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The Generals' Diplomacy: U.S. Military Influence in the Treaty Process, 1992-2000

by Karl K. Schonberg

ABSTRACT

The U.S. military has always played an important role in informing and advising diplomacy, but in recent years its influence has been the key factor deciding whether the United States enters into treaties dealing with issues of defense and security. Consensus support or opposition within the Pentagon was the crucial determinant of the success or failure of each of the six most important security pacts considered by the United States between 1992 and 2000. Military advice ought to be of importance to civilian leaders conducting diplomacy and weighing the value of agreements, but the current state of affairs, in which opinion within the U.S. military ultimately decides the fate of treaties, reflects a troubling diminution of civilian control over the diplomatic process.

THE GENERALS' DIPLOMACY: U.S. MILITARY INFLUENCE IN THE TREATY PROCESS, 1992-2000

The advice of military leadership has almost always been regarded as important by U.S. political leaders considering diplomatic questions which affect national security. The Clinton administration, however, was arguably more politically constrained to defer to this advice more than others had in the past. This article will examine the role of the U.S. military in six recent cases of multilateral diplomacy, involving the most prominent treaties concerning military or security affairs considered by the United States during the Clinton years: 1. the second Strategic Arms Reduction Treat (START II), signed in 1993; 2. the 1992 Chemical Weapons Convention (CWC); 3. the 1996 Comprehensive Nuclear Test Ban Treaty (CTBT); 4. the 1997 agreement to expand NATO; 5. the 1997 Ottawa Treaty banning anti-personnel land mines; and 6. the 1998 Statute of the International Criminal Court (ICC). In each case it will consider

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the extent of the military's influence on each of these agreements as they were being negotiated or were under consideration by the Senate.

Four of these treaties came before the U.S. Senate for advice and consent between 1992 and 2000. The other two were either not signed or not submitted to the Senate. The history of each of them suggests that it is the concerns of the U.S. military, more than the power of the presidency or Congress, which has come to decide the security interests of the United States and to determine the international obligations that should accompany those interests.

START II

The first of these cases was the final cold war-era nuclear arms limitation pact, START II. Signed by Presidents Bush and Yeltsin in 1993, it required the United States and Russia to limit their strategic delivery vehicles to between 3500 and 3000 respectively by the year 2003 (this deadline was later extended to 2007). The U.S. Senate gave its consent to the treaty in January 1996.

What is striking about the passage of START II is not that it was eventually ratified, since it was widely accepted as a valuable and relatively uncontroversial agreement, but rather the scale of the concessions secured by the Pentagon and its supporters in Congress in exchange for ratification. U.S. military officials by and large gave ringing endorsements to the treaty, and lobbied effectively for its passage. As a symbol of the Western victory in the cold war and a representation of the clear fact that Russia no longer represented a military or ideological threat to the United States, START II enjoyed broad, consensus support throughout the U.S. government. Even so, U.S. military backing for the treaty was conditional on Russian acceptance. Head of U.S. Strategic Command General Eugene Habiger told a Senate panel in March 1996 that the U.S. would not make unilateral cuts in the its nuclear forces in any event, and by 1998 might need to spend $2-5 billion more than was expected if Russia did not ratify the agreement.[1] On the same day that START II was ratified, the Senate also approved a $265 billion defense authorization bill, which the president had already said he would sign. This amounted to a $2.8 billion increase in the defense budget, and required Clinton to accept a variety of programs that he had previously opposed, including the building of more B-2 stealth bombers, a mandate that soldiers with HIV and AIDS retire or be discharged, and a ban on abortions in overseas military hospitals.[2]

Despite (or because of) START II's high level of support throughout government, Senate Hawks were able to use the treaty's passage as a bargaining chip to gain other concessions, which were often beneficial to the military. Foreign Relations Committee Chairman Jesse Helms refused to let his committee vote on the treaty for nearly a year, until he could advance legislation merging the Arms Control and Disarmament Agency, Agency for International Development, and U.S. Information Agency into the State Department. Armed Services Committee chair Strom Thurmond refused to allow his committee to vote on the treaty until President Clinton signed the

1996 defense authorization bill. And Jim Inhofe of Oklahoma and Bob Smith of New Hampshire threatened to impede the final vote on the treaty until Clinton committed the government to a national missile defense program.[3] In the end, the difficulties that START II encountered and the tradeoffs which Senate hawks ultimately extracted from the Clinton administration suggest the absolute necessity of military support for arms control agreements perceived by political leaders, and the resulting strength of the military in the treaty process.

The Chemical Weapons Convention

Negotiations with the Soviet Union toward a new international agreement limiting chemical weapons began under the Nixon administration, and became multilateral under the Reagan administration. On January 13, 1993 the United States signed the treaty, which made illegal the development, manufacture, stockpiling, export, and use in combat of chemical warfare agents. To enforce this ban, it included the most invasive verification measure of any arms control agreement in history. It was ratified by the U.S. Senate (by a vote of 74-26) on April 24, 1997 and entered into force just five days later.

The history of each of them suggests that it is the concerns of the U.S. military, more than the power of the presidency or Congress, which has come to decide the security interests of the United States and to determine the international obligations that should accompany those interests.

