Broadening the Ban:
Limitations of Agency, Intentionality,
and Legitimacy in the Ottawa Convention

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Ἔστιν δὲ πίστις ἐλπιζομένων ὑπόστασις, πραγμάτων ἔλεγχος οὐ βλεπομένων.

(*[Trust] is the assurance of things hoped for, the conviction of things not seen - Hebrews 11:1*)

(Re)situating the Ottawa Convention

The Ottawa Convention to ban landmines can perhaps be regarded as one of the most rapidly successful arms control/humanitarian initiatives in modern history.[1] In less than five years, over 120 countries added their word and their weight to the Convention, culminating in the ban on the use, manufacture, stockpiling, and export of these weapons. Central to the successful conclusion of the ban was the continued and unwavering assertion by NGOs and government leaders alike that anti-personnel (AP) landmines were not only indiscriminate, but wreaked their devastating havoc on civilians long after the conflicts that precipitated the mine use were over. There is little doubt that the successful conclusion of the Ottawa Convention will contribute to saving future lives that would otherwise be sacrificed to AP landmine use. Concomitantly, the world (at least in this aspect) will be a safer place. But a clear understanding of the implications of the ban on landmines would have us do more than simply celebrate its victory in eliminating a particular weapon from the arsenals of the world, even if there is significant consensus on the particularly devastating effects of that weapon.

With this caveat in mind, this paper aims to contribute to a critical understanding of the implications of the Ottawa Convention through an assessment of the ways in which agency, intentionality, and legitimacy are woven into the discourse surrounding the ban treaty. It is hoped that through a problematisation of the discursive and conceptual limitations of the Ottawa Convention, the agenda and targets of the ban might at the very least be broadened to include other categories of weapons that perform and devastate in the same ways as AP landmines. At best, it is hoped that this paper will stimulate critical thinking about militarisation and state-centric security practices more generally, and will call into question those particular underlying norms that give rise to discursive constructions of states and state interests, militaries, and weapons usage as unproblematically 'necessary.'

Landmine-as-Agent and the Ban Process

In the articulation of his recent research agenda tracing the genealogy of the stigmatisation of landmines, Andrew Latham sets out to determine (in part) "why some weapons…are invested with a heightened degree of moral opprobrium while others are considered mundane or 'conventional'." For, he argues,

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[1]The Ottawa Convention is formally known as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (18 September 1997).

"most weapons can be used indiscriminately and in ways that cause needless human suffering."[2] The answer, for Latham, is that particular discourses give rise to the development of socially constructed norms, thus instantiating particular weapons with particular moral or ethical meanings at different points in history. The discursive practices that are taken here to instantiate meaning should not be understood as purposive or instrumental events or tools, but as processes which emanate from cultural and political ways of being and knowing. These epistemological and ontological underpinnings are the conceptual lenses through which we interpret the world, and by which we negotiate, develop, and produce meaning in social contexts. It is therefore, more fruitful to engage in an inquiry of the practices which produce meaning in particular places, and with respect to particular objects (in this case, landmines). As David Campbell notes, "[w]hile the objects of concern change over time, the techniques and exclusions by which those objects are constituted as dangers persist."[3] It is in the context of such an ethos that Latham introduces the ban on landmines as socially and politically related to earlier articulations of various weapons bans throughout the twentieth century. And just as the ban is part of a larger discursive construction that finds precedent in earlier stigmatisations of particular weapons, so landmines themselves, their effects, and the way they are perceived have been coded in particular ways as the result of discursive practices.

"[S]pecific weapons" Latham suggests, "do not self-evidently belong in one category or another, but come to be placed under a specific moral sign as a result of a process of interpretation." More generally, he posits that military artefacts (weapons, weapons systems, and the ways in which they are used) "have a specific history and politics that can be interrogated and explored."[4] This approach lends itself to a discussion of the ways in which the problem of landmines has been socially constructed and codified in the Ottawa Convention, and the discursive manner in which landmines have been stigmatised. It is crucially important to note that, in the context of treaty bans on certain weapons, it is not the violent behaviour of states or militaries that is specifically proscribed, rather it is the weapon that is codified as inhumane, indiscriminate, or otherwise unacceptable. Latham notes that "the laws of war [or war's constitutive weapons bans], by stigmatising a narrow range of military technologies and techniques while legitimising any conduct consistent with military necessity/utility, actually work to suspend the application of moral judgment to the vast majority of weapons and battlefield practices (almost all of

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[2]Andrew Latham, "Global Cultural Change and the Transnational Campaign to Ban Antipersonnel Landmines: A Research Agenda," YCISS Occasional Paper No. 62, October 2000, p. 2.

