented definition of AP mines with the effects of AV mines with anti-handling devices on the mobility of teachers, doctors, health care workers, and staff of development agencies dealing with the post-conflict situation. This way, the

advocacy group could reason that the existence of AV mines with anti-handling devices prevents the government's smooth execution of humanitarian assistance in the reconstruction of social infrastructure. This also enhances the legitimacy of their appeal for the effect-oriented definition of AP mines, which bans AV mines with anti-handling devices and sensitive fuses.

Norms with Domestic Salience

A linked norm's domestic salience indicates the strength of the norm. It is supported by a durable set of attitudes toward the norm's legitimacy in a government. The norm constitutes itself as part of the government's value system and resonates in domestic debates. Occasional remarks by governmental officials and political leaders on the linked norm do not necessarily guarantee the domestic salience of the norm. The linked norm is declared and implemented repeatedly in official policies, with little room left for a controversy over its interpretation and implementation. The growth of domestic salience in a norm usually accompanies the consolidation of institutional foundation and financial resources for norm implementation.

I measure the extent of domestic salience a norm enjoys with two elements. These are the existence of domestic discourse and state policies. First, the existence of domestic discourse proves governmental officials' awareness of the necessity for norm implementation. That the norm appears in the domestic political discourse implies a preparation for a new policy or at least a modification in the policy agenda. Second is the actual existence of state policies which demonstrate the actual norm implementation.

6. Selection of Governments and Plan for the Empirical Research

Sample governments of the research are narrowed down to the governments of the Organization for Economic Co-operation and Development (OECD). This is in order to control for the two domestic factors of the room for advocacy work and the existence of civilian protection norms with domestic salience. First, OECD's membership qualifications, commitment to democracy and free market economy,²²⁵ allow some room for the establishment and activity of advocacy groups. I understand the concept of democracy based on the concept of polyarchy by Robert A. Dahl, which sees that power is vested in multiple entities. The definition of democracy based on polyarchy allows seeing the extent of the role of advocacy groups to influence the decision-making process. In polyarchy the following seven institutions are highly achieved: elected officials; free and fair elections; inclusive suffrage; right to run for office; freedom of expression; alternative information; and associational autonomy.²²⁶ Active humanitarian advocacy is possible only in more developed democracy, in which advocacy groups have a better chance to enjoy legitimate and open arenas with rightful access to the channels of authority and to the public, utilizing their rights to freedom of speech, publication, and assembly in order to reach and educate the general public and rights to lobby elected officials and government authorities to change or improve governmental policies. On the other hand, politics in

²²⁵ Thirty member states of the OECD, as of December 7, 2006, are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

²²⁶ Robert A. Dahl, *Democracy and Its Critics*, New Haven: Yale University Press, 1989.

a less democratic government, even though it might guarantee free elections, does not guarantee the rule of law, freedom of speech and assembly, and freedom from censorship, thus imposing implicit and explicit regulations on the activities of advocacy groups. Though there exist NGOs in less democratic systems, their functions are mainly to transfer donor funds and provide economic and social services rather than to advocate policy change or improvement.

Second, relatively higher GDP per capita of OECD members indicates higher potential commitment to mine action and socio-economic development assistance, thus providing the existence of related norms with domestic salience. To focus on OECD members also allows a meaningful pattern of government attitude towards AV mines with anti-handling devices and sensitive fuses since the production of AV mines with anti-handling devices or sensitive fuses requires advanced technologies which are mainly available in advanced economies.

In the next chapter, Chapter 5, I will start by establishing the aggregate pattern of variation of OECD governments. Governments with both the OECD and the 1997 AP Mine Ban Treaty membership fall into two major categories of definitions of AP mines: (1) those who adopt the effect-oriented definition of AP mines under the 1997 AP Mine Ban Treaty; (2) those which adopt the design-oriented definition of AP mines. Then, I will examine the correlation between the definition patterns and the extent of stake each government has in AV mines as of 2002. The research will demonstrate a positive correlation between the two, thus suggesting the influence of the military stake in AV mines on a government's definition of AP mines. Governments with higher levels of military stake in AV mines will tend to support a

narrower definition, the design-oriented definition of AP mines. Governments with lower territorial concern will tend to support a wider definition, the effect-oriented definition, of AP mines.

In Chapter 6, the research will embark on qualitative studies of the influence of humanitarian advocacy on governmental definition of AP mines. For detailed studies, I select two governments from each category of governmental attitude: the Canadian and the Austrian governments from Category 1; the French and the German governments from Category 2. The reasons for the choice of these four governments are the relatively visible advocacy activities and the availability of data on them. I will observe and examine humanitarian advocacy work for five years, from 1998 through 2002. By 2002, five years after the conclusion of the treaty, the issue on the definition of AP mines had been well recognized by signatories, and arguments both in the domestic and international arenas have been made.

In studying the influence of both the elements of the military stakes in AV mines and humanitarian advocacy on the definition of AP mines, the research will demonstrate the weak influence of humanitarian advocacy: the more coherent and focused humanitarian advocacy groups in France and Germany than those in Canada and Austria have less influence on governmental definition of AP mines. Lastly, in Chapter 7, I will compare the French and the German governments; the latter has shifted its definition of AP mines from the design-oriented to the effect-oriented definition. The research covers the period between 2003 and 2006 to observe the discussions between government officials and humanitarian advocates about the interpretation of AP mines. The study will demonstrate that the cause of the

difference lies in the advocacy tactics to change the discourse from military technology to civilian protection. The German humanitarian advocacy successfully established the legitimacy of its humanitarian discourse and the German government shifted to the effect-oriented definition of AP mines.

Chapter 5 The Influence of Government's Military Concerns on the Patterns of the Definition of AP Mines among Signatories to the 1997 AP Mine Ban Treaty

1. Introduction

This chapter seeks to demonstrate how governmental armament policy is affected by a government's military concern. For this purpose, I will empirically demonstrate that a government's decision on the controversial definition of anti-personnel (AP) mines under the 1997 AP Mine Ban Treaty correlates with the level of stake a government has in anti-vehicle mines (AV) mines with anti-handling (including sensitive fuses).

The definition of AP mines under the treaty affects signatory governments' landmine policy because there exists a possible definition which would also include and prohibit AV mines with anti-handling devices, which some signatories still use. AV mines with anti-handling devices are used as alternatives to banned AP mines; anti-handling devices, such as sensitive tilt rod, anti-lift/pressure release devices, and trip wires, function in the role that AP mines used to play, to lie together with an AV mine and protect it from being tampered with or removed by enemy hands. An AV mine with an anti-handling device could, however, be unintentionally touched or tampered by a civilian, thus detonating the AV mine and killing or injuring the civilian. Thus there have emerged two competing rules for the definition of AP mines: (1) AV mines with anti-handling devices that could be exploded with the unintended contact of a person are prohibited under Article 2 (the effect-oriented definition), and (2) AV mines with anti-handling devices are not prohibited under Article 2 (the design-oriented definition). The effect-oriented definition of AP mines under the treaty regards such AV mines with anti-handling devices as AP mines due

to their anti-personnel effects and thus prohibiting them, while the design-oriented definition of AP mines excludes such AV mines with anti-handling devices from the category of AP mines since they are designed as AV mines, however dangerous they are to civilians. The effect-oriented definition of AP mines could protect civilians better than the design-oriented definition since the former covers many more types of mines under the jurisdiction of the 1997 AP Mine Ban Treaty, thus prohibiting many more types of AV mines and preventing many more potential mine accidents. My research hypothesizes that the level of perceived necessity of AV mines with anti-handling devices will affect the way a government defines AP mines under the 1997 AP Mine Ban Treaty.

In the following section, I begin by categorizing each government according to the definition of AP mines which it espouses. Then, I will examine how each government's definition of AP mines corresponds with the level of perceived necessity of AV mines with anti-handling devices. The level of perceived necessity consists of two elements: the number of types of AV mines in production and the level of territorial concern a government perceives. First, I compare each government's definition and the number of types of AV mines with potential anti-personnel effects in production. Second, I compare each government's definition and the level of territorial concern. Lastly, the research will conduct an empirical examination of the general patterns of participation in the 1997 AP Mine Ban Treaty in order to reconfirm the influence of territorial security on the issue of AP mines in general. As explained in the previous chapter, the research examines OECD (Organization for Economic Co-operation and Development) governments' decisions

on the definition of AP mines, with the exceptions of non-signatory governments of Finland, Poland, South Korea, and the United States.²²⁷

2. Levels of Stake in AV Mines with Anti-Handling Devices and Governmental Choices of the Definition of AP mines

The two realist elements which will affect a government's calculation of stakes for the possession of AV mines with anti-handling devices are (1) the number of types of AV mines with anti-handling devices and (2) the existence of any territorial threats. In evaluating the cost and risk of suspending the production and use of AV mines with anti-handling devices, a government considers the number of AV mines with protective devices in production and the existence of any territorial threats. The number of AV mines in production reflects the cost of replacing AV mines with alternative weapons and that of research and development of alternative weapons. Though the number of AV mines in possession could indicate a government's stake in landmines more accurately than that in production, I will use the former due to the unavailability of complete data on each government's possession of AV mines. The level of territorial security affects a government's estimation of the current and future necessity of AV mines.

2-A. Governments' Definitions of AP Mines

Interviews, surveys, and governments' public statements show that 17 OECD governments had adopted the effect-oriented definition of AP mines under the 1997 AP Mine Ban Treaty up through 2004: the governments of Australia, Austria,

²²⁷ Though Poland signed the treaty in December 1997, it is still under process for ratification as of March 2007.

Belgium, Czech Republic, Canada, Greece, Hungary, Iceland, Ireland, Italy, Mexico, Netherlands, New Zealand, Norway, Portugal, Slovakia, and Switzerland. On the other hand, the governments of the following seven states use the design-oriented definition of AP mines: Denmark, France, Germany, Japan, Spain, Sweden, Turkey, and the United Kingdom.²²⁸ The governmental policy of Luxembourg was not discernible from official statements or policy implementation.

2-B. Number of Types of AV Mines with Protective Devices in Production

Human Rights Watch's research results from 2000, which provide minutely detailed information on the risk levels of AV mines in production,²²⁹ help one to examine the intricacies of AV mine production. In the two categories of risk levels, mines of "primary concern" are those AV mines with design features or capabilities that are judged to pose the greatest threat of exploding or detonating as the result of an unintentional act. The other category, "secondary concern," lists those mines for which, while they may pose a threat of exploding or detonating as the result of an unintentional act, data are still insufficient to render judgment regarding the stimuli or forces necessary to activate their kill mechanisms.²³⁰

The overall outcome of the examination of the production of AV mines representing primary and secondary concerns reveals a clear positive correlation between governments' sense of the necessity of AV mines with anti-handling devices and their definition of AP mines. A government with a greater variety of AV mines in

²²⁸ *Landmine Monitor Report 1999-2004*. Available at <http://www.icbl.org/lm/>.

²²⁹ The report was submitted to the Standing Committee of the 1997 AP Mine Ban Treaty in 2000.

²³⁰ Human Rights Watch Fact Sheet, "Antivehicle Mines With Antihandling Devices," prepared by Mark Hiznay and Stephen Goose for the First Meeting of the Standing Committee of Experts on the General Status and Operation of the Convention, January 10-11, 2000.

production tends to embrace the design-oriented definition, whereas a government with a smaller variety of AV mines in production tends to hold an effect-oriented definition. Governments with the effect-oriented definition produce on average four types of AV mines with potential AP effects while governments with the design-oriented definition produce on average ten types of AV mines with potential AP effects.

The contrast between the two groups becomes starker when the average number of AV mines in primary concern and secondary concern are examined separately. As indicated in Figure 5-1 and Figure 5-2 below, both in AV mines of primary and secondary concerns, governments with the effect-oriented definition had a lesser variety of AV mines than those with the design-oriented definition. Governments with the effect-oriented definition had on average 1.43 types of AV mines of primary concern, while those with the design-oriented definition produced on average 3.12 types of AV mines of primary concerns. As for AV mines of secondary concern, governments with the effect-oriented definition produce on average 2.93 types of AV mines whereas governments with design-oriented definition had on average 6.75 types of AV mines of secondary concern.

Figure 5-1 Production of Mines of Primary and Secondary Concerns by Governments with the Effect-Oriented Definition of AP Mines²³¹

| | Primary Concern | Secondary Concern |
|---------------------------------|-----------------|-------------------|
| Australia | 0 | 0 |
| Austria | 5 | 7 |
| Belgium | 3 | 3 |
| Canada | 0 | 0 |
| Czech (Slovakia) ²³² | 2 | 7 |

²³¹ ICBL, Landmine Monitor Fact Sheet, prepared by Human Rights Watch, "Mines with Sensitive Fuzes and Antihandling Devices, Article 2," June 2005. <http://hrw.org/landmines/avmahd1.htm>. Human Rights Watch Fact Sheet, "Antivehicle Mines With Antihandling Devices," 2000.

| | | |
|-------------|--------------------------|--------------------------|
| Greece | 1 | 0 |
| Hungary | 1 | 2 |
| Iceland | 0 | 0 |
| Ireland | 0 | 0 |
| Italy | 11 | 22 |
| Mexico | 0 | 0 |
| Netherlands | 0 | 5 |
| New Zealand | 0 | 0 |
| Norway | 0 | 0 |
| Portugal | 0 | 1 |
| Switzerland | 0 | 0 |
| Average | Total 23 Average 1.43 | Total 47 Average 2.93 |

Figure 5-2 Production of Mines of Primary and Secondary Concerns by Governments with the Design-Oriented Definition of AP Mines

| | Primary concern | Secondary concern |
|--------------------|--------------------------|--------------------------|
| Denmark | 0 | 4 |
| France | 13 | 24 |
| Germany | 5 | 9 |
| Japan | 0 | 5 |
| Spain | 2 | 0 |
| Sweden | 5 | 8 |
| Turkey | 0 | 0 |
| The United Kingdom | 0 | 4 |
| Average | Total 25 Average 3.12 | Total 54 Average 6.75 |

3. Experience of Internal and External Conflicts

The existence and experience of internal or external conflicts matter for a government's decision-making on landmine policy. Governments faced with more intense conflicts will see more urgency to prepare and use mines than those faced with less intense conflicts and will be more reluctant to suspend and destroy AV mines. Even though many reports disproved the military utility of AP mines and led to the conclusion of the AP Mine Ban Treaty in 1997, governments perceive the

²³² Data in the Human Rights Watch Fact Sheet, "Antivehicle Mines With Antihandling Devices," used the data of Czechoslovakia.

military utility of landmines, including AV mines, in terms of both defense and offense. While landmines have been used for border protection in peacetime, they also carry distinctive utility for military tactics during armed conflicts. Now that AP mines have been abolished under the 1997 AP Mine Ban Treaty, the evaluation of the military utility of AV mines, especially those with antihandling devices, has increased.

According to the databases on conflict in the Stockholm International Peace Research Institute,²³³ OECD governments have not experienced large-scale international or internal armed conflicts during the fifteen years of the research period, 1992 and 2006. Based on the conflict intensity index developed by the Heidelberg Institute on International Conflict Research as shown in Table 5-1,²³⁴ most conflicts of OECD countries range from level one of no violence to level three of violent force in sporadic incidents as shown in Figure 5-2 and Figure 5-3. The only exception, a level four conflict, was the Turkish conflict with the militant ethnic separatist Kurdish guerrilla group, falling just short of the level of regular interstate war which produces thousands of casualties.

²³³ Stockholm International Peace Research Institute. "Major armed Conflicts: Violent and Non-Violent Conflicts," last updated September 2005. Available at <http://first.sipri.org/index.php?page=step3&compact=true>.

²³⁴ All the conflict surveys in this chapter are based on the data from the Stockholm International Peace Research Institute's "Facts on International Relations and Security Trends Database" and from the Central Intelligence Agency's "Field Listing-Disputes-International, the World Factbook." The former is available at <http://first.sipri.org/index.php>. The latter is available at <https://www.cia.gov/cia/publications/factbook/fields/2070.html>.

Table 5-1: Levels of Conflict Intensity²³⁵

| State of Violence | Level of Intensity | Name of Intensity | Definition |
|---------------------------------|--------------------|-------------------|---|
| non-violent (perceived threats) | 1 | Latent Conflict | A positional difference over values of national meaning. The difference is recognized by each party. |
| | 2 | Manifest Conflict | The use of measures that are located in the preliminary stage to violent force, including verbal pressure, threatening explicitly with violence, or the imposition of economic sanctions. |
| violent | 3 | Crisis | A tense situation in which at least one of the parties uses violent force in sporadic incidents. |
| | 4 | Severe Crisis | Violent force is repeatedly used in an organized way. |
| | 5 | War | Violent force is used with certain continuity in an organized and systematic way. The extent of destruction is massive and of long duration. |

Since the end of the Second World War, there has been no major conflict among major powers. Most high-level conflicts which broke out after the end of the Cold War have been in non-OECD states. Most conflicts of OECD states were at level one, in which there was no explicit violence. Some were over fishery zones in the ocean, with a lesser likelihood for the use of landmines, for example the dispute between France and Canada over the fishery industry off the coast of French territory, St. Pierre and Miquelon, which reached agreement in 1994 without any violence. For another instance, a low-level conflict between Norway and Iceland over the fishery zones located between the mainland of Norway and the Svalvard archipelago, about midway between Norway and the North Pole, has continued, with the Norwegian authorities' first arrest of Icelandic vessels in the Fishery Protection Zone around Svalvard in 1994.

Conflicts which originated in economic, social, cultural, and environmental issues ended at lower levels of conflict intensity and have had no report of the use, the

²³⁵ Constructed by the Heidelberg Institute for International Conflict Research. Available at http://www.hiik.de/methodik/methodik_ab_2003.html.en.

alleged use, or injuries from landmines. The Turkish government's new safety and environmental regulations in response to the increasingly heavy traffic in the Bosphorus Straits, over which the Turkish government has sovereignty on the condition of the free passage of international vessels in peacetime, caused disputes with the Russian government whose oil tankers use the Bosphorus Straits from the terminal at Novorossiysk to the Mediterranean Sea. Negotiations have continued in the dispute over Slovakia's construction of power-plant Gabachikovo, which the Hungarian government argues has caused deterioration in the quality of drinking water in the region and the extra imposition of duties on trading goods from and into Hungary due to alteration of the natural boundary line between the two states, the middle of the Danube River. The altered natural border changed the navigational route for trade through the territory of Slovakia. The two governments have been continuing negotiations following the recommendation of the International Court of Justice in September 1997.²³⁶

Cultural conflicts remained non-violent and were resolved through negotiations. The Greek government has had a latent conflict with the Macedonian government since 1991 over the usage of the name Macedonia as Macedonia's state name. South Tyrol province in northern Italy had ethnic tensions between the German- and Italian-speaking populations until 1992, when both sides reached an agreement giving full equality of the German language and free cultural development of the German and Ladin populations in the region.

²³⁶ The Trade and Environment Databases. TED Case Study, "Hungary Dam." Available at <http://www.american.edu/TED/hungary.htm>

Some of OECD governments' territorial disputes, in which landmines, if disputes escalate, have a substantial likelihood of offensive and defensive use to secure disrupted borders, to restrict enemy movement, and to channel the movement of attacking enemy forces to the advantage of defending forces, have been resolved or remained at lower conflict levels with no report of the use, the alleged use, or incidents of landmines. Conflicts over independence in former French colonies have been almost entirely resolved. Agitation by the New Caledonians for the political independence of New Caledonia ended in the Noumea Accord in 1998, which transferred an increasing amount of governing responsibility from the French to the New Caledonian authority over a period of fifteen to twenty years. The July 2002 resolution of the long-held territorial dispute between the Spanish and the British governments over the sovereignty of Gibraltar, a self-governing British colony, has left in its wake another dispute between the local government and the two governments. The local government's opposition in November 2002 to the agreement on the joint sovereignty over Gibraltar by the Spanish and British governments has been rejected by the two governments.

Some territorial disputes have left reports of the use or the alleged use of mines, and mine incidents, mainly from governments which hold the design-oriented definition of AP mines. The Turkish government made clear that it had used mines in two territorial conflicts. The Turkish government had used mines until January 1998²³⁷ on its border regions, particularly in the southeast region bordering Syria, Iran, and Iraq, for the purpose of halting the attacks by the Kurdistan Workers' Party

²³⁷ *Landmine Monitor Report 2001*, "Turkey."

(PKK)²³⁸ on Turkey from these neighboring states.²³⁹ The Turkish government's crackdown on the Kurdish insurgency group had continued since 1982 when the Turkish government explicitly denounced the Kurdish separatism in the 1982 Constitution. Though the Turkish government's counter-insurgency operations against a separatist insurgency group successfully captured the group's leader in 1999, which led to the withdrawal of the insurgents from Turkey mainly to northern Iraq, PKK resumed attacks in 2004. Territorial disputes over Cyprus between the Greek and Turkish governments since the violent clash between the Greek Cypriot majority and Turkish Cypriot minority in the capital of Nicosia in December 1963 culminated in the 1974 invasion by Turkish forces of northern Cyprus in response to Greek government-sponsored attempt to seize control of Cyprus. In the process, though, the Turkish forces laid thousands of mines in and near the buffer zone separating the Turkish-controlled area from the Greek Cypriot-controlled area.²⁴⁰

The Spanish government used landmines in its territorial conflicts with the Moroccan government. The Spanish army planted mines all along the border between the former Spanish Sahara and Morocco, in order to stop the *Green March*, a mass demonstration by Moroccans to appeal for the return of the Spanish Sahara to Morocco in November 1975.²⁴¹ The Spanish government had also disputed with the Moroccan government over the Spanish enclaves Ceuta and Melilla, on the northern coast of Africa, between 1961 and 1999. Though the conflict remained at the preliminary stage of violent force and the use of mines by the Spanish government

²³⁸ PKK was renamed in 2003 as Kongra-Gel (KGK), the People's Congress of Kurdistan.

²³⁹ *Landmine Monitor Report 1999*, "Turkey."

²⁴⁰ United States Department of State, *Hidden Killers: The Global Problem with Uncleared Landmines*, 1993, p. 78.

²⁴¹ *Landmine Monitor Report 1999*, "Spain."

ended in 1975, the Spanish Army had kept landmine stockpiles until its entry into the 1997 AP Mine Ban Treaty in case there was any serious conflict with Morocco which could threaten its hegemony in Ceuta and Melilla.²⁴²

The French government has faced some revolts from part of its contiguous territory and from its former colonies. The *Front de la Libération de la Corse* sought independence of Corsica from France between 1975 and 1999. The French government in 1999 admitted having used AP mines to protect the Solenzara Air Base in southern Corsica, though the area had already been demined in 1998.²⁴³

Some governments face the potential or actual use of mines by rebel forces in ethnic and religious internal conflicts. The Spanish government's long-running campaign against Basque Fatherland and Liberty (*Euskadi Ta Askatasuna*, ETA), a non-state group dedicated to promoting Basque independence since 1959, has continued with repeated ceasefire breaches on the part of the ETA. There is a report of the ETA's stockpiling of landmines, although the ETA insists no use of them in its anti-government actions.²⁴⁴ According to media reports, the Basque government had been buying some landmines from 1991 until 1996 to train the police, just in case ETA was thinking about using them.²⁴⁵

The Mexican government has faced armed rebellions by the Zapatista Army of National Liberation (Zapatistas, or *Ejército Zapatista de Liberación Nacional*), which began an uprising in 1994 as a protest to the North American Free Trade Agreement (NAFTA), which could damage the economic and social life of the

²⁴² *Landmine Monitor Report 1999*, "Spain."

²⁴³ French Senate, Group of Republican Communists and Citizens, session of 14 June 1998, Banning and Elimination of Antipersonnel Mines. *Landmine Monitor Report 1999*, "France."

²⁴⁴ *Landmine Monitor Report 1999*, "Spain."

²⁴⁵ *Landmine Monitor Report 1999*, "Spain."

indigenous population in Chiapas. Though controversial, there are letters on the declaration of mine use in Chiapas by the Zapatista Army of National Liberation to mine all terrestrial accesses on the rebel territory in order to avoid a possible night incursion of the Mexican army.²⁴⁶ Besides the Zapatista Army, there are reports from the U.S. State Department report and media about the alleged mine use by drug traffickers in Sinaloa, Chihuahua, and Sonora,²⁴⁷ though the Mexican government denies it.

The British government carries the long-lasting regional conflict in Northern Ireland. There is no record of landmine injury or killing on any party involved, including the Royal Ulster Constabulary,²⁴⁸ the British Army, the Irish Defense Force, or any person engaged in paramilitary activities. No AP mines have been found in the ground in the state or along the border between the Republic of Ireland and Northern Ireland, even though Northern Ireland, a part of the United Kingdom, has been for many years the site of a violent and bitter ethno-political conflict between the Nationalists, who are predominantly Catholic, and the Unionists, who are predominantly Protestant, over the future political direction of Northern Ireland. Still, commercial and homemade explosives were used by the paramilitaries from both sides for bombing campaigns.

Cease-fires in the conflict have failed repeatedly. Even after the series of resolutions, the Irish government's renouncement of territorial claims on Northern Ireland in 1998, the formation of the multiparty Northern Irish government headed by the Ulster Unionist leader in December 1999, and the end of British direct rule of the

²⁴⁶ *Landmine Monitor Report 1999*, "Mexico."

²⁴⁷ U.S. Department of State, *Hidden Killers: The Global Landmine Crisis*, December 1994, p. 23.

²⁴⁸ The Royal Ulster Constabulary was renamed as the Police Service of Northern Ireland in 2001.

province, occasional failures of disarmament on the part of the Irish Republican Army (IRA), fighting for the Nationalists,²⁴⁹ led to the British government's suspension of the self-government plan.

Figure 5-3 Conflict Intensity of the Conflicts Governments with Effect-Oriented Definition of Mines Face

Conflict Intensity: 1-latent; 2-manifest conflict; 3-crisis; 4-severe crisis; and 5-war.

| | International Disputes, 1992-2006 | Conflict Intensity |
|-------------|--|--|
| Australia | None | 0 |
| Austria | None | 0 |
| Belgium | None | 0 |
| Canada | Québec | 1 |
| | St. Pierre and Miguel till 1992 | 1 |
| Czech | With Lichtenstein since 1990- ²⁵⁰ | 1 |
| Greece | Macedonia till 1995 | 1 |
| | Cyprus (with Turkey) | 3 (left from the civil war days in the 1940s; but no use now) |
| Hungary | With Slovakia over Gabchikowo | 1 |
| Iceland | With Norway over fishery zone | 1 |
| Ireland | Northern Ireland since 1968 | 3 (no landmine) |
| Italy | South Tyrol till 1992 | 1 |
| Mexico | Chiapas | 3 (no landmine by the government; but allegedly by the rebels) |
| Netherlands | None | 0 |
| New Zealand | None | 0 |
| Norway | With Iceland over fishery zones | 1 |
| Portugal | None | 0 |
| Slovakia | Hungarian minority | 2 |
| | Slovakia with Hungary over Gabchikowo | 1 |
| | With Lichtenstein since 1990- | 1 |
| Switzerland | None | 0 |
| Average | | Total 17 Average 1 |

Source: Stockholm International Peace Research Institute. "Major armed conflicts: Violent and Non-Violent Conflicts," last updated September 2005. Available at <http://first.sipri.org/index.php?page=step3&compact=true>

²⁴⁹ The IRA is the illegal military arm of an Irish political party, the Sinn Fein Party.

²⁵⁰ Even though the conflict started in 1990 before Czechoslovakia split into the Czech Republic and the Slovak Republic on January 1, 2003, I will treat the dispute both Republics face as of 2009 separately since the dispute with Lichtenstein has been continuing in both Republics.

Figure 5-4 Conflict Intensity of the Conflicts Governments with the Design-Oriented Definition of Mines Face

Conflict Intensity: 1-latent; 2-manifest conflict; 3-crisis; 4-severe crisis; and 5-war.

| | International Disputes 1992-2006 | Intensity |
|--------------------|--|-------------------------|
| Denmark | No conflict | 0 |
| France | St.Pierre and Miquelon | 1 |
| | Tromelin | 1 |
| | Corse | 1 |
| | Tahiti upspring after atomic tests in 1995 | 1 |
| | Glorieuses Islands till 1990 | 1 |
| Germany | No conflict | 0 |
| Japan | Russia--Kurils | 1 |
| | Korea--Takeshima | 1 |
| Spain | Morocco | 2 |
| | Gibraltar | 1 |
| | Basque | 3 |
| Sweden | No conflict | 0 |
| Turkey | Cyprus | 3 |
| | Russia | 1 |
| | Syria/Iraq –water | 1 |
| | Syria | 1 |
| | Kurds | 4 |
| The United Kingdom | Northern Ireland | 3 |
| | Gibraltar | 1 |
| Average | | Total 12 Average 1.5 |

Source: Stockholm International Peace Research Institute. "Major armed conflicts: Violent and Non-Violent Conflicts," last updated September 2005. Available at <http://first.sipri.org/index.php?page=step3&compact=true>

Figure 5-3 and Figure 5-4 summarize the relationship between the conflict intensity levels and the definition of AP mines in OECD governments. I calculated the average levels of conflict intensity in the governments of both the effect-oriented definition and the design-oriented definition by choosing the highest intensity each government faces. This is because each government's military preparedness will be calculated based on the worst case scenario. For example, in the case of the United Kingdom, the level of conflict intensity is 3 even though the conflict in Gibraltar is 1.

From Figure 5-3 and Figure 5-4, the influence of territorial security concerns on the definition of AP mines is obvious. Governments with the design-oriented definition tend to have conflicts of higher intensity, while those with the effect-

oriented definition of AP mines tend to have experienced conflicts of lower intensity. For governments with the effect-oriented definition of AP mines, the average intensity of a conflict is 1 while for governments with design-oriented definition, the average intensity of a conflict is 1.50. The obvious use, including past use, of landmines by governments was only in those with the design-oriented definition of AP mines, Turkey, France, and Spain.

Still, these figures alone may not seem adequate to show a clear influence of territorial security on landmine policy since the overall levels of conflicts involving OECD governments have been very low. In the next section, I will examine the empirical data on government participation in the 1997 AP Mine Ban Treaty in order to see whether participation patterns correlate with the level(s) of territorial security each government face.

4. The Strong Impact of Territorial Security on the Patterns of Participation in the 1997 AP Mine Ban Treaty

The influence of territorial security on governmental policy is also validated by the pattern of participation in the 1997 AP Mine Ban Treaty. The perception of territorial security has affected the pattern of participation in the 1997 Mine Ban Treaty as well as the pattern of definition of AP mines under the treaty. This section will demonstrate the positive correlation between the perception of the importance of territorial security and participation in the treaty.

As elaborated below, the average conflict intensity of non-signatories is much higher than that of signatories. In practice, non-signatories to the treaty justify their decisions based on their state interests. Many of the forty non-signatory

governments²⁵¹ have gotten involved in conflicts of higher intensity. Most insist on the necessity of AP mines for the defense of their territorial borders and the unavailability of alternative weapons and defense systems for the lack of sufficient financial and technical capabilities.

These non-signatories are the governments of Armenia, Azerbaijan, Bahrain, Burma, China, Cuba, Egypt, Finland, Georgia, India, Iran, Iraq, Israel, Kazakhstan, North Korea, South Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Micronesia, Mongolia, Morocco, Nepal, Pakistan, Palau, the Russian Federation, Saudi Arabia, Singapore, Somalia, Sri Lanka, Syria, Tonga, Tuvalu, the United Arab Emirates, the United States of America, Uzbekistan, and Vietnam.

Many of these countries have been engaged in armed conflicts of high intensity. As Table 6 shows, the average conflict intensity of the non-signatories is 2.25, much higher than that of signatory OECD governments, including governments of both the design-oriented definition and the effect-oriented definition, in the previous section, which was 1.25.

Many governments attribute their non-signatory status to ongoing conflicts they have been involved in. For example, the governments of Armenia and Azerbaijan, having exchanged sporadic fire in the Nagorno-Karabakh even after the 1994 ceasefire agreement ending six years of war, have expressed security concerns over each other and argued for the necessity of maintaining AP mines.²⁵² The Georgian government insists on the necessity to keep AP mines due to the insecurity in mined areas in Abkhazia, over which the Georgian government lacks de facto

²⁵¹ Non-signatory status of these governments is as of February 7, 2007.

²⁵² *Landmine Monitor Report 2004*, “Armenia” and “Azerbaijan.”

jurisdiction following the uprising of Abkhazi rebels seeking independence from the Georgian government's rule.²⁵³ The Israeli government explains the necessity to keep AP mines from its security concerns over occasional military attacks from guerillas in neighboring Lebanon and Palestine.

The strongly territorial-based idea of sovereignty also supports the defensive use of AP mines for border protection as a legitimate exercise of sovereignty. Some governments claim the right to possess and use AP mines even if the levels of conflict they engaged in are low. For instance, the Chinese government, which has faced three conflicts of intensity level 2, defended its possession and use of AP mines as the legitimate defense requirements of sovereign states.²⁵⁴ In spite of a long-subsidied conflict with the United States, the Cuban government, whose average conflict intensity is 1, continues to legitimize the use of AP mines in the area immediately surrounding the area of Guantanamo, which has been used as a U.S. naval base, since the Cuban government believes that the use of AP mines would strengthen the defensive capacity of Cuba to preserve its sovereignty and territorial integrity.²⁵⁵

Furthermore, many of the non-signatory governments claim the military utility of AP mines due to lack of financial and technical resources to perform the treaty obligations to clean landmines and to develop alternative weapons to guard often long national borders. An official of Kyrgyzstan commented in a committee under the treaty that AP mines were a cheap means of border protection for its mountainous

²⁵³ *Landmine Report Monitor 2004*, "Georgia."

²⁵⁴ "White Paper: China's National Defense," Information Office of the State Council, People's Republic of China, 27 July 1998. Cited in *Landmine Monitor Report 1999*, "China."