The leadership of the U.S. military tended to strongly favor the Chemical Weapons Convention (CWC), largely because the Pentagon had previously abandoned all planning for offensive uses of chemical weapons on the battlefield during the Bush administration. U.S. strategists did still devote considerable time and energy to protecting U.S. soldiers from chemical attack, a risk (and thus a cost to the Department of Defense [DoD]) which the CWC might reduce. In 1995 the United States had the world's second largest chemical weapons arsenal (with some 30,000 metric tons of nerve and blister agents), but since the early 1990s, the U.S. military had accepted as a matter of doctrine that chemical weapons were useless to it in combat, given the political costs that would accompany using them and the ready availability of more effective, less indiscriminate alternatives.[4] Since this was not necessarily true for potential opponents who did not have these alternatives, any agreement limiting chemical weapons would be advantageous to the United States and disadvantageous to many of its likely foes. The treaty at least promised to compel other states to destroy the chemical stockpiles that might threaten U.S. forces, and to give U.S. officials access to intelligence on these stockpiles and stronger legal arguments to justify eliminating them. U.S. military planning rested on the presumption of a non-chemical response

to any attack using chemical weapons, which the CWC did not prohibit. "Desert Storm proved that retaliation in kind is not required to deter the use of chemical weapons," Joint Chiefs' Chairman John Shalikashvili said in Senate testimony. "The U.S. military's ability to deter chemical weapons in a post-cold war world will be predicated upon both a robust chemical weapons defense capability, and the ability to rapidly bring to bear superior and overwhelming military force in retaliation against a chemical attack."[5]

Senate Majority Leader Trent Lott supported the treaty because, in his words, military leaders "believe it will make our soldiers, sailors, airmen and Marines more safe in potential battlefields–and less likely to face the horrible prospect of chemical weapons."[6] The White House was able to use this military support to create a powerful impression on Capitol Hill, staging public events in which military leaders such as Colin Powell and Norman Schwartzkopf expressed their backing for the treaty, and releasing a letter of support signed by some 17 retired four-star generals and admirals.[7] Defense Secretary William Perry and Lt. General Wesley Clark (speaking for the Joint Chiefs of Staff) testified before the Senate that the treaty would give the United States a powerful means to control the proliferation of chemical weapons around the world.[8] One administration official argued that the military's role in the public relations campaign surrounding ratification was explicitly intended to let legislators know that opposing the treaty meant "voting against the guys with the ribbons on their chests."[9]

Administration support for the agreement was presmised on the assumption that the tactical and bureaucratic interests of the military would be protected. President Clinton sent a letter to Lott promising that he would withdraw from the treaty if it compromised the nation's military capabilities, and in order to gain ratification, the administration made a variety of concessions in the form of 28 conditions attached to the final agreement approved by the Senate.[10] These specified, among other things, that the United States would pay only its "fair share" for implementing the agreement; that U.S. defenses against chemical weapons would be improved; that chemical weapons intelligence would not be shared with "rogue" states, and that the U.S. military could use chemical agents for riot control when necessary. All in all, the agreement thus left the U.S. military with a potentially decreased strategic threat and the promise of increased funding, in exchange for dismantling a stockpile of weapons which had already been accepted to be useless, and explicit protection of those that were still considered tactically necessary.[11]

NATO Expansion

As a means to enhance security and consolidate the emergence of democracy and liberal capitalism in Eastern Europe, the leaders of the North Atlantic Treaty states voted in July 1997 to accept the applications of Poland, Hungary, and the Czech Republic for membership. The U.S. Senate voted on April 30, 1998 to approve the protocol expanding the alliance, and the new members were formally accepted the

following March.

Though many U.S. military leaders initially favored an emphasis on the Partnership for Peace as the vehicle to manage American security relations with Eastern Europe, strong support within the DoD eventually coalesced behind the idea of early NATO enlargement.[12] Throughout the process of formal and informal hearings and discussions that led up to the Senate vote on enlargement, Pentagon officials cooperated with the NATO Enlargement Ratification Office in the State Department, the administration's focal point for Senate lobbying, providing classified reports to be passed on to key legislators.[13]

Pentagon support for NATO expansion was reflected in the DoD's cost estimates for the inclusion of the three former Eastern-bloc states, which were extremely low and reflected in the view of some "little more than wishful thinking based on Pollyannaish security scenarios." The DoD estimated that the total cost of enlargement would not exceed $35 billion, whereas the Congressional Budget Office (CBO) argued that the cost could be as high as $125 billion. The Pentagon argued that the U.S. contribution to these costs should be only $1.5-2 billion, whereas the CBO estimated the likely cost to the U.S. to be as high as $19 billion.[14] Since the uncertain cost of expansion was a major concern of critics of the agreement, the rosier estimate from the Pentagon was a powerful tool for proponents of the move. One U.S. official suggested about the Pentagon's cost report that its "main priority was to keep costs down to reassure Congress, as well as the Russians... There was a strong political imperative to low-ball the figures."[15]

NATO enlargement was not simply an end in itself, however–it was also seen by some of its advocates as a justification for higher overall defense spending. Coming on the heels of a successful attempt by Congressional hawks to increase military spending by making funding of U.S. military operations in Bosnia contingent on it, some saw in NATO enlargement a similar prospect. "If you are going to think that [enlargement] through," House Speaker Newt Gingrich commented, "you are not going to cut the defense budget."[16]