[3]David Campbell, *Writing Security: United States Foreign Policy and the Politics of Identity,* (University of Minnesota Press: 1992), p. 13.

[4]Latham, "Global Cultural Change," pp. 5-6.

which are violently cruel)."[5]   In other words, it is the proscribed weapon, rather than the states and militaries which field them, that are coded at particular points in time as morally and ethically unacceptable.

That agency is regularly (and perhaps increasingly) ascribed to weapons and weapons systems should hardly be surprising. We are increasingly subjected to explanations of both the achievements and malfunctions of weapons in news media and official government briefings during times of conflict. Not inconsequentially, the image of a 'smart bomb' locating the entrance to a narrow chimney stack has become the iconic image of the Gulf War. Similarly, during NATO's 1999 attack against Yugoslavia, weapons and weapons systems were glorified to an extreme. Daily footage on network television displayed an astounding and impressive array of technologically advanced, surgical strikes against various targets.[6] The F-117 Nighthawk (stealth bomber) was flown in specially from a mid-western airbase in the early weeks of the conflict as a sort of showcase of advanced American technology.[7] More important for the purposes of this study, however, are the types of explanations that were propounded when mistakes were made. Almost without exception, NATO mistakes that resulted in losses of civilian life were ascribed to technological malfunctions, either entirely or in part. For example, when 16 civilians in the town of Surdulica were killed on 27 April, NATO General Giuseppe Marani explained that the bomb "went astray." On 1 May, 23 people were killed in a bus that was crossing the Luzane bridge near Pristina when a NATO missile struck. NATO spokesman Jamie Shea explained that the bus "was not seen by the pilot whose attention was focussed on his aim point during weapon trajectory." A 19 May strike in Belgrade that demolished the maternity wing of the Dragisa Misovic hospital clinic was attributed to a technical malfunction. In Aleksinac, on 5 April, five civilian deaths and 30 injuries were explained by Air Commodore David Wilby this way: "despite our meticulous and careful pre-attack planning, the law of statistics will, at some stage, go against us and we will be exposed to technical defect." When an air-to-surface missile mistakenly crashed into a house in Bulgaria on 28 April, NATO officials indicated that the bomb became confused as a result of the Yugoslav technique of illuminating and then quickly extinguishing ground radar systems.[8]

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[5]Ibid., p. 28.

[6]The results of these strikes were in some cases quite astounding. For example, in the city of Uzice, the post office in the city centre lay in ruins with only minimal damage to nearby apartment blocks. Similarly, targeted government buildings on Knez Milos Street in downtown Belgrade were utterly demolished while civilian residences nearby were basically uncompromised.

[7]Unfortunately, the Stealth did not turn out to be all that stealthful.

[8]"NATO's Bombing Blunders," BBC World News, 1 June 1999.

These examples, and others like them, are those to which we have all in some way or another been exposed, and to which we have even in some way grown accustomed. But these examples, commonplace as they may be becoming, are not without their conundrums. Cristina Masters argues that "[n]avigating the ethical implications of inscribing military technology with agency… requires not only analyzing the *effects* of advanced military technologies, but also analysing the processes that discursively constitute technology as legitimate political agents."[9] In other words, there are clear ethical implications concerning responsibility and accountability when that which is said to have failed is the weapon, weapons system, or technology itself. States and state militaries (or allied state militaries such as in the case of NATO) for example, were absolved of responsibility with respect to the "technical defect" of the weapons used. The deaths of human beings in Serbia and Iraq were therefore not the responsibility of any other human being, but were instead the regrettable but necessary effects of weapons failure which are attributable to the laws of statistics. Such an obfuscation of responsibility radically forecloses the possibility of representing the practices of militarisation and war as unethical or morally questionable. We are therefore, unable to stigmatise the totality of warfare or weapons usage in a general sense, but are instead left with the possibility of stigmatising particular weapons that are coded as particularly problematic. The problematic aspects of particular weapons may lie in their disproportionate effects on civilians (chemical/biological weapons), the totality of their devastation (nuclear weapons), or their indiscriminate and long term effects (AP landmines).

