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**EXAMINING THE EFFECTIVENESS OF
INTERNATIONAL LANDMINE REGIMES**

Alan Craig Bryden

PhD

2010

EXAMINING THE EFFECTIVENESS OF INTERNATIONAL LANDMINE REGIMES

The Interplay between Design and Implementation

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Submitted for the degree of Doctor of Philosophy

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University of Bradford

2010

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EXAMINING THE EFFECTIVENESS OF INTERNATIONAL LANDMINE REGIMES

The Interplay between Design and Implementation

Keywords: Anti-personnel mine (APM), Design, Effectiveness, Implementation, International Humanitarian Law (IHL), Landmine, Mine Action, Regime, Regime Theory, Stockpile Destruction.

Abstract

Two international treaty frameworks – Amended Protocol II (APII) to the Convention on Certain Conventional Weapons and the Anti-Personnel Mine Ban Convention (APMBC) – have been developed to prohibit or restrict the use of landmines. However, reflecting a gap in current academic research, there is a lack of knowledge of their effectiveness in supporting the humanitarian goals that underpin both treaties. In order to address gaps in the existing literature, this thesis applies an analytical framework grounded in regime theory to develop new insights into the design, implementation and effectiveness of APII and the APMBC within the broader framework of international humanitarian law (IHL). Two main hypotheses are explored. The first considers the importance for regime effectiveness of the relationship between design and implementation processes. The second analyses the significance for the landmine regimes of regime interplay and nesting within wider IHL and mine action discourses. In addressing these hypotheses, design/implementation interplay, agency dynamics and normative considerations represent key themes that enable us to develop new insights to a specific issue area that also demonstrates important linkages to wider humanitarian, security and developmental agendas.

Dedication

This thesis is dedicated to my wife Evelyne and to my children Gordon and Sam. Throughout a long and arduous drafting process, their unstinting love, encouragement (and patience) has been decisive in bringing this work to completion. I can only promise a healthier work-life balance in our post-PhD world.

Acronyms

ABM	Anti-ballistic missile (Treaty)
AHD	Anti-handling device
AICMA	Action against anti-personnel mines
ANSA	Armed non-state actor
AP II	Amended Protocol II
APEC	Asia-Pacific Economic Cooperation
APM	Anti-personnel mine
APMBC	Anti-personnel Mine Ban Treaty
AVM	Anti-vehicle mine
BWC	Biological Weapons Convention
CARICOM	Caribbean Community
CBW	Chemical & biological weapons
CCW	Convention on Certain Conventional Weapons
CD	Conference on Disarmament
CDDH	Conference on the Reaffirmation of IHL Applicable in Armed Conflicts
CFC	Chlorofluorocarbon
CMAC	Cambodian Mine Action Centre
CPA	Comprehensive Peace Agreement
CTBT	Comprehensive Test Ban Treaty
CWC	Chemical Weapons Convention
DDA	Department of Disarmament Affairs
DDR	Disarmament, Demobilisation and Reintegration
DfID	UK Department for International Development
E-MINE	Electronic Mine Information Network
ERW	Explosive remnants of war
EU	European Union
FFM	Fact-finding mission
GATT	General Agreement on Trade and Tariffs
HALO	Hazardous Areas Life Support Organisation
IAEA	International Atomic Energy Association
ICBL	International Campaign to Ban Landmines
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IMAS	International Mine Action Standard
IMF	International Monetary Fund
IMSMA	Information Management System for Mine Action
IRC	International Red Cross
ISU	Implementation Support Unit
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
LSN	Landmine Survivors Network
MAG	Mines Advisory Group
MASG	Mine Action Support Group
NAFTA	North American Free Trade Association

NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
NPT	Nuclear Non-Proliferation Treaty
NSA	Non state actor
NSG	Nuclear Suppliers Group
OAS	Organisation of American States
OAU	Organisation of African Union
ODA	Official Development Assistance
ODS	Ozone depleting substance
OECD	Organisation for Economic Cooperation and Development
OECD DAC	Organisation for Economic Cooperation and Development, Development Assistance Committee
OPCW	Organisation for the Prohibition of Chemical Weapons
PKK	Kurdistan Workers Party
PfP	Partnership for Peace
POF	Pakistani Ordnance Factory
SADC	Southern African Development Community
SALT	Strategic Arms Limitation Treaty
SALW	Small Arms and light weapons
SDI	Strategic Defense Initiative
SPLA/M	Sudanese Peoples Liberation Army / Movement
SSR	Security Sector Reform
TEAP	Technology and Economic Assessment Panel
UEFA	European Union of Football Associations
UN	United Nations
UNEP	United Nations Environmental Programme
UNESCO	United Nations
UNGA	United Nations General Assembly
UNMAS	United Nations Mine Action Service
UNMIK	United Nations Mission in Kosovo
WMD	Weapons of mass destruction
WTO	World Trade Organisation

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Chapter 1

The Design, Implementation and Effectiveness of Landmine Regimes

1. Introduction

This thesis seeks to increase knowledge and understanding on the development, implementation and effectiveness of the two treaty frameworks established under international humanitarian law (IHL) to specifically address landmines. While IHL in general and the landmine issue in particular have generated a considerable body of literature from both international law and international relations perspectives, a central research motivation underpinning this thesis is that the existing literature does not adequately address the effectiveness of these international legal frameworks in meeting the challenges that prompted their creation. The research questions explored in this thesis seek to address this lacuna. In particular, it is argued that design factors and their relationship to subsequent implementation are critical to regime effectiveness. By applying an analytical framework drawing on regime theory, this thesis seeks to make an original contribution to knowledge that generates new insights for the landmine treaties and the broader field of IHL within which they are situated. The relatively recent entry into force of both regimes provides a constraint to this analysis. However, situating our research questions within the broader framework of IHL can deepen and contextualise our understanding of the landmine regimes while developing new insights to the design, implementation and effectiveness of related regimes with a longer historical pedigree.

IHL is based on the premise that the legitimate means of warfare are not unlimited and that a balance must be struck between humanitarian concerns and the onus of military necessity. The body of treaty law and custom that seeks to achieve this goal

thus attempts to reconcile conflicting interests that can span the national security concerns of authoritarian governments to the objectives of peace advocates, humanitarian and development workers. The range of actors involved is thus extremely diverse. Primary stakeholders are states, service personnel and civilians caught up in armed conflict and its aftermath. However, other interested parties may include international organisations, commercial companies, the media, international lawyers, academics and civil society more broadly. Even within national governments, responsibilities and interests that touch on IHL are split, inter alia, between foreign and defence ministries, development agencies and trade and industry departments. Multiple issues, interests and actors therefore provide a complex basis from which to analyse the effectiveness of IHL.

The complexities of IHL are particularly apparent in the international treaties that address landmines. The existence of two applicable treaties with the common goal of alleviating the human suffering caused by landmines¹ suggests that the international community recognises the importance of this issue. According to the prevalent narrative on the anti-personnel mine ban convention (APMBC), this treaty represents, in both process and substance, a novel and effective approach to IHL that has been responsible, among other effects, for the emergence of an international norm against the use of anti-personnel mines (APMs). The corollary to this argument is that the other landmine treaty, Amended Protocol II (APII) to the Convention on Certain Conventional Weapons (CCW), contains ineffective restrictions developed through a process that is slow and inadequate. However, there is significant scepticism from

¹ The APMBC is explicit about this humanitarian goal, made clear in the first preambular paragraph to the treaty which declares its determination to stop the killing and maiming of civilians, especially children, by APMs. Article 3(7) of APII prohibits the use of any weapons covered by the protocol against civilians or civilian objects.

some mine action practitioners over the effectiveness of *both* regimes in alleviating the suffering caused by landmines. This uncertainty as to the practical effects of the landmine regimes provides a powerful motivation for the research questions posed in this thesis.

Specific gaps and lacunae in the existing literature centre on a lack of knowledge on the effectiveness of measures to address landmines. A common normative framework under IHL as well as overlapping and interlocking stakeholder groups point to the need for a more nuanced understanding of potential linkages and distinctions between APII and the APMBC. It also highlights an under-explored relationship of these treaties to the broader context of IHL within which they are situated. This thesis is thus concerned with developing knowledge in these areas.

Regime theory provides an appropriate framework for this research because it attempts to unpack the principles, norms, rules, procedures, actors and issue areas that shape the design, implementation and effectiveness of multilateral regimes. This approach seeks to understand the shift from policy goals to the practical reality of their application and considers why theoretically sound principles come unstuck when faced with challenging real world situations. Regime theory seems particularly appropriate to the study of landmine regimes as effectiveness in this subject area depends on addressing complex technical challenges that also require important levels of political will in order to be resolved.

This introductory chapter begins by situating the landmine issue within the broader context of IHL. It then introduces the analytical framework of regime theory applied

throughout this thesis. The following section poses the primary research questions for this thesis and a number of associated secondary questions that seek to develop new insights into the design, implementation and effectiveness of APII and the APMBC understood as ‘regimes.’ It then establishes an elaborated research framework for the analysis of landmine regime effectiveness developed in subsequent chapters. The penultimate section outlines the research methodology applied throughout this thesis. This chapter concludes by setting out the structure, focus and sequencing of subsequent chapters and how these relate to the overall objectives of this thesis.

2. Landmine regimes in context

IHL comprises two approaches to the conduct of armed conflict (*jus in bello*): Geneva law focuses on the protection of war casualties and non-combatants while Hague law addresses the rights and duties of belligerents in limiting the means of warfare. Landmine regimes therefore fall within the scope of Hague law. In many cases, there are significant overlaps between IHL and arms control agreements that regulate or prohibit specific weapons. Indeed, APII and the APMBC contain elements of both. However, there is a fundamental shift in discourse between arms control frameworks that seek to balance concerns of military necessity with appropriate use and the imperative of IHL to alleviate human suffering. This thesis therefore considers the weight that the respective landmines regimes accord to these two approaches and their consequent bearing on regime rules, norms and actors involved in design and implementation.

2.1 *Landmine regimes and IHL*

Not all provisions in IHL have found expression within a specific international regime. The principles behind the regulation or prohibition of weapons draw on customary international law tenets of *jus in bello* such as the need to prevent ‘unnecessary suffering’ or ‘superfluous injury.’ The prohibition on weapons that cause additional suffering for no military gain is therefore applicable to all states. Similarly, customary IHL includes the principle of ‘discrimination’ to ensure that non-combatants are not deliberately targeted. One hypothesis explored in this thesis is that this quality of regime nesting within a wider normative framework is an important distinguishing feature from ‘hard’ security regimes or regimes in other issue areas. In order to develop our analysis of landmine regimes it is thus important to take into account how far the regimes, individually and collectively, engage with the broader framework of treaty law and IHL norms that all states are bound to observe regardless of their membership of individual regimes.

Given the relatively short period since APII and the APMBC entered into force, the analysis of relevant historical case studies allows a more mature critique of strengths and weaknesses in regime implementation from a longer historical perspective. Analysing related IHL treaties as regimes can help to situate the landmine regimes within this broader framework through clarifying commonalities and distinctions in efforts under IHL to ban or restrict the use of weapons. This analysis also provides new insights by offering an initial comparative analysis of how far landmine regime

characteristics – constellations of actors, interests and norms – are specific to this issue area or can be linked to dynamics found in other IHL regimes. In this regard, within the corpus of Hague law, the 1899 *Hague Declaration 3 Concerning Expanding Bullets* (Hague Declaration 3) and the 1925 *Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare* (the 1925 Gas Protocol) offer particularly relevant cases.

In considering these historical cases the purpose is not to develop a legal-historical analysis. Instead, a regime perspective helps us to develop new insights into under-researched treaties that remain relevant today by analysing them through the optic of regime theory. A specific research goal addressed through this approach is to critically question the claim found frequently in the APMBC literature that the ‘Ottawa Process’ represents a new and unprecedented departure in the field of IHL. More generally, these cases can inform our understanding of how IHL regimes develop over time. This enables us to refine our questions for landmine regimes through identifying trends, processes and influences that, if not visible to primary regime stakeholders, are nevertheless highly influential in shaping their design, implementation and effectiveness.

Hague Declaration 3 is the only IHL treaty prior to the APMBC that bans a conventional weapon in widespread use. Like APMs, expanding bullets – commonly known as dum dum rounds – were condemned by medical practitioners who had witnessed at first hand the effects of these weapons. The international advocacy campaign that generated widespread public support for Hague Declaration 3 bears

comparison with the Ottawa Process. While the latter is often highlighted in the literature as a unique example of international civil society and media mobilisation, these same factors would seem to have proved influential in building support and thus pressuring governments to adopt a ban in 1899. A gap of nearly one hundred years between Hague Declaration 3 and the APMBC represents a lengthy period in order to trace the dynamics of implementation and assess the regime's effectiveness. Hague Declaration 3 therefore provides an important comparative case study in order to understand how far the two landmine regimes represent continuity or change within the corpus of IHL. Through framing our analysis within a regime theory approach, this case study also enables us to distinguish factors that may share common features with security, trade or environmental regimes from those that are specific to IHL.

The 1925 Gas Protocol is one of the earliest binding legal restraints on a specific weapon. The regime formation process tapped into strong public concern over the horrifying human costs of trench warfare in the First World War. Like landmines, a major impression was made by evidence of victims left alive to suffer from terrible injuries after exposure to these weapons. The 1925 Gas Protocol provides an early example of civil society exerting pressure to outlaw a weapon, resulting in an international norm against their use. The negotiating process that led to its agreement was also marked by the exclusion of states from the developing world. Like Hague Declaration 3, this case therefore provides a number of significant parallels to the processes surrounding the design and implementation of the landmine regimes.

Considering Hague Declaration 3 and the 1925 Gas Protocol through the lens of regime theory offers an opportunity to develop new insights into these regimes, their

interplay and the factors that have contributed to their effectiveness over time. Analysis of issues such as the norms that underpin these regimes and the shifting clusters of actors involved in design and implementation allows us to identify how these processes resonate with APII and the APMBC. The weapons addressed by these regimes share with APMs the quality of having been stigmatised in the international public consciousness. Consequently, this thesis explores the hypothesis that important regime issues for APII and the APMBC such as norm-building, spillover effects and regime nesting can only be understood through situating this analysis within its broader historical context.

2.2 *Origins and emergence of the landmine regimes*

The use of landmines in armed conflict can be traced back as far as the American Civil War although this practice only became widespread during the Second World War.² The specific regulation of APMs under IHL began in 1980 with the agreement of Protocol II to the CCW. However, growing international recognition in the early 1990s of the effects of APMs in contemporary conflicts and the inadequacies of the existing regulatory framework to protect both combatants and in particular civilians led to a CCW review conference. This involved eight months of negotiations between 1995-96 that resulted in the further elaboration of existing regulations. The rules of procedure for the negotiating conference limited participation to government representatives. This prevented many other interested stakeholders from playing a direct role in the shaping of the treaty, and contributed to a lack of public interest in the negotiations except through criticism of the process from a vociferous pro-ban

² Blagden, P. (1996) *Antipersonnel Mines: Friend of Foe?* (ICRC)

lobby. The resulting APII provides for a number of more stringent restrictions on the design of landmines, booby traps and ‘other devices’ than is contained in the original Protocol II.

A significant element of those excluded from the CCW negotiations comprised the non-governmental organisations (NGOs) and civil society actors that between 1992-93 began to coordinate a campaign to ban APMs. This group formed the nucleus of an International Campaign to Ban Landmines (ICBL), which, by 1995, incorporated some 350 different NGOs. Support for a ban also came from the International Committee of the Red Cross (ICRC) as well as the United Nations with UN Secretary General Boutros Boutros Ghali highlighting the issue in his 1992 *Agenda for Peace*.³ At a conference held in Ottawa during October 1996, Canadian Foreign Minister Lloyd Axworthy took the initiative to set a date for a negotiating conference with the goal of agreeing a complete ban on APMs. Following a year-long two-track process that combined state-level discussions with an extensive civil society driven advocacy campaign, a negotiating conference was held in Oslo over a three week period in September 1997. A wide range of states from both the developed and developing world participated while numerous NGOs, international organisations and mine action practitioners were given full access to the conference. Decision-making was by two-thirds majority and lengthy position statements were prohibited in order to achieve an agreed treaty text within a short timeframe. The resulting APMBC provides for a complete ban on the use, production, transfer and stockpiling of APMs.

³ Boutros Ghali, B. (1992) *Agenda for Peace*. Retrieved 20 March 2002 from the World Wide Web: www.un.org/Docs/SG/agpeace.html

Protocol II and APII are consistent in pursuing ways to minimise the effects of landmines through regulating their use while seeking to balance restrictions against concerns of military utility. A number of criticisms are levelled at this approach. In particular, applying a logic that draws heavily on arms control antecedents, the humanitarian impact of these weapons are not directly acknowledged. Moreover, the temporal consideration that landmines may pose a danger to communities and individuals decades after conflicts have ended is unaddressed. Neither APII nor the APMBC contain strong verification provisions. However, an informal civil society-driven verification mechanism has emerged, centred around the annual *Landmine Monitor* publication, which provides a detailed analysis of regime compliance globally. A further criticism is that APII essentially proposes technical ‘fixes’ that presuppose a technological and resource base out of reach for many developing countries, suggesting that APII may have limited relevance in the very countries that suffer the most from landmines. According to many critics of APII, it is unsurprising that the regime has a relatively weak support base in the developing world. The counterpoint to criticism of APII is that a restrictions-based approach, developed through consensual negotiations, draws landmine producers and users that would not consider an outright ban into a constructive arms control process. While the APMBC has a considerably wider membership than APII,⁴ many militarily-significant states including China, India, Pakistan, Russia and the United States (that are members of APII) have not joined the APMBC regime.

The APMBC has generated a great deal of analysis and commentary in a relatively short period. In contrast, APII has attracted little attention outside of governmental

⁴ As of 24 November 2009 APII has 93 full members while the APMBC has 156 states parties.

circles. Yet much existing work on the evolution of the former focuses narrowly on the achievements of the coalition of like-minded states and civil society organisations. The central narrative, encapsulated in Cameron, Lawson and Tomlin's seminal volume on the subject, *To Walk Without Fear, the Global Movement to Ban Landmines*,⁵ emphasises the unique nature of this process. It starts from the position that the Ottawa Process is fundamentally 'a good thing' that has re-written the rules for the design and implementation of IHL treaties. This perspective sees international civil society, in conjunction with like-minded states, successfully pressuring more reluctant states through the medium of coordinated, well-targeted advocacy to be bound to new humanitarian treaty obligations.⁶ In parallel, beyond champions of the APII regime such as the US – portrayed as supporting the regime to save face due to their unwillingness to join the APMBC – APII is cast simplistically as an ineffectual response to the global landmine problem from states unwilling to ban these weapons.

Despite extensive attention by the media, civil society, policy analysts, lawyers and researchers, there is no systematic analysis of the strengths and weaknesses of APII and the APMBC. This represents an important gap in the existing literature which this thesis seeks to address. Significantly, regime theory qualifies effectiveness according to different phases of regime evolution. While political will may represent a key criterion for effectiveness in the landmine regime formation phase, such

⁵ Cameron, M.A., Lawson, R.J. & Tomlin, B.W. (eds.) (1998) *To Walk Without Fear, The Global Movement to Ban Landmines*. See also: Mathew, R.A., McDonald, B and Rutherford, K.A. *Landmines and Human Security* (2004)

⁶ See for example: Anderson, K. 'The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organisations and the Idea of International Civil Society. *European Journal of International Law*. Volume II. No.1. Bleicher, M. 'The Ottawa Process: Nine Day Wonder or a New Model for Disarmament Negotiations?' *Disarmament Forum* No.4. (1999) Hubert, D. 'The Landmine Ban: A Case Study in Humanitarian Advocacy'. *Humanitarianism and War Project*. Occasional Paper #42.

considerations are combined with the context-specific technical challenges of mine action in the implementation phase.

This points to important research questions relating to the influence of mine action practitioners across regime design and implementation. Building on this point, while there is much overlap, distinct stakeholder groups can be identified in relation to the two regimes. This raises research questions on the relevance of stakeholder clustering to the nature of regime development as well as in distinguishing effectiveness from effective regime marketing. The de facto stigmatisation of APMs through the Ottawa Process brings to the fore normative considerations applicable to and thus linking both regimes regardless of the antipathy of partisan regime supporters.

3. Framing landmine regime effectiveness

Regime theory provides an analytical framework that has developed new insights into a number of different issue areas. The relative absence of extant research that systematically considers IHL from the perspective of ‘regime’ offers a significant opportunity to develop new understandings of what contributes to an effective (or defective) regime within this field. Significant parallels seem to exist between the landmine issue and the wider fields of security, trade and the environment. Drawing on findings from regimes in these issue areas thus enables us to develop new insights to the landmine regimes while also helping to clarify those characteristics that may be particular to the field of IHL. This approach provides a means to fill gaps in the current literature through structuring our analysis around key questions of design, implementation, effectiveness and consequences. This section begins by setting out

the primary research questions posed in this thesis, identifying the contributions to knowledge that this analysis seeks to make. It then elaborates a number of hypotheses and secondary research questions considering landmine regime effectiveness within a broader IHL framework. This establishes the outlines of a research framework that is elaborated in Chapter 2 and applied in subsequent chapters.

3.1 Primary research questions

The central research question explored in this thesis posits that the relationship between the design phase and regime implementation is a key determinant of regime effectiveness. Focusing on the political and technical challenges of regime development links a critical analysis of the emergence of the treaty frameworks to a practitioner-driven mine action literature. It is argued that drawing together these related, if disconnected literatures is highly significant in order to understand regime implementation, highlighting practical and political challenges that contribute to voluntary or involuntary defection. In developing this approach, the significance of political will in regime formation and implementation phases as well as the ability of APII and the APMBC to demonstrate regime learning and adapt in order to better meet implementation challenges represent key research questions.

The multi-level nature of landmine regime effectiveness generates important questions on how agency shapes the nature of regime provisions and influences the extent to which regime members are able to meet their obligations. The APMBC literature in particular emphasises the innovative nature of both the diverse global coalition and the tightly organised core group that were pivotal to the successful

regime formation phase. These characteristics are commonly juxtaposed with a narrower (and therefore less effective) constituency contributing to the agreement of APII. An important set of research questions therefore relates to the role, influence and interactions of different stakeholder groups. Drawing on insights from the wider regime theory discourse, one hypothesis proposes that how actors cluster at different stages of regime evolution has an important bearing on regime effectiveness. The relationship between agency and legitimacy is also significant. In particular, how far claims to legitimacy linked to the engagement of the global South actually extend beyond representation to ownership of an implementation process that in terms of mine action almost always plays out within developing states has evident consequences for regime effectiveness.

The significance of the broader framework of IHL to landmine regime dynamics represents an important research focus. On one level, applying a comparative approach that relates IHL to regimes in other issue areas permits us to explore commonalities across regime types as well as to better understand characteristics particular to IHL regimes. On another, the concept of regime nesting links important questions on the role of norms within and across the two landmine regimes to a more mature IHL discourse. This permits us to move beyond the facile differentiation between the two regimes prevalent in the extant literature and enables a critical assessment of claims to the uniqueness of particular regime characteristics. From a theoretical perspective, embedding landmine regime analysis in this wider normative framework allows us to explore important issues of regime nesting and interplay and thus to delineate ‘deep’ linkages that need to be unpacked in order to determine effects across regimes. Consequently, it may be apposite to conceptualise these

regimes as sub-regimes situated within a broader IHL regime addressing inhumane weapons.

3.2 *A research framework for landmine regimes*

If the APMBC has been held up as an unprecedented, successful example of how to drive forward the IHL agenda, part of the success of the Ottawa Process has been in promoting the APMBC ‘brand’ and juxtaposing it with the CCW. The research questions outlined above are intended to move beyond a perceptions-based approach by developing new insights into the effectiveness of the two landmine regimes. It is therefore essential to assess not just if and why regime rules are obeyed but to understand how this behaviour contributes to the realisation of regime objectives. This sub-section further elaborates research questions that are tested in subsequent chapters. These are grouped under the themes of *the interplay between design and implementation, key actors and normative considerations*.

3.2.1 *the interplay between design and implementation*

This thesis explores a dynamic relationship between design factors and the quality of regime implementation. Decisions made in the regime design phase can be highly influential in supporting or constraining regime effectiveness. In particular, a central hypothesis guiding the approach to regime evolution within this thesis is that understanding common or distinct principles, norms, rules, procedures, issues and actors within and across these regimes can provide an important contribution to knowledge on regime effectiveness both individually and in comparative terms.

Drawing on work within the regime theory discourse that analyses the key component features of regimes, this thesis argues that a deeper understanding of process factors can greatly enhance our knowledge of landmine regimes.

Implementation measures regime obligations against the practical realities and political constraints that contribute to defection. These constraints are particularly relevant for landmine regimes given that the problem is most acute in developing countries that face a range of political, economic and security challenges of which landmines form only one part. This is important because implementation presents a double test. On the one hand this relates to the ability of members to meet regime demands and avoid involuntary defection. On the other, the implementation phase provides the litmus test of whether states' willingness to cut a positive international figure by joining a regime with evident humanitarian credentials is matched by the political will to accept the costs associated with fulfilling regime obligations. The ability of the regimes to recognise and address implementation issues as well as the flexibility to demonstrate regime learning and adjust to meet challenges that may not have been considered in regime design are key research issues relating to regime implementation.

The effectiveness of an international regime is based not just on observing regime rules but on the contribution of compliant behaviour to achieving regime goals. This raises the key issue of defining effectiveness in the context of the landmine regimes. Our review of the broader IHL literature from a regime perspective leads us to identify an important variable to landmine regime effectiveness beyond the economic and political factors identified within the wider literature. Acknowledging the nesting

of the landmine regimes within the broader context of IHL points to a *humanitarian* criterion that requires the impact of the regime on the human security of individuals (both military and civilians) to be taken into account.

Effective regimes in different issue areas often demonstrate the ability to evolve in order to address shortcomings in regime design or to meet new challenges that were not apparent to treaty drafters. How regimes learn is thus identified as a significant element of regime evolution. Flexibility in order to support the achievement of regime goals and enable necessary course corrections requires regimes to be responsive to the conduct of their members. Overtly, the two regimes apply very different approaches to regime learning. APII provides for flexibility in implementation through permitting optional deferral periods for certain regime obligations. In contrast, the APMBC seeks to preserve the integrity of the core prohibition on APMs by categorically ruling out reservations or deferrals. While both approaches may be seen to have merits, detailed analysis of implementation processes in relation to specific mine action priorities within the treaties represents a key means within this thesis to better understand the consequences of these different approaches for regime effectiveness.

Consequences of international regimes beyond the issue area they are intended to address can be significant. Examples considered within this chapter highlight changes to relations between regime members (as well as non-members) and shifts in broader policy positions as a result of learning through regime-driven interactions. Regime nesting can also result in spillover effects into related issue areas. For example, in the case of landmine regimes there is a need to understand how spillover effects are reflected in the efforts of some regime participants to extend the regimes' coverage

into new issue areas beyond their original scope or to apply lessons from the process of regime evolution to the development of new regimes.

3.2.2 *Key actors*

Experience from different regimes shows that implementation may necessitate very different skills and requires the contribution of sets of actors beyond those involved in the regime formation phase. This points to the need to understand the contributions of stakeholder groups in relation to the different phases of regime evolution. In particular, mapping the clustering of regime-relevant actors and determining how these groupings shift from design to implementation provide important insights to regime effectiveness.

One perspective juxtaposes the landmine regime implementation process with the humanitarian imperatives that led to their creation: while the experts are back in the field, the process is being driven by Western diplomats and lobbyists. The perception is of an over-emphasis on bureaucracy at the expense of practical work to solve the global landmine problem. This raises important questions for the support provided by the regimes to mine action since effective regimes in many issue areas require practitioner expertise in both design and implementation phases. Moreover, if political will is essential to move from consensus around an issue of concern to the negotiation of an international treaty, sustained political commitment remains key to ensuring compliance with provisions that are costly and potentially sensitive in terms of their national security implications.

While states are central players in international regimes, certain regime theory approaches emphasise the function of regimes as social institutions, bringing the roles of different non-state actors (NSAs) to the fore. Mine action is a complex activity, uniting demanding technical challenges with socio-economic issues that require a close understanding of the ‘impact’ of landmines on communities and individuals. Within this field international organisations as well as a range of NSAs play an influential role in advocacy, policy-making and programming. APII is more state-centric, has a lower profile and is viewed with markedly less enthusiasm by many NSAs, notably the NGO community within the ICBL. Given the contrasting approaches adopted by the two regimes, it is posited that better understanding the relationship of the regimes to international organisations, states and NSAs is particularly relevant to understanding APII and APMBC regime effectiveness.

The problems posed by landmines are most acute in and need to be addressed by developing countries that are often least equipped to deal with them. The nexus between agency and political will is therefore particularly relevant to the study of landmine regimes. This is an area where there would seem to be a clear distinction in regime terms between APII and the APMBC given the lack of engagement of the former with developing world concerns and the centrality of the global South to the latter. However, challenges faced by environmental regimes point to important research questions for APII and the APMBC. In particular, do regime frameworks distinguish between political support for regimes and political will to assume the costs of regime membership?

3.2.3 *Normative considerations*

Normative considerations would seem to represent a key factor in understanding the two regimes and their relationship to IHL. This represents a significant point of distinction between the APMBC, which emerged rapidly through capitalising on the momentum created by a ‘norm bandwagon’ effect and the more military-technical approach of APII which developed over a more drawn out period. The emergence of a norm against the use of APMs seems to follow Finnemore and Sikkink’s description of a ‘norm cascade’⁷ with the support of states coalescing around the position that a ban was the only appropriate response to the suffering caused by APMs. In considering the choices made by states in balancing domestic and international interests, the influence of norms on how two-level games play out should be considered. External events may also be relevant to this calculus. Although not directly linked to the regime formation process, the death of Princess Diana just prior to the Oslo negotiations provides an example of an event that further increased public pressure, at least within the UK, to support a humanitarian cause that was known to be close to her heart.

The historical case studies on dum dum bullets and chemical gas share with APMs a common feature that the use of these weapons has become widely acknowledged as unacceptable within the international community. Understanding how the concept of ‘stigmatisation’ influences the effectiveness of IHL through analysing these treaties as regimes is therefore a significant means to link analysis of APII and the APMBC to the broader normative framework of IHL. Considering the regimes as part of the IHL

tradition also points to questions that seek to understand the effects of the landmine regimes beyond their stated objectives. In particular, it is important to determine what (if any) spillover effects in other issue areas can be attributed to the existence of the landmine regimes.

Research into some regimes points to a quality of regime resilience that is found when they are nested within broader normative frameworks. Both landmine regimes can be situated within the wider framework of international efforts under IHL to regulate or ban certain types of weapon. Normative considerations may thus provide a bridge between APII and the APMBC. On one level there may be a lack of apparent overlap between the different regime frameworks. However, from a regime perspective the normative framework of IHL would seem to provide an overarching regime within which APII and the APMBC are nested. This points to the need to unpack ‘deep’ linkages of overlap and interplay that may not be apparent (or are denied) by regime stakeholders.

4. Research methodology

The conceptual framework of regime theory has enabled new contributions to knowledge in areas of international cooperation as diverse as security, trade and the environment. However, this analytical approach has not been applied to the field of IHL more broadly or the landmine regimes in particular. This thesis therefore utilizes a regime approach to these issue areas for the first time. New insights are

⁷ Finnemore, M. and Sikkink, K. ; ‘International Norm Dynamics and Political Change’; *Paper presented, at the Ideas, Culture and Political Analysis Workshop, Princeton University (May 15-16 1998)*, p.7.

pursued through addressing two deficits in the current literature: the absence of systematic analytical critique of a partial and self-interested literature; and, a significant gap in the existing literature that fails to define or evaluate the effectiveness of the landmine regimes in achieving the goals they were set up to meet.

Addressing an absence of conceptual clarity within the literature is particularly important. Applying a definition of ‘regime’ that focuses on principles, norms, rules procedures and programmes establishes a range of interrelated concepts through which to develop our analysis of complex, multi actor and multi-level social institutions. Related to this is the significance of a process-based perspective inherent to the regime theory approach. Distinguishing the different phases of regime development – formation, implementation, effectiveness and consequences – provides a comprehensive structure within which to situate our research questions. For the purposes of conceptual clarity, it is useful to distinguish these four categories. However, their characteristics are intrinsically linked and mutually reinforcing (in positive or negative terms) with decisions made in one phase impacting upon other aspects of regime evolution. Deconstructing APII and the APMBC in this way thus enables us to move beyond a perceptions-based approach and address important gaps in the current literature.

A twofold definition of effectiveness proposed by Arild Underdal is significant because it highlights that even if widely adhered to and fully implemented, a regime may not alleviate the problems it was set up to address.⁸ For a regime to be effective, the relevance and appropriateness of specific provisions must therefore go hand in

⁸ Underdal, A. (1992) ‘The Concept of Regime Effectiveness’, *Cooperation & Conflict* 27: pp. 227-40.

hand with the political will to implement them. Thus, effectiveness is a function of the interplay of design and implementation factors. Related to this point is the question of how to measure effectiveness. Beyond other criteria proposed in the regime literature, humanitarian impact provides an important dimension specific to IHL regime effectiveness that is applied systematically throughout this thesis. In particular, this approach casts into relief the question of how far normative considerations – such as the de facto stigmatisation of APMs – contribute to regime effectiveness.

As discussed above, the extant literature is strongly biased in favour of the Ottawa Process. This is reflected both in the volume of articles and books available on the APMBBC in comparison to APII and in terms of the positive evaluation of the former at the expense of the latter. This critique is significant because it is self-interested (the majority of these works are written by participant observers with a stake in the APMBBC regime) as well as narrow in focusing primarily on the political ‘success’ of creating a new and ‘unprecedented’ international instrument banning APMs. In order to move beyond these limitations, this thesis systematically applies Underdal’s twofold definition of effectiveness emphasising both observance of regime rules and the extent to which regime objectives are fulfilled. The latter criterion is critical. Since the underpinning objective of both regimes is to alleviate the humanitarian suffering caused by these weapons, the achievement of mine action-related implementation goals must be a pre-condition for landmine regime effectiveness.