In an era in which an array of expensive weapons systems were threatened with the budget axe in the United States, NATO enlargement was also regarded as a potential windfall to American defense contractors, and for U.S. weapons manufacturiang and development to advance with foreign financing. U.S. arms manufactures spent vast sums to lobby legislators in favor of expansion, seeing the opportunity for new sales of weapons, communications systems, and other military hardware. The six biggest U.S. defense contractors spend $51 million on lobbying in the two years leading up to the spring of 1998. In early 1998, Poland alone was considering buying 100 to 150 fighter aircraft from Lockheed or Boeing, whose planes each cost $20 million and $40-$60 million, respectively. NATO enlargement was expected to dramatically increase the amount of money the newly accepted states would be able (and indeed, required) to spend on their militaries, though after 1996 the Pentagon was already guaranteeing loans to recipient states for defense exports.[17]

THE COMPREHENSIVE TEST BAN TREATY

A treaty banning all nuclear testing had been pursued intermittently throughout the Cold War, but the agreement was not finally concluded until the end of the first Clinton administration. Signed in September 1996, the Comprehensive Test Ban Treaty (CTBT) banned all nuclear explosions for the purpose of weapons testing, and created a system to monitor compliance and detect violations. In the United States, the agreement was submitted to the Senate for ratification in late 1997, where it awaited a vote for just over two years. In October 1999, the Senate voted against ratification, making it the most prominent international agreement to be voted down since the Treaty of Versailles in 1919.

Though the idea of a comprehensive test ban had a pedigree of support by both Republican and Democratic administrations dating back to the 1950s, the agreement that the Clinton administration proposed to Congress had been created by overruling some prominent voices in the DoD. Military leaders within the administration had supported a proposal for an easy withdrawal from the treaty and resumption of nuclear tests 10 years after the ban went into effect. This proposal had been put forward "at the Pentagon's insistence" in 1993, but had been strongly opposed by a wide array of foreign states (including the U.S.'s major allies among the nuclear powers) and by many of the heads of the other arms control bureaucracies in Washington. The Clinton White House rejected this proposal, though a codicil allowing the resumption of testing when it was made necessary by a "supreme national interest" was included in the treaty.[18]

In exchange for rejecting the 10 year opt-out clause in negotiations in early 1995, leaders at the DoD hoped that the administration would accept the necessity of allowing small nuclear explosions to be of a much larger yield than had previously been imagined. Clinton refused to decide on this issue early in 1995, thus scuttling the Pentagon's hope that it would be a quid pro quo for a more permanent treaty.[19] The accepted definition of nuclear "experiments" allowed under the treaty at that point was explosions equivalent to about four pounds of TNT. Leaders of the U.S. military wanted this cap expanded more than 100,000-fold, to allow explosions of force equivalent to 300-500 tons of TNT. Well-informed sources suggested that this change was "high on the Pentagon agenda" in early 1995, and supporters of the treaty feared that the Clinton administration might accept the change and cast the viability of the treaty itself into doubt in order to avoid "a Pentagon lobbying campaign in Congress."[20]

Senior Defense Department officials argued that these larger tests were necessary if the treaty was to be permanent, in order to measure with certainty the effects of time in corroding the plutonium cores of nuclear warheads and the breakdown of electronic components within them. Officials in the Energy and State Departments, and arms control advocates more generally, held that such tests were unnecessary and would gravely damage the prospects for an effective CTBT.[21]

In August 1995, after months of delay and debate, President Clinton announced a decision on the issue. A few days after the 50th anniversary of the Hiroshima and

Nagasaki bombings, he said the U.S. would not conduct any nuclear test of any size and would seek a "true zero-yield nuclear test ban treaty."[22] Shortly before his announcement, the Senate voted its approval for $50 million to prepare for the small nuclear tests the Pentagon had sought to protect, even though none were scheduled to be conducted in the following year.[23]

Increasingly over time, a schism developed between the White House and other supporters of the CTBT on one hand, and Congressional conservatives and much of the defense bureaucracy on the other, over how to protect the nation from the danger of nuclear proliferation. While the White House argued that halting testing was the most effective and realistic way of stopping the spread of weapons, it was the view of "Republicans and the Pentagon that the best defence against nuclear proliferation is to be able to shoot down missiles fired by rogue states..."[24]

As the vote on ratification approached, the Pentagon was a source of reports that Russia had been testing low-yield nuclear devices in Novaya Zemlya (tests which the CIA conceded that it could not detect by seismic measurement but which did appear to be nuclear explosions). This evidence was readily seized upon by those in the Senate who argued that the CTBT's verification regime was dangerously inadequate.[25] When the Senate voted against ratification of the CTBT on October 13, 1999 by a margin of 51-48, the most prominent arguments of opponents of the agreement were those that had originally been raised by military leaders: that the compliance of other countries could not be guaranteed effectively enough, and that the a ban on testing would make ensuring the reliability of the U.S. nuclear arsenal an impossibility.[26]

The political atmosphere in Washington in 1999 was clearly a major factor in the defeat of the CTBT. Electoral politics played heavily in the thinking of the leaders of both parties, and both were determined to use the test ban to their advantage–Republicans seeing in it the chance to deny the Clinton administration a victory, and Democrats the opportunity either to win such a victory or paint their opponents as warmongers. In the wake of the Lewinsky scandal, Clinton himself was viewed with even more hostility than before by many Republicans, (particularly because impeachment had only seemed to increase his popularity), and this personal rancor doubtless entered into the politics of the test ban. Also, the CWC now having been approved, Senate Majority Leader Trent Lott was under pressure from some in his own party to allow no further movement on arms control. Negative testimony by officials of the nation's nuclear test laboratories also seriously damaged the test ban's chances for approval.