²⁵⁵ *Landmine Monitor Report 1999*, "Cuba."

topography, noting that 80 percent of its border is mountainous and unreachable.²⁵⁶ A governmental official from Laos affirmed his country's non-signatory status, commenting that, "Given a small population and inadequate border guards to patrol the border, these mines [AP mines] are used in some border points in order to defend the nation."²⁵⁷

Figure 5-5 Conflicts and Conflict Intensity of Non-Signatories to the 1997 AP Mine Ban Treaty between 1992-2006

Conflict Intensity: 1-latent; 2-manifest conflict; 3-crisis; 4-severe crisis; and 5-war.

| State name | Conflicts | Conflict intensity |
|------------|---------------------------------------|--------------------|
| Armenia | Azerbaijan | 4 |
| Azerbaijan | Armenia | 4 |
| Bahrain | With Qatar over sea border | 1 |
| Burma | Karen | 4 |
| China | Turkestan -1999 | 2 |
| | Tibet | 2 |
| | Uigur | 1 |
| | Vietnam | 1 |
| | India border 63-93 | 1 |
| | Kazakhstan 90-93 | 1 |
| | Taiwan | 1 |
| | Vietnam (Spratly) | 2 |
| Cuba | U.S.A. | 1 |
| | Guantanamo territorial | 1 |
| Egypt | Sudan (territorial) | 4 |
| | Islamists vs. the Egyptian government | 4 |
| Finland | none | 0 |
| Georgia | Abkhazia | 4 |
| | South Ossetia | 4 |
| India | Assam | 2 |
| | Punjab | 3 |
| | Ayodhya | 3 |
| | Kashmir | 3 |
| Iran | With Iraq | 2 |
| | Mujaheddin-e Khalq | 2 |
| | Saudi Arabia over Iranians' | 2 |

²⁵⁶ Statement in the Standing Committee on General Status and Operation of the Convention in 2006. Cited in *Landmine Monitor Report 2006*, "Kyrgyzstan."

²⁵⁷ Interview with Somphanh Phengkhammy, Minister of Labor and Social Welfare, Vientiane, 6 February 2004. Cited in *Landmine Monitor Report 2006*, "Lao People's Democratic Republic."

| | | |
|--------------------|--|---|
| | Mecca pilgrimage UAE territory | 1 |
| Iraq | Iran | 2 |
| | Turkey over Kurds | 3 |
| | Turkey over rivers | 1 |
| | Kuwait | 3 |
| | Shiite vs. Sunni (2003-) | 4 |
| Israel | Lebanon (Hizbolla) | 4 |
| | Intifada (until 1993) | 4 |
| | Palestine | 4 |
| | Jordan (over the Jordan river) | 1 |
| Kazakhstan | Kyrgyzstan over boundary demarcation | 1 |
| | Turkmenistan over seabed boundary | 1 |
| North Korea | South Korea | 1 |
| South Korea | North Korea | 1 |
| Kyrgyzstan | Kazakhstan over boundary demarcation | 1 |
| | Tajikistan over boundary demarcation | 1 |
| | Uzbekistan over boundary demarcation | 1 |
| Kuwait | Iraq (until 1994) | 3 |
| | Saudi Arabia water territory | 1 |
| Laos | Thailand over border | 2 |
| Lebanon | Israel | 4 |
| | Palestine | 3 |
| Libya | U.S.A. | 2 |
| | Over the Chad border | 2 |
| Micronesia | None | 0 |
| Mongolia | No conflict | 0 |
| Morocco | Western Sahara | 2 |
| Nepal | Civil war | 4 |
| Pakistan | Civil war at Karachi | 3 |
| Palau | The Philippines-maritime delineation | 1 |
| | Indonesia-maritime delineation | 1 |
| | | |
| Russian Federation | Japan | 1 |
| | Inguchia North Ossetia | 1 |
| | Azerbaijan | 3 |
| | Tartastan till 1994 | 1 |
| | Chechnya | 4 |
| | Turkey (Bosphorus) | 1 |
| Saudi Arabia | Kuwait border (islands) | 1 |
| | Yemen over the maritime border demarcation | 1 |
| | Iran | 1 |
| | Quatar border 1999 | 2 |
| Singapore | none | 0 |
| Somalia | Civil war | 4 |
| | Somaliland secession | 3 |
| Sri Lanka | Tamil | 4 |
| Syria | Turkey--water | 3 |

| | | |
|------------|-------------------------------|---|
| Tonga | None | 0 |
| Tuvalu | none | 0 |
| UAE | Iran over territory islands | 2 |
| USA | Cuba Guantanamo | 2 |
| | Libya | 3 |
| Uzbekistan | Kyrgystan | 1 |
| Vietnam | China territory | 3 |
| Average | Total number of conflicts: 75 | Intensity total: 88 Average conflict intensity: 2.25 |

Source: Stockholm International Peace Research Institute. "Major Armed Conflicts: Violent and Non-Violent Conflicts," last updated September 2005. Available at <http://first.sipri.org/index.php?page=step3&compact=true>

5. Conclusion

This chapter has presented empirical research on the relationship between OECD governments' definitions of AP mines under the 1997 AP Mine Ban Treaty and their perceptions of the necessity of AV mines with anti-handling devices, which are used as alternatives to banned AP mines. The research results suggest that a government's estimation of stakes on AV mines with anti-handling devices, which includes the types of AV mines in production and the level of territorial security, corresponds with the way a government defines AP mines. Governments with the design-oriented definition of AP mines tend to have a wider variety of AV mines in production and face conflicts with higher intensity, while governments with the effect-oriented definition of AP mines tend to have a smaller variety of AV mines in production and face conflicts with lower intensity. The more a government sees the perceived necessity of AV mines with anti-handling devices, the more types of AV mines the government tends to exempt from the jurisdiction of the treaty by adopting the design-oriented definition of AP mines.

The influence of territorial security seems relatively weak in the OECD cases since the range of conflict intensity OECD governments have faced is relatively

skewed to lower levels. Still, the significance of territorial security in landmine policy is reconfirmed by the examination of the pattern of participation in the 1997 AP Mine Ban Treaty: signatory governments have faced higher levels of territorial security than non-signatories have. In other words, signatories have less concern about territorial security than non-signatories. Consequently, it is reasonably inferred that territorial security plays a part in the decision on the participation in the 1997 AP Mine Ban Treaty and then, after the decision to participate, also in the decision-making on the definition of AP mines under the treaty.

Based on this chapter's findings of the huge influence of government's estimation of stakes in AV mines on landmine policy, the next chapter explores whether there is any room for the influence of humanitarian advocacy on landmine policies. Process tracing of the interactions between the government and humanitarian advocacy in four states, Austria, Canada, France, and Germany, will demonstrate the limited extent of the influence of humanitarian advocacy on governments and the strong influence of government's estimation of stakes on AV mines.

Chapter 6 The Influence of Humanitarian Advocacy Groups on Governments

This chapter tests the relationship between different levels of state interest at stake and the influence of humanitarian advocacy groups on governments. I will examine how humanitarian advocacy groups' discourse influences a government's definition of anti-personnel (AP) mines under the 1997 AP Mine Ban Treaty. A comparative case study of the activities of humanitarian advocacy groups in four cases—Austria, Canada, France, and Germany—will demonstrate the government's strong military-centered orientation and the weak influence of humanitarian advocacy groups on a government's decision on the definition of AP mines. I select and compare governments from the two categories of the definition of AP mines: the Austrian and the Canadian governments with the effect-oriented definition of mines, on the one hand, and the French and German governments with the design-oriented definition, on the other. Significantly, while French and German humanitarian advocacy groups, which had advantages in accessibility and information availability, failed to persuade their governments, the Canadian and Austrian humanitarian advocacy groups, with fewer advantages in accessibility and information availability, succeeded in persuading their governments.

Austrian and Canadian Advocacy Groups

The Austrian and Canadian humanitarian advocacy groups had little cooperation with legislators in the issue of the definition of AP mines though they had close collaborative relationships with their governments and legislators in other issue areas

of mine action, such as mine clearance and victim assistance. Neither of them conducted systematic research on the safety of AV mines with anti-handling devices possessed by its government or established a joint project or campaign to persuade the government. Their inquiries with governments were rather for collecting information for the Landmine Monitor Report, a civil-society-based reporting and monitoring system, than for requiring modifications on governmental standards on AV mines.

1. Austrian Advocacy Activities

The Austrian Aide for Mine Victims (AAMV) was the leading Austrian NGO to inquire into the issue of the definition of AP mines.²⁵⁸ Still, the issue of the definition of AP mines was only a small part among the many agendas the AAMV set, which included victim assistance and socio-economic reintegration projects in Cambodia and Kosovo.

Intense technical discussion with the Austrian government has not been the AAMV's campaign strategy of choice. Rather, the AAMV has geared its strategy more toward the public, both domestically and internationally. The AAMV's focus on victim assistance led the AAMV more toward field work, public campaigns, and fundraising campaigns. The AAMV, in cooperation with the Mines Advisory Group,

²⁵⁸ The Austrian Red Cross prepared an initial draft law to ban AP mines domestically with professional support by the ICRC and entered into force in the beginning of 1997. In 1996, a campaign organized by the Austrian Red Cross gained the support of 120,000 signatures in favor of a law banning antipersonnel mines. Such a law entered into force at the beginning of this year." Other main Austrian NGOs in the issue of AP mines, HOPE 87, Horizont 3000, and the Austrian Red Cross, also focus on the protection of mine victims and development-oriented mine actions. Other Austrian NGOs involved in mine action are Care-Austria, Caritas-Austria, Dreikonigsaktion, Friedensburo, the Rotary club in Salzburg-West, and the UNICEF-Austria. This listing is not exclusive.

a British NGO,²⁵⁹ worked in the field for victim assistance, and on socio-economic reintegration projects with emphasis on a developmental, community-focused approach to the problems of landmines, working in close liaison with communities and building partnerships with local groups in mine-affected countries,²⁶⁰ especially Afghanistan, Cambodia, and states in Africa or the Middle East. They undertook fact-finding missions and produced documentaries of mine-affected countries in Bosnia-Herzegovina, Burma, Cambodia, Costa Rica, Laos, Mozambique, Nicaragua, Sri Lanka, Turkey, Thailand, Tanzania, and Vietnam.

Other advocacy issues the AAMV has been involved in are the universalization of the treaty, the inclusion of non-state actors in the treaty, and the incorporation of gender elements into mine action. Public advocacy and media lobbying at relevant international conferences for a mine-free world, public events and education, interviews in print media, radio, and TV have made up the main part of the AAMV's work. The AAMV formally requested Chancellor Wolfgang Schuessel to address the universalization of the Mine Ban Treaty at the Asia-Europe Summit in Seoul, in particular vis-à-vis a non-signatory Korea.²⁶¹ The AAMV wrote to the Minister for Foreign Affairs in January 2003 emphasizing the importance of involving non-state actors in the universalization of the treaty.²⁶²

1-A. Access and Information

²⁵⁹ The Director of AAMV, Judith Majlath, is patron of the British Mines Advisory Group MAG.

²⁶⁰ Austrian Aid for Mine Victims, "Introduction to Austrian Aid for Mine Victims (AAMV)."

²⁶¹ Letter from AAMV to Chancellor Wolfgang Schuessel, October 16, 2000. *Landmine Monitor Report 2001*, "Austria."

²⁶² *Landmine Monitor Report 2003*, "Austria."

The AAMV has established and maintained a close relationship with the Austrian government even though their collaboration has been informal rather than official. The AAMV has been a campaign partner of the Austrian government in the Ottawa Process and continued to cooperate in field work.

The Austrian government recognizes the important role of the AAMV as campaign partner in the banning of AP mines. In the Action Program of the Austrian government for the “International Year of Volunteers 2001,” in the Speech by the Federal Minister of Social Services Herbert Haupt and Interior Minister Dr. Ernst Strasser, the Austrian government recognized the role of the AAMV as the main NGO in the campaign for the success of the total ban on antipersonnel mines in Austria.²⁶³ The Austrian Federal Ministry of Foreign Affairs also provides financial support to two projects of the AAMV as a partner of the Austrian government’s mine action program.²⁶⁴ AAMV has received governmental funding for the victim assistance operation in Cambodia in 2000-2001 and in 2004.²⁶⁵

However, the AAMV’s close collaboration with the Austrian government did not reach the issue of the definition of AP mines. First, there exists no steady partnership or even consistently open lines of communication between the AAMV and the Austrian government. There exists no national NGO-platform or national strategy to assist capacity-building in the NGO sector.

²⁶³ Bundesminister Mag. Herbert Haupt and Bundesminister Dr. Ernst Strasser, *Internationales Jahr der Freiwilligen 2001; Aktionsprogramm der Österreichischen Bundesregierung* (International Year of Volunteer 2001: Actionprogram of the Austrian Federal Government), December 4, 2000.

²⁶⁴ *Evaluierung des Österreichischen Minenaktions-programms 1998-2002. Desk-Studie. Beauftragt vom Österreichischen Bundesministerium für Auswärtige Angelegenheiten, Sektion für Entwicklungszusammenarbeit, Abteilung VII. 6* (Evaluation of the Austrian Mine Action Programs 1998-2002: Commissioned by the Austrian Federal Ministry for Foreign Affairs, Section VII 6), Vienna, Austria. December 2002, p.14.

²⁶⁵ *Article 7 Report*, “Austria,” January 1- December 31, 2001. Available at <http://disarmament2.un.org/MineBan.nsf/>.

Second, the AAMV did not conduct an independent campaign for the definition of AP mines. The AAMV dealt with the issue only for the country monitor report of the Landmine Monitor System. The AAMV did not construct its own data of the AV mines possessed by the Austrian army. The AAMV inquired about any suspicious practices only when isolated incidents occurred. The inquiry was rather a one-time inquiry without any follow-up arguments or counterarguments with evidence. When responses from governments were very insufficient and incomplete, the AAMV did not go for further investigation or presentation of rebuttals.

The AAMV questioned both the government and the producer of directional fragmentation mines, also known as Claymore mines. This mine is effective against thin-skinned vehicles such as jeeps and trucks. The fragments will puncture tires, gas tanks, radiators, and engine accessories. Claymore mines were problematic since their trip wire could be activated by the unintentional contact of a person. First, the AAMV queried the Austrian Chamber of Commerce, an agency under the Federal Ministry of Interior in charge of receiving the record of existing stockpiles of AP mines prohibited, about the transfer of Claymore mines.²⁶⁶ The AAMV also solicited answers from the managing director of Dynamit Nobel Wien, the production company of Claymore mines, regarding Claymore mines which could have anti-personnel effects if used in victim-detonated mode.²⁶⁷ Furthermore, the AAMV sought assurance from the Ministry of Defense that antihandling devices attached to

²⁶⁶ *Das Bundesgesetz über das Verbot von Antipersonenminen, Artikel III § 1, Article IV. BGBl. I Nr. 13/1997* (The Austrian Federal Law on the Prohibition on Anti-Personnel Landmines, Article 3 Section 1, Article 4.)

²⁶⁷ Letter from the Austrian Chamber of Commerce to the AAMV, December 8, 1997. Letter from H Richter, Managing Director, Dynamit Nobel Wien, to the AAMV, May 8, 2000. Both were cited in the *Landmine Report 2000*, "Austria." Available at <http://www.icbl.org/lm/2000/austria.html>.

them cannot be activated by unintentional disturbance, since they explode only when tipped a certain degree after excavation.²⁶⁸ The Defence Ministry ascertained that the anti-vehicle (AV) mine, the DFC 19, is only command-detonated.²⁶⁹

1-B. The Attitude of the Austrian Government towards the Definition of AP Mines

In spite of the AAMV's lack of independent campaigns or research and lack of cooperation with parliamentarians, the Austrian government was very responsive to AAMV's inquiries and adopted the effect-oriented definition of AP mines as early as 2000. At the first meeting of the Standing Committee on General Status held in January 2000, the Austrian government was one of the governments that reiterated that AV mines with antihandling devices which function like AP mines—which may explode from an unintentional act of a person—are banned under the 1997 AP Mine Ban Treaty.

In response to the inquiry about the safety of Claymore mines, the Austrian government was prompt in correcting the tripwire mode of Claymore mines stockpiled in the Austrian Federal Army. The Austrian government closed the hole for tripwire in the Claymore mine so that any use of tripwire mode is forbidden, thus requiring that all the Claymore mines in stock be in a command-detonated mode and be in compliance with the AP mine ban treaty and domestic law.²⁷⁰

²⁶⁸ AAMV's interviews with Lt.Col. Hamberger, Ministry of Defence, Vienna, January 8 and January 16, 2001. *Landmine Monitor Report 2001*, "Austria." Available at <http://www.icbl.org/lm/2001/austria/>.

²⁶⁹ AAMV's interviews with Lt.Col. Hamberger, Ministry of Defence, Vienna, January 8 and January 16, 2001. *Landmine Monitor Report 2001*, "Austria."

²⁷⁰ Alexander Lang, Legal Affairs Division, Austrian Red Cross, Report on the Demonstration and Information on Meeting, Felixdorf, Austria, December 18, 1997. AAMV's interview with Dr. Doujak, Ministry of Foreign Affairs, and Lt. Col. Hamberger, Ministry of Defense, Vienna, March 20, 2000 and subsequent telephone interviews and emails, March-April 2000. All cited in the *Landmine Monitor Report 1999*, "Austria."

The Austrian government disclosed its record of export and admitted that it had exported AV mines with potential AP effects. The Chamber of Commerce in Austria quickly responded to the AAMV inquiry about the legality of the export of Claymore mines to Norway in spring 1997, after the Austrian national law prohibiting the export of AP mines took effect in January 1997. First, the Chamber of Commerce investigated the issue and revealed that Claymore mines had been exported not only to Norway, but also to Switzerland, Sweden, Brazil, and the Netherlands—even though the license to export these mines had already been issued in 1996, before the law took effect in January 1997. The Chamber of Commerce admitted that at that time the Ministry of Interior had considered both tripwire-activated and command-detonated AP mines to be exempted from prohibition under the Austrian law and that only those AP mines delivered to Brazil were physically adapted to prevent tripwire/victim-activation.²⁷¹ Since that time, the Ministry of Interior has strictly controlled and monitored sales of Claymore mines, making strict checks on end-use; any such mines exported have been adapted so that they can only be command-detonated, and re-conversion for use with tripwires is ruled out.²⁷² Afterwards, the Ministry of Interior rejected any new application for an export license of Claymore mines by a mine production company, such as the one by Dynamit Nobel Wien in July 1999.²⁷³

²⁷¹ Alexander Lang, Report of the meeting of December 18, 1997, Cited in the *Landmine Monitor Report 2000*, “Austria.”

²⁷² AAMV’s interview with Dr. Lohberger, Chamber of Commerce, Vienna, March 28, 2000. Cited in the *Landmine Monitor Report 2000*, “Austria.”

²⁷³ AAMV’s telephone interview with Dr. Schnabl, Ministry of the Interior, Vienna, March 20, 2000. Cited in the *Landmine Monitor Report 2000*, “Austria.”

Furthermore, the Austrian government has been willing to set best practices for more detailed regulation of AP mines. At the Standing Committee on May 11, 2001, the Austrian government agreed on the Dutch government's view that the issue should be dealt with by adopting and reporting on voluntary "best practices." The Austrian delegation also supported the recommendation that state parties review their inventories of AV mines to ensure that the risk to civilians is minimized in the Standing Committee Meeting on the General Operation and Status of the Convention in February 2002.²⁷⁴ Furthermore, at the fourth Meeting of States Parties, the Austrian government welcomed practical steps suggested by the ICRC intended to take the issue "beyond legalistic debate" and encouraged all states to express views in the hope of convergence.²⁷⁵

However, the Austrian government was not completely responsive. In practice, the AAMV occasionally made persistent inquiries and the Austrian government showed cautious and secretive stance to them. The AAMV in cooperation with Human Rights Watch made persistent inquiries when responses from the Austrian government were unclear or insufficient. In response to Human Rights Watch's identification of eleven types of AV mines with anti-handling devices of potential concern in Austria,²⁷⁶ the Austrian government made comments only on five types of AV mines. Other than the comments, the Austrian government merely

²⁷⁴ *Landmine Monitor Report 2002*, "Austria."

²⁷⁵ AAMV's intervention by the Austrian delegation, the Fourth Meeting of States Parties, Geneva, 16-20, September 2002. Landmine Monitor notes. Cited in the *Landmine Monitor Report 2003*, Austria.

²⁷⁶ Mark Hiznay and Stephen Goose, "Human Rights Watch Fact Sheet: Antivehicle Mines with Antihandling Devices," prepared for the Standing Committee on the General Status and Operation of the Convention, Geneva, 10-11 January, 2000, p.4. The identified AV mines in Austria are as follows: the ATM6, ATM7, ATM 2000, PM83, and Pz MI 85 M due to sensitive fuzing; the AVM, SCRAM 95, SMI 21/11 C and SMI 22/7C because of IR sensors; the Model 67 and Model 75 because of secondary fuze wells for antihandling devices; and the PM3000, which has a built-in antihandling devices.

gave a general confirmation of the safety of the AV mines in the arsenal. It stated in May 2000 that it “possesses only such types of anti-tank mines [including AV mines] as are compatible with the content of the treaty and national regulations and international obligations.”²⁷⁷ The Ministry of Defense repeated this statement in 2002.²⁷⁸ The Ministry of Defense never identified the total number of types of AV mines in possession.

Two types of AV mines out of the five identified by the Ministry of Defense received a simple comment that they are not known to the ministry. As for the two types of AV mines, the PM83 and the PzMi 85 M, both of which were pointed out as being equipped with tilt rod fuses, the Austrian government did not clarify whether they are no longer produced or they have never produced. Furthermore, the Ministry of Defense avoided any legal assessment of the two types of AV mines as to whether they would be permitted in agreement with the Austrian Republic's international legal obligations.²⁷⁹

The Ministry of Defense confirmed and commented on the safety of only three types of AV mines held by the Austrian army, the DFC 19, the Pz75 (AT mine) and the Pz88 (AT mine). According to the Ministry of Defense, the DFC 19 is only command-detonated²⁸⁰ and the Pz88, equipped with an anti-handling device, explodes

²⁷⁷ Letter from Lt. Col. Hamberger, Ministry of Defense, to the AAMV, May 9, 2000. Cited in the *Landmine Monitor Report 2000*, “Austria.”

²⁷⁸ AAMV's interview with Lt.-Col. Monsberger, Arms Control Section, Ministry of Defense, Vienna, March 27, 2002. Cited in the *Landmine Monitor Report 2002*, “Austria.”

²⁷⁹ Letter from Lt.-Col. Hamberger, Ministry of Defense, to the AAMV, May 9, 2000. Cited in the *Landmine Monitor Report 2000*, “Austria.”

²⁸⁰ AAMV's interview with Lt. Col. Hans Hamberger, Ministry of Defense, Vienna, January 8, 2001. Cited in *Landmine Monitor Report 2001*, Austria.

only when tipped a certain degree after excavation, making the amount of disturbance necessary to initiate the mine greater than an unintentional act of a person.²⁸¹

Another case of secrecy the AAMV faced was regarding the inquiry about igniters which could be activated by the unintentional contact of a person. When the AAMV investigated the safety of igniters whose licenses are transferred to other states, the Ministry of Interior confirmed that licenses for igniters are issued only for command-detonated electric igniters. The Ministry of Interior, however, did not provide any examples or names due to official secrecy.²⁸² When the AAMV and researchers of the Landmine Monitor further continued the investigation and expressed concerns specifically about the Dynamit Nobel Graz/ Dynamit Nobel Wien (DNG/DNW) DETO-Spring Percussion Igniter, an ignition system that can be released either manually or by tripwire, Austrian officials did not show interest in pursuing this matter with DNG/DNW.²⁸³ In response to the advocates' own inquiries, the managing director of DNW confirmed the suspension of the production and the destruction of the igniter.²⁸⁴

The defense ministry only responded that igniters that are detonated by the unintentional contact or approach of persons are no longer produced by any Austrian company.²⁸⁵

²⁸¹ AAMV's interviews with Lt.-Col. Hamberger, Ministry of Defence, Vienna, January 8 and January 16, 2001. *Landmine Monitor Report 2001*, Austria. Also in Human Rights Watch, "Antivehicle Mines with Sensitive Fuzes or with Antihandling devices," February 25, 2002, p.10.

²⁸² AAMV's interview with Dr. Schnabl, official responsible for issuing export licenses for war materials, Ministry of the Interior, December 20, 2000.

²⁸³ *Landmine Monitor Report 2001*, "Austria."

²⁸⁴ AAMV's interview with Hermann Richter, Managing Director, Dynamit Nobel Wien, January 8, 2001.

²⁸⁵ AAMV's interviews with Lt.-Col. Hamberger, Ministry of Defence, Vienna, January 8 and January 16, 2001. *Landmine Monitor Report 2001*, Austria.

The stance of the Austrian government toward the effect-oriented definition of AP mines had gradually assumed a more compromising tone. In the Standing Committee Meeting in May 2002, the Austrian delegation renewed the legal analysis of the definition of AP mines and anti-handling devices. Before the meeting in May 2002, the Austrian government interpreted the treaty as prohibiting anti-handling devices that could be exploded by “unintentional” activities. However, in the meeting in May, the Austrian government gave a compromising view that even unconscious tampering could constitute the act of tampering, thus indicating that anti-handling devices that could be exploded by unintentional activities are legal. According to the Austrian government, when a person is unaware that he or she is tampering with an anti-handling device, as far as it is tampering, it is considered not as unintentional activities, but as tampering.²⁸⁶ This Austrian interpretation allows the possibility that children playing with anti-handling devices without knowing that they are tampering with anti-handling devices could be hurt from their contacts with the so-called “legitimate” anti-handling devices.

In 2003 the Austrian government started to recognize both interpretations of the definition of AP mines. This contradicts the official statement of Austria in 2000, which viewed that the effect-oriented definition was consistent with the diplomatic record.²⁸⁷ In 2003, the Austrian government commented that both interpretations—the effect-oriented and design-oriented definitions—constitute good-faith implementations of the 1997 AP Mine Ban Treaty. With this comment, the Austrian

²⁸⁶ Statement of Austria to the Standing Committee on the General Status and Operation of the Convention, Geneva, May 31, 2002. Cited in the *Landmine Monitor Report, 2002*, “Austria.”

²⁸⁷ Oral statement of the Austrian Delegation, Standing Committee of Experts on the General Status and Operation of the Convention, Geneva, Switzerland, 10-11 January 2000. *Landmine Monitor Report 2000*, “Austria.”

government clearly distanced itself from its prior stance that only the effect-oriented definition is the natural understanding from the negotiation process of the 1997 AP Mine Ban Treaty. The Austrian government ceased any further talk on the definition of AP mines in the arena of the 1997 AP Mine Ban Treaty and left negotiations for a solution to the problem to the arena of the Convention on Conventional Weapons (CCW).²⁸⁸

It is interpreted that the Austrian government changed its attitude toward the definition of AP mines because Austria's commitment to the defect-oriented definition was tentative from the start. This mixed attitude could be supported by the fact that the Austrian government was one of the main promoters of the 1997 AP Mine Ban Treaty and by the relatively larger number of types of AV mines in production in Austria. As the promoter of the treaty, the success of the treaty was important for the Austrian government. The Austrian government drafted the original text of the treaty.²⁸⁹ The Austrian government also took the initiative in developing the format for Article 7 reporting, mandatory annual report on treaty implementation to the Secretary-General of the United Nations.²⁹⁰ Moreover, the Austrian foreign minister has made continuous efforts to increase the number of signatories to the

²⁸⁸ Statement of the Austria delegation, "Addressing the humanitarian problems that may pose similar risks to the civilian population as AP-mines," in the 5th Meeting of States Parties, September 18, 2003. Available at http://www.apminebanconvention.org/fileadmin/pdf/mbc/MSP/5MSP/update_day4/Austria_5MSP_18_Sept_2003.pdf.

²⁸⁹ The Austrian government's treaty draft excluded such mines with more than one use, hybrid mines; the original draft defined AP mines as "a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more reasons." Some states criticized the Austrian definition and states agreed in the Vienna meeting in February 1997 that the word 'primarily' will be removed from the original definition. Thomas Hajnoczi, Thomas Desch, and Deborah Chatsis, "the Ban Treaty," in Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin eds., *To Walk without Fear: The Global Movement to Ban Landmines*, 1998, p. 298.

²⁹⁰ Landmine Monitor Report's interview with Dr. Doujak, Ministry of Foreign Affairs, and Lt. Col. Hamberger, Ministry of Defense, Vienna, 20 March 2000. Cited in *Landmine Monitor Report 1999*, "Austria."

treaty, especially by making efforts to achieve a coordinated EU policy on AP mines and by reporting and condemning any new use of landmine use, especially by the Yugoslav army in Kosovo in 1999.²⁹¹

Beside the humanitarian commitment to the treaty, there exists the fact that the Austrian government had a relatively higher number of the types of AV mines in production. Certainly, the Austrian government's overall military stake in AV mines was still low. During 1992 through 2006, the Austrian government had no armed dispute or conflict. The Austrian government did not face even a latent conflict. However, a closer look at the Austrian production of AV mines reveals that the number of the types of AV mines produced in Austria is relatively larger than that in other states with the effect-oriented definition of AP mines, even though the number in Austria was lower than other major powers with the design-oriented definition of AP mines, such as Germany and France. Among the countries with the effect-oriented definition, Austria is the second largest producer of AV mines with potential AP effects. Austria produces twelve types of AV mines, second to Italy, which reportedly produces thirty-three types of AV mines with potential AP effects. The average number of types of AV mines produced in the states with the effect-oriented definition of AP mines is 4.3.

Thus, it can be concluded that the Austrian government's adoption of the effect-oriented definition of AP mines at the early stage in spite of the Austrian advocacy group's low level of concern over the issue was due to the government's humanitarian commitment to the treaty and the low level of military stake the

²⁹¹ Landmine Monitor's interview with Dr. Gerhard Doujak, Ministry of Foreign Affairs and Lt. Col. Hans Hamberger, Section for Arms Control, Non-proliferation and Verification, Ministry of Defense, Vienna, March 20, 2000. Cited in *Landmine Monitor Report 1999*, "Austria."

Austrian government had in AV mines. However, the Austrian government's compromising attitude towards the definition of AP mines, admitting the legitimacy of the design-oriented definition, also reflects the Austrian government's relatively larger number of the types of AV mines in production.

2. Canadian Advocacy Activities

Like the AAMV, the Mines Action Canada (MAC),²⁹² the leading Canadian landmine advocacy coalition, has not had a negotiating arena with the Canadian government or a systematic dialogue about the effect-oriented definition of AP mines.²⁹³ MAC has treated the issue of definition more reactively than systematically. MAC did not conduct any research on the danger of anti-handling devices and sensitive fuses. As a coalition of more than forty Canadian NGOs working in disparate issue areas, including peace, development, labor, human rights, as well as mine action, MAC has engaged in a wide range of mine actions from the implementation of programs in the field to the directing of international and domestic advocacy efforts toward governments. As a core member of the ICBL, MAC has also engaged in administrative work for the Landmine Monitor.

The partnership between MAC and the Canadian government hardly played an important role in the discourse of AV mines with potential AP effects. Though MAC had taken several positions in the decision-making of mine actions as advisor and reviewer, these positions are outside the issue of the definition of AP mines.

²⁹² MAC is composed of forty Canadian organizations.

²⁹³ MAC is a coalition of Canadian NGOs working in mine action, peace, development, labor, health, youth and human rights.

2-A. Access and Information

MAC's close collaborative relationship with the Canadian government has been in issue areas other than the issue of the definition of AP mines. MAC has participated in the Canadian delegation in inter-governmental meetings and the Canadian government has provided generous financial support to MAC. Since the Ottawa Process, MAC has gained various positions to participate in the decision-making process of landmine action, related to mine action funding and projects in the field rather than the definition of AP mines under the 1997 AP Mine Ban Treaty. Since May 1996, when the CCW Review Conference reconvened for the amendment of AP mine protocol (Protocol II), the Canadian government invited a representative of the MAC coalition to participate as a member of the official delegation. After the conclusion of the 1997 AP Mine Ban Treaty, MAC has been represented in the official Canadian delegation in the annual state party meeting. MAC is also on the advisory committee of the Canadian Landmine Fund,²⁹⁴ which focuses on coordination of mine actions in the field among agencies involved, including governmental agencies, such as the Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA), and civil society. MAC also participated in a review committee for field operations. Two MAC members joined the NGO Project Review committee under CIDA, to provide NGO perspective and analysis to the decision-making process. MAC has assessed that this enables NGOs to compete with commercial firms for tendered projects and to access normal CIDA channels, which otherwise might not be as flexible or

²⁹⁴ It was originally initiated by the then Prime Minister Chrétien. DFAIT Press Release No. 67, March 24, 1998.

accessible.²⁹⁵ MAC has taken an observer position in the center in charge of research and development of demining technology, the Canadian Centre for Mine Action Technology (CCMAT). Even though CCMAT offered MAC a seat in the management committee, MAC, in opposition to CCMAT's engagement in the research and development of alternative weapons, has chosen to sit as an observer in CCMAT.

MAC's close collaborative relationship with the Canadian government was reflected in the government's substantial financial support for MAC. In 2000, approximately 83 % of MAC's revenue was from the Canadian government. In 2001, the governmental support was 75 % of MAC's revenue.²⁹⁶

From its experiences of collaboration with the Canadian government before the conclusion of the 1997 AP Mine Ban Treaty, MAC has learned the difficulty of influencing the actions of governmental officials even with a position of participation in the decision-making process of armament policy.²⁹⁷ The Liberal government, which started in 1993 and pledged to adopt a broader definition of security encompassing sustainable development, invited MAC to join the review process of foreign and defense policies, the Foreign Policy Review, and gave opportunities to meet with government officials regularly, to be duly informed of government activities and positions related to landmines, and to make presentations on MAC's views on the issues of landmines. These opportunities gave MAC a greater role in the

²⁹⁵ *Landmine Monitor Report 1999*, Canada.