In order to understand the manner in which AP landmines have been so completely stigmatised, it is crucial to explore the ways in which these weapons have been discursively constructed and coded as occupying a particular conceptual (and exceptional) space. The discursive construction of the AP mine as an actor imbued with agency is the crucial first step toward achieving its banishment from the arsenals of state militaries, and is quite visible in the language deployed by ban supporters. Canadian Foreign Minister Lloyd Axworthy viewed the campaign to ban AP mines as a "defining moment for post-Cold War international relations," in which it was becoming increasingly clear that "international public opinion will not tolerate the indiscriminate violence of landmines."[10] In the introduction to (what is so far) the only edited volume dealing with the Ottawa Convention and AP landmines, Cameron, Lawson, and Tomlin describe its constituent chapters as tracing the "problem of AP mines."[11] Williams and Goose argue in the same volume that the primary problem of AP mines – what makes them a particularly

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[9]Cristina Masters, "Cyborg Soldiers and Militarized Masculinities," unpublished Master's degree thesis, York University, 2000, p. 7.

[10]Lloyd Axworthy, "Towards a New Multilateralism," in Cameron, Lawson, and Tomlin, *To Walk Without Fear: The Global Movement to Ban Landmines,* (Oxford University Press: 1998), p. 448.

[11]Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin, "To Walk Without Fear", in Cameron, et al., p. 15.

deadly scourge – is that they "cannot discriminate between a combatant and a civilian." Further, "the landmine does not stop killing" when the conflict is over."[12] Vines discusses landmines as "blind weapons" that "recognize no cease-fire."[13] Larrinaga and Turenne Sjolander point to a crucial reformulation of the discursive meaning of landmines throughout the Ottawa Process, noting that a multitude of publications outlining the humanitarian concerns of landmine use in the last decade has contributed to "shifting the terrain underpinning the understanding of landmines from military utility to humanitarian law."[14] The primacy accorded to the humanitarian discourse is "underpinned by an essentialized notion of what landmines are," that is, a scourge to be eradicated.[15] As Marshall Beier argues:

> AP landmines have been rendered as a humanitarian scourge in an objective sense independent of context. This powerful rhetorical move precludes thinking about ways in which the indiscriminacy attributed to AP landmines might be attenuated as a basis for preserving some measure of legitimacy regarding their use. It thus lends well to the view that a universal ban is requisite, but it accomplishes this by way of an anthropomorphic turn which imbues AP landmines with agency.[16]

None of this is to say that the use of AP mines does not entail deadly, indiscriminate, and inhumane effects. It is to say, however, that a conceptual shift has occurred, which posits landmines as the problem, "rather than the states or other actors that produce and use them."[17] In this way, rather like the discussion of NATO bombing blunders in Yugoslavia, agency is no longer located in the government or military, but is rather imbued to the weapon. It is not the actor that sows the mines that is deadly, indiscriminate, and inhumane – it is the landmine itself. It is the landmine which cannot determine identity – the landmine which is discursively constructed as blind or incapable of differentiation. Crucially, positioning the landmine as agent effects a closure – a limitation or obfuscation of human responsibility for the laying of landmines and the subsequent carnage and terror that accompany landmine use. As Beier reminds us, the "responsibility for dire human consequences falls on landmines themselves, not those who laid them."[18]

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[12]Jody Williams and Stephen Goose, "The International Campaign to Ban Landmines," in Cameron et al., p. 21.

[13]Alex Vines, "The Crisis of Anti-Personnel Mines," in Cameron et al., p. 128.