Opposition to the CTBT was not as strong within the military as it was to the Ottawa Landmine Treaty or Statute of the International Criminal Court. Some in the Pentagon viewed the test ban as a potential benefit to the United States because of the verification mechanisms is put in place. But the consensus within the military was nevertheless opposed to the agreement, and it was that consensus that decided the issue. Given the charged political environment and tenuous balance between the political forces debating the treaty, the Pentagon was again in a position to decide the

fate of a major piece of diplomacy. It decided against approval, and the treaty was rejected, but military support could just as easily have produced the opposite result.

The Ottawa Landmine Ban

After a very visible campaign by international human rights advocates, roughly 100 nations signed an agreement in 1997 which banned the production, export, and deployment of anti-personnel landmines. The United States was unable to include exceptions to its use of landmines on the Korean peninsula or for the use of "smart" mines, which self-destruct and thus avoid the public health threat of less advanced mines. As a result, the Clinton administration would not sign the treaty and said that it would only do so in the future if technical alternatives to anti-personnel mines could be developed. The treaty went into force in March, 1999, without the U.S.

President Clinton, in the words of one commentator, "knows these weapons should be banned... but lost the courage to oppose Pentagon and Senate hawks on the issue."[27] The U.S. military's fight against restrictions on the use of landmines, however, did not begin with the ban enacted at Ottawa.[28] In 1995, the Pentagon had "vigorously lobbied against legislation that would impose a moratorium on the use of land mines." The legislation in question was an amendment proposed by Senator Patrick Leahy of Vermont, that would have disavowed the use of mines for one year starting in 1998–though it made specific exceptions for the use of remote-control and anti-tank mines, and anti-personnel mines used along national borders and demilitarized zones. JCS chairman Shalikashvili worked with Senate Armed Service Committee Chair Strom Thurmond to weaken the law, and in January 1996, Leahy complained in a letter to the Washington Post that officials at the DoD were "actively seeking to undermine my efforts... to rid the world of antipersonnel mines."[29] Military leaders would continue to lobby for a repeal of the moratorium on the use of antipersonnel mines in the months that followed, breaking a pledge that Clinton had made to Leahy in doing so.[30]

For the military, the exclusion of anti-tank landmines from any ban was essential, since the use of such mines in "shaping the battlefield" remains an integral part of the Pentagon's conception of modern warfare. This exclusion was problematic in negotiations, however, because the anti-tank mines used by U.S. forces are often combined with anti-personnel mines which were the primary target of the treaty's advocates.[31] Nearly all U.S. anti-tank mines as currently manufactured would thus also be illegal under the terms of the Ottawa treaty.[32] U.S. military doctrine assumes that the combined use of these weapons is necessary in order to protect anti-tank mines from being tampered with or simply removed by enemy forces.[33] The United States was the only power which possessed the most advanced air-deployed, self-destructing mines, and they were widely accepted in military circles to be a valuable "force multiplier." Some in the Pentagon were also concerned that a successful, NGO-led anti-landmine campaign might set a dangerous precedent, setting the stage for outside groups to gradually strip the U.S. arsenal of key assets.[34]

In the fall of 1995 JCS Chairman Shalikashvili declared that anti-personnel mines were "indispensable" to U.S. military strategy,[35] but there were alternative views which the administration could have seized upon to counter the Pentagon's consensus position if it had chosen to do so. Among military experts and even officers in the DoD, some held that the long-term value of stigmatizing the use of mines would outweigh any short-term disadvantages. Some held that aside from their humanitarian costs, landmines impaired the mobility of U.S. forces on the battlefield (and a 1987 internal Army report had concluded that in war games, air-dropped U.S. mines had been the biggest source of simulated deaths among U.S. forces). Some argued as well that there were better ways of containing an advancing armored column, such as antitank aircraft.[36]

The Clinton administration strongly advocated U.N.-sponsored talks on an international ban on landmines after 1995, but all the while Clinton was also assuring Pentagon leaders that "these discussions would never lead to change in U.S. military policy against their advice." "Because Clinton didn't serve, because of his deference to the military" head of the Vietnam Veterans of American Foundation Bobby Muller argued, "he's a coward when it comes to standing up to the Pentagon. I was in meetings where he told retired generals: 'I can't afford a break with the Joint Chiefs."[37] On another occasion, Clinton reportedly told a group of the ban's supporters that only if he could somehow "get the Joint Chiefs off my back," would he be able to move the United States toward joining the agreement.[38]

The next stage in the progress of diplomacy toward the Ottawa treaty was the review conference of the Convention on Certain Conventional Weapons held in Vienna in September 1995. The Pentagon advocated a U.S. position at this conference that called for the very gradual elimination of "indiscriminate" anti-personnel mines (i.e., those with an unlimited lifespan once deployed) and no restrictions at all on those that were not indiscriminate (i.e., the self-destructing mines used by U.S. forces). This Pentagon stance became the U.S. negotiating position at the review conference, and remained permanently entrenched thereafter.[39]