The research methodology applied in this thesis seeks to bridge related but hitherto disconnected literatures through a regime theory framework. One literature focuses

on the political evolution of APII and the APMBC while the other addresses different components of the mine action agenda. In order to distinguish a humanitarian – as opposed to political or economic – criterion for effectiveness, this thesis utilises data sources from within the mine action literature that are heavily based on field research. Considering both together links political developments to mine action pay-offs and thus adds to our knowledge of the actual (rather than perceived) impact of these regimes. Given that different stakeholders supported mine action before the existence of the regimes while many non-regime members are also important contributors in this area, such an approach is also necessary to address significant counter-factual questions related to landmine regime effectiveness.

To inform this research I draw on previous personal experience both as desk officer for IHL within the UK Ministry of Defence (1998-2000) and as a project manager within the Geneva International Centre for Humanitarian Demining (GICHD) (2000-2002). The former position gave me privileged access to the national policy process for the implementation of both landmine regimes as well as key insights into the relationships between the UK and other state and non-state actors in this issue area. My work at GICHD provided exposure to a wide range of mine action stakeholders and involved field based research into the effectiveness of humanitarian demining support. This thesis therefore builds on insights, relationships and experience developed in both these positions.

Both APII and the APMBC are relatively young regimes. On the other hand, they form part of an IHL tradition with extremely long historical antecedents. For this reason, this thesis draws lessons from analyzing IHL regimes with a more mature

implementation history. Close analysis of related regimes that also have strong normative content – as with Hague Declaration 3 and the 1925 Gas Protocol – is essential in order to test the hypothesis explored in relation to both regime formation and implementation that there is an important, positive link between humanitarian norms and regime effectiveness.

A central focus on the humanitarian impact of the landmine regimes determines the literatures that are reviewed and analysed in subsequent chapters. Given that IHL has not been considered to date through the optic of regime theory, important insights can be developed through considering parallels and distinctions with regimes in different issue areas. Analysing both treaty texts in relation to the state of the art in the field of mine action is particularly important to identify the extent to which regime designers have taken into account concrete implementation challenges. Available empirical data on the implementation histories of states parties drawn from civil society based monitoring efforts is particularly significant. While the results of such analysis may itself provide one measure of regime effectiveness, it can also provide important insights into broader regime issues such as the clarity of regime obligations, changing patterns of behavior over time and evidence of regime defection that are explored through subsequent chapters of this thesis.

5. Thesis approach and structure

The research questions introduced above address an evident gap in the existing academic literature by analysing the design and implementation of APII and the APMBC. Regime theory offers a rigorous analytical framework that is applied to

provide analytical depth to a subject area that has not benefited from extensive academic critique. This section therefore begins by re-stating the main objectives and research questions examined in this thesis. The relationship between APII, the APMBC and resulting mine action ‘outcomes’ is developed through several chapters of this thesis. The primary and secondary research questions explored in this introductory chapter are addressed through detailed consideration of APII and APMBC regime development. In order to align regime effectiveness as closely as possible to mine action objectives, a particular focus is given to the relationship between the regimes and developments in the areas of humanitarian demining and stockpile destruction. This section concludes by introducing the thesis structure reflected in subsequent chapters.

5.1 Thesis objectives and research questions

It is now useful to re-state the main objectives and research questions examined in this thesis in light of our initial discussion of regime theory approaches. The overall aim of this thesis is to examine in-depth key aspects of the design, implementation and effectiveness of international agreements relating to landmines within the framework IHL through applying a regime analysis perspective and approach. There are two overall research questions / hypotheses:

1. The effectiveness of the landmine regimes depends greatly on the character and extent of the relationship between the design and implementation processes.

To address this primary hypothesis, we examine a number of key secondary research questions, including:

- In what ways does regime design influence commitment to regime formation processes?
 - How important is the involvement of implementation actors in regime design and what can be learned from our analysis of stakeholder clustering dynamics in different phases of regime development?
 - What consequences can be discerned from the gaps between international regime commitments and domestic implementation processes under the regimes?
 - What are the implications for regime effectiveness of how the regimes acknowledge and address both technical and political dimensions of implementation?
 - How significant are different approaches to regime rules in shaping the ability of the regimes to ‘learn’ and adapt to challenges?
2. The design, implementation and effectiveness of international efforts to address landmines depends substantially on the interplay between, and nesting of, the relevant treaty regimes within both broader IHL and mine action discourses. Landmine regime effectiveness thus cannot be properly understood outside of this broader context.

To address this second main hypothesis, the thesis examines a second set of secondary questions, including:

- How significant is the role of norms in determining regime effectiveness across design and implementation phases?
- In what ways does landmine regime evolution draw on longer historical processes of IHL regime development (in particular Hague Declaration II and the 1925 Gas Protocol) and what are the consequences for their effectiveness?
- Are normative considerations significant in generating ‘deep’ linkages between the two regimes (regardless of distinct frameworks and membership)?
- How does the concept of regime nesting within a broader IHL framework help us to understand important regime dynamics?
- Can disjunctions between regime and mine action priorities be discerned and what are the resulting costs to regime effectiveness?

5.2 *Thesis structure*

Chapter 2 reviews and analyses the state of the art in regime theory in order to establish the research framework applied in subsequent chapters. To develop its comparative dimension, insights derived from regimes in other issue areas are considered in relation to processes of APII and APMBC regime design and implementation. A review of IHL literature provides a new perspective on antecedents that refine our research questions for treaty regimes with a much shorter implementation history. This analysis thus informs a more specific and detailed critique of the landmine regimes from a regime perspective.

Consideration of two ‘historical’ IHL regimes in Chapter 3 leads to theoretically motivated questions on the significance of specific issue areas within IHL as well as the influence of different stakeholder groups on regime effectiveness. The extent to which Hague Declaration 3 and the 1925 Gas Protocol have been effective in achieving regime objectives provides important insights for the relatively recent processes of APII and APMBC regime implementation. Given the lengthy implementation period of these early IHL treaty regimes, both provide significant opportunities to develop new insights into strengths and weaknesses in regime design and how this relates to regime effectiveness.

Chapters 4 and 5 respectively consider the formation and implementation of the landmine regimes. This analysis builds on Chapter 3 by seeking to identify elements of continuity and change with broader processes of IHL regime development. While the primary research objective of this thesis is to contribute new knowledge to the effectiveness of APII and the APMBC, applying a comparative approach can provide insights to underlying interactions that may not be visible (or are denied) in both regimes. Particular emphasis is placed on understanding the consequences of different approaches applied by the two regimes in order to address similar humanitarian challenges. Different regime rules, overlapping but distinct stakeholder groups and the significance of restrictions versus prohibitions-based approaches represent key foci. Our analysis of processes of regime development feeds into subsequent chapters that apply insights drawn from regime development and implementation to different pillars of the mine action agenda.

Chapters 6 and 7 consider the ways in which the two landmine regimes contribute to mine action in the areas of humanitarian demining and stockpile destruction. An important point of departure in relating the regimes to mine action is the need to clarify relevant regime obligations and to identify influential actors in regime design and implementation. Distinguishing implementation from effectiveness is particularly important. If important stakeholder groups within the regimes do not have mine action expertise, this can lead to misperceptions over regime performance. Moreover, the onus of demonstrating ‘success’ may contribute to a reluctance to highlight challenges to regime implementation. Contributions to knowledge therefore touch on the ability and willingness of the regimes to set out and enforce realistic, appropriate obligations. These chapters also provide a means to measure regime contributions to specific elements of the mine action agenda against overarching regime goals to address the human suffering caused by landmines.

The concluding chapter considers the specific contributions to knowledge made by this thesis. It identifies where our understanding of IHL more broadly as well as the landmines issue in particular have been enhanced through analysing them as ‘regimes.’ It draws together insights from across the previous chapters that relate specifically to regime effectiveness and considers them under the themes set out in this chapter: the interplay between design and implementation, key actors and normative considerations. As discussed above, landmine regimes represent an area of research that cannot be de-linked from the policy implications of a ‘live’ issue on international security, humanitarian and development agendas. Creating a bridge between this analysis and wider research priorities is thus an important consideration. The insights developed within this thesis therefore attempt to link research goals with

their practical implications in an issue area where the practical payoffs from enhanced academic critique may be substantial.

Chapter 2

Reviewing the Landmines Literature through Regime Theory

1. Introduction

There is an apparent gap between the underpinning objectives of the two regimes established under international law to restrict or prohibit the use of landmines and their actual impact in reducing the humanitarian costs of these weapons. This is reflected in widely varying views on the relevance of these regimes in addressing the humanitarian challenges they were set up to alleviate. The ultimate goal of this thesis is thus to make a new contribution to knowledge in understanding the effectiveness of the two landmine regimes. A central hypothesis is that the relationship between the design and implementation of APII and the APMBC is critical to understanding regime effectiveness. This chapter contributes to that overarching research goal through reviewing different literatures that can add to our knowledge of regime effectiveness in the field of IHL. This enables the further elaboration of the research framework and refinement of the research questions considered in subsequent chapters.

The subject of this thesis is characterised by multi-level issues, a diverse range of actors that shifts from negotiation to implementation and a partial literature. There is therefore a need for a structured approach to research within this field. Regime theory provides an analytical framework that can help systematically analyse the complexities of landmine regimes. As discussed in Chapter 1, considering fields as diverse as security, trade and the environment as regimes has proved effective in

developing new insights into international efforts to influence behaviour in these issue areas. For analytical purposes, the ongoing implementation of both regimes is relatively new and therefore insights must be derived from a short period. However, the broader framework of IHL is significant. Analysis of historical IHL regimes with parallels to APII and the APMBC in this chapter can contribute to research questions that address regime interplay and nesting within the broader context of IHL.

Landmine regimes cannot be assessed in isolation. The field within which these regimes are situated covers, *inter alia*, international relations, international law, IHL, as well as arms control and disarmament. As part of the body of IHL, APII and the APMBC must be understood within the architecture of international legal measures developed to protect combatants and civilians in time of war. They also rest within the framework of agreements negotiated to regulate or eliminate specific categories of weapon. This is significant because, if situated within a common normative framework, APII draws on arms control approaches in seeking a balance between military utility and humanitarian concerns while the APMBC focus directly on humanitarian impact. While advocates of the Ottawa Process clearly favor the latter approach, a major research focus of this thesis is to develop a more nuanced understanding of the individual and cumulative effects of both regimes. Landmine regimes have spawned official texts, policy-related material, advocacy-driven work and technical studies. These multiple perspectives reflect the humanitarian, political and economic interests that overlap and intersect within this field. Analysis of a number of different literatures is therefore required to capture the complex dynamics that shape landmine regime design, implementation and effectiveness.

This chapter begins with a review of key elements of the regime literature. From the starting point of perspectives on what constitutes a ‘regime,’ it identifies important approaches and insights that have emerged in the regime theory discourse that are relevant to this thesis. Work to date on security, trade and environmental regimes is assessed in order to understand the characteristics of different types of regime, highlight commonalities and distinctions and thus to inform our subsequent analysis. Critically assessing different regime theory approaches and insights from different thematic areas permits us to generate refined hypotheses and research questions for IHL in general and the landmine regimes in particular. Having reviewed the conceptual framework of regime theory, including key thematic issue areas, this chapter then considers the history, development and scope of IHL from a regime perspective. After introducing landmine treaties as ‘regimes,’ the chapter concludes by refining key primary and secondary research questions posed in Chapter 1 in light of insights developed from this review of relevant literatures.

2. Understanding regime theory

Regime theory provides the analytical framework applied systematically throughout this thesis in order to develop new insights to APII and the APMBC within a broader IHL context. This section reviews and analyses key elements of the regime theory discourse in order to situate IHL within this analytical framework. Beginning with a conceptualisation of different definitions of regime, significant regime theories are considered. This section concludes by assessing significant elements in the evolution of regime theory.

2.1 *Definitions of regime*

A useful starting point for an analysis of regime theory and its utility within the field of IHL is to consider different definitions of a regime. In one of the earliest conceptualisations of regime, a definition provided by John Ruggie in 1975 describes ‘a set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments which have been accepted by a group of states.’⁹ This concept is of value because although, as discussed later in this chapter, there are widely contrasting views on the role played by regimes, different schools agree that while the international system is characterized by anarchy, it is governed by rules. The concept of regime, although with long historical antecedents, reflects the fact that ‘it is only during the course of the twentieth century that regimes can be regarded as a global phenomenon, with states becoming enmeshed in increasingly complex sets of rules and institutions which regulate international relations around the world.’¹⁰

Ernst Haas, writing in 1980, suggests that ‘regimes are norms, rules and procedures agreed in order to regulate an issue area.’¹¹ Stephen Krasner in 1983 offered the definition of a regime as ‘implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations.’¹² Another definition was offered in 1989 by Robert Keohane as ‘institutions with explicit rules, agreed upon by governments, which pertain to

⁹ Ruggie, J. (1975) ‘International Responses to Technology: Concepts and Trends’, *International Organization* 29 (3): p.570.

¹⁰ Little, R. ‘International Regimes’ in Baylis, J. and Smith, S. (2001) *The Globalization of World Politics* 2nd edition (Oxford University Press): p.299.

¹¹ Haas, E.B. (1980) ‘Why Collaborate? Issue Linkage and International Regimes’, *World Politics* (32): p.358.

¹² Krasner, S.D. (1983) *International Regimes* (Ithaca, NY): p.2.

particular sets of issues in international relations.¹³ The similarities and distinctions between these three early definitions are instructive. All include explicit rules or procedures and an agreed organizational framework as essential to the characterization of a regime and the role that actors play within it. Keohane offers a ‘minimalist’ definition of regimes as formalized constructs agreed and established by states. In this respect, he acknowledges that rules alone do not make a regime; there is also a need for validity and recognition by states for a regime to exist. However, in responding to the Krasner definition, Keohane is wary of defining regimes in terms of observed behaviour due to the complexity in interpreting implicit rather than overt regime characteristics such as principles and norms.¹⁴

In introducing the concept of norms to their definitions of a regime, Krasner and Haas point out that participation in international regimes is more complex than a function of rules and procedures. Norms explicitly incorporate multi-actor involvement in regimes beyond the states that make up their formal membership. In other words, regimes are an expression of interdependence in international relations and this is as relevant as structural aspects in defining and explaining them. It should also be noted that neither Krasner nor Haas refer solely to states, allowing for wider interpretations of the actors involved in international regimes. This is important because research has recognised the danger that ‘a state centric approach runs the risk of introducing a conservative bias into regime analysis and fails to confront many interesting developments currently underway in international and transnational affairs.’¹⁵

¹³ Keohane, R.O. (1989) *International Institutions and State Power: Essays in International Relations Theory* (Boulder, Colorado): p.4.

¹⁴ Keohane, R.O. ‘The Analysis of International Regimes’, in Rittberger, V. (1993) *Regime Theory and International Relations* (Clarendon Press): p.28.

¹⁵ Young, O.R. (1995) ‘Global Governance. Drawing Insights from the Environmental Experience’. *An Occasional paper from the Dickey Center, Dartmouth College – Hanover, New Hampshire*: p.13.

The regime theory discourse has moved beyond these earlier definitions of regime. In particular, Krasner has been criticized because of the difficulty in differentiating the four main components of regimes. Distinguishing these elements is essential if regimes are to be classified in ways that help to explain their design, implementation and effectiveness. Levy, Young and Zurn recognize this challenge to operationalising the concept of international regimes. They note that the ability to understand the costs and benefits of legal rules is essential but has been lacking in earlier research. This is an important gap because ‘given the basic thrust of regime analysis as a tool for understanding international cooperation, there is a need to go beyond merely routinized or patterned behavior.’¹⁶

Levy, Young and Zurn define international regimes as ‘social institutions consisting of agreed upon principles, norms, rules, procedures and programs that govern the interactions of actors in specific issue areas.’¹⁷ The authors elaborate on their classification of international regimes:¹⁸

- *Principles*, understood as coherent bodies of theoretical statements, and *norms* constitute central elements of international regimes. These concepts permit a classification of regimes in all phases of their evolution that facilitates our understanding of regime effects and consequences. The authors point to work by Robert Keohane and Harald Muller suggesting that ‘when the principles and norms of a regime are nested together with other regimes, the regime

¹⁶ Levy, M.A. Young, O.R. and Zurn, M. (1995) ‘The Study of International Regimes’, *European Journal of International Relations* Vol. 1 (3): p.271.

¹⁷ Levy, Young and Zurn (1995): p.274.

¹⁸ Levy, Young and Zurn (1995): pp. 275-279.

becomes highly resilient in the face of deterioration in the overall relationships to which it relates....furthermore, where networks of regimes link the same set of participants, actors' perceptions of each other's behavior are more likely to be affected than where regimes are isolated.'¹⁹

- Posing the question as to what observable characteristics of *rules* increase both their legitimacy and the likelihood of compliance, Levy, Young and Zurn highlight an argument by Thomas Franck that international rules exert a normative pull to the extent that they are legitimate. Franck proposes four legitimacy-enhancing characteristics: (1) determinateness and clarity; (2) symbolic validation within the participating community; (3) internal coherence; and, (4) vertical links between the primary obligation and secondary rules which establish 'normative standards that define how rules are to be made, interpreted and applied.'²⁰

- With regard to *procedures* and *programmes* the authors note that typologies of regimes show wide variations in decision making procedures. They suggest, however, that regimes which are evolutionary, with the ability to learn and adapt, may offer greater chances for success in the long run.²¹

- Looking at *actors*, Levy, Young and Zurn emphasise the number and type of actors that may be involved in a given regime. They point to work showing that the involvement of NSAs, at least in the case of environmental regimes,

¹⁹ Muller, H. 'The Internationalization of principles, Norms and Rules by Governments: The Case of Security Regimes', in Rittberger (1993)

²⁰ Franck, T.M. (1990) *The Power of Legitimacy among Nations* (Oxford University Press): p.184.

²¹ Levy, Young and Zurn (1995): p.278.

improves the effectiveness of the regimes and fosters regime learning. They also highlight the impact of ‘epistemic communities’ – understood as ‘network(s) of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge’²² – in shaping priorities and pushing forward the debate in specific subject areas.²³ These issues raise broader questions on international policy coordination and the impact of different numbers and types of actors on regime design, implementation and effectiveness.

- The authors emphasise that although links may be derived between *issue areas* and processes of regime formation, much work remains to be done on the influence of different issues on the nature of regime formation and implementation.²⁴ In the case of the two landmine regimes, the significance of the humanitarian catalyst underpinning the regime formation process must be considered.

Clear definitions are important in order to distinguish regimes from other entities within the international system. There is a need for conceptual clarity because actors and institutions are interrelated. However, Levy, Young and Zurn note that ‘in practice, international organizations and international regimes are often closely intermeshed. Specific international organizations regularly perform a number of functions for international regimes, including monitoring, information-gathering and rule-revising. On the other hand, international organizations can also operate as

²² Haas, P.M. (ed) (1992) ‘Knowledge, Power and International Policy Coordination’; *International Organization* 46(1): p.3.

²³ Haas, P.M., Keohane, R.O. and Levy, M.A. (eds.) (1993) *Institutions for the Earth: Sources of Effective International Environmental Protection* (MIT Press)

regime-making mechanisms.’²⁵ Keohane also stresses the importance, given that regimes are social institutions, of distinguishing between organizations, regimes and conventions. He specifies that ‘international organizations are purposive entities, with bureaucratic structures and leadership, permitting them to respond to events. International regimes are institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations. Conventions are informal institutions, with implicit rules and understandings, that shape the expectations of actors.’²⁶

2.2 *Theories of international regimes*

Although regime theory emerged as a field of study in the 1970s, the issue of rules and their influence on the behavior of states has much longer antecedents. Richard Little suggests that the study of regimes should therefore be set within a tradition that can be traced back to Hugo Grotius (1583-1645), the ‘father of international law.’²⁷ Thus the study of international regimes falls within a wider framework of international rule-making and governance that embraces both international relations and international law traditions. However, the study of international regimes poses significant challenges that have required scholars to go beyond established theoretical frameworks stemming from International Relations theory. For example, assumptions of state centrality within international relations are not taken for granted in regimes dealing with transnational issues that involve a range of international, state and non-state actors. Equally, the distinction between national and international politics is

²⁴ Levy, Young and Zurn (1995): p.279.

²⁵ Levy, Young and Zurn (1995): p.321.

²⁶ Keohane, (1989): p.3.

²⁷ Little, in Baylis and Smith (2001): p.300.

blurred by processes whose consequences are felt on both domestic and international stages.

Three broad approaches can be discerned in the study of international regimes: the Realist approach focuses on power relationships and coordination; Liberal Institutionalists adopt an interest-based perspective to collaboration; while Cognitivists emphasise knowledge dynamics, communication and identities. A major difference between the three schools is their relative emphasis on how far institutions matter. The degree of 'institutionalism' of a given theory derives from the assumptions made about actors and their motivation. A central Realist argument is that the distribution of power affects the prospects for an effective regime to emerge and persist as well as defining the central characteristics of the regime. Liberal institutionalist theories, emphasise that 'regimes help (self-interested) states to coordinate their behavior such that they may avoid collectively suboptimal outcomes.'²⁸ Cognitivists focus on knowledge-based theories which embrace institutionalism in a causal sense with regime members learning through exposure to the social norms within a given institution.

From the point of view of classification it may be useful to juxtapose these three approaches. However, properly conceptualizing regimes does not allow for such clear distinctions. Andreas Hasenclever, Peter Mayer and Volker Rittberger suggest the potential for synthesis between the traditions, stating that 'power, interests and knowledge interact in the production of international regimes.'²⁹ Realism and neoliberalism are both rationalist approaches which in a sense provide respectively

‘pessimistic’ and ‘optimistic’ interpretations of international regimes. Drawing from both traditions may result in what Duncan Snidal calls ‘a contextually richer theory that is able to explain international politics better than either vulgar realism or vulgar liberalism in isolation.’³⁰ Equally, cognitivist approaches can provide valuable insights to the goals of actors or the options they perceive themselves as having. While it is not the purpose of this thesis to develop the methodological debate on approaches to regime theory, it is useful to draw on all three traditions when exploring specific cases in the field of IHL.

2.3 *The evolution of regime theory*

Stephan Haggard and Beth Simmons position the regime literature as an attempt to reconcile idealist and realist traditions relating to international institutions by suggesting that states’ activities are influenced by norms but that this is also consistent with the pursuit of national interests.³¹ This accords with the view of Ernst Haas who answers the question why states collaborate through the mechanism of international regimes with the assertion that ‘if it were possible to predict the outcome of international negotiations by projecting the power of the parties, our question would be answered...the existence of an unstable hierarchy of issues on the international agenda means that minds are being changed all the time.’³² Although research in the field of regime theory no longer centres on refuting neorealist claims

²⁸ Hasenclever, A. Mayer, P. and Rittberger, V. (1997) *Theories of International Regimes* (Cambridge University Press): p.4.

²⁹ Hasenclever, Mayer and Rittberger (1997): p.211.

³⁰ Snidal, D. (1993) ‘The Relative-Gains Problem for International Cooperation: Response’; *American Political Science Review* (87): p. 741.

³¹ Haggard, S. & Simmons, B.A. (1987) ‘Theories of International Regimes’, *International Organization* 41 (3): p.492.

³² Haas (1980): p.361.

that international organizations are unnecessary to world politics, this does not mean that issues of power politics are irrelevant. A significant theoretical debate focuses on assessing the balance between power, knowledge and interests as causal factors in institutional development and effectiveness.³³

It is clear that states are key actors within international regimes. However, debate within this field has moved beyond the assumption of state centrality to consider a range of actors involved in international regimes. This reflects recognition of regimes as international social institutions shaped not just by formal institutional structures but by a wider community of actors, norms and social processes interacting in complex ways within a given issue area. Acknowledging the dual nature of regimes as rule bound treaty frameworks and social institutions is important. It highlights the need to capture the dynamic nature of international institutions and the relationship between technical and political considerations that influence the behaviour of regime stakeholders. Taking into account these issues is essential if we are to understand why regimes are established, how they are implemented and to what extent they are effective in achieving the goals they were set up to meet.

One issue that has received increasing attention is the role of NSAs in international regimes. Recognition of this fact is important because it moves the debate forward from a comparison of the relative weight of influence of states versus NSAs towards ‘the analysis of the roles non-state actors actually play in a society whose membership is still composed largely of states.’³⁴ An important element of understanding the influence of state and non-state actors in international regimes is how changing

³³ Hasenclever, Mayer and Rittberger (1997): p.283.

clusters of actors affect different phases of regime formation and implementation. Joseph Camilleri and Jim Falk take this notion further by citing transnational movements as sources of ‘support for a new system of multiple allegiances and jurisdictions, held together not by supreme authority but by an emerging world culture and a dynamic network of communities, movements and organizations.’³⁵ Although this perspective may be regarded as extreme in its downplaying of the role of states, it raises important questions as to the impact of globalization on international governance.

Questions relating to international regimes have become much more specific. Marc Levy, Oran Young and Michael Zurn in a survey of international regime literature divide these questions into four areas:³⁶

- 1) Under what conditions and through what mechanisms (why and how) do international regimes come into existence?
- 2) Do regimes persist even when the circumstances in which they came into existence change? What makes regimes robust, effective and flexible, can this be generalized?
- 3) What are the observable consequences of regimes for state behaviour and problem solving? Do regimes serve the goals that led to their creation?
- 4) What long term effects do regimes have on national political systems and the structure of world politics?

³⁴ Levy, Young and Zurn (1995): p.317.

³⁵ Camilleri, J.H. and Falk, J. (1992) *The End of Sovereignty. The Politics of a Shrinking and Fragmenting World* (Edgar Elgar): p.232.

³⁶ Levy, Young and Zurn (1995): pp. 268-269

These broad sets of questions addressed by regime theory provide a means to structure the more specific research questions considered in this thesis within a coherent analytical framework. Consideration of different aspects of regime theory developed in this chapter provide a means to address the knowledge gaps motivating this thesis through structuring our analysis around questions of regime design, implementation and effectiveness.

3. Four phases in the evolution of international regimes

This section reviews key elements of the regime theory discourse that can help to frame research questions on landmine regimes. Regime theory identifies a number of clear phases in the development of international regimes: *regime formation*; *implementation*; *effectiveness*; and, *consequences*. Deconstructing APII and the APMBC through focusing on the interrelationships between different phases of regime evolution enables us to move beyond a perceptions-based assessment and address important gaps in the current literature. This provides a novel, structured approach to an issue area that has not been considered to date through the optic of regime theory.

3.1 Regime formation

Peter Mayer, Volker Rittberger and Michael Zurn account for the emergence of so many new regimes in the past sixty years as stemming from the reality that ‘interactions and transactions in the international arena have increased and resulted in

a new quality of interdependence among international actors in a shrinking world.³⁷ In particular, the authors note the effects of such diverse phenomena as increased capital mobility, the emergence of weapons of mass destruction (WMD) and global ecological threats in reducing the ability of states to deal effectively with trade, security or the environment on a unilateral basis. Robert Keohane emphasises that the post-1945 boom in international institutions does not reflect a decline in state power but a growth in interdependence and consequent demand for multilateral institutions.³⁸ In contrast, Lisa Martin suggests that states only turn to multilateralism when self-interest justifies such a course. While agreeing that the profusion of new organizations following the Second World War is evidence of the utility of multilateralism, she questions whether this corresponds to any kind of multilateral norm. Rather, in an increasingly complex world, a skein of bilateral relations is difficult to sustain with multilateral solutions requiring less enforcement effort from powerful states.

Oran Young and Gail Osherenko break the study of regime formation into three linked topics:³⁹

- The ability to agree an institutional arrangement
- The length of time between the issue appearing on the international agenda and the conclusion of a regime agreement
- The extent to which the regime is tailored to the specific issue(s)

³³ Mayer, Rittberger and Zurn in Rittberger (1993): p.394.

³⁸ Keohane in Rittberger (1993): p.35.

³⁹ Young, O.R. and Gail Osherenko (eds.) (1993) *Polar Politics: Creating International Environmental Regimes* (Cornell University Press).

Although states are recognized as core regime members, the role of the various actors and entities involved in regime formation is complex and requires considered analysis. Haggard and Simmons account for this because ‘growing interdependence means that groups at the domestic level increasingly have ‘regime interests’...welfare is tied not only to particular policy decisions, but to other states’ compliance with regime norms, the way in which cooperation is institutionalized, and the access regimes provide for private actors.’⁴⁰

Norms are clearly important to regime formation. Martha Finnemore and Kathryn Sikkink describe the phenomena of ‘norm cascades’ and ‘norm bandwagons’ when a certain number of states adopt a principle or norm and other states feel obliged to adopt the same approach.⁴¹ John Ruggie argues that regimes can only succeed when they reflect the dominant normative orientation in the domestic practices of the leading members of a regime.⁴² Richard Putnam further develops this issue, demonstrating that international negotiations are a two-level process with domestic issues and actors bringing influence to bear on the international level. Governments seek to maximize their ability to meet domestic pressures while minimizing adverse consequences of foreign developments. However, he emphasizes that ‘the political complexities for the players in this two-level game are staggering. Any key player at the international table who is dissatisfied with the outcome may upset the game board, and conversely, any leader who fails to satisfy his fellow players at the domestic table risks being evicted from his seat.’⁴³ While considering the specific factors that

⁴⁰ Haggard and Simmons (1987): p.517.

⁴¹ Finnemore & Sikkink (May 15-16 1998): p.7.

⁴² Ruggie, J.G. ‘Multilateralism: The Anatomy of an International Institution’, *International Organization* 46(3): p.592.

⁴³ Putnam, R. (1988) ‘Diplomacy and Domestic Politics; the Logic of Two Level Games’; *International Organization* (42): p.434.

influence regime formation, it is therefore also important to recognize the importance of context and the influence of external events.

Actors can play qualitatively different roles in regime formation. In this context, Oran Young describes three kinds of leadership:⁴⁴ *Structural leaders* who represent states and seek ways of bringing material power to bear on regime formation processes; *Intellectual leaders* who shape the way ideas are framed and energized; and, *Entrepreneurial leaders* who craft options for consensus and broker contractual deals. Finnemore and Sikkink link individual leadership and norm emergence in regime formation. ‘Norm entrepreneurs’ play a significant role in convincing states to form a regime around a given issue area.⁴⁵ However, ways in which entrepreneurial skills are clustered with intellectual leadership in the regime formation phase can have important consequences for subsequent implementation and effectiveness.

3.2 *Regime implementation*

A seminal study on the subject by Jeffrey Pressman and Aaron Wildavsky⁴⁶ defines ‘implementation’ as ‘a process of interaction between the setting of goals and actions geared to achieving them.’⁴⁷ It analyses a US Government programme that sought to reinvigorate a depressed area with high unemployment. The key lesson drawn from the failure of the Oakland Project, which failed in spite of the necessary political will and sufficient funding, was that ‘from the outset, emphasis was on designing the programme, obtaining initial agreement at the local level, and committing the

⁴⁴ Young, O.R. ‘Political Leadership and Regime Formation: On the development of Institutions in International Society’; *International Organization* 45(3): pp.281-308.

⁴⁵ Finnemore & Sikkink (1998): p.7.

⁴⁶ Pressman, J. & Wildavsky, A. (1973) *Implementation* (University of California Press)

funds.... the later steps of implementation were felt to be ‘technical questions’ that would resolve themselves if the initial agreements were negotiated and commitments were made.’⁴⁸ This highlights that many of the challenges of regime implementation rest on how far ‘ideal’ regime stipulations reflect the practical realities of the contexts in which they must be implemented.

Regimes invariably require action from their members so a clear understanding of what is needed to comply with regime rules must underpin the design of specific provisions. It is therefore essential that actors have the capacity to comply with regime provisions. Richard Putnam describes as ‘involuntary defection’⁴⁹ the situation where states fail to meet regime requirements because the obligations placed on them are unrealistic. Implementation challenges also argue for effective compliance verification with obligations stipulated under the regime. The absence of a monitoring capability can mean that regimes lack the self-awareness to understand implementation and thus recognise if changes are needed to improve regime compliance. A lack of clarity on these issues can also undermine confidence in the regime, leading some regime members to question whether others are observing obligations to which all have agreed to be bound.

Political will is key to encouraging wide ratification of treaty regimes. However, adherence to an international treaty is only the first step. It is equally important that treaty requirements are fully integrated into domestic legal structures and regulations in order to influence behaviour at the national level. In this respect, Antonio Cassese notes that ‘international law cannot work without the constant help, cooperation, and

⁴⁷ Pressman and Wildavsky (1973): xv

support of national legal systems.’ This integration of international rules in national frameworks is particularly important to implementing treaty regimes in what Andrew Hurrell refers to as the ‘hard cases’ where national security interests form part of the debate.⁵⁰

3.3 *Regime effectiveness*

Levy, Young and Zurn define regime effectiveness as ‘the contributions institutions make to solving the problems that motivate actors to create them.’⁵¹ However, they acknowledge that the range of different cases and the variety of possible measurement criteria makes generalizing from specific cases extremely difficult. This is compounded by the fact that problems which compel the setting up of an international regime tend to be serious enough for actors to pursue their resolution through a variety of means which may or may not be linked to the regime in question.

Underdal’s dual approach to regime effectiveness – how far members abide by regime rules and the extent to which regime objectives are fulfilled⁵² – raises the possibility that a regime can be extremely effective in terms of compliance without fulfilling its overarching objectives. A comprehensive definition of effectiveness therefore goes beyond the implementation of legal provisions or policy adjustments by regime members to include ‘changes in the behaviour of actors and in patterns of interactions among them in ways that contribute to management of targeted problems.’⁵³ Oran

⁴⁸ Pressman and Wildavsky (1973): p.143

⁴⁹ Putnam (1988): pp. 427-60.

⁵⁰ Hurrell, A. ‘International Society and Regimes’; in Rittberger (1993): p.71.

⁵¹ Levy, Young and Zurn (1995): p.291.

⁵² Underdal (1992): pp. 227-40.

⁵³ Levy, Young and Zurn (1995): p.292.

Young cites two widely used criteria for regime performance: ‘An economic criterion stresses efficiency and asks whether the same results could have been achieved at a lower cost or, alternatively, better results achieved at the same cost...a political criterion directs attention to equity and raises questions about the fairness both of the results of institutional arrangements and of their procedures or processes.’⁵⁴ However, behind both landmine regimes is a broader humanitarian onus to reduce the suffering caused by these weapons. A humanitarian criterion therefore represents an important third dimension of landmine regime effectiveness.