[14]Miguel de Larrinaga and Claire Turenne Sjolander, "(Re)presenting Landmines from Protector to Enemy: The Discursive Framing of a New Multilateralism," in Cameron et al., p. 374.

[15]Ibid, p. 378.

[16]J. Marshall Beier, "Siting Indiscriminacy," unpublished paper, p. 2.

[17]de Larrinaga and Turenne Sjolander, "(Re)presenting Landmines," p. 380.

[18]Beier, "Siting Indiscriminacy," p. 16.

The allocation of responsibility to the landmine-as-agent, rather than to those who field the weapons, has also served to foreclose the discursive possibilities of broadening the ban to include other, equally indiscriminate and inhumane weapons that are fielded by militaries and other actors. For example, the United States (US) (and presumably a significant number of its allies) "no longer classifies Claymore [AP landmines] as anti-personnel mines…Claymore mines with M57 command detonating devices are routinely deployed in the basic combat ammunition load of U.S. forces, and are likely present during operations and deployments to places such as Kosovo, Colombia, and the Persian Gulf."[19] The significance of this 'command detonating' feature is that now forces in the field are the agents that will determine when and why these mines will be activated. The primacy of discriminacy (or lack thereof) previously accorded to the landmine-as-agent for the purposes of achieving the ban has been effectively foreclosed, leaving the human soldier to decide who will become the victim. It is important to note (for the reader who would by now be nodding vigorously at the somewhat predictable US example I have employed) that it is not only the US that continues to field these mines – various reports circulated that Canadian and Australian peacekeepers in East Timor "were equipped with command-detonated Claymore-type mines, which are not prohibited by the Mine Ban Treaty."[20]

As was already mentioned, the landmine-as-agent discourse serves to exculpate the people that lay them from responsibility. In this case, however, the burden of responsibility has shifted from the weapon to those who field the weapon. It is clearly assumed that US, Canadian, and Australian armed forces are capable of acting responsibly in their use of smart mines – that they are unproblematically able to employ discriminacy of targeting through this type of landmine use (see Beier for a similar argument with respect to the case made by India for not acceding to the Ottawa Convention). Through the invocation of the soldier as a responsible agent of warfare and weapons use, Claymore mines have escaped the restrictions of the Ottawa Convention. Nevertheless, in 2000, Human Rights Watch requested that four major US manufacturers cease production of Claymore M18A1 components.[21]

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[19]"Use of Antipersonnel Landmines," Human Rights Watch Report, 2000.

[20]"Statement on East Timor," Human Rights Watch Report, 2000; "Canadian Forces Equipped With Landmines, CP Ottawa, 13 February 2000; "Landmine Monitor Report 2000: Toward a Mine-Free World," International Campaign to Ban Landmines (ICBL), p. 243. Australia, like Canada, is a states party to the Ottawa Convention.

[21]These companies were Silas Mason & Hangar Co., Inc (KY), Mohawk Electrical Systems, Inc. (DE), Thiokol Corp. (UT) and Matthews Associates, Inc. (FL). All of these corporations are involved in the U.S. manufacture of Claymore mines. Of the four, only Matthews Associates agreed to desist. Andrew Cooper, author of the HRW report that identifies all U.S. companies involved in AP landmine production, notes that these companies are "feeling the stigmatization" associated with those in the business community who are associated with landmine production. "These are middle-class, educated people who have children – they don't want to be considered war criminals ("Motorola Joins Anti-Mine Drive", 22 April 1997, Wired News)." The inherent difficulty with this statement is that it identifies and naturalizes a particular way of being and the actions or behaviours that are unproblematically associated with that way of being. The