In April 1996 the Vietnam Veterans of America Foundation published a full-page ad in the New York Times, containing a letter from 13 retired U.S. flag officers advocating a comprehensive and permanent ban on antipersonnel mines. In the midst of the presidential election, however, "Clinton was reluctant to question the Joint Chiefs, who were being aggressively lobbied by regional commanders in Korea and elsewhere to hold firm." Clinton's National Security Council Staff did not interfere with or typically even monitor the planning of U.S. policy on the issue that was occurring in the JCS or the Pentagon. As a result, though Clinton was reelected in 1996, "the decision he had made to allow the Pentagon to determine mines policy was now completely entrenched."[40]

In August 1997, the Clinton administration sent negotiators to Oslo, where the final language of the treaty was being drafted, to make a final attempt to seek a compromise. The Pentagon's demands for exemptions for the Korean Demilitarized Zone and for "smart" mines were the sticking points which separated the U.S. from the rest

of the signatory states. The Joint Chiefs of Staff had deeper concerns about the agreement as well, since they viewed a ban that did not include some of the world's major exporters as a disadvantageous one for the U.S. Because of this view, "the very fact that the administration decided to send a delegation to Oslo was viewed in military circles as potentially ominous."[41]

There was little cause for concern, since the U.S. delegation that was sent to Oslo was "controlled by the Pentagon's agenda, included top U.S. generals, and had specific orders not to sign without guaranteeing its exemptions: Korea and mixed canisters of antipersonnel and anti-tank mines."[42] Given the inflexibility of the U.S. position, there was almost no chance that these eleventh-hour talks could have succeeded. When they failed and it became clear that the U.S. would not be among the signers of the Ottawa treaty in December, Senator Patrick Leahy spoke on the Senate floor about what he saw as the reasons why. "I am convinced that President Clinton wants to see these weapons banned," he said,

> But to sign the treaty would have required making a difficult decision which would have been unpopular with the Pentagon... They [the military] make the same argument today as in the 1920s when they opposed a ban on poison gas, calling it "one of the most effective weapons ever known." It is the job of our civilian leaders to act when there are overriding humanitarian concerns.[43]

In the forward to an article on this issue for the Center for International Policy, Leahy argued that over the course of the 20th century, military resistance to arms control has been typical. The difference in the landmine campaign, he suggested, is that where in the past presidents had been willing to take a stand against the military and overrule tactical concerns in favor of the nation's strategic interest in arms control, in the 1990s Bill Clinton had refused to do so.[44]

Despite support for the ban from the State Department (and from the President's wife and daughter), he ultimately sided with its opponents in the Pentagon and declined to commit the U.S. to the ban.[45] In justifying his refusal to sign the treaty, the president said that "as Commander in Chief, I will not send our soldiers to defend the freedom of our people and the freedom of others without doing everything we can to make them as secure as possible."[46]

The promise of the Clinton administration to accept the treaty by 2006 if alternatives to land mines could be found was called "worthless" by Mary Wareham of Human Rights Watch, because in her view, little effort was being devoted to finding such alternatives. There was a serious question in mid-1999 as to whether the United States would even attend that year's review conference of the treaty in Maputo, Mozambique, because Congressional conservatives objected to paying any part of the conference's organizational costs.[47]

THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

In light of the growing number of increasingly brutal regional and ethnic wars which have emerged in recent years, a movement among national governments to create a standing court to try war crimes and other offenses gained momentum throughout the 1990s. Such a court, it was hoped, would avoid the delay and diplomatic wrangling that had accompanied the creation of tribunals to deal with the atrocities that had occurred in Bosnia and Rwanda. Initially strongly supported by the Clinton administration, the movement culminated with a broad-based agreement signed in Rome in 1998, creating such a court. U.S. leaders, however, ultimately declined to join the forming body on the grounds that it might threaten American sovereignty or prosecute U.S. citizens unfairly.

In negotiations on the statute of the court, the United States held that according to Chapter VII of the U.N. Charter, the court should be unable to take action in cases where the U.N. Security Council did not specifically instruct it to do so. The real concern of American negotiators, however, was not protecting the U.N. Charter but ensuring that American soldiers were not prosecuted. This was evidenced by U.S. opposition to a proposal by Singapore that would protect the Security Council's role by allowing it to stop prosecutions without requiring its order to start them. U.S. arguments against a court independent of the Security Council also emphasized the concern that the court's prosecutor would have excessive power without overarching U.N. control, and more generally that an independent court might discourage powerful states like the U.S. from undertaking humanitarian missions and would be unlikely to pass muster in the Republican-controlled Senate.[48]

It was feared that a politically driven, anti-American prosecutor might in the future be able to try U.S. servicemen and women for actions undertaken in the line of duty. Given the language of the court's statute, this was always a somewhat tenuous argument since the court would only be able take action against troops involved in an armed conflict (not against U.S. forces stationed in Japan in peacetime, for example). Moreover, two of its four categories of offenses–crimes against humanity and genocide–involve violations on a scale so massive that U.S. forces would be very unlikely to be subject to them. The category of "aggression" would generally only apply to heads of state and their aids, and thus would not be likely to threaten U.S. forces in the field. And prosecution for "war crimes" could only take place under the treaty's principle of "complementarity" if a U.S. military court was not already conducting a prosecution (and even then would depend on U.S. willingness to surrender a soldier charged with a crime to the International Criminal Court [ICC]).[49] Thus, in exchange for avoiding relatively small risk of political prosecution, the U.S. military and the Clinton administration were willing to sacrifice the chance for more effective justice and a stronger legal framework with which to take action against the Pol Pots, Saddam Husseins and Foday Sankohs of the post-cold war world.