Jorgen Wetteland and Steinar Andresen adopt a counter-factual approach to assessing regime effectiveness, asking what would have happened if the regime had never existed. This implies a causal link between the operation of the regime and the behavior of the relevant actors and makes the important point that a regime that does not appear successful in terms of before-and-after comparison may look more effective when causal links and counter-factuals are taken into account.⁵⁵ Certain issue areas lend themselves more or less to before-and-after comparison. Ronald Mitchell’s study of oil pollution before and after the introduction of equipment standards⁵⁶ offers an interesting comparative example for landmine regimes. Both involve a wide range of actors and interest groups, have an environmental component to the issue and, arguably, allow for measurement of the problem before and after regulation. However, as already discussed, the caveat applies that any conclusions drawn from such analysis should take into account whether other factors beyond the regime may account for a perceived change.

⁵⁴ Young, O.R. (1995): p.19.

⁵⁵ Wetteland, J. and Andresen, S. (1991) *The Effectiveness of International Resource Cooperation: Some Preliminary Findings* (Fridtjof Nansen Institute)

Influences on regime effectiveness can be divided between exogenous and endogenous factors. Among the former, a popular Realist argument has made the case for ‘hegemonic stability.’ This posits that a concentration of power in a state that supports institutional goals is essential for institutional success through providing enforcement of regime rules. Endogenous factors contributing to regime effectiveness are tied to the premise that there are good and bad ways of structuring and administering regimes. Michael McGinnis and Elinor Ostrom provide a set of ‘design principles,’ derived from domestic institutions, which they argue are applicable for the effectiveness of international institutions:⁵⁷

- Rights to utilize resources are clearly defined
- Rules match local circumstances
- Individuals affected by operational rules can participate in modifying them
- Monitoring of resources and participants behaviour is by accountable agents
- There are graduated sanctions for violators
- Existence of low-cost conflict resolution
- The rights of participants are not challenged by outside authorities
- Institutional activity is layered and nested

These design principles are useful only for illustrative purposes. They remain hypotheses until applied to specific cases. However, they raise the pivotal question for regime effectiveness of the linkages between the principles and obligations that

⁵⁶ Mitchell, R.B. (1994) ‘Regime Design Matters: International Oil Pollution and Treaty Compliance’, *International Organization* 48(3): pp.425-58.

constitute a regime framework and the reality of how they are implemented. This reconciles lessons from the failings of the Oakland Project with the challenges posed by landmines through underlining the need to understand ‘how the design features and programmatic activities of institutions interact with the configurations of interests and patterns of influence within which they operate.’⁵⁸

3.4 *Regime consequences*

Definitions of regime consequences are often linked to the effectiveness of international institutions in achieving regime goals and objectives. This approach has the benefit of integrating related phases of regime evolution. However, for the purposes of my research, ‘regime consequences’ refer to the broader effects of regimes. Compliance with regime provisions may generate a number of ‘outputs’ from members that are intended to contribute to the specific ‘outcome’ a regime is established to achieve. However, consequences may affect actors outside of the regime while emulation effects and other consequences may shape outcomes in other issue areas.

The direct effects of regimes are often easier to trace than indirect effects. Equally, when a regime has consequences outside its own issue area, it can be a question of perspective whether effects are negative or positive. While recognizing the complexities of international society and the consequent difficulty in tracing all the effects of a specific regime, a distinction can be drawn between two kinds of regime

⁵⁷ McGinnis, M. and Elinor Ostrom (1992) ‘Design Principles for Local and Global Commons’; *Paper prepared for presentation at a conference on linking local and global commons*, Harvard University, 23-25 April 1992.

⁵⁸ Levy, Young and Zurn (1995): p.303.

consequence: those that affect state and inter-state relations; and, those that affect international society and transnational relations.⁵⁹ Between stakeholders, regimes can play a role in altering perceptions of each other. Equally, through facilitating greater understanding of a particular subject area, policy changes can be effected that have consequences beyond a given issue.

Regimes can also foster transnational links and, as with inter-state relations, encourage common understanding among actors that influence how they calculate their interests. Consequently, whether regime consequences are linked to states or to international society, regime learning constitutes an important concept. Interactions between stakeholders may result in new ways of thinking about specific problems as well as the ways regime members think about each other.

Drawing from experience of environmental regimes, Oran Young notes that ‘some regimes produce spillover effects by influencing relations among members in functional areas beyond their nominal scope. Regimes, especially those widely regarded as successful, can also generate demonstration effects by creating precedents that affect the thinking of both their own members and others as they confront new problems.’⁶⁰ Individual regimes can be embedded in wider normative frameworks as with Ruggie’s example of embedded liberalism and post Second World War international trade institutions. Oran Young stresses the importance of these cognitive constructs as ‘international institutions cannot remain effective for long after the

⁵⁹ Levy, Young and Zurn (1995): p.309.

⁶⁰ Young (1995): pp.27-28.

collapse of their intellectual underpinnings.’⁶¹ Overlapping normative or ideational frameworks can also generate spillover effects between linked issue areas. This raises important questions relating the development of a norm against the use of APMs and its consequences within the wider normative framework of IHL.

4. Regimes in different issue areas

This section discusses examples from security, trade and environmental regimes that may provide valuable lessons for the regimes that are the main focus of this thesis. Factors that shape regime evolution, key actors and normative considerations represent themes that seem particularly significant in order to understand the characteristics of different regimes. Considering these questions can inform our approach to APII and the APMBC and allow us to develop insights drawn from these issue areas that may be applied to the field of IHL more broadly and the landmine regimes in particular.

4.1 Security regimes

The Concert of Europe – an agreement signed in 1815 between the states of post-Napoleonic Europe with the aim of preventing major war on the continent – could be regarded as an early example of a security regime.⁶² Indeed, the absence of war involving more than two Great Powers between 1815 and 1914 is testament to the

⁶¹ Young, O.R. ‘The Effectiveness of International Institutions: Hard Cases and Critical Variables’; in Rosenau, J.N. & Czempiel, E. (1992) (eds) *Governance Without Government: Order and Change in World Politics* (Cambridge University Press): p.192.

⁶² Little, in Baylis and Smith (2001): p.304.

effectiveness of the regime.⁶³ The Concert of Europe also included a review mechanism to resolve disputes through regular congresses although with the corollary that decision-making was shaped by the Great Powers so ‘did not correspond to a United Nations, but rather to the Permanent Members of the UN’s Security Council.’⁶⁴ Security regimes in the modern sense began to emerge following the Second World War. In particular, the onset of the Cold War saw the development of a number of bilateral, regional and global security regimes. The effectiveness of some of these regimes has been questioned. Other security regimes, however, have been judged more effective.

4.1.1 *The NPT*

The Nuclear Non-Proliferation Treaty (NPT), which opened for signature in 1968, is the central treaty in the global nuclear non-proliferation regime. It is a global treaty regime which regulates the possession of nuclear weapons. The Comprehensive Test Ban Treaty (CTBT) is a distinct but related regime embedded within the NPT which seeks ‘to achieve the discontinuance of all test explosions of nuclear weapons for all time.’⁶⁵ The CTBT entered into force in 1996 and includes a verification system combining seismic monitoring and on-site inspections. All states parties must agree to inspections by the International Atomic Energy Association (IAEA).⁶⁶ If requested, the IAEA can also monitor the nuclear facilities of non-regime members. The exception to this voluntary inspection regime is Iraq where, from the end of the 1991 Gulf War to just before the military action that led to the fall of the Saddam regime,

⁶³ Hobsbawm, E.J. (1962) *The Age of Revolution 1789-1848* (Cardinal): p.128.

⁶⁴ Hobsbawm (1962): p.131.

⁶⁵ Nuclear Non-Proliferation Treaty: Preamble.

⁶⁶ The IAEA is the organization dedicated to verifying NPT compliance.

the IAEA conducted ‘special inspections’ in order to verify that Iraq was not continuing to develop a covert nuclear weapons programme.

All five recognized nuclear weapon states and 184 non-nuclear weapon states are currently NPT regime members.⁶⁷ However, the Iraq case highlights the difficulty in determining regime effectiveness when a state is not committed to demonstrating compliance. After intensive inspection efforts, and even after regime change as a result of US led military operations in Iraq in 2003, a clear picture of Iraq’s nuclear weapons programme has still not emerged. Moreover, India, Israel and Pakistan are not party to the NPT but are acknowledged to have a nuclear weapons capability. Equally, Iran, Iraq, Libya and North Korea are NPT members but have demonstrated an interest in acquiring nuclear weapons.⁶⁸

4.1.2 *The ABM treaty*

The 1972 Anti-Ballistic Missile (ABM) Treaty is a Cold War strategic nuclear arms regime agreed bilaterally between the US and the Soviet Union. The regime was challenged when US President Ronald Reagan announced plans for a Strategic Defense Initiative (SDI) which proposed a unilateralist missile defence system in direct conflict with the ABM regime’s principles of mutual vulnerability and strategic stability. Harald Muller uses this case as an example of divergent interests and their interplay when a security regime is threatened.⁶⁹ The US Department of Defense supported scrapping the ABM treaty in favor of SDI, a position initially adopted by

⁶⁷ As of 5 January 2009.

⁶⁸ Cirincione, J. (ed) (2000) *Repairing the Regime* (Routledge): p.285

⁶⁹ Muller, H. (1993) ‘The Internationalisation of Principles, Norms and Rules by Governments: The Case of Security Regimes’; in Rittberger (1993): pp.361-390.

the President. The State Department, the US Senate, the arms control community and European allies of the US all supported the treaty regime and opposed SDI. Muller points to a number of reasons why the regime was sufficiently robust that President Reagan was forced to backtrack:

- The principle of *pacta sunt servanda*. Once a regime is in place it is difficult to scrap it. Not least, the ABM treaty was enshrined in US law so the Senate would not permit manipulation of the treaty by the Administration: ‘when rules are translated into domestic law, regimes gain strength from legal and constitutional reflexivity.’⁷⁰
- Compliance with regime rules was more likely once the issue became a matter of public debate. Public and media attention constrained the Administration’s freedom of action.
- This case highlights the potential role of foreign ministries as regime advocates in contrast to the ‘hawkish’ position of the security establishment.
- SDI and the ABM treaty was not regarded as a stand alone issue but as forming part of a wider security framework and abolishing the ABM treaty was perceived as a threat to the credibility of deterrence. Muller deduces from the support for the regime, both domestically and internationally, that ‘security regime compliance, hence, takes into account the consequences that non-

⁷⁰ Muller in Rittberger (1993): p.386.

compliance might have for the broader framework of arms control, security cooperation, and peace.’⁷¹

Muller also emphasizes the broader normative role of bilateral security regimes in the 1980s. On the one hand, regime cooperation showed the US that the Soviets could be a reliable arms control partner; while on the other hand, ‘security cooperation with the United States had convinced a considerable part of the Soviet foreign policy elite and the security apparatus that their Manichaeian image of the world was wrong. The Soviet elite started understanding the interdependence of security policy.’⁷² The specific regime was nested in a wider normative framework, encouraging learning by regime participants beyond the specifics of the regime itself and thus facilitating confidence-building between the Soviet Union and the West.⁷³

4.2 *Trade regimes*

The origins of trade regimes have been linked to technological advances in the fields of transportation and communication which facilitated the development of cross-border cooperation. The principle of freedom of passage for shipping is an example of a tacit regime that can be traced back to the sixteenth century. The standardization of international postal agreements represents one regime within the communications field that is rooted in nineteenth century technological advances. Richard Little argues

⁷¹ Muller in Rittberger (1993): pp.384-85.

⁷² Muller in Rittberger (1993): p.384.

⁷³ See Efinger, M., Mendler, M. and Rittberger, V. (1990) ‘Towards an East-West Security Regime: The Case of Confidence and Security Building Measures’; *Journal of Peace Research* 27(1): pp.55-74.

that ‘the resulting network of regimes can be seen to provide an essential part of the infrastructure underpinning the modern international economy.’⁷⁴

4.2.1 *Global trade regimes*

On a global level, the General Agreement on Trade and Tariffs (GATT) was established in 1947 to realise the principles of free trade in practice. It reflected recognition of the need to regulate international trade and comprised both a general director and a secretariat responsible for preparing international trade conferences and agreements. Impetus for establishing the GATT came from the US, the dominant economic power of the time, and from that perspective could be regarded as reflecting the principle of hegemonic stability. However, characterising this phenomenon as ‘cooperation after hegemony,’ Robert Keohane notes that if US economic power had dwindled by the 1970s, the regime remained effective. The rules and procedures governing the GATT were substantially modified during the regime’s history as a key agenda item in several GATT conferences.⁷⁵

Adopting a counterfactual approach, Thomas Biersteker provides insights into the effects of the global debt regime of the 1980s.⁷⁶ Biersteker describes how the international financial system was close to collapse in the 1980s due to the accumulation of debt from developing countries and the severe overexposure of many US and European banks in the face of this debt. A number of countries became unable to make their debt repayments and matters were brought to a head by Mexico’s

⁷⁴ Little, in Baylis and Smith (2001): p.305.

⁷⁵ Krasner, S.D. (1985) *Structural Conflict: The Third World Against Global Liberalism* (University of California press): pp.4-5.

⁷⁶ Biersteker, in Rittberger (1993): pp315-338.

balance of payment crisis in August 1982. The debt regime that was developed to address this crisis incorporated both formal and informal instruments with a clear normative goal of assisting developing countries. However, this assistance was conditional on debt-laden countries pursuing market-oriented economic reform. The principal institution of the regime, the International Monetary Fund (IMF), provided relief from debt burdens only on the basis that this criterion was observed. New facilities were created and enhanced surveillance mechanisms were introduced to monitor countries' performance.

Biersteker poses the question whether this regime influenced the environment within which states interacted, the behavior of those actors, and, in particular, whether the regime had any significant effects that could not be explained by other causal explanations. He focuses on two key effects: the indebted countries did not renounce their debts; and, they generally did engage in market-oriented economic reform.⁷⁷ Biersteker argues that if we go back to the 'branching point' of August 1982 when Mexico appealed for assistance, the absence of an emergency financial package and an IMF agreement linked to access to commercial bank finance would have resulted in a very different world political economy. Assuming that behavioral logic remains the same, he argues that without the regime Mexico would have defaulted and, as a consequence, less credibility would have been given to attempts to assist other indebted countries, thereby increasing the likelihood of further defaults and thus inhibiting efforts to address the situation in other indebted countries.

⁷⁷ Biersteker, in Rittberger (1993): p.334.

The GATT had always been seen as an interim agreement from its inception in 1947. Increasing trade protectionism in the 1970s and the developing country debt crises of the 1980s highlighted the need for change. The final Uruguay Round (1986-94) of international trade talks established the World Trade Organisation (WTO) as a successor institution to the GATT. The WTO has evolved in regime terms beyond the GATT framework, covering services, intellectual property and investments. The WTO also has greater enforcement powers through its dispute settlement mechanism. This is a significant example of regime evolution once it became clear that the institutions created at Bretton Woods were not appropriate to the changing nature of the international system in the 1980s and 1990s. However, as discussed below, serious questions have been raised as to the compatibility of the WTO framework with international development goals.

4.2.2 Regional economic communities

On a regional level, the development of the various post-1945 European institutions was a response to the failures of states acting individually. With the founding of the Organisation for Economic Cooperation and Development (OECD) in 1948, the European Coal and Steel Community in 1952, the European Economic Community in 1958 and the European Union (EU) in 1965, increasing, gradual European cooperation in economic and trade policies – as part of wider political, economic and social integration – can be traced. This process was driven by a core group of states and the evolving nature of these regimes was set within, and therefore constrained by, the institutional frameworks which they had established.

If European regional cooperation was driven by the legacy of the Second World War, then it could be argued that regional economic cooperation beyond Europe has been driven by the post-Cold War phenomenon of globalization. The end of the bipartite world order provided new opportunities for regional trade cooperation with the term the ‘new regionalism’⁷⁸ coined to describe a phenomenon which, in part, has come about as a response to European economic integration. The North American Free Trade Association (NAFTA) – comprising Canada, Mexico and the US – is notable because it is the most far reaching example of a regional cooperation project that includes countries from both North and South.⁷⁹ Cooperation is particularly challenging because of the imbalances in the economies of the different regime members but, as was the case with Mexico’s financial crisis in 1997, the organization has successfully maintained cooperative approaches to problem solving.

In another region, Asia Pacific Economic Cooperation (APEC) – comprising 21 pacific rim countries or regions – seeks to coordinate members’ economic policies as well as reducing tariffs and duties. The impetus for the development of this regime came through the structural leadership of the US. APEC prioritises the role of NSAs, in particular business leaders, to contribute towards regime goals of enhancing trade, investment and a sense of ‘community’ in the region. Although APEC’s progress has been slowed due to disparities between its members economies, as well as the impact of the Asian financial crisis of the late 1990s, the inclusiveness of the regime has generated broader consequences through providing a forum that permits discussion of wider political and security issues.

⁷⁸ Hettne, B., Inotai, A. and Sunkel, O. (eds) (1999) *Globalization and the New Regionalism*

4.3 *Environmental regimes*

Environmental regimes have developed out of an increasing awareness across the international community of the need to address the damage being done to the global environment. By the year 2000 there were over 130 multilateral environmental regimes.⁸⁰ This represents a prolific rate of growth when it is considered that regimes in this area first began to emerge only during the 1970s.

4.3.1 *The evolution of environmental regimes*

The 1972 United Nations Conference on the Human Environment (The Stockholm Conference) was an important early step in the development of environmental regimes. The declaration agreed at the conference contains a number of principles that, even if not widely accepted at first, over time gained international stature and became a benchmark for environmental diplomacy. The conference led to the establishment of environmental monitoring networks as well as to the creation of the United Nations Environmental Programme (UNEP). This provides an institutional framework that has shaped the environmental debate as well as facilitating the linkages between the environment and related issues. The conference also had a wider impact in that many governments subsequently formed Ministries for the Environment or national agencies responsible for environmental monitoring and regulation. The increased public awareness of environmental issues has also been reflected in the growth of NGOs and networks of NGOs focusing specifically on these questions.

(Macmillan)

⁷⁹ Christiansen, T, 'European and Regional Integration' in Baylis and Smith (2001): p.513.

Although scientific analysis on the dangers posed by ozone depleting substances (ODS) had been emerging since the early 1970s, the dramatic discovery of an ‘ozone hole’ above the Antarctic proved the catalyst for international action. Public and political concern prefaced a *volte-face* from the international companies that had previously opposed restrictions on chlorofluorocarbons (CFCs) – some of the most damaging ODS – but now accepted the need to participate in (and thus influence) the development of an international agreement on this issue. The Montreal Protocol, signed in 1987, committed signatories to cutting CFC consumption by 50% by 1999. One early problem was that many developing countries refused to sign the protocol unless the cost of implementation was met by the developed world. This principle was agreed in 1990 and a multilateral fund established for this purpose. UNEP, supported by states and NGOs, played an important role in widening the scope of the protocol: the range of controlled products was increased and the timescales for implementation tightened over time. There were (and are) problems with compliance in certain countries. However, serious challenges to the credibility of the regime have been averted through international pressure combined with offers of conditional assistance.⁸¹

The scope of the global environmental challenge was put at the forefront of the international agenda during the 1992 Rio ‘Earth Summit’. Around 150 states were represented and 45,000 people attended one of the largest summit meetings ever held.⁸² If the dangers posed by CFCs had already become an issue of grave concern for the international community, the Earth Summit was intended to deal with the

⁸⁰ Greene, O. ‘Environmental Issues’; in Baylis and Smith (2001): p.398.

broader consequences of this *bete noire*: global warming, climate change, the extinction of certain species and deforestation. Two documents emerged from the Rio Conference: the Rio Declaration of 27 principles on the environment and development; and, Agenda 21, a detailed plan of action (400 pages contained in 40 chapters) covering the span of sustainable development issues.

Agenda 21 illustrates that no single regime can address the range of national, regional and global environmental challenges. Rio established framework conventions on climate change, biodiversity and desertification but complex implementation issues remained after the Conventions entered into force in 1994, only two years after the Earth Summit. One of the basic difficulties in implementing the Rio Conventions was that they failed to impose legal commitments on states. The goal was therefore set to develop a more legally binding protocol on the issue of greenhouse gas emissions to be negotiated in Kyoto, Japan. National and regional interests complicated negotiations but the Kyoto Protocol was agreed in December 1997 and achieved more stringent commitments on the emission of greenhouse gases in developed countries. Yet both political and practical challenges remain. As well as the technical challenges of implementing commitments, ongoing US opposition to the protocol has hindered progress. Equally, as across the range of environmental issues, there is a fundamental difference in priorities between the developed world's emphasis on *preservation* and the *economic* imperatives of the developing world. This issue clearly demonstrates the problematic of the Prisoners' Dilemma where dominant individual strategies lead to sub-optimal results in terms of common interests. The challenge is particularly conspicuous in issues where national interests and global commons intersect.

⁸¹ Greene, in Baylis and Smith (2001): p.403.

4.3.2 *Characteristics of environmental regimes*

Peter Haas, Robert Keohane and Marc Levy argue that environmental regimes are effective through fulfilling three criteria: increasing concern; improving the contractual environment; and, enhancing the capacity of governments – the 3 Cs.⁸³ These criteria link institutions with their external environment as a deficiency in any one area may cause failures in the collective management of the regime. Oran Young also highlights the innovative role that NSAs have played in environmental regimes, including through the introduction of procedures that overcome the potential paralysis engendered by consensus decision-making.⁸⁴ Greene concurs, making an important distinction between different types of regime by noting that ‘it increasingly became the norm that non-Governmental groups should have wide access to intergovernmental meetings on the environment, to an extent that would have shocked earlier generations of diplomats and is still unknown in some other spheres of international activity.’⁸⁵

Haas emphasises the importance of transnational groups of scientists and policy makers who become carriers and transmitters of ways of thinking about international problems and their solutions.⁸⁶ Drawing from international efforts to protect regional seas, he describes these epistemic communities as having three characteristics: a regional community interested in the issue; respect by the political community for these experts; and, channels of contact between experts and policy makers. This

⁸² Greene, in Baylis and Smith (2001): p.404.

⁸³ Haas, Keohane and Levy (1993): Conclusion.

⁸⁴ Young (1995): p.33.

⁸⁵ Greene, in Baylis and Smith (2001): p.392.

corresponds with Young's observation that 'regimes form a horizontal rather than a vertical or hierarchical system of public order.'⁸⁷

There is currently significant debate over whether the objectives and approaches of the global trade regime embodied in the WTO are compatible with achieving sustainable development and environmental protection. The transnational NGO campaigns that mark each WTO meeting with massive protests are testament to this contradiction. This raises questions about how two international regimes in different issue areas but with similar memberships can generate such differing perspectives on their effectiveness and utility. It also recalls the two-level problematique of domestic versus international interests and the balance of power between state and non-state actors in international regimes.

5. Regimes in international humanitarian law

This section provides an overview of regimes in IHL in order to situate and contextualize a subsequent introduction to key elements of the landmine regimes. This initial review, together with insights from the regime theory discourse (Sections 2 and 3), and from research findings in other issue areas (Section 4) informs the refined research framework, hypotheses and research questions elaborated in the subsequent section.

⁸⁶ Haas (1994): p.4.

5.1 Overview

IHL, also known as the laws of war, is intended to minimise the suffering caused in armed conflict. It refers to rules between states governing armed conflict (*jus in bello*) but not the resort to armed conflict (*jus ad bellum*). The origins of IHL can be traced back almost as far as warfare itself. For example, the Greeks and the Romans customarily prohibited the use of poison or poisoned weapons in combat.⁸⁸ There is an extensive body of literature on IHL in general as well as particular treaty regimes. These include negotiating histories and other commentaries⁸⁹ as well as work looking at the impact of IHL within the broader framework of international relations.⁹⁰

IHL can be divided into two branches. ‘Geneva law’ deals with the treatment of combatants, non-combatants and civilians caught up in armed conflict while ‘Hague law’ regulates the means and methods of warfare. Geneva law includes Conventions drawn up in 1864, 1906, 1929 and 1949 with the Geneva Conventions of 1949 replacing the previous ones. The two Additional Protocols of 1977 to the 1949 Geneva Conventions are considered to combine both Geneva law and Hague law in that they govern the treatment of individuals caught up in war but also prohibit weapons that cause ‘unnecessary suffering’ or ‘superfluous injury.’⁹¹ The restrictions and regulations on the means and methods of warfare found in Hague law are most relevant to the subject of this thesis. An important distinction is made between

⁸⁷ Young (1995): p.10.

⁸⁸ Roberts, A. & Guelff, R. (eds.) (1989) *Documents on the Laws of War* (Clarendon Press): p.29.

⁸⁹ See: Self, W.A. & Roach, J.A. (1992) *Index of International Humanitarian Law*. (ICRC). Brierly, J.L. (6th edition 1991) *The Law of Nations*. (Oxford University Press)

⁹⁰ For example, Cassese, A. (1988) *International Law in a Divided World*. (Oxford University Press)

⁹¹ Beach, Gen Sir H. (2001) ‘Qualitative Arms Control and International Humanitarian Law Applicable to Armed Conflict’; *ISIS Policy Paper No.1*. Retrieved from the World Wide Web on 15 February 2002 at: www.isisuk.demon.co.uk/0811/isis/uk/regpapers/no01_paper.html

binding international treaties and ‘customary’ rules of warfare. Custom complements treaty law because any treaty provision which embodies customary law is binding on all states whether or not they are parties to the treaty in question. From a regime perspective, this adds the complicating factor that rules are not simply laid down in a specific treaty but must also be drawn from a much wider corpus of international law and practice.

There are significant links between rules governing the conduct of armed conflict and controls and prohibitions on specific weapons systems. The 1925 Gas Protocol, like the CCW and APMBC, falls into both categories, containing strong elements of IHL and arms control. However, the distinctions between these two branches of international law are equally important. In particular, there is a clear shift in discourse between arms control frameworks that take into account the military utility of a given weapon with the humanitarian perspective of IHL premised on alleviating the human suffering caused by certain means and methods of warfare. It follows that if regimes are to be effective they must take into account the different approaches reflected in both IHL and arms control discourses.

5.2 *Selected treaties in IHL*

The first international treaty prohibiting the use of a weapon is the *1864 St Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight*. This was negotiated by 16 states at an international Military Commission convened by the Tsar of Russia. It provides for a ban on bullets which explode on impact with the human body, thus introducing the key IHL principle of

‘unnecessary suffering.’ The *1899 Hague Regulations* resulting from the Hague Peace Conference of the same year introduce the fundamental principle that the rights of belligerents to wage war are not unlimited. Arising from this are the principles of *proportionality* and *discrimination*:

- Proportionality, as it applies to *jus in bello*, requires calibrating any military response, whether in offence or defence, to the military actions of the enemy, and to the anticipated military advantage to be gained

- Discrimination includes the obligation that non-combatants and those hors de combat should not be deliberately targeted.⁹²

A specific outcome of the 1899 Hague Conference was the banning of *dum dum* or soft-nosed bullets. Expectations over this outcome were not high but by the end of the conference 20 of the 23 states represented had agreed to Hague Declaration 3. In this case, advocacy by the medical community – in particular doctors who had treated wounds caused by these bullets in the field – raised the profile of the issue in the national and international media and provided a powerful lobbying force. Sandi Cooper describes this phenomenon as ‘the first major instance where concerned citizens – recognizing that technology might run amok, that warfare could destroy civilization and that social priorities were suffering from military expenditures – organized a movement to push their governments to act preventatively.’⁹³

⁹² Beach, (2001): p.5.

⁹³ Cooper, S. (1972) *Arbitration or War: Contemporary Reactions to the Hague Peace Conference of 1899* (Garland): p.37.

Public outrage at the gassing of soldiers during the First World War provided the political impetus for the 1925 Gas Protocol. The protocol stems from the 1899 Hague Declaration's prohibition on the use of poison and weapons causing unnecessary suffering. However, despite a broad membership, observance of the treaty regime's provisions by signatories has been uneven. For example, Italy used gas during the 1935-36 invasion of Ethiopia, the Japanese used gas in China between 1937-45 and the UN Security Council in 1988 unanimously adopted a resolution condemning the use of chemical weapons in the conflict between Iran and Iraq.⁹⁴

The *1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* reflects efforts enshrined in earlier Hague Conventions to protect cultural property in time of war. The failure of these principles of IHL had been starkly illustrated with the plunder of occupied territories by the Germans during the Second World War. The Convention, and its Additional Protocol which was opened for signature in May 1999, establish a regime requiring the identification and marking of cultural property and its safeguarding during international and non-international armed conflicts and whenever one state occupies the territory of another state. The regime seeks a balance between protection and military necessity. However, many militarily-significant states did not join the original convention, citing weaknesses in its protections and the absence of a mechanism to support implementation. These issues were addressed in Amended Protocol II. However, the gap of five years between negotiation and ratification by 20 states which triggered entry into force highlights the lack of broad international support for this regime.⁹⁵

⁹⁴ Roberts & Guelff (1989): p.138.

⁹⁵ The Amended Protocol entered into force in March 2009. As of 22 April 2009, the Additional Protocol has 52 members. This number does not include any permanent members of the UN Security Council.

Following the Second World War, no international treaty regimes appeared banning specific weapons until the CCW in 1980. This is an ‘umbrella’ treaty under which specific protocols have been negotiated regulating or prohibiting:

- weapons that injure through non-detectable fragments (Protocol I)
- mines, booby traps or other devices (Protocol II and Amended Protocol II)
- incendiary weapons (Protocol III)
- blinding laser weapons (Additional Protocol IV)
- explosive remnants of war (Protocol V)

The conferences in 1978 and 1979 which led to the agreement of the CCW were negotiated by governmental representatives and military experts with minimal external pressure. Important advances were made but, as discussed below, in the case of landmines these measures were shown to be inadequate by the widespread continued use of landmines in conflicts throughout the developing world.

5.3 *Landmine regimes*

This sub-section provides a brief introduction to preface the deeper analysis of the the landmine regimes developed in subsequent chapters. The regulation of APMs under IHL began only in 1980 with the agreement of the *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices* (Protocol II). It represents the first elements of a prohibition on a conventional weapon since the 1899

Hague declaration banning dum dum bullets.⁹⁶ The lack of any modern day precedents meant that the CCW negotiating process followed the traditional consensus-bound pattern that has commonly characterised arms control negotiations between states.⁹⁷ In the decade following the agreement of Protocol II, the use of landmines, often targeted against civilian populations, became a common feature of the increasing number of civil wars around the world. Growing international recognition during the 1990s of the humanitarian impact of these weapons led to a CCW Review Conference. After 8 months of stop-start negotiations, consensus could be reached on a number of improvements to Protocol II.

The outcome of the CCW review conference did not satisfy the growing pro-ban coalition that had been blocked by the CCW rules of procedure from participating in the review process. Disappointment at its outcome encouraged the Canadian Foreign Minister, Lloyd Axworthy, to initiate a separate negotiating track - the Ottawa Process. The period leading up to the negotiating conference saw a dual-track approach with civil society actors raising public and media awareness while committed states lobbied across national capitals. A core group from within the coalition prepared the draft treaty text and was also responsible for ensuring that the issue of an APM ban was not raised in inhospitable multilateral frameworks.

Differences in institutional frameworks contribute significantly to the distinctions between the two regimes that emerged from these processes. APII negotiations followed established CCW procedures: only government negotiating teams were recognised; decisions could only be reached by consensus; and, formal negotiations

⁹⁶ Hubert (2000): p.5.

were spread over several months. In contrast, the Ottawa negotiations were not tied to any international framework or negotiating forum and included strong representation from a range of NSAs. Decision-making was by two-thirds majority and the negotiating conference lasted only three weeks. Unlike the CCW, the negotiating framework was therefore set towards achieving a definite result within a short timeframe.

One of the key factors in influencing undecided states during the Ottawa negotiations was the absence of compelling counter-arguments to the expert testimony, provided by mine action practitioners and landmine victims, of the humanitarian costs inflicted by these weapons. This message was amplified by national and international news media reporting on the plight of landmine victims in the worst affected countries. High-profile support coupled with powerful – if not always accurate – statistics also had a profound effect. In contrast, the humanitarian impact of APMs was not directly addressed in the APII negotiations. Although there was external pressure on the CCW Review Conference to achieve significant results, these voices were absent from the formal negotiations. It was recognised that radical solutions would fail the consensus requirement so limited change was always the most likely result in these closed negotiations. Military-technical experts necessarily focussed on the technical characteristics of APMs and restrictions to these weapons that would be acceptable to all.

The ban movement grew because this seemed a logical solution to an obvious humanitarian disaster. The visibility of the mine ban issue was, therefore, essential to

⁹⁷ Hubert (2000): p.16.

the success of the pro-ban lobby. The idea of a ban was much easier to transmit to the general public than the technical detail of restrictions on certain categories of mines. Certainly, widespread resistance to forceful US lobbying during the Ottawa negotiations demonstrates the strength of the anti-APM norm. In this respect, Neil McFarlane highlights the importance of domestic politics to the Ottawa negotiations, noting that the US suffered a rare policy disagreement with close allies on a security policy issue.⁹⁸ The two permanent members of the United Nations Security Council that joined the regime, France and the UK, had elected new, left of centre governments keen to demonstrate their humanitarian credentials by endorsing the anti-APM norm.

The APMBC entered into force some 3 months after APII on 1 March 1999. The reality that states encompassing more than half the world's population (including many militarily-significant states) have not signed the APMBC but are part of APII shows that membership alone is not an adequate indication of regime effectiveness. In this respect, the research questions develop through this thesis provide an opportunity to better understand the effectiveness of two treaty frameworks seeking to address the same challenge with very different approaches in terms of process and substance. The high public profile of the APMBC raises the question of how domestic and international issues intersect in terms of national policy decision-making. APII is much more state-centric, has a lower profile and is viewed with less enthusiasm by many civil society actors. Albeit that the two regimes have different approaches and profiles, it is important to understand how their contrasts and similarities have positive or negative effects on regime effectiveness.

⁹⁸ McFarlane, N. in Hubert, (2000): xi.

6. Understanding landmine regime effectiveness

This section draws on the analysis of different literatures within this chapter in order to refine the research framework for this thesis. First, key insights from regime theory approaches in different issue areas are considered. Building on this, hypotheses and research questions introduced in Chapter 1 are further motivated and elaborated.