The core of the argument that allowed the Claymore to escape the ban is that the human soldier at the "command detonating" switch is discriminating (as opposed to the standard AP mine, which is not). This in itself is quite problematic, as it assumes that this soldier will not make mistakes in the identification of a combatant. Further, nearly all observers in the last decade have agreed that conflict in the post-cold war environment is increasingly intrastate and increasingly localised.[22] Claymore mines with either command-detonating features, or smart mines which sport self-destruct mechanisms (such as are fielded by the US) are unproblematic only insofar as they assume fixed battle locations and parameters. In other words, it is not unreasonable to assume that the territorial spaces used by combatants in warfare by day are the very same spaces traversed by refugees attempting to flee the fighting by night. The example of Sarajevo should give pause, as civilians who tried to escape the encirclement of their city often found themselves braving front lines that were heavily mined. Even if the self-destruct mechanisms associated with certain types of AP mines render them harmless after 48 hours, there is still an implicit assumption that there will not be a child, woman, or man attempting to escape a conflict situation by crossing the mined area within that time period – an assumption that is patently ludicrous if policymakers are in agreement about the stated nature of post-Cold War conflict.[23]

Attending to the larger implications of the Ottawa Convention, however, I would note that the key problem with the discriminacy argument is located in its very discriminacy, so to speak. The implicit assumption at the core of the indiscriminacy argument poses the apparently acceptable fact that there are people who are not to be pitied if they step on landmines and are grievously injured or killed. These people are, of course, enemy soldiers – regular or irregular – whom the landmines are designed to target. Therefore, the ban treaty does not actually call into question the legitimacy of blowing people's limbs off – it simply seeks to determine whose limbs are legitimately imperiled. It is, of course, an unproblematised assumption of all military activities that the enemy is to be subjected or eradicated through the use of weapons in order to achieve state objectives. As alluded to above, the Ottawa

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implication, of course, is that those who may not find themselves in the categories of "middle-class", "educated", or "parent" cannot necessarily be dissuaded from producing, acquiring, or fielding AP landmines. This serves to discursively construct an image of the 'other' which can be expected to engage in the war crimes associated with AP landmines: in this case, located as lower-class, uneducated people who either do not have children, or do not associate their child-raising role with moral imperatives.

[22]Conflict in Bosnia, Chechnya, and Kosovo has demonstrated that warfare is often localized around heavily populated areas – particularly in urban locations, or in the case of the early stages of the Kosovo crisis, conflict was sporadic and moved quickly from village to village throughout the Drenica Valley. In any case, all of these conflicts were characterized by their proximity to civilian areas.

[23]It is also important to note that, even after the deactivation of self-disarming mines, the earth in which they are sewn continues to be uncultivatable. The mines must still be removed in order to farm, and this is achieved only by great cost and time to populations which may already be impoverished.

Convention has simply identified a particular weapon that has become the target for eradication. No component of the ban (nor anyone associated with it) has seriously called into question the legitimacy of state-centric military practices that result in tremendous human suffering through the use of weapons of war more generally. Beier and Denholm Crosby argue that the agenda of the International Campaign to Ban Landmines (ICBL) was simply to

> eliminate the use by states of AP landmines because of their indiscriminate and inhumane nature. There was no intent on the part of the ICBL to situate the movement to ban landmines within the larger context of state-centric security practices. By not doing so, the ICBL left largely unexamined the issue of states' responsibility for creating the humanitarian problem through their support for the production, stockpiling, use, transfer, and global trade in landmines.[24]

The inscription of the AP landmine with agency is thus implicated in the deflection of state or military responsibility as the security practices which have in the past necessitated landmine use are left unproblematised. This is further evidenced by the stark fact that the use of AP-like weapons continues proliferate in the technologically advanced militaries of most western states. It is important to re-emphasise, then, that AP mines are not the only weapons of war which have been discursively constructed as agents, nor are they the only weapons fielded by the world's militaries which maim, kill, and terrorise civilian populations long after conflicts have ended.

The taboo surrounding AP landmines, because it is vested in discursive constructions of agency and subjectivity, remains just that: a taboo on AP landmines. The Ottawa Convention has not laid the groundwork for a re-articulation of militarised state security practices, and it has not provided a framework in which to decisively state that blowing people's limbs off is fundamentally unacceptable. The obvious reason is that technologically-capable states can, do, and continue to develop and field weapons that replicate the exact same features of AP landmines. Laos, Iraq, Kuwait, and Yugoslavia (to name just a few) are saturated with cluster bombs and other types of unexploded ordnance (UXO) that replicate AP landmines in their effects. Furthermore, anti-tank/anti-vehicle (AT/AV) mines are not included in the prohibitions contained in the Ottawa Convention, even though these weapons, too, do not know how to distinguish between civilian and military vehicles.