In March of 1998, U.S. negotiators introduced a proposal which would mandate that the ICC could not act for up to a year if the state whose citizens were to be

charged claimed that it was prosecuting them within its own judicial system. This provision "would effectively mean than any American citizens accused of war crimes would be tried in U.S. courts rather than by the international tribunal."[50] According to the Washington Post reporter observing the negotiations, this American position was clearly "driven largely by heavy pressure from the Defense Department and its supporters in Congress," derived from the fact that the "Pentagon chiefs vividly remember when foes of U.S. policy in Vietnam during the 1960s and 1970s and Central America in the 1980s called for prosecution of American officials and servicemen as war criminals."[51]

Richard Dicker, Associate Counsel to Human Rights Watch, saw common roots in the causes of U.S. rejection of the ICC and landmine ban. It was for "military, Pentagon-driven reason[s] that the United States has put itself in opposition to everyone in the world."[52] In the end, the core reason the United States did not join the ICC was because, in the words of the New York Times, "the Pentagon and a Republican-controlled Congress opposed it."[53]

In order to help ensure that its concerns were prominent in negotiations, the DoD actively lobbied the armed forces bureaucracies of foreign states to arouse the same views. A Pentagon memorandum dated March 27, 1998 outlined the U.S. military's concerns about the court, and asked for the support of the militaries of other states. The document was distributed to defense attaches of a variety of states in Washington and to NATO leaders in Brussels. In early April U.S. military leaders called a meeting of those in Washington to discuss the issue. According to Human Rights Watch, "some of these officers represent militaries with extremely poor human rights records," so the Defense Department's strategy amounted to "calling in the foxes to help build the chicken coop." "The Pentagon should not resort to enlisting the Pinochets of the world to lobby against the creation of an independent and effective ICC."[54] The DoD also gave instructions to it's own defense attaches around the globe to lobby their host governments similarly,[55] and in the midst of the Rome conference finalizing the treaty, Reuters reported that Secretary of Defense Cohen linked support of the U.S. position (against a court with universal jurisdiction) "with the viability of U.S. troop deployment in Germany during a meeting with the German minister of defense. Similar linkages were reportedly made in meetings with South Korean officials.."[56]

Ultimately, as with the Ottawa treaty, U.S. diplomats could not find a compromise position which would allow the United States to sign the Statute of the International Criminal court. In the view of some of the administration's critics, this was because the White House had allowed the Pentagon to effectively hijack diplomacy, as some argued had occurred with the landmine ban. The failure of the U.S. to join the court as a charter member, in the view of Aryeh Neier, emerged from the fact that "Clinton permitted the Department of Defense to take the lead in shaping U.S. policy toward the court and the State Department official who led the U.S. delegation to Rome, Ambassador for War Crimes David Scheffer, to act as the Pentagon's spokesman."[57]

In his final days in office, Bill Clinton did sign the Statute of the court, though at this point his action seemed like a purely symbolic act. The incoming Bush administration disavowed Clinton's action and declared that it had no intention of submitting the agreement to the Senate.

Additional Cases

Protocol on the Convention on the Rights of the Child

Beyond the more prominent international agreements mentioned above, the Pentagon has also been instrumental in keeping the U.S. from signing a new Protocol to the Convention on the Rights of the Child which would mandate that children under 18 could not be soldiers. This agreement is intended to further criminalize the actions of warlords in Central and Western Africa and elsewhere, who often kidnap and virtually enslave as soldiers children who are 12 or 13 years of age, or less. The reasoning behind the opposition of the U.S. military derives from the fact that some U.S. servicemen and women are recruited when they are only 17 years old, though these soldiers make up less than one-half of one percent of total U.S. forces. A compromise proposal, which would allow for recruiting 17 year-olds but keep them out of combat until their 18th birthday, has also been deemed unacceptable by the Pentagon.[58]

Nuclear Free Zones

The treaties of Roratonga and Pelindaba, signed by the U.S. in March and April 1996, prohibited the development, acquisition, and deployment of nuclear weapons in the South Pacific and Africa, respectively, as well as the disposal of nuclear wastes in those regions. The President has not submitted them to the Senate for consideration, at least in part because of the reluctance of the U.S. military to rule out the possible use of nuclear weapons against Libyan chemical weapons facilities.[59]

Reform of the Biological Weapons Convention

The original Biological Weapons Convention (signed in 1972 and ratified by the Senate in 1974) bans the building and stockpiling of biological weapons, but has been crippled by its lack of enforcement mechanisms. Current negotiations are aimed at strengthening the agreement and creating a verification regime like that which is accompanies the Chemical Weapons Convention. U.S. military support for this agreement is likely for the same reasons that the Pentagon supported the Chemical Weapons Convention–it bans weapons that the United States already forswears the use of as a matter of doctrine, and may provide a source of intelligence about potential enemies and a legal basis for taking action against them. Given the likelihood of military support, based on the patterns observed in this study, this agreement would seem to have an excellent chance of being ratified by the Senate if it takes this form.