6.1 Issues for landmine regimes

Research to date within the field of security regimes is significant because while the landmine regimes may have an underpinning humanitarian objective, both raise important ‘hard’ security issues. Given the sensitivity of the issue area, interests play a highly prominent role in this type of regime. Security regimes that limit or eliminate military capabilities bear particular comparison with landmine regimes. Implicit in these regimes is the erosion of military capabilities through restricting or removing a category of weapons. This issue is thus highly sensitive and subject to a polarisation of views between different interests. Security regimes may reassure regime members through trade-offs built into regime design, as found in APII, or promote stringent measures using advocacy or other forms of pressure as made evident in the APMBC. Both approaches can therefore provide insights that may be applied to better understand the effectiveness of the landmine regimes.

Analysis of different security regimes provides important wider lessons that can inform our understanding of both regime challenges and reasons for regime effectiveness. It is clear from the case of the ABM treaty that the regime was effective because: 1) it fit within an overall *strategic* framework; 2) in *political* terms it was grounded within a broader arms control policy; and, 3) in *legal* terms it was enshrined in both domestic and international law. These three frames of reference and their influence on the robustness of the ABM treaty regime raise important considerations for the two landmine regimes and the broader political context within which they are situated. The difficulties in developing effective security regimes point to a number of key observations to be considered in the context of the landmine regimes:

- Regime membership does not guarantee compliance
- Non-membership of certain states can have disproportionate effects on regime effectiveness
- Technical challenges of verifying regime compliance can be exceptionally demanding
- Implementation may be facilitated through combining formal regime mechanisms with informal or ad hoc measures by states or other regime stakeholders

Trade regimes provide examples of specific mechanisms embedded in broader normative frameworks such as post-Second World War liberal economic order or the post-Cold War phenomenon of globalisation. The formation and implementation of regimes addressing economic issues are particularly relevant for landmine regimes

because in both cases achieving ‘universalisation’ in membership and promoting effective cooperation means addressing inherent inequalities between members. The GATT demonstrates a number of significant regime characteristics. The *principle* of free trade and a core *norm* focusing on the reduction and eventual elimination of tariff and non-tariff barriers were particularly influential. Moreover, regime *rules* and *procedures* demonstrated a flexibility to adapt to a changing external environment, including a deterioration in relations among participants. Further reasons for the durability of the GATT that offer insights for the landmine regimes are extrapolated from Keohane:⁹⁹

- Interactions within the regime lead to a stabilisation of mutual expectations
- Transaction costs in achieving objectives are reduced within the framework of the regime
- Participation results in the availability of information otherwise not available or only at a high cost
- A frame of reference exists to structure future relations with parties in spite of different interests and priorities

The changing nature of the international system over time has required successful trade regimes to be evolutionary. This raises the broader point that if it becomes clear that regimes are not effective, flexibility and self-awareness to enable regime learning are important in order to support regime evolution. In the case of many regional and global economic communities, structural leadership has come from the US as the world’s dominant economic power. The concomitant US influence in political,

⁹⁹ Keohane (1984): Chapter 7.

economic and security spheres emphasises the need to understand the significance of the US role in relation to the effectiveness of the landmine regimes. This touches both on the implications of its policy decision to support only APII and not the APMBC but also in how the US position as the single largest bilateral funder of mine action activities relates to the realisation of regime goals.

The landmines issue shares with environmental regimes an imperative to address problems that go beyond national interests to include concerns over the preservation of global commons. Moreover, dangers associated with both environmental issues such as ODS and landmines have become better understood over time, resulting in the need for flexible, differentiated responses. In the case of environmental regimes, review and monitoring mechanisms have proved important in order to maintain regime credibility. Bearing out Richard Putnam's analysis of a two-level game, with concerns at the national level bearing fruit in multilateral negotiations, pressure on states and commercial companies to support environmental regimes has been greatly facilitated by targeted, civil society-driven advocacy.¹⁰⁰ The environmental experience is therefore particularly significant for landmine regimes in raising questions that consider the kinds of monitoring mechanisms that enhance regime effectiveness as well as the need to critically assess the influence of regime stakeholders beyond the level of the state.

Critical to a successful environmental regime is the ability to adapt and develop. Framework conventions that facilitate such flexibility and demonstrate characteristics of regime learning have come to be regarded as essential in the context of

environmental regimes. The Montreal Protocol provides an important example of regime effectiveness, incorporating both rule observance and achievement of intended goals. From a 'before and after' perspective, before the protocol was signed in 1987 global consumption and depletion of ODS was increasing significantly but by the mid 1990s this trend had been halted and reversed.¹⁰¹ The regime has gained strength from being part of a two-level game; public pressure at the national level engendered political support within this multilateral framework. Provisions reflect the different needs and capacities of its members and the regime framework has shown flexibility as new challenges to regime effectiveness have emerged. The domestic versus international dimensions of the regime would seem to offer important parallels to the landmines issue. More broadly, given technical and political implementation considerations, qualities of regime flexibility and responsiveness to new and evolving challenges seem particularly significant.

Building on characteristics of environmental regime evolution identified by Owen Greene, a number of specific insights for our analysis of APII and the APMBC can be distinguished:¹⁰²

- The regime formation phase requires clear scientific monitoring and assessment in order to prove a particular environmental threat and appropriate remedial action. This stage can also be marked by the jockeying of different interest groups. Regime formation is assisted if public concern is mobilized: as an example, even though the problem had existed long before, measures

¹⁰¹ Greene, in Baylis and Smith (2001): p.401.

¹⁰² Greene, in Baylis and Smith (2001): pp.399-400.

against oil pollution at sea were only stimulated after a number of high profile oil tanker disasters.

- At the design stage, knowledge-based epistemic communities have proved influential. Greene notes that ‘delegations from organizations such as Greenpeace, World Wildlife Fund or Friends of the Earth at international meetings were frequently larger and more expert than those of all but the largest states, and through their access to the media and their expertise were able to shape international agendas.’¹⁰³
- The implementation phase is equally complex requiring commitment, expertise and resources from implementers. Some states take legal obligations more seriously than others so review and verification mechanisms are important for increasing awareness of, and ensuring compliance with, regime obligations.

6.2 *An elaborated research framework for landmine regimes*

By considering landmine treaties from the perspective of ‘regime,’ this thesis adopts a relatively systematic and thorough regime analysis approach, focusing on linkages between processes of design, implementation and effectiveness that have been lacking within much of the existing literature in this issue area. Reviewing research on the design, implementation and effectiveness of security, trade and environmental regimes provide a number of significant insights. Landmines are a security issue, as apparent from the motives of states that chose not to join the APMBC and lose this military capacity. In many ways, the issue is also akin to the environmental

¹⁰³ Greene, in Baylis and Smith (2001): p.392

experience in terms of the global nature of the threat and the transnational efforts by states and NSAs to address it. International trade regimes also highlight important links between design factors and agency in contributing to the resilience of transnational regimes. However, the caveat applies that while lessons can be drawn across different regime types, there are also significant distinctions that must be reflected in our analysis. This sub-section therefore revisits research questions stemming from our two main hypotheses set out in Chapter 1 in light of our review of the relevant literatures. These questions are further developed under three cross-cutting themes: *the interplay between design and implementation*, *key actors* and *normative considerations*

6.2.1 *The interplay between design and implementation*

Consideration of regimes in different issue areas reinforces our main hypothesis that design factors may be highly influential in shaping the quality of regime implementation. A comparative approach to landmine regime formation casts into relief the range of different regime stakeholders and interests – domestic and international – that need to be considered across regime formation processes. The central contribution of mine action experts, mine affected states and mine victims to APMBC regime design presents a distinguishing feature from APII. This practical experience was influential in shaping specific APMBC treaty provisions. Testimony from the field also proved particularly effective in convincing the unconverted and raising the political stakes of deciding not to join the regime. The influence of different stakeholder groups thus emphasises the importance of research questions

addressing both technical and political considerations in order to understand the relationship between regime design, implementation and effectiveness.

If, in certain cases, states join regimes to share in the political benefits of association, membership also comes with material and political costs that need to be assumed in the implementation phase. Considerations of cost and benefit at different stages of regime evolution thus underpin the hypothesis that regime effectiveness is closely linked to the interplay of political and technical issues within the landmine regimes. Important research questions for chapters addressing implementation issues focus around whether obligations are realistic when measured against the capacities of states parties or, in contrast, if they are likely to result in involuntary defection. Regime members may also pursue strategies of voluntary defection to avoid fulfilling their obligations. For this reason, the ability of the regimes to bridge gaps between international commitments and national compliance through deploying ‘carrots’ or ‘sticks’ is identified as a significant consideration for regime effectiveness.

Although implementation and effectiveness are closely linked, the regime literature strongly emphasizes the need to distinguish between compliance with treaty provisions and the impact of a regime on the problems it was set up to address. The twofold definition of effectiveness proposed by Arild Underdal is significant because it highlights that even if widely adhered to and fully implemented, a regime may not alleviate the problems it was set up to address. For a regime to be effective, the relevance and appropriateness of specific provisions must therefore go hand in hand with the political will to implement them. Thus, effectiveness is a function of the interplay of design and implementation factors.

Despite the importance of transparency as a basis for regime learning, neither landmine regime binds members to rigorous compliance verification measures. Understanding the consequences of both regimes adopting a ‘light’ approach to verification is therefore important. While civil society has filled this gap in regime design by providing regularly updated analysis on compliance issues, the relationship between identifying and addressing implementation challenges needs to be carefully considered. As discussed below, on the one hand it is important to understand the ability of the regimes to draw on the requisite expertise to support implementation. On the other, this capacity may only be relevant to the extent that there is political will within the regime to highlight shortcomings and enforce compliance. Research questions that address regime learning within and across the regimes therefore identify an important consideration for regime effectiveness. This adds a supplementary dimension to the hypothesis that regime effectiveness is shaped by the interrelationship between design features and the ability of regimes to generate and sustain political will through the implementation process.

Regime consequences are understood in this thesis as an analytical category that is distinct from effectiveness. Whether the regimes create demonstrable spillover effects that influence other elements of IHL is particularly relevant. This raises a particularly important issue for the landmine regimes because the process of forming and implementing these regimes brings together a wide array of state and non-state actors motivated by a humanitarian agenda that may also include other IHL issues. It is therefore necessary to critically question assertions that the Ottawa Process represents

a ‘new diplomacy’ in order to understand interaction effects – such as regime learning – generated by the regimes and their broader consequences.

6.2.2 *Key actors*

Implementation of a treaty regime, particularly when addressing a conventional weapon in widespread use, requires very different approaches to the norm entrepreneurship critical to regime formation. The relationship of mine action expertise to the diverse cluster of international, state and non-state actors involved in different phases of regime development can be linked to the study of epistemic communities. In particular, it is important to consider the extent to which landmine regime formation and implementation clusters represent a genuine epistemic community that brings specialist expertise to bear on regime challenges or a more amorphous grouping of actors drawn together through common regime interests. The backgrounds and experience of the actors involved in regime design already strongly influence the regime framework within which implementation takes place. It is thus important to focus research questions on the different stakeholders involved in landmine regime design. In what ways do mine action practitioners contribute to the design process? Are these actors more or less implicated in regime implementation? This thesis therefore explores the hypothesis that agency in the regime design phase can be highly influential in determining regime effectiveness.

A related research question posits that the engagement and interactions of different constituencies strongly influences the quality of regime evolution. Beyond the individual skills sets deployed within these processes, the clustering of different actors

and how these patterns shift across phases of regime development is explored as one potential influencing factor for regime effectiveness. In the APMBC literature, the dynamics of the 'committed state' and NSA cluster are considered as key to understanding the success of the Ottawa Process. However, a regime perspective raises more nuanced questions on the significance of agency across design and implementation phases. Specific research questions related to the interplay of mine action expertise (intellectual leadership) and the role of advocacy (entrepreneurial leadership) are therefore particularly relevant and need to be developed. Comparing the interactions of landmine regime stakeholders to epistemic communities may be particularly useful in elaborating a critical distinction between regime-focused expertise and less focused coalitions of interested actors.

Further questions linked to agency focus on the practical consequences that issues of representation and ownership have for regime effectiveness. The different extents to which space is provided for developing world actors and their concerns would seem to represent a significant area of contrast between the two regimes. In particular, this generates a number of research questions relating to how the experience of mine affected states is reflected within the regimes. It also tests arguments citing the Ottawa Process as an exemplar of a 'new diplomacy'¹⁰⁴ and perspectives that conflate narrow NGO coalitions supporting the APM ban with claims to legitimacy linked to global civil society. There is therefore a need to critically assess the assumption that 'the formal right to speak is one with the practical ability to raise a voice.'¹⁰⁵ Returning to the issue of stakeholder clustering, how these roles differ across regimes or between

¹⁰⁴ Anderson (2002) ; Bleicher (1999).

¹⁰⁵ Beier, J.M., (2004) 'Emailed Applications are Preferred': Ethical practices in mine action and the idea of global civil society'; in Harpviken, K.B. (Ed) *The Future of Humanitarian Mine Action* (Palgrave): p.26.

design and implementation phases can be particularly significant given that achieving mine action goals requires successful implementation in mine affected states that predominantly form part of the developing world.

6.2.3 Normative considerations

The concept of a ‘norm bandwagon’¹⁰⁶ seems to capture the swiftly growing support that saw many states positively re-evaluating the costs and benefits of membership with others adhering to elements of the treaty even while remaining outside the regime. However, the effectiveness of norms in supporting regime formation must be distinguished from their influence on the qualitatively different challenges of implementation. Our second main hypothesis addresses this issue through exploring regime interplay and nesting dynamics of the landmine regime within the broader framework of IHL. This hypothesis leads to research questions that link the normatively loaded nature of an issue area situated within IHL with the practical mine action obligations placed on regime members. In particular, how does normative ‘pull’ contribute to a tangible increase in political and material commitment to mine action? And, can regime effects be traced to one regime framework or to dynamics of regime interplay that ignore legalistic demarcations between the two regimes?

These more specific questions add further dimensions to a wider, theoretically motivated question relating to the significance of a understanding the landmine regimes as nested within a broader regime defined by the norm against inhumane weapons. Some security regimes demonstrate a quality of regime resilience that

¹⁰⁶ Finnemore and Sikkink (May 15-16 1998), p.7.

derives from their being nested within broader normative frameworks. While there are few evident links between the respective implementation processes, the nesting of APII and the APMBC within the wider framework of international efforts to regulate or ban the use of certain types of weapon raises the possibility of ‘deep’ regime ties. Such linkages are not acknowledged by regime stakeholders. However, through drawing on our analysis of historical IHL antecedents from a regime perspective, considering the two regimes from the perspective of shared norms allows us to explore important potential synergies. This may offer an important correction to the rejectionist stance that underpins the influential advocacy of the ICBL and which continues to provide a barrier to cooperation across the regimes. This point raises a related set of research questions that address the relevance of advocacy in the implementation as opposed to negotiation phase of regime development.

The influence of an anti-APM norm on the behaviour of non-regime members represents a conspicuous gap in the current literature. While states may be motivated to remain outside regimes for a number of political, economic or security reasons, normative push factors can still encourage regime-compliant behaviour. In the case of the US, it is important to consider whether, despite the criticism that continues to accompany their policy position as an ‘Ottawa denier,’ non-membership of the APMBC actually does weaken the regime. Conversely, it is important to consider whether the dynamics of US non-membership have resulted in positive emulation effects such as increased mine action support or the need to take a more pronounced leadership role within the CCW.

This thesis explores the relevance of normative considerations in explaining how states balance incentives and disincentives – including both domestic and international concerns – to regime membership. Certainly, decisions to join the APMBC that came with political risk (UK membership in opposition to the US policy position) or material cost (several Central and Eastern European states for which landmine manufacture was an important part of their defence industrial base) highlights a ‘two-level game’ and thus the need to deconstruct the different motives behind national positions. Parallels can be drawn between these issues and the decision-making dynamics that underpin the evolution of Hague Declaration 3 and the 1925 Gas Protocol. Insights from these regimes can therefore contribute to research questions relating to how the regimes influence national calculations on the costs and benefits of regime membership and compliance.

7. A refined thesis structure and approach

There are a number of important gaps in our understanding of the design, implementation and effectiveness of APII and the APMBC. In part, these gaps can be attributed to the complexity of the issues and the wide range of actors involved. An absence of systematic analysis in this field provides both a barrier and an opportunity to develop new insights into IHL more broadly and landmine treaties in particular, understood as regimes. Subsequent chapters build on the framework and insights introduced in Chapter 1 and refined in this chapter in order to develop a deeper analysis of the principles, norms, rules, procedures, issues and actors that have shaped the design and implementation of the landmine regimes. This research fills an

identified gap in the literature by enabling a more nuanced understanding of how the interplay of design and implementation influence regime effectiveness.

Building on the foregoing analysis in this chapter, it is now useful to refine and re-state the aims and objectives of the following chapters through drawing on the frameworks elaborated above.

In order to provide contextual depth to our detailed analysis of APII and the APMBC, Chapter 3 seeks to apply our research framework to relevant historical IHL treaties. An initial analysis of both Hague Declaration 3 and the 1925 Gas Protocol highlight the need to consider how factors such as the visibility of an issue area and rules relating to participation in processes of regime design and implementation shape political will or practical support for regimes. On one level, insights from a regime perspective on these historical treaties enable us to measure claims to uniqueness made by supporters of the landmine regimes against historical antecedents that have not been considered to date in relation to APII and the APMBC. On a more theoretical level, given the recent pedigree of the landmine regimes, analysis of more mature regimes enables us to recognise normative dimensions that contribute to IHL regime effectiveness. Insights from regimes in other issue areas that point to the significance of nesting within wider normative constructs provide a nuanced set of issues that link Chapter 3 to subsequent chapters. In particular, despite the (deliberate) lack of interaction between the two landmine regimes, shared norms provide a means to consider how APII and the APMBC interact with each other as sub-regimes within a broader regime framework delineated by a norm against inhumane weapons.

Chapter 4 focuses on the formation of APII and the APMBC. Considering the different processes that led up to regime agreement is particularly important in order to understand the objectives and motivations that underpin regime dynamics. The profile of the two regime formation processes is thus important in relation to these considerations. Understanding the nature of landmine regime design is particularly important in order to explore the relationship between design factors and the quality of regime implementation. Determining how this process can be influenced within an established regime framework (APII as part of the CCW) in comparison with the ‘one off’ APMBC is therefore important. Rules are shown to be particularly important because they determine both the actors that can contribute directly to regime formation and also dictate the flexibility that these actors are given to shape regime frameworks. Specific sets of actors are associated with each regime. It is particularly important to unpack the influence of different stakeholder groups and their roles – from advocacy to technical expertise – in order to carefully distinguish the engendering of political will from contributions to the actual regime design process. Distinguishing groups with an interest in the issue area from epistemic communities with contextual or technical knowledge provides an important means to clarify how regime design processes are shaped.

Chapter 5 builds on insights developed in the preceding chapter to consider the implementation and effectiveness of the two landmine regimes. Analysis relating to design, agency and norms in the regime formation phase is recalled in order to determine how these considerations play out in implementation. The influence of practitioner communities and mine affected states in regime design can therefore be tested in relation to how regimes address complex, context-specific implementation

challenges. Unpacking these challenges in their political and technical dimensions through reconciling regime analysis with mine action best practice is essential. Carrots and sticks to support or enforce compliance and avoid defection are therefore particularly important. Related to this point, experience from the wider IHL discourse demonstrates that embedding international obligations in domestic law and practice represents an important consideration for treaty compliance.

Different regimes highlight the importance of flexibility in order to address new and evolving challenges to the effectiveness of a regime. Such flexibility implies an ability for regimes to understand the need for course corrections as part of the implementation process. Given that such mechanisms form part of many effective regimes, the absence of strong verification and monitoring provisions within either landmine regime raises important questions on the ability of the regimes to be ‘evolutionary’ with evident consequences for regime effectiveness. Systematically applying a twofold definition of effectiveness that encapsulates both compliance and impact is thus critical. This is particularly appropriate for Chapters 6 and 7 since humanitarian demining and stockpile destruction represent central means for the regimes to deliver against their humanitarian objectives. Enhanced resource provision and technical support are two ways to link the influence of the regimes to these activities. Given that the core obligations in these areas rest with mine affected regime members, political will at the national level (and the ability of the regimes to reinforce this quality) are key considerations of regime effectiveness. Since different actors support these activities outside of the regimes themselves, counter-factual approaches are also relevant to distinguish regime effects from the work of the mine action community more broadly.

The concluding chapter revisits the hypotheses that motivate this thesis and considers what new contributions to knowledge have been realised through the primary and secondary research questions explored through the various chapters. Research pay offs through applying the lens of regime theory to IHL are considered and new perspectives set out on the effectiveness of APII and the APMBC. The chapter concludes by situating the contribution to knowledge made by this thesis within a wider IHL research agenda and identifies potential areas that would merit further research.

Chapter 3

Regimes Prohibiting the Use in War of Poison Gas and Dum Dum Bullets

1. Introduction

One of the main hypotheses explored in this thesis posits that landmine regime dynamics can only be properly understood as nested regimes, forming part of wider efforts under IHL to regulate the conduct of armed conflict. This chapter therefore contributes to the overall research aims of this thesis by exploring the significance of regime nesting within the issue area of IHL. It thus informs research questions introduced in Chapter 1 and refined in Chapter 2 by deepening our understanding of the extent to which regime characteristics are unique to the landmine issue and how far they draw on the experience of IHL antecedents. Moreover, although Hague Declaration 3 and the 1925 Gas Protocol have been researched from historical-legal perspectives, examining them through a regime theory lens constitutes a new contribution to knowledge through generating insights into an existing literature of these historical IHL regimes from a regime perspective.

The 1925 Gas Protocol and Hague Declaration 3 seem to offer important parallels to the landmine regimes. Hague Declaration 3, like the APMBC, provides for a complete ban on a category of weapon while the 1925 Gas Protocol is closer to APII in its more nuanced restrictions-based approach. The ban on dum dum bullets is significant as the first codification of the customary international law principle prohibiting weapons causing unnecessary suffering¹⁰⁷ and the only treaty-based prohibition on a

¹⁰⁷ Roberts and Guelff (2000): p.63.

conventional weapon in widespread use until the APMBC nearly 100 years later. The 1925 Gas Protocol can trace its roots to Hague Declaration 2 from the 1899 Peace Conference which prohibits the use of projectiles whose sole object is the diffusion of asphyxiating or deleterious gases.¹⁰⁸ It provides a very early binding legal restraint on a weapon that had been widely condemned around the world.¹⁰⁹ Analysis of these cases provide new insights to inform our analysis of the landmines regimes. This chapter therefore contributes to our first main hypothesis on regime design/implementation interplay by addressing secondary research questions relating to the significance of different approaches to regime rules and other design factors.

A significant parallel between dum dum bullets and APMs may be found in the arguments deployed by those who debated this issue from military utility and humanitarian perspectives and how the weight given to these different approaches fed into regime provisions. Ultimately, a prohibition on dum dum bullets represents a clearly defined regime outcome whereas the design and subsequent implementation phases of the 1925 Gas Protocol have been marked by disagreements over scope and application. Moreover, both Hague Declaration 3 and the 1925 Gas Protocol were considered in relation to military targets. APII is also drafted in this light while the APMBC focuses directly on the impact of these weapons on affected civilian populations during hostilities and as a post-conflict challenge. Considering commonalities and distinctions between the relatively ‘new’ landmine regimes and IHL antecedents enables us to better understand IHL regime effectiveness through addressing research questions on the interplay of technical and political considerations and the ability of the regimes to evolve and adapt through regime learning.

¹⁰⁸ Roberts and Guelff (2000): p.155.

Normative considerations lie at the heart of IHL. However, the arms control expert Jozef Goldblat suggests that ‘all laws of war suffer from one common weakness: the rules of conduct established for belligerents in time of peace may not resist the pressure of military expedience generated in the course of hostilities, and the attempts to ‘humanise’ war may sometimes prove futile.’¹¹⁰ A corollary to this point is the argument that states only ban weapons which they have no intention of using.¹¹¹ Assessing the effectiveness of Hague Declaration 3 and the 1925 Gas Protocol by considering how far outcomes that can be attributed to them are consistent with the prevailing political will and national security requirements of the states involved informs two sets of secondary research questions. First, it enables us to better understand the influence of norms – in particular the concept of stigmatisation – in different phases of regime evolution. Second, it provides new insights to the two level dynamics of IHL regimes where international commitments need to be followed by national level implementation.

Through applying the analytical framework of regime theory, this chapter aims to contribute to knowledge by examining in detail the design, implementation and effectiveness of Hague Declaration 3 and the 1925 Gas Protocol. It considers key features of the two regimes through building on the themes elaborated in previous chapters. Key issues are *the interplay between design and implementation, key actors and normative considerations*. Finally, this chapter highlights insights gained from a

¹⁰⁹ Goldblat, J. (1994) *Arms Control. A Guide to Negotiations and Agreements* (Sage): Chapter 7.

¹¹⁰ Goldblat, J. (1982) *Agreements for Arms Control – A Critical Survey*. Stockholm International Peace Research Institute (SIPRI): p.89.

¹¹¹ Bailey, S.D. (1972) *Prohibitions and Restrictions in War* (Oxford University Press): p.140.

more refined understanding of these two regimes that may be particularly relevant in developing our analysis of APII and the APMBC.

2. The development of Hague Declaration 3 and the 1925 Gas Protocol

This section considers the contextual factors that provide the background to Hague Declaration 3 and the 1925 Gas Protocol. It makes a new contribution to a well researched subject area by reframing these IHL treaties through regime analysis. This section thus identifies the dynamics behind regime formation processes and seeks to understand the interests and interactions of different actors. This provides the basis for our analysis of opportunities and limitations in addressing humanitarian concerns through developing regimes in these areas.

2.1 Origins of the 1899 Hague Peace Conference

The 1899 Hague Peace Conference was called by the Tsar of Russia with the overt goal of slowing the mounting cycle of military expenditure among the Powers. The initiative was characterized as a response to the ‘armed peace’¹¹² that characterized contemporary Europe with states investing ever-increasing amounts in new and improved armaments. The Tsar’s manifesto condemned the system of ‘armaments *a l’outrance* transforming the armed peace into a crushing burden that weighs on all nations and if prolonged will lead inevitably to the very cataclysm which it is desired

¹¹² Hull, W.I. (1972) *The Two Hague Conferences and their Contribution to International Law* (Garland): p.52.

to avert.’¹¹³ The point of departure for the conference thus reflected economic and ‘hard’ security interests as well as humanitarian considerations.

Opening on 18 May 1899, twenty-six predominantly European countries attended. None of the participating states had high expectations going into the conference. Indeed, many were cynical as to Russia’s motives, well aware that, humanitarian goals notwithstanding, the Tsar’s initiative had to be set next to the fact that Russia at that time had fallen significantly behind the other Powers in the contemporary arms race. The event, therefore, was characterized by what Inis Claude terms ‘multilateral insincerity.’¹¹⁴ States’ participation in the Russian initiative reflected the requirements of a two-level game: to do otherwise would be diplomatically embarrassing and run contrary to domestic and international public opinion. However, the underlying security, political and economic interests of participating states are key to understanding the process of regime development.

2.2 *The development of the prohibition on expanding bullets*

The conference was divided into three Commissions: on Armaments; on the Laws of War; and, on Arbitration, which in turn divided into sub-committees. The use of sub-committees and chairmen as well as majority voting rather than unanimity was innovative for the time. This approach was to be adopted and further developed in future institutional procedures for international negotiations.¹¹⁵ However, the results of the 1899 Hague Conference reflected the minimalist expectations of the

¹¹³ Tuchman, B.W. (1966) *The Proud Tower. A Portrait of the World before the War: 1890-1914* (Macmillan): p.230.

¹¹⁴ Claude, I.L. (1964) (3rd Edition) *Swords into Ploughshares. The Problems and Progress of International Organization* (Random House): p.26.

participants. The conference produced: three Conventions on Arbitration, Laws and Customs of War on Land and Extension of the Geneva Rules to Maritime Warfare; three Declarations on Projectiles from Balloons, Asphyxiating Gases and Expanding Bullets; six 'Wishes' for future endeavours and a Resolution recalling the desirability of limiting expenditures for armaments and new types of weapon. In concrete terms this was a realistic if much more limited return than aspired to by the Russians.

Delegates were aware that although a failure to agree reductions in expenditures on armaments was always the likely result, nevertheless there would be significant public disappointment at such an outcome. Although the proposal put forward by Switzerland in the Sub-Commission to the First Commission to the Conference to prohibit 'the use of projectiles which aggravate wounds and increase suffering, such, for example, as 'dum dum' bullets'¹¹⁶ was not on the original conference agenda, it was readily seized upon as an achievable objective after the failure of states to agree concrete limitations on the headline conference goals. Despite the underpinning *realpolitik* interests of many participating states, the need to demonstrate progress in addressing issues of humanitarian concern proved influential in terms of agenda setting and thus provided the opening for a focus on exploding bullets.

Bullets that expand and flatten in the human body were first mass produced at a British Indian arsenal in Dum-Dum, near Calcutta,¹¹⁷ thus providing the more colloquial generic title of dum dum bullets for a shell which 'had the capability of spreading out on entering the target body and of inflicting a much bigger wound than

¹¹⁵ Claude (1964): p.27.

¹¹⁶ Hull (1972): p.181.

¹¹⁷ Guelff and Roberts (1989): p.39.

did the normal hard-nosed high-velocity rifle bullet.’¹¹⁸ Discussion in the relevant sub-Commission began by focusing on the *design* of dum dum bullets. A number of more or less specific formulations were put forward by delegates with the sub-Commission finally adopting the following wording:

The contracting Powers prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with hard jackets, whose jacket does not entirely cover the core or has incisions in it.¹¹⁹

When the proposition was put to the vote in the sub-Commission, nineteen out of twenty delegations present voted in favour and only Great Britain voted against. General Ardagh for Great Britain, in justifying his negative vote, put forward the unedifying argument that bullets with greater stopping power – such as dum dums – were required in battle against ‘savages’ who continued to fight when wounded by smaller calibre rounds. This distinction was rejected by the sub-Commission and the final declaration, in the form of the original proposition, was accepted by twenty-two delegations with only the US and Great Britain voting against while Portugal abstained.¹²⁰ The majority of states present were thus happy to form a coalition on the ‘right side’ of this issue. Great Britain in effect compounded this norm bandwagon dynamic by combining a policy position that was on the wrong side of a humanitarian issue with a message in delivering this position that was insensitive in the extreme.

¹¹⁸ Best, G. (1983) *Humanity in Warfare* (Methuen): p.162.

¹¹⁹ Guelff and Roberts (2000): p.64.

2.3 *Origins of the 1925 Gas Protocol*

Custom and usage stretching as far back as ancient times prohibits the use of poison in battle. Hague Declaration 2, one of the outputs of the 1899 Hague Peace Conference, was the first codification of this principle, prohibiting projectiles designed to diffuse asphyxiating or deleterious gases. However, gas warfare rose to the top of public and political agendas due to the widespread use of these weapons during World War I. Throughout the course of the war 6,000 tons of lachrymators and 7,000 tons of respiratory irritant gases were used.¹²¹ John Keegan describes how ‘gas in a variety of forms, the more deadly asphyxiant phosgene, and the blistering ‘mustard’, would continue in use throughout the war, and chlorine would kill thousands of Russian troops in German offensives west of Warsaw.’¹²² The issue area of gas warfare therefore links a normative dimension that can be traced back to the earliest accounts of warfare with high levels of contemporary concern. This provides a potent mix that combines the same concerns over military-technological progress that infused the Hague negotiations with the psychological and physical legacies of ‘the war to end all wars’.

The Treaty of Versailles and the other treaties that delineated the end of World War I codified a ban on possession as well as use of these weapons by the defeated powers.¹²³ These measures do not represent either a multilateral arms control or IHL regime but a series of conditions applied to the defeated powers which did not apply

¹²⁰ During the subsequent 1907 Hague Peace Conference both Great Britain and Portugal announced that they would sign Hague Declaration 3.

¹²¹ Carnegie Endowment for International Peace (1971) *The Control of Chemical and Biological Weapons* (New York): pp.65-66.

¹²² Keegan, J. (1999) *The First World War* (Pimlico): p.215.

to the victors. The 1925 Gas Protocol, negotiated over a period of under 8 weeks in 1925, was a significant further development. The protocol, which provides for a general prohibition on ‘the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices,’¹²⁴ therefore marks a clear break from ‘victor’s justice’ and a return to negotiations between states under international law.

As an attempt to regulate the arms trade the 1925 International Conference for the Control of the International Trade in Arms, Munitions, and Implements of War, convened by the Council of the League of Nations from 4 May to 17 June 1925 was, like the first Hague Peace Conference, guided by economic and ‘hard’ security imperatives. However, international regulation was no more feasible then than it had been in 1899. In another parallel with the Hague in 1899, the inclusion of poison gas on the conference agenda had not been planned but was added at the behest of one of the delegations – the United States – in order that the conference achieve (and be seen to achieve) a meaningful outcome in such a high-profile area of concern. The need to respond to domestic and international humanitarian constituencies was therefore also a significant factor.

2.4 The development of the 1925 Gas Protocol

The document initially considered by delegations in Geneva dealt solely with the trade in conventional weapons. The US representative proposed an amendment prohibiting the use in war of chemical weapons. The initial emphasis on ‘trade’ rather

¹²³ Articles 170 and 171 of the Versailles Treaty forbade Germany from importing or exporting any arms, munitions or warlike materials, making specific reference to chemical weapons.

¹²⁴ Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925.

than a prohibition represents the balance sought by the US who wanted to be ‘the moral leader in the worldwide quest for security through disarmament’ while also seeking ‘a modicum of insurance’¹²⁵ in case deterrence failed. These discussions highlight the underpinning security dynamics that had to be balanced with economic and humanitarian concerns as factors shaping regime design. Multiple interests presented participants with a version of the Prisoners Dilemma. The common good of achieving such a ban was conditioned by concern over the potential inability to react preventatively to the development of chemical weapons by another state.¹²⁶

The US proposed that these issues be devolved for discussion in technical committees. However two central problems emerged when they were considered in detail:

- The difficulties posed by dual-use technologies became swiftly apparent. Expert opinion at the conference was unanimous that nearly all materials used in chemical weapons were to be found in non-military industrial products and processes. As Zanders notes, ‘the inability to distinguish unambiguously between chemicals used as warfare agents and those that have peaceful industrial purposes rendered any ban on their trade or transfer impractical because of the impossibility of verifying the end use of the recipient state.’¹²⁷

- The principle of ‘equal treatment’ among states, in the spirit of the Covenant of the League of Nations, was highlighted by many delegations as a guiding

¹²⁵ Brown, F.J. (1868) *Chemical Warfare. A Study in Restraints* (Princeton University Press): p.97.