Discerning Intent

It is crucial at this point to discuss the 'intentionality' that has been codified in the landmines taboo. The convention does not simply proscribe the weapons of war that tear human bodies to pieces; it proscribes

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[24]J. Marshall Beier and Ann Denholm Crosby, "Harnessing Change for Continuity: The Play of Political and Economic Forces Behind The Ottawa Process," in Cameron et al., p. 276.

weapons that are specifically intended to tear human bodies to pieces (in an indiscriminate way). In the definitions of the Ottawa Convention, AP mines are understood to refer to those mines which are "designed to be exploded by the presence, proximity, or contact of a person and that will incapacitate, injure, or kill one or more persons."[25] In this case, it is clearly the intentionality of the weapon that determines its legitimacy (or lack thereof). In other words, if the weapon is not specifically designed to grievously injure human bodies, it can be (and is) legitimately fielded. The use of cluster bombs is a case in point.[26] A statement of the ICRC for the 2001 Review Conference of the UN Convention on Certain Conventional Weapons (CCW) noted that:

> By design, submunitions are area weapons. That is, when delivered by the cluster bomb, rocket, or other means, they will be dispersed over an area of up to several hundred square meters. When targeting is imprecise or a targeting error occurs the effects…in a civilian area can be far greater than with most traditional ordnance. In addition, those submunitions that fail to explode are an immediate threat to the civilian populations concerned – rendering dangerous such activities as obtaining food, water, and medical care and blocking relief activities on behalf of these populations…The increased ability to rapidly deliver large amounts of ordnance over greater and greater distances means that even conflicts lasting only a few days can leave huge numbers of unexploded munitions.

The ICRC noted as early as 1994 that cluster bombs (CBUs) present a danger "at least as serious as that of anti-personnel mines."[27] It is one of the arguments of this paper that cluster bomb submunitions actually present a greater danger to human life than AP mines, because there is no possibility of cluster bomb mapping, and thus, no way of determining which areas may be affected before there are casualties. Further, it has been noted that cluster bomb detonation is variable "depending on surface conditions.

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[25]Ottawa Convention, Article 2: "Definitions."

[26]Cluster bombs (CBU: Cluster Bomb Unit) are 'canisters' that are filled with submunitions, often called 'bomblets' (BLU: Bomb Live Unit).The canister is designed to break open (usually in the air) at an altitude which is pre-programmed by the user, releasing as many as 202 bomblets which are in turn scattered over a wide target area. CBU submunitions can be "activated by an internal fuse, and can detonate above ground, at impact, or in a delayed mode."They often contain incendiary 'rings' which result in what is essentially a firestorm over the target area. During NATO's campaign over Yugoslavia, the U.S. employed the CBU-87, containing 202 submunitions (BLUs).Great Britain used the RBL-755 (a modified version of the earlier BL-755 – notorious for its failure to operate 'successfully' at high altitudes), containing 147 submunitions. The U.S. and Great Britain together dropped some 1,400 CBUs over Yugoslavia, containing some 200,000 submunitions. Some of the most disastrous effects of CBU usage against Yugoslavia included the bombing of a hospital complex and marketplace in the Serbian city of Nis, and attacks against civilians in Korisa. Further devastating is the number of BLUs that are estimated to have failed to detonate, resulting in some 30,000 AP landmine-like submunitions scattered all over the southern portions of the country.See William M. Arkin, "Ticking Time Bombs: NATO's Use of Cluster Munitions in Yugoslavia," HRW Report, June 1999, Vol. 11, No. 6 (www.hrw.org/reports/1999/nato2/).

[27]Statement by ICRC at the 49th Session of the UN General Assembly, 24 October 1994.

