

**Democracy Building in Georgia:  
The Case for the Ottawa Convention**

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## **Introduction<sup>1</sup>**

Landmines have received unprecedented attention in the past five years. The movement to ban landmines has managed to focus the attention of the world on the repugnant nature of this particular weapon. The explosion of a landmine is not forceful enough to kill an adult, but it is, however, strong enough to remove the lower extremities. Amplifying the misery that is inflicted by this weapon, is the fact that landmines are indiscriminate in their choice of victim; landmines are unable to distinguish between civilians and combatants. Mined areas continue to be hazards for civilian populations long after a conflict ends.

The Treaty to Ban Landmines, also known as the Ottawa Convention, is the culmination of the demand to end both the manufacture and use of this weapon. It is the intention of the framers of the Treaty that it be adopted universally. Landmines are argued to be such a gross violation of human rights that their use in war is inhumane. The ban includes not only all future use, but the removal of all existing landmines from a territory.

The Ottawa Convention has not been signed by all countries. Security concerns are the most commonly cited reasons for this. Landmines are often used in contested areas to protect borders. Signing this treaty would remove one possibility in the arsenal of a country. This problem is complicated by the fact that the other side in a conflict may not be willing to handicap themselves in the same manner. Facing this reality, many countries invoke the classic argument of the sovereign nation: certain rights may be suspended in the face of imminent danger.

Georgia is a non-signatory. As with other non-signatories, it cites its security as the principle reason for not adopting the Ottawa Convention. Georgia borders Chechnya, whose internal turmoil threatens its security. The Chechen rebels use Georgia as an entry point into their own country for various reasons. The other side in this conflict, Russia, also poses a security problem. Georgia only gained its independence from Soviet rule in 1991. Relationships between the two countries remains strained. Another security concern is within Georgia's own borders. The province of Abkhazia is the homeland of the Abkhaz, a distinct linguistic and cultural group from the Georgians. The secessionist interests of this region are strong and are, in part, responsible for the recent civil war.

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The Landmine Monitor Report 2000 provides a description of the role that landmines continue to play in Georgia. It reports that problems related to the recent civil war may not have completely abated as the Georgian government reports that paramilitary groups continue to lay landmines in the region of Abkhazia (Landmine Monitor Report, pg. 824). However, this allegation was not independently verified by the authors of the report. More troubling though, is that the government does not dismiss the possibility of using landmines along its border with Chechnya. Russia is considering mining certain mountain passes to stem the flow of men and arms into Chechnya (Landmine Monitor Report, pg. 823). The Georgian government may feel it necessary to respond to the actions of the Russians in a similar manner on their side of the border. Russia is also accused of an incursion on Georgia territory and of dropping a cluster bomb containing antipersonnel mines. Russia maintains that this incident was an accident.

The fact that Georgia is an emerging democracy is an added concern. As previously mentioned, Georgia was under Soviet rule until 1991. Independence did not result in much call for celebration as conflict soon ensued. The flashpoints were the regions of Abkhazia and South Ossentia (Suny, 1994: pg. 328). 1991 ended in the overthrow of the first prime minister who was replaced by an interim government headed by Shevardnadze. Throughout 1992 conflict increased in the region of Abkhazia. A second round of elections took place in 1993, and Shevardnadze has led the country since that time. Many steps have been taken to shore up the strength of the Georgian democracy. A new constitution has been adopted, the Georgian people are experiencing more freedom, and most importantly, conciliatory steps have been taken towards minorities in the country. Nonetheless, the government of Georgia does not enjoy the complete trust of its population.

Georgia would seem to present a particularly difficult case for the universal adoption of the Ottawa Convention. The focus of this paper will be to provide a specific strategy to encourage Georgia's signing of the Treaty. The key to convincing Georgia to participate in the worldwide movement, is to focus on the Treaty's utility as a mechanism for democracy-building. The country has shown an intense interest in being recognised as a democracy. Reinterpreting the Treaty as a step towards this goal may provide the needed impetus to have the Georgian government finally sign the document. I will use a proceduralist interpretation of the role of law in a nation to buttress my claim that signing the Ottawa Convention shows not only a commitment to human rights, but also to democracy.

### **A Proceduralist Interpretation of the Law**

The law has a special character; it is a coercive set of rules by which a society organises its interaction. This is what a leading proponent of a proceduralist interpretation of law, Jürgen Habermas, regards as the facticity of the law. The law is also a set of rules that is seen as legitimate by legal subjects. Habermas

refers to this as the normative quality of the law. Consequently, any theory of law must respect these two factors. The title of Habermas' 1992 book, *Between Facts and Norms*, indicates his attempt to navigate between these two poles.