¹²⁶ Zanders, J.P. ‘The Chemical Weapons Convention in the Context of the 1925 Geneva Debates’ ; *The Nonproliferation Review*, Spring/Summer 1996; p.39.

¹²⁷ Zanders (1996) : p.41.

principle for their deliberations. There was a recognition that a ban on trade was discriminatory, freezing and legitimizing the superiority of those states who already had an advanced chemical industry and would therefore be unaffected by the ban.

Unable to find a compromise between prohibition and unrestricted use, the US withdrew the reference to ‘trade’ in their proposed text. Instead, a complete prohibition was proposed on the use of poison gas in war. As in the Hague some twenty-five years before, technological development was an influential factor. The humanitarian effects of recently developed weapons provided a backdrop to discussions that left no doubt as to the ‘right side’ of the gas warfare issue. Moreover, the challenge of distinguishing civilian from military use of chemicals, clearly demonstrated by technical expert communities, proved influential in moving negotiations beyond the focus on trade.¹²⁸

3. The interplay between design and implementation

The purpose of this section is to consider the evolution of the Hague Declaration 3 and 1925 Gas Protocol regimes. It contributes to the overall research objectives of this chapter by developing new insights into these two regimes that inform our understanding of continuity and change across different IHL regimes. The importance of regime design and its relationship to implementation is thus considered in relation to regime effectiveness. The influence of national security versus humanitarian considerations within the regimes is assessed. This section concludes by examining the relevance of these two regimes in the broader context of IHL regime evolution.

3.1 Relating regime design to implementation and effectiveness

Hague Declaration 3 is binding between contracting parties in time of war. During negotiations, British and US delegates argued that the definition of expanding bullets provided in the declaration was too technically detailed. However, all the other delegations present recognised that the clarity of the prohibition was essential. A prohibition based on design characteristics was necessary to prevent states finding loopholes in their obligations through applying different interpretations if the ban had been linked to more general principles of IHL. The appropriateness of a design-based prohibition has been demonstrated by the fact that the declaration has proved successful in eliminating the manufacture and use of this type of ammunition for military purposes by states.

Rapid acceptance on a political level and the absence of any known violations of the prohibition are evidence of the declaration's effectiveness.¹²⁹ However, the wording of the declaration reflects the nature of firearms and ammunition at the end of the Nineteenth Century and the understanding of wound ballistics at that time. It has been argued that this wording is no longer adequate to achieve the regime's objectives 'given the variety of ways in which bullets are now constructed, a modern understanding of wound ballistics and recognition that other factors such as bullet velocity are also responsible for the degree of injury and suffering from rifles and

¹²⁸ The Protocol was signed on 17 June 1925 and entered into force in 1928.

¹²⁹ Use of these rounds, albeit not by states parties to the Declaration, continued in the 1899-1902 Boer War and the Russo-Japanese War of 1904-05.

handguns.’¹³⁰ By basing the prohibition on a technical characteristic, the regime has lacked the flexibility to adapt to reflect developments in firearms and ammunition since 1899.

A related consideration of regime effectiveness links technological development to changing practice in the conduct of armed conflict. Evolving weapons technology has had profound effects on military strategy and tactics. The arguments put forward by Ardagh against the wording of the declaration relate to the use of single shot rifles at short range to stop a charging enemy. But the development of automatic weapons and the integration of infantry with armour and artillery on the modern battlefield make both these arguments and the regime itself less relevant in practice on the battlefield than in 1899. A technical definition has thus ‘frozen’ the regime in binding it to contemporary technology and military practice. This does not limit the regime’s effectiveness at the time but does constrain its ability to evolve and adapt. These considerations also provide compelling arguments to explain why the regime has not grown significantly over time beyond its initial membership.¹³¹

The 1925 Gas Protocol regime also faces a number of challenges to regime effectiveness as a result of temporal considerations. The protocol restricts its non-use obligation to states parties that are at war. This means that its provisions do not apply in the case of the internal armed conflicts that have become increasingly prevalent in the years since the protocol entered into force. In fact, as Jozef Goldblat suggests, ‘it

¹³⁰ Coupland, R. and Loye, D. ‘The 1899 Hague Declaration Concerning Expanding Bullets. A Treaty Effective for more than 100 Years Faces Complex Contemporary Issues’; *Review of the International Red Cross* Vol. 85 No. 849 (March 2003): pp.137-38.

¹³¹ Hague Declaration 3 has only thirty-one members of whom twenty-seven signed before 1910. A full list of States Parties can be found on the ICRC IHL database at: www.icrc.org/ihl.nsf/WebNORM?OpenView&Start=1%Count=150&Expand=10.1

might also be argued that the Protocol does not even cover those international conflicts in which the belligerents do not consider themselves to be formally at war.¹³² Moreover, it does not prevent research, manufacture, stockpiling, transfer or training in the use of these weapons.¹³³ There are thus a number of loopholes that regime members may exploit that are consistent with regime rules but which undermine regime goals. The wording included in the protocol leaves considerable room for diverging interpretations of obligations. States have thus taken different positions on whether tear gas and other non-lethal gases fall within the protocol's scope.

Regime compliance has been mixed. Examples of voluntary defection can be found in several cases. Egyptian forces were alleged to have used poison gas in the Yemen during the 1960s. This issue was discussed in the United Nations General Assembly (UNGA) on 5 December 1966 leading to a resolution calling for observance of the 'principles and objectives' of the 1925 Gas Protocol.¹³⁴ In 1982 the US government alleged the use of chemical weapons in Laos, Cambodia and Afghanistan by the Soviet Union and its allies. Both sides also used chemical weapons during the Iran-Iraq war. Iraq was also known to have used chemical weapons against its own Kurdish minority population with the attack on Halabja in Northern Iraq in March 1988 gaining worldwide notoriety.¹³⁵

Different examples of regime defection demonstrate the importance of compliance verification as a component of effective regimes. While Hague Declaration 3 was

¹³² Goldblat (1994): p.

¹³³ Bailey (1972): p.127.

¹³⁴ Resolution 2162 B xxi.

¹³⁵ Guelff and Roberts (2000): p.157.

agreed without verification provisions, it may be argued that this is unnecessary since, in terms of manufactured production, the declaration has been almost universally implemented. However, in contrast to chemical weapons, which require significant technical and scientific skill to develop and deploy, expanding bullets represent a much simpler technology. Dum dum rounds can be easily improvised prior to battle through cutting an 'X' into the tip of a regular small caliber round.¹³⁶ The round then expands on impact causing similarly large wounds to rounds constructed for that purpose. This would seem to reinforce Goldblat's point that rules made in peacetime governing the conduct of hostilities may be disregarded in conflict situations, a view also expressed in 1899 by delegates who feared that the protocol's provisions might not withstand the strain of hostilities.¹³⁷ Certainly it reinforces the importance of applying a twofold definition of effectiveness that looks beyond compliance to take into account whether overarching regime goals are realised.

Similarly, the 1925 Gas Protocol does not contain any provisions for the monitoring or verification of treaty compliance. In order to address this lacuna, UNGA Resolution 37/98 of 13 December 1982 requested the Secretary General 'to investigate, with the assistance of qualified experts, information that may be brought to his attention by any Member State concerning activities that may constitute a violation of the protocol or the relevant rules of customary international law.'¹³⁸ The resulting report on chemical and bacteriological (biological) weapons, including provisional procedures, was presented by the Secretary General to the General

¹³⁶ A former serving officer in the South African Defence Force (SADF), speaking anonymously, confirmed that during counter-insurgency activities in Namibia this practice was common in preparing for military operations. Instructions on the procedure to improvise dum dum bullets can also be found easily on the internet. See: www.totse.com/en/bad_ideas/guns_and_weapons/162568.html

¹³⁷ Mathews & McCormack (1999): p.336.

¹³⁸ Guelff and Roberts (2000): p.156.

Assembly in 1984.¹³⁹ A UN Mission investigating allegations of the use of chemical weapons in the Iran-Iraq war issued seven reports between March 1984 and August 1988. On 21 March 1986 a United Nations Security Council Statement criticized Iraq for ‘use of chemical weapons, in clear violation of the Geneva Protocol of 1925’ while on 26 August the Security Council unanimously adopted Resolution 620 condemning ‘the use of chemical weapons in the war between Iran and Iraq.’¹⁴⁰ Further UN Missions in 1992 investigated alleged use of chemical weapons in Azerbaijan and Mozambique. The initiative developed in the UNGA went some way to addressing the absence of any mechanism to verify compliance among states parties.

The various UN missions and resulting Security Council Resolutions demonstrate the mutually reinforcing relationship between the 1925 Gas Protocol regime and international institutions. The UN is fulfilling its central goal of safeguarding international peace and security by providing a de facto verification mechanism for the regime. The UN has the legitimacy to take this step because of the regime’s existence, membership and credibility. These measures have been superseded by the much more detailed verification system established under the CWC with the creation of the Organisation for the Prevention of Chemical Weapons (OPCW). This phenomenon of overlapping and interlocking regimes with the same objective echoes the experience of regimes in other issue areas that gain strength through their evolutionary nature. In this case, situating individual regimes within a broader regime addressing chemical weapons offers greater chances for effectiveness over time.

¹³⁹ UN Doc. A/39/488, Annex II (1984).

Despite a lack of flexibility to incorporate change, the 1925 Gas Protocol has continued to attract new members. The large number of states bound by the protocol,¹⁴¹ various statements of the UNGA and the Security Council in support of its provisions, and the many references found in other IHL treaties, explain why the 1925 Gas Protocol is widely regarded as forming part of customary international law. This question has been clouded by differing interpretations as well as the reservations applied by some states. However, Guelff and Roberts acknowledge that ‘at least the first use of lethal chemical and biological weapons is prohibited by customary international law. Less consensus exists on the status under customary international law of non-lethal chemical weapons.’¹⁴²

3.2 *Spillover effects*

The continued reference to both Hague Declaration 3 and the 1925 Gas Protocol in later treaties is a significant example of IHL gaining strength from the mutually reinforcing nature of its component treaties. Reference to both regimes in the Statute of the International Criminal Court (ICC), defining the use of expanding bullets and chemical weapons as war crimes, demonstrates that the two regimes remain relevant in IHL. The contemporary significance may be less evident in the case of Hague Declaration 3, which has been to an extent superceded by developments in weapons technology and military tactics. Temporal considerations relating to both technological progress and changing military practice therefore provide important considerations for the landmine regimes. However, there is also continued reference to Hague

¹⁴⁰ Guelff and Roberts (2000): p.157.

¹⁴¹ As of 18 December 2008 there are 135 States Parties.

¹⁴² Guelff and Roberts (2000): p.157.

Declaration 3 in relation to weapons that some consider fall under the more general prescription on weapons that cause ‘unnecessary suffering’ or ‘superfluous injury.’ While on one level the regime may seem to have diminished currency, it remains relevant in the context of its spillover effects to related issue areas through its nesting within a broader IHL framework.

The final declaration of the January 1989 Paris Conference on the Prohibition of Chemical Weapons,¹⁴³ acknowledges the importance and continued validity of the 1925 Gas Protocol. The declaration also stressed the need to conclude an international legal instrument on the prohibition of the development, production, stockpiling and use of chemical weapons.¹⁴⁴ The resulting CWC was signed in 1993 and entered into force in 1997.¹⁴⁵ It provides for a complete prohibition on chemical weapons with no possibility of ‘no first use’ reservations and also applies to internal armed conflicts. The 1925 Gas Protocol’s prohibition on the use of chemical and biological weapons has therefore been augmented by the broader prohibition on production and possession found in the chemical and biological weapons conventions. The mutually reinforcing nature of these treaties is demonstrated by the fact that several states withdrew reservations to the 1925 Gas Protocol following adherence to the Biological and Chemical Weapons Conventions. Moreover, the CWC contains preambular clauses and articles reaffirming the principles, objectives and obligations of the protocol. The 1925 Gas Protocol is thus an important antecedent to these broader and deeper measures. It provides for the international de-legitimisation of chemical weapons, an essential precursor to both practical disarmament measures and the

¹⁴³ 149 states were represented at the conference.

¹⁴⁴ Guelff and Roberts (2000): p.157.

evolution of a norm against their use. In this sense, the broader regime established to address the threat from chemical weapons has adapted and evolved, demonstrating the regime's ability to 'learn' over time as well as to exploit increased political will as a result of external events in order to better address the dangers posed by these weapons.

Equally, Hague Declaration 3 can be situated within a broader regime framework aimed at restricting or prohibiting the use of weapons causing 'superfluous injury' or 'unnecessary suffering.' This is particularly important in relation to Hague Declaration 3 demonstration effects on later developed weapons. A draft protocol on small caliber weapon systems was submitted to the United Nations conference that led to the adoption of the CCW in 1980. In order to conform to the letter and spirit of Hague Declaration 3, a resolution was adopted encouraging states to conduct further research into new types of bullets, particularly those which turn or 'tumble' once entering the human body.¹⁴⁵ More recently, a draft protocol on small calibre weapon systems was presented at the 1995 CCW Review Conference calling for more testing on the effects of different rounds. Although this proposal, as with the earlier initiative, has not led to a new IHL regime, it retains a level of currency through its relationship to Hague Declaration 3.

¹⁴⁵ A complete prohibition on biological weapons was provided for in the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction*, signed on 10 April 1972 and entering into force in 1975.

¹⁴⁶ See: 'Report of the ICRC for the review conference of the 1980 UN Conventions on Prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively

Spillover effects relating to nuclear weapons can be linked to the 1925 Gas Protocol. It has been argued that the effects of nuclear weapons imply that their use is prohibited by the terms of the regime as well as by customary principles prohibiting the use of weapons causing unnecessary suffering. This position was rejected in the 1996 Advisory Opinion of the International Court of Justice (ICJ) on the *Legality of the Threat or Use of Nuclear Weapons*. The intentional design of a weapon was determined to be the defining factor in whether a weapon be prohibited, rejecting the ‘effects’ argument that the secondary asphyxiating and poisoning caused by nuclear weapons rendered them illegal. However, regardless of the outcome, it is significant that the regime contributed to a debate on nuclear weapons and IHL that needed to be addressed through a landmark ICJ judgement.

The nexus between de-legitimisation and political will is particularly important in relation to the broader research questions posed in this thesis. Analysis of the 1925 Gas Protocol demonstrates that if a weapon becomes ‘stigmatised’ the powerful regime effects can also be exerted, including beyond regime membership. The association of specific regimes with customary principles of IHL contributes to a mutually reinforcing relationship where the existence of a regime strengthens the underpinning norm while also encouraging states to adopt regime-compliant behaviour. This relationship also works against regimes losing their relevance over time since long term regime goals can be re-considered again and again in different fora.

injurious or to have indiscriminate effects’; *International Review of the Red Cross* no. 299, (April

4. Key actors

This section considers the roles of different stakeholder groups in the development of Hague Declaration 3 and the 1925 Gas Protocol. In order to support the wider research objectives of this chapter, particular emphasis is placed on the role of influential states (the ‘Great Powers’) as well as the influence of civil society. In the case of the former, a relatively static membership and the absence of overt regime defection means that actors involved in regime design provide the focus for this section. Broader issues related to agency in international regimes, including the clustering of actors in different phases of regime development, are elaborated in order to provide a comparative perspective in relation to the landmine regimes.

4.1 *The Great Powers and the 1899 Hague Peace Conference*

The states attending the 1899 Hague Peace Conference were conscious of the need to play to the concerns of the Peace Movement without sacrificing the requirements of military necessity. Not long before the conference China and Japan, Turkey and Greece, Spain and the US, had all been at war. Tensions were raised in the Hague by the Dutch hosts, supporters of the Boers, who had demanded invitations for the Transvaal and Orange Free State despite a looming conflict with Great Britain. Barely masked *realpolitik* concerns under ostensible humanitarian imperatives are highlighted in a private communication in which the US stressed the need for an international court of arbitration to be seen to be created while reassuring the

1994): pp.123-182.

Germans that ‘the purely voluntary character of the jurisdiction proposed...should be so clearly emphasized that the very last trace of any compulsion, moral or otherwise, upon any nation, be it great or small, should disappear.’¹⁴⁷ This highlights that while normative considerations and the public profile of the issue generated a significant convening power, an effective IHL regime was not the goal for many participating states.

By contrast, since initiatives from the Tsars led to the convening of the 1868, 1874, 1899 and 1907 peace conferences, Russia stood out, at least in the public eye, as the state most concerned with peace, disarmament and the laws of war. However, for the other Powers, this was a case of ‘the voice being so often the voice of justice and peace, the Realpolitik being forever suspect as that of unregenerate imperialist and militarist bear.’¹⁴⁸ Whatever the motives, Russia as the initiator was alone among the Powers to push for reductions in armaments. This is significant because despite the high levels of multilateral insincerity, providing a framework for negotiation exposed states to a high profile, two-level game intertwining domestic and international concerns that left open the possibility for states to be tied into a process leading to new international obligations.

Germany, the ‘modern Sparta’¹⁴⁹ built by Chancellor Bismark, was the driving force of the contemporary arms race and it is perhaps no coincidence that the Tsar’s call for a peace conference first came less than a month after Bismark’s death on 30 July 1898. However, Kaiser Wilhelm II (who had dismissed Bismark in 1890) greeted the

¹⁴⁷ Best (1983): p.140.

¹⁴⁸ Best (1983): p.164.

¹⁴⁹ Hull (1972): p.52

Tsar's initiative with disdain: 'what will Krupp pay his workers with?'¹⁵⁰ Taking his cue from the Kaiser, German opposition to the notion of Europe being beset by the malaise of armed peace was clearly apparent in the role played by the German representation. Whereas all the Powers viewed the Russian proposals in more or less the same light, the Germans were less concerned about being cast in the role of conference spoilers. By contrast, the British Government recognized the balancing act required at The Hague. Unlike the Germans, being mindful of the 750 favourable resolutions received by the Foreign Office from public groups in the four months following the publication of the Tsar's manifesto,¹⁵¹ they did not want to be seen to be rejecting the conference and its humanitarian goals. The War Minister Lord Lansdowne noted in his instructions to Ardagh that 'You have a very difficult hand to play. It is clear that the conference has availed itself with the avidity of at once achieving something in the interests of humanity and gibbeting us as *the* inhuman power of the age.'¹⁵²

Ardagh attempted to justify the British position as the sole opposant to the declaration on dum dum bullets in the sub-Commission. His main argument was that 'the use of these words describing technical details of construction will result in making the prohibition a little too general and absolute.'¹⁵³ Ardagh argued that recent conflicts had shown that the fully jacketed bullet of the British Lee-Metford rifle did not have the stopping power to put an enemy combatant *hors de combat*. The wounds caused by the dum dum bullet have this necessary effect 'but their result is by no means

¹⁵⁰ Tuchman (1966): p.241.

¹⁵¹ Tuchman (1966): p.239

¹⁵² PRO, FO 30/40. 3/36 (2 July 1899)

¹⁵³ Hull (1972): p.183.

designed with the aim of inflicting useless suffering.’¹⁵⁴ He therefore argued for ‘a phraseology which shall leave aside technical details of construction and affirm the principles on which we are all agreed....that is to say, the prohibition of the use of bullets whose effect is to aggravate uselessly the sufferings of men placed *hors de combat*, or to render their death inevitable.’¹⁵⁵

The US, while also opposed to the Russian proposals on armaments, was keen to distance itself from being seen to meddle in European affairs. Captain Mahan, their naval representative, argued during the conference that ‘the military and naval armaments of the US are at present so small, relatively to the extent of territory and to the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden of expense upon the latter, nor can even form a subject for profitable mutual discussion.’¹⁵⁶ However, on the specific issue of dum dum bullets, the US – about to use these rounds in the Philippines – subsequently supported the British position in arguing for a more general prohibition on bullets that, in effect, exceeded the limits needed for putting a combatant *hors de combat*.

Ultimately, both the British and US proposals were rejected by the other delegations. The rationale was that a non-definition based prohibition would be too vague to be effective. While the British-US position was consistent in seeking to balance military necessity with humanitarian concerns, it was recognised among other participating states that such language would not be acceptable to the Peace Movement. This demonstrates the power of binding states within a process of regime formation that is particularly acute in the area of IHL. While such a prohibition was not on the table at

¹⁵⁴ Hull (1972): p.184.

the beginning of the negotiating conference, the convening of the different states and the need to demonstrate progress meant that this was an acceptable solution for the majority of participants. This humanitarian onus was strengthened by the reality that only Great Britain and the US had an immediate military use for these rounds. It was therefore cost free for other states to (be seen to) take the moral high ground.

4.2 *Civil society and the 1899 Hague Peace Conference*

At the end of the Nineteenth Century, a recognized Peace Movement had emerged. However, the base of the movement was much broader, drawing many who made the link between industrial progress and peace. Captains of Industry therefore provided significant patronage, the best-known examples being Nobel's creation of the Peace Prize in 1897 and the Carnegie Endowment for International Peace publishing the Proceedings of the 1899 Hague. This highlights a clustering of state and non-state actors motivated by common interests. This mutually reinforcing relationship offered a powerful combination of the convening power of a state with financial leverage and compelling advocacy for an effective regime.

For the Peace Movement, the Tsar's initiative was seized on with great enthusiasm. In particular, the journalist William T. Stead, campaigned around Europe in favour of the Tsar's proposals and established a new weekly *War on War* to strengthen public demand for the peace conference.¹⁵⁷ Sessions of the conference were closed, excluding the press and other observers not linked to official delegations. Stead, through exploiting his numerous personal connections, nevertheless published a daily

¹⁵⁵ Hull (1972): p.185.

¹⁵⁶ Ibid.

chronicle of the Conference in *Dagblad*, The Hague's leading newspaper. It was read by the majority of delegates, heavily quoted by other correspondents and relayed to home societies by supporters. The media therefore self-consciously provided a force multiplier effect for the humanitarian lobby. The Conference belatedly accepted transparency as a *fait accompli* and opened up to the press, thus both demonstrating the influence of civil society and further increasing the public scrutiny of delegates' endeavours.

A range of observers present at the conference also had an influence on delegates' behaviour. Correspondents and representatives of the Peace Movement lobbied in favour of specific objectives and raised petitions around Europe and beyond. Despite the bellicosity of the official German position, a Committee of *Reichstag* Deputies, professors and writers descended on the Hague to support the Conference.¹⁵⁸ Public attention therefore increased the pressure on delegates to achieve meaningful results. This was particularly evident in the pressure applied through the press for the establishment of a Permanent Court of Arbitration. Germany was the last of the Powers to resist the idea of arbitration but even they were eventually forced to agree to the proposal, in spite of the strong reservations of the Kaiser. Their agreement to the proposal for the prohibition of expanding bullets must therefore be seen in this same context.

The de facto opening up of the regime design process is an important shift. It demonstrates that strong public interest coupled with an effective advocacy campaign can bypass formal rules of procedure. The two level focus of international movement

¹⁵⁷ Tuchman (1966): p.248.

and domestic constituencies is particularly significant. Although Germany would never have voluntarily agreed to a ban on dum dums, the negotiating environment, in particular the effect of channeling domestic advocacy, changed the calculus of costs and benefits in its favour.

4.3 *The Great Powers and the 1925 Gas Protocol*

The issue of poison gas presented a policy dilemma for US decision makers. In public the US delegation to the Geneva Conference clearly felt the onus of humanitarian considerations. Behind the public statements there were major splits within the delegation – as within the Administration – over policy on chemical warfare. The War Department was opposed to any prohibition other than on use against cities and non-combatants. Although official statements did not reflect this position, the War and Navy Department representatives were vociferous in attempting to undermine the proposals of their own delegation.¹⁵⁹

While not evident in Geneva, where the US signed the protocol at the end of the conference, splits in the US position were to prove decisive when the focus switched to implementation and Senate consent for ratification was sought. Resistance from the War Department was compounded by a lack of coordination by pro-regime factions with the Senate or the chemical industry. Influential opponents in the military argued against adherence on the grounds of military preparedness. With the support of sympathetic Senators, resistance was reinforced by the fact that the War Department had not been consulted until *after* the US was committed to the regime. In contrast,

¹⁵⁸ Tuchman (1966): p.258.

supporters in the US were conspicuously quiet. The protocol seemed to represent a broader restatement of the terms of the Washington Treaty which had been ratified without dissent. Lulled by this as well as by favourable reporting from the Foreign Relations Committee, 'the peace groups forfeited the opportunity to influence the most significant debate on chemical warfare during the interwar period.'¹⁶⁰

The Senate considered the 1925 Geneva Protocol on the basis of a calculus that reflected national security rather than humanitarian concerns. Ratification was rejected not because of any sense that gas warfare was desirable but because the perspective was adopted that gas weapons would probably be used in future conflicts and the US had to be prepared for that use. As Brown points out, rejection of the protocol (which the US eventually ratified only in 1975) marked an important shift in US policy with preparedness for gas warfare taking priority over international efforts towards prohibition.¹⁶¹ It thus represents a unilateralist approach that reflected the views of one strand of the US negotiating team. The absence of a bridge between international policy formulation and national policy adoption was therefore highly significant in shaping the long term US policy stance on this issue.

Many states, including France and Great Britain, became parties to the 1925 Gas Protocol subject to the reservation that it is binding only as long as other states are bound by it. The protocol is therefore viewed by some adherents not as an absolute prohibition but as an obligation of 'no first use.' These reservations clearly weaken the protocol. Yet it is important to acknowledge that such reservations were a small price to pay if they were the means by which states could adhere to the regime. On the

¹⁵⁹ Brown (1968): p.101.

one hand, the primary motive behind the reservation by the Soviet Union, which became a state party in 1928, lay in the fact that two major potential enemies – Japan and the United States – had not ratified the protocol.¹⁶² On the other, the Soviet Union reserved the right to use gas against non-signatories (hence Soviet use of gas in Afghanistan during the 1980s was not technically illegal). Reservations to regime membership therefore provided a means to stabilise relations between states but also came with associated humanitarian costs.

In the years preceding the development of the regime, European powers had an ambiguous approach to chemical weapons. France in 1921 had allegedly provided Spanish Morocco with a filling capacity for chemical weapons. State of the art chemical agents were subsequently also provided by Germany, in violation of the Versailles Treaty. Great Britain and France turned a blind eye to this collaboration because of their own interests in shaping the outcome of the Morocco rising and as a result control of the Straits of Gibraltar. The Geneva conference took place in the midst of the uprising and the Spanish made widespread use of chemical bombs.¹⁶³ Resistance to a ban on trade in chemical weapons by certain European powers would therefore seem to be a logical consequence of national security interests rather than the practical difficulties of implementing such a prohibition.¹⁶⁴

The 1925 Gas Protocol failed to bind the US because it was not sufficiently embedded within the broader framework of IHL. The lack of normative push factors meant that the US policy position did not come with costs at domestic or international levels.

¹⁶⁰ Brown (1968): p.106).

¹⁶¹ Brown (1968): pp.108-9).

¹⁶² Hammond, J.W. (1999) *Poison Gas : Myths Versus Reality* (Greenwood Press): p.21.

¹⁶³ Zanders (1996): p.41.

Similarly, the reservations tabled by some regime members highlight at best a conditional commitment to a prohibition on chemical gas. While constraining the behavior of regime members, the mixed implementation history of some states parties demonstrates that this regime followed an arms control calculus and that this weapon had not yet been stigmatised. However, the policies of the European powers were to evolve very differently to that of the United States. In part, this can be attributed to factors exogenous to the regime. The rise of totalitarian governments coupled with technological advances in air power presented a threat within Europe that, for geopolitical reasons, the US did not face.¹⁶⁵ Thus, while the US position hardened in favour of chemical warfare readiness, following signature of the 1925 Geneva Protocol the European Powers increasingly supported a complete prohibition on chemical weapons including support for control of domestic production and trade as well as verification. In contrast to the US, regime membership thus provided a mechanism in which humanitarian concerns and broader security policy priorities aligned themselves.

4.4 Civil Society and the 1925 Gas Protocol

Opponents of chemical warfare realized that gas weapons possessed ‘the twin appeals of being new and unique in its effects on man.’¹⁶⁶ For the International Red Cross (IRC) poison gas represented a vivid symbol of the horrors of war. The Final Resolution of the 1925 IRC Conference declared the objective of the IRC and its national societies as ‘not then merely a question of making a scientific and practical study of the best means of assisting the victims of gas; it is above all a question of

¹⁶⁴ Zanders (1996): p.41.

undertaking moral propaganda against the use of gas, and thereby also a moral propaganda against war itself.’¹⁶⁷

Civil society advocacy in support of the 1925 Gas Protocol is consistent with the trends linking peace to technology that characterise the earlier Hague conferences. The regime is also notable as a case where domestic civil society actors mobilised to militate against treaty ratification. A one year gap between signature of the treaty and its reporting out of Congress on 26 June 1926, coupled with a lack of supporting activity by the State Department, provided space for those groups opposed to ratification. In particular, veterans associations in the United States, notably the American Legion, used their considerable influence to oppose ratification. Significantly, the absence of convincing counter-arguments enabled this well-organised component of civil society to be effectively mobilised by the War Department and other proponents of chemical warfare preparedness to support their position.

The development of international regimes focusing on global challenges as a recognised mechanism to promote humanitarian issues in the interim between 1899-1925 is significant. The emerging role of the IRC as a proponent of ‘moral propaganda’ against these weapons is a new development. Public opinion was not unified in its opposition to chemical weapons while national security interests presented persuasive counter-arguments to some states. The emergence of early IHL regimes thus provided a means to force states to consider the humanitarian implications of this weapon. However, at this point the influence of the humanitarian

¹⁶⁵ Brown (1968): p.109.

¹⁶⁶ Brown (1868): p.178.

lobby is too diffuse to radically change the cost-benefit calculus for many to fully adopt regime provisions in relation to chemical gas.

5. Normative considerations

This section considers the role of norms in the development of Hague Declaration 3 and the 1925 Gas Protocol. It first considers the humanitarian imperative behind the two regimes and how far these considerations influenced states in moving beyond a national security based approach to regime membership. This section then assesses how normative considerations impact on regime effectiveness.

5.1 Humanitarian push or national security pull?

In the case of expanding bullets, states were giving up nothing that was central to their national security interests. Over time, it is also arguable that chemical weapons have been of diminishing strategic value in the face of improved defensive and protective equipment as well as the emergence of other weapons. Moreover, the threat posed by their use as a weapon of terror by both state and non-state actors has facilitated regime development.¹⁶⁸ The paradox to the US position in relation to the 1925 Gas Protocol is that the demand for gas warfare readiness was not matched by a viable capability to employ chemical weapons. No new gas masks had been made since 1921, no toxic shells had been filled since 1922, chemical weapon war reserves were in perpetual deficit and by 1924 chemical warfare training was not even included in the War

¹⁶⁷ Proceedings, 12th International Red Cross Conference, Geneva, 1925.

¹⁶⁸ Mathews & McCormack (1999): p.5.

Department Training Regulations.¹⁶⁹ Although the reasons behind US rejection of the protocol were complex, the shift from regime design to implementation led to interest groups expending significant political capital – both at home and abroad – to safeguard a capability that could not be used.

The helpful role of the UK in clarifying the linguistic difference between the English and French-language versions of the 1925 Gas Protocol text makes all the more conspicuous their subsequent policy volte-face. In 1970 the British Foreign Secretary announced that the UK considered CS¹⁷⁰ and other such tear gases to be outside the scope of the protocol, arguing that CS is not harmful to man and distinguishing between it and those lachrymogens existing in 1930. This contrasted with repeated statements following ratification. The British policy shift was prompted by a proposal from UN Secretary General U. Thant, submitted in 1969 as a draft UNGA Resolution,¹⁷¹ which stated that the 1925 Gas Protocol ‘applies to the use in war of all chemical, bacteriological and biological agents (including tear gas and other harassing agents) which now exist or which may be developed in the future.’¹⁷² UK troops had recently used CS in Northern Ireland for the first time, perhaps influencing Britain’s abstention and the Foreign Secretary’s subsequent ‘clarification’ in the House of Commons. The British action was doubly harmful as a unilateral reinterpretation of regime obligations and a blow to Britain’s credibility as a proponent of arms control and disarmament.

¹⁶⁹ Brown (1968): pp.133-4).

¹⁷⁰ Named after Corson and Stoughton, the scientists who first developed the gas.

¹⁷¹ This resolution (Resolution 2603A (xxiv) 16 December 1969) was adopted by 80 votes to 3 (Australia, Portugal, USA) with 26 abstentions, including Great Britain.

¹⁷² Bailey (1972): p.134.

The US, both as a non-party when the issue was discussed in 1930 and on their eventual ratification on 22 January 1975, made clear their understanding that the scope of the 1925 Gas Protocol did not extend to control agents and chemical herbicides. The Nixon Administration, when it asked the Senate to consent to US ratification on 25 November 1969, also announced the ‘no first use’ of lethal chemical weapons and a complete renunciation of all biological weapons. The Senate resisted efforts by Secretary of State William P. Rogers to permit retaliatory use of chemical weapons, thus moving away from the policy that had prevented ratification fifty years previously. But the exclusion of non-lethal chemical weapons remained and these weapons were used extensively in Vietnam. A balance can therefore be discerned with regime membership becoming more acceptable in line with developing humanitarian norms against the use of chemical weapons.

The ‘network of reservations’¹⁷³ which marked the 1925 Gas Protocol regime, mostly centred around the principle of ‘reciprocity,’ certainly undermine its effectiveness. Reservations by the US – technically a signatory in 1925 if not an adherent until fifty years later – as well as Russia cast doubt on whether the protocol had actually banned the use of chemical weapons. It is therefore relevant to recognise the importance of *which* states include reservations. That these positions are held by Great Powers gives them a weight that is more persuasive than in the case of smaller states.

Multiple reservations and interpretations seem to suggest that, at least in the case of chemical weapons, national security ‘pull’ was the driving factor in states’ approaches to implementing their international obligations. Moreover, that the UK signed up to

¹⁷³ Dettner, I. (2000) *The Law of War* (Cambridge University Press): p.256.