Sand, snow, mud, and surface water lead to substantial numbers of duds and also result in bomblets penetrating ground cover and going sub-surface."[28] This, of course, results in the probability that people in the affected area cannot see the submunitions, and so, cannot avoid them when carrying on with daily tasks. Furthermore, the variability of cluster bomb failure rates due to surface conditions means that it is very difficult, if not impossible, to determine the extent of cluster bomb contamination in a given area. Cluster bomb testing by the US Army at the Yuma Proving Grounds in Arizona resulted in a March 2000 report that "in all, 140 submunitions demonstrated 77 per cent reliability." The UK Working Group on Landmines notes that these statistics "indicate that a 20 per cent rate of submunition failure is acceptable to the U.S. Department of Defense as long as the failures are on target."[29] Further, as Lloyd Axworthy discovered about butterfly mines, cluster bomb submunitions are also quite "pretty." Human Rights Watch has reported that cluster bomblets appear variously as "white lawn darts, green baseballs, [and] orange-striped soda cans" which mean that children are particularly vulnerable because the munitions are "attractively arrayed and intriguing."[30] During the 1999 NATO attack on Yugoslavia, the United States and Great Britain engaged in the use of cluster bombs extensively. The ICRC has reported that more than a quarter million cluster bomblets were released in 1,400 drops over Serbia (including Kosovo), resulting in estimates that there are currently some 30,000 unexploded cluster bomb submunitions remaining.[31]

The use of cluster bombs during NATO's Operation Allied Force over Kosovo, however, is not particularly noteworthy when juxtaposed with the use of cluster bombs in the last several decades more generally. The UK Working Group on Landmines has reported that "from 1964 to 1973, as part of its strategy during the Vietnam War, the U.S. dropped a planeload of bombs on the Lao people every eight minutes…[in 1996] UN estimates put the amount of UXO still in the countryside at about 500,000 tonnes…[and]…much of this is cluster bombs and bomblets." During the various articulations of the Gulf War throughout the 1990s and into the twenty-first century, US cluster bomb attacks on Iraqi targets have amounted to 47,167 units containing more than 13 million bomblets.[32]

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[28] UK Working Group on Landmines, "Cluster Bombs: The Military Effectiveness and Impact on Civilians of Cluster Munitions," Report, 2000.

[29]Ibid.

[30]Arkin, "Ticking Time Bombs," (www.hrw.org/reports/1999/nato2).

[31]Craig Franus, "Ban Cluster Bombs, Urges Charity," CNN, 5 September 2000.

[32]UK Working Group on Landmines, "Cluster Bombs: The Military Effectiveness".

Ironically, however, the death and mutilation wreaked by cluster bomb use does not meet what appear to be the intentionality requirements of the Ottawa Convention. In this case, it is not the success, but the failure of cluster bombs to perform as intended that generates dire human consequences. "Unlike landmines, cluster weapons are not designed to be long-lasting or victim-activated; it is their failure to always act as designed that leads to civilian casualties."[33] Because it is not the intended function of cluster bombs to cause such devastation (although it seems rather ludicrous to say), they do not fall into the category of "mine designed to be exploded by the presence, proximity, or contact of a person and that will incapacitate, injure or kill one or more persons." When they fail, however, this is precisely their effect.[34] Latham argues that

> while it is true that at different times certain weapons have been subject to legal proscription, at any given point in history these banned technologies have accounted for only a tiny percentage of the overall destructive potential available to combatants. The practical effect of this has been the creation of two distinct categories of weaponry. The first, 'inhumane weapons', comprises a few technologies that are stigmatized, de-legitimized and proscribed; the second, 'conventional weapons', includes the vast majority of armaments that are considered legitimate and unexceptional – despite the fact that their effects can be equally horrific, murderous, and brutal.[35]

Toward a Rearticulation of Weapons Use

It is not the intent of this paper to belittle the achievements of the Ottawa Convention. There is little doubt but that the conclusion of the treaty will, as noted already, preserve the lives of those who would otherwise be killed by future landmine use. What I have tried to suggest throughout, however, is that the achievements of the ban on landmines should not be exaggerated or rendered as a transformative event in the progress of humanitarian thought and its ensuing practices. The Ottawa Convention differs little from previous weapons bans in that it does not actually advance an understanding of humanitarianism that is vested in the desire to prevent human suffering more generally as a result of state security practices. In this respect, it is clear that "[t]he general taboo [surrounding landmines] does not lend well to a prohibition on other state exercises of violence effecting civilian populations, so that one is left to

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[33]Ibid.