The facticity of the law needs little explanation. Coercion is derived from the force that the state may exercise against an individual that breaks the law. It is the legitimacy of the law that is in much more need of explanation. The validity of the law has been classically found in two places: the popular sovereign and human rights. Habermas does not break from tradition as the novel aspect of his interpretation is that he seeks to place these two concepts in a cooperative role and not in competition with each other, as they are often conceived.

Popular sovereignty is the manner in which a group of people direct themselves. Each member of society is an autonomous actor who has complete freedom to act in a hypothetical state of nature. As a member of society, each individual grants some of his or her own decision-making power to the sovereign who is then entitled to make decisions on his or her behalf, with the understanding that he or she does not abdicate all freedoms. The sovereign may limit the freedom of each individual actor only in so far that the restriction serves the interests of the community.

The concept of the popular sovereign is often described in terms of the social contract, which is an idealisation of the conditions under which free individuals would hand over control to another party. It is not a literal description of our history, but rather an expository device in political philosophy. Immanuel Kant viewed the social contract as an institutionalisation of the equality of all members of a society as a system of rights is expressed in public laws (Habermas, 1992: pg. 93). The reification of rights into laws includes human rights, and the fundamental principle that underlies the law is equal treatment for all. The acceptance of the social contract in Kant's philosophy, is a rational decision on the part of free and moral individuals. Limits on actions cannot be arbitrarily enacted as they would not be accepted, and it is in this way that Kant justifies the law's legitimacy. As we will see, this is not an adequate explanation for Habermas.

It is the relationship between public and private autonomy that differs from theory to theory. An example of this is the liberal discussion of the role of rights. Human rights are justified as a counterforce to a dangerous popular sovereign. The power of the sovereign is easy to abuse, therefore, rights act as protection against an absolute power that could potentially eradicate all personal freedoms. The aspect that Habermas brings to the discussion is that we must understand these two concepts, not as competing, but as complementary. The failure that Habermas sees in other theories is that they do not provide a proper foundation for the legitimacy of the law.

The problem that other theories face is that they merely describe the rational principle that underpins the legitimacy of the law and this is expository in nature, not justificatory. The mere mention of a rational principle does not explain why the theoretical edifice on which it is built is valid. The proponents of such theories are relying on the readers understanding of rationality to move their description to an explanation. Habermas provides the needed bridge between explanation and justification by focussing on procedure. The legitimacy of the law lies in the procedure through which we enact it: “Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses” (Habermas, 1992: pg. 107). The discourse principle applies to a wide variety of action norms, which include both moral and legal norms. In the case of legal norms, their specific instantiation is in the political theory of democracy.

A proceduralist account of the legitimacy of the law privileges discourse as the expression of our rationality. This gives a specific pale to the public and private autonomy of the individual. Public autonomy resides in the ability to form one’s will in an unfettered manner. The formation of will is through discussion and any hindrance by the government in this process will compromise the citizen’s ability to fully participate in public life. Private autonomy of the individual must guarantee unhindered access to the aforementioned participation. Consequently, the rights of an individual centre around discourse rights.

There are three important instantiations of these theoretical considerations. The first is that democracy is the only political system that is legitimate. No other political system can amply protect public spheres for proper will-formation. The second is that there are no specific human rights for any one society. Rather, the individual must create concrete rights through a discursive process. Finally, these discourses must take a legal form. All members of a society are both authors and addressees of the law and the law acts as the conduit of communication between the private and public spheres. The law is Janus-faced and able to recognise the two roles of each individual.

As a conduit, legal discourses serve a dual function. They first serve to elucidate, enumerate, and otherwise clarify the rights that each individual is entitled to in their private lives. The outcome of this legal discourse is the reification of rights in public law that is described by Kant. The legitimacy of these rights rests in the public autonomy of each individual, which, in a healthy democracy, should guarantee an uninhibited formation of will. If this freedom is missing, the law cannot serve its purpose, will have no normative force, and will only be a coercive vehicle of the state. Any rights found in such a system will also lack validity because they are first and foremost legal rights.

Habermas' theory privileges does not privilege public nor private autonomy; they are mutually dependent. The theory of law that Habermas extends in his discussion also has this dual nature; it has a role to play in both private and public life. The argument of a proceduralist though, is that neither of these roles alone is enough to endow the law with normative force. It is the manner in which rational agents use the law that explains its validity. An interesting consequence of Habermas' theory is its practical nature. It is a theory oriented around action. It is possible to adjudicate the validity of a legal system by simply looking at the actions of the legal subject; the further the experience of the legal subject deviates from the ideal, the more questionable the legitimacy of the system.