Hague Declaration 3 only after concluding a colonial war in which these rounds were used and that the US has never signed the declaration, demonstrate that national security trumped humanitarian considerations. The absence of international condemnation following Japanese use of chemical weapons in China before and during World War II also suggests that the focus on these weapons generated during the regime design phase lapsed in implementation. States applied a calculus that weighed humanitarian with national security concerns. There was no norm bandwagon that radically influenced this equation in favour of regime compliant behaviour.

On the other hand, without humanitarian 'push' it is questionable whether states would have made it to the negotiating table. The emerging norm against these weapons promoted by civil society was fundamental to the convening of the 1899 Hague Peace Conference in the same way that the IRC's moral propaganda proved critical to convening the Geneva negotiations in 1925. Despite evident multilateral insincerity, states were still obliged to convene and to form regimes in order to demonstrate their humanitarian credentials to domestic and international constituencies. The pressure applied by civil society, including through innovative use of print media, was evident in the buildup to the conferences, functioning in 'real time' through exerting pressure on national negotiators. Both these cases illustrate Richard Putnam's analysis of national positions stemming from a two-level calculation that balances domestic with international considerations. Certainly the contradictions in the US position on chemical weapons bear this out. While they led efforts to seek a ban on trade during negotiations, this translated into an outright ban which was supported in Geneva but could not be realised when taken back to the

capital. The complexity of the issues involved is also highlighted by the British case: domestic pressure played a significant part in pushing the UK to sign the 1925 Gas Protocol but it was also domestic security concerns that lay behind their reinterpretation of those obligations to exclude CS gas forty-five years later.

Both Hague Declaration 3 and the 1925 Gas Protocol are agreements born of their times. While dum dum bullets had been designed for use in colonial wars, no African nations were represented in the Hague.¹⁷⁴ However, the late decision to make the conference sessions ‘open’ allowed for a degree of transparency to the decision-making process and permitted a broader audience to voice their opinions. In terms of implementation, although Hague Declaration 3 has been widely observed, it is likely, as discussed above, that ‘improvised’ expanding bullets remain in use in developing world conflicts where IHL may be less rigorously observed than in interventions by western armed forces. By rejecting initial proposals against the trade in chemical weapons, delegates in Geneva recognized the implementation challenges such proposals posed for non gas-producing (i.e. less developed) states. This demonstrates evolution from 1899 in that, invoking the principles of the League of Nations, Southern countries had a voice in the negotiations and were able to influence the shape of the proposals. However, in terms of breaches of the protocol, the use of chemical weapons by the Italians in Abyssinia or alleged use by the Soviet Union in Southeast Asia make clear that the developing world has borne the brunt of these weapons while the response of the developed world has been muted.

¹⁷⁴ Only China, Japan, Persia (Iran) and Siam (Thailand) from Asia were present.

5.2 *Norms and regime effectiveness*

The legal restraint of the 1925 Gas Protocol focused public and political attention on the issue, thereby reinforcing the stigmatisation of chemical weapons among civilians. Brown, comparing the first and second World Wars, points out that ‘for the first time since the advent of the nation at arms a major weapon employed in one conflict was not carried forward to be used in a subsequent conflict.’¹⁷⁵ He argues that codification had the effect of reinforcing other restraints, strengthening public and military fear of chemical warfare and providing an excuse for a lack of military preparedness in this area.¹⁷⁶ Thus while the concerns of powerful constituencies ensured that the US did not join the regime, the norm against the use of poison gas in war that was magnified through the regime ensured that such a capability would not be used.

For different reasons, the 1925 Gas Protocol played a significant role in Germany’s non-use of chemical weapons during World War II. The prohibition, in reinforcing the specific arms control terms of the Versailles Treaty, cost the Germans ten years of research and development into these weapons. Despite German scientists making a major breakthrough in the development of nerve agents, a lack of confidence engendered by the prohibition and its effects contributed to their forfeiting the use of this weapon.¹⁷⁷ It is therefore important to recognise that stigmatisation is not the only aspect of the regime that supports implementation. Its normative weight also reinforced prescriptive measures found in other agreements in inhibiting technological progress in this area of warfare. Considering the perspectives of both the US and

¹⁷⁵ Brown (1968): p.290.

¹⁷⁶ Brown (1968): p.293.

¹⁷⁷ Brown (1968): p.293.

Germany, the development of a norm against the use of chemical weapons was clearly instrumental in the non-use of these weapons in World War II.

While it is evident that the regime contributed to the emergence of an internationally recognised norm against the use of chemical weapons, the norm has not been universally effective. Italy as a State Party used poison gas in 1935-36 during its invasion of Abyssinia¹⁷⁸ despite public opinion being roused against chemical weapons by the international news media. During the conflict the ICRC received numerous complaints, confirmed by ICRC delegates on the ground, on the use of chemical weapons by Italian forces. The response of the President of the Italian Red Cross was that the 1925 Geneva Protocol did not preclude the use of gas in reprisal for the ill-treatment of Italian prisoners of war. The ICRC categorically rejected this position, re-emphasising the absolute prohibition on the use of chemical weapons in the protocol. Indeed, the argument of the Italian Red Cross which sought to legitimise this act through the justification under international law to engage in ‘reprisals’ does not ring true.¹⁷⁹ However, the conduct of the Italians suggests that neither the norm against the use of gas nor the legal prohibition were significantly robust at that stage when measured against national interests and a much weaker developing world enemy that could not retaliate militarily.

As a category of weapon representing a threat to individual combatants, the normative dimension of the ban on expanding bullets is less apparent than in the case of gas

¹⁷⁸ Italian forces invaded Abyssinia (now Ethiopia) on 2 October 1935, completing the conquest and annexing the country by March 1936. See: ICRC ‘Abyssinian War (1935-1936)’; available at: <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList74/A0B2CAE68823612241256C8700332B7B>

¹⁷⁹ Reprisals are a term of legal art referring to acts which although illegal by themselves may be permissible as a deterrent in response to illegal acts by an enemy. Best, G., (1997) *War and law since 1945* (Clarendon Press): p.192.

warfare. However, the humanitarian push provided by the Peace Movement was an important factor in bringing states to the table and the public attention placed on the conference increased the pressure on delegates to achieve tangible results. On a normative level, Ken Rutherford argues that peer pressure to emulate other states was also a powerful mechanism in encouraging states to adopt the results of the Hague conference.¹⁸⁰ In this respect, the norm against expanding bullets proved important in the negotiation of a ban which, once agreed, was widely implemented. The Italian example above recalls that IHL regimes face their most significant tests during implementation. However, the rejection by other delegations of the British position as ‘contrary to the humanitarian spirit’¹⁸¹ demonstrates an important statement of solidarity when the developing world was not well represented in the Hague. Indeed, despite their rejection of the ban, the regime’s moral force clearly influenced British behaviour. It was decided not to use these rounds during the Boer War and dum dums sent in error to South Africa were swiftly recalled.¹⁸²

Disagreement over the criteria for the unacceptability of dum dum bullets is unsurprising because technological progress had outpaced the evolution of IHL. The 1868 St Petersburg Declaration and subsequent codifications that prohibit weapons that cause ‘superfluous injury’ or ‘unnecessary suffering’ did not established objective criteria to measure this term or its counterbalance ‘military necessity.’ This highlights an important issue for the landmine regimes. General principles of IHL can be interpreted very differently in their application to specific weapons. Stigmatisation, where existing, provides a means to move beyond this ambiguity.

¹⁸⁰ Rutherford, K. ‘The Hague and Ottawa Conventions: A Model for Future Weapon Ban Regimes ?’ *The Nonproliferation Review* (Spring/Summer 1999): p.42.

¹⁸¹ Best (1983): p.159.

¹⁸² Pakenham, T. (1979) *The Boer War* (Abacus): p.251.

6. Implications for landmine regimes

Insights developed from our analysis of the design, implementation and effectiveness of Hague Declaration 3 and the 1925 Gas Protocol raise significant issues for the two landmine regimes. This chapter reinforces our hypothesis that regime interplay and nesting dynamics are important to our understanding of regime effectiveness in this issue area. Considering the formation and implementation of these regimes over time demonstrates the powerful dynamics generated by individual regimes within a broader IHL regime addressing weapons causing ‘unnecessary suffering’ or ‘superfluous injury.’ In this broader context, these two historical regimes have proved effective in raising the political costs of continued use, providing ‘a solid moral and political basis for criticizing other states’ ownership or use of these weapons.’¹⁸³ However, challenges to the implementation of both regimes also point to the difficulty of operationalising general principles of IHL with respect to specific weapons that reinforce the need to critically examine the relationship between design and implementation factors in the landmine regimes.

Design factors are shown to be particularly significant. This chapter identifies weaknesses in the 1925 Gas Protocol regime framework as a result of reservations as well as the absence of a formal verification mechanism. These gaps and lacunae reflect the compromises necessary at the time to form an international regime. Conversely, the subsequent creation of the OPCW demonstrates flexibility in order to

¹⁸³ Rutherford (1999): p.41.

address problems that may have been left unresolved in the regime design process or only become apparent over time. Conditional obligations and verification challenges must therefore be considered in light of differing approaches within the two landmine regimes. APII is characterised by a number of reservations while, in the absence of a formal verification mechanism, the APMBC has been supported through the development of an unconventional civil society based approach to compliance monitoring outside of the regime proper. How landmine regime frameworks address these implementation challenges thus represent important considerations in relation to regime effectiveness.

Compliance has been almost complete in the case of Hague Declaration 3. For the 1925 Gas Protocol, if there has been voluntary defection, actual and suspected use of chemical weapons has been detected and attracted significant international opprobrium. Applying a regime approach provides a more nuanced picture of regime effectiveness. The lack of flexibility within the Hague Declaration 3 regime, the consequent inability to deal with ‘improvised’ dum dums and its lack of application to new munitions with similar effects are highly relevant considerations for landmine regimes. Given that the use of landmines in developing world conflicts has evolved dramatically from the concept of static ‘minefields’ applied in earlier conflicts, our analysis points to significant risks of diminishing relevance if regimes do not find ways to learn in order to respond to changing behaviour or technological advance.

This chapter explores the influential roles of different NSAs in IHL regimes. The IRC focused its ‘moral propaganda’ in support of the regimes in order to further the development of IHL while the peace and internationalist movements understood

negotiations as a means to influence state behaviour at particular points in history: the armed peace of the 1890s and the ‘never again’ zeitgeist that followed World War I. Even when barred from the negotiations, civil society actors developed novel approaches in order to influence the negotiations. In particular, the focus of national and international media was deliberately exploited at different times to ensure that national delegations felt under strong pressure to achieve demonstrable results. However, it is equally relevant to acknowledge the effective role civil society may play in undermining regimes. The important role of domestic lobby groups in the US decision not to ratify the 1925 Gas Protocol provides a counter-intuitive example of civil society influencing national decision-making. These insights are particularly important in order to critically examine claims to uniqueness found within the existing literature on the Ottawa Process.

This chapter demonstrates that ‘multilateral insincerity’ does not preclude regimes influencing the behaviour of participating states in important ways. Once involved in a process of regime development there is an obligation to show progress that is magnified by the humanitarian nature of the issue area. The normative weight of the IHL subject matter was clearly influential in bringing the major Powers of the day to the negotiating table as well as fostering civil society support for the regime formation process. The impact of stigmatisation can be found in regime effects beyond the membership of the regimes. The US did not ratify the 1925 Gas Protocol for many years but this chapter argues that, as a result of the associated stigma, their use was never a possibility in the intervening period. It is equally significant that the emerging norm against these weapons did not engender a paradigm shift in how states calculated the costs and benefits of regime membership. Despite their obligations, a

number of states voluntarily defected from regime commitments on the use of chemical gas. Moreover, the UK and the US were confronted by compelling arguments to ban dum dum bullets on humanitarian grounds but did not join the regime because of military interests. This nuanced understanding of the influence of normative considerations across regime design and implementation phases enables us to further refine our approach to research questions for landmine regimes in this area.

Analysing Hague Declaration 3 and the 1925 Gas Protocol as regimes provides new insights into their design, implementation and effectiveness. Distinctions as well as common features of IHL regimes provide both context and an important comparative dimension to support our subsequent critical analysis of the landmine regimes. Important new insights are shown on the costs and benefits of distinct regime approaches from the simplicity of a 'ban' to the more complex regulatory design provide important new insights. Our focus on stakeholder clustering dynamics is shown to be important, made evident by the force multiplier effect of civil society when combined with supportive states in earlier IHL regimes. This chapter also provides a nuanced analysis of the relationship of norms to regime effectiveness. The importance of embedding specific issues within the larger construct of inhumane weapons is highlighted as are countervailing national security pull factors that can dilute the effectiveness of this norm. The following chapters build on these insights drawn from earlier IHL regimes to focus on key questions of landmine regime design, implementation and effectiveness.

Chapter 4

The Emergence and Design of the Landmine Regimes

1. Introduction

This chapter considers the emergence and design of APII to the CCW (and Protocol II from which it derived) and the APMBC. The latter is portrayed by advocates and some commentators as the flagship of a new ‘fast track’ model for IHL. This is contrasted with the ‘old fashioned’ approach found in the CCW, generating less definitive provisions, involving a narrower range of stakeholders and producing less significant results over a much more drawn out time period. If both the APII and APMBC regimes have their partisans, our understanding of the two landmine regimes is conditioned by their contrasting profiles and the limitations of the existing literature rather than their effectiveness in addressing the global challenge of landmines. A central hypothesis explored in this thesis is that the dynamics across design and implementation phases are highly significant to regime effectiveness. This chapter therefore contributes to the overall aim of this thesis by critically assessing prevalent regime narratives through the optic of regime theory in order to generate new insights into processes of landmine regime formation.

In the case of APII, the ‘closed’ nature of the process and its low public profile has resulted in a limited literature on the emergence and design of the treaty regime. As was acknowledged by one US negotiator in 1980, while verbatim accounts exist for the plenary sessions, ‘the real negotiations took place in unrecorded private

discussions and in the many sessions of the three working groups.’¹⁸⁴ In contrast, the Ottawa Process is commonly characterized as highly participatory and has generated an extensive body of writing. However, very little material poses critical questions to the regime or its origins. Bringing together relevant insights from IHL and mine action practitioner literatures from a regime analysis perspective enables us to address a number of important research questions that relate to landmine regime formation. In particular, research questions explored in this chapter address the extent to which regime obligations take into account the technical and political challenges associated with this issue area.

From a design perspective, this chapter applies our analysis of regime effectiveness dynamics to the landmine regimes by analyzing how regime obligations relate to key mine action objectives. Research questions that consider the extent to which the regimes, individually and collectively, address the core problems they were set up to meet, and whether they provoke wider consequences unforeseen by those involved in establishing the regimes are thus particularly significant. This focus also provides initial insights into the costs to regime effectiveness of disjunctions between regime and mine action priorities that are further elaborated in subsequent chapters.

An underpinning humanitarian imperative situates the landmine regimes within the broader normative framework of IHL: Protocol II sets an important standard as the first codification of IHL specifically regulating landmines;¹⁸⁵ the APMBC provides for the first formal ban on a conventional weapon to be adopted by the international

¹⁸⁴ Roach, J.A., ‘Certain Conventional Weapons Convention: Arms Control or Humanitarian Law?’ *Military Law Review* Vol. 105 (Summer 1984): p.4.

¹⁸⁵ Carnahan, B.M. ‘The Law of Landmine Warfare: Protocol II to the United Nations Convention on Certain Conventional Weapons’; *Military Law Review*, Vol. 105 (Summer 1984): p.95.

community since the 1899 Hague Declaration on dum dum bullets.¹⁸⁶ This chapter thus builds on insights developed in Chapter 3 through considering regime nesting and interplay dynamics in the landmine regime formation phase. Analysing the landmine regimes in relation to other weapons that cause unnecessary suffering or superfluous injury allows us to critically question claims in the existing literature that these regimes represent a new departure in the practice of IHL. This approach also addresses research questions that seek to identify how far support in the regime formation phase derives from a quality of regime nesting that draws on deeper IHL trends encouraging stakeholders to stay on the ‘right side’ of a compelling humanitarian issue.

Within the processes of regime formation, this chapter considers how the involvement and clustering of different stakeholders in processes of regime formation influences regime effectiveness. Chapter 3 demonstrates that a combination of subject area expertise and the ability to exert influence through advocacy are key considerations in certain IHL regimes. To address the dangers posed by landmines in (predominantly) developing countries, this points to the need for landmine regimes to recognise the concerns of mine action practitioners as well as affected national stakeholders. Addressing the roles of key implementation constituencies in the regime formation phase represents an important element in addressing our main hypothesis on the relationship between design and implementation for regime effectiveness. This raises a number of related secondary research questions explored in this chapter on the

¹⁸⁶ Prokosch, E. (1995) *The Technology of Killing. A Military and Political History of Anti-Personnel*

influence of different stakeholder groups and the significance of different types of leadership on regime formation processes.

Analysing how far landmine regime design reflects mine action knowledge and requirements represents a key research objective of this chapter. This chapter begins by critically assessing the historical origins and processes leading to the formation of the two landmine regimes. Systematically applying the research framework elaborated in Chapter 2, it then analyses the roles of different actors in shaping regime design. The relevance of norms to landmine regime emergence and formation is considered, situating this analysis within the broader corpus of IHL. Finally, this chapter sets out key insights emerging from our analysis of processes of landmine regime formation and their relationship to questions of implementation and effectiveness addressed in subsequent chapters.

2. Understanding landmine regime formation

While driven by the same humanitarian imperative, APII and the APMBC include different regime rules, engage contrasting approaches and involve different stakeholder groups. This section therefore considers the significance of these factors to the origins and development of the two regimes.

2.1 *Origins of the CCW and APMBC regimes*

The ICRC began preparing Draft Rules¹⁸⁷ from the early 1950s for the protection of civilians from weapons, including landmines, deemed to have uncontrollable effects. Beginning in the mid 1960s, the use in Indochina of tear gases and other weapons perceived to be excessively injurious or to have indiscriminate effects led to a number of resolutions within the UNGA well as studies commissioned by the Secretary General on the effects of various weapons.¹⁸⁸ In 1971 and 1972 the ICRC convened Conferences of Government Experts to consider proposals for prohibitions or restrictions on certain conventional weapons. These conferences, informed by studies commissioned at the behest of the Swedish government in which military and medical experts studied recently developed weapons, produced a report that proposed language for several anti-personnel weapon bans.

Growing concern among a number of states over the use of certain anti-personnel weapons in contemporary conflicts led the ICRC in 1973 to establish a working group of experts which met in Lucerne in September 1974 then in Lugano in January 1976. As a result of these meetings, consensus emerged around proposals relating to undetectable fragments, incendiary weapons, restrictions and recording requirements for remotely-deliverable mines.¹⁸⁹ Discussions continued in an *ad hoc* committee on conventional weapons formed as part of a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in

¹⁸⁷ ICRC (1958) (2nd edition) *Draft Rules for the Limitation of the Dangers incurred by the Civilian Population in Time of War (Geneva)*

¹⁸⁸ Mathews, R.J. (2001) 'The 1980 Convention on Certain Conventional Weapons: A Useful Framework Despite Earlier Disappointments'; *International Review of the Red Cross* December 2001 Vol.83 NO. 844: p.993.

¹⁸⁹ Prokosch (1995): p.160.

Armed Conflicts (CDDH) held in Geneva in 1976 and 1977. The CDDH was convened by the Swiss government, as the depository of the Geneva Conventions, in order to prepare for the negotiation of the Additional Protocols to the Geneva Conventions. This linkage is significant because it bound the issue of arms control to the further development of IHL.¹⁹⁰ The CDDH could not reach agreement on the types of weapon to be included, whether prohibitions or restrictions should be pursued, or if battlefield use or the protection of civilians should be the focus. Positions were broadly divided between clusters of neutral and developing states on the one hand and ‘militarily-significant’ states¹⁹¹ on the other:

<i>Neutral/Developing States</i>	<i>Militarily-significant States</i>
Sweden, Norway, Switzerland, Yugoslavia, Egypt, Mexico	USA, larger NATO Members, USSR, larger Warsaw Pact members

The concluding session of the CDDH recommended that these issues be addressed in a UN framework. As a result, after preparatory meetings in 1978-79, which used as their basis the texts prepared in the CDDH ad hoc Committee, the CCW conference was held in 1979-80.

These early initiatives are significant because they firmly situate progress on the landmine issue within the broader normative framework of IHL. As a single issue, landmines had not gained sufficient momentum to initiate a process of regime formation. However, a regime was able to form within the CCW because it was embedded in a broader set of contemporary IHL issues of concern. The mutually reinforcing relationship between like-minded states, NSAs involved in IHL and expert

¹⁹⁰ Mathews (2001): p.994.

communities show how normative considerations are closely intertwined with technical expertise on the effects of weapons. It is also significant to note that in the decades preceding the emergence of the landmine regimes a clustering of concerned states with NSAs possessing expert knowledge is coalescing around this issue area. The transition from working group meetings to CDDH to the CCW points to an important causal relationship in moving from issue emergence to regime formation between the crystallisation of issues to be addressed and the nature of the discussion forum.

2.2 *'Interlocking and overlapping': APII and APMBC regime formation*

The CCW regime was established in 1980 with three protocols: Protocol I on non-detectable fragments; Protocol II relating to mines, booby-traps and other devices; and, Protocol III on incendiary weapons. During the 1980s the CCW gained few new adherents and had a low international profile. This changed near the end of the decade as the issue of blinding laser weapons was highlighted through a series of ICRC-initiated experts' meetings between 1989-1991. At the same time the humanitarian cost of landmines was gaining increasing international prominence. Both these factors resulted in a renewal of interest in the CCW.¹⁹² Consequently, in 1993, France, supported by a number of other states, requested a CCW review conference. There followed a period lasting twenty-seven months which led from expert group meetings to the final conference session in May 1996. Increasing engagement in the process was reflected by a rise in the number of states parties to the original Protocol II in the

¹⁹¹ The term 'militarily significant' states is found in preambular paragraph 6 of the CCW.

¹⁹² Mathews (2001): p.998.

run up to the conference, including a number of militarily significant states such as the United States.

Additional Protocol IV on blinding laser weapons was agreed relatively easily. This ban was particularly significant because, for the first time since the 1868 St. Petersburg Declaration on exploding bullets, a weapon had been banned before ever being deployed in battle. This demonstrates a link between the CCW and the broader regime within the framework of IHL addressing inhumane weapons. On the landmines issue, two distinct sets of interests led to a more challenging negotiating process: supporters of a total prohibition on APMs or a strengthening of Protocol II's restrictions. Between these two positions a number of states supported a ban in principle but recognized that such an outcome would not be achieved in consensus-based CCW negotiations. Accordingly, tortuous negotiations saw the deadline for concluding the review conference twice pushed back from October 1995 to January 1996 and then to a final session held from 22 April to 3 May before agreement on APII was reached.

The 1979-80 CCW negotiations had been broadly split between what Roach terms the 'prohibitionists' and the 'realists.'¹⁹³ In the 1995-96 negotiations the same basic positions applied with prohibitionists unable to meet their goal due to entrenched opposition within a consensus-based regime framework. The US played a proactive role in the negotiations, keen to demonstrate leadership on the issue but with the same underlying approach that the forum could be 'managed' in line with US policy objectives. This is significant because while knowledge and concern over the issue of

¹⁹³ Roach (1984): p.14.

landmines had evolved significantly in the 15 years between CCW conferences, regime rules constrained the progress that could be achieved to ‘more of the same’ technical restrictions. While reassuring for US security interests, this did not placate those that wished to address the humanitarian costs of these weapons. Chairman of the review conference Johan Molander acknowledged this link between regime rules and the outcome of the negotiations by stating that results reflected as much as could be achieved on the basis of consensus.¹⁹⁴

While the APII outcome was a tactical victory for those that sought to limit their liability to restrictions on landmines it represented a strategic error, by making clear that the only way to achieve the goal of a ban was via a distinct regime framework. The measured CCW approach jarred with the recognition of a humanitarian crisis caused by APMs and thus made transparent the tension between arms control and IHL imperatives. The ICRC in particular made a direct linkage between the nine year period allowed for implementation of APII’s detectability and self-destruction provisions and the cost in human terms of mines already in the ground or that would be laid during that period.¹⁹⁵ This mirrors similar complaints raised in 1980 at the insistence by certain states of setting a high number of ratifications as the trigger for entry into force – effectively a delaying tactic to prevent early review of the convention.¹⁹⁶ The limited results of the review conference were condemned as a failure by the ICBL¹⁹⁷ and this message was effectively projected by the international

¹⁹⁴ United Nations Press Release DC/2556 ‘Further Restrictions on Anti-Personnel Landmines Adopted by Review Conference on Injurious Weapons’; Retrieved from the World Wide Web on 9 May 2000: www.un.org/News/Press/docs/1996/

¹⁹⁵ *International Review of the Red Cross* no 315, pp.631-636.

¹⁹⁶ Roach (1984): p.53.

¹⁹⁷ The origins of the NGO-led campaign to ban APMs which brought this issue to international public attention can be traced to three organisations working in Cambodia: the Coalition for Peace and Reconciliation, Handicap International (HI) and the Mines Advisory Group (MAG). At the beginning

news media in its reporting of the conference. The leitmotif of the Ottawa Process, coined by ICBL Coordinator Jody Williams, stemmed from these partial results and was unambiguous: ‘no exceptions, no reservations, no loopholes.’¹⁹⁸

The need for additional momentum was also felt on the state level. Canada convened a meeting of pro-ban states, international organisations and NGOs in Ottawa between 3-5 October 1996. During the conference’s closing address, spurred by a perception that progress risked being wasted by divergent national positions, Canadian Foreign Minister Lloyd Axworthy made a surprise announcement asking states to return to Ottawa by the end of 1997 to sign a treaty banning APMs. This statement drew support from the ICRC, ICBL as well as the UN Secretary General but caused consternation among many states as a radical breach of established diplomatic practice. At this stage only some 50 governments had publicly declared themselves in favor of a ban so the approach is notable for the political risk taken by Canada. The Ottawa meeting thus represents the real starting point for the regime formation process.

The Austrian Government circulated a first draft treaty, drawing on disarmament law – notably the CWC¹⁹⁹ – only a few weeks after the Ottawa conference. They then hosted a meeting in Vienna between 12-14 February 1997 to exchange views on the draft treaty. The meeting was attended by representatives of 111 governments with the ICRC providing a lead on the key issues of substance. A revised text was issued

of the 1990s, through newsletters, publications and reports the profile of the landmine issue was raised and the foundations set for the emergence of the ICBL in 1992.

¹⁹⁸ This expression was first used at the last major preparatory meeting held in Brussels during 24-27 June 1997 prior to the Oslo negotiating conference.

¹⁹⁹ Full title: The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

on 14 March 1997 which was to remain relatively unchanged throughout the process. A subsequent meeting in Bonn between 24-25 April focused specifically on the issue of verification. A total of 121 governments participated in this meeting, which was followed between 24-27 June by an event hosted by the Belgian Government. The Brussels conference was attended by 156 states and adopted a declaration forwarding the third Austrian draft to the diplomatic conference scheduled in Oslo in September. Perhaps even more significantly, such extensive support only nine months after the Ottawa conference provides strong evidence of a norm bandwagon effect in relation to this issue. 97 states signed the Brussels Declaration endorsing the central elements of the ban treaty and reaffirming their commitment to sign such a document in Ottawa before the end of the year. Thus, many states had shown their hand before the start of the negotiating conference, allowing the core group to focus on the uncommitted.

This government-focused process was complemented through initiatives led by the ICRC and ICBL to sustain momentum by organising workshops and coordinating advocacy efforts across the globe. NGO-driven conferences and events in mine-affected states provided a powerful push factor for states to embrace the anti-APM norm. In March 1997, the Tokyo Conference on Anti-Personnel Landmines, hosted by the Japanese Government, was attended by 27 States, the EU and 10 international organisations. Other national and international conferences took place in East, Central and South Asia, Australia, New Zealand and throughout Europe. Press conferences were deliberately held jointly with pro-ban states to underline the collaborative nature of the process.²⁰⁰ In the same way, comments were sought from the ICBL on the treaty drafts and the ICBL was a participant in each of the conferences in the

‘governmental’ strand of the process. Following the Oslo negotiating conference a further round of *demarches*, lobbying at the 1997 UN General Assembly and NGO-sponsored media activities were geared to encouraging wavering states to sign the treaty in Oslo.

The parallel state and civil society driven strands of this process demonstrate a number of important characteristics from a regime perspective. A key aspect is the momentum provided by the short deadline until the negotiating conference which meant that discussions were never allowed to be bogged down in technical detail. That technical issues were considered a secondary concern to the political imperative to be associated with this process is evident in the rapidly increasing political commitment to the Ottawa Process. This is shown both numerically but more significantly by the willingness of so many states to commit to the Brussels Declaration just a few months after the Ottawa conference.

The Oslo Diplomatic Conference took place between 1-18 September, concluding with the adoption of the treaty. 90 states were registered as full participants, 32 attended as observers as did representatives of the ICRC, various UN agencies and hundreds of NGOs. The main sticking point in agreeing the treaty proved to be a package of five ‘non-negotiable’ changes required by the US delegation. When initial lobbying met with failure these were eventually whittled down to three.

Initial US position	Fallback US position
1. Strengthened verification provisions	1. Eliminate Korean mines within 9 yrs

²⁰⁰ Williams, J. and Goose, S., ‘The International Campaign to Ban Landmines’; in Cameron, Lawson and Tomlin (1998): p.36.

<ul style="list-style-type: none"> 2. Exemption for the Korean peninsula 3. Unrestricted right of withdrawal 4. 9 year period for entry into force 5. Exemption for AHD placed near AVMs 	<ul style="list-style-type: none"> 2. Right to withdraw during conflict 3. Exemption for AHD placed near AVMs.
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An exemption for anti-handling devices (AHD) combined with anti-vehicle mines (AVM) was intended to save US ‘smart’ mine systems in which the central weapons targeting vehicles were protected by APMs. However, it was widely recognised that this was an attempt to reclassify these weapons since they had already been defined as APMs during the APII negotiations. This is significant in demonstrating the interplay between the regime formation processes. A move to dilute the APMBC regime was undermined due to parallel negotiations in the other landmine regime framework.

In the end, fierce lobbying by the US was resisted by the majority of states – backed up by the ICBL – who refused to dilute a straightforward ban as the price for US signature. A 24-hour delay requested by the US on the final day of negotiations saw President Clinton and various senior Administration officials lobby unsuccessfully to gain support for the US position. The nature of the process had drawn out the ‘red line’ issues for the US and effectively isolated the delegation from the rest of the negotiating conference. Failing to gain support for these changes the US proposals were eventually withdrawn, paving the way for the conclusion of the conference and the adoption of the treaty. Subsequently, 122 States signed the ban treaty in Ottawa between 2-4 December 1997.²⁰¹

The existing literature positions the APMBC as a self-sufficient response to the inadequate outcome of the APII negotiations. However, considering the formation of

²⁰¹ Burkina Faso deposited the 40th ratification on 17 September 1998, bringing the treaty into force.

APII and the APMBC from a regime perspective clarifies the interlocking and overlapping nature of the two regimes. The perceived inadequacies of APII in the eyes of major international actors such as the UN provided a strong argument to find other means to move forward this agenda. This perception was magnified by the work of civil society actors that had not been given space within the CCW process and therefore networked in order to generate more effective lobbying through the Ottawa Process. APII did exert a pull factor on states through the onus to adhere to *any* regime addressing landmines. However, compromise between military utility and humanitarian concerns was not enough to demonstrate responsible international conduct given the visibility of the emerging pro-ban agenda. In tandem, the lack of political space for civil society within the CCW framework meant that there was no ‘safety valve’ for their concerns. This gave both a legitimate platform and a *raison d’etre* for the ICBL and the Canadians to promote an alternative track.

2.3 *Linking regime design to effectiveness*

While both regimes pursue the same headline objective, the means, actors involved and regime rules are distinct. Similarities and distinctions between the two regimes are illustrated in the table below:

APII	APMBC
<ul style="list-style-type: none"> • Reduce human suffering • Military-technical approach • Lengthy regime formation • State-centred, low-profile • Military/officials negotiating • Consensus voting • Technical Restrictions • No developing world buy-in 	<ul style="list-style-type: none"> • Reduce human suffering • Humanitarian imperative • Rapid process • Open to all, high-profile • Mine action experts • 2/3 majority • Ban on APMs • North-South consensus

The APMBC negotiations were founded on principles of openness and majority decision-making. This approach was reflected in the range of expertise within the negotiations and the flexibility of the rules of procedure for the conference, requiring a two-thirds majority for decision making. In contrast, the narrow, state-based eligibility criterion for participation meant that, within a consensus-bound framework, the CCW discourse was shaped by national military experts and negotiators from an arms control and disarmament background. How these different considerations impact on the effectiveness of APII and the APMBC are considered in the following sections.

2.3.1 Effectiveness and the APII restrictions based approach

The point of departure for the negotiation of Protocol II was that landmines are necessary defensive weapons whose use needs to be restricted in order to minimize risks to civilians. This emphasis on technical criteria as opposed to humanitarian impact is a direct consequence of the background and expertise of the negotiators. In the absence of any evidence to the contrary from representatives of mine affected states or mine action practitioners, the longevity and nature of the post-conflict landmine threat or its socio-economic consequences were not discussed.²⁰² Specifically, the restrictions and prohibitions found in Protocol II and APII fail to take into account the indefinite time period during which the weapons can represent a threat. The temporal nature of the hazard after the cessation of hostilities *as a mine action issue* and consequently the overall cost in humanitarian terms of the use of these weapons was not an issue.

²⁰² The Arms Project (1993): p.272.

Protocol II and APII, like any negotiated treaty, reflect a number of compromises found in the permissive language which qualifies the various obligations. Under Protocol II, parties to a conflict must ‘endeavour to ensure’ that non-pre-planned minefields are recorded²⁰³ while the seemingly stronger obligation requiring recording of all ‘pre-planned’ minefields²⁰⁴ is rendered irrelevant by the lack of such planning in the laying of the majority of the world’s landmines. Indeed, ‘minefields’ implies the laying of mines to recognized military patterns for specific tactical reasons; this does not conform to the ‘nuisance’ mine use employed by state and non-state forces in many developing world conflicts. This terminology is particularly revealing because it demonstrates that the regime and its stakeholders were neither informed by nor focused on the realities of contemporary landmine use. The input of developing countries can, however, be discerned: forbidding the use of animals or their carcasses as booby traps in Article 6 of the protocol stems from the concerns of Mongolia for their civilian populations of nomadic herders.²⁰⁵ However, this remains a point of detail rather than any robust attempt to obligate states to take responsibility for the post-conflict consequences of their military actions.