²⁹⁶ Out of MAC's total revenue of \$ 879,528 in 2001, \$ 733,674 was from the Canadian government. In 2000, the total revenue was \$1,445,484 and \$1,079,922 was from the Canadian government. *MAC Annual Report 2000-2001*, p. 13.

²⁹⁷ Valerie Warmington and Celina Tuttle, "The Canadian Campaign," in Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomplin eds., *To Walk without Fear: The Global Movement to Ban Landmines*, Toronto: Oxford University Press, 1998, pp. 50-51.

landmine policymaking process.²⁹⁸ Still, MAC has admitted the difficulty in changing governmental officials' thought toward civilian protection away from the military utility of AP mines.²⁹⁹ Members of MAC noted that it was after the beginning of the Ottawa Process, initiated by the then foreign minister Lloyd Axworthy in October 1996, when the Canadian government ceased to be defensive in response to MAC's calls for a total ban on AP mines.³⁰⁰

MAC's close relationship with the Canadian government led MAC to perform more as a promoter of the 1997 AP Mine Ban Treaty than as a monitor of the treaty. Substantial financial support from the government for MAC was directed for international support in universalization, ratification, and implementation activities through assistance of pro-ban civil society organizations in Latin America, Africa, and Eastern Europe. Domestically, the funding supported MAC's collaboration with DFAIT in the development of a multi-media/multi-sectoral mine action outreach program in Canada.³⁰¹ MAC's expenses for education, outreach, and international programs counted 63 % of the total expenses in 2000, and 86 % in 2001.³⁰²

In spite of these close collaborations between MAC and the Canadian government, MAC did not utilize such a close relationship to argue for the effect-oriented definition of AP mines. MAC's lack of independent research on AV mines led to an insufficient discourse with the Canadian government. MAC's discourse with

²⁹⁸ Mines Action Canada, "Organization Description," *Mines Action Canada Strategic Plan 2006-2010: Final Draft*, October 14, 2005.

²⁹⁹ Mines Action Canada, "Brief History."

<http://www.minesactioncanada.org/aboutus/index.cfm?fuseaction=History>.

³⁰⁰ Valerie Warmington and Celina Tuttle, "the Canadian Campaign," in Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin, eds., *To Walk without Fear, The Global movement to Ban Landmines*, Toronto: Oxford University Press, 1998, pp. 48-59.

³⁰¹ DFAIT, *Annual Report 1998-1999*, p. 14

³⁰² MAC, *Annual Report 2000-2001*, p. 14.

the Canadian government on the issue of AV mines was conducted more for the report for the Landmine Monitor. Indeed, MAC could gain access to governmental officials via email, telephone, and letter correspondence. These contacts, however, were more for collecting information about governmental practices than evaluating their practices and making recommendations. Such correspondence with the Canadian government did not lead to a sustainable conversation on the safety standard of AV mines with anti-handling devices or sensitive fuses. MAC did not pursue further investigation when the government's responses were unclear. For instance, when MAC could not obtain a clear answer from the Department of National Defence as to whether the anti-handling function of the controversial Claymore mine, M18A1, 5,400 of which were in stock, was modified, removed, or ever present,³⁰³ MAC did not conduct further systematic investigation. When the Department of National Defence confirmed the safety of DM 21,³⁰⁴ a German AV mine held in significant quantities in Canadian stockpiles, MAC did not conduct further investigation, either, even though the German advocacy group, the German Initiative to Ban Landmines, pointed out the possibility that the DM 21 mine's built-in tilt rod fuse can activate the mine with only a few kilograms of pressure to tilt the rod.³⁰⁵

Since MAC did not conduct systematic research on AV mines, MAC's inquiries were done in response to information from other NGOs and to media reports. MAC inquired about the safety of M18A1 only when Canadian Forces

³⁰³ Letter from Daniel Longtin, Director of Munitions Programme, National Defense Headquarters (NDHQ), March 12, 1999. Cited in *Landmine Monitor Report 1999*, "Canada."

³⁰⁴ Letter from Colonel E.S. Fitch, Director of Military Engineering, NDHQ, letter to MAC, August 24, 1998. Cited in *Landmine Monitor Report 1999*, "Canada."

³⁰⁵ Thomas Küchenheimer and the German Initiative to Ban Landmines (GIBL), "Antipersonnel Effects of Antivehicle Mines Information Paper: Why Antivehicle Mines Should Also Be Banned," January 2000. Markus Haake and the GIBL, "German's Landmine Policy in Twilight," August 2000.

carried the type of AV mines for international operations, such as the UN peacekeeping operation in East Timor in 1999 and the multilateral operation in Afghanistan since 2001. As for the Canadian Forces' stock of the universal booby-trap device, F1A1, which enables M18A1 to function in a tripwire mode, MAC only reported the fact without any recommendation of the removal of the device.³⁰⁶

Concerning the AV mine, FFV-028, MAC gained the information from Pax Christi, an NGO in the Netherlands, about the Canadian Forces' procurement of it. The Canadian Forces have bought 12,000 FFV-028 AV mines from the Dutch via Bofors.³⁰⁷ MAC reported having learned from a confidential source that the Dutch Ministry of Defense believed the result of the magnetic influence which FFV-028 AV mines would receive could harm innocent civilians because of the highly sensitive nature of its sensor.³⁰⁸ MAC also used media sources when a newspaper reported an injured Canadian soldier's possession of the Claymore mine, C 19, in Afghanistan.³⁰⁹ MAC queried the government as to whether it was in a command-detonated mode. MAC notified and warned against the Canadian government's omission of the information on Claymore mines in the Canadian report of Article 7 report in 2000 and 2001.³¹⁰

As a thematic focus, like the Austrian advocacy group, MAC has paid considerable attention to other issues of AP mines. MAC's activities under the 1997

³⁰⁶ *Landmine Monitor Report 1999*, "Canada".

³⁰⁷ Mines Action Canada/Pax Christi, Netherlands, email correspondence March 27, 1996. Cited in *Landmine Monitor Report 1999*, "Canada."

³⁰⁸ Confidential source. Cited in *Landmine Monitor Report 1999*.

³⁰⁹ Krista Foss, "Wounded troops eager to return to duty," *The Globe and Mail*, April 20, 2002.

³¹⁰ The Canadian government responded that it views that the reporting of command-detonated Claymore munitions is not required for reporting under Article 7. The Canadian government added that it holds only the equipment possible for deploying these weapons in command detonated mode. Email to Landmine Monitor (MAC) from Kerry Brinkert, DFAIT/ILX, July 25, 2001. Cited in *Landmine Monitor Report 2001*, "Canada".

AP Mine Ban Treaty focused on how to contribute to a longer-term aspect of humanitarianism: the development of policies and initiatives to support community-based humanitarian mine clearance, mine risk education, and victim rehabilitation as components of development and peace building.³¹¹ MAC measured the depth of governmental commitment to the issue of AP mines by the extent of mine clearance, victim assistance, and mine action education.³¹²

Furthermore, MAC's advocacy strategy was also directed toward the general public, both domestically and internationally. Domestically, MAC has focused on raising awareness and providing landmine education to the Canadian public to raise awareness and build up its capacities. Unique to MAC's methods of advocacy are its outreach efforts to raise the awareness of Canadian students and youth. MAC encouraged voluntary engagement of the youth in mine action, starting the Youth Mine Action Ambassador Program to get the youth involved in landmine actions and organizing the annual Appropriate Technology Competition for Canadian university students. MAC offered capacity building workshops for MAC member NGOs.

Internationally, MAC has engaged in administrative and logistical support of the ICBL and the Landmine Monitor through overseeing the Landmine Monitor Report and the development and management of an online database for Landmine Monitor program.³¹³ MAC published reports of international symposiums dealing with the overall assessment of the implementation of the 1997 AP Mine Ban Treaty

³¹¹ MAC, *Annual Report 2000-2001*, p.1.

³¹² *Ibid.*, p.4.

³¹³ *Ibid.*, p.3.

from a wide range of aspects.³¹⁴ Furthermore, MAC, in cooperation with the ICBL and the ICRC, has been providing workshops for implementing national legislation on AP mines for governments from developing states, especially for the Americas. In May 2003, MAC, the ICBL, and the ICRC, with the support of the government of Spain, provided a workshop on implementation of national legislation for America's governmental representatives in Geneva. Also in August 2003, MAC helped with a seminar, organized by the Organization of American States and the governments of Canada and Peru, about the major mine actions. MAC led the ICBL delegation and made a statement on progress and challenges in the Americas on behalf of the international campaign. MAC also organized and coordinated the participation of fellow campaigners from Colombia and Brazil. A Colombian landmine survivor participated, making a presentation on his experience with survivor assistance in the Colombian context.³¹⁵

Another reason for MAC's insufficient focus on AV mines is that MAC categorized the issue of AV mines within the wider category of victim-activated weapons. With its focus on the effort to ban all victim-activated weapons,³¹⁶ MAC included mines and mine-like weapons in a single category of victim-activated weapons. The issue of AV mines with anti-handling devices and sensitive fuses was included in the category of victim-activated weapons. Accordingly, the wording of the legal interpretation of AP mines under the 1997 AP Mine Ban Treaty has become

³¹⁴ For example, MAC's other publications are as follows: "Without Reservations: An International Symposium Addressing the Challenges of Achieving a Landmine Free World," December 2002; "Building the Road Beyond Nairobi," November 2004; "Working with Young People for a Mine Free World: How to Engage Young People in Campaigning," 2004; and "101 Great Ideas for the Socio-Economic Reintegration of Mine Survivors," June 2005.

³¹⁵ Mines Action Canada, *Annual Report 2003-2004*, 'What's on Your "TO-DO List?"' p. 11.

³¹⁶ Mines Action Canada, *Mines Action Canada Strategic Plan 2006-2010: Final Draft*, October 14, 2005.

only one of a range of MAC's activities to address and ban victim-activated weapons.³¹⁷

The two main types of victim-activated weapons which MAC paid attention to were explosive remnants of war (ERW) and cluster munitions. ERW are unexploded ordnance, which is conventional munitions containing explosives, and abandoned explosive ordnance. ERW include abandoned artillery shells, hand grenades, mortars, cluster submunitions, rockets and other explosive ordnance that remain after the end of an armed conflict. Cluster munitions are air-dropped or ground-launched munitions that eject hundreds of submunitions.

Like AP mines, ERW and cluster munitions have killed or injured many civilians during the post-conflict period. For MAC, the issue of AV mines with anti-handling devices or sensitive fuses is categorized either in ERW or cluster munitions. MAC has always emphasized humanitarian concerns and then the human and socio-economic impact of landmines and cluster bombs with antipersonnel effect.³¹⁸ MAC conducted a joint global survey in 2003-2004 on the post-conflict impact of ERW and AV mines, which was published in 2005.³¹⁹

Subsequently, in various arenas, MAC has addressed the problem of AV mines in two ways: as the issue of ERW in the CCW and as the issue of cluster munitions in a new international campaign. MAC was a driving force in including ERW in a new agenda of CCW to establish a new legal guideline on ERW. MAC has played a leadership role within the NGO community on the issue and was

³¹⁷ Draft minutes of MAC Annual General Meeting, March 28-29, 2000. Cited in MAC, "The Campaign Against Cluster Bombs: Key Consideration for Mines Action Canada," March 2001, p. 14.

³¹⁸ MAC, *Annual Report 2000-2001*, p.1.

³¹⁹ Landmine Action, Actiongroup Landmine.de, Mines Action Canada, "Explosive Remnants of War and Mines other than Anti-personnel Mines: Global Survey 2003-2004," 2005.

instrumental in developing the NGO statement to the 2nd Review Conference of the CCW in 2001.³²⁰

As for cluster munitions, as early as 2001, MAC's coalition members had already strongly supported a moratorium on production, sale, transfer, and the use of cluster munitions.³²¹ MAC reported an assessment of the humanitarian, legal, and strategic issues of cluster munitions.³²² It emphasized the danger of cluster munitions, largely due to bombing inaccuracy, for civilians and urged for a new legal regulation on cluster munitions. Since 2003, MAC, like the AAMV, has started an initiative toward a ban on cluster munitions. MAC supported and co-chaired the launch of a cluster munition coalition (CMC) in the Hague in November 2003. This event brought together civil society, governments, and international organizations to reaffirm their commitment to dealing with the dangers of cluster munitions and all ERW. MAC became the point of contact for the CMC and has undertaken various coordination, fundraising, and campaigning activities in this role.³²³

2- B. The Canadian Government's Stance toward the Definition of AP Mines

The Canadian government has shown concern about AV mines with potential AP effects and supported the effect-oriented definition of AP mines, though MAC did not have an independent agenda or research on the issue of the definition of AP mines.

MAC's discourse took the form of inquiries and collecting information on governmental practices rather than continuous policy assessment and

³²⁰ MAC, *Annual Report 2000-2001*, p.1.

³²¹ *Ibid.*, p.3.

³²² MAC, "The Campaign Against Cluster Bombs: Key Consideration for Mines Action Canada," March 2001.

³²³ MAC, *Annual Report 2003-2004*, 'What's on Your "TO-DO List?,"' P.9.

recommendation. At a technical meeting on AV mines with sensitive fuses and antihandling devices sponsored by the ICRC in March 2001, a Canadian delegation supported the effect-oriented definition of AP mines and the illegality of anti-handling devices that could explode from an intentional contact: “antihandling devices, other than those which activate when an attempt is made to tamper with or otherwise internationally disturb an anti-vehicle mine, and anti-vehicle mines with fusing devices which cause mines to function as anti-personnel mines, fall under Article 2 of the Ottawa Convention [the 1997 Antipersonnel Mine Ban Treaty] and are thus prohibited by the Convention.”³²⁴

The Canadian government implemented the effect-oriented definition of AP mines through voluntarily setting a safety standard and removing such anti-handling devices that did not meet the safety standard. The Canadian government reported the removal of tilt rod and pressure-activated AV mines with a minimal activation threshold of less than 150 kilograms based on the judgment that a tilt rod could be inadvertently touched by a person and detonate AV mines, thus banned by the 1997 AP Mine Ban Treaty.³²⁵

The Canadian government guaranteed the safety and legality of AV mines at issue from a variety of perspectives. As for the AV mine, C 19, carried by the Canadian forces in Afghanistan, the Defence Ministry explained that the C 19 is equipped only with a detonator for command-activated mode, not with a detonator for

³²⁴ Statement by the Canadian delegation in the meeting by the International Committee of the Red Cross. “Report on Technical Expert Meeting on Anti-Vehicle Mines with Sensitive Fuses or with Sensitive Anti-Handling Devices,” Geneva, March 13-14, 2001. Cited in the *Landmine Monitor Report 2004*, “Canada.”

³²⁵ Statement by the Canadian delegation in the ICRC meeting of March 13-14, 2001. Cited in the *Landmine Monitor Report 2001*, “Canada.”

trip wire of victim-activated mode. The Defence Ministry made it clear that the Canadian Armed Forces stock only command-activated detonators and are not permitted to possess victim-activated detonators for application to the C19. The Foreign Ministry confirmed that the command-activated cannot be switched back to victim-activated mode, since the Canadian Armed Forces are not allowed to possess accessories for such a conversion.³²⁶ Then, the Canadian Armed Forces are unable to convert the C19 into victim-activated mode, an AP mine.³²⁷ The DFAIT further guaranteed the safety of C 19 through improved maintenance in the transfer and production process: imported parts are screened to check that C 19 mines are produced without the built-in tripwire capability.³²⁸ The Canadian Forces have advised soldiers the illegality of the unauthorized use of C 19 mines that are booby-trapped to facilitate victim-activation and the potential punishment under Canadian law.³²⁹

In the matter of another controversial mine, the FFV-028, antitank mine with an integral magnetic-influence fuse, the Department of National Defence itself admitted that the mine could be controversial with its potential antipersonnel effects and that its tests remain “inconclusive,”³³⁰ and decided to modify the mine, replacing the current fuse with a safer, command-detonated, one.³³¹

³²⁶ Letter from Minister Lloyd Axworthy to MAC, received June 23, 2000. Cited in *Landmine Monitor Report 2000*, “Canada.”

³²⁷ *Landmine Monitor Report 2000*, “Canada.”

³²⁸ MAC/Col. Normand Levert (Liaison Officer to the Mine Action Team of the Department of Foreign Affairs and International Trade), telephone interview, February 5, 1999. Cited in *Landmine Monitor Report 1999*, “Canada.”

³²⁹ *Landmine Monitor Report 2000*, “Canada.”

³³⁰ *Landmine Monitor Report 1999*, “Canada.”

³³¹ MAC Telephone interview with Colonel Normand Levert, February 5, 1999. Cited in *Landmine Monitor Report 1999*, “Canada.”

The Canadian government's cooperation with MAC's inquiries and the adoption of the effect-oriented definition of AP mines in spite of the very weak advocacy of MAC might be explained by the Canadian government's rational calculation of state interest. The Canadian reputation mattered greatly in the issue of AP mine ban since the Canadian government was the driving force toward the conclusion of the 1997 AP Mine Ban Treaty. The Canadian foreign minister Lloyd Axworthy was the initiator of the Ottawa Process, a diplomatic procedure toward the conclusion of the treaty. The Canadian government itself was the initiator and promoter of the Landmine Monitor System, conceptualizing and strongly supporting the civil-society based monitoring system.³³² This explains the Canadian government's cooperation with MAC's inquiries for the purpose of collecting information for reporting to the Landmine Monitor.

Above all, the Canadian government had low stakes in AV mines. The extent of modification the Canadian government had to make on AV mines after the adoption of the effect-oriented definition of AP mines was low since all the AV mines used by the Canadian government were imported. The Canadian government had had a low level of territorial concerns since 1992 through 2006, involving only the low-intensity dispute over its fishery zone and the separatist movement in Quebec. The former dispute had no possibility of using landmines. The latter dispute had remained non-violent except several terrorist attacks by members of a secessionist and Marxist group, Quebec Liberation Front (*Front de libération du Québec*), against the Montreal Stock Exchange and shops with English names in the 1960s and 1970s.

³³² *Landmine Monitor Report 2000*, "Canada." Notes for an address by Foreign Affairs Minister Lloyd Axworthy to the Meeting of States Parties, Maputo, Mozambique, May 3, 1999.

Secessionists and federalist political parties in Quebec have recognized the each other's positional differences over the status of Québec and continued efforts to examine and define the nature of Quebec's association with the rest of Canada. Thus, the Canadian government had perceived little necessity to use AV mines as well as the prohibited AP mines and had no problem in choosing the effect-oriented definition of AP mines with or without advocacy pressure.

3. Summary of the Canadian and the Austrian Cases

Both Canadian and Austrian advocacy groups' commitment to the issue of AV mines with anti-handling devices and sensitive fuses was lower in comparison with their commitment to other issue areas of mine action. Neither conducted an independent research on AV mines. Though both advocacy groups have had maintained a close collaborative relationship with their governments, the collaboration took place in the areas other than the issue of the definition of AP mines. Their collaboration was through governmental funding for victim assistance operations in the field of mine-affected countries, negotiations for mine action funding and project in mine action in the field, coordination of mine actions in the field, assistance of pro-ban civil society in non-signatory states, and campaigns and workshops for raising awareness of the general public. The Canadian and Austrian advocacy groups' relationship with their governments on the issue of AV mines took the form of rather unilateral inquiries than mutual dialogue, falling short of persistent clarification of occasionally unclear and insufficient responses from the governments because both advocacy groups dealt

with the issue of AV mines only for collecting government information for the annual country report of the Landmine Monitor.

As the second hypothesis in chapter 3 suggested, the degree of military stake in AV mines a government perceives matters most for the decision on the definition of AP mines. Even if advocacy groups' technological discourse for the effect-oriented definition is weak, both the Austrian and the Canadian governments adopted the effect-oriented definition of AP mines. This is largely due to the relatively lower stakes both governments had in AV mines as well as both governments' serious humanitarian concerns about the issue of AP mines, which was well reflected in their leadership toward the ban on AP mines.

A closer look at the Austrian case further confirms the influence of the level of stake in AV mines. The Austrian government's change in the attitude toward the definition of AP mines after 2003 can be explained by the Austrian government's relatively higher stakes in AV mines. The number of AV mines in production was relatively higher than the other governments with the effect-oriented definition of AP mines. The Austrian government's relative secretiveness and partial disclosure of information on AV mines also indicate the sensitivity the Austrian government had in the issue of AV mines. The AAMV's insufficient push for the Austrian government's international effort toward the effect-oriented definition of AP mines allowed the Austrian government to calculate that its international reputation as leader of the Ottawa Process would not be damaged even if it admitted the legitimacy of the design-oriented definition of AP mines as well as the effect-oriented definition of AP mines.

In the following section, I will analyze the advocacy cases in France and Germany from 1998 through 2002. During this period, the French and the German governments maintained their support for the design-oriented definition of AP mines, even though both governments faced advocacy groups' appeal for the effect-oriented definition of AP mines, supported by persistent arguments based on detailed military information on the danger of AV mines with anti-handling devices or sensitive fuses for civilians. It was in 2005 when the German government shifted its stance from the design-oriented to the effect-oriented definition of AP mines. The French government stuck to the design-oriented definition of AP mines as of 2007.

4. French Advocacy Activities

French advocacy groups had privileges in terms of access to the decision-making process, and they compiled detailed weaponry information to measure the safety of AV mines in the French arsenal. The National Commission on the Elimination of Anti-Personnel Mines (*Commission nationale pour l'élimination des mines antipersonnel*, CNEMA) and Handicap International, the two main advocacy agents in France concerned with the definition of AP mines, have been consistently and thoroughly investigating the functioning and safety of AV mines in the French arsenal. Handicap International, as a member of CNEMA, could reflect its concerns about the safety of anti-handling devices in the agenda of CNEMA. However, CNEMA could not change the French government's design-oriented definition of AP mines.

4-A. Access to the Decision-Making Process

CNEMA's official status as the monitor of the French implementation of the 1997 AP Mine Ban Treaty gave it access to decision-makers. CNEMA was installed May 1999 by the French prime minister to verify governmental compliance with the 1997 AP Mine Ban Treaty in accordance with France's legislation on the 1997 AP Mine Ban Treaty.³³³ CNEMA assumed detailed responsibilities for the monitoring of the French implementation of the treaty, ranging from the suspension of production to use, transfer, and stockpiling of AP mines, covering the information of their types, quantities, and batch numbers.³³⁴ CNEMA members discuss the results of monitor reports and make recommendations to the government when CNEMA submits the annual report to the prime minister.³³⁵

CNEMA's institutional settings provide an excellent opportunity for humanitarian advocacy groups to get closer to the decision-making process. The diversity of membership provides an ideal arena for members of civil society, including humanitarian advocacy groups. CNEMA's membership includes both private and public members, including NGOs, governmental officials of the defense ministry and foreign ministry, and four parliamentarians (two *députés* and two senators). Members of CNEMA have a chance to exchange their views and information every two months in plenary sessions. The participation of NGOs and parliamentarians in a governmental body to monitor governmental compliance with

³³³ *Article 9, LOI no 98-564 du 8 juillet 1998 tendant à l'élimination des mines antipersonnel.* (Article 9, Law on the Elimination of Anti-Personnel Mines, No. 98-564, July 8, 1998) *Décret instituant une Commission nationale pour l'élimination des mines antipersonnel* (Decree no. 99-358 of May 10, 1999, on setting up a National Committee for the Elimination of Anti-Personnel Mines.).

³³⁴ Article 11, law No. 98-564, July 8, 1998.

³³⁵ Since 2005 CNEMA's annual reports have been submitted to the foreign ministry.

international treaties is unprecedented in France.³³⁶ The commission which monitors French compliance with the 1993 Chemical Weapons Convention, another humanitarian treaty, is composed of only four ministerial representatives.³³⁷ The adoption of CNEMA's annual report is decided by simple majority vote of the members.

As for the issue of the definition of AP mines, CNEMA has continued to serve as an important arena to talk about the danger of AV mines with anti-handling devices and sensitive fuses, even though the jurisdiction of CNEMA over the issue of AV mines with anti-handling devices or sensitive fuses was not clearly mandated in the national legislation. Some members from the section of civil society in CNEMA already had been concerned about the danger of AV mines with anti-handling devices or sensitive fuses even before the establishment of CNEMA. Handicap International, a CNEMA member since the establishment in 1999, was already mindful of the danger of AV mines and took the initiative to set the agenda of AV mines with anti-handling devices and sensitive fuses even before the conclusion of the 1997 AP Mine Ban Treaty in December 1997. In February 1997, Handicap International commissioned *Observatoire Des Transferts d'Armements* (the Observatory of Armament Transferred), to study the safety of AV mines with AP effects. Mr. Elomari Belkacem, director of the observatory, also became a member of CNEMA when it was established. The study, published in February 1997, thoroughly analyzed French landmine production, including the types of mines with sensitive fuses or with

³³⁶ *Landmine Monitor Report 1999*, "France."

³³⁷ *Landmine Monitor Report 1999*, "France."

antihandling devices and the names of their manufacturers, and listed some AV mines with anti-handling devices with potential antipersonnel effects.³³⁸

Among the issues warned of in the report was the name change of mines to hide the danger of AV mines. Handicap International warned against the potential use of AV mines with AP effects through name changes. Handicap International recommended that French manufacturers be listed if they introduced products designed to circumvent a possible landmine ban, notably in the form of munitions or machines. Handicap International warned against the description change of a mine dispenser system by Giat Industries. Giat Industries had modified the description of its Minotaur mine dispenser system by removing the word “antipersonnel” from the description. Originally, the Minotaur was described as the system that allows the instant creation of large tank, antipersonnel, and mixed minefields.³³⁹ However, after the then President François Mitterrand’s AP mines export moratorium declaration in 1994, the term “antipersonnel” was changed to “counter-clearance.”³⁴⁰ The term counter-clearance was later removed and the description of 1996 read that the system dispenses only antitank mines (AV mines). The report commissioned by Handicap International cited comments of demining experts to alert observers that some AV mines with anti-handling devices or sensitive fuses could function like AP mines.³⁴¹ This means that Giat Industries’ continuing marketing and selling of the Minotaur

³³⁸ Belkacem Elomari and Bruno Barillot, “*Le Complexe Français de Production des Mines et Systèmes Associés* (The French Manufacturing Complex For Landmines and Related Systems).” Lyon, February, 1997. Cited in *Landmine Monitor Report 1999*, “France.”

³³⁹ Mixed mine fields are fields in which both AV mines and AP mines are laid.

³⁴⁰ *Landmine Monitor Report 1999*, “France.”

³⁴¹ *Landmine Monitor Report 1999*, “France.”

mine dispenser system still leave potential for it to be used as the dispenser of AV mines with AP effects.

Based on the report, Handicap International suggested that CNEMA as a monitoring institution be mandated to monitor the safety of anti-handling devices and sensitive fuses adapted for AV mines. Handicap International warned particularly against booby-trapping systems and recommended an independent report on them by independent experts in order to ensure that there is no contravention of the AP mine ban.³⁴²

Handicap International's research result in February 1997 already had affected the discussion on the definition of AP mines in the National Assembly. The National Assembly concurred with Handicap International's early suspicion of the existence of AV mines with potential AP effects in the French arsenal when the national legislation of the treaty was under discussion in 1998. During the debate leading to the passage of the French law, Deputy Marie-Hélène Aubert suggested a widening of the definition of AP mines to include other devices with potential AP effects. She based her argument on the treaty negotiation in Oslo, which reached an agreement that if AP mines can be triggered by an involuntary act of a person, they may be considered as AP mines.³⁴³

CNEMA's diversity of membership and simple majority vote system helped keep some members' concern about the safety of AV mines on the agenda of

³⁴² Belkhacem Elomari and Bruno Barillot, "The Elimination of antipersonnel mines, principles for Control and Verification, the Case of France," Lyon: Ovservatorie des Transfers d' Armaments, September 1998. Cited in *Landmine Monitor Report 1999*, "France."

³⁴³ Speech by Deputy Marie-Hélène Aubert during the April 24 Session of the National Assembly in 1998, Parliamentary Debates, *Official Journal of the French Republic*, pp. 3051-3057. Cited in the *Landmine Monitor Report 1999*, "France."

CNEMA and reflect it in CNEMA's annual reports. Certainly, there is no clear jurisdiction of CNEMA over the issue of AV mines with anti-handling devices or sensitive fuses mandated in the national legislation. Still, some CNEMA members, especially Handicap International, the Observatory of Armament Transferred, and Senator François Rochebloine, have continued to do research and address the issue. Their research, reflections, and recommendations had been continuously introduced in CNEMA's annual reports while a CNEMA member representing the foreign ministry, Ambassador Samuel Le Caruyer de Beauvais, continued to hold the French foreign ministry's design-oriented definition of AP mines.

4-B. CNEMA's Technological Arguments

CNEMA has gradually strengthened technological arguments with data in its appeals for the effect-oriented definition of AP mines. First, CNEMA's original bold proposal in 1999 suggested a revision of the treaty if there was no successful international initiative for a revision by 2004.³⁴⁴ However, CNEMA gradually moderated its strong tone and continued a detailed and persistent argument on the safety of each AV mine in the French arsenal. CNEMA's annual reports after 2000 have provided an elaborate technological argument supported by detailed information about the functioning of sensitive fuses and anti-handling devices and inquiries of the French government about the safety of these fuses and devices.

CNEMA reexamined the French government's evaluations of the safety of AV mines, conducting investigations and interviews with officials from the Ministry

³⁴⁴ *CNEMA Annual Report*, 1999, p. 151, p. 173, and p.176.

of Defense and landmine industries.³⁴⁵ Though the French government guaranteed the safety level of AV mines in the French arsenal, CNEMA identified the danger of several types of AV mines with anti-handling devices. With regard to the HPD F2 and the MIAC Disp F1, CNEMA member, Ambassador de Beauvais, a CNEMA member, as a representative of the French foreign ministry, assured their safety and the strict usage restriction; the two types of AV mines are not equipped with anti-lifting systems and the French military doctrine calls for their use only in high-intensity conflicts against an armored enemy.³⁴⁶ CNEMA's annual report of 2002, however, disproved the safety of the anti-lifting system of the HPD F2. CNEMA supported the argument with governmental information contained in the French military engineering manual Gen 150 Edition 2000.³⁴⁷ Contrary to the French government's response, the engineering manual identified the existence of an anti-lifting system in HPD F2 and explained the danger that the HPD F2 mine cannot be lifted after lying from 10 minutes up to 30 full days, since the electromagnetic mine detector, as the anti-lifting system, disturbs the mine and can activate it. CNEMA also called attention to the manual's warning to deminers against the electromagnetic mine which stated that "it is *dangerous* and *prohibited* to try to locate HPD F2 mines with a detector."³⁴⁸

CNEMA doubted the credibility of the French government's allegation of the safety of the magnetic sensor of three types AV mines, HPD F2, HPD F3, and MI AC

³⁴⁵ CNEMA Annual Report, 2000, pp. 15-21.

³⁴⁶ Letter from Ambassador de Beauvais, February 23, 2001. Cited in the *Landmine Monitor Report 2001*, "France."

³⁴⁷ *Landmine Monitor Report 2002*, "France."

³⁴⁸ Cited in the *Landmine Monitor Report 2002*, "France."

Disp F1, which explode from changes in the magnetic field.³⁴⁹ CNEMA suspected that the sensitivity of the magnetic sensor could be activated by the unintentional presence of a person. CNEMA has continued to address the danger of these controversial AV mines and to recommend that measures be taken to ensure that all three mines are not activated by the unintentional presence of a person.³⁵⁰

CNEMA used the statement of the Defense Ministry to legitimize the need for the monitoring of the two other controversial AV mines, the MIACAH F1 and the MIACAH F2, whose safety issues CNEMA had been alerted to. According to CNEMA, a breakwire to be attached to them and placed across a road or path is so thin, almost invisible, that a child can break it.³⁵¹ CNEMA introduced the defense ministry's admission of the danger of the breakwire to civilians and the French army's study to press for the replacement of the activation system with a mechanism which can discriminate between people and vehicles.³⁵² CNEMA sought verification through the monitoring of the modification process to make sure that MIACAH F1 and MIACAH F2 would not fall into the category of AP mines under the 1997 AP Mine Ban Treaty.³⁵³

4-C. The Response of the French Government

The French government declined to accept the effect-oriented definition of AP mines in spite of the continuous demand and inquiries of CNEMA. The French government clearly supported the design-oriented definition of AP mines. In the Standing

³⁴⁹ *CNEMA Annual Report 2000*, pp. 18-21.

³⁵⁰ *CNEMA Annual Report 2001-2002* and *CNEMA Annual Report 2003*.

³⁵¹ *CNEMA Annual Report*, 2000, pp. 16-17.

³⁵² *Ibid.*, p. 17.

³⁵³ *Ibid.*, p. 17.

Committee Meeting, a preparatory meeting composed of four thematic subsections for the annual Meeting of States Parties to the 1997 AP Mine Ban Treaty, in May 2002, the French government expressed its support for the British government's design-oriented interpretation of AP mines that the scope of the AP Mine Ban Treaty does not extend to AV mines with antihandling devices or sensitive fuses that may be activated by the unintentional act of a person.