Habermas's proceduralist interpretation of the law provides more than simply a test for the legitimacy of a legal system; it contains an ideal within it. The closer a legal system approximates the conditions outlined in his theory, the stronger it will be. Striving for the ideal is possible because Habermas' theory is based on action. This is especially important for societies in the midst of developing a democratic system. Rights and democracy are equiprimordial in the proceduralist system and a successful legal discourse improves the rights of the individual, but as the rights of the individual increase, there should be further strengthening of the democracy. A strong democracy improves the legitimacy of the legal system. It is not possible to detach rights from democracy and thus, they improve or weaken in concert.

### **The Special Character of the Treaty to Ban Landmines**

Proceduralism would not usually be invoked as the philosophical backdrop for discussing an international treaty. Habermas' theory is concerned with justifying law at the national level. This is problematic. International law is outside the scope of his theory and, therefore, the content of any international legal instrument is seen as illegitimate. This worry, however, is mitigated by the special character of the Treaty to Ban Landmines. Unlike most treaties, it is the result of an international movement. There had been growing concerns in the eighties among various non-governmental organisations (NGOs) about the specific problems that landmines were causing in developing nations. It was clear to workers in heavily mined areas that the most pressing concerns of these communities was the removal of mines. The mounting civilian casualties instigated action in the early nineties. The six original NGOs that formed the International Campaign to Ban Landmines (ICBL) were Handicap International (France), Human Rights Watch (US), Medico International (Germany), Mines Advisory Group (UK), Physician for Human Rights (US), and the Vietnam Veterans of America Foundation (US) (Cameron et al., 1998: pg. 22). These groups had all dealt with the issue, but not in any concentrated manner.

The campaign was distinct from the beginning because of its loose organisation, as it had no central office or directorate to oversee activities. It was thought from the outset that NGOs in each country

would have the best insight into how to promote the collective cause. This proved to be a decisive move in the effectiveness of this movement. The original members of the ICBL were all from the North. The campaign was able to capitalise on a history of close working relationships between NGOs and their respective governments. Developing nations did not have this advantage and consequently, their campaign focussed on the education of their populations on the issue (Cameron et al., 1998: pg. 23). This flexibility allowed the campaign to effectively advocate its cause regardless of its location.

As the campaign gained momentum, governments took notice. The Ottawa conference of 1996 included representatives from 50 governments committed to the banning of landmines, 24 observer countries, and various NGOs. The conference was held to develop a concrete strategy for a comprehensive ban. It is the inclusion of the NGOs that is so remarkable:

The ICBL was given a seat at the table as a full participant in the conference, while those governments unwilling to declare themselves pro-ban sat in the back as observers. Campaigners were actively involved in drafting the precise language of both the final declaration and the action plan. This extraordinary level of co-operation would become a defining feature of what would become known as the Ottawa Process. Between October 1996 and December 1997 the ICBL would work in close partnership with Canada and other pro-ban states of the Ottawa Process to help develop treaty language and build the political will necessary to ensure the success of the process (Williams & Goose, 1998: pg. 35).

The creation of the Treaty to Ban Landmines followed fast on the heels of this conference. It was signed by 121 countries in December of 1997. The current number of signatures stands at 139, with 108 ratifications (Mines Actions Canada: December, 2000).

The emphasis, from the start, on local control is an excellent indicator of the ICBL's commitment to national autonomy. The content, therefore, of the Treaty cannot be treated as *de facto* illegitimate by a proceduralist simply because it is an international document. The particular rights that are demanded by a nation need not originate from inside that nation, as it is the decision to adopt a specific set of rights that must not be imposed from outside, not the content of the rights. The legitimacy of the Treaty, as with any other law in the theory of Habermas, is found in the procedure that surrounds its adoption.

Though the Treaty is usually seen as a tool to affirm human rights, it can be equally considered a vehicle for the strengthening of democracy in Georgia. The proceduralist emphasis on the importance of legal discourse in the reaffirmation of democracy allows the Treaty to function in this second capacity. The policy suggestions I will make to persuade Georgia to adopt the Treaty to Ban Landmines will reflect its latent capacity as a democracy-builder.

**Democracy Building in Georgia: The Role of Civil Society**

A proceduralist interpretation of the Treaty to Ban Landmines suggests one obvious strategy: the furtherance of public discussion on the subject. From Habermas' standpoint, the development of public spheres of discourse is essential to this project. Habermas offers the development of the public press in England as an illustration of the development of such a sphere in a democracy. The first major step toward the creation of a genuinely critical public sphere happened in 1695 with the end of official censorship. There was a marked growth in journals and pamphlets from that period onward. The power of these public discourses was not completely utilised in the eighteenth century, but public officials had to suddenly heed "the sense of the people" (Habermas, 1989: pg. 64). This weakened the absolute sovereignty of legislators as they could no longer make decisions in isolation. The development of this phenomenon over the next one hundred years resulted in its eventual institutionalisation in the society.