An important element of regime effectiveness is the relationship between design principles and implementation. Article 9 of APII requires that, following the cessation of hostilities, former parties to the conflict shall ‘endeavour to reach agreement’ on the provision of information to facilitate mine clearance, a provision that has been referred to as ‘the most questionable variant of the rules of warfare, whose true purpose is not to ‘safeguard the minimum standard of civilisation’ but rather to ‘cover

²⁰³ Protocol II art 7(2).

²⁰⁴ Protocol II art. 7 (1) (a).

²⁰⁵ Carnahan (1984): p.92.

up the inability or unwillingness to achieve this object.’’²⁰⁶ There is no requirement for parties to a conflict to clear the mines they laid, nor is specific guidance given for the safeguarding of civilians. Moreover, if states parties are obliged to disseminate these provisions to their armed forces, translation into field manuals and standard operating procedures is not mandated nor are penal sanctions provided for against individuals.

A clear indication of the ineffectiveness of Protocol II was the widespread use of APMs in the 1980s. If Protocol II saw very few new ratifications in the 1980s this is because militarily significant states did not want to be bound by its provisions while others felt it not worth ratifying.²⁰⁷ APII addressed many of the concerns surrounding the original protocol by extending its scope to non-international armed conflicts, strengthening restrictions on the use of APMs, banning undetectable APMs, prohibiting anti-sensing devices as well as placing tighter restrictions and obligations on mine laying. Implementation obligations were also tightened with an obligation on states to prevent violations, to impose penal sanctions on individual violators and to distribute relevant military instructions to their armed forces. The increase in membership of APII and its application to mines other than APMs, notably AVMs and booby traps, is also significant because at that time it was the only IHL that specifically regulated these weapons.

Our research framework that considers regime design in relation to practitioner mine action expertise exposes costs that were not apparent within the process because this

²⁰⁶ Carnahan (1984) pp.82-83, quoting G. Schwartzberger, *International Law as Applied by International Courts and Tribunals* 11 (1968).

²⁰⁷ Mathews (2001): p.997.

practitioner perspective was not available to regime designers. Moreover, analyzing the specificities of the issue area demonstrates important design caveats in relating normative considerations to implementation challenges. Thus, technical adjustments to the manufacture of future weapons, even when derived from important IHL norms, are of questionable value when the major threat posed to civilians (and the military) from landmines already in the ground is unrecognised.

2.3.2 The APMBC 'ban' and mine action effectiveness

The origins of the Ottawa Process in field-based organisations with practical experience of landmines provides a notable contrast with the CCW approach. In this respect, the problems posed from a mine action perspective by the restrictions-based APII approach would seem to be addressed by the APMBC: the treaty requires states parties to destroy or ensure the destruction of all APMs under their jurisdiction or control. However, this approach jars with the acknowledged goal of mine action to reduce the threat posed by mines so that individuals and communities can live in a safe environment. While this chapter shows that the clarity of the message that underpins the Ottawa Process was a decisive factor in regime formation, potential tensions between maximalist APMBC regime goals and the more nuanced calculus of mine action prioritisation also casts into relief a tension between expert communities and advocacy NGOs that continues to play out in regime implementation. Chapter 5 builds on this insight by analysing how far potential contradictions between the logic of enforcing a ban and the objectives of mine action have consequences for regime effectiveness.

A recognized gap in APMBC regime design is the absence of an effective verification mechanism. States were unwilling to sign up to stringent compliance monitoring provisions. The regime establishes annual reporting requirements in which technical data is provided by states parties. Fact-finding missions (FFMs) initiated by the UN Secretary General – modeled along the lines of various arms control and disarmament regimes – are also provided for should any state party be suspected of a breach. Article 8 describing the process for FFMs is the longest in the treaty and provides significant details on the steps for initiating such a mission. However, no practical modalities are established for the implementation of this provision which therefore leaves ambiguous how this process would play out in practice. This ambiguity is significant because it de-links the political will evident in the regime formation phase from subsequent implementation. On the one hand there is limited formal verification while on the other States Parties are obliged to take the diplomatically uncomfortable step of pointing the finger at other states suspected of breaches. The absence of any FFMs from March 1999 to date raises a major research question for the implementation phase related to the ability of the APMBC to both understand and address non-compliance by regime members.

3. The interplay of state and non-state actors in landmine regime formation

While recognising that *issues* are interdependent, a central hypothesis explored through this thesis is that it is equally important to acknowledge the interdependence of different *actors* in order to better understand the dynamics of regime formation. The hypothesis is explored that clarifying the clusters of state, sub-state and international actors, with distinct or overlapping regime interests, is particularly

relevant to understanding the development of the landmine regimes. Research on environmental regimes points to a strong, positive relationship between the involvement of NSAs and regime effectiveness,²⁰⁸ raising significant questions for APII and the APMBC given their contrasting approaches to issues of participation. This section therefore builds on work in the broader regime theory discourse to develop new insights into questions of agency and the significance of stakeholder clustering within the landmine regimes.

3.1 States

As international legal bodies the formal membership of the landmine regimes is comprised of states. The provisions that delineate them are binding on states so implementation is gauged on the level of participation and adherence to regime rules. The genesis of APII and the APMBC are strongly influenced by the interests, priorities and commitments of different states. In order to analyse the roles played by these actors across the two regime formation processes, these actors are considered under the categories of militarily significant states, middle powers and developing nations.

3.1.1 Militarily significant states, regime membership and effectiveness

Militarily significant states can be distinguished between ‘hard’ and ‘soft’ positions. Hardliners such as Russia, China, India and Pakistan initially viewed all attempts to regulate conventional weapons with suspicion while the US, UK and other major

²⁰⁸ Young (1995): p.15.

NATO powers adopted a ‘military pragmatist’ stance that emphasized arguments of military utility at the expense of humanitarian considerations and thus put a break on more radical proposals. Over time, greater recognition became evident within militarily significant states that non-detectable, long-lived APMs were widely used by developing states as well as non-state actors and posed a threat to their own forces. This represents a clear shift in perception that emphasised the military interest in IHL rather than understanding its purpose as solely to protect civilians in developing countries.

The election of left-of-centre governments in France and the UK proved a significant factor in provoking a shift in these countries’ policies. On 21 May 1997 the Labour Government pledged the total destruction of British APMs by 2005 and gave full backing to the Ottawa Process.²⁰⁹ France expressed similar support and reversed its earlier insistence on an ‘exceptional use’ clause in the treaty. These shifts by two major European powers are important in themselves, demonstrating a clear shift from a military-pragmatist stance to a political acceptance of the anti-APM norm. They also had a spillover effect in influencing other European states that did not necessarily fit comfortably within the pro-ban camp. Italy agreed that by 1999 or on signature of the treaty it would support outlawing the use and production of APMs and immediately prohibited their operational use by Italian forces.

Non-supporters of the APMBC in Europe included states with compelling national security concerns such as Finland²¹⁰ and Turkey, or Yugoslavia, recently involved in

²⁰⁹ *Financial Times* 22 May 1997, p.3.

²¹⁰ For Finland, the geopolitical reality of a long land border with another non-signatory – Russia – represents a *Realpolitik*-driven exception to Finland’s otherwise notable humanitarian foreign policy tradition.

an armed conflict. Beyond Europe, China, Cuba, Egypt, India, Iran, Iraq, Israel, North Korea, South Korea, Pakistan, Russia and Syria are some of the major states that did not participate in Oslo. In all these cases, national security concerns, in many cases compounded by authoritarian systems of government that were particularly allergic to the unconventional civil-society driven nature of the process, were the overriding argument against participation in the Ottawa Process. However, it is significant that although reluctant to endorse a ban, Russia and China did promote a new intensification of mine action activities and an export moratorium on APMs to coincide with the formation of the APMBC. This points to an emulation effect that drove these states to support certain APMBC regime commitments – including important mine action obligations – while remaining outside of the regime and its overarching imperative to prohibit APMs.

Understanding the US role and influence in the two landmine regimes is particularly important in order to clarify the relationship between regime membership and goals. The US during the 1970s was described by one of its own negotiators at the 1980 CCW Conference as ‘not particularly desirous of concluding a weapons agreement and neither promoted nor opposed the multilateral negotiating process.’²¹¹ At the 1974 Lucerne Conference the military pragmatists dominated, spearheaded by the US delegation, which comprised a weapons systems analyst, two military surgeons, military officers, Pentagon and State Department officials.²¹² Technical data was used to downplay the humanitarian impact of weapons, in some cases debunking statistics while refusing to provide ‘classified’ information to back up their arguments.²¹³ The 1976 Lugano Conference followed a similar pattern with evidence produced by the

²¹¹ Roach (1984): p.4.

US and others to demonstrate that weapons such as napalm and *flechettes* did not cause superfluous injury. Despite such disingenuous tactics, the conference concluded with a general agreement on the need for measures which became the three initial protocols to the CCW.

Once the CCW process became concrete, the US 'soft' military pragmatist position shifted in order to influence the outcome of the negotiations. This agenda was reflected in particular by the much criticized long entry into force and amendment provisions which represented a specific US negotiating goal. The US delegation's report on the conference was candid on their objectives:

These provisions should give Western countries ample time to ratify before amendments can be considered, and should limit the ability of radical governments to press for an endless series of conferences to expand the current restrictions.²¹⁴

The US agreed an export moratorium on APMs in October 1992, subsequently extended by three years with the unanimous support of the US Senate. This was a significant step in that the moratorium applied equally to NATO allies. Moreover, in another move that provoked a significant emulation effect, it was the US that first raised this issue in the UNGA where Senator Patrick Leahy introduced resolutions in 1993 and 1994 calling respectively for a moratorium on exports and the eventual elimination of APMs. The US leading role in setting the agenda for the 1995-96 CCW review conference should therefore be considered in light of these earlier commitments.

²¹² Prokosch (1995): p.149.

²¹³ Prokosch (1995): p.151.

²¹⁴ Roach (1984): p.54.

The Clinton Administration's announcement on 17 January 1997 that it would observe a permanent ban on the export and transfer of APMs should be understood as a response to the Ottawa Process. Internal divisions on an APM ban demonstrate close parallels to domestic debates on the 1925 Gas Protocol analysed in Chapter 3. Despite support from within both government and domestic civil society, the US resisted the Ottawa Process, influenced by the reluctance of the military and its political supporters to give up this capability. The US therefore pursued the competing strategy to initiate negotiations within the Conference on Disarmament (CD) on a treaty banning the use, production, transfer and stockpiling of APMs. This approach, although supported by a number of states, was widely criticised because the CD, like the CCW, operates on the basis of consensus. In particular, there was a perceived danger that hardline mine producers and users such as China and Russia might hamper the negotiation process. However, the arguments proved moot as the CD, riven by wider institutional problems, failed to include the landmines issue on its 1997 agenda.²¹⁵

The extant literature positions the CCW as the natural home of militarily significant states while the APMBC draws in a much broader range of members. However, a more nuanced analysis demonstrates a strong interplay between the different regimes. Categories thus proved to be fluid with shifting positions caused by the regime formation processes and regime effects seen even in the behaviour of non-regime members. The ability to shift entrenched 'hard' military pragmatist positions within the CCW provides a central argument for the validity of the CCW track. Ultimately,

many hard line states shifted their positions through a combination of political pressure, acknowledgement of the benefits to civilians of the proposed amendments, and recognition that, given the internal nature of many contemporary conflicts, the protocol would be meaningless without such an expansion in scope. This has significant consequences that are relevant for mine action which have not been identified in the extant literature. While the CCW does not include mine action stakeholders it does influence the conduct of producers and users. The behaviour of these actors directly impacts on the potential future mined areas to be cleared through humanitarian demining.

3.1.2 Representation and reality in the roles of middle powers

The role of small and medium sized states – middle powers – is depicted in the literature as central to the success of the Ottawa Process.²¹⁶ Canada went out on a precarious diplomatic limb in calling for the negotiation of a ban treaty at a time when declared support remained limited. Canada was also proactive in forging a partnership with the ICBL and other non-state actors participating in the process. The decision on Axworthy's famous announcement was made during the conference itself based on Canadian officials' assessment of the momentum that could be tapped by such a step. Following the conference, Canada had to expend a great deal of political capital in

²¹⁵ In an example of the relationship between regime rules and effectiveness, it has taken 12 years (1997-2009) until the CD has been able to agree on a programme of work.

²¹⁶ It should however be noted that much of this extant work, in particular the seminal reference work on the Ottawa Process – *To Walk Without Fear, the Global Campaign to Ban Landmines* – was edited and written almost exclusively by Canadian officials, experts and scholars. Of the three editors, Maxwell Cameron and Brian Tomlin are academics at Carleton University in Ottawa and Robert Lawson works at the Canadian Department of Foreign Affairs and International Trade.

unruffling diplomatic feathers, persuading states of the feasibility of the target that had been set and forming the core group of like-minded states.

This initial APMBC core group was made up of eleven members: Austria, Belgium, Canada, Denmark, Ireland, Mexico, Norway, Switzerland, South Africa, Germany and The Philippines. The group regularly strategised, shared information and coordinated their activities. Like Canada, other members maintained strong links with national and international NGOs and other stakeholders. Members of the group assumed different roles. South Africa, Mexico and The Philippines worked as regional champions while the Netherlands and Ireland adeptly used their EU Presidencies to exert influence. Austria assumed responsibility for developing the draft treaty text, while Germany, Belgium and Switzerland hosted important preparatory meetings. Moreover, while Canada and the European members were reluctant to undermine the CD as an institution by questioning the inclusion of landmines on its agenda, Mexico was less inhibited. The core group of pro-ban states was influential because, as Hubert points out, ‘states are themselves formidable advocates and may well be taken more seriously than non-state actors by other states.’²¹⁷ Moreover, the cross-regional representation of the coalition undercut traditional UN negotiating blocks by including members of the EU and G77.

In the CCW, Sweden, historically a significant player in the disarmament field and in this case spurred on by strong domestic criticism of the Vietnam war, was the first state to publicly call for the need to address the legal and humanitarian aspects of the

²¹⁷ Hubert (2000): p. xiii.

use of a range of conventional weapons.²¹⁸ It was the Swedish Government that convened military and medical experts to study the effects of certain weapons from the perspective of IHL. Considerable momentum for the Lucerne and Lugano conferences came from Sweden, supported by a number of other states as well as the ICRC. Their 1973 report offered language for prohibitions or restrictions on anti-personnel weapons including small caliber high velocity projectiles, fragmentation warheads, flechettes, landmines, booby traps and incendiaries.²¹⁹

The interplay between the two regimes and their situation within the broader field of IHL is demonstrated by the fact that the seeds of the cooperation that underpinned the Ottawa Process were laid within the CCW process. A proposal tabled at Lucerne by Sweden, Egypt, Mexico, Norway, Sudan, Switzerland and Yugoslavia that included text on landmines was rejected by the militarily significant states. Three of these states were to form part of the initial core group of like-minded states that drove the Ottawa Process. In the margins of the January 1996 CCW session, eight pro-ban States (Austria, Belgium, Canada, Denmark, Ireland, Mexico, Norway and Switzerland) met with the ICBL to discuss future strategy.²²⁰ Further meetings of this group led to the Canadian offer to host the first Ottawa conference. Thus, elements of research and political will on an issue that was identified as important from an IHL perspective as early as the 1970s gained traction within the Ottawa Process over 25 years later.

²¹⁸ Roach (1984): p.11.

²¹⁹ Swedish Ministry of Foreign Affairs, *Conventional Weapons. Their Deployment and Effects from a Humanitarian Aspect: Recommendations for the Modernisation of International Law, A Swedish Working Group Study* (1973)

3.1.3 *Developing nations, participation and ownership*

Given the focus on the technical characteristics of weapons, little emphasis was placed in the Lucerne or Lugano meetings on the experience of mine affected states. Making a point that was to be taken up to great effect twenty years later in the Ottawa Process, Prokosch points out that ‘the Lucerne Conference might have felt itself under more pressure to move toward banning the new weapons if representatives of the countries where they had been used had said more about their terrible effects.’²²¹ This is however at least an ambivalent point since one strand of reasoning among developing states supported the use of landmines for their equalizing effects against well armed aggressors, while also emphasising their relatively low cost. A similar argument was deployed over the use of booby traps, resulting in a compromise definition in Protocol II which only prohibits ‘perfidious’ booby traps.²²² This is significant because it demonstrates that compromises in treaty language are not just a reflection of the interests of militarily significant states but also of different developing world concerns.

The extensive use of landmines against civilian populations during the civil wars not covered by Protocol II in Angola, Mozambique and Afghanistan (although the conflict was international in character it was treated as internal by the Soviet Union) gave little incentive for ratification by developing states in the 1980s and early 1990s. Although APII addressed this lacuna, the problem, as expressed by the ICRC before the UNGA following its agreement, was that ‘poorly trained or equipped forces may be unwilling or unable to abide by a complex set of rules or pay an increased price for

²²⁰ Hubert (2000): p.17.

self-destructing mines.²²³ The absence of input from mine affected states or the developing world more broadly was thus a major criticism of the CCW process. Moreover, one of the key arguments against using the CD as the venue for negotiations on landmines was that, if the major producers and users of landmines were present, the majority of mine affected states were excluded from this body.

In contrast, the needs of developing states are at the heart of the humanitarian rationale underpinning the Ottawa Process. The process therefore advocated an inclusive approach focused on building support in regions affected by mines. The selection of the South African, Jacob Selebi, as Chairman of the Oslo negotiating conference was symbolically as well as practically significant. The media campaign led by the ICBL and ICRC highlighted the impact of mines on a human level, particularly through vivid depictions of mine victims. Indeed, many survivors were brought to the various meetings to bear witness to injuries caused by APMs. Ban campaigns in the South were an integral part of the Ottawa Process. NGO-driven meetings in Mozambique and South Africa focused attention on the landmine crisis in Africa and garnered widespread state support for a ban in that region. The case of the Cambodia campaign is also instructive. The campaign was launched in 1994 and in June 1995 hosted the 3rd International ICBL Campaign conference in Phnom Penh, the first landmine conference to be held in a mine affected country. The conference was attended by over 450 participants from more than 40 countries and provided a model for other national campaigns and signature drives.²²⁴

²²¹ Prokosch (1995): pp.154-55.

²²² The Arms Project (1993): p.303.

²²³ Statement of the ICRC at the United Nations General Assembly, 51st session, 1996. Statement of 18 October before the First Committee. *International Review of the Red Cross* no 315 (1 November 1996): p.632.

²²⁴ Williams and Goose in Cameron, Lawson and Tomlin (1998): p.30.

The ICBL promoted regional support for the ban through the creation of ‘mine free zones.’ The States of Central America were followed by the Caribbean Community (CARICOM) in committing themselves to no further use, production, trade or stockpiling of APMs. Southern Africa proved a particularly coherent regional bloc while the then Organisation of African Unity (OAU) and the Organisation of American States (OAS) also played an important role in mobilising support for the ban. This regional solidarity from the developing world bore fruit at Oslo. Central American and African States provided cohesive support for a strong and effective legal instrument, avoiding the emergence of damaging North-South policy splits.

The commitment of the global South – particularly mine affected states – lent credibility to the Ottawa Process that was absent from the CCW. However, the extant literature does not emphasise that the treaty drafting process prior to the Oslo negotiating conference was led by the core group of states and the ICBL steering committee. Given that, as discussed above, the treaty text was not significantly amended during the negotiations, this provides an alternative perspective on developing world input to the development of the treaty to that maintained in the accepted narrative. Yet the absence of a verification mechanism coupled with a lack of substantive ‘buy in’ to the specifics of regime design raises important questions considered in Chapter 5 for all APMBC regime members on levels of commitment to regime implementation engendered during the regime formation phase.

3.2 *Non state actors: the ICRC-ICBL nexus*

Within the CCW framework, civil society actors faced challenges of both *access* and *influence*. The neutral, impartial status of the ICRC transcended this limitation, giving it a unique position to act as ‘honest broker’ in facilitating inter-state negotiations. In contrast, the transnational NGO coalition that came together to form the ICBL is seen as the centerpiece of the Ottawa Process. Contrary to the ICRC, the ICBL was able to directly criticize governments through its advocacy. Thus, although the ICBL is prominent as the civil society vehicle that drove forward the Ottawa Process, interactions between a range of state and non-state actors were instrumental to the substantive moves towards a ban on APMs, even if the role of the ICRC may be less visible within the literature.

The strength of the ICBL lay in its structure, combining a small international staff which provided direction and coordinated policy on behalf of hundreds of local organisations around the world. Price notes that ‘the most basic effect of civil society, then, has been the transnational dissemination of information about the scope of landmine use and its effects, thereby helping to define the use of AP landmines as not only a problem but as a global crisis.’²²⁵ The ban movement grew because a ban seemed a logical solution to an obvious humanitarian disaster. Effective lobbying was central to this process, combining engagement with political leaders and government officials with public awareness campaigns. It is important to distinguish between the ICBL steering committee – which provided strategic direction to the campaign – and the broad based coalition that formed national campaigns and made the link to grass roots activists. The steering committee, initially with no formal structure, budget or secretariat, set out strategy for the various meetings and targeted priority regions and

countries for capacity building efforts. Membership of the committee was to expand and significant individuals were included on an ad hoc basis.²²⁶ The NGOs that made up the rump of the campaign – reaching up to 1,200 NGOs in 60 countries²²⁷ – were cohesive although disagreements were apparent between organizations preoccupied with lobbying governments and those more focused on mine action.

The ICRC's role is commonly downplayed in favour of the NGO coalition of the ICBL and the Canadian contribution. This can be attributed to a combination of the deliberately 'modest' profile of the organisation and the near monopoly held by the ICBL and Canada on the Ottawa Process literature. However, while the ICBL coordinated with the core group of like-minded states and engaged many developing states, the ICRC, through its credibility and expertise, could also engage effectively with militarily significant states. This role was critical in building trust in an IHL regime formation process that lacked both precedents and safety valves in the form of compromises gained as through a process of consensus decision-making.

At the first CCW negotiating conference, the ICRC followed the current, supporting proposals on restrictions, believing that those who advocated banning weapons were unrealistic.²²⁸ At the 1995/96 review conference the ICRC was again invited to act as 'expert observer.' This status meant the ICRC could speak, submit proposals (they provided two working papers) and distribute documentation.²²⁹ The role of the ICRC

²²⁵ Price, R. 'Reversing the Gun Sights: Transnational Civil Society Targets Land Mines'; *International Organization* (Summer 1998): pp.613-644.

²²⁶ The core of the ICBL was built around no more than 24 full time activists with expenditures of USD 1-2 million per annum in the latter stages of the campaign. See: Goose, S. 'Strategising about International Citizens Campaigns'; *The Progressive Response* 2, no.8. (March 20 1998).

²²⁷ Williams & Goose p.22

²²⁸ Mathews (2001): p.994.

²²⁹ Price (Summer 1998): p.624.

was therefore significant because the organisation combined influence with subject area expertise. The credibility and expertise of the ICRC was critical in shifting the perceptions of states as well as in contributing legal expertise that helped to situate the regimes within the broader context of IHL. The organisation subsequently initiated expert conferences and published studies on the effects of APMs, providing a bridge between the mine action community and other stakeholders such as militaries, government officials and NGO advocates.²³⁰ Arguments relating to military necessity, which underpin the CCW process, were addressed head-on by the ICRC. The organisation commissioned an analysis on the ‘Military Use and Effectiveness of Anti-Personnel Mines’ by a retired senior British military officer with a background in combat engineering, weapons research and subsequently humanitarian demining.²³¹ This study critically assesses the military effectiveness of APMs and struck a chord among military and non-military audiences by highlighting a major gap between questionable military gains and the terrible humanitarian impact of their use.

The ICRC, together with the ICBL, was responsible for the concerted international campaign to stigmatise the use of APMs. As another example of the ‘without precedent’ fallacy, it is inaccurate, as some commentators have claimed, that this was the ICRC’s first ever such campaign. As shown in Chapter 3, similar efforts by the organisation successfully contributed to the stigmatisation of chemical weapons following World War I. However, the convergence of this campaign with other efforts and the possibilities offered by modern communications technology ensured that the anti-APM campaign had a global impact within a very short timeframe. The non-

²³⁰ For a full analysis of the role of the ICRC in the mine ban process see: Maresca, L. and Maslen, S. (Eds.) (2000) *The Banning of Anti-Personnel Landmines. The Legal Contribution of the Red Cross 1955-1999* (Cambridge University Press)

²³¹ Blagden (1996)

adversarial approach of the ICRC is thus significant because it offered an approach and expertise different to that brought by the ICBL. As the acknowledged ‘guardian’ of IHL, the ICRC made contributions throughout the drafting process on key elements of the treaty. In particular, the ICRC emphasised the need for unambiguous definitions and universality if the treaty was to be successful.

The ICBL was given a campaign headquarters and meeting rooms – provided through the influence of ICBL member Norwegian Peoples Aid – located directly opposite the negotiating hall. This physical location facilitated the direct link between NSAs and state actors that distinguishes the two regime formation processes. The ICBL held official observer status on the same terms as observer governments. They were present at all sessions and could make oral interventions at any point although they could not vote or formally propose treaty text. Underlining a central plank of the Ottawa narrative, Williams and Goose claim that ‘this is the first occasion on which NGOs were given official status in international negotiations of a disarmament/arms control or humanitarian law treaty.’²³² However, as demonstrated in Chapter 3, while the APMBC regime framework certainly allowed for wider participation than the CCW, this was not an unprecedented initiative but in fact marked a return to a traditional approach to the development of IHL in which civil society plays an active role. While the novelty of the approach is an important element of the APMBC ‘brand,’ this perspective downplays a long history of humanitarian advocacy by both state and non-state actors.

²³² Williams and Goose, in Cameron, Lawson and Tomlin (1998): p.43.

The two strands of the Ottawa Process were reinforced by a number of events, activities and opportunities seized by a range of supportive individuals and institutions. Support within the UN system for a ban on APMs came from the highest political level. UN Secretary General Boutros Boutros-Ghali became increasingly explicit in his support for a ban, first in the 1992 *Agenda for Peace* and subsequently in his foreword to the Proceedings of a 1995 symposium on landmines.²³³ The legitimacy of the process was reinforced by the landmark December 1996 UNGA Resolution 51/45S calling on states ‘to pursue vigorously an effective, legally binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines with a view to completing the negotiations as soon as possible.’²³⁴ Other significant factors included the World Bank in August 1997 agreeing to fund mine clearance activities for the first time in its history. The timing of these supportive moves by different international organizations is significant. They contribute to the sense of momentum surrounding the Ottawa Process while also lending credibility to this unconventional approach to IHL regime formation.

3.3 Stakeholder clustering and regime effectiveness

In contrast to previous CCW practice, at the insistence of the Chinese delegation²³⁵ NGOs were not even granted observer status in the APII negotiations. Attendance was limited to states with the ICRC and UN agencies invited as special cases.²³⁶ Organisations with extensive practical experience were thus excluded. The

²³³ Boutros-Ghali, B. ‘Foreword’; in Cahill, K. (Ed.) (1995) *Clearing the Fields Solutions to the Global Landmines Crisis* (Basic Books): xiv.

²³⁴ UN General Assembly Resolution 51/45S ‘An International Agreement to Ban Anti-Personnel Landmines’; adopted 10 December 1996. The Resolution was adopted by 156 states in favour, 10 abstentions and none against.

²³⁵ *Final Report of the Governmental Experts*, Article 49, CCW/CONF.I/GE/23

homogeneous nature of the experts involved in APII regime design, with little questioning of the logic that these weapons were militarily useful without being indiscriminate was a decisive consideration in delimiting the language and scope of the protocol. The absence of broader stakeholder groups from the process of APII regime formation limited possibilities for regime learning.

However, the absence of civil society from the CCW negotiations, does not infer that they had no influence on the process. The French government's request to initiate a CCW review conference had been the result of a lobbying campaign by the French NGO Handicap International. Moreover, over 100 experts from 70 NGOs attended the conference to monitor the negotiations and lobby in the margins.²³⁷ NGO members also gained access to national policy processes and to the negotiations themselves through being invited to form part of official delegations. The Canadian NGO Mines Action Canada had strong links with the division of the Ministry of Foreign Affairs responsible for the negotiations and in the cases of both Australia and Canada members of NGOs formed part of official delegations.²³⁸ Even with the restricted CCW rules of procedure, recognition of the benefits of NGO expertise allowed some organisations to influence proceedings as part of national delegations.

If there may have been overlaps in the makeup of national negotiating teams for APII and the APMBC, the phenomenon of regime learning through participation in APMBC regime formation is unique. Although diplomats, officials, military officers and lawyers brought their own expertise – and were more or less the same figures involved in the APII negotiations – exposure to the effects of landmines through the

²³⁶ Prokosch (1995): p.185.

first hand evidence of mine victims and humanitarian assistance workers as well as the nature of the work as described by mine action practitioners, led to better understanding of the magnitude of the problem and the kinds of measures needed to address the issue. This influence on actors responsible for shaping policy at national level and constituting the national negotiating teams is significant and is not acknowledged in the existing literature.

The link forged between the ICBL and like-minded states proved an effective influencing mechanism. It is also important to recognize that pressure was effectively applied both to western and developing nations and that many states were prepared – or pushed – only six months after agreeing APII to move much further in signing up to a ban on APMs. In this period, the highly visible campaign to raise awareness on the humanitarian cost of these weapons had generated sufficient traction within a more open process of regime formation to enable such an outcome. This link was reinforced to a much greater extent than in APII through a number of states including ICBL members in their delegations. As Rutherford points out, ‘in some cases that meant that some countries essentially handed their policy and negotiating apparatus to activists; in other cases the government had its own line, usually sympathetic but not identical to the NGO position, but allowed the NGO inside access to the negotiations.’

The clustering of actors within the Ottawa Process was determined by self-selection: if you agreed with the goal of a complete ban on APMs you could join. This approach had the unintended consequence of leading to self-interested participation by spoilers in the regime formation process. As it became apparent during the course of 1997 that

²³⁷ Hubert (2000): p.13.

the CD approach was failing to erode support for the Ottawa Process, the US on 18 August announced its intention to participate fully at the Oslo negotiating conference. Although, in principle, embracing the Brussels Declaration indicated US support for a complete ban on APMs, this move in practice allowed the US to apply pressure on participants in order to influence their position. However, at the Brussels meeting, strong arm lobbying tactics by the US delegation, inviting other delegations to their hotel to press their position, was effectively countered by the ICBL briefing delegations going in and de-briefing them coming out.

Looking beyond the open model for participation, a clear division of labour can be discerned within the APMBC approach. In the run up to the Oslo negotiating conference, NGO activities in states with a tradition of civil society activism were combined with state-driven efforts to prepare for the negotiating conference. These were interlinked and coordinated with different organisations playing to their strengths. On a political level, the diverse cluster of actors in the Ottawa strand encouraged and pressured states beyond 'the committed' to join the regime. The practitioner experience within this cluster proved particularly effective in countering more minimalist positions that sought a nuanced outcome rather than an outright ban on APMs. The absence of such a diverse design cluster meant that APII could not transcend the knowledge base of its existing membership. A related cost of the narrow APII constituency was that it became easy for the APMBC cluster, with its strong advocacy base, to influence the political landscape through painting the other regime as a failure.

²³⁸ Price p.624.

3.4 Leadership

Both regime formation processes are characterised by influential clusters, intertwining states and NSAs. Oran Young's distinction between *structural*, *intellectual* and *entrepreneurial* leadership provides a useful way to cast into relief influential actors in landmine regime formation²³⁹ and to recognize similarities and distinctions between APII and APMBC regime formation. While the optic of leadership attributes influence to individual actors, the clustering of different leadership roles within and across stakeholder groups, it is argued, is critical to understanding these processes.

Structural leadership was provided in the Ottawa Process by Canada. While the Canadians were supported by the like-minded group, their structural leadership role is undisputed given the political risks uniquely taken by Axworthy and his officials as well as their initiative in partnering openly with the ICBL. Canada was also the only actor that could both bring other states into the like-minded group and mitigate, in concert with other states, the efforts by spoilers to derail or divert momentum from the Ottawa Process. Structural leadership in the APII framework was provided by the US although this role was pursued with the clear goal of preserving the status quo and promoting only incremental change. They were *the* spoiler in the APMBC process while at the same time seeking to demonstrate leadership in the international community on the landmine issue. Despite the efforts of the US to shape the outcome of the negotiating conference away from a complete ban, their intervention, somewhat counter-intuitively, actually proved helpful in achieving this result. The major changes sought by the US – and the heavy-handed way they went about achieving

²³⁹ Young in *International Organisation* 45(3) pp.281-308.

them – offered a stark ‘with us or against us’ choice to states. In the absence of this dynamic, the negotiating conference may well have become bogged down in discussions over points of detail. However, contrary to expectations, given the sensitive issues under discussion and the rapid nature of the process, the draft treaty actually became stronger rather than weaker through the course of the negotiations.²⁴⁰

If the intellectual content of the Ottawa Process was drawn from a number of sources – notably mine action practitioners and mine affected states – intellectual leadership came from the ICRC. The organisation’s structure and credibility was instrumental in converting many states to commit to an unconventional process of regime formation. A major distinction between the two regimes lies in the area of intellectual leadership. In the APMBC context this leadership was grounded in both IHL and mine action expertise. Beyond the ICRC, the capacities that were available to shape the APII regime were based on arms control and disarmament experience. This narrow vision, reinforced by constraining regime rules, did not permit for a focus on the realities of contemporary landmine use, their impact, and measures to address them.

Entrepreneurial leadership in the Ottawa Process was provided by the steering committee of the ICBL. It is particularly significant that this group moved beyond a ‘classical’ advocacy position of criticizing the behaviour of governments to coordinating a two-level campaign that effectively combined collaboration with like-minded states and a massive mobilization of national and international civil society organisations. Such an approach meant that different NGOs found reasons to support the campaign within their own core mandates: human rights or IHL, developmental,

²⁴⁰ Hubert (2000): p.26.

medical or public health perspectives; the process offered something for all these interest groups. National level ICBL priorities of raising public awareness and pressuring governments would then shift as closer cooperation was established with certain governments. By contrast, the formation of APII is characterised by an absence of entrepreneurial leadership. Within a CCW regime framework that had been established for fifteen years, no actor was willing or able to broker deals that would lead to transformational change. The strict rules governing participation of non-state actors obviated opportunities for such a role while encouraging these groups to seek creative, far reaching alternatives within the alternative Ottawa Process.