Reform of the Anti Ballistic Missile (ABM) Treaty for National Missile Defense

In September 1997 the United States and the Soviet successor states signed a memorandum noting the continued force of the 1972 ABM treaty on states of the former Soviet Union, and the U.S. and Russia signed two agreements distinguishing theater missile defenses from national missile defenses and specifying interceptor ve-

locity. The Clinton administration has not submitted these amendments to the ABM treaty for the necessary approval by the Senate, at least in part because conservative opponents of the treaty would like to abrogate it altogether. However, national missile defense remains a hotly contested issue in Washington, and based on the evidence gathered here, it would seem very likely the strong military support for the idea would create intense political pressure for major change in the ABM regime as it has existed since the early 1970s.

In an era in which a perception of softness or weakness on military issues and even hostility to the military itself has dogged the administration in the White House, the political necessity of military support for policy has been felt with particular intensity.

Conclusions

It would be easy to view the problem of excessive military influence over diplomacy as an issue of the Clinton presidency, a function of the fact that Bill Clinton's avoidance of military service made him politically vulnerable and thus uniquely unable to challenge the Pentagon. If this was the case, a new president might well mean a diminution of the military's role. In reality, however, the problem is far more complex and will not be remedied soon, because it lies in a political system in which the enormous expansion of defense budgets since the beginning of the Cold War have made the military and its associated network of contractors a vast industry unto themselves, and thus a constituency which must be dealt with deferentially by any president. This fact, along with the media revolution which has given military leaders and their Congressional allies constant, ready access to the public forum, has short-circuited the traditional chain of command with the president at the top. This has been a problem for Bill Clinton, but it is not uniquely a problem of Bill Clinton. George W. Bush is also likely to find that the Pentagon has far more say than the Constitution imagines in decisions of diplomacy, foreign policy, and national grand strategy.

In his first year in office, Bush has faced one of the most profound tests to confront any recent president, in the events of September 11 and their aftermath. His popularity with the public has skyrocketed, and his political power in official Washington along with it. This does not necessarily mean that he will be able to challenge the military's role in the diplomatic process in the future, however, even if he is inclined to do so. Public regard for the armed forces and political deference to military decision-making have increased since September 11 as well, and in the months and years ahead the ramifications of this change are likely to be felt in the policy process in ways that have little or nothing to do with the ongoing war on terrorism. The institutional influence of the Pentagon is likely to expand even further as the military's

prestige rises in a time of crisis, and as fear and nationalism stifle those voices that might otherwise object to this growing role. Bush's popularity may or may not be sustainable over time, but a revived emphasis on national security as a primary focus of U.S. policymaking is now firmly entrenched in the national political psyche. As a result, the influence of the military establishment in bureaucratic and institutional politics will be even greater in the years ahead that it has been in the past decade. Whether popular with the public or not, George W. Bush will, like Clinton, inevitably be seen as a president who did not serve his country in war, and will thus be politically constrained toward deference to the Pentagon in critical matters of diplomacy. To an even greater extent than Clinton's, Bush's administration is also one in which the president's primary advisors on world affairs -including Secretary of Defense Rumsfeld, Secretary of State Powell, and Vice-President Cheney- have long histories and deep personal ties to the Pentagon establishment.

Security policymaking has always involved negotiation and logrolling among the military and other interested actors. During the cold war, for example, the influence of military leadership was crucial in shaping all four SALT and START agreements and deciding whether they would be accepted. In this role, the military has sometimes acted as a brake on ill-considered change, and has been a powerful advocate of arms control in certain cases (the Army in particular was a strong proponent of removing tactical nuclear weapons from Europe, and the Joint Chiefs since the mid-1990s have supported unilateral U.S. reductions in overall nuclear stockpiles). The political power of the military has sometimes been exercised by shaping the views of principle policymakers, and sometimes by threatening to give a negative evaluation of a piece of diplomacy in testimony before Congress–but this too is part of the routine of policymaking, not an aberration but part of the expected give and take of politics in a democracy. The U.S. military is not reflexively anti-arms control, and the political use of expertise and the threat of policy criticism are not new phenomena. Within limits, they are a normal part of the process, and no reasonable observer would suggest that the Pentagon should not have an active role in the process of creating treaties that affect the nation's security.

But they should not be the the primary makers of policy, nor should their stamp of approval be seen by elected officials as the necessary green light signaling that a treaty can be proposed and then approved. As military affairs have become more complex and technical, this fact has probably grown from a sense that key decisions must be made more and more by the experts who best understand them. In an era in which a perception of softness or weakness on military issues and even hostility to the military itself has dogged the administration in the White House, the political necessity of military support for policy has been felt with particular intensity. But this reality nevertheless represents a departure from the Constitutional vision of a politically weak military bureaucracy, responsible for carrying out the decisions of civilian leadership. The fact that Congress and the President will disagree over the nation's interests and struggle for control of the treaty process seems virtually guaranteed by the Constitution, but the adoption of treaties is strictly their prerogative just the

same. Contention between the branches over diplomacy would have been regarded by the founders as a necessary discomfort of democracy, but the dictation of foreign policy by the military to a deferential Congress and President would have been seen as a fundamental affront to the system.