Indeed, the French government revealed the information on the storage status and the safety level of AV mines in response to questions from advocacy groups. In response to Human Rights Watch's presentation of AV mines with potential AP effects,³⁵⁴ the French government revealed in detail the storage status and safety level of such AV mines as had been pointed out. The French defense ministry identified which mines were stockpiled and which mines had been studied but never produced or destroyed.³⁵⁵ The French government made it clear that the French army stockpiled no AV mines with low metal content (the KP 77, MACIPE, MIAC ID 51, and 1951/1953), the kind which cannot be detected by a mine detector.³⁵⁶ The French government has also been responsive to the issue of Claymore-type directional fragmentation mines. In March 2002, France's Ambassador for Mine Action confirmed that France had no Claymore-type directional fragmentation mines in its stockpile.³⁵⁷

³⁵⁴ Human Rights Watch Fact Sheet, "Antivehicle Mines with Antihandling Devices," Prepared for the First Meeting of the Standing Committee of Experts on the General Status and Operation of the Convention, Geneva, January 10-11, 2000, pp. 7-9

³⁵⁵ Letter from Christian Lechervy, Ministry of Defense, May 15, 2000, Cited in *Landmine Monitor Report 2000*, "France."

³⁵⁶ Letter from Ambassador de Beauvais, February 23, 2001. Cited in the *Landmine Monitor Report 2001*, "France."

³⁵⁷ Letter from Samuel Le Caruyer de Beauvais, Ambassador for Mine Action, March 27, 2002. Cited in the *Landmine Monitor Report 2004*, "France."

However, even with CNEMA's very detailed technological discourse supported by scientific data, the rigid attitude of the French government did not change. First of all, the French government valued the military utility of AV mines. When the French legislature argued over the ratification of the 1997 AP Mine Ban Treaty, a government official explained that the refusal to adopt the effect-oriented definition of AV mines was due to the military utility of AV (anti-tank) mines. For the French government a tank is too important an indispensable weapon to be removed: "A tank is a tool of war...the removal of an AT mine from the battlefield is obviously a military action."³⁵⁸ The defense ministry thought that such an extension of the definition would be tantamount to the decommissioning of AT mines.³⁵⁹

Second of all, the French government's strong belief in the military utility of AV mines led to a clear distinction between AV mines and AP mines. The French government emphasized the different targets both AV mines and AP mines have and underestimated the similar negative effects both could have on civilians, the inhumane, anti-personnel effect of some AV mines with anti-handling devices on civilians.

Third of all, CNEMA's limited jurisdiction made it impossible for CNEMA to force the French government to respond to or to talk with CNEMA about the different views between them. About the French government's distinction between AV mines and AP mines, the military utility of AV mines, and the safety of anti-handling devices, CNEMA, due to lack of the function of enforcement, had no power to

³⁵⁸ National Assembly, session of April 24, 1998, Official Journal, Parliamentary Debates, P.3056. Cited in the *Landmine Monitor Report 1999*, "France."

³⁵⁹ *Landmine Monitor Report 1999*, "France."

continue in-depth discussion with the French government. This allowed the French government to keep its continuous assertion that the AV mines currently stockpiled by the ministry of defense are not covered by the 1997 AP Mine Ban Treaty,³⁶⁰ though this was based on the design-oriented definition of AP mines. The same pattern happened with the case of the ACPR F1 AV mine. In the face of the French government's refusal of CNEMA's warning and requirement that the ACPR F1's tripwire is too sensitive and dangerous for civilians and that its tripwire mode be modified,³⁶¹ CNEMA could not do anything but repeat its warning and request in the annual report, which is not binding. In this case, the French government did not respond to CNEMA since it was outside of the category of the treaty, according to the French government's design-oriented definition.

CNEMA's inability to bring the French government to conversation allowed the French government to ignore the issue of the danger of anti-handling devices and to bring the issue on the danger of AV mines outside the arena of the jurisdiction of CNEMA. The French government suggested alternatives to the improvement of anti-handling devices in order to enhance the safety level of AV mines.³⁶² These alternatives are the marking and monitoring of the minefields and the demining after a ceasefire, both of which are already regulated in the CCW amended Protocol II. CNEMA has jurisdiction only over the 1997 AP Mine Ban Treaty and has not jurisdiction over the CCW.

³⁶⁰ Cited in *Landmine Monitor Report 2001*, "France."

³⁶¹ *CNEMA Annual Report 2000*, pp. 19-20.

³⁶² Comment by the French delegation at the meeting of the Standing Committee on General Operation and Status of the Mine Ban Treaty on May 11, 2001.

The other effect of CNEMA's limited jurisdiction is about the failure to enforce CNEMA's safety standard level of anti-handling devices and sensitive fuses of AV mines. The French government's strong belief in the military utility of AV mines and low level of concern about their inhumane effects, in contrast to CNEMA's high concern about their inhumane effects, led to the French government's usage of a lower safety standard of AV mines than CNEMA's standard. There was no common negotiating table to discuss the difference, including the method of safety test, among CNEMA, the French government, and the manufacturer. When CNEMA criticised the French government's and industries' methods of safety test of AV mines, CNEMA insisted that the test for the two AV mines, HPD F2 and HPD F3, should be conducted in a hypothetical situation simulating the existence of human beings, reflecting the noise and magnetic impact of human existence.³⁶³ CNEMA was not satisfied with the manufacturer Giat's theoretically estimated reliability, neglecting human factors, of the activation system of the MI AC Disp F1 mine. Giat emphasized the improvement in the safety level of the mine's activation system which enhanced insensitivity to light variations in the magnetic field and then maintained that this mine is in theory insensitive to a human's presence, except if the mine is shaken.³⁶⁴ CNEMA only suggested in its annual report that further testing under a hypothetical circumstance on the existence of a human being be conducted.³⁶⁵

CNEMA's technological argument was not fully utilized due to the French government's strong belief in the military utility of AV mines and CNEMA's limited jurisdiction. CNEMA failed to persuade the French government to change the

³⁶³ *CNEMA Annual Report 2000*, pp. 18-19.

³⁶⁴ *Ibid.*, p. 20.

³⁶⁵ *Ibid.*, p. 21.

definition of AP mines from the design-oriented to the effect-oriented one. Since the French government did not recognize the issues on the measures to improve the safety standard of AV mines and the different safety levels of anti-handling devices as agendas to negotiate, CNEMA's warnings and suggestions just ended in a unilateral conversation. CNEMA's role as monitor of the French implementation of the 1997 AP Mine Ban Treaty did not have enforcement power to bring the French government and the manufacturer to sit at the negotiation table.

5. Germany Advocacy Activities

The leading anti-landmine advocacy network in Germany, the German Initiative to Ban Landmines (GIBL, since 2004 the Actiongroup Landmine.de),³⁶⁶ has set the agenda for discussion of the danger of AV mines with AP effects and persistently investigated the German government's stance on the issue. GIBL's support for the effect-oriented definition of AP mines comes from its vision of a ban of any victim-activated weapons. GIBL has continued to urge that any mine that can be set off by an unintended act of a person or which is likely to be detonated by the presence, proximity, or contact of a person is against the principle of discrimination under international humanitarian law. In this relation, GIBL has been very mindful of the danger of anti-handling devices to civilians and has called for the German government to adopt the effect-oriented definition so that AV mines with anti-

³⁶⁶ Member organizations of the Actiongroup Landmine.de are as follows: Brot für die Welt, Christoffel Blindenmission, Deutsche Welthungerhilfe, Caritas International, EIRENE-International, Handicap international, Jesuiten Flüchtlingsdienst, Justitia et Pax, Kindernothilfe, medico international, Misereor, OXFAM-Deutschland, Pax Christi, Solidaritätsdienst International (SODI), terre des homes, and UNICEF-Deutschland.

handling devices or sensitive fuses that could detonate from the unintentional behavior of a person will be covered by the treaty and thus prohibited.

To prove its point, GIBL has compiled statistics and facts and generated knowledge about sensitive fuses and antihandling devices. GIBL did its own research on the types and functions of sensitive fuses and anti-handling devices of AV mines. GIBL listed problematic AV mines with anti-handling devices or sensitive fuses and highlighted the difficulty and futility of differentiating AV mines from AP mines and banning only AP mines. GIBL's leading researcher Thomas Kürchenheimer and his transnational collaborators, mainly Landmine Action and Mines Action Canada, clarified the functioning of anti-handling devices and sensitive fuses, such as tripwires, breakwires, tilt-rods, and low-pressure fuses, and published technical discussions and research papers on the dangers of these devices to civilians.

Furthermore, GIBL developed a collaborative relationship with parliamentarians to share information and to draw up a parliamentary resolution in 2002 appealing for the effect-oriented definition of AP mines to the German government. However, the German government rejected the appeal and maintained the design-oriented definition of AP mines. This demonstrates the limitations of the military-based arguments of the GIBL.

5-A. Technological Argument

GIBL's original and ultimate purpose has been to press for a ban on all mines, which are basically victim-activated weapons. In relation to the 1997 AP Mine Ban Treaty, it called for a ban on AV mines with anti-handling devices or sensitive fuses that are

activated by the unintentional contact of a person. In 1999 GIBL first published a systematic evaluation of the danger of AV mines to civilians in a discussion paper titled, “Why AV Mines Should Be Banned.”³⁶⁷ It emphasized the importance of identifying the problem of AV mines from the point of view of civilian protection especially after the conclusion of the 1997 AP Mine Ban Treaty, since GIBL was concerned about the accelerated development of anti-handling devices and sensitive fuses as alternatives to banned AP mines.

GIBL’s technological argument started with setting an agenda on the need to address the danger of sensitive fuses and anti-handling devices, since the German government did not regard their dangers to civilians as a serious problem to address. The German government focused only on self-neutralization and self-destruction systems, which render landmines inactive after a certain time,³⁶⁸ as effective measures to enhance the safety level of AV mines to civilians. The existing international humanitarian law on landmines, Amended Protocol II of the CCW, required the attachment of self-neutralization or self-destruction systems only to AP mines, not to AV mines.³⁶⁹ The German government believed that regulations of AV mines’ self-neutralization and self-destruction systems would protect civilians since they might minimize the dangers resulting from long-lived or non-detectable mines.³⁷⁰ Thus, the German government’s stance towards the problem of AV mines has been to call for technical regulations on AV mines’ self-neutralization and self-

³⁶⁷ Thomas Küchenmeister (GIBL), “Why Antivehicle Mines Should Also Be Banned,” January 2000.

³⁶⁸ *Deutscher Bundestag, Drucksache 14/667* (German Parliament, document 14/667), March 26, 1999.

³⁶⁹ The amended Protocol II of the CCW.

³⁷⁰ Statement by the German delegation to the First Conference of States Parties to the Amended Protocol II of the Convention on Conventional Weapons, Geneva, December 15-17, 1999. *Cited in Landmine Monitor Report 2000*, “Germany.”

destruction systems within the framework of CCW. The German government did not address the danger of a mine's anti-handling devices or sensitive fuses even though they might detonate and injure a civilian on contact before the mine is self-destructed or self-neutralized.

GIBL's main objection to the self-destruction and self-neutralization systems is their technological unreliability. As for self-destruction systems, the GIBL cited the higher failure rates of self-destruction and self-neutralization systems, especially when they are scattered in remote-delivery systems.³⁷¹ These scattered mines have reportedly failed to self-destruct or self-neutralize in large numbers, with common failure rates of 5-10 percent.³⁷² Because of the sheer volume of mines used in scatterable systems, this translates into any unexploded mines. Less sophisticated production methods have been reported to result in failure rates as high as fifty percent.³⁷³

GIBL supported its argument by citing the high failure rates of self-destruction and neutralization systems, drawing upon data from field experience. During Operation Desert Storm, it was noted, thirty-four percent of all US casualties were caused by landmines, many of them caused by US penetration of its own smart, scatterable minefields.³⁷⁴ Ten percent of US Gator scatterable AV mines used in the Gulf War did not self-destruct.³⁷⁵ The GIBL cited a comment from a staff member of

³⁷¹ Mike Croll, *The History of Landmines*, 1998; Vision, N., "The Demise of AP mine: A Military Perspective," in *RUSI Journal*, No.2, 1998, cited in the GIBL and Landmine Action, "Alternative Anti-Personnel Mines: the Next Generations," 2001, p.26.

³⁷² *Ibid.*, p. 26.

³⁷³ Andrew Cooper, "In Its Own Words: The US Army and AP Mines in the Korean and Vietnam Wars," *Human Rights Watch Arms Project Vietnam Veterans America Foundation*, Vol. 9, No.3, July 1997, p.8. Cited in the GIBL and Landmine Action, p. 26.

³⁷⁴ *Ibid.*, p.8.

³⁷⁵ *Ibid.*, p.26.

the German mine producer DASA that the increased use of scatterable munitions would result in a considerable increase in dud rates.³⁷⁶

GIBL also pointed out the pitfalls of self-destruction and self-neutralization features even in their normal functioning and pointed out that these systems were developed for military strategy rather than for civilian protection. First of all, with self-neutralizing mines, when and whether they have in fact self-neutralized will not be evident to soldiers, deminers, or civilians approaching a mined area. Second, mines with self-destruction systems could endanger people since civilians do not know when they will explode: being in the immediate vicinity of a self-destruct mine when it happens to explode is an obvious physical hazard. Uncertainty about the timetable of self-destruction will endanger and deter the use of land, potentially affecting even those with accurate knowledge of the mine.³⁷⁷ According to GIBL, these technologies of self-neutralization and self-destruction of mines were designed to facilitate crossing of their own minefields by military forces.³⁷⁸

On top of the unreliability of self-neutralization and self-destruction systems of mines, GIBL explained the dangers of sensitive fuses and anti-handling devices to civilians. Following up on the ICRC's information paper, "Anti-Vehicle Mines Equipped with Anti-Handling Devices,"³⁷⁹ which addressed the danger of anti-handling devices to civilians, the GIBL called for technical discussions on anti-handling devices and sensitive fuses in order to prevent the deadly threat to

³⁷⁶ *Soldat und Technik*, No.2, 1991. Cited in the GIBL and Landmine Action, 2001, p. 26.

³⁷⁷ *Ibid.*, p. 25.

³⁷⁸ *Ibid.*, p.25.

³⁷⁹ ICRC, "Anti-Vehicle Mines: Effects on Humanitarian Assistance and Civilian Populations." CCW/GGE/II/WP.9. July 15, 2002.

civilians.³⁸⁰ GIBL has done detailed research on the nature and characteristics of anti-handling devices and sensitive fuses from unclassified government and technical sources, including interviews from military personnel, experts, and manufacturers.

GIBL listed the type and characteristics of devices, explained the mechanisms of these devices, and pointed out the danger these protection devices still pose to civilians. For instance, AV mines fitted with vibration sensors cannot distinguish whether the vibration comes from a tank or a civilian vehicle. In addition, a higher pressure threshold of AV mines still leave possibilities for harm to civilians. Even if a pressure threshold is eighty kilograms, a civilian who was running could apply pressure of up to 150 kilograms when striking it with a heel.³⁸¹ Another weakness in a pressure threshold system is the easiness of resetting a threshold of minimum pressure. GIBL publication of 2001 reported that the German DM-11 anti-tank mines, which were in use in Somalia, could easily be reset to a low-pressure threshold of only a few kilograms.³⁸² Magnetic sensors, which react to a change in the magnetic field, could react to any metal objects placed nearby such as hand-held radios brought into the vicinity of the mine or other metallic objects, such as keys carried by a passer-by.³⁸³

GIBL reinforced its technological arguments on the danger of these AV mines with several cases from other states. For example, GIBL quoted the advice of the Canadian army about the danger of sensitive fuses of the Austrian anti-tank mine 2000E: “The Austrian anti-tank mine 2000E has advanced fusing with seismic

³⁸⁰ GIBL and Landmine Action, 2001, p. 9.

³⁸¹ Ibid., 2001, p.21.

³⁸² Ibid., p. 21.

³⁸³ Ibid., p. 22.

activation and magnetic influence actuation and soldiers are simply warned that it should not be approached.” About the SB MV/1, an anti-tank mine, the Canadian military advised that the mine had advanced magnetic influence fusing and should not be approached.³⁸⁴

Citing contradictory remarks about the safety of an AV mine within the German government further enhanced the credibility of GIBL’s argument. On the one hand, the German government assured the safety of the anti-tank mine, AT-2, a scatterable anti-tank mine, which causes detonation after deliberate and sustained movement of the mine, since the mine is laid open and visible to everybody.³⁸⁵ On the other hand, according to GIBL, a military magazine cast doubt on the visibility of the mine. The magazine cited a test result showing the danger that the AT-2 mine cannot be recognized when laid on a field or a meadow and that the AT-2 mine on sand is only visible from a distance of about 15 meters.³⁸⁶ The sensitivity of the anti-lifting device and magnetic influence fuse in the AT-2 could be detonated by an unintentional act of a person, for example a person walking into or stumbling over it. GIBL also introduced a German military authority’s comment, implying anti-personnel effects of AT -2, that the AT-2 mine can be detonated by any movement of dismounted soldiers as well as combat vehicles.³⁸⁷

³⁸⁴ Canadian Forces, *Mine Awareness Database 99*, 1999. Cited in GIBL and Landmine Action, 2001, p.23.

³⁸⁵ *Wehrtechnik*, No. 11, p. 33, 1993. Cited in the GIBL and Landmine Action, 2001, p. 25.

³⁸⁶ *Ibid.*, p.25.

³⁸⁷ Cited in the GIBL and Landmine Action, p.20.

5-B. Access to the Decision-Making Process

GIBL, like the French advocacy groups, had channels to access governmental officials. The German advocacy had conducted direct inquiries through interviews with governmental officials and in a conference, and sent an open letter to the chancellor.

Through these communications, GIBL has exchanged detailed information and views with the German government about the legality of certain types of AV mines. In November 1999, GIBL published an open letter to the then German Chancellor Gerhard Schröder, in which it expressed its concern about the negative humanitarian effect of AV mines with sensitive fuses, with the examples of AV mines, the AT-2 and MUSPA, both of which contain built-in anti-handling devices.³⁸⁸ In response, however, the German defense ministry insisted that the MUSPA does not target people and therefore is not prohibited by the 1997 AP Mine Ban Treaty.³⁸⁹ GIBL disproved this point by citing a decision by the Italian government to list the MUSPA mines as AP mines since they can function like an AP mine.³⁹⁰

GIBL's opportunity to directly meet in a meeting and discuss with government officials about the issue of the danger of anti-handling devices in a meeting helped GIBL to set the agenda of AV mines, though the one time meeting was not enough to change the German government's design-oriented definition of AP

³⁸⁹ *Die Tageszeitung*, 22 November 1999; *Sindelfinger Zeitung*, 22 November 1999, cited in *Landmine Monitor Report 2000*, "Germany."

³⁹⁰ Italy, Mine Ban Treaty Article 7 Report, submitted March 29, 2000, Annex B-1. Available at <http://disarmament2.un.org/MineBan.nsf/>.

mines. In April 2001 in the Lew Kopelew Forum,³⁹¹ in which governmental officials, parliamentarians, and NGOs participated,³⁹² participating NGOs called the officials in the meeting to adopt the effect-oriented definition of AP mines and call attention to the danger of an AV mines produced in Germany. In the Forum, Thomas Gebauer of Medico International, a member of GIBL, introduced a Dynamit Nobel's document which implies the illegality of AV mines. The presented internal document of Dynamit Nobel indicated that the DM-31/FFV 028 antitank mine, produced by Dynamit Nobel and Bofors AB and currently in the service of the German army, is not in compliance with the 1997 AP Mine Ban Treaty since the mine is equipped with a magnetic fuse capable of being detonated "unintentionally" by a motorized bicycle passing near the mine.³⁹³

This made participating government officials aware of the issue of AV mines and even successfully induced a comment friendly to the effect-oriented definition of AP mines from Walther Stütze, State Secretary of the Ministry of Defense. He commented that Germany should ban all types of landmines and that the German government should propose a ban on AV mines at the CCW. The Minister added:

If one wants to eliminate devilish things, then one must not allow any exceptions. If one assesses mines as devilish things—and one can't argue against that—then one must prohibit mines without any exception. Then one must introduce such a position to the negotiations. If one wants to support that process, then indeed the possibility exists,

³⁹¹ The Lew Kopelew forum was established in honor of the Soviet writer and dissent, Lew Kopelev, and takes place periodically. The forum in April 2001 took place following the award ceremony of Halo Trust for the Lew-Kopelew Prize for peace and human rights.

³⁹² The participants include Walther Stütze, State Secretary of the Ministry of Defense, Angelika Beer, defense spokesperson of the Green Party, former Foreign Minister Klaus Kinkel (Liberal Party), Rupert Neudeck (humanitarian relief organization, Cap Anamur), and Thomas Gebauer (Medico International),

³⁹³ "Gute Mine, Böses Spiel" (Good mines, bad game), *Spiegel*, May 7, 2001. Cited in *Landmine Monitor Report 2001*, "Germany."

to go in advance with a unilateral concession. For this year exists a possibility [with the CCW].³⁹⁴

However, the one-time meeting could not bring any substantial result.

Furthermore, the meeting was not set for the talk on the danger of AV mines. The Lew Kopelew Forum itself is a cultural forum, dealing with a wide range of issues of politics, sciences, and culture and the meeting only followed the Lew Kopelew Prize ceremony for a British demining agency, HALO Trust, in honor of its contribution to peace and human rights. Stutzle's indication in the forum about the government's willingness to introduce a proposal to ban AV mines at the CCW Review Conference in December 2001³⁹⁵ did not lead to any such initiative. Instead, the German government made a limited proposal to impose technical restrictions on anti-handling devices in 2002.

Cooperation with parliamentarians was smooth and more useful for GIBL to set the agenda of the AV mines than the one-time meeting with government officials. Major German political parties in the parliament, the Social Democratic Party (*Sozialdemokratische Partei Deutschlands*, or SPD), the Green Party, the Christian Democrat Union, and the Free Democratic Party, have acknowledged the problem of AV mines with anti-handling devices or sensitive fuses and had ideas for a ban or restrictions on AV mines with potential AP effects. President of the German parliament, Wolfgang Thierse of the SPD explicitly supported the GIBL's campaign to ban all landmines.

³⁹⁴ Phoenix broadcasting, *Lew Kopelew Forum: Landminen – das Ende einer Waffengattung* (Landmines – the End of an Arm), April 7, 2001. Translated and introduced in *Landmine Monitor Report 2001*, "Germany."

³⁹⁵ *Landmine Monitor Report 2001*, "Germany."

However, it was with the ruling coalition at the time, the SPD and the Green Party, that GIBL cooperated. The ruling parties' proposal called for the necessity of an international agreement to address the danger of AV mines with anti-handling devices.³⁹⁶ The main opposition party, the Christian Democratic Union (CDU), argued only for the obligation of the attachment of self-neutralization and self-destruction systems to AV mines without addressing the danger of anti-handling devices and sensitive fuses, which GIBL regarded insufficient.³⁹⁷ The insufficiency of self-neutralization and self-destruction systems for civilian protection was the main point GIBL continued to insist on. GIBL argued for the necessity of focusing on the danger of anti-handling devices and sensitive fuses, emphasizing that the wording of the 1997 AP Mine Ban Treaty did not clarify the legality of such AV mines with anti-handling devices that could be activated with an unintentional contact of a person.³⁹⁸

Information sharing with the ruling parties helped reinforce GIBL's argument on the danger of the DM-31 AV mines. The Green Party of Germany cooperated with the GIBL in publicizing the correspondence between the party members and the landmine industry. The correspondence revealed Dynamit Nobel's admission of the danger of AV mines. In the correspondence, in response to an inquiry letter from Angelika Beer of the Green Party, who had served as a coordinator of the International Campaign to Ban from 1991 through 1994, Landmines Dynamit Nobel, the manufacturer of the DM-31 AV mines, admitted that the DM-31 AV mine could be a violation of the 1997 AP Mine Ban Treaty and must be modified. Dyanmit Nobel

³⁹⁶ *Deutscher Bundestag, 14 Wahlperiode* (the German National Parliament, the 14th Legislative Period)—242 Stizung (the 242nd session), Berlin, June 13, 2002.

³⁹⁷ GIBL press release, June 26, 2001.

³⁹⁸ GIBL and Landmine Action, 2001.

added an estimate of the huge cost of modifying the mine, approximately 40-50 million DM (20-25 million euro), in order to fulfill the obligations of the 1997 AP Mine Ban Treaty.³⁹⁹ Dynamit Nobel pointed out the existence of other types of AV mines with potential danger to civilians in the German arsenal, including the stockpiling of a huge number of scatterable (mechanically laid) AV mines and off-route mines with a fiber-optic sensor, which aims at a point where a target will pass and is activated by the target passing over a fiber-optic cable.⁴⁰⁰

Nevertheless, cooperation with the ruling coalition parties turned out to be less productive than expected due to a disagreement between the parties on the extent to which they address the problem of the inhumane effects of AV mines on civilians. The disagreement caused a failure to directly call for the effect-oriented definition of AP mines in the parliamentary resolution in June 2002. Certainly, the SPD and the Green Party had shared the focus on civilian protection in disarmament with GIBL when the two parties made a government coalition in October 1998⁴⁰¹ and the two parties shared concerns about the danger of AV mines for civilians. An SPD member criticized in the parliament the German army's optimistic assumption that AV mines are safe for civilians because the withdrawing army will clear and carry the AV mines back with them. Petra Ernstberger of SPD observed that, if AV mines were carried back there would be no AV mine problems in the first place, and that the army

³⁹⁹ Cited in Actiongroup Landmine.de (the new name of the GIBL after 2004) and the Mines Advisory Group, "Anti-Vehicle mines—Discussion Paper," 2004, p.10. Available at <http://www.zagreb-sos.net/en/index.htm>.

⁴⁰⁰ Dynamit Nobel's Letter to Angelika Beer, February 2, 2001. Cited in the "Anti-vehicle mines—Discussion Paper," p. 10.

⁴⁰¹ *Aufbruch und Erneuerung –Deutschlands Weg ins 21. Jahrhundert Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und BÜNDNIS 90/DIE GRÜNEN.* (Departure and renewal—Germany's way in the 21st Century: Coalition agreement between the Social Democratic Party of Germany and the Green Party), October 20, 1998, p.46.

usually expects that AV mines left on the ground will deter the advancement of the enemy.⁴⁰² Still, the SPD, whose member Scharping headed the German defense ministry and insisted on the military utility of AV mines,⁴⁰³ was reluctant to explicitly support the effect-oriented definition of AP mines while the Green Party explicitly supported it. GIBL naturally supported the view of the Green Party.⁴⁰⁴ Angelika Beer, the defense spokesperson for the Green Party, criticized the political pressure of the defense ministry on the original draft of the resolution.⁴⁰⁵

The contents of the parliament resolution adopted on June 12, 2002 did not directly appeal for the effect-oriented definition of AP mines, though the resolution demanded that the German government take international initiatives toward the prohibition of AV mines which pose threats to civilians by the first review conference of the 1997 AP Mine Ban Treaty in 2004.

First, as for the definition of AP mines in the 1997 AP Mine Ban Treaty, the original draft by the SPD and the Green Party directly addressed the call for the effect-oriented definition of AP mines.⁴⁰⁶ It demanded that the German government strengthen the treaty by including all sensitive AV mines that can be detonated by a person. However, the final draft was changed to a demand for an international agreement on the “design-oriented” definition of AP mines. The final draft requires that the German government work with the States Parties to the 1997 AP Mine Ban Treaty to establish the understanding that AV mines which can be detonated by

⁴⁰² *Deutscher Bundestag*, 14 *Wahlperiode* (the German National Parliament, the 14th Legislative Period)—242 *Stizung* (the 242nd session), Berlin, June 13, 2002.

⁴⁰³ *Welt am Sonntag*, February 24, 1999.

⁴⁰⁴ “*Neuer Waffendeal: Rot-Grün im Minenfeld* (New Weapons Deal: Red and Green in Minefield),” *Die Tageszeitung*, November 3, 1999.

⁴⁰⁵ Comment of Angelika Beer. *Landmine Monitor Report 2003*, “Germany.”

⁴⁰⁶ *Deutscher Bundestag* 14, *Wahlperiode*, *Drucksache* 14/8858. April 24, 2002.

persons due to the design of their fusing system are banned by the treaty. The phrase “due to the design” was added to the final draft.⁴⁰⁷ The resolution only implied the advocacy appeal for the effect-oriented definition of AP mines as a call for the German government to remove AV mines which can pose a threat to civilians from the German arsenal.

The second problem in the resolution is that the resolution’s demand that the German government remove step-by-step all AV mines from German stockpiles which could pose a threat to civilians. In her statement in the parliament, Angelika Beer of the Green Party criticized that such a “step-by-step” approach would take years for a total destruction of such AV mines.⁴⁰⁸ Angelika Beer supported the Freedom Party’s proposal to remove AV mines “immediately” from the German arsenal, and she expressed her support for both the ruling parties’ proposal, as the defense spokeswoman of the Green Party, and the Freedom Party’s proposal.⁴⁰⁹

Though GIBL’s cooperation with parliamentarians set the agenda of AV mines in the parliament and successfully passed the parliamentary resolution to call attention to the danger of AV mines, the disagreement between the SPD and the Green compromised the contents of the parliamentary resolution. The parliamentary resolution failed to directly call for the effect-oriented definition of AP mines.

⁴⁰⁷ *Deutscher Bundestag*, 14, *Wahlperiode*, *Drucksache* 14/9438. June 12, 2002.

⁴⁰⁸ “Beer wirft Verteidigungsministerium Blockade vor” (“Beer blames the Ministry of Defense for blocking”), *Berliner Zeitung* (daily newspaper), June 14, 2002.

⁴⁰⁹ Statement of Angelika Beer in the German parliament. *Plenarprotokoll* (meeting record) 14/242, *Deutscher Bundestag. Stenographischer Bericht* (German Parliament Stenographic Report), June 13, 2002, pp. 194-195.

5-C. The Response of the German Government

Since the conclusion of the 1997 AP Mine Ban Treaty, the German government has maintained the design-oriented definition of AP mines. The German government regarded any problems of AV mines with potential anti-handling devices as matters outside the jurisdiction of the 1997 AP Mine Ban Treaty since these mines are designed as AV mines. The German government also believed that any problem of AV mines with anti-handling devices, if any, could be solved through the installation of self-neutralization and self-destruction systems in AV mines without improving anti-handling devices. The CCW was the ideal arena to address such issues as technical restrictions on AV mines in order to minimize the dangers resulting from long-lived or non-detectable mines. As the German delegation to a CCW meeting stated, “[A] special value of the Amended Protocol II [of the CCW], in our view, is that it addresses problems of weapons not covered by the Ottawa Convention (the 1997 AP Mine Ban Treaty), in particular anti-vehicle mines.”⁴¹⁰

The German government’s low level of concern with anti-handling devices led to its partial responses to GIBL’s inquiries. For instance, the German government responded that AT-2 did not have a magnetic detonator, though GIBL’s concern covered not only the magnetic detonator but also anti-handling devices. As for DM-31, the German government responded that DM-31 did not have an anti-handling device,⁴¹¹ even though GIBL had also pointed out the concern that the magnetic fuse

⁴¹⁰ Statement by the German delegation to the First Conference of States Parties to the Amended Protocol II of the Convention on Conventional Weapons, Geneva, December 15-17, 1999. Cited in the *Landmine Monitor Report 2000*, “Germany.”

⁴¹¹ Letter from Ministry of Defense to GIBL, September 21, 2000. Cited in *Landmine Monitor 2001*, “Germany.”

attached to DM-31 was capable of being detonated by the presence of metallic objects.

Indeed, the German government had a strong belief in the technological solution by self-destruction and self-neutralization systems to the danger of AV mines to civilians. In December 2000, the German government expressed its hope to equip self-neutralization systems, as well as self-destruction systems and enhanced detectability, with AV mines in order to achieve 99.99 percent rate of safety reliability of AV mines.⁴¹² The German government's report on disarmament, submitted to parliament on May 9, 2001, referred only to general efforts towards the improvement of self-neutralization and self-destruction systems without reference to anti-handling devices or sensitive fuses. The report indicated that the German government's goals were limited to "a ban on non-detectable mines as well as an introduction of effective activity limits for remotely delivered anti-vehicle mines."⁴¹³ To the German government, the CCW was the ideal arena for technological regulation of self-destruction and self-neutralization systems of AV mines.⁴¹⁴

Behind the German government's reluctance to deal with the issue of AV mines within the 1997 AP Mine Ban Treaty lay the German government's strong belief in the military utility of AV mines and the cost-effectiveness of the use of landmines. The ministry of defense clearly recognized landmines as an elementary component of the equipment of German crisis response forces, declaring that to

⁴¹² Landmine Monitor noted in the Second Annual Conference of States Parties to Amended Protocol II of the CCW, Geneva, December 14, 2000. GIBL interviews with the German delegation to the Second Annual Conference of Parties to Amended Protocol II of the CCW, Geneva, December 11-13, 2000. Cited in the *Landmine Monitor Report 2001*, "Germany."

⁴¹³ *Deutscher Bundestag Drucksache 14/5986*, p. 16. Cited in the *Landmine Monitor Report 2001*, "Germany."

⁴¹⁴ Statement by the German delegation to the First Conference of States Parties to the Amended Protocol II of the Convention on Conventional Weapons, Geneva, December 15-17, 1999.

abandon the use of AV mines in defense operations would increase the risk faced by forces on the ground to an unwarranted degree.⁴¹⁵ Furthermore, the cost-effectiveness of landmines was an important factor for the German government. The German government commented to the parliament that anti-tank mines (AV mines) enable the military to reduce its personnel costs.⁴¹⁶

The German government's practices on AV mines followed the design-oriented definition of AP mines. Information provided to the GIBL by the German Federal Ministry of Defense in June 2003 indicated that Germany had more than 900,000 AT-2 AV mines equipped with an anti-handling device. Other sources indicated that Germany had as many as 1.5 million AV mines with anti-handling devices, including more than 1.2 million AT-2 mines, 125,000 DM-31 mines, and 125,000 MIFF mines. In 1999, there were press reports that the German Ministry of Defense had offered 23 Scorpion mine launchers, including 36,000 AT-2 mines, to Greece, which the ministry of defense confirmed in November 1999.⁴¹⁷

The German government did not implement the parliamentary resolution. It did not take the initiative to reach an international agreement on the definition of AP mines before the first review conference of the 1997 AP Mine Ban Treaty in 2004. The German government did not destroy AV mines with threats to civilians.