[34]The reader may object to a comparison which posits that the use of cluster bomb submunitions results in the same level of devastation as that caused by AP landmines, because cluster bomb casualties are undeniably less prevalent in number. However, it is crucial to point out that numerical criteria are generally not accorded a great deal of legitimacy in humanitarian discourses. Throughout the Kosovo crisis, western observers agreed almost unanimously that the humanitarian emergency developing there was not about numbers. Indeed, those who questioned the assertion that Yugoslav forces were engaging in 'ethnic cleansing' and 'genocide' on the basis of the relatively limited numbers of ethnic Albanian casualties throughout 1998 were reminded of the 1948 UN Convention on Genocide, which does not accept numbers of victims as decisive in the identification of crimes against humanity.

[35]Latham, "Global Cultural Change," p. 26.

wonder whence we would go from a total ban on landmines."[36] Most western militaries are undeniably capable of fielding any number of technologically advanced weapons systems, such that the Ottawa Convention is unlikely to seriously undermine their ability to wage terrorising military campaigns. Disassociating themselves from the use of AP landmines does not affect advanced states from engaging in decisive, devastating warfare which imperils human life. The Convention has also failed, through its rendering of the landmine-as-agent, to identify loci of accountability and responsibility outside of the weapon itself. By advancing *de facto* the argument that landmines are problematic because of their indiscriminacy and inhumanity, the Convention has actually helped to discursively codify other weapons (i.e., those that are not included in the ban) as not indiscriminate and not inhumane. Such an articulation has inadvertently contributed to the legitimation of (non-AP) weapons which result in similar devastating consequences. By reifying an understanding of the landmine-as-agent, the Convention has also lent itself to the suggestion that intentionality is of crucial importance in determining what/which weapons and practices are acceptable in warfare. To that end, the Convention has not advanced any claim that killing, maiming, or wounding people is inherently problematic. The (unintended) results of this have been: 1) to effect a closure on the possibility of adding other, equally devastating weapons to the list of proscribed agents under the rubric of the Ottawa Convention and, 2) to leave unproblematised and unscrutinised those militarised state security practices that imperil human life more generally.

A reevaluation of the impact of state security practices is crucial if we, in the post-Cold War environment, really wish to engage in discourses that have at their core humanitarian concerns. Any attempt to formulate adequate responses to humanitarian concerns would seem to entail a discussion of ethical possibilities that are not the central focus of this study. However, in identifying where humanitarian practices are conceptually and theoretically weak or limiting, we can start to posit suggestions that may provide a framework for a broadening and/or deepening of our understanding of the practices that render people insecure and imperiled more generally. In the context of the ban on landmines, this would seem to require a rearticulation of agency such that states and militaries would become the primary focus of scrutiny with respect to weapons use. Accordingly, shifting responsibility from particular weapons to those who use them could provide a breadth of analysis that would extend beyond the discursive construction of inhumane weapons to include those security practices which imperil human life more generally. Such a shift would also extend the parameters of humanitarian discourse to potentially encompass any and all categories of weapons and weapons use and would almost necessarily render problematic the militarised practices that facilitate this use. A further suggestion lies in what I would argue should be the jettisoning of conceptual qualifiers such as discriminacy and

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[36]Beier, "Siting Indiscriminacy," p. 19.

indiscriminacy, intentionality and unintentionality. Simplistic and unsophisticated as the suggestion may appear, a more fruitful and expansive course of analysis would reject the qualifying terms of discourse that preclude or supercede discussion of the effects of militarisation and weapons use in the context of their humanitarian implications. At best, such a shift in the focus of analysis would render problematic all forms of state security practices that have violence at their core. At the very least, it would provide the basis for a broadening of the ban to include weapons that replicate the effects of AP landmines which have been discursively rendered so inhumane.