Notes

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[4] Amy E. Smithson, "Dateline Washington: Clinton Fumbles the CWC," *Foreign Policy*, #99 (Summer 1995), pp. 168-82.

[5] "The Chemical Weapons Convention," U.S. Department of State (www.state.gov). September, 1998.

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[7] Norman Kempster, "Standoff Over Chemical Weapons Pact," *Los Angeles Times*, April 5, 1997. p. A6.

[8] Thomas W. Lippmann, "Officials Urge Ratification of Chemical Weapons Ban," *Washington Post*, March 29, 1996. p. A20.

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[20] Randolph Ryan, "Pentagon Is Said to Seek Narrower Definition of Atom 'Test,'" *The Boston Globe*, June 11, 1995. p. 5.

[21] Ralph Vartabedian, "Pentagon Seeks to Resume Underground Nuclear Tests," *Los Angeles Times*, June 17, 1995. p. A1.

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[23] R. Jeffrey Smith, "Physicists Say Small Nuclear Tests Backed by Senate Are Unnecessary," *Washington Post*, August 9, 1995. p. A20.

[24] Ben Fenton, "'Star Wars' Test Highlights Vote on Nuclear Treaty," *Daily Telegraph* (London), October 5, 1999. p. 16.

[25] "Russia's Secret Tests Give Boost to Anti-CTBT Senators," *Asia Intelligence Wire*, October 4, 1999.

[26] Helen Dewar, "Senate Rejects Test Ban Treaty," *Washington Post*, October 14, 1999. p. A1.

[27] Robert Scheer, "Land Mines: Changing Clinton's Mind," *San Diego Union-Tribune*, October 17, 1997. p. B7.

[28]The DoD was joined in its opposition to the Ottawa Convention by the Arms Control and Disarmament Agency, which tended to see the agreement as a largely symbolic gesture. Both the ACDA and the Pentagon supported the Amended Mines Protocol (Protocol II) of the 1980 Convention on Certain Conventional Weapons as an alternative to Ottawa. Of the CCCW's four protocols, the first two (restricting some fragmentation weapons and some uses of land mines, respectively) were approved by the Senate in 1995, and an amended version of the second was approved in 1999. The third and fourth (restricting incendiary and blinding laser weapons, respectively) have not been ratified, once again in large part because of military concerns.

The two that were approved were strongly supported by the Pentagon. Protocol I restricted only anti-personnel weapons that injured with shards of material that were undetectable by x-ray. The Amended Protocol II mandated that all mines contain at least eight grams of iron to make them detectable; that minefields containing non-self-neutralizing mines be marked and the use and transfer of these weapons be prohibited after nine years; that restrictions on mine use be applied to civil as well as interstate wars; and that state governments aid in humanitarian mine removal. However, U.S. military officials expected that these changes would "have little impact on U.S. military forces since this treaty requires 'responsible' [anti-personnel land mine] use already codified in U.S. doctrine and NATO Standardization Agreements." (Naval Air Warfare Center, Weapons Division; http://www.nawcwpns.navy.mil/~treaty/CCCW.html). U.S. negotiators had secured language in the agreement that specifically excluded Claymore mines and anti-tank mines that had attached anti-personnel devices, and this second exemption was "crucial to the decision by the Senate in its advice and consent to the treaty." (Michael Lacy, "Passage of Amended Protocol II, The Army Lawyer, v. 2000 (March, 2000). p. 7-15).

Human rights advocates at the conference where changes to Protocol II were negotiated were scathing in their criticism of the result. A statement from an umbrella group of anti-mine NGOs said that the delegates had crafted a "reprehensible agreement," a "complete failure," that would "not make a significant difference in stemming the global land mines crisis." They noted that the Amended Protocol II allowed for a nine year delay in eliminating "dumb" mines during which vast numbers might be deployed; that it accepted a 10% failure rate for self-destructing mines which might still mean hundreds of thousands of active weapons left in the wake of a war; and that it would be impossible to verify that mines being deployed met even these specifications. The International Committee of the Red Cross suggested that the Amended Protocol II might even "encourage the production, transfer, and use of a new generation of mines while not prohibiting any existing types other than, eventually, non-detectable anti-personnel mines." In any case, the ICRC argued, "these measures are unlikely to significantly reduce the level of civilian land mine casualties." (Jim Wurst, "Bobbled Ban," Bulletin of Atomic Scientists, v. 52 (Sept./Oct. 1996). pp. 11-14).

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[31] James Kitfield, "Holding Out for "Smart" Land Mines," *National Journal*, October 4, 1997. p. 1980.

[32] John F. Troxell, "Landmines: Why the Korea Exception Should Be the Rule," *Parameters: The U.S. Army War College Quarterly*, Spring 2000. pp. 82-101.

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[46] John F. Troxell, "Landmines: Why the Korea Exception Should Be the Rule," *Parameters: The U.S. Army War College Quarterly*, Spring 2000. pp. 82-101.

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