⁴¹⁵ GIBL and Landmine Monitor, 2001, p.4.

⁴¹⁶ *Deutscher Bundestag Drucksache* 14/667, March 26, 1999. <http://www.bundestag.de>: "The main task of our armed forces remains the national and alliance defense. Especially in times of decreasing troop strength the Federal Armed Forces need technical aids in order to fulfill their mission. Anti-Tank-Mines belong to those technical aids." Cited in *Landmine Monitor Report 2000*, "Germany."

⁴¹⁷ Associated Press, November 3, 1999, *Die Tageszeitung*, November 4, 1999. The GIBL had begun looking into this export, which was widely reported in the German media: *Die Tageszeitung*, November 3, 1999, Associated Press, November 3, 1999, *Handelsblatt*, November 3, 1999, *Frankfurter Rundschau*, November 4, 1999, *Südwest Presse*, November 4, 1999, *Rhein-Zeitung*, November 4, 1999, *Berliner Zeitung*, November 4, 1999, *Süddeutsche Zeitung*, November 4, *Freitag*, November 5, 1999. Cited in *Landmine Monitor Report 2004*, "Germany."

In conclusion, the German government's belief in the military utility of landmines was a huge obstacle to GIBL's advocacy work. GIBL's detailed technological arguments on the insufficiency of self-destruction and self-neutralization systems for the protection of civilians from AV mines and the necessity to address the dangers of anti-handling devices and sensitive fuses fell short of persuading the German government. The German government's strong belief in the military utility of AV mines deterred it from engaging in serious conversation with GIBL. The German government's responses to GIBL's inquiries were insufficient and partial. Even though GIBL successfully brought the issue to the parliament and cooperated with parliamentarians to draft and pass a parliamentary resolution to demand that the German government adopt the effect-oriented definition of AP mines, the German government had continued to use the design-oriented definition of AP mines until 2005. The German government did not take international initiatives in the review conference of the 1997 AP Mine Ban Treaty. Instead, as elaborated in the next chapter, the German government shifted the argument on anti-handling devices and sensitive fuses to the arena of CCW.

6. Conclusion

The comparison of the cases of Austria and Canada and those of France and Germany proved this study's second hypothesis on the weak influence of technological discourse by the humanitarian advocacy groups on a government. The second hypothesis suggested that when a government has a higher degree of military stake in landmine policy, the humanitarian advocacy groups'

technological discourse hardly influences the government's landmine policy, even if the advocacy group has access to the decision-making process. The German and the French governments' high stake in landmine policy prevented GIBL's and CNEMA's detailed technological discourse from influencing the two governments, respectively.

All the detailed scientific information and knowledge brought by the French and German advocacy groups about the danger of AV mines' anti-handling devices and sensitive fuses for civilians were not strong enough to change their governments' assessment of the balance between the military utility of AV mines and civilian protection. Both the French and German advocacy groups conducted thorough investigation and independent and joint research to establish information resources on the functions of AV mine. This helped them make persistent arguments strongly supported with various types of scientific data and empirical facts and reinforced by counterarguments against government officials on the danger of certain types of AV mines. However, neither government was shy about expressing the military utility of AV mines. Both are the biggest producers of AV mines with anti-handling devices. The adoption of the design-oriented definition allowed the French and the German governments to keep substantial types and quantities of AV mines with anti-handling devices or sensitive fuses in their arsenals, without being affected by the 1997 Mine Ban Treaty.

The French and German advocacy groups' closer access to the decision-making process was useful for agenda-setting even though both faced limitations. GIBL faced a contingent limitation of the disagreement among the ruling parties on

the definition of AP mines and the resultant compromise in the parliamentary resolution of June 2002. CNEMA as a monitor of the French implementation of the 1997 AP Mine Ban Treaty did not have any function of enforcement and CNEMA's recommendations and warnings to the French government expressed in the annual reports were not binding. Still, both advocacy groups enjoyed the extent of access to introduce the agenda on the definition of AP mines into the domestic discourse. Either through a governmentally established monitor system, as CNEMA in France, or through cooperation with the legislature as with the case of GIBL in Germany, access to the decision-making helped these advocacy groups include the agenda on AV mines with anti-handling devices in the policy discourse. GIBL's cooperation with German parliamentarians provided GIBL with an opportunity to set the agenda on AV mines with anti-handling devices in the policy discourse, as seen in parliamentary questions and the parliamentary resolution of June 2002, even though the disagreement between the ruling parties on the extent of the danger of AV mines for civilians caused a failure to reflect GIBL's humanitarian appeals perfectly, the effect-oriented definition of AP mines and the total ban on all landmines, in the parliamentary resolution of June 2002. In France, CNEMA's diversity in membership provided members of civil society, especially Handicap International, with an opportunity to appeal to the French government for their humanitarian appeals. Handicap International gained an opportunity to place the issue of AV mines with anti-handling devices on CNEMA's checklist for the French implementation of the 1997 AP Mine Ban Treaty.

The refusal of the French and the German government to adopt the effect-oriented definition of AP mines was strong. Even if advocacy groups' work helped the French and German governments recognize the problem of AV mines with anti-handling devices, both governments proposed different solutions to the problem of AV mines from those recommended by the advocacy groups. In the face of the scientific arguments on the danger of anti-handling devices, both governments thought that the concern for civilian protection could be solved through other measures than the technical restrictions on anti-handling devices or sensitive fuses. The French government encouraged the improvement of the use of AV mines by tightening the obligations of monitoring and marking landmine fields. The German government believed in the functioning of self-neutralization and self-destruction systems. Regulations on the issues of marking, monitoring, and self-neutralization and self-destruction systems were convenient for both governments since these issues, which are already regulated to some extent in the CCW, could be dealt with again in the state-centered CCW for further regulations, thus without resorting to the more civil society-oriented arena of the 1997 AP Mine Ban Treaty.

In contrast, the Canadian and Austrian cases demonstrated the strong effect of a government's military stake in landmines on its landmine policy. In other words, this also proved the third hypothesis by demonstrating that a government does not need advocacy pressure in adopting the effect-oriented definition of AP mines as far as the effect-oriented definition does not harm any landmine policy based on the government's perceived necessity of AV mines. Both the Canadian and the Austrian governments took the effect-oriented definition of AP mines even if the humanitarian

advocacy groups did not engage in serious technological discourse. Despite that the advocacy groups' arguments were propounded with a smaller volume of data, evidence, and counterarguments, and lacked any official arena to discuss the issue of AV mines with their governments, both the Austrian and the Canadian governments have officially supported the effect-oriented definition of AP mines in international meetings because both had low stake in AV mines.⁴¹⁸ Both governments have clearly supported international efforts to reach an agreement and to adopt the effect-oriented definition of AP mines.⁴¹⁹

From the perspective of the original concern of this research, these results of the four states indicate the internalization of the norm of humanitarian disarmament has been progressing in Canada and Austria and has been delayed in Germany and France. As explained in chapter 1 and chapter 4, the adoption of the effect-oriented definition of AP mines indicates more advanced acceptance, internalization, of the AP mine ban norm than the design-oriented definition of AP mines since the former prohibits many more types of AP mines. Humanitarian advocacy work in Germany and France was not helpful for the norm internalization in Germany and France, which had high stake in the military utility of AV mines with anti-handling devices

⁴¹⁸ The oral statement of the Austrian Delegation, Standing Committee of Experts on the General Status and Operation of the Convention, Geneva, Switzerland, January 10-11, 2000. Cited in the *Landmine Report 2001*, "Austria." Statement by Canada, in International Committee of the Red Cross, "Report on Technical Expert Meeting on Anti-Vehicle Mines with Sensitive Fuses or with Sensitive Anti-Handling Devices," Geneva, March 13-14, 2001. Cited in the *Landmine Report 2004*, "Canada."

⁴¹⁹ Meeting of States Parties is held annually attended by states parties to the 1997 AP Mine Ban Treaty. Non-signatories can attend as observers. Relevant international and regional organizations can also attend as observers. The Standing Committee Meeting was established in the first Meeting of States Parties in order to ensure the systematic and effective implementation of the 1997 AP Mine Ban Treaty. As of 2007, there are four thematic committees: 1. Mine Clearance, Mine Action, and Mine Risk Education; 2. Victim Assistance and Socio-Economic Reintegration; 3. General Status and Operation of the treaty; and 4. Stockpile Destruction. These standing committee meetings are open to all governments (States Parties and States not Party), relevant International Organizations and NGOs. For more detail, see <http://www.icbl.org/layout/set/print/treaty/meetings/intersessional>.

and sensitive fuses. This also indicates the importance of state interest in norm internalization.

The Austrian government's change in its stance in 2002 by admitting the legitimacy of both the design-oriented definition and the effect-oriented definition of AP mines reemphasizes the strong influence of the extent of military stakes in AV mines on government decision on the definition of AP mines and then on the internalization of the norm of humanitarian disarmament. Austria had many more controversial AV mines in production than Canada though the level of armed conflicts both had faced was very low. Austria produced twelve controversial AV mines while Canada never produced controversial AV mines.⁴²⁰

The next chapter will compare the French case and the German case further, concentrating on the years from 2002 through 2005, when the German government changed to the effect-oriented definition of AP mines. The study will examine how GIBL's tactical change, from technological discourse to civilian-protection discourse, successfully affected the German government's shift in the definition of AP mines.

⁴²⁰ ICBL, Landmine Monitor Fact Sheet, prepared by Human Rights Watch, "Mines with Sensitive Fuzes and Antihandling Devices, Article 2," June 2002. <http://hrw.org/landmines/avmahd1.htm>.

Chapter 7 The Influence of Humanitarian Discourse: Comparison of the German Case and the French Case

This chapter will examine how changes in the discourse of advocacy groups affect government landmine policies with the cases of France and Germany from 2002 to 2005. The cases will examine whether changes occurred in the government definition of anti-personnel (AP) mines from the design-oriented definition of AP mines to the effect-oriented definition of AP mines, a more humanitarian definition. The latter prohibits not only AP mines but also anti-vehicle (AV) mines with anti-handling devices and sensitive fuses that would explode with any unintentional contact by a person.

Different discourse strategies by the two states' advocacy groups have brought different results to the two governments' definitions of AP mines. Though both governments held the design-oriented definition of AP mines under the 1997 AP Mine Ban Treaty as of 2002, the German government changed to the effect-oriented definition in 2005. Germany also made efforts to set standards of sensitive fuses, both domestically and internationally. On the other hand, the French government has kept the design-oriented definition of AP mines as of 2009 and hardly participated in any international negotiations toward the regulation of AV mines with sensitive fuses.

This research first demonstrated the plausible elements of these different attitudes of the German government and the French government. The German advocacy group had shifted the focus of its discourse to humanitarian argument since 2003 and linked its argument with the causal principles of domestic and international policies of landmines and similar weapons, while the French advocacy group stuck to

the technological discourse without resorting to humanitarian discourse. The tentative conclusion I gained is that the German advocacy group's approach was more effective because the French advocacy groups' command of military technological information could not easily surpass the French government's. I inferred that illustrations of the damages that AV mines caused for civilians helped the German government understand the seriousness of the danger of AV mines with anti-personnel effects.

Still, the additional study on alternative explanations demonstrated that possible two practical factors could also explain the same results of the German government's change in the definition of AP mines and the French government's refusal to do so. The German government faced less inconvenience in changing the definition of AP mines from the design-oriented one to the effect-oriented one than the French government did since the German government had more sophisticated technology to produce such AV mines with sensitive fuses that are less dangerous for civilians and since the German government finished the modification and withdrawal of AV mines that would be problematic under the effect-oriented definition of AP mines. These two practical explanations overwhelmed the validity of the effectiveness of the influence of the German advocacy group's humanitarian discourse on the German government.

The study tried the third alternative explanation on the existence of socio-political background in Germany to facilitate humanitarian discourse and its influence on the receptivity of the German government to a stricter regulation of landmines. Though the facts on the history of demining in Germany and France showed that

Germany had historically faced more serious landmine problems than France, it turned out that such a history was not reflected in the remarks and motivations of political leaders sympathetic to the total ban on AP mines and the German advocacy group.

The interpretation of all the interactions between the government and the advocacy group, both in Germany and France, led to the conclusion of the importance of the two permissive explanations of the humanitarian discourse and the practical elements in that the two factors, humanitarian and practical, are interacted. The humanitarian advocacy discourse had a limited influence on the German government to the extent that it could set the agenda of AV mines dangerous for civilians while the government tried to minimize any limitations on armament policy imposed by the new humanitarian agenda.

1. Technological and Humanitarian Discourse of the German Initiative to Ban Landmines

In 2005 the German government changed the interpretation of the definition of AP mines from the design-oriented to the effect-oriented definition of AP mines, thus prohibiting AV mines whose sensitive fuse or anti-handling device detonates with any unintentional contact by a person. The German government stated in a meeting of the Convention on Conventional Weapons (CCW) that AV mines that can be actuated “accidentally” by the presence, proximity, or contact of a person, have to be treated as AP mines, regardless of whether the detonation is caused by a sensitive fuse or a sensitive anti-handling device and that from the German government’s point of view,

such mines are thus prohibited.⁴²¹ Similarly, the German Foreign Ministry confirmed the same stance as the German government in its letter to Human Rights Watch in November 2005.⁴²²

Behind the German government's shift lie the efforts of the German Initiative to Ban Landmine (GIBL), a German advocacy network against landmines. GIBL sought to strengthen its discourse on civilian suffering from landmines. In the past, GIBL advocated for the effect-oriented definition of AP mines by utilizing technological arguments on the functioning of AV mines, instead of humanitarian arguments to protect civilians from the effects of AV mines. However, GIBL's earlier technological argument faced the limit that the German government's standard was different from GIBL's standard for the measurement of the safety of AV mines with anti-handling devices and sensitive fuses.

1-A. Technological Discourse

GIBL made meticulous and balanced technological arguments on the dangers of AV mines with sensitive fuses and anti-handling devices for civilians, even though GIBL's ultimate purpose was a ban on all AV mines. The technological argument facilitated the German government's awareness of the dangers of sensitive fuses and anti-handling devices. GIBL did not totally deny the military utility of AV mines.⁴²³

GIBL only made a general statement that the emerging recognition that AV mines

⁴²¹ Letter from the Head of Division of Conventional Arms Control and Confidence—and Security-Building Measures, Federal Foreign Office, to the Executive Director of the ICBL, November 8, 2005. Cited in the report of the International Committee of the Red Cross, "Anti-vehicle' mines with sensitive fuses: Positions and relevant practice of States Parties on Article 2 of the Ottawa Convention," in the Group of Governmental Experts of the Convention of Conventional Weapons in March 2005.

⁴²² Cited in, *the GIBL Newsletter*, June 2006, p. 1.

⁴²³ GIBL, "Why Anti-vehicle Mines Should Also Be Banned," January 2000.

with anti-handling devices give little military advantage, while having a considerable inhumane impact on local populations and humanitarian aid workers.⁴²⁴ Instead of any straightforward judgment on the military utility of AV mines, GIBL observed the increasing tendency in the late 1990s toward the use of more high-tech mines in conflicts in Kosovo, Chechnya, and Kashmir. They even incorporated the German defense ministry's view by introducing a governmental official's comment that due to the modernization in military, "abandoning anti-tank [AV] mines in defense operations would increase the risk faced by forces on the ground to an unwarranted degree,"⁴²⁵ and also that mines are a fundamental component of the equipment of German crisis response forces especially in times of decreasing troop strength.⁴²⁶ To judge the military utility of AV mines themselves was not the purpose of the GIBL advocacy. Instead, GIBL, in its publications, focused on the assessment of the safety of anti-handling devices and sensitive fuses attached to AV mines and the necessary technological modifications of these devices that would enhance civilian protection.

Indeed, GIBL expressed skepticism of the general tendency toward total reliance on technological development of weapons as a key to civilian protection.⁴²⁷ GIBL was skeptical that technological developments and sophistication of AV mines could make AV mines completely safe for civilians. In a 2001 publication, GIBL criticized this worldwide trend toward the growing dependence on technology for

⁴²⁴ Actiongroup Landmine.de (GIBL) and Mines Advisory Group, "Anti-Vehicle Mines Discussion Paper, November-December 2004," p.10.

⁴²⁵ *Welt am Sonntag*, January 24, 1999. Cited in Küchenmeister, 2000.

⁴²⁶ The response of the German government to the question of legislators of Social Democratic Party. *Deutscher Bundestag Drucksache* 14/667 (German Parliament, document 14/667), March 26, 1999, p.5. "The main task of our armed forces remains the national and alliance defense. Especially in times of decreasing troops strength the Federal Armed Forces need technical aids in order to fulfill their mission. Anti-Tank mines belong to those technical aides."

⁴²⁷ Küchenmeister, 2000, p. 4.

civilian protection, citing the example of the new US non-lethal warfare doctrine formally adopted by NATO in 1999 as the most significant determinant of future AP mine replacement technologies.⁴²⁸ The US doctrine holds that civilians could legitimately be targeted with non-lethal weapons alongside insurgents since it is unrealistic to assume away civilians and non-combatants during an operation in the midst of civilians. The doctrine allows such non-lethal common tasks of incapacitating or stopping an individual in a crowd, stopping a vehicle. Furthermore, GIBL criticized the fact that many technological solutions produce alternatives that actually target civilians, while minimising fatalities and permanent injury to personnel. This is seen in the examples of victim-seeking automated guns, explosive-driven ordnance, and electroshocks fencing, despite the fact that they are called non-lethal, or civilian-friendly, weapons.⁴²⁹ GIBL's doubt about the legitimacy of alternative landmine technologies also came from the suspicion that such technological development of alternative AP mines might be used to circumvent the existing humanitarian treaties.⁴³⁰

Nevertheless, GIBL set aside its skepticism of technology development and avoided resorting to an idealistic view that any modernization of mines should be banned immediately. Instead, GIBL meticulously examined and assessed the safety of anti-handling devices and sensitive fuses in a diverse collection of publications almost every year.⁴³¹

⁴²⁸ Actiongroup de.(GIBL) and Landmine Action, "Alternative Anti-Personnel Mines: the Next Generations," March 2001, p. 8.

⁴²⁹ Ibid., pp. 7-8.

⁴³⁰ Ibid., p. 57.

⁴³¹ The GIBL's publications since 2001 have never discussed the issue on the technological development for civilian protection.

GIBL's technological arguments made the German government aware of the danger of anti-handling devices and sensitive fuses, albeit to a limited extent. The effect of GIBL's inquiries and persuasion appears in the German government's initiative in the CCW to set safety standards for sensitive fuses and anti-handling devices of AV mines in 2002. Even though GIBL preferred a solution for the problem to be discussed in the 1997 AP Mine Ban Treaty rather than in the CCW, the fact that the German government started to set up an agenda for the safety of sensitive fuses and anti-handling devices was progress since the German government had not seen them as a problem previously. The German government's choice of the CCW as an arena for the negotiation of anti-handling devices and sensitive fuses of AV mines, instead of the 1997 AP Mine Ban Treaty, was due to the German government's concern about the potential negative effect of these negotiations which cast doubt on the scope of the type of weapons on the universalization of the 1997 AP Mine Ban Treaty.⁴³²

That the German government started to deal with the issue of anti-handling devices and sensitive fuses also indicated that GIBL successfully turned the burden of proof on the safety of sensitive fuses and anti-handling devices to the German government. The German government used to have full confidence in the technological reliability of anti-handling devices and sensitive fuses not to harm civilians and saw no necessity to address the issue. It was GIBL that identified the danger of these devices and urged for technical restrictions on them. However, the German government started an effort to prove the safety of these devices. In 2002, the

⁴³² Landmine Monitor' note in the third Meeting of States Parties to the 1997 AP Mine Ban Treaty, Managua, Nicaragua, 18-21 September 2001. Cited in the *Landmine Monitor Report 2002*, "Germany."

German government took an initiative to the CCW to address the problem and to facilitate international efforts to set a standard to decide the safety of sensitive fuses and anti-handling devices. The German initiative in the CCW to set a best-practice standard of anti-handling devices reflects GIBL's long-held requirement of standardized tests to judge the legitimacy of AV mines with sensitive fuses. In the 2001 publication, GIBL addressed the lack of standardized tests for anti-handling devices to determine whether they contravene the 1997 AP Mine Ban Treaty. Furthermore, GIBL pointed out the problem in the current test system which sets aside all the innumerable natural and artificial and human elements which could distract the designed functions of a device or a mine.⁴³³ GIBL explained that a magnetic fuse attached to an AV mine could be activated while a person carrying magnetic and portable radios or metallic objects, such as keys, approaches the AV mine.⁴³⁴ GIBL emphasized the need for a standardized testing of AV mines by demonstrating that a substantial portion of AV mines, 50 % to 75 % of existing AV mines, are equipped with anti-handling devices and that most AV mines could be equipped with anti-handling devices at little cost.⁴³⁵

The German government's initiative in the CCW addresses the technological improvement of the safety level of sensitive fuses and anti-handling devices. In July 2002 the German government proposed the agenda in the CCW explaining the scope of the problem of AV mines and the need to reach an agreement upon suitable concrete technical parameters which make it impossible for AV mines to be actuated

⁴³³ Actiongroup de.(GIBL) and Mines Advisory Group, 2004, p.4.

⁴³⁴ GIBL and Landmine Action, 2001, p.6.

⁴³⁵ Jane's Information Group, *Trends in Mine Warfare*, 1995. Cited in Actiongroup.de.(GIBL) and Mines Action Group, 2004, p.19.

by persons.⁴³⁶ This indicates a shift in the German government's focus. Before 2002, the German government's idea of technological modification of AV mines had focused only on the detectability, self-neutralization and self-destruction systems of AV mines. The German government's statement as of May 2001 did not show any recognition of the danger of sensitive fuses and anti-handling devices.⁴³⁷ Instead, it mentioned only the necessity to reduce the danger of nondetectable AV mines to deminers.⁴³⁸ Even in December 2001, the German government maintained the same concern, addressing only the danger of nondetectable mines and mines without self-deactivation or self-neutralization systems. The German government co-sponsored a joint proposal in the CCW, which asked for the improvement of detectability and self-destruction systems of AV mines.⁴³⁹

The influence of GIBL's focus on anti-handling devices on the German government can also be illustrated by the German government's scientific examination of anti-handling devices for a safety standard. The German government could have focused on other measures to mitigate the danger of AV mines to civilians. On top of the regulation of anti-handling devices and sensitive fuses, three measures exist for the protection of civilians from AV mines: the marking and monitoring of laid AV mines; the setting of limited life-span of AV mines by

⁴³⁶ Delegation of Germany, "'Food for Thought' on Mines Other Than Anti-Personnel Mines (MOTAPM) for the second meeting of experts in July 2002." CCW/GGE/II/WP.5. July 11, 2002.

⁴³⁷ *Unterrichtung durch die Bundesregierung. Bericht der Bundesregierung zum Stand der Bemühungen um Abrüstung, Rüstungskontrolle und Nichtverbreitung sowie über die Entwicklung der Streitkräftepotenziale (Jaresabrüstungsbericht 2000)* (The German Foreign Ministry, Annual Report on Disarmament, Armscontrol, Non-Proliferation, and the Development of Armaments). *Drucksache* 14/5986. May 9, 2001, p. 16.

⁴³⁸ *Ibid.*, p. 16.

⁴³⁹ The other main co-sponsors were the United States and Denmark, both of which had put forward the same proposal in 1995 only to fail. The proposal required all remotely-delivered AV mines to be equipped with self-destruction capabilities, and to enhance the technical specifications of self-destruction and self-deactivation features to reduce further the risk to civilians and friendly military forces.

neutralization, self-destruction, or self-deactivation system; and the guaranteeing of the detectability of AV mines for demining. Other governments chose these different measures to mitigate the danger of AV mines for civilians. The Irish government suggested the reinforcement of the obligation to mark and fence AV mine fields;⁴⁴⁰ the British government sought the enhancement of the detectability of AV mines;⁴⁴¹ the Australian government's focus was on mine detection technology and minefield marking methodologies.⁴⁴² Among the disparate solutions, the German government focused on the protection of civilians through the technological improvement of anti-handling devices and sensitive fuses, as long demanded by GIBL. The German government took the initiative to reach an agreement on suitable concrete technical parameters or limits (best practices) for fuse mechanisms, which could reduce the risks of AV mines to human beings. First, in 2002 the German government sought to establish an overview of relevant data on fuse technology by collecting information on the functioning of existing fuse mechanisms from each government.⁴⁴³ In June 2003, the German government integrated data from member governments on eleven types of fuses and drew a tentative conclusion that three types of sensors seemed unable to be designed in such a way that an individual cannot initiate the

⁴⁴⁰ Delegation of Ireland, "Mines Other Than Anti-Personnel Mines (MOTAPM) laid outside fenced and marked areas." CCW/GGE/III/WP.4. December 2002. "Mines Other Than Anti-Personnel Mines (MOTAPM) laid outside perimeter-marked areas." CCW/GGE/VIII/WG.2/WP.2. July 2004.

⁴⁴¹ Delegation of the United Kingdom, "Detectability of Anti-Vehicle Mines." CCW/GGE/VIII/WG.2/WP.1. July 2004.

⁴⁴² Delegation of Australia, "Landmine Detection Technology," March 2004. CCW/GGE/VII/WG./WP.2. "Minefield Marking Methodologies," November 2004. CCW/GGE/IX/WG.2/WP.2.

⁴⁴³ Working paper prepared by the Delegation of Germany, "Food for Thought on Mines Other Than Anti-Personnel Mines," for the second meeting of experts in July 2002. CCW/GGE/II/WP.5. July 11, 2002. Working Paper prepared by the Delegation of Germany, "Mines Other Than Anti-Personnel Mines (MOTAPM): Sensitive Fuses for Anti-Vehicle Mines (Overview of Fuzes and Recommendations for Best Practice)." November 28, 2002. CCW/GGE/III/WP.5.

mine and are, therefore, not a recommended method of detonation.⁴⁴⁴ Moreover, the German government's presentation in July 2004 to the CCW recommended additional qualifications for the determination of the sensitivity of fuses to meet, such as the influence of weather and climate as well as storage and handling conditions.⁴⁴⁵

The German government's recommendations heavily relied on technological development of sensors and devices and fell short of the safety standards GIBL had called for.⁴⁴⁶ Certainly, some suggestion by the German government did not totally rely on technological development of sensors. Instead, it recommended the suspension of the use of types of sensitive fuses, break wires, tilt rods, and trip wires, since they cannot be designed not to be excessively sensitive so that an individual's unintentional contact cannot initiate the mine. However, other recommendations were totally technologically-oriented. The most remarkable case is the German government's suggestion of multi-sensor fuse technology, in which multiple fuses are used to ensure optimum performance against targeted vehicles and avoid firing at other objects. With a multi-sensor fuse, the discriminatory capacity of AV mines increases and will prevent them from being actuated accidentally by the presence, proximity or contact of a person. A type of triple -sensor fuse technology includes the three types of sensors, acoustic sensors, infrared-sensors, and seismic/vibration sensors. A mine with such a multi-sensor fuse explodes only when all the sensors are

⁴⁴⁴ The Delegation of Germany, "Sensitive Fuses for Anti-Vehicle Mines: Overview of Fuses, Sensors and Recommendations for Best Practice," June 13, 2003. CCW/GGE/V/WG.2/WP.2.

⁴⁴⁵ The Delegation of Germany, "Sensitive Fuses and Sensors for Mines Other Than Anti-Personnel Mines: Proposal for Best Practice," July 5, 2004. CCW/GGE/VIII/WG.2/WP.3. The Delegation of Germany, "Protocol on Prohibitions or Restrictions on the Use and Transfer of Mines Other Than Anti-Personnel Mines," November 2003. CCW/GGE/VI/WG.2/WP.9.

⁴⁴⁶ These are as follows: acoustic sensors; break wires; fiber-optic wires; infra-red-sensors; magnetic sensors; pressure sensors; roller arms; scratch wire sensors; seismic/vibration sensors; tilt rods; and trip wires.

activated. Though multi-sensor fuses are very sophisticated, such mechanisms are very expensive to produce and there is little incentive to design them.⁴⁴⁷ Other technological recommendations by the German government had lower standards to measure the safety of some fuses. The German government allowed the safety of some fuses which GIBL recognized as dangerous. For instance, the German government decided that fiber-optic wires, magnetic sensors, pressure sensors, roller arms, and scratch wire sensors can be designed not to be excessively sensitive and can be designed to operate satisfactorily on their own even though GIBL repeatedly pointed out the danger of magnetic sensors and pressure sensors for civilians. Thus, GIBL's technological discourse was not totally reflected in the German government's efforts to set best practices for fuses.

1-B. GIBL's Humanitarian Discourse

Though the German government's solution to the problem of AV mines with sensitive fuses in the CCW did not meet GIBL's standards, the change in GIBL's discourse from technological arguments on the danger of AV mines to humanitarian arguments on the inhumane effects of AV mines pushed the German government to adopt the effect-oriented definition of AP mines. GIBL emphasized that AV mines affect the socio-economic lives of victims for an extended period even after the conflict has ended with a considerable amount of evidence.

⁴⁴⁷ International Committee of the Red Cross (ICRC), "Report on the Technical Expert Meeting on Anti-Vehicle Mines with Sensitive Fuses or with Sensitive Anti-Handling Devices," September 7, 2001. APLC/MSP.3/2001/INF/3. The technical meeting was hosted by the ICRC on Marcy 13-14, 2001.

GIBL's humanitarian discourse has been reinforced gradually since 2003. In its publications before 2003 GIBL introduced generally the overall humanitarian impact of AV mines on civilians, their families, and their communities as a marginal one.⁴⁴⁸ GIBL introduced surveys and research by the International Committee of the Red Cross (ICRC) and the UN Department of Humanitarian Affairs, as well as country reports from the annual Landmine Monitor Report. It also revealed the various difficulties survivors face, such as the problems of resettlement for refugees and internally displaced persons, the difficulty in finding jobs, the poverty of survivors' families, and the hindered reconstruction of mine-affected communities. GIBL continued to compile country-based records and episodes of the socio-economic problems caused by AV mines in mine-infected countries, such as Afghanistan, Angola, Bosnia, Burundi, Ethiopia/Eritrea, Kosovo, Senegal, and Sudan. For example, civilian and commercial vehicles, including ambulances, hit AV mines and were destroyed in Afghanistan; transportation detours caused transportation routes to be shut down, which increased commodity prices in Afghanistan; huge mine-contaminated lands were unsuitable for cultivation in Angola.⁴⁴⁹

However, since 2003 GIBL's humanitarian discourse has strategically addressed to those who doubted the scale of humanitarian problems AV mines impose on civilians. GIBL's discourse has become more specific and has reinforced its reports on the socio-economic impact of AV mines on civilians especially in response to criticisms about the insufficient evidence on the scale of the humanitarian impact of AV mines. The British government requested more evidence to establish

⁴⁴⁸ Küchenmeister, 2000. GIBL and Landmine Action, 2001.

⁴⁴⁹ GIBL and Landmine Action, 2001, pp. 32-38.

the AV mines' inhumane impact.⁴⁵⁰ The Russian government criticized the exaggeration of the inhumane character of AV mines. The Russian government argued that the overwhelming number of losses of civilians as well as soldiers is caused by improvised explosive devices used by unofficial armed groups and terrorist groups.⁴⁵¹ In response to such criticisms, GIBL, in cooperation with other NGOs, conducted its first survey focused only on the humanitarian impact of AV mines in 2003-2004. The result demonstrated the large-scale and far-reaching inhumane effects of AV mines. First, the report pointed out a cause of insufficient data on AV mines in the lack of discrimination between AP mines and AV mines in many post-conflict countries' accident reports.⁴⁵² Second, the survey explained the conditions of eighty-eight individual mine-affected countries and war-torn territories. The survey showed the existence of a large amount of AV mines, detailing that approximately one million AV mines, excluding AP mines, have been cleared by mine action organizations since 1999. Third, the survey introduced the huge scale of the damage AV mines can do, whose explosion can kill multiple people or injure them with long-lasting socio-economic effects. An AV mine explosion can hurt a larger number of civilians than an AP mine explosion, which injures or kills a person who stepped on it. Fourth, the survey introduced ramifying contamination of AV mines, which destroy social infrastructures, deny humanitarian access, hinder the delivery of essential services, and delay the process of post-conflict recovery and infrastructure development

⁴⁵⁰ Statement on matters pertaining to Article 2 at the fifth Meeting of States Parties, Bangkok, September 18, 2003.

⁴⁵¹ The Russian Federation, "Improvised Explosive Devices." November 20, 2003. CCW.GGE.VI.WG.2/WP.6.

⁴⁵² Landmine Action, Actionmine.de (GIBL), and Mines Action Canada, "Explosive Remnants of War and Mines Other Than Anti-Personnel Mines: Global Survey 2003-2004," 2005.

projects. An explosion of an AV mine could destroy social infrastructures, including railroads and bridges, thus obstructing humanitarian delivery and transportation for essential services, such as sanitation, health centers, and food rations. This leaves vulnerable populations even more vulnerable. This can affect the lives of not only the victim(s) of the direct impact of the explosion of AV mines but also the community which was affected by such infrastructure destructions by the AV mines. The cost of aid implementation and prices are thus increased. Such ramifying impact of AV mines explosion is of greater significance than the level of casualties resulting directly from AV mines accidents. Even a single suspicion of the existence of an AV mine can suspend road traffic. Long stretches of road can be closed simply by the fear of these mines. GIBL also pointed out that AV mines, albeit designed to attack vehicles, are intentionally aimed at civilians with the knowledge of such long-ranging impact.