The role that public opinion plays in democracies has not gone unnoted. It is a fact, in modern times, that countries with more absolute forms of government are very careful to censor the press. The development of a politicised public sphere in the twentieth century will, consequently, have a different medium than that which is outlined by Habermas. Georgia is a case in point of this thesis, as the communist government in Georgia has kept very tight control of the media.

The secession of Georgia from Russia was preceded by public debate. A sanctioned form of nationalism was tolerated by Russia under the guise of environmental, religious, cultural, and linguistic debates in Georgia. An example of this type of discussion is the 1986 debate about the construction of a railway link through the Caucasus that threatened the ecological balance of a mountainous region (Sunny, 1994: pg. 320). The debate forced the project to be cancelled. The language may have been ecology, but the issue was the political determination of the Georgian people.

A natural place to foster discussion is in the institutionalisation of these public spheres of discourse: NGOs. In Georgia, NGOs such as The League for Protection of the Constitution have had an active role in civil society. They halted an attempt by the Tbilisi municipality to have all inhabitants registered. Another example is the work of the International Center for the Reformation and Development of the Georgian Economy that conducted a survey on how the Minister of State Property Management should conduct a process of privatisation. The survey was later used in the formation of the Minister's strategy on that very subject (Jones, 1998: pg. 3). Georgian NGOs are more effective in their roles than the press because they do not have the same history.



My main policy recommendation is in regards to the financing of NGOs in Georgia. The development of the third sector in this country has been swift. Jones provides the following figures: “If in 1993 there were, according to ISAR-Georgia (formerly the Institute for Soviet-American Relations), no more than five genuine NGOs, by mid 1995, there were 1,000 NGOs registered with at least forty of them active, non-profit, and non-partisan. By the summer of 1997, over 3,000 were registered...”(Jones, 1998: pg. 2). The financing of Georgian NGOs falls primarily in the hands of international agencies. Three of the main sources of financing for these organisations are the United States Agency for International Development, Oxfam, and the Soros Foundation (Spector, 1998: pg. 3). The majority of the funding is activity based and is linked to specific projects.

Funding for projects linked to the dissemination of information about the Treaty needs to be made more widely available. There are two fronts on which this strategy can be realistically applied. The first is to lobby international organisations that currently fund the bulk of NGO activity in Georgia to place a higher emphasis on projects that are linked to the implementation of the Treaty. The lobbying of these agencies must work hand in hand with attempts to involve more Georgian NGOs in projects related to educating the public about the Treaty.

The ICBL has its own contingent in Georgia that was present at the Ottawa conference and has been actively campaigning for the banning of landmines in their country. The NGOs most involved with the landmine issue are the Helsinki Citizens’ Assembly Committee of Georgia, Soldiers Memory Fund Association, Women of Georgia for Elections, Georgian Committee of World Doctors Against the Nuclear War, and MIKA 98 (Mines Action Canada: December 1, 2000). Their current activities involve monitoring the Abkhazia border, conducting information seminars, and most importantly, expanding the network of NGOs involved in this issue.

NGOs could be assisted through support directed at information dissemination and providing the tools such as internet access, coordinated information access, etc.. This would involve a change in the funding focus for these groups as this is not activity based, but it is related to the infrastructure of the NGOs in Georgia.

An expanded network of NGOs should include those whose main objective is democracy-building. What needs to be impressed on groups such as the Democracy Institute for Peace, Democracy and Development, and the Georgian Young Lawyer’s Organization is that the Treaty to Ban Landmines is pertinent to the promotion of democracy in Georgia. Admittedly this is difficult, given the many concerns that face the emerging democracy. There are many problems associated with the restructuring

of the government, but I think that it will be easier to garner support for the Treaty if it is seen to fit within the larger project of democratising Georgia.

### **Conclusion**

In this paper, I have attempted to show the role that the Treaty to Ban Landmines can play in strengthening the emerging democracy of Georgia. I have used a proceduralist interpretation of the law to bring attention to the close association between human rights and democracy. A proceduralist justification of the role that the Treaty can play in democracy-building emphasises the importance of communication and discourse. I have argued that there needs to be a restructuring of the funding of NGOs to better reflect their communication needs. A stronger third sector will hopefully foster discussion on the Treaty to Ban Landmines and its eventual adoption in Georgia.

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