1-C. Linkage of GIBL's Humanitarian Discourse with Related Norm and Principles

GIBL's humanitarian discourse that AV mines should be banned was reinforced through linkage of the causal principles of the GIBL's appeal and those of two international programs and a norm: these are the Bad Honnef Framework for mine action, the UN Millennium Goals, the norm on the clearance of explosive remnants of war (ERW) in Protocol V of CCW. It was a different style from the norm linkage expected in the third hypothesis in chapter 3 that an advocacy appeal's linkage with a norm strengthens the appeal and influences the government if the norm has domestic salience. Instead of applying an internalized norm in the domestic context of

Germany to GIBL's call and enhancing the legitimacy of the call, GIBL found a common causal principle between its appeal and the international programs and a norm. Such linkage worked to influence the German government because the German government was committed to the international programs and the international norm. First, GIBL's general argument on the socio-economic impact of AV mines had the same causal belief as that of the Bad Honnef Program, which assumes that mines disrupt socio-economic development of mine-affected communities and seeks such mine action that contributes to socio-economic development of them. Second, GIBL's discourse had the same causal belief as the German government's interpretation of the principle of the UN Millennium Goals that landmines obstruct the effort of poverty reduction. Third, GIBL's discourse indicated the similar causal belief of civilian protection from victim-activated weapons as that of the emerging international consensus on cluster munitions and the international norm on explosive remnants of war (ERW).

1-C-(1). Linkage with the Bad Honnef Program

GBL's appeal for a ban on AV mines dangerous for civilians was connected with the Bad Honnef Framework on landmine action, which the German government also supported and put into practice the Bad Honnef Framework. The linkage was not exactly a norm-linkage, which the third hypothesis expected that a discourse strengthened by the linkage of an advocacy appeal with a domestically internalized norm could influence a government. What was linked with the GIBL's appeal was the causal belief of the Bad Honnef Framework, an international agreement on landmine

policy, that landmines do long-lasting and multidimensional harm to individuals and the society. The GIBL's appeal was strengthened within the domestic discourse in Germany since the German government totally supported the Bad Honnef Framework and reflected it in its landmine policy. Furthermore, the Bad Honnef Framework's admission of the importance of a comprehensive ban on landmines as ultimate victim assistance enhanced the legitimacy of GIBL's call for a ban on AV mines dangerous for civilians.

The Bad Honnef Framework, which calls for the development-oriented mine action for socio-economic recovery of individuals and the society, had the same causal belief as that of GIBL's: landmines disrupt totally the relationship between the individual and the social and economic environment unique to each region. Based on the causal belief, the Bad Honnef Framework argues that landmine action should readjust disrupted relations between mine victims and their community. Short-term mine actions of mine-clearance and the provision of prosthetics cannot heal landmine victims' trauma, mend broken family, or provide houses and jobs for mine victims and returned refugees. Thus, the Bad Honnef Program encourages development-oriented mine actions that reflect the needs of mine victims, encourages the integration of short-term emergency relief and long-term development programs, and supports the solidarity and autonomy of mine-affected communities.

The German government was supportive for the Bad Honnef Framework's idea of development-oriented mine action from the beginning in 1997. Personnel from the German Ministry for Foreign Affairs and the German Ministry for Economic Cooperation and Development endorsed and participated in the two meetings of the

Bad Honnef Framework in 1997 and 1999 along with government officials from mine-affected countries and donor countries, UN agencies, and local and international NGOs. Dr. Günter Mulack of the German Ministry for Foreign Affairs promised further consultation and cooperation with mine-affected countries in planning, reviewing, and assessing mine action programs for the achievement of the Bad Honnef Framework.⁴⁵³ He emphasized the foreign ministry's effort to enhance the autonomy and solidarity of the mine-affected countries through encouraging them to master the management of mine action programs by technical support and transfer of know-how.

The German government incorporated the development-oriented mine actions into its mine action policy. The relationship of mine clearance with other mine actions was recognized. In 1999, State Minister Dr. Ludger Volmer, speaking on behalf of the presidency of the European Union, urged for the principle that mine clearance cannot be disconnected from the general development strategy of a state.⁴⁵⁴ In 2003, the German government insisted that the long-term project of victim assistance continues even after the completion of demining,⁴⁵⁵ and pledged to keep up its support until all victims of AP mines have received the necessary assistance.⁴⁵⁶ In June 2004, at the Standing Committee meeting, which is a meeting of member governments of the 1997 AP Mine Ban Treaty to discuss implementation issues, the

⁴⁵³ Welcome Statement of Dr. Günter Mulack in the second Bad Honnef Meeting in Berlin, June 22, 1999. "Documentation of the Second Expert Conference of Development-Oriented Mine Action Programmes (Bad Honnef II)," 1999, pp. 59-60.

⁴⁵⁴ Intervention by State Minister Dr. Ludger Volmer, the first Meeting of States Parties, Maputo, May 3-7, 1999.

⁴⁵⁵ State party of the 1997 AP Mine Ban Treaty is obliged to clear and destroy all the mines in its territory not later than ten years after the entry into force of the treaty for that State Party. Article 5 Section 1.

⁴⁵⁶ Statement by the delegation of Germany, Fifth Meeting of States Parties, Bangkok, September 15-19, 2003.

German delegation reemphasized the obligation of member states to provide assistance for mine victims and called for a long-term commitment to be integrated with development programs. In this regard, the German delegate demanded that mine victim assistance be included in the general social policies of mine-affected countries.⁴⁵⁷ The Bad Honnef Framework was reflected in the funding policy of the German Ministry for Economic Co-Operation and Development, which is responsible for mine victim assistance and rehabilitation. The Ministry for Economic Co-operation and Development indicated that its funding policy puts priority on the support of the reintegration of landmine survivors into the social and economic structure.⁴⁵⁸ For these purposes, the German government promoted donor and local coordination of mine actions so that regional priorities and requirements are met and then lead to socio-economic recovery. As 2003 chair of the Mine Action Support Group, which seeks to facilitate the coordination among donor countries in the field of humanitarian mine clearance, the German government stressed the importance of obtaining a first-hand impression of the situation and the resources in mine-affected African countries.⁴⁵⁹

The German government's endorsement of the Bad Honnef Framework has enhanced its recognition on the humanitarian impact of the use of AV mines, which is the causal principle of GIBL's call for a ban on AV mines dangerous for civilians. In the discussion on technical restrictions on AV mines in the CCW, in July 2004, the

⁴⁵⁷ Statement by Germany, Standing Committee on Victim Assistance and Socio-Economic Reintegration, Geneva, June 23, 2004. Cited in *Landmine Monitor Report 2004*, "Germany."

⁴⁵⁸ Comment from the Ministry for Economic Co-operation and Development. Cited in *Landmine Monitor Report 1999*, "Germany."

⁴⁵⁹ "Implementation of the G-8 Africa Action Plan Report for the G8 Summit in Evian, June 1-3, 2003." Prepared by Dr. Uschi Eid, Parliamentary State Secretary, the German Chancellor's G8 Personal Representative for Africa, p.23.

German government admitted the impact of AV mines in the larger context of humanitarianism. In the CCW, the German government started the discussion by addressing the humanitarian impact of the use of AV mines, impeding humanitarian assistance, peacekeeping, reconstruction, and social and economic development. At the same time, they ceased to emphasize the military utility of AV mines. Previously, the German government did not focus on the humanitarian points. Instead, the German government used to insist on the military utility of AV mines and the operational permissibility according to international humanitarian law.⁴⁶⁰

The German government's awareness of the socio-economic condition of victims of AV mines also appears in the government's financial support of a study on the socio-economic impact of AV mines. The German government financially supported a study by the Geneva International Center for Humanitarian Demining (GICHD), a Swiss demining NGO,⁴⁶¹ on the humanitarian impact of mines other than anti-personnel mines (MOTAPM) to examine the socio-economic conditions of mine-affected Angola.⁴⁶² The study reaffirmed the far-reaching impact of AV mines on civilians as reported by GIBL and other NGOs. It reported that the presence or suspected presence of AV mines could increase the shipment costs of goods and aid, thereby increasing the number of people who die and suffer in humanitarian crises; it could disrupt the distribution of foods and services, affecting a much greater number of people than those killed and maimed directly by AV mines. GICHD's 2004

⁴⁶⁰ Working Paper prepared by the Delegation of Germany, "Food for Thought on Mines Other Than Anti-Personnel Mines for the Second Meeting of Experts in July 2002 Sensitive Fuzes." CCW/GGE/II/WP.5. July 11, 2002.

⁴⁶¹ GICHD engages in operational and informational activities for the improvement of mine action performance. It provides operational assistance and conducts surveys to create and disseminate knowledge on demining technology and management.

⁴⁶² GICHD, "Humanitarian Impact from Mines Other Than Anti-Personnel Mines," Geneva, October 2004.

conclusion emphasized how the use of AV mines exacerbated humanitarian problems in post- conflict communities, which might otherwise have been resolved, causing them to become long-term, intractable emergencies.⁴⁶³

GIBL's call for a ban on AV mines dangerous for civilians was also strengthened because the Bad Honnef Framework also shared with the GIBL's call for a ban on landmines, including AV mines, based on the causal belief on mine's long-term effects on individuals and the society. GIBL's advocacy call for a ban on AV mines dangerous for civilians was situated as strengthening the Bad Honnef Framework since the Bad Honnef Framework ultimately seeks to prevent new mine victims. The Bad Honnef Program believes that the solidarity, autonomy, and sustainable development of mine victims and communities, which will be achieved through the development-oriented mine action, will prevent another armed conflict and thus bring sustainable peace.⁴⁶⁴ GIBL's call for a ban on AV mines facilitates the Bad Honnef Program's ultimate purpose to prevent new mine victims. The Bad Honnef Framework clearly indicates the importance of the awareness of NGOs that witnessed mine victims in the field and strengthened the idea of a ban on landmines for the establishment of the Bad Honnef Framework.⁴⁶⁵ Accordingly, the purpose of the Bad Honnef Framework includes political advocacy for a comprehensive ban on other mines and similar weapons since such a ban prevents future mine victims, thus

⁴⁶³ Ibid., p. 4.

⁴⁶⁴ GIBL, "Mine Action Programmes from a Development-Oriented Point of View (The Bad Honnef Frameworks)," 1997. GIBL, "Documentation of the Second Expert Conference of Development-Oriented Mine Action Programmes (Bad Honnef II)," 1999.

⁴⁶⁵ GIBL, "The Bad Honnef Frameworks," 1997, P. 2.

serving as ultimate care for mine victims.⁴⁶⁶ GIBL's appeal for a ban on AV mines dangerous for civilians is an integral part of the Bad Honnef Framework.

Thus, GIBL's advocacy for a ban on AV mines dangerous for civilians was strengthened through the Bad Honnef Framework whose development-oriented mine action policy was supported by the German government and incorporated in the German government's mine action policy. Though the advocacy call's legitimacy was strengthened not from an application of a domestically internalized norm, which the third hypothesis expected, the legitimacy was strengthened through the common causal principle, which both the GIBL's discourse and the Bad Honnef Framework shared. The causal principle was that landmines harm individuals and the society for a long time and from various aspects.

1-C-(2). Linkage with the UN Millennium Development Goals

Secondly, GIBL's humanitarian discourse was strengthened by linkage with the principle of the UN Millennium Development Goals. In the Zagreb Initiative, which GIBL started in cooperation with Australian NGOs, the Australian Network to Ban landmines and the Justice and International Mission Unit,⁴⁶⁷ in 2005, GIBL urged signatories to the 1997 AP Mine Ban Treaty to adopt the effect-oriented definition of AP mines and to prohibit sensitive fuses, specifically tripwires, breakwires, tilt-rods,

⁴⁶⁶ Ibid., p. 8. GIBL, "The Bad Honnef Frameworks," 1999, p.48.

⁴⁶⁷ The two Australian NGOs had a strong focus on the issue of AV mines and reported in 2004 and 2005 on government positions on AV mines, especially on AV mines with protective devices under the 1997 AP Mine Ban Treaty and urged for the effect-oriented definition of AP mines under the treaty. For example, see the report of the Australian Network to Ban Landmines and the Justice and the International Mission Unit, "the Road to a Truly Mine-Free World: Government Attitudes to Anti-Vehicle Mines," 2005.

low-pressure fuses, and anti-handling devices.⁴⁶⁸ Furthermore, the Zagreb initiative urged for immediate negotiations toward developing an internationally binding treaty that would ban the production, stockpiling, trade in, and use of AV mines that are not command detonated. The Zagreb initiative connected the problem of AV mines with the universally agreed upon Millennium Development Goals. The Millennium Development Goals, agreed to by governments in September 2000, were a politically-renewed will of world leaders to reduce extreme poverty, the solution for which governments have been cooperating on for decades. The Zagreb Initiative recognized that many post-conflict effects of AV mines obstruct the achievement of the Millennium Development Goals to reduce poverty and to provide health care and universal primary education.⁴⁶⁹ The Zagreb Initiative reemphasized the repeated claim of the socio-economic effects of AV mines, such as the killing and maiming of civilians long after a ceasefire, the inhibition of the repatriation of refugees and internally displaced persons, and the pollution of the natural environment.

The German government, with an increasing understanding of socio-economic effects of AV mines, as mentioned above, had already established a foundation to see the link between AV mines and poverty. The German government based government strategy toward the UN Millennium Development Goals on the recognition of the

⁴⁶⁸ The campaign started during the sixth Meeting of the States Parties of the AP Mine Ban Treaty from November 28th to December 2nd, 2005 in Zagreb. The Zagreb Sign-On Statement. <http://www.zagreb-sos.net/en/index.htm>.

⁴⁶⁹ The Millennium Development Goals are universally agreed unprecedented efforts to reduce extreme poverty in September 2000. Other goals are environmental sustainability, combat against HIV/AIDS and other diseases, promotion of gender equality and empower women, and global partnership for development.

clear link between poverty, and arms races and violent conflict.⁴⁷⁰ The German government situated disarmament as one of ten German strategies for poverty reduction. As for landmines, the German government pledged its continuous commitment to humanitarian demining in order to consolidate peace through reconstruction and reconciliation, thus reducing poverty.⁴⁷¹ It addressed the problem of the large-scale presence of landmines on agricultural lands and introduced a case in Cambodia, in which refugees have had difficulties in resettlement due to landmines.⁴⁷²

1-C-(3). Linkage with the Emerging Norms on ERW and Cluster Munitions

Thirdly, GIBL linked the issue of AV mines with the related class of bombs, explosive remnants of war (ERW) and cluster munitions, which are munitions delivered by air or fired from artillery which, at a preset altitude or a specific time after being discharged, release dozens or even hundreds of explosive submunitions, through the perspective of civilian protection. ERW and cluster munitions have gradually collected international attention due to their indiscriminate impact on civilians. International attention to the humanitarian effects of ERW and cluster munitions has been growing particularly since 2000, especially after the NATO's aerial bombing of the Federal Republic of Yugoslavia in 1999 and the war in Afghanistan that began in 2001.⁴⁷³

⁴⁷⁰ The Federal Ministry for Economic Cooperation and Development, "Poverty Reduction—a Global Responsibility, Program of Action 2015," August 26, 2005. Available at <http://www.bmz.de/en/service/infothek/fach/materialien/materialie108.pdf>.

⁴⁷¹ *Ibid.*, p. 31.

⁴⁷² *Ibid.*, p. 31.

⁴⁷³ Human Rights Watch, "Civilian Deaths in the NATO Air Campaign," *A Human Rights Watch Short Report*, Volume 12, Number 1 (D), February 2000; Human Rights Watch, "Cluster Bombs:

ERW are mortar bombs, grenades, cluster submunitions and air-dropped bombs which have not exploded and are left as a hazard in the post-conflict environment. ERW include both ordnance being fired but failing to explode and ordnance abandoned during the fighting. GIBL pointed out that some AV mines are categorized as cluster munitions and could remain as ERW: remotely-scattered AV mines, such as air-dropped or rocket launched, are scattered as submunitions of cluster munitions and could remain as ERW on the ground.⁴⁷⁴

GIBL's focus was on the indiscriminate nature of cluster munitions and ERW and danger to civilians during the post-conflict period. GIBL argued for the indiscriminate nature of these weapons not only during the conflict period but also during the post-conflict period. According to GIBL, cluster munitions are used in an indiscriminate manner with an unclear distinction between military and civilian targets. Furthermore, civilian targets suffer not only from a direct cluster munition attack but also from the physical contact of unexploded submunitions, ERW, on the ground after a conflict. Based on this recognition, GIBL identified cluster munitions and ERW with the banned AP mines.⁴⁷⁵ GIBL surveyed the indiscriminate effects of ERW and AV mines during the post-conflict effects and demonstrated the wide scale of post-conflict contaminations both ERW and AV mines could cause.⁴⁷⁶ GIBL's appeal for government added a new campaign against cluster munitions. GIBL joined

Memorandum For Convention on Conventional Weapons (CCW) Delegates," December 16, 1999; Human Rights Watch, "Cluster Bomb Memorandum to Delegates to April Prepcom for the 2001 CCW Review Conference," April 2, 2001; Human Rights Watch, "Backgrounder: Cluster Bombs in Afghanistan," October 2001; Human Rights Watch, "Ticking Time Bombs: NATO Use of Cluster Munitions in Yugoslavia," *A Human Rights Watch Short Report*, Vol. 11, No. 6 (D), June 1999; ICRC, "Cluster Bombs and Landmines in Kosovo," August 2000; and ICRC, "Expert Meeting on Explosive Remnants of War: A Summary Report," September 18-19, 2000.

⁴⁷⁴ GIBL and Landmine Action, 2001, p. 25.

⁴⁷⁵ GIBL, "Cluster Bombs and Cluster Munitions: A Danger to Life," Berlin, 2005.

⁴⁷⁶ Landmine Action, Actionmine.de (GIBL), and Mines Action Canada, 2005.

a newly-created international NGO campaign, Cluster Munitions Coalitions, for a total ban on cluster munitions.

The argument for the inclusion of AV mines in the categories of ERW and cluster munitions has strengthened through transnational and international recognition of the causal belief of the discriminate nature of cluster munitions and ERW. The International Committee of the Red Cross (ICRC) included AV mines in the category of ERW from the perspective of civilian protection,⁴⁷⁷ when the ICRC suggested an additional protocol to the CCW to mitigate the inhumane effects of ERW.⁴⁷⁸ Human Rights Watch showed its concern about remotely-delivered AV mines through constructing a list of producer countries of remotely-delivered AV mines and their exporters.⁴⁷⁹ Human Rights Watch's report on unexploded submunitions categorized mines delivered by projectiles, bombs, and rockets as submunitions and explained the various factors contributing to submunitions failures.⁴⁸⁰ The report also listed countries that produce, stockpile, transfer, and use submunitions and urged for the development of effective and universal international prohibitions or regulations to alleviate the ERW problem.

International NGOs continued to strengthen the protection of civilians from ERW through preventive measures. In 2003 Pax Christi Ireland and Pax Christi

⁴⁷⁷ Peter Herby and Anna R. Nuiten, "Explosive Remnants of War: Protecting Civilians through an Additional Protocol to the 1980 Convention on Certain Conventional Weapons," *International Review of the Red Cross*, No. 841, 2001, pp. 195-206.

⁴⁷⁸ Report of the ICRC to the Preparatory Committee for the 2001 Review Conference of the CCW, December 11, 2000. CCW/CONF.II/PC.1/WP.1. Cited in the report of the Third Preparatory Committee for the Second Review Conference of the State Parties to CCW, September 24-28, 2001, pp. 11-16. CCW/Conf.II/PC.3/1.

⁴⁷⁹ Human Rights Watch Fact Sheet, "Types and Manufacturers of Remotely Delivered Antivehicle Mines," December 2001. Prepared for the CCW Review Conference, December 2001, Geneva, Switzerland.

⁴⁸⁰ Human Rights Watch, Memorandum to CCW Delegates, "A Global Overview of Explosive Submunitions." Prepared for the CCW Group of Governmental Experts on the Explosive Remnants of War, May 21-24, 2002, p.2.

Netherlands launched a campaign for a ban on cluster munitions and formed a transnational advocacy network, Coalition against Cluster Munitions, which GIBL also joined. Coalition members share the causal belief of the indiscriminate characteristics of cluster munitions and ERW, which could endanger and kill mainly civilians. Coalition members insisted on the necessity of taking preventive measures to mitigate the largely-recognized social and economic effects of the wide range of unexploded and abandoned ordnance, such as artillery shells, mortar shells, hand grenades, cluster munitions, bombs and similar weapons, on civilians, peacekeepers, and humanitarian workers during post-war periods.

The European parliament has also included AV mines and cluster munitions in the same category of unexploded submunitions (unexploded cluster munitions), repeatedly warning against the grave humanitarian effects of unexploded submunitions, both AV mines and cluster munitions, on civilians. The European parliament's resolutions on February 13, 2003 and on October 28, 2004 called for an immediate moratorium on the use of cluster munitions. The latter resolution of 2004 also urged for a ban on AV mines with actual anti-personnel effects and for the effect-oriented definition of AP mines under the 1997 AP Mine ban Treaty, along with the call for a moratorium on the use of cluster munitions.⁴⁸¹ The 2004 resolution, which specifically addressed the problems in landmines and called for the effect-oriented definition of AP Mines, was based on the confirmation of the EU member governments' previous agreements on the humanitarian disasters caused by cluster munitions and unexploded submunitions.

⁴⁸¹ European Parliament Resolution on Cluster Munitions. October 28, 2004. P6_TA-PROV (2004) 0048.

Governments' identification of AV mines with ERW and cluster munitions has also strengthened gradually. As of 2001, many governments in the CCW refused to identify ERW with AV mines due to the two weapons' different ways of posing threats to civilians. They argued that AV mines were designed to be left unexploded and lie in wait for their intended victim; the adverse humanitarian consequences resulted from the weapon's improper use. ERW of unexploded submunitions dropped as cluster munitions were viewed as a problem not because they were used improperly, but rather because they did not function as intended when fired or delivered.⁴⁸² The indiscriminate nature of ERW and cluster munitions, however, has been increasingly recognized. Governments of the CCW agreed upon a new rule on the treatment of ERW as an additional protocol of the CCW in 2003. Protocol V obliges governments to clear, remove, and destroy ERW and to take post-conflict remedial measures to protect citizens, especially socio-economic reintegration of victims.

The German government was also ready to understand the causal belief of ERW and cluster munitions: the indiscriminate and inhumane effects of these weapons on civilians during the post-conflict period. In its annual disarmament review report from 2002 to 2005, the German government repeatedly deplored the catastrophic effects of ERW, which were increasingly found during demining operations along with AP mines.⁴⁸³ The German government signed the CCW's

⁴⁸² Louis Maresca, "A New Protocol on Explosive Remnants of War: The History and Negotiation of Protocol V to the 1980 Convention on Certain Conventional Weapons," *International Review of the Red Cross*, Vol. 86, No. 856, 2004, p. 821, pp. 815-35.

⁴⁸³ *Landmine.de (GIBL) Newsletter*, April 2007, p. 7.

newly added protocol, Protocol V on the clearance of explosive remnants of war, in May 2005.

Still, the shift was not a quick or a smooth one. In practice, the German government's understanding of the indiscriminate nature of AV mines has not affected the German government's definition of AP mines. In 2003, the German government was still opposed to the effect-oriented definition of AP mines. In May 2003, the German government declined the ICRC's February 2003 proposal to find a pragmatic "middle ground" to resolve the problem of sensitive fuses and anti-handling devices.⁴⁸⁴ In September 2003, at the fifth Meeting of States Parties to the 1997 AP Mine Ban Treaty, the German delegation repeated its position that the treaty is not applicable to AV mines with anti-handling devices.

However, the surging awareness of the inhumane effects of ERW and cluster munitions and the international effort to mitigate the effects of ERW and cluster munitions increased the German government's awareness of the inhumane effects of AV mines. In response to the emerging awareness of the need to address the post-conflict contamination and socio-economic impact of weapons, the German government in 2005 finally expressed its support for the effect-oriented definition of AP mines under the 1997 AP Mine Ban Treaty.

GIBL's discourse shift from the technological arguments on the safety level of anti-handling devices and sensitive fuses to the socio-economic effects of AV mines on civilians helped GIBL's successful persuasion of the German government to adopt the effect-oriented definition of AP mines. Still, to be noted is that the new discourse

⁴⁸⁴ Intervention by the ICRC, Standing Committee on the General Status and Operation of the Convention, May 16, 2003.

was linked with international norms of ERW and the UN Millennium Goals, even though they were becoming part of the value system of the German government.

1-C-(4). International Linkage of GIBL's Humanitarian Discourse

GIBL's discursive link was not directly to norms internalized in Germany but to international programs and norm to which the German government was committed. GIBL strengthened the legitimacy of its appeal for the ban on AV mines with potential anti-personnel effects by referring to the UN Millennium Goals and the emerging international norms on ERW and cluster munitions, even though policies of the German government were backed by the causal beliefs of the UN Millennium Goals and the norms on ERW and cluster munitions.

The linkage with international norms worked because the discourse took place at the international and transnational levels as well as the national level. Since the increasing audience of the discourse has come to include international NGOs and other governments, linkage with international norms clarified GIBL's appeal to the audience outside of Germany. After 2003 the discourse arena shifted more to the international arena. GIBL emphasized the international dimension of the appeal for a ban on AV mines with anti-personnel effects. GIBL's 2003 publication emphasized that advocacy for the effect-oriented definition of AP mines is not a unique appeal by GIBL to the German government. In practice, the publications of 2003, 2004,⁴⁸⁵ and 2005 on the danger of AV mines were international joint projects among GIBL, Landmine Action, Mine Action Canada, Mines Action Group of the United Kingdom, and the Australian network. Episodes and reports of inhumane effects of AV mines

⁴⁸⁵ Actiongroup Landmine. de (GIBL) and Mines Advisory Group, 2004.

on civilians were carried in these publications. For instance, the 2005 report introduced the World Food Programme's estimation that in Sudan the food security of up to two million people were affected by AV mines.⁴⁸⁶

GIBL's discourse at the international and transnational levels could resonate with arguments in international meetings in which the German government participated and build systemic pressure on the German government for a ban on AV mines with anti-personnel effects. The issue of AV mines with anti-personnel effects was treated in disparate international arenas, notably the annual state party meetings of the 1997 AP Mine Ban Treaty, the standing committee meetings on the General Status of the Treaty, and the CCW, all of which the German government participated in. International arguments on the issue of AV mines have been prevalent in various international arenas involving disparate actors. The annual State Party Meetings has continued to deal with the issue since 2000, in which several governments explicitly affirmed their adoption of the effect-oriented definition, encouraged state parties to review the AV mines in their own inventories to ensure that the risk to individual civilians is minimized, and tried to set up an informal expert group to set up best practices to minimize the risk to civilian populations of AV mines.⁴⁸⁷

The ICBL, the ICRC, and Human Rights Watch recurrently raised the agenda on AV mines with anti-handling devices in international meetings. In 2002, the ICRC and Human Rights Watch introduced background papers regarding the definition of AP mines and stressed the necessity to identify practical steps. The ICRC submitted

⁴⁸⁶ Landmine Action, Actiongroup de. (GIBL), and Mines Action Canada, 2005, p. 14.

⁴⁸⁷ The Standing Committee on General Status and Operation of the Convention: APLC/MSP.2/2000/SCE5/1; APLC MSP.3/2001/SC4/13; APLC/MSP.3/2001/SC4/1; and APLC/MSP.3/2001/1 Annex III. ICBL: APLC/MSP.5/2003/5 and APLC/MSP.5/2003/CW.4/1.

its report on the impact of AV mines to the CCW in July 2002.⁴⁸⁸ The ICBL also intervened in the standing committees and state party meetings to present their state practices in 2002 and call for an agreement on definition and on best practices.⁴⁸⁹ Human Rights Watch distributed a fact sheet on government definition of AP mines and a memorandum on the dangers of anti-handling devices and sensitive fuses in the treaty's annual state party meetings and the standing committee meetings, as well as in the CCW.⁴⁹⁰ In the first review conference of 2004, Human Rights Watch urged for the need to continue to discuss the issue on the definition of AP mines, warning against the situation that many governments, whether with the design-oriented definition or the effect-oriented definition, are content with the division with little prospect of resolution.⁴⁹¹

Still, this study cannot conclude that only the influence of meetings in the international arena could have influenced the German government. First, the chairpersons of Standing Committees always have remained neutral, just encouraging state parties to achieve a common definition of AP mines. They supported neither the design-oriented definition of AP mines nor the effect-oriented definition. There existed no strong governmental initiative to push forward the discussion toward an agreement after each government expressed its own definition in the Standing Committee in September 2000. The meeting of state parties merely received a report

⁴⁸⁸ ICRC, "Anti-Vehicle Mines: Effects on Humanitarian Assistance and Civilian Populations," July 15, 2002. CCW/GGE/II/WP.9.

⁴⁸⁹ Statement of the ICBL to the Fourth Meeting of States Parties to the 1997 AP Mine Ban Treaty Delivered by Stephen Goose (Human Rights Watch), Head of the ICBL. September 18, 2002.

⁴⁹⁰ Human Rights Watch Backgrounder, "Antivehicle Mines with Sensitive Fuzes or Antihandling Devices," February 25, 2002.

⁴⁹¹ Delivered by Steve Goose, Director of Human Rights Watch Arms Division and Head of ICBL Delegation at Nairobi Summit on a Mine-Free World: First Five-Year Review Conference for the Mine Ban Treaty. December 1, 2004.

from the standing committee and the arguments have not led to any conclusion for some years. Even though the voices of frequent presenters, Human Rights Watch, the ICRC, and the ICBL, in standing committee meetings and state party meetings have always advocated the effect-oriented definition of AP mines, they still did not directly criticize or pinpoint the German government, as GIBL has done. Though the Standing Committee meetings and State Party meetings had continued to talk about the issue since 1999, their efforts brought about no result in the first review conference of the treaty, the Nairobi Summit, in 2004. The Nairobi Action Plans adopted in the Nairobi Summit to further the efforts toward the ban on AP mines did not reach any meaningful conclusion on the issue of the definition of AP mines. It merely made a general recommendation for member states to exchange views and share their experiences in a cooperative and informal manner to promote consistent application of Article 2.⁴⁹²

Second, a strong initiative by the ICRC to reach a best practices solution without touching the legal argument on the definition of AP mines stalled. The ICRC withdrew its proposal to organize an expert meeting to reach a best practices solution due to lack of enough governmental supports. The ICRC's proposal of a second expert meeting in February 2004, which sought to reach an understanding on "best practices" regarding sensitive fuses and anti-handling devices gained insufficient support from governments to resolve the issue.⁴⁹³ The ICRC changed from the necessity to adopt the effect-oriented definition of AP mines to the argument to find

⁴⁹² Nairobi Summit (the first review conference of the 1997 AP Mine Ban Treaty), "The Nairobi Summit on a Mine-Free World, November 29-December 3, 2004. Ending the Suffering Caused by Anti-Personnel Mines: Nairobi Action Plan 2005-2009," p. 5.

⁴⁹³ Intervention of the ICRC, Standing Committee on the General Status and Operation of the Ottawa Convention (the 1997 AP Mine Ban Treaty), May 16 2003.

common ground on best practices. Furthermore, the initiative to reach common ground on best practices failed. The treaty's first review conference in 2004 in Nairobi failed to reach an agreement on the definition of AP mines and the State Party Meeting suspended the talk on AV mines.

In contrast to the discussions in international meetings, GIBL has continued to appeal to the German government directly, referring to already established domestic principles on landmines. Since 2003, GIBL publications have added advocacy tones to their research-centered publications. GIBL's 2003 publication renewed its direct appeal to the German government for recognition of the danger of AV mines and for the effect-oriented definition of AP mines.⁴⁹⁴ The style of the publication of 2003 shifted away from a text-based research report form to the terse presentations of main appeals and of pictures with visual impact. After a brief explanation of the inhumane impact of AV mines, the 2003 report listed GIBL's ultimate purpose to ban all landmines, which the ruling parties agreed with upon coalition formation in 1998, and the joint statement of GIBL's and the British NGO, Landmine Action, that governments start collecting data on sensitive fuses and anti-handling devices to measure their safety and drew attention to the growing international movement toward a ban on AV mines with anti-personnel effects.⁴⁹⁵ GIBL introduced all the names and contact addresses of all German NGO groups committed to the GIBL's cause, listed the names of all the German companies producing problematic anti-handling devices and sensitive fuses, and carried pictures of famous German figures posing as a maimed victim.

⁴⁹⁴ GIBL, 2003.

⁴⁹⁵ GIBL, 2003, pp. 8-9, and pp.12-13.

GIBL's direct appeal to the German government also took place in 2004 as a petition letter to the political leader. In its open letter to Chancellor Schröder, the then leader of SPD, in November 2004, GIBL again reminded the German government of the coalition agreement between the SPD and the Green Party, which pursued further efforts toward a global ban on all types of landmines that threaten civilians and of the parliamentary resolution of June 2002, which urged for an international effort to reach an agreement on the danger of AV mines with anti-personnel effects,⁴⁹⁶ and for the coalition government's pledge to aim for a global ban on all types of landmines that threaten civilians.⁴⁹⁷ In the open letter, GIBL criticized that the German government had not implemented the resolution's demands to remove AV mines from the German arsenal step by step and to take initiatives to reach an international understanding on the danger of AV mines.

The last evidence to support the importance of GIBL's direct appeal to the German government on top of the systemic effects of international meetings is that those international meetings failed to change some governments' definitions of AP mines. Even though the German government switched to the effect-oriented of AP mines in 2005, the French government, as well as the Japanese and Danish governments, maintain the design-oriented definition of AP mines. These governments also attended all these annual state party meetings and standing committee meetings.

⁴⁹⁶ Open Letter to Chancellor Schröder. Published in *Frankfurter Rundschau*, November 25, 2004. www.landmine.de/fix/Nairobi/english_letter_to_schroder.pdf.

⁴⁹⁷ *Koalitionsvereinbarung zwischen der Sozialdemokratischen Partei Deutschlands und Bündnis 90/Die Grünen* (Coalition Agreement between the Social Democratic Party and Alliance '90/ The Greens), *Erneuerung—Gerechtigkeit—Nachhaltigkeit*. (Renewal-Justice-Sustainability), October 16, 2002. p. 79.

In conclusion, the empirical examination of the German case suggests the limitations of advocacy groups' technological discourse to influence a government and the effectiveness of humanitarian discourse. GIBL's technological discourse based on meticulous research and empirical support still failed to persuade the German government to adopt the effect-oriented definition of AP mines. Still, GIBL's humanitarian discourse, which has strengthened especially since 2003, could successfully influence the German government, leading the German government to adopt the effect-oriented definition of AP mines in 2005. GIBL's humanitarian discourse has gained influence when GIBL linked its argument with domestically established norms and internationally growing norms. Two of the linked norms, the Bad Honnef framework for the integration of mine action with development programs and the norm of poverty reduction, as represented in the UN Millennium Goals, were already embedded in the German policy. The other linked norm, the norm on the regulations on ERW, was just accepted by the German government in 2005, even though international discussions on ERW had continued more than four years by then. The effectiveness of international norm linkage was because the discourse on the definition of AP mines took place in the international arena as well as in the domestic arena.

2. The French Advocacy Discourse

The French advocacy group, CNEMA (*Commission nationale pour l'élimination des mines antipersonnel* National Commission for the Elimination of Anti-Personnel Landmines), has continued to attempt to persuade the French government to adopt the

effect-oriented definition of AP mines since its establishment in 1999. CNEMA's call for the effect-oriented definition reflected its member Handicap International's concern about the inhumane effects of AV mines with anti-handling devices. CNEMA has an official status, as an official monitoring agency established under the French national law of the treaty, with the obligation of submitting an annual report to the French prime minister. In spite of CNEMA's privileged status as an official entity, which allowed close interviews with governmental officials and annual submission of its report and recommendations, CNEMA's argument could not persuade the French government into adopting the effect-oriented definition of AV mines. The only two changes CNEMA's advocacy brought to France's AV mines were the withdrawal of MIACA F1⁴⁹⁸ and the replacement of MIACAH F2's break wire fuse with a new one in order to prevent an explosion with the unintentional contact of a person.⁴⁹⁹ Other than these modifications, the French government has continued to reject the effect-oriented definition of AP mines, thus allowing AV mines with anti-handling devices and sensitive fuses that pose risk of accidental or inadvertent actuation.

Instead, the French government's humanitarian concern was directed toward the danger of ERW.⁵⁰⁰ ERW are the unexploded or abandoned artillery shells, hand grenades, mortars, cluster submunitions, rockets and other explosive ordnance that remain on the battleground after the end of an armed conflict. The issue of ERW overlaps with that of AV mines in that both are left on the ground after the cease-fire

⁴⁹⁸ *CNEMA Annual Report 2001-2002.*

⁴⁹⁹ Letter from Samuel Le Caruyer de Beauvais, Ambassador for Mine Action, February 17, 2004. Cited in *Landmine Monitor Report 2004*, "France."

⁵⁰⁰ Letter from Samuel Le Caruyer de Beauvais, Ambassador for Mine Action, March 31, 2003. Cited in the *Landmine Monitor Report 2003*, "France."

and continue to injure or kill civilians. In addition, some scattered or air-dropped AV mines constitute submunitions of cluster munitions. However, the French government separated the two issues even though the two problems overlap.

The French government made a substantial commitment to the solution of the problem of ERW in the arena of the CCW. Since the beginning of negotiations on ERW in the CCW in 2002, the French government has led the discussion through the presentation of technological and legal analyses of the problems of current submunitions.⁵⁰¹

The French government's suggestions on technical modifications were very in detail, proposing several standards to evaluate the improvement of the design of munitions. The first point was the achievement of a high rate of reliability in operation. The French government proposed that the improvement of detonator design and the checking system of the production and stockpiling processes would enhance the ratio of the number of munitions that explode to the total number of munitions delivered. Second was about the detectability of ERW. And the third point was the obligatory inclusion of self-destruction or self-neutralization mechanisms into munitions and obligatory marking.⁵⁰²

The French government's legal analysis extended to the preventive measures as well as the remedial measures of ERW problems. Even after the Protocol V of the CCW in 2003 obliged signatories to clear, remove, and destroy ERW during post-conflict periods, the French government sought preventive measures as well. The

⁵⁰¹ Delegation of France, "Technical Improvements to Submunitions," July 2002. CCW/GGE/II/WP.6. Delegation of France, "Methodological Approach to Evaluation in the Context of Improvement of the Design of Certain Specific Types of Munitions," July 23, 2004. CCW/GGE/VIII/WG.1/WP.1.

⁵⁰² Delegation of France, July 23, 2004.

French foreign ministry identified legal sources to regulate the design of cluster munitions through the analyses of treaties and general principles of international humanitarian law. Based on the general principles of discrimination and the prohibition of superfluous injury,⁵⁰³ the French government suggested the improvement of the designing of cluster munitions and setting up stricter rules for the use of submunitions in the military planning process and during the drawing up of rules of engagement.

In contrast to its serious commitment to the issue of ERW, the French foreign ministry continued to decline to deal with the issue of the definition of AP mines under the 1997 AP Mine Ban Treaty. Instead, the French foreign ministry held on to the design-oriented definition of AP mines and cast no doubt upon its legality and legitimacy. It continued to argue that the 1997 AP Mine Ban Treaty excludes AV mines, which are meant to explode on the basis of the proximity of vehicles.⁵⁰⁴ The French government reaffirmed its reluctance to alter this interpretation by rejecting the international agreement made in the fifth State Party Meeting in 2003 to reach a consensus on the issue of AV mines with sensitive devices by the first review conference of the 1997 Mine Ban Treaty in November 2004.⁵⁰⁵ For the French foreign ministry, the issue was no longer on the agenda.⁵⁰⁶

CNEMA was still persistent in its technological arguments through its interactions and cooperation with parliamentarians and transnational actors.

⁵⁰³ Delegation of France, "Explosive Remnants of War and International Humanitarian Law," August 11, 2005. CCW/GGE/XI/WG.1/WP.17.

⁵⁰⁴ Statement of the French delegation in the Standing Committee Meeting on the General Status and Operation of the Convention, May 16, 2003.

⁵⁰⁵ Intervention by the French delegation. The Standing Committee Meetings in June 2004. *Landmine Report 2004*, "France."

⁵⁰⁶ Letter from Ambassador Chesnel, Ministry of Foreign Affairs, February 17, 2004. *Landmine Monitor Report 2004*, "France."

CNEMA's annual reports complemented the information provided by a transnational monitor, the Landmine Monitor. Though the Landmine Monitor identified three types of problematic AV mines with potential anti-personnel effects in France,⁵⁰⁷ CNEMA added three more AV mines to which it alerted the French government and explained the mechanisms of all six AV mines.⁵⁰⁸ In March 2003, Handicap International presented a report to parliamentarians, detailing the antipersonnel characteristics of these mines.⁵⁰⁹ Following this report, Senator Rochebloine, in cooperation with other parliamentarians, addressed questions about HPD 2, HPD3, and MIACAH F2 to the French defense ministry on the issues raised.⁵¹⁰

However, the very detailed inquiries of French advocates could not produce any meaningful discussion with the rigid French government rendered. In response to inquiries by CNEMA, Handicap International, and parliamentarians, the French foreign ministry repeated that the way in which these actors classified the identified AV mines was outside the scope of the French government's definition of AP mines.⁵¹¹ For the French government, mines designed for anti-tank (anti-vehicle) use are unambiguously excluded from the implementation scope of the 1997 AP Mine Ban Treaty.⁵¹²

⁵⁰⁷ *Landmine Monitor Report 2000* and *Landmine Monitor Report 2001*, "France."

⁵⁰⁸ *CNEMA Annual Report 2001*, pp. 15-21.

⁵⁰⁹ Handicap International, "Handicap International et l'action contre les mines : théorie, pratique et revendications d'Handicap International (Handicap International and Its Action against Mines: Theory, Practice, and Demands of Handicap International)," March 2003.

⁵¹⁰ Letter from Senator Rochebloine to the Defense Ministry in 2003. Date not available. Letter carried in *CNEMA Annual Report 2003*, pp. 153-55.

⁵¹¹ In February 2004, a statement of the Mine Action Ambassador. *CNEMA Annual Report 2000*, pp. 54-55.

⁵¹² Letter from Ambassador Chesnel, Ministry of Foreign Affairs, February 17, 2004. Cited in the *Landmine Monitor Report 2004*, "France."

The French government hardened its stance by rejecting further talk by using the case of CNEMA's remit. The French Ambassador for Mine Action commented in February 2004 that the French government would no longer respond to CNEMA's inquiries about AV mines, to which the French government had responded since 1999. This is due to the fact that CNEMA's remit is limited to AP mines as defined in the 1997 AP Mine Ban Treaty, which does not cover AV mines according to the interpretation of the French government.⁵¹³ Consequently, the French government expressed that it had no responsibility to respond to CNEMA's inquiries about anti-handling devices and sensitive fuses. The only concern the French government had about the safety of AV mines was the reliability of their self-neutralization systems and the French Army's commitment to their further improvement.⁵¹⁴ As the German government had maintained in 2002, the French government also believed that self-neutralization systems of AV mines would provide sufficient safety to civilians.

In the face of the French government's rigidity about the remit of CNEMA, CNEMA's official post as the monitor of French implementation of the 1997 AP Mine Ban Treaty turned out to be disadvantageous for the conduct of flexible discourse on agenda setting. Established by legislation to monitor the French government's practices in victim assistance and demining under the 1997 AP Mine Ban Treaty,⁵¹⁵ CNEMA could not extend or modify its mandate at its discretion especially after the French government explicitly supported the design-oriented definition of AP mines to the understanding the range of CNEMA's jurisdiction.

⁵¹³ *CNEMA Annual Report 2000*, Paris, *La Documentation française*, pp. 54-55.

⁵¹⁴ Letter from Ambassador Chesnel, Ministry of Foreign Affairs, February 17, 2004. Cited in *Landmine Monitor Report 2004*, "France".

⁵¹⁵ Law No. 98-564, July 1998.

There were several attempts to extend the scope of CNEMA's remit. A CNEMA member, Senator François Rochebloine, with twenty-seven other senators, brought the issue of the remit of CNEMA to the legislature in September 2004. The bill proposed to the National Assembly expanded the definition of AP mines under French law. It required the adoption of the effect-oriented definition, so that AV mines with actual anti-personnel effects could be included under French law, thus extending CNEMA's jurisdiction to AV mines with potential anti-personnel effects.⁵¹⁶ However, the bill was not passed.

In spite of the limitations on its remit, CNEMA, especially under the initiative of its member Handicap International, has continued technological arguments to warn the French government against the danger of some AV mines with sensitive fuses and anti-handling devices.⁵¹⁷ They use domestic and transnational cooperation to strengthen and disseminate their arguments. In November and December 2004, Senator François Rochebloine inquired of the producers of controversial AV mines about the safety level of AV mines with anti-handling devices. This was, in particular, with regard to the French army's AV mines with potential anti-personnel effects (HPD 2, HPD 3, and ACPR F1). Senator Rochebloine reported to the National Assembly about the producers' comments that these identified mines could have anti-personnel effects.⁵¹⁸

⁵¹⁶ Law proposal No. 1821 has been presented by Mr. Rochebloine on September 22, 2004 to the French National Assembly.

⁵¹⁷ For example, in the 2004 report, CNEMA recommends the modifications of MIACAH F2, HPD F3, HPD F2, and AC dispersable F1. *CNEMA Annual Report 2005*, p. 25.

⁵¹⁸ Senator Rochebloine's correspondence with THEAL and Giat. *CNEMA Annual Report 2004*, pp. 194-207.

In 2005, Handicap International brought the issue to the international arena by calling for an amendment to the 1997 AP Mine Ban Treaty that would extend the definition of AP mines to include AV mines with anti-personnel effects.⁵¹⁹ In addition, it renewed its criticisms of the French army's possession of AV mines. Handicap International did not fail in adding scientific evidence. One of the criticisms Handicap International made was about pressure sensors with a low threshold, the threshold of less than 150 kilograms.⁵²⁰ Handicap International also asked the French government to test and to confirm the safety of two AV mines with magnetic sensors, HPD and dispersable F1, even though manufacturers asserted the safety of them to civilians the presence of a person in the brochure.⁵²¹

CNEMA also continued its scientific arguments. As for MIACAH F2, whose fuse will be replaced with a new one in order to prevent an explosion with the unintentional contact of a person, CNEMA asked the French defense ministry to inform the CNEMA of the safety of the new fuse system.⁵²² CNEMA recommended physical adaptation of the ACPR F1 mine to prevent its use in anti-demining mode.⁵²³ However, CNEMA's persistent tactics failed. The French government no longer responded to CNEMA's requests or inquiries. In addition, the French government has maintained the design-oriented definition of AP mines.

Behind the rigidity of the French government lie two background factors. First, the French government values the military utility of AV mines over civilian

⁵¹⁹ Handicap International, "Colloque sur le thème des bombes à sous-munitions (Symposium for the theme of submunitions)." October 6, 2005, p.3.

⁵²⁰ Ibid., p.3.

⁵²¹ Ibid., p.3.

⁵²² CNEMA Annual Report 2005, p.25.

⁵²³ CNEMA Annual Report 2000, pp. 19-20.

protection. Second, CNEMA, focusing heavily on a technological-oriented discourse, did not emphasize the humanitarian aspect of the issues. Unlike the German advocacy group GIBL, CNEMA continued to use scientific and technological arguments with the French government, without appealing to the humanitarian side of the issue of AV mines, such as the socio-economic effects of AV mines on civilians.

First, the French government's high evaluation of the military utility of AV mines is implied in the French government's persistent separation of AV mines from AP mines and its repeated estimation of the safety of AV mines with sensitive fuses in the French arsenal.⁵²⁴ Furthermore, the validity of the French government's explanations on the rejection of repeated proposals for discussions on AV mines was cast doubt on by the ICRC. The French government was concerned that the complex process of legal arguments, involving the wording of AP mines and AV mines with sensitive fuses, might deter non-signatory governments from signing the treaty, thus hurting the universalization of the treaty. The French government particularly wanted the participation of certain non-signatories that evaluated highly the military utility of AV mines.⁵²⁵ In the same vein, the French government also rejected the ICRC's compromise proposal to discuss only safety technological standards for anti-handling devices and sensitive fuses in order to set a "best practices" standard, which sought to avoid the complexity of legal interpretations AP mines.⁵²⁶ The ICRC expected that technological negotiations in pursuit of a pragmatic "middle ground," which

⁵²⁴ For example, the letter from Ambassador de Beauvais on February 12, 2001 and the statement of the French Delegation to the Standing Committee on General Operation and Status of the Convention, Geneva, May 11, 2001. Both cited in *Landmine Monitor Report 2001*, "France."

⁵²⁵ Statement of the French Delegation to the Third Meeting of State Parties, Managua, Nicaragua, 18-21 September 2001. Cited in *Landmine Monitor Report 2002*, "France."

⁵²⁶ ICRC proposal in February 2003 in the Standing Committee on the General Status and Operation of the Convention.

according to the ICRC's observation has more common ground than a legal solution, would not cause any prejudice to any government's legal position concerning the definition of AP mines, thus resolving the issue within the framework of the 1997 AP Mine Ban Treaty.⁵²⁷

The ICRC commented that such legal and procedural excuses did not constitute a legitimate reason from the humanitarian point of view for the following reasons. First, the implication of the design-oriented definition of AP mines is that killing or maiming a person through detonation of a mine containing a relatively small amount of explosives in the form of AP mines is prohibited whereas doing the same through the use of a more lethal mine containing far more explosives as AV mines is permitted. Such a contradiction undermines the credibility of the 1997 AP Mine Ban Treaty.⁵²⁸ Furthermore, tactical considerations of and references to the views of non-signatories are not a legitimate basis under international law for treaty interpretations and have no bearing on the obligations of member governments of the treaty.⁵²⁹

The other reason why CNEMA failed to persuade the French government was the insufficient humanitarian discourse to demonstrate the danger of AV mines with anti-handling devices and sensitive fuses. CNEMA did not draw attention to how civilians are actually suffering from AV mines with anti-handling devices since CNEMA, as an official monitor of the French implementation of the 1997 AP Mine Ban Treaty, strictly located the issue in the context of the article 2 of the treaty and

⁵²⁷ Intervention of the ICRC, Standing Committee on the General Status and Operation of the Convention, May 16, 2003.

⁵²⁸ Intervention of the ICRC, Fifth Meeting of States Parties, Bangkok, September 17, 2003, p.1.

⁵²⁹ *Ibid.*, p. 2.

stuck to the technological argument on whether anti-handling devices are activated by tampering or intentional disturbance of the mine.

CNEMA's humanitarian discourse in the issue area of victim assistance successfully influenced the French government, demonstrating the possible effectiveness of humanitarian discourse CNEMA could have conducted in the issue of AV mines with anti-handling devices. CNEMA, especially its member Handicap International, used information and knowledge on the conditions of victims in order to persuade the French government into strengthening victim assistance and then establishing international rights of landmine victims. Since the conclusion of the 1997 AP Mine Ban Treaty, Handicap International has expressed its concern about the French government's weak focus on victim assistance in comparison with the government's strong mine clearance and called on the French government to become involved in comprehensive and long-term cooperation with other governments that are developing policies for support for work with the disabled, including mine victim assistance.⁵³⁰

Handicap International and CNEMA's platform was based on their desire for real assistance for mine victims and the understanding that there was currently insufficient victim assistance. Handicap International and CNEMA formulated an extensive definition of mine victims. CNEMA's 1999 annual report expanded and elaborated on the definition of mine victims to reflect Handicap International's definition, which includes not only those injured, mutilated, or traumatized, physically and psychologically by landmines, but also family members of mine victims and those who depend on the victims. CNEMA's definition of victims also

⁵³⁰ *Landmine Monitor Report 2000*, "France."

includes those whose fundamental rights are violated, collectively or individually, through negligence, prejudice, and other social acts, or whose normal activities are otherwise disturbed.⁵³¹ In parallel with the development of this notion of victims, Handicap International and CNEMA conducted field research on the political, legal, and social conditions of mine victims, collecting episodes of mine victims as well as the experiences of rehabilitation professionals and victim assistance professionals in Senegal and Mozambique.⁵³² Furthermore, Handicap International presented a legal review of the healthcare system and social protection of civilian victims in Bosnia-Herzegovina and Angola and warned against the weak system of emergency medical care for victims.⁵³³ Based on the reviews, Handicap International urged for the improvement of laws and policies on pre-hospitalization care, hospital care, rehabilitation, and community-based mine action through further research in health and social welfare. Handicap International made presentations on these research results in the section of victim assistance of the Standing Committee Meeting, which is an inter-governmental meeting talks about the implementation of the 1997 AP Mine Ban Treaty.⁵³⁴

Handicap International and CNEMA strengthened a call for an establishment of the international rights of mine victims, one of the crucial appeals in victim

⁵³¹ Handicap International, "Towards Real Assistance to Landmine Victims: the Position of Handicap International," 2000, p. 6.

⁵³² For instance, "Landmine Victims in Senegal 1988-1999" published in 2000; "Response to Injury and Disability due to Antipersonnel Landmine Accidents. A study case: Mozambique" published in 2000; and "Strengthening and Promoting Associations and Community Networks for Sustainable Mine Risk Education: Huambo Province, Angola," 2005.

⁵³³ Handicap International, "Landmine Victim Assistance in Bosnia-Herzegovina: Working Paper to Support the Elaboration of a Long-Term Strategy for Landmine Victim Assistance," published in 2003.

⁵³⁴ Handicap International presentations in the Standing Committee Meetings: "Regional Victim Assistance Project for Southeast Asia," in 2003; "Lessons Learned Workshop: A Review of Assistance Programs for War Wounded & Other Persons with Disabilities Living in Mine-Affected Countries," May 2004; "Self- Help and Advocacy for Rights and Equal Opportunities South east Europe: A Regional Project Enhancing the Disability Movement," February 2004.

assistance, by linking the call with existing instruments of international and national law. The 2004 CNEMA report identified legal sources of states' obligations and victims' compensation and reparation rights from existing international human rights law, international humanitarian law, and international environmental law. First, the report identified people's right to the freedom of residence and the right to food in the Universal Declaration of Human Rights and people's right for the protection of the right to life and bodily security in the 1966 International Covenant on Civil and Political Rights. Furthermore, the report cited the Additional Protocol I to the Geneva Convention for the state's responsibilities for the protection of civilians during armed conflict⁵³⁵ and for the state's obligation to compensate when it fails to protect civilians.⁵³⁶ Handicap International even identified the state's obligation to avoid the depletion of the environment of other states in the Convention on Biological Diversity. Handicap International argues that such an obligation applies to the state's use of weapons, especially the state's responsibility for the negative effect of landmines' non-biodegradable and toxic garbage on ecosystems.⁵³⁷ The 2005 CNEMA report recommended the punishment of mine users by the newly created International Criminal Court.⁵³⁸

These humanitarian arguments have worked to persuade the French government on the issue of victim assistance and the rights of landmine victims.

CNEMA and Handicap International's campaign for the legal protection of victims

⁵³⁵ Article 51 about the prohibition of indiscriminate attacks and the requirement of the distinction between civilians and combatants. Article 35 about the prohibition of superfluous injury or unnecessary suffering.

⁵³⁶ Article 91. A party to an armed conflict which violates the provision of the Geneva Conventions or of the protocol is liable to pay compensation.

⁵³⁷ *CNEMA Annual Report 2004*, pp. 77-90. Handicap International, "What Rights for Mine Victims?: Reparation, Compensation, from Legal Analysis to Political Perspectives."

⁵³⁸ *CNEMA Annual Report 2005*.

gradually led the French government to accept the importance of victim assistance. Though the French government did not mention the protection of landmine victims in its earlier discussions of landmines, the idea of victim-assistance has gradually included in the French landmine policy. In 2000 the French government did not have a detailed plan for victim assistance while it had detailed policy plans on the mine ban or mine clearance.⁵³⁹ The French government has gradually strengthened its victim assistance policy through financial and legal measures. The French government did not have a specific line item for mine victim assistance in their budget for mine action in 1999.⁵⁴⁰ However, in 2000-2001, the French government set up a budget for victim assistance, 0.5 million euros, although, admittedly, it was still much smaller than the budget for mine clearance of 1.6 million euros.⁵⁴¹ In April 2002, however, the French government set victim assistance as a priority.⁵⁴² In March 2003, as co-chair of the standing committee on victim assistance and socio-economic reintegration, the French government took the initiative to collect information from mine-affected countries in order to gain a detailed picture of the needs and capacities of mine-affected communities.⁵⁴³ Finally, the French government showed its interest in the promotion of the legal protection of landmine victims. In response to a parliamentary question, the ministry of foreign affairs responded that for the future, France favors “international recognition of individual victims’ rights” in February 2004.⁵⁴⁴ Thus,

⁵³⁹ *Landmine Monitor Report 2000*, “France.”

⁵⁴⁰ *Landmine Monitor Report 2000*, “France.”

⁵⁴¹ Letter from Ambassador M. De Beauvais, February 12, 2001. *Landmine Monitor Report 2001*.

⁵⁴² France, Mine Ban Treaty Article 7 Report, submitted April 2000. Available at <http://disarmament2.un.org/MineBan.nsf/>.

⁵⁴³ Letter from Ambassador Gérard Chesnel, Ministry of Foreign Affairs, March 31, 2003. *Landmine Monitor Report 2003*, “France.”

⁵⁴⁴ Letter from Amb. Gérard Chesnel, Ministry of Foreign Affairs, February 17, 2004. Cited in *Landmine Monitor Report 2004*, “France.”

the French government's victim assistance policy has strengthened in response to CNEMA's and Handicap International's humanitarian discourse which was reinforced through linkage with international human rights law and international humanitarian law on the state's responsibility for the reparations and compensation.

3. Review of the French and German Advocacy Activities

French advocacy groups could not persuade the French government into adopting the effect-oriented definition of AP mines. Far from giving an advantage of access to the decision-making process, CNEMA's official status, as a monitor established by national legislation, produced a counterproductive effect when the adamant French government judged that the issue of AV mines with anti-handling devices was outside the jurisdiction of CNEMA and rejected further inquiries from CNEMA. CNEMA, unlike GIBL, did not engage in humanitarian discourse. Indeed, the French advocacy groups had sufficient information on the socio-economic conditions of victims through their field-based research. The French advocacy groups, however, did not utilize the facts, episodes, data, and knowledge that they had about victims to disprove the safety of AV mines with anti-handling devices and sensitive fuses. Instead, the French advocacy groups' attention was focused on strengthening the political and legal protection of mine victims, especially by establishing the rights of AP mine victims.

3-A. Limitations of the Technological Argument

The limitations of the technological discourse were demonstrated by both the French and German cases. In both cases, advocacy groups could accumulate a substantial amount of information from a variety of sources and both the French and the German governments were responsive to inquiries about the types of AV mines in possession. However, both cases faced difficulty in persuasion due to the different standards used to measure the safety of anti-handling devices and sensitive fuses of AV mines. In the French case, the limitation was more obvious than in the German case; the French government declined to debate the safety standard itself.

The complicated nature of the technological discourse preferred rather a closed discourse arena of correspondence between government officials, and parliamentarians and advocates than an open arena of the legislature. As the German case demonstrated, arguments on the functioning of anti-handling devices and sensitive fuses in the legislature were rather general, merely accusing the government's negligence of the danger of AV mines for civilians. It was not the argument in the legislature but parliamentarians' direct inquiries that led to substantial discussion with governments. As observed in the German case, negotiations in the parliament did not lead to any substantial discussion on the specific function of each anti-handling device or sensitive fuse. Also in the French case, the main discourse took place in CNEMA members' direct inquiries and correspondences with governmental officials.

Even though the German government, unlike the French government, was willing to negotiate over the issue of the definition of AP mines, such negotiation required engagement beyond occasional inquiries and parliamentary discussions.

Neither the sporadic accessibility to the government through inquiries and letters nor contact with the legislature led to any productive and continuous discussion on the technological safety standard of AV mines with anti-handling devices and sensitive fuses. This was due to the fact that such a discussion is too technical. Indeed, GIBL's accessibility to the legislature helped set the agenda of the legislature and facilitated GIBL's cooperation with parliamentarians to pass the parliamentary resolution of June 2002 for the effect-oriented definition of AP mines. However, the arena of the legislature was suitable more for a general topic that is easy to appeal to the public. To reach an agreement on a technical standard required some type of expert group composed of governmental officials, scientists, military officers, as well as advocates, which would meet regularly to exchange and compare data, and conduct a joint test of the safety of AV mines with anti-handling devices or sensitive fuses. For such an intensive discussion, the German government sought the international arena of the CCW, whose discussions tend to focus on heavily technology-oriented solutions to enhance the safety of a weapon. Subsequently, the tentative conclusion the German government has drawn from the arguments in the CCW in 2005 was heavily technology-oriented, with the suggestion of the use of a combination of multiple types of sensitive fuses, and still failed short of the standard adopted by GIBL. The German government's conclusion permitted the use of magnetic fuses, which GIBL point out as dangerous to civilians.

Still, the effectiveness of leadership by parliamentarians cannot be underestimated. The existence of like-minded parliamentarians in both the French and German cases was decisive. In the French case, Senator François Rochebloine, a

leading CNEMA member to warn against the danger of AV mines with anti-handling devices, has led discussions through correspondence with the French defense ministry. In the German case, the initiative by then parliamentarian Angelika Beer of the Green Party, who was a former coordinator of the International Campaign to Ban Landmines to which GIBL belonged until 2004, led to the successful agenda setting of the issue in the parliament.

The other difficulty in such a highly technological argument was the availability of a certain type of information. Indeed, both the French and German advocacy groups acquired sufficient information and knowledge about the characteristics and functioning of AV mines with anti-handling devices and sensitive fuses to persuade their governments. However, such information that would link each anti-handling device or sensitive fuse to each landmine explosion incident was hardly available. In other words, advocacy groups could not verify that a particular anti-handling device attached to an AV mine was exploded by the unintentional contact of a person. This is because most demining or victims' reports on mine explosion incidents do not include the types of mines, their anti-handling devices, sensitive fuses, or the victims' behaviors towards or proximity to the exploded AV mines. The advocacy groups' campaign to set stricter safety standards on anti-handling devices and sensitive fuses was supported only by theoretical and hypothetical arguments, not by empirical evidence.

3-B. Advantage of Humanitarian Arguments and the Effectiveness of International and Domestic Norm Linkage

The strength of humanitarian advocacy groups in humanitarian discourse was demonstrated in both the German and the French cases. Both have collected data and episodes of the socio-economic conditions of mine victims and their families and communities through independent and joint field research. GIBL utilized such data to persuade the German government into understanding the inhumane effects of AV mines. CNEMA and Handicap International used the data to persuade the French government into strengthening victim assistance and initiating an international effort to establish international rights of landmine victims.

These humanitarian arguments were strengthened through connections with internationally emerging or established norms. The theoretical argument on the influence of advocacy groups on a government in Chapter 3 hypothesized the importance of linking an advocacy appeal with domestically established norms for the successful persuasion of a government. This assumed that norm interpretation disputes usually occur in domestic arenas and involve mainly domestic humanitarian advocacy groups. However, the dispute over the definition of AP mines has gradually extended to the international arena. For example, the annual meeting of state parties to the 1997 AP Mine Ban Treaty dealt with the issue of the definition of AP mines with the participation of international NGOs such as Human Rights Watch and the International Committee of the Red Cross. The international nature of the discourse over the definition of AP mines made the GIBL's norm linkage with international norms as well as domestic norms possible to persuade the German government into adopting the effect-oriented definition of AP mines. The international nature of successful norm linkage was demonstrated in CNEMA's humanitarian discourse on

victim assistance. CNEMA cited internationally-agreed human rights norms in order to persuade the French government toward strengthening victim assistance. Thus, norm linkage was effective not only with domestic norms but also international norms.

4. Alternative Explanations

Alternative Explanation 1: The Effect of the Military Calculation

Even though the comparative empirical case studies of Germany and France have suggested the effect of humanitarian discourse on government definition of AP mines, it could be suspected that military calculations affected these governments' respective policies. Certainly, as studied in Chapter 4, both cases have the same extent of stakes in landmines in terms of territorial security and the production of AV mines. The number of types of AV mines disputed by advocacy groups was six in both France and Germany.

Still, a further investigation of the availability to alternatives to AP mines or to AV mines with potential anti-personnel effects reveals a slight difference between the two states. A government with more advanced technologies to produce mines that protect themselves with no anti-personnel effects could afford a stricter definition of the effect-oriented definition of AP mines. The German government's military calculations on the availability of alternatives could explain the German government's shift from the design-oriented definition of AP mines to the effect-oriented definition. Germany had more capability to prepare alternatives to AP mines, which are prohibited by the 1997 AP Mine Ban Treaty, and controversial AV mines

with potential anti-personnel effects, than France, based on its advanced landmine technology.

A comparison of the numbers of patents in the field of landmine and mine component technology suggests the point. As shown in Table 1 below, German landmine companies far exceed French landmine companies in terms of the number of patents for landmine technologies. The total number of patents by German landmine industries is 511 while that by French industries is 329. This indicates that Germany has capability to produce more sophisticated landmines that would distinguish the intentional disturbing of landmines from the unintentional disturbing, and discriminate soldiers from civilians, thus posing no threat to civilians. Subsequently, the element of the availability of alternatives to AP mines and AV mines with anti-personnel effects can explain the German government's adoption of the effect-oriented definition of AP mines, which prohibits AV mines with anti-personnel effects, and the French government's rejection of it.

Figure 7-1 The World's Top-Twenty Companies in Landmine Technology R&D

| Companies/Institutions | Patent activities total | Country |
|------------------------|-------------------------|---------|
| Daimler Chrysler AG | 142 | Germany |
| Rheinmetall AG | 129 | Germany |
| Dynamit Nobel AG | 125 | Germany |
| Diehl Stiftung & Co | 115 | Germany |
| Giat Industries SA | 83 | France |
| Thomson CSF | 66 | France |
| SAAB AB (Celsius AB) | 42 | Sweden |
| Etat-Francais Armement | 35 | France |

| | | |
|-----------------------------------|----|--------|
| US Secretary of Army | 30 | USA |
| Honeywell INC | 20 | USA |
| Lacroix Tous Artifices Etienne | 19 | France |
| Soc. Armement Alsetex | 17 | France |
| Boeicho Gijutsu Kenkyu Honbuch | 16 | Japan |
| Valsella Meccanotecnica Spa | 14 | Italy |
| British Aerospace plc | 12 | UK |
| US Secretary of Navy | 9 | USA |
| Israel Aircraft Industry Ltd | 9 | Israel |
| Ruggieri SA | 9 | France |

World Patent Index, 1963-November 1999, collated by Thomas Küchenmeister, GIBL.⁵⁴⁵

Alternative Explanation 2: Completion of Modification to Controversial AV Mines

The other potential realist explanation is that the German government could shift to the effect-oriented definition because Germany had completed modifications of anti-handling devices and sensitive fuses of AV mines that have been pointed out and debated by GIBL so that those AV mines follow an internationally emerging consensus on best practices, which is based on the recommendations made in the 2001 expert meeting organized by the ICRC. The recommendations included best practices in establishing a minimum pressure threshold of 150 kilograms for AV

⁵⁴⁵ Markus Haake, GIBL, "German's Landmine Policy in Twilight," 2000. Thomas Küchenmeister of GIBL commented as follows: The table covers all patents held by the 'Top-Twenty' companies, their subsidiaries, predecessors or within joint ventures, in the following patent classifications: Fuzes for controlled mines or mine fields, Submunitions, Self-propelled mine-clearing vehicles, Landmines, Minelaying land vehicles, Landmine components, Contact fuses, Fuses for initiating mine ejection. Not necessarily all patents of the classes 'submunition' and 'contact fuses' refer to landmines. Due to joint ventures multiple entries of patents are possible. Data are not complete because they represent only main patent classes of publicly available patents.

mines⁵⁴⁶ and in discontinuing use of three types of devices, tripwires, breakwires, and tilt rods. In practice, the German government reached a similar conclusion after it collected and summarized each government's view on best practices presented in the CCW, even though there has been no official agreement on this point.⁵⁴⁷

As Table 2 shows, all six types of German AV mines, whose safety for civilians GIBL disputed, have cleared the emerging standard for best practices, in terms of pressure threshold, breakwires, tripwires, and tilt rods. The German government modified the pressure threshold of DM 21 to above 180 kilograms in 2002 so that DM 21 will not be activated by a pressure of less than 150 kilograms.⁵⁴⁸ However, GIBL has continued to address the danger of magnetic influence fuses attached to three types of AV mines: AT-2, DM-31, and MIFF.

In contrast, two types of French AV mines (MIACAH F1 and MIACAH F2) have violated the emerging standard of best practices. Thus, it is reasonable to infer that the French government declined to adopt the effect-oriented definition of AP mines. Other AV mines with magnetic fuses (HPD 2, HPD 3, and Dispersable F1), though following the emerging standard of best practices, are under intense scrutiny and pressure from CNEMA about the safety of magnetic fuses as examined in the previous section of the French case study.

⁵⁴⁶ Human Rights Watch Backgrounder. "Antivehicle Mines with Sensitive Fuzes or Antihandling Devices," February 25, 2002.

⁵⁴⁷ The Delegation of Germany, "Sensitive Fuses for Anti-Vehicle Mines: Overview of Fuses, Sensors and Recommendations for Best Practice," November 14, 2003. CCW/GGE/VI/WG.2/WP.3.

⁵⁴⁸ Telephone interview by Thomas Küchenmeister, GIBL, with the Ministry of Defense, May 2002. *Landmine Monitor 2002*, "Germany".

Figure 7-2 Germany's AV mines with potential anti-personnel effects and their humanitarian status

| Type of AV mines | Fuse type | Status: Does the fuse at issue violate the emerging consensus on the suspension of tripwires, breakwires, and tilt rods, and of a pressure threshold of 150 kilogram? |
|------------------|---|---|
| AT-2 | Anti-handling devices and magnetic influence fuse | No |
| DM-21 | A pressure-operated detonator | No (the German government modified the pressure threshold above 180 kilograms) |
| DM-31 | Magnetic influence fuse | No |
| SMART | A sensor-fused anti-material munition | No |
| MUSPA | Electronic sensor fuze, initiated acoustically or by physical contact | No |
| MIFF | Magnetic influence fuse | No |

Figure 7-3 France's AV Mines with Potential Anti-Personnel Effects and Their Humanitarian Status

| Type of AV mine | Fuse type | Status: Does the fuse at issue violate the emerging consensus on the suspension of tripwires, breakwires, and tilt rods, and of a pressure threshold of 150 kilogram? |
|-----------------|------------------|---|
| MIACAH F1 | Breakwire | Yes, it violates. But withdrawn from service in 2001 |
| MIACAH F2 | Breakwire | Yes it violates. (To be changed in 2008) |
| Dispersable F1 | Magnetic sensors | No |
| HPD 2 | Magnetic sensors | No |
| HPD 3 | Magnetic sensors | No |
| ACPR F1 | Anti-demining | No |

In the French case, a limited effect of humanitarian advocacy discourse cannot be denied. Table 3 shows that the French government has also made efforts to modify certain types of AV mines in order to minimize their inhumane effects on civilians. The French government acknowledged that the non-intentional act of a person could activate the breakwire and cause the MIACAH F1 and the MIACAH F2 to explode. Then, the French ministry of defense withdrew the MIACAH F1 from service and started a study about ways to replace the MIACAH F2's breakwire system with a mechanism that allows discrimination between vehicles and people.⁵⁴⁹ The French government's effort to improve the MIACAH F2's breakwire obviously indicates its humanitarian effort though the decision to withdraw the MIACAH F1 might have been based on military calculations that the MIACAH F1 was no longer useful. If the MIACAH F2 had little military utility for the French army, the French government could have simply withdrawn the MIACAH F2 from service. However, the French government kept the MIACAH F2 obviously because of its military utility. Under the possibility of the use of the MIACAH F2, the French government tried to improve the humanitarian standard of the MIACAH F2 by improving its breakwire fuse.

Alternative Explanation 3: Socio-Political Background to Facilitate Humanitarian Discourse?

The other possible element to explain the different results in France and Germany is the different socio-political backgrounds in these two states. Germany has historically faced the problem of landmines more directly than France. This might have had a

⁵⁴⁹ *CNEMA Annual Report 2001*, p. 16.

systematic effect on the receptivity of the German government to a stricter regulation of landmines, the effect-oriented definition of AP mines.

Though both Germany and France were battlegrounds and suffered from air raids during World War I and World War II, Germany had a heavily mined front line along the division between East and West during the Cold War. Along the German-German frontier, from 1961 until 1985, the former German Democratic Republic (East Germany) laid approximately 1,322,700 mines along the German-German frontier.⁵⁵⁰ Thus, it can be expected that Germany has a foundation more receptive to a stricter regulation of landmines than France.

The German government has been well aware of the difficulty of complete demining. Out of the total 1,322,700 mines along the German-German frontier, 17,992 mines were not verified as having been cleared as of 1999. This is despite the fact that the former border was probably one of the best recorded minefields in the world, was demined in 1985 by the military of the former German Democratic Republic,⁵⁵¹ and was demined again under a second mine clearance operation by private companies beginning in 1991. The German government announced in December 1995 that all mine-affected areas on the old East-West divide had been cleared on the assessment that most of the unverified mines deteriorated completely. There has been no search underway for these mines afterwards. Despite the German government's announcement on the clarification of landmines along the German-German border, landmines have continued to be found along the border. On April 24,

⁵⁵⁰ *Landmine Monitor Report 1999*, "Germany."

⁵⁵¹ In 1985 Former East German leader Erich Honecker agreed to clear the mines in return for a financial aid package from West Germany.

2001, it was reported that three mines had been discovered in the previous year on the former border.⁵⁵²

Landmines are found not only along the borders but also across the territory of Germany. According to the Landmine Monitor, in 2003-2004, mines were found in six states out of the total sixteen states of the Federal Republic of Germany: in Brandenburg, two AV mines in the Dranser See near Berlin, fifty AV mines and AP mines in Zehdenick, fifty-one kilometers north of Berlin, in the Müggelsee near Berlin, and at Oranienberg near Berlin; in Bavaria, four AV mines and more than 1,000 items of ERW in Tüddern near Aachen, at Neu Ulm near Munich, and at Grafenwöhr near Nuremberg; in North-Rhine Westphalia, ERW in Essen, at Luchenberg near Aachen, and at Troisdorf near Bonn; in Lower Saxon, ERW in Hamburg; and in Saxony Anhalt, nineteen AP mines at a Magdeburg youth club.⁵⁵³ In 2002, 150 tons of bombs, mines, hand grenades, explosives and other munitions from World War II were eliminated in Baden-Württemberg.⁵⁵⁴ In contrast to Germany, the size of the landmine problem on French soil is far smaller. Fewer mines and unexploded ordnance from World Wars I and II have been found in France. During 2003, clearance of ERW that necessitated evacuation of local populations occurred in April near Lens in the west of France, in September in Brest (also in the west), and in October/November in Strasbourg in the east and in a northern village.⁵⁵⁵ World War II weapons were found in two rivers in 2003. In April 2004, twelve AP mines from World War II were discovered on a beach at Saint-Trojan in western

⁵⁵² “Minengefahr im ehemaligen Grenzstreifen (Mine threat on the former border),“ *Volksblatt-Mellrichstadt*, April 23, 2001. Cited in *Landmine Monitor 2001*, “Germany.”

⁵⁵³ *Landmine Monitor Report 2004*, “Germany.”

⁵⁵⁴ *Landmine Monitor Report 2003*, “Germany.”

⁵⁵⁵ *Landmine Monitor Report 2003*, “France.”

France. In August 2004, two AP mines from World War II were discovered on a beach at La Torche on the Atlantic coast.⁵⁵⁶

The mine areas that tend to be of more concern to the French government are in former colonies and former military bases abroad. In June 2004, France indicated its demining efforts in the French military site at La Doudah in Djibouti, a former French territory.⁵⁵⁷ Traditional clearance methods were not effective since flooding and landslides had buried some of the mines deeply. Demining of the territory is planned to take place before March 1, 2009, which is the treaty deadline for France's destruction of AP mines in mined areas under its jurisdiction or control. Article 5 of the 1997 AP Mine Ban Treaty obliges each state to clear and destroy AP mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of the treaty for the state. France became a party to the treaty on March 1, 1999. Thus, in general Germany has had more severe experiences with landmines than France in terms of size and extent.

Germany's more severe experiences of landmines than France's experiences might have motivated a stronger willingness of Germany, both at the social and political levels, to regulate landmines more strictly. However, it is impossible to conclude that there exists any systemic influence of the historical experiences of landmines on the German government's receptiveness to the effect-oriented definition of AP mines, a more humanitarian definition. First of all, these experiences were not reflected in the statements of German parliamentarians or political leaders who have

⁵⁵⁶ *Landmine Monitor Report 2004*, "France."

⁵⁵⁷ Intervention by France. Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies, June 22, 2004. *Landmine Monitor Report 2004*, "France."

engaged in mine ban advocacy activities. What they addressed was the serious landmine problems at the global level, especially in war-torn countries, and not that on German soil. For instance, the parliamentary resolution in June 2002 emphasized the seriousness of the AP mine problem by introducing the data on the existence of 230 million AP mines worldwide.⁵⁵⁸ Similarly, the German advocacy group, GIBL, did not mention the German experience of landmines in any of its publications. Thus, it is difficult to conclude that there was any systematic or discursive influence of the German experience of landmines on the German government's decision to adopt the effect-oriented definition of AP mines.

5. Conclusion: the Double Effects of both Humanitarian Discourse and Military Calculation

This study has indicated the influence of both effective humanitarian discourse and military calculations on government landmine policy. The influence of humanitarian discourse when strengthened through norm linkage, as expected from the third hypothesis, was proved. The German humanitarian advocacy group's more effective humanitarian discourse reinforced by the linkage with the causal principles of international programs and an international norm and the French advocacy group's lack of such a humanitarian discourse seem to have influenced the different results in landmine policy in the German and the French governments. The empirical study of the German case also demonstrated that the linkage works even through the common

⁵⁵⁸ *Drucksache 14/9438. Deutscher Bundestag, 14. Wahlperiode* (the German National Parliament, the 14th Legislative Period)—242. Sitzung (the 242nd session), Berlin, June 12, 2002.

causal beliefs between GIBL's appeal and the linked international norm and programs.

Still, the effect of humanitarian discourse cannot be overestimated because the first and second alternative rationalist explanations could also verify the German government's shift to the effect-oriented definition of AP mines and the French government's unchanged stance in favor of the design-oriented definition of AP mines. The first alternative explanation shows that Germany has higher technological capacity to produce more sophisticated AV mines which would not be categorized as AP mines even under the effect-oriented definition of AP mines. The second alternative explanation shows that AV mines in Germany were already modified so that they could meet the emerging consensus on the safety standard of sensitive fuses and anti-handling devices. Then, the German government had no worry about the possibility that those AV mines in Germany could be assessed as dangerous for civilians under the effect-oriented definition of AP mines.

However, a close examination of the process of the two governments' responses to the advocacy discourse indicates the element of humanitarian effect. Each government's stance on the definition of AP mines cannot be totally attributed to these rational calculations because both governments made gradual humanitarian efforts by improving the fuse mechanisms of their AV mines, albeit to a limited extent. First of all, the German government did not have to focus on the discussion on the improvement of anti-handling devices and sensitive fuses. It could totally reject the discussion on anti-handling devices and sensitive fuses as the French government did. Or it could continue to stick to the improvement of the safety measures of self-

neutralization and self-destruction systems of AV mines, which the German government originally held. The German government accepted, however, the agenda. Furthermore, the German government chose to tackle the issue with the improvement of anti-handling devices and sensitive fuses. Again, though the German government could have chosen other measures of strengthening of monitoring minefields or the improvement of detectability of AV mines, the German government chose the issue of sensitive fuses. Second of all, the French government addressed the problem of breakwire system, which the growing international consensus regarded as anti-personnel. The French government has made efforts to replace the MIACAH F2's breakwire system with a mechanism that allows discrimination between vehicles and people. The French government withdrew the MIACAH F1 with breakwire system from service. This indicates that CNEMA's technical arguments could have a limited influence on the French government in the long run.

Humanitarian advocacy work and a government's military calculations have mutual influence. Humanitarian advocacy groups' humanitarian discourse, especially when connected and strengthened through linkage with policies and a norm embracing the same causal principles as the advocacy groups' humanitarian arguments, could narrow the room for government discretion in armament policy. GIBL's humanitarian discourse successfully had the German government recognize and address the humanitarian problem of anti-handling devices and sensitive fuses. The issue of anti-handling devices and sensitive fuses was set as an agenda. In return, still, the government calculated and pursued the best interest within the narrowed space. Within the agenda, the German government's solution to the problem was

quite technical. Contrary to GIBL's expectation of the abolition of these devices and fuses, the German government advanced further technological improvement efforts to modify them.

Advocacy arguments, both technological and humanitarian, can influence a government to a certain extent, though it was the humanitarian discourse strengthened through linkage with the causal principles of international norm and programs that had a more decisive influence. Still, the result of the humanitarian influence does not necessarily reduce a government's assessment of the military utility of weapons or lead to disarmament. The humanitarian influence rather drives governments to develop more advanced weapons. Thus, the way a government strikes a balance between military utility and civilian protection remains military oriented.

From the perspective of humanitarian disarmament, the study could be summarized as follows: advocacy groups' discourse, especially humanitarian discourse, could alert the necessity of the internalization of the norm of humanitarian disarmament, the ban on AP mines, albeit with limited persuasive effects on governments. This way, humanitarian discourse could tilt government assessment of the balance between military utility and civilian protection toward the latter to a limited extent.

Chapter 8 Conclusion

The thesis of this study originates from a broad question: to what extent can the state accept more people-centered rule? The concept, of course, was idealized in the seventeenth-century theories of the state by Locke and Hobbs, albeit in different methods and extent. Ideals frequently clash with reality. The state must focus significant concern and priority over macro-level issues of territorial security and then armament policy, with occasional sacrifice of the lives of individuals, even civilians. The question on the state's relationship with its people has gradually changed since the mid-nineteenth century, with a shift toward the greater importance of the latter and with styles of governance that increasingly look beyond state borders. The trend accelerated in the late twentieth century with the generation of a number of more human-centric norms, such as human development and human security, not to mention the variety of burgeoning thematic human rights norms. I conceptualized the phenomenon as the emergence of human-centric governance, the notion that setting and implementing rules on people's relationship with the state is no longer the exclusive province of the state, and that international organizations, transnational advocacy groups, and individuals/norm entrepreneurs have come increasingly to participate, alongside the state, in the processes of governance.

In human-centric governance, I paid special attention to the perspective of international humanitarian law, the law of war, specifically the newly generating norm of humanitarian disarmament, which protects civilians not only during armed conflicts but also during post-conflict periods in the forms of weapon clearance and

victim assistance. Historically the law of war has required a balance between military utility and civilian protection based on the principle of the discrimination of civilians from attack targets and that of the proportionality of offense methods to military purposes. The norm of humanitarian disarmament tilts the balance toward the latter. The process of tilting the balance is not always smooth, especially because the state is most sensitive to its autonomy over armament policy. I sought the possibilities and limitations of humanitarian disarmament: the balance between civilian protection and military utility.

From the perspective of human-centric “governance,” my question focuses on the conditions and extent of state compliance with international norms. I paid attention to the discursive role of humanitarian advocacy groups and its effect on a government’s armament policy. In order to answer this question, I used the case of norm interpretation dispute over the definition of anti-personnel (AP) mines under the 1997 AP Mine Ban Treaty.

I inquired into this theme with the case of the discourse exchange between humanitarian advocacy groups and governments over the dispute over the definition of AP mines. It is whether the definition of AP mines includes anti-vehicle (AV) mines with anti-handling devices that could be activated by the unintentional contact of a person and thus prohibits such AV mines. Article 2 of the treaty legalizes AV mines with anti-handling devices based on the definition that anti-handling devices are activated when *tampered or intentionally* disturbed. However, many humanitarian advocacy groups insist that there exist such anti-handling devices that are sensitive enough to be activated by the *unintentional* contact of a person. AV mines with such

sensitive anti-handling devices can be activated by the *unintentional* contact of a person thus having anti-personnel effects. Still, Article 2 of the 1997 AP Mine Ban Treaty does not clarify the status of AV mines with such anti-handling devices that could be *unintentionally* activated. An agreed-upon definition of AP mines is key to norm internalization with respect to the ban on AP mines so that the humanitarian achievement of the treaty does not end up in an empty treaty with insufficient compliance.

Humanitarian advocacy groups called for a wider definition of AP mines, the effect-oriented definition of AP mines, while some governments have decided to adopt a narrower definition of AP mines, the design-oriented definition. The effect-oriented definition is more humanitarian than the design-oriented definition, since the former covers and thus prohibits many more types of landmines under the jurisdiction of the 1997 AP Mine Ban Treaty.

The question of norm interpretation disputes is found at the intersection of international law and international relations in terms of transnational relations. From the viewpoint of international law, the issue is a matter of state compliance with norms. International legal scholars Abram Chayes and Antonia Chayes explored various non-enforcement strategies to manage state compliance with norms outside of the formal institutions which adjudicate legal disputes. Though they elaborate on various types of strategies of transnational actors, especially advocacy non-governmental organizations (NGOs), such as mobilization of voters, lobbying, public campaigns, and information dissemination, they did not particularly explore NGOs' discursive role and strategies, especially in the domestic political context. An

international legal scholar, Harold Koh, further suggested a framework breaking down the traditional dichotomies of international and domestic, public actors and private actors. In transnational legal processes, public and private actors interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and internalize rules of transnational law. In an “interpretive community,” international and transnational actors communicate and generate a consensus of an interpretation of a norm in a particular context, thus facilitating the internalization of the norm.

An international relations scholar, Robert Keohane, dealt with the issue of norm interpretation dispute in the context of institutional bargaining. He suggested a structural condition for advocacy groups to influence a government. He argued for the importance of ideological and topical cleavages between the general public and the decision-makers because transnational advocacy groups can take advantage of the cleavage, ally with the general public, and then put pressure on the government. If such a cleavage does not exist between the general public and the government, it is difficult for transnational advocacy groups to influence the government. Still, Keohane’s argument provides only instrumental logic of advocacy influence on government: Advocacy groups can increase pressure on government through strengthening its voice in cooperation with the general public. Keohane’s logic does not explain the discursive influence of humanitarian advocacy groups on a government. In other words, using his model we never know whether advocacy groups could exert a normative influence on a government, the scenario understood

by the constructivist approach, which assumes that an agent's identity and interests are a repertoire of intersubjectively formed ideas and norms.

In order to clarify the institutional condition of discursive influence on governments in the domestic context, I highlighted the two deficiencies of humanitarian advocacy groups might suffer from in the domestic context: insufficient military information and difficulty in access to the decision-making system. Based on the assumption that the state has been most resistant to external interference with its decision-making processes in the issue area of security and then armament policy, I posited that advocacy groups face the secrecy of government information policy, and also face difficulty in obtaining military information which they use to dispute the safety level of weapons in order to persuade the government. Advocacy groups, which share principle beliefs but not always causal beliefs, are different from epistemic communities, whose members share causal beliefs and are invited to the decision-making process by the government to provide expertise advice.

I located a position in which humanitarian advocacy groups could be situated in the domestic decision-making process in Cortell and Davis' matrix of the domestic political structure, which describes the ideal types of state-social relation, whether close or distant, and the decision-making process, whether centralized or decentralized. The position humanitarian advocacy groups which try to strengthen civilian protection in a government's armament policy is a distant relation with the government, outside of the rather centralized decision-making process which is concentrated among the defense and foreign ministries and which excludes the legislature.

At this point, humanitarian advocacy groups could have two strategies to participate in the decision-making process: either to find like-minded government officials who will cooperate with them or to switch from military discourse to humanitarian discourse and bring the humanitarian discourse to the legislature. The first choice allows the advocacy groups to sit in the decision-making process and gain weaponry information and persuade the government. Such a case hardly ever happens since it depends on a coincidence whereby some members of advocacy groups have close personal connections with a powerful political leader or a minister. Even if humanitarian advocacy groups continue to have military discourse or appeal to the government from outside of the decision-making process, it is expected to be difficult for them to influence the government since their comparative advantage is not in military information but in humanitarian information. The second choice allows advocacy groups to utilize their comparative advantage in humanitarian information and bring the issue out of the closed circle of the executive to the parliament. In the second case, advocacy groups need cooperation from like-minded parliamentarians in order to enjoy access to the decision-making process. This scenario is realistic since cooperation between advocacy groups and parliamentarians is not rare. Furthermore, advocacy groups could enhance the legitimacy of their humanitarian discourse through norm linkage with other related norms which are domestically internalized.

I drew three hypotheses. First, I set the general stance of a government toward armament policy: when a government has higher military stake in landmines, it tends to take the design-oriented, less humanitarian, definition of AP mines. The second hypothesis posits the limitations of military discourse by humanitarian advocacy

groups: it is difficult for humanitarian advocacy groups' military discourse to influence the government when a government has higher military stake in landmines, even if the advocacy groups have access to the decision-making process. The third hypothesis conceives the effect of humanitarian discourse on a government: humanitarian advocacy groups' humanitarian discourse can persuade a government if the legitimacy of the discourse is strengthened through norm linkage.

The empirical cases narrowed down those twenty-five governments which fell into both of the following two categories as of 2002: signatories to the 1997 AP Mine Ban Treaty and members of the Organization of Economic Co-operation and Development (OECD). The first category was necessary because the issue of the definition of AP mines mattered only among the signatories. The condition of the membership of OECD, which requires democracy, was set in order to control for the element of room for advocacy activities.

The three case studies basically proved the three hypotheses: the strong influence of government perception of military utility of landmines on armament policy, the ineffectiveness of military discourse by advocacy groups, and the effectiveness of humanitarian discourse strengthened through linkage with related norms. Further dimensions to the influence of advocacy groups on government also emerged in the case studies, especially the second and third.

The first case study tested the first hypothesis by examining the pattern of the definition of AP mines among the sample governments as of 2002. The test confirmed the strong influence of a realist element, namely government perception of the military utility of mines, on armament policy. The test demonstrated that a

government with higher sense of military utility of AV mines, as measured by government perception of territorial security and by the number of the types of AV mines in production, tends to take the narrower, design-oriented definition of AP mines. The test also demonstrated that a government whose strategic outlook places a lower emphasis on the military utility of AV mines tends to adopt the wider, effect-oriented definition of AP mines. Another test of the general pattern of participation in the 1997 AP Mine Ban Treaty also proved the strong influence of the military utility of mines on armament policy. Signatories to the treaty had, on average, a lower level of perceived territorial threat than non-signatories. This indicates that non-signatories did not choose to join the treaty because many of them still saw the necessity of AP mines to protect their territorial borders.

The second case study studied the influence of advocacy groups' military discourse on armament policy from 1998 through 2002 by comparing two governments with the effective-oriented definition of AP mines, Austria and Canada, and two governments with the design-oriented definition of AP mines, Germany and France. The second case study also demonstrated the strong influence of a government's perception of military utility of mines and the difficulty for advocacy groups to persuade the government even when the advocacy groups possessed detailed military information and relatively close access to the decision-making process. Though the advocacy groups in Austria and Canada did not put pressure on their governments toward the adoption of the effect-oriented definition, both the Austrian and the Canadian governments adopted the effect-oriented definition of AP mines. On the other hand, as of 2002, the advocacy groups in Germany and France

could not persuade these governments to adopt the effect-oriented definition in spite of their military discourse supported by detailed information based on intense research. This was because, when a government recognizes a higher military utility of AV mines, as did the German and French governments, it is reluctant to accept the advocacy agenda itself. Both the German and the French governments proposed alternatives, such as the equipping of mines with self-neutralization and self-destruction systems, as the solution to the safety level of sensitive fuses and anti-handling devices of AV mines.

Closer examination of the results in the second case study revealed new logic concerning the difficulty for advocacy groups to engage in military discourse with a government, which is different from the logic used in the hypothesis. The reason for the difficulty of military discourse for advocacy groups was not the insufficiency of military information, as expected in my theoretical argument. Both the French and German advocacy groups had enough and detailed military information on the functioning of controversial AV mines and their devices. What made their persuasion difficult was the lack of access to such a decision-making arena as would engage in scientific and technological arguments on the safety level of AV mines. Certainly, both advocacy groups had access to officials at the decision-making level. In the German case, though the German Initiative to Ban Landmines (GIBL) could cooperate with the two ruling parties of the Social Democratic Party (SPD) and the Green Party, GIBL faced the disagreement over the definition of AP mines between the two ruling parties. The defense minister, a member of SPD, was against explicit support of the effect-oriented definition of AP mines. As Cortell and Davis expected,

if the core decision-makers' preference, in this case the German defense minister's preference, was similar to that of the advocacy groups, their appeal could have been accepted. In the face of the disagreement between the two ruling parties, GIBL could not intervene in the negotiation between SPD and the Green Party to persuade SPD though it cooperated with them for the parliamentary resolution of June 2002, which, without addressing the effect-oriented definition of AP mines, called for the German government's effort for an international negotiation to restrict AV mines dangerous for civilians. In the French case, the National Commission on the Elimination of Anti-Personnel Mines (*Commission nationale pour l'élimination des mines antipersonnel* CNEMA) itself was an arena for NGOs to talk directly with government officials. However, the arena ended up in a periodical general negotiation on the overall status of French implementation the 1997 AP Mine Ban Treaty without serving as a focused forum for more detailed technological argument on the safety standard of AV mines with anti-handling devices.

In this sense, it is worth exploring the conceptual differentiation between humanitarian advocacy groups and epistemic communities. Contrary to the assumption in the research, advocacy groups could collect as much military information as epistemic communities and it was rather their status vis-à-vis government that distinguishes advocacy groups from epistemic communities.

The third case study of the comparison of humanitarian discourse between Germany and France from 2003 through 2005 demonstrated the effectiveness of the humanitarian discourse strengthened through norm linkage. The German humanitarian advocacy group, German Initiative to Ban Landmines (GIBL, renamed

Actiongroup Landmine.de in 2004) switched its discourse after 2002 from a military and technological one to a more humanitarian one, focusing on the long-lasting effects of AV mines on civilians, while the French humanitarian advocacy group (CNEMA) stuck with the military discourse without resorting to humanitarian discourse. GIBL strengthened its argument that AV mines could have a long-lasting impact on the socio-economic lives of civilians through linking its call to the related international programs and norms with similar causal beliefs, such as the United Nations Millennium Programs for poverty reduction; the Bad Honnef Framework, which constitutes principles for development-oriented mine action; the new international norm on explosive remnants of war (ERW) to enhance the safety of civilians during post-conflict periods; and the emerging international consensus favoring restrictions or a ban on cluster munitions. Though the French advocacy group, CNEMA, had a humanitarian argument on the establishment of the legal protection of landmine victims, it did not connect the argument to the call for a ban on AV mines that pose danger to civilians. Eventually in 2005, the German government switched from the design-oriented to the effect-oriented definition of AP mines, while the French government did not change.

A closer examination of Germany's actions casts a degree of doubt on the theory that credits the effectiveness of GIBL's humanitarian discourse for Germany's adoption of the effect-oriented definition of AP mines, and shifts support toward more rationalist interpretations. First, it has been observed that the German government, at the time that it switched to the effect-oriented definition, had enough capacity to produce more advanced and sophisticated AV mines that could

distinguish military personnel from civilians, and it has been posited that it was thus ready to make the switch because it could afford to do so. In addition, it had by that time already withdrawn all the possibly controversial AV mines from its arsenal, so any AV mines in the German arsenal by that time would not be assessed as violating the 1997 AP Mine Ban Treaty. Under the assessment of the effect-oriented definition of AP mines, the German government would not have to worry about the safety standard of AV mines while the French government still possessed problematic AV mine MIACAH F2 with breakwire, which would not meet the emerging international consensus on the safety standard of AV mines for civilian safety.

I also looked for a possible cause of the embedded understanding of the danger of landmines in both countries, which could facilitate advocacy groups' humanitarian discourse. Germany received heavier damage from landmines than France during the first and second world wars. Demining took longer and cost more in Germany than in France. Occasional accidents and demining have continued even in the 1990s in Germany. However, the case of embedded understanding of the danger of landmines was not substantiated. Landmine experiences were not reflected in the statements of German governmental officials or even the German advocacy group for a ban on landmines, GIBL. Thus, it was impossible to conclude that Germany has stronger socio-political conditions to accept a ban on AV mines dangerous for civilians on humanitarian grounds.

The research therefore left the two probable reasons for the German government's switch in the definition of AP mines open. What could be concluded from the research is that both GIBL's humanitarian discourse and the German

government's rational calculations mattered. The German government, which had avoided the issue of AV mines with sensitive fuses by suggesting alternative measures of self-destruction and self-neutralization systems of AV mines at an earlier stage, eventually accepted the agenda involving AV mines dangerous for civilians and started to address the issue in the arena of the Convention on Conventional Weapons. This is obviously the result of GIBL's humanitarian discourse. Within the agenda of AV mines dangerous for civilians, the German government did its best to withdraw AV mines dangerous for civilians from the arsenal, albeit to a limited extent, and accepted the effect-oriented definition of AP mines in 2005. Consequently, what was clarified was that humanitarian advocacy groups could set the agenda on the danger of AV mines, and the government tried to maximize its state interest within the agenda.

To examine the mechanism of the intricate cycle of advocacy groups' agenda-setting and a government's state-interest calculation within the agenda could be an important project to further examine the condition of the influence of advocacy groups on a government's armament policy. A clue to the solution for the puzzle would be the mechanism in which humanitarian discourse is strengthened through norm linkage, which was found to take a different avenue from that expected in the third hypothesis. GIBL's humanitarian discourse was strengthened, not from norm linkage through application to domestically internalized norms, as expected from the third hypothesis, but from the linkage of the advocacy appeals with the causal beliefs of internationally accepted agreement and goals. As briefly discussed in Chapter Seven, part of the reason for the variety of linkage style was that the humanitarian

discourse was conducted not only by GIBL but also by other international and transnational advocacy groups in international arenas, though the former was more intense and continuous. In this sense, the finding suggests the necessity of seeing the wider multilateral relations surrounding the German government beyond the bilateral relation between GIBL and the German government. In other words, the governance of the execution of a human-centric norm, in this case the humanitarian disarmament norm of the ban on AP mines, is conducted not only by GIBL but also, albeit indirectly, by international and transnational actors, such as the International Campaign to Ban Landmines, Human Rights Watch, and the International Committee of the Red Cross.

From a disciplinary point of view, this finding suggests the importance of the wider perspective provided by the management school of international legal scholarship; the management school suggested the approach of legal processes to make a subtle analysis of norm interpretation disputes, which unpacks the black box of the state, examines the role of domestic and transnational legal actors, and then deciphers complicated discursive processes involved in all stages of interpretation disputes which involve information dissemination and exchange alongside normative discourses. This will also contribute to the clarification of the mechanism of human-centric governance in norm implementation.

Still, this research should be built upon the study of the conditions and extent of the influence of advocacy discourse in the bilateral interaction between advocacy group(s) and a government, which was clarified in the form of causal relationship in this study. The study of discourse in the domestic arena allowed for highlighting

direct advocacy discourse with target governmental entities. The institutional and state-interest-oriented constraints that humanitarian advocacy groups faced, especially in terms of access to the decision-making process, were more clearly shown in domestic discourse than they could have been shown in international discourses among domestic and transnational advocacy groups, international institutions, and multiple governments. This also served the advancement of the paradigm of constructivism in international relations, which considers how a norm's justification power, which international legal scholars recognize, was actually employed by advocacy groups.

In conclusion, the case of norm interpretation dispute over the definition of AP mines under the 1997 AP Mine Ban Treaty bore a strong case in examining the discursive influence of humanitarian advocacy groups on a government's armament policy. The treaty represented a strong case of the state's balance between military utility and civilian protection because the issue of AV mines with sensitive fuses was quite important to governments. Resolution of the dispute was expected to be difficult since the military utility of AV mines with anti-handling devices increased due to the treaty's total ban on AP mines. AP mines were used to protect AV mines from being removed by the enemy. Since AP mines had been totally banned in 1997, it was expected that anti-handling devices would serve a role of AP mines in protecting AV mines from being removed. Subsequently, it was assumed that governments were even more resistant to the wider definition of AP mines under the 1997 AP Mine Ban Treaty. Still, as presented above, it was discovered that the answer to the ultimate factor affecting a government's armament policy was more complicated, a mixture of

advocacy groups' agenda-setting and a government's calculation within the agenda, and involves multilateral relations. Case studies on multilateral discourse for the implementation of other humanitarian disarmament norms, such as with explosive remnants of war and cluster munitions, could further enhance the understanding of the mechanism of the discursive interaction between humanitarian advocacy groups and governments.

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