Analysis of stakeholder cluster within and across APII and the APMBC provides important new insights to landmine regime formation. The significance of the 'committed state' and NSA cluster to the APMBC is confirmed. However, a deeper analysis demonstrates that the intellectual leadership role of the ICRC was highly effective, if less visible in the literature, in building support beyond those already committed to the process. Agency dynamics across the two regimes also refine our understanding of important qualities of rigidity and flexibility in regime rules. APII regime rules that excluded civil society proved ineffective in practice, as was the case with the negotiation of the 1925 Gas Protocol. On the other hand, while self-selection by the like-minded was a defining characteristic of the Ottawa Process, decision-making was in fact highly coordinated and controlled within a much narrower group of actors. These insights thus add new layers to our understanding of regime formation but also point to challenging issues of implementation and effectiveness developed in Chapter 5. In particular, narrow intellectual leadership in the case of the APMBC and an apparently open process that displays tight control of decision

making by its entrepreneurial leadership, raise important questions on the ability of expert communities and mine affected states to influence implementation processes in both regimes.

4. The influence of norms on regime formation

The humanitarian objectives that underpin both APII and the APMBC means that understanding the influence of norms on processes of regime formation is particularly important. This strong normative content raises important research questions discussed in this section on the impact of norms in moving from issue emergence to regime formation. Supporters of the respective landmine regime frameworks tend to underline the distinctions between the two approaches. However, this section also considers common normative underpinnings that may demonstrate significant if less visible linkages between the regimes as well as in their nesting within the broader normative framework of IHL.

4.1 Regime nesting

The roots of specific measures to restrict the use of landmines within IHL can be traced back to initiatives begun in the 1950s. Both regimes draw on two customary principles of IHL that underpin the Geneva Conventions and which can be found in the earliest expressions of the laws of war: the prohibition on the use of weapons that are *indiscriminate* or which cause *unnecessary suffering* or *superfluous injury*.²⁴¹ Taking a longer term perspective is therefore important to contextualise the

²⁴¹ 1977 Additional Protocol I to the Geneva Conventions (Art. 35 [1 + 2] and Art. 51 [4 + 5]).

development of the two landmine regimes in relation to this historical perspective. The ICRC is thus significant in playing the role of a 'norm carrier' that enhances the integrity of both regimes by situating them through their involvement within the broader framework of IHL.

The 'umbrella' CCW treaty explicitly situates the landmine issue within a broader normative context that includes prohibitions or restrictions on a range of weapons that cause unnecessary suffering or superfluous injury. The APII regime is therefore an example of a concrete advance in IHL based on principles enshrined in the CCW such as responsibility for clearance, provision of technical information and protection of civilians. If the principles of indiscriminacy, superfluous injury and unnecessary suffering which underpin the CCW provide an important link to the broader corpus of IHL, they are of limited utility in their application to specific weapons. IHL does not provide a clear definition of the scope and application of these terms; as Kalshoven points out, these principles 'are not particularly suited to serve as yardsticks for the legality of a weapon.'²⁴² Thus even if provisions are derived from important IHL norms, this does not itself provide a basis for regime effectiveness. Consequently, this poses significant questions for the implementation phase as to the effectiveness of APII according to a definition that goes beyond the implementation of regime provisions to encompass the fulfillment of regime goals.

Beyond the broader normative framework of IHL, the APMBC is significant as the embodiment of an emerging norm stigmatising the use of APMs. The APMBC represents a specific acknowledgement that landmines are not an acceptable weapon

²⁴² Kalshoven, F. (1990): p.517.

of war. In the absence of criteria for the acceptability of landmines, a ban offers the only solution that clearly falls within the standard of customary IHL. The emergence of a campaign to ban APMs and its support by national governments is intrinsically linked to the perceived failure of the CCW, from a humanitarian perspective, to adequately meet this standard. According to Price, ‘acceptance by states that there was a crisis implied that action was necessary and the failure of past approaches narrowed the range of acceptable responses.’²⁴³ Once states internalised the fact that there was a humanitarian emergency – at the same time that the CCW had failed to adequately address it – the argument to achieve a complete ban was reinforced. This demonstrates a mutually reinforcing dynamic between the perceived failure of the APM process to address the humanitarian costs of these weapons and the increasingly compelling stigmatization narrative of the Ottawa Process. Indeed, the technical nature of the APM negotiations and its widely perceived failure to address humanitarian concerns conferred a morally ambiguous status on its supporters while serving to boost the norm-building dimension of the Ottawa Process given its focus on the humanitarian impact of APMs.

The perceived failure of APM to address the humanitarian impact of APMs had a tangible effect in boosting support among states for the APMB. The UK and France are the most conspicuous examples of militarily significant states that regarded APMs as a useful military capability but, despite the additional consideration of heavy pressure from the US, signed up to the ban. These cases thus highlight the highly political nature of the regime formation process. Following Price’s model of the two-level game, internal and external pressures combined to tip the calculus for many

²⁴³ Price p.631

states beyond the core APMBC constituency in favour of joining the regime. Common to domestic and international discourses was the need to be seen to be on the right side of a high profile humanitarian issue. Certainly, in the case of the APMBC, the rapid progress from identifying the need for a ‘mine ban’ treaty to forming the regime seems to fit the description of Finnemore and Sikkink’s ‘norm cascade’²⁴⁴ with many states feeling obliged to follow the example of others in joining the regime as ‘the right thing to do.’

The Ottawa Process isolates APMs as a weapon that is both unacceptable and which could be addressed by way of a ban. The campaign derived its strength by maintaining a single focus on this humanitarian imperative that would have been dispersed had this goal been diluted. The message of the Ottawa Process was therefore closely linked to its normative ‘pull.’ Ken Anderson, former Director of the Arms Division at Human Rights Watch, notes that ‘this utter moral and political clarity was an integral part of the campaign in reaching various publics.’²⁴⁵ Efforts by the Landmine Survivors Network (LSN) to include wording to assist victims in the draft treaty text was regarded by some ICBL members as a distraction from the overall goal of a ban. LSN was criticised for not going through the steering committee in pursuing its goal.²⁴⁶ While language was eventually included, this was largely due to the targeted efforts of LSN, the ICRC and Handicap International rather than as an ICBL campaign goal. However, this example raises an important distinction between humanitarianism and humanitarian norms as a regime formation mechanism. The cold-eyed realism of the ICBL leadership was demonstrated by its reluctance to

²⁴⁴ Finnemore and Sikkink (1998): p.7.

²⁴⁵ Anderson (2002)

²⁴⁶ White, J. and Rutherford, K. ‘The Role of the Landmine Survivors Network’; in Cameron, Lawson and Tomlin (1998): p.111.

include victim assistance provisions in the draft treaty text, despite compelling humanitarian arguments, because this might be opposed by certain states and therefore complicate the negotiating process. The norm entrepreneurship guiding the campaign was therefore not idealistic. It recognised both the utility of the anti-APM norm in compelling as many states as possible to join a regime centred around a ban on APMs as well as the countervailing costs of expanding the regime's scope and blurring this key message.

The timing of related initiatives was helpful in reinforcing the normative weight of the Ottawa Process. The landmark 1996 UNGA Resolution as well as the evident support for the ban movement by both famous figures and ordinary people in their thousands from all corners of the world generated momentum and contributed to a norm cascade that positively influenced the orientation of states towards the Ottawa Process. The tragic death of Diana, Princess of Wales in a car accident just before the Oslo conference greatly increased media attention on delegates due to her high profile support for a ban.²⁴⁷ Finally, the awarding of the Nobel Peace Prize jointly to the ICBL and its coordinator Jody Williams in October 1997 gave a boost to the drive for signatures between the conclusion of the negotiating conference and the subsequent signing ceremony in Ottawa. In particular, Japanese Foreign Minister Obuchi recognized the awarding of the Nobel prize as a significant factor in reconsidering Japanese policy to sign up to the APMBC.²⁴⁸

For Price, the commitment of mine affected states to the ban process signifies that 'unlike some international norms such as those embodied in human rights

²⁴⁷ Williams and Goose in Cameron, Lawson and Tomlin (1998): p.43.

instruments, the treaty has support where it is needed most – in countries where the pernicious effects of the now-deviant practice have been most prevalent.²⁴⁹ One related consequence of the APMBC regime formation process was the forging of links between governmental and civil society actors in the South. In the case of South Africa, Noel Stott, a member of the South African Campaign to Ban Landmines, describes the importance of ‘critical solidarity’ with the discourse of the South African government influenced by an internationalist concern to signal the country’s return to the international community by embracing this humanitarian norm.²⁵⁰ This provides a parallel with EU applicant states that were keen to be seen to embrace the anti-APM norm, even though for some landmine production remained a significant economic activity at the time. In both these cases the anti-APM norm gained support through tapping into a broader normative imperative to demonstrate responsible international behaviour.

Analysis of norms in regime formation lends considerable weight to the hypothesis that the nesting of APII and the APMBC within a wider IHL regime has a number of significant consequences. The characteristic of moral clarity led to a revised calculus for APMBC membership based on humanitarian rather than security or economic criteria. It also extended beyond IHL to encompass norms relating to state legitimacy by drawing on the need for states undergoing various forms of transition to demonstrate good international conduct. This point is also significant in highlighting a potential cleavage within the Ottawa core group. As made evident by different attitudes to the inclusion of victim assistance provisions, while the mission of the ICRC is to promote humanitarian goals, the ICRC uses this humanitarian imperative

²⁴⁸ Williams and Goose in Cameron, Lawson and Tomlin (1998): p.46.

to achieve its policy goals. This fundamental divergence may have consequences for implementation.

5. Conclusions

This chapter contributes to our overall research aims through a systematic analysis of the multi-actor (involving international, state and non-state actors) and multi-level (reflecting the interplay of domestic and international concerns) processes that led to the development of APII and the APMBC. Investigating our two main hypotheses is intended to add to our knowledge of complex, fluctuating transnational dynamics that shape the design, implementation and effectiveness of the landmine regimes. This concluding section identifies new insights and contributions to knowledge through examining relevant research questions in relation to landmine regime formation processes.

Our analysis contributes to developing our main hypothesis on landmine regime nesting and interplay through demonstrating the significance of regime nesting to the emergence of APII. The regime demonstrates the progress states were prepared to make in 1995/96 on the restrictions they had previously agreed in 1980. However, it also represents a chain of argumentation within the field of IHL that was launched as early as the 1950s. In contrast, even if this thesis demonstrates important parallels to the wider IHL discourse that are not taken into account in the extant literature, the dynamic behind the Ottawa Process is distinct from conventional processes of IHL regime development in several important ways. The intensely political nature of the

²⁴⁹ Price (1998): p.640.

APMBC regime formation process is shown by the fluidity of positions for many states in the face of a combination of domestic and international pressure to be on the ‘right side’ of the issue through joining the regime. Finnemore and Sikkink’s concept of a ‘norm bandwagon’ as a spur to regime formation²⁵¹ provides a particularly useful concept to better understand reasons behind the different APII and APMBC trajectories from issue emergence to regime formation. In contrast to the former, many states involved in the Ottawa Process were compelled to revisit the political calculus for regime membership according to humanitarian rather than security or economic criteria.

This chapter provide important insights that demonstrate the significance of stakeholder clustering dynamics for landmine regime formation. The active engagement of representatives from mine affected states and mine action practitioner communities was particularly significant in terms of the process and substance of APMBC regime formation. The former, mobilised both at state level and through national civil society organisations, gave the campaign its global character and contributed significantly to its legitimacy. Mine action expertise was particularly influential in providing substantive inputs that effectively countered dissenting arguments in favour of the continued use of APMs. In contrast, the absence of these stakeholder groups in APII regime design points to an important disjunction between the development of the regime its the ability to draw on the knowledge of mine action expert communities. Contributions from practitioners and mine affected states thus constitute key variables in accounting for differences between APII and APMBC regime design.

²⁵⁰ Stott, N. ‘The South African Campaign’; in Cameron, Lawson and Tomlin (1998): p.73.

Important secondary research questions consider how different approaches to regime design influence landmine regime effectiveness. Contrary to a characteristic of successful regimes in other issue areas, *inflexibility* in refusing to dilute the core ban on APMs has been decisive in maximising political support for the APMBC. Rather than seeking compromise solutions, the integrity of the anti-APM message was thus a key factor in shaping state behaviour. This chapter demonstrates that the absence of flexibility in terms of participation and the consensus decision-making criterion within the CCW – while providing a level of confidence for militarily significant states to engage in the regime – also has costs for regime effectiveness. If civil society actors are *neglected*, they are also *conflated* by the regime. Our analysis points to gaps in intellectual and entrepreneurial leadership that may constrain regime learning if carried into the implementation phase. In contrast, the Ottawa Process benefited from a unique combination of structural, intellectual and entrepreneurial leadership which strongly influenced the political dynamics of the regime formation process. Thus, the influence of norms represents a key distinction between the two regimes. APII attracted a nucleus of participating states while the Ottawa Process transcended such a fixed grouping by exploiting ‘push’ and ‘pull’ dynamics that drew on the strength of the anti-APM norm to gain the support of a broad constituency of states.

This chapter shows how the juxtaposition of the APMBC with APII was a highly successful tactic in promoting the Ottawa brand. However, both the massive early support for the APMBC regime and the lack of amendments to the draft treaty during the negotiating conference contribute insights on the interplay of political and

²⁵¹ Finnemore and Sikkink (May 15-16 1998): p.7.

technical considerations for regime effectiveness. These dynamics suggest that states may not have paid sufficient attention to the implications of their obligations. Our analysis of the US role – APMBC ‘spoiler’ but single largest global mine action donor – contributes to addressing our research question on the need to understand the level of synergies between regime and mine action objectives. This highlights that APMBC membership is not a pre requisite for playing a positive international role in mine action. Research questions related to assuming the costs of membership and the potential disjunction between regime and mine action goals thus present key foci for Chapter 5.

This chapter develops new insights into landmine regime formation processes. The roles played by different stakeholder groups and the limitations imposed by regime rules represent key considerations in understanding the relationship between design, implementation and effectiveness across the APII and APMBC regimes. While both regimes draw on a common normative framework as IHL treaties, the different ways that the regime formation processes draw on these norms represents a key distinguishing feature. Chapter 5 builds on our analysis of the emergence and design of the landmine regimes in order to apply these insights to the implementation and effectiveness of APII and the APMBC.

Chapter 5

Implementation and Effectiveness of the Landmine Regimes

1. Introduction

APII entered into force on 3 December 1998 and was followed by the APMBC on 1 March 1999. In both cases, sufficient time has passed since regime formation and entry into force to construct a meaningful analysis of the implementation and effectiveness of the two regimes. Building on insights into regime formation processes developed in Chapter 4, this chapter contributes to overall thesis objectives through exploring our main hypothesis that ties landmine regime effectiveness to the relationship between design and implementation factors. This chapter therefore considers how different aspects of regime design play out in implementation.

In order to inform our second main hypothesis on regime nesting and interplay dynamics, consideration of regime and mine action discourses within a single analytical framework is critical. Resource mobilisation, donor coordination and concrete contributions to the various ‘pillars’²⁵² of mine action all, in qualitatively different ways, represent mine action related objectives of the two regimes. Linking analysis of the regimes as IHL instruments with their relationship to various functional sectors of mine action permits us to further elaborate how effectively the regimes reflect mine action concerns and priorities. This chapter analyses efforts within regime implementation processes to support mine action – where stakeholders and approaches overlap, intersect or duplicate – in order to deepen our knowledge of

the effectiveness of the two regimes. This analysis is directly linked to Chapters 6 and 7 which focus specifically on effectiveness in relation to humanitarian demining and stockpile destruction.

Gaps in the existing literature highlight a very limited understanding of the *quality* of landmine regime implementation; regime compliance is frequently conflated with effectiveness. As in the regime formation phase, implementation is characterised by a lack of source material in the case of APII and a plethora of often uncritical narratives on the APMBC. There is a significant parallel literature developed by practitioners on approaches, good practice and lessons learned in the field of mine action. However, work on regime implementation and mine action research have not been drawn together with the consequence that meaningful findings on the effectiveness of the regimes have failed to emerge. As Filippino and Paterson note:

The gap between social scientists and practitioners is unclear. For example, the human toll exacted by landmines and UXO was the principal impetus behind the international movement to ban landmines. But what do we know about the contributions made by clearance, marking and mine awareness to a reduction in the number of deaths and disabilities? We know very little, at least in quantitative terms.²⁵³

This chapter therefore addresses research questions that seek to understand potential disjunctions between landmine regime implementation and mine action payoffs. This contributes to a transversal research objective that attempts to identify the extent to which the regimes are making a difference in efforts to alleviate the *humanitarian* impact of these weapons. Addressing regime effectiveness in its humanitarian

²⁵² The 5 pillars of mine action are: mine risk education, victim assistance, humanitarian demining, stockpile destruction and advocacy. International Mine Action Standards (IMAS) 04.10.

dimension also builds on Chapter 3's focus on historical IHL case studies, permitting a more nuanced comparative analysis of the challenges of implementing APII and the APMBC and how far this process draws on regime nesting dynamics within a wider IHL context. Finally, the complex technical and political requirements of implementing mine action related commitments at the national level provides an important contribution to research questions related to the significance of learning for regime effectiveness.

This chapter builds on Chapter 4 by considering the significance of actors involved in regime formation to the landmine regime implementation processes. Particular emphasis is placed on stakeholder clustering and the existence of constant or fluctuating clusters of actors across design and implementation phases. The relationship between policy, agenda setting and programming roles as well as the influence of mine action practitioners and mine affected states in these areas are key considerations. Some actors, such as the ICBL in the context of the APMBC, are wholly situated within the regime. Others have been significantly assimilated into the implementation processes. A much broader category of state and non-state actors contribute to implementation either across the two regimes or favouring one over the other. In order to take into account all actors that play a part in regime implementation, it is therefore essential to analyse the roles played by actors outside the regimes *sensu stricto*, including non-members as well as groups not directly addressed by the treaties.

²⁵³ Filippino, E.M. and Paterson, T., 'Mine Action Lessons and Challenges: Is Mine Action Making a DifferenceOr Avoiding the Question'; *Journal of Mine Action* 9.1 (July 2005).

This chapter further elaborates our examination of landmine regime design, implementation and effectiveness through analysing the implementation and effectiveness of APII and the APMBC. The nature and utility of formal and informal regime implementation mechanisms is assessed and challenges of voluntary and involuntary defection are considered. Regime effectiveness is then analysed under the headings of *resources*, *political will* and *humanitarian impact*. This chapter concludes by setting out key insights on the implementation and effectiveness of the landmine regimes from a mine action perspective. This analysis is further developed in the subsequent chapters through focussing in greater depth on humanitarian demining and stockpile destruction.

2. Understanding landmine regime implementation

This section systematically analyses landmine regime implementation. Our approach considers how far regime rules are realistic and shaped by a clear understanding of the measures required to implement them. Verification mechanisms provide an important means for regimes to understand implementation processes and recognise the need to adapt in order to become more effective. This section assesses the role of formal and informal mechanisms established by the regime in order to support implementation. It then analyses key actors in regime implementation, in particular the impact of stakeholder clustering and how this relates to the regime design phase.

2.1 Relating compliance to design: formal monitoring and verification

Both regimes hold annual meetings and require reporting from regime members to demonstrate progress on implementation issues. The APMBC framework has established a programme of regular intersessional meetings. Within the CCW framework, an experts group has a comparable mandate although on a much smaller scale. Outside of the formal regime framework various state and non-state actors have developed means to support regime implementation. One significant example is the Implementation Support Unit (ISU) created by the GICHD. Another is the *Landmine Monitor*, an annual publication coordinated by the ICBL, which represents the most significant compliance monitoring mechanism under the APMBC. The landmine regimes include a number of formal verification mechanisms summarised below:

Implementation Mechanism	APII	APMBC
Meetings of Regime Members	Annual	Annual
Work Programme	Yes	Yes
Review Conference	As agreed by majority	Every 5 years
Reporting	Annual	Annual
Secretariat	No ²⁵⁴	Yes
Compliance monitoring	No	Yes

There is no formal body responsible for compliance monitoring within either landmine regime. This responsibility rests firmly with individual states parties. In both APII and the APMBC, regime members are accountable through annual reports. Reporting is thus intended to provide a catalyst for action within the regimes to address implementation challenges. Regime members must submit detailed

²⁵⁴ Although the APII regime does not have its own secretariat, at the 3rd CCW Review Conference, held in November 2008, elements of such a role were given to GICHD through a mandate to organise a new CCW sponsorship programme in parallel to a similar role on behalf of the APMBC.

information on progress in meeting mine action related implementation goals. Article 13 of APII requires reporting on mine clearance, national implementing legislation, updates on technical information exchange and other cooperation as well as details of landmine production, stockpiling and use. In the case of the APMBC, self-reporting by states according to the requirements of Article 7 represents the key APMBC monitoring mechanism. Providing information on the location of mined areas in order to support humanitarian demining activities forms part of this obligation.

Annual meetings of states parties to the APMBC provide a forum for discussion on implementation issues. These are complemented by a programme of intersessional meetings attended by states (regime members and non-members), the UN, ICRC, ICBL and others. The intersessional work programme was established in 1999 with individual ‘Standing Committees’ on victim assistance and socio-economic reintegration, mine clearance, MRE and mine action technologies, stockpile destruction, and the general status and operation of the treaty. Intersessional meetings have become a major forum to discuss implementation of treaty obligations. However, they were reduced in frequency in 2005 following a decision at the first APMBC Review Conference.²⁵⁵ Despite an approach that links implementation to the various mine action pillars, they have been regarded by many mine action practitioners as more significant for awareness-raising among the diplomatic community than for bringing tangible benefits to mine action.

Due to pressure generated through APMBC intersessional meetings as well as via the ICBL and *Landmine Monitor*, the level of Article 7 reporting has increased since the

treaty entered into force.²⁵⁶ Statistics show a year on year increase in reporting between 2001-2007. However, a more insightful indication of the commitment of states parties lies in the statistics for regime members providing annual updates to these reports. The compliance rate for 2007 is 59% under this criterion, representing a trend of declining responses that has grown each year since 2003. Moreover, of the 59 states parties not providing annual updates in 2007, fewer than 5 came from the developed world.²⁵⁷ This provides an indication that transparency and accountability are weakest in those states most affected by landmines.

The APII framework is notable since reporting on compliance measures is not linked to a monitoring mechanism. In contrast, the APMBC provides for FFMs in order to investigate allegations of non-compliance. However, the modalities found in the treaty for these missions are lifted almost verbatim from the text of the CWC. As discussed in Chapter 4, the regime design process did not result in significant changes to an initial treaty draft that leant heavily on antecedents such as the CWC. Verification provisions do not therefore focus on the specific characteristics of APMs. A lack of practitioner input in this aspect of the design phase thus has direct consequences on the effectiveness of the regime approach to verification. In particular, the regime fails to take into account the reality that while large scale mine use may be easily identifiable, not least as a result of the particular nature of the injuries provoked by these weapons, landmine stockpiles can be relatively easily hidden. A significant challenge to verifying compliance is therefore unaddressed.

²⁵⁵ Final Report of the First Review Conference of the States Parties to the Convention on the prohibition of the Use, Stockpiling, production and Transfer of APMs and on their Destruction; *Nairobi Action Plan 2005-2009* APLC/CONF/2004/2005; Nairobi, 3 December 2004.

²⁵⁶ From an initial compliance rate of 63% in 2001, subsequent annual rates were 75%, 88%, 91%, 96%, 96% and 97% in 2007. *Landmine Monitor* (2008): p.12.

²⁵⁷ *Landmine Monitor* (2008): p.12.

The regime has not put practical measures in place to give ‘teeth’ to its verification mechanism. Within the UN system, no standing secretariat has been established nor has provision been made for the conduct of such missions. Moreover, the regime does not have established procedures in place should an FFM be requested. Despite an extensive intersessional work programme, the Article 8 mechanism has thus been characterised as ‘modest’ from a disarmament perspective.²⁵⁸ Beyond a lack of practitioner influence on regime design, the lack of emphasis on verification may be explained by an evident reluctance among regime members to ‘break from the pack’ in political terms. An FFM would be initiated on the basis of an accusation of non-compliance by one state party against another. However, regime members have shown no willingness since entry into force of the regime to apply this mechanism. The ICBL maintains that ‘a mechanism or body is needed to facilitate attempts to address compliance concerns short of formally invoking Article 8.’²⁵⁹ In contrast, many states, including core group members, oppose such new mechanisms on the basis that regime members should ‘be prepared to respond to all serious allegations of non-compliance within the core provisions of Article 1.’²⁶⁰

FFMs provide a specific example of a broader tension within the APMBC regime between member states seeking to maintain authority over the implementation process and the efforts of civil society to proactively enforce compliance. Implementation thus presents distinct challenges of political will to those evident in the regime formation

²⁵⁸ Findlay, T., ‘Verification of the Ottawa Convention: Workable Hybrid or Fatal Compromise?’; *Disarmament Forum* 4, 1999.

²⁵⁹ ICBL ‘Letter to States Parties to the MBT regarding the Intersessional Standing Committee Meetings in May 2001’; at www.icbl.org/SC/y2/letter_to_statepart_May_2001.php accessed 7 July 2003.

phase. Despite evidence of implementation problems highlighted through compliance monitoring, the regime's verification mechanism has not been engaged. The regime has failed to lower the political transaction costs of addressing overtly the sensitive issue of defection.

Tensions between states parties and other regime stakeholders are less evident in the APII regime which has no effective compliance monitoring provisions. Adopting compliance monitoring procedures for APII along the lines of Article 8 of the APMBC has been raised as both practically useful and a means to facilitate implementation at the national level.²⁶¹ It would potentially build synergies and provide for economies of scale between the two regimes. However, while offering evident returns in terms of supporting implementation, the political barrier to implementing compliance monitoring provisions would be even higher than in the APMBC. Within a regime framework governed by consensus, including states parties whose rejection of the APMBC demonstrates a high concern for national security issues, agreement on measures for more intrusive verification is unrealistic.

2.2 *Filling the gaps: informal compliance monitoring*

Formal implementation mechanisms including review conferences, annual meetings of states parties and intersessional work programmes are intended to permit the flow of relevant information and highlight where implementation support should be focused or redirected. The provision of accurate and timely information thus forms an important nexus between a common requirement for the regimes and a means to

²⁶⁰ 'Austrian Intervention during the Standing Committee on the General Status and Operation of the while Convention', Statement by a representative of the Government of Austria, Geneva, 31 May 2002.

support the five pillars of mine action. On different levels, both regimes seek to enhance knowledge and information flows at national and international levels on landmines and their effects in order to improve the work of mine action policy makers and practitioners. While not envisaged in the design of either regime, informal civil society monitoring and verification has become an integral part of the APMBC regime implementation process and has also generated important effects on APII implementation.

Landmine Monitor describes its role as ‘an attempt by civil society to hold governments accountable to the obligations they have taken on with respect to anti-personnel mines.’²⁶² Since 1999, its annual reports have provided the major source of information on APMBC compliance issues. It comprises a global reporting network, a central database and the annual publication. Beyond national reports, the publication includes updates on new signatories, areas of special concern and new developments. Analysis is drawn from a wide network of in-country researchers, augmented by external experts. By its own admission, the quality of the data in *Landmine Monitor* has been variable with discrepancies from country to country depending on individual researchers although there has been a marked improvement over time. 15 donor governments, the European Commission and the United Nations²⁶³ provide funding that allows for the research, publication and wide dissemination of the report. This support allows for wide penetration of the report’s findings: the publication is distributed at no cost to government officials and policy makers and is fully accessible online.

²⁶¹ Mathews (December 2001): p.1007.

²⁶² Landmine Monitor 2006 ‘About Landmine Monitor’.

This civil society driven initiative fills an evident gap in the treaty framework. Information brought together within *Landmine Monitor* has proved useful in permitting mine action donors to identify and support states at risk of involuntary defection. It is also significant that governments recognise the need for this mechanism and are prepared to support it with resources. This support base has been constant despite the fact that entries have been critical of aspects of national compliance by the concerned donors. This points to an important advantage of informal verification; it is easier to highlight sensitive implementation issues through this mechanism than through invoking the formal apparatus of the regime.

Landmine Monitor offers a norms as opposed to sanctions-based approach to compliance monitoring. Naming and shaming has led to clarifications within the framework of the regime and provided advance warning where regime members appear unlikely to meet obligations. Increased levels of transparency through this informal mechanism has therefore generated a level of political pressure within the regime that has not been realised through formal regime mechanisms. However, there is an important conduit between formal and informal implementation support processes. The ICBL provides oral and written input to intersessional Standing Committee meetings and annual states parties meetings. Consequently, whereas states are reluctant to criticise other states, the ICBL draws on the analysis generated by *Landmine Monitor* as an empirical basis for targeted advocacy. The task of focusing attention on states parties that risk failing to meet compliance deadlines is thus not a sensitive state-to-state transaction.

²⁶³ Australia, Austria, Belgium, Canada, Czech Republic, France, Germany, Ireland, Luxembourg, New

As in the Ottawa strand, both states and multilateral organisations could play an important role in facilitating implementation of APII at national level. However, informal implementation support mechanisms have not been replicated in the APII regime in order to supplement formal regime mechanisms. More broadly, civil society has not been permitted space to contribute to regime implementation so gaps in regime design, such as the absence of verification measures, are not directly addressed by informal means. However, although barred from direct participation in the regime by CCW rules of procedure, the ICBL also participates in the work of the APII group of governmental experts. It is important to recognise that *Landmine Monitor* does exert an influence on APII regime implementation. Through highlighting APII compliance issues to a wider international audience, this has resulted in a positive knock-on effect by encouraging greater transparency within the framework of the regime. There is also significant scope for civil society to promote universalisation, offering an important complement to the APMBC given resistance to the regime in some regions. These entry points for civil society engagement in the closed APII implementation process demonstrate that – as in regime formation – formal rules are not effective in preventing civil society from playing a proactive role in implementation.

2.3 *Key regime actors*

This sub-section addresses important research questions that seek to understand the

Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom, the European Commission, UNDP and UNICEF.

roles of different actors in landmine regime implementation. The roles of mine action practitioners and mine affected states are considered in order to critically assess both the knowledge base of implementers and the ownership of the process by those most directly affected by landmines. Building on our analysis in the previous chapter, how different actors interact in the implementation phase is analysed in order to further elaborate the hypothesis that stakeholder clustering is a key element in refining our understanding of landmine regime effectiveness.

2.3.1 Expertise, ownership and regime implementation

From a mine action perspective, APMBC regime design was strongly influenced by the critical input of mine action practitioners and experience drawn from various mine affected states. On the other hand, the APII regime relied on design input from arms control and disarmament experts but includes in its membership many significant landmine users and producers. It is important to acknowledge these very different influences in considering how, explicitly and implicitly, the regimes engage with and address mine action concerns in their implementation. If broad participation was influential during regime formation in providing legitimacy and expertise to the process, substantive commitment becomes even more essential in the implementation phase. In supporting mine action, the most important implementation actors are stakeholders from mine affected countries. While largely ignored in the context of APII, these actors are made directly responsible for APMBC regime implementation.

The APMBC has proved flexible in incorporating new mechanisms to support regime implementation. Creating a secretariat was not initially foreseen based on the

argument that resources ‘should be committed to the field where they were most needed.’²⁶⁴ However, the logic behind such a capacity became evident as requests from regime members for support became increasingly frequent. At the meeting of states parties held in Managua in 2001 an offer from the GICHD to host a secretariat – the ISU – to facilitate the implementation process was accepted. The ISU became operational in June 2002, works directly with the co-Chairs and co-Rapporteurs of the intersessional committees, facilitates meetings of states parties, contributes to strategic thinking and along with the ‘Sponsorship Group’ of interested states parties seeks full participation of mine affected states.

Through housing the ISU, the GICHD has assumed the de facto secretariat function for the APMBC. Given that the majority of GICHD staff are technical experts involved in mine action research and operational activities, co-location offers potentially important synergies through regime learning. This represents an important evolution from an organisation supporting mine action through studies, evaluation work and operational assistance to becoming an integral part of the regime. At the 3rd CCW Review Conference in November 2006, the GICHD was given responsibility for a new CCW sponsorship programme, paralleling its role under the APMBC. While many actors within each regime have shown resistance to cooperation, this combining of secretariat roles represents a structural first step towards developing greater synergies and cost benefits.

The ICBL benefits from NGO status while being fully integrated within the APMBC regime. It has a unique place in the (semi-autobiographical) APMBC genesis story.

²⁶⁴ Maslen (2004): p.71.

However, the transition from regime formation to implementation has placed new challenges on the organisation, requiring a partial transition away from its advocacy roots. Advocacy remains a priority, both in supporting universalisation and in its opposition to the APII regime. But a central challenge, epitomised by its responsibility for Landmine Monitor, has been the shift from activism to a research orientation. This difficult transition is exemplified by Landmine Monitor since ‘the political activism that drove the campaign from its early beginnings is not necessarily compatible with the research and documentation demanded by a monitoring effort.’²⁶⁵ The composition of the Landmine Monitor network is significant. By giving a voice to local actors, analysis is grounded in domestic circumstances. However the lack of research experience in the ICBL leadership as well as its national organisations is evident. This ongoing tension is reflected in the quality of some of the contributions. Although based on the existing activist network, there has therefore been a conscious shift to developing a network of in-country researchers.

The partial shift of the ICBL from entrepreneurial leadership to seeking to play an intellectual leadership role is significant. It demonstrates a tension in the implementation process. As elaborated below, practitioner expertise is not effectively captured within the regime. Important consequences can be identified for regime effectiveness given the highly influential role of the ICBL in APMBC regime implementation. First, implementation challenges related to mine action are not addressed. Relatedly, there is an evident tendency to ‘revert to type’ and engage in advocacy targeting non-members rather than focusing on regime challenges beyond universalisation.

²⁶⁵ Kjellman, K.E. ‘Norms, Persuasion and Practice: *Landmine Monitor* and Civil Society’; in

2.3.2 Stakeholder clustering in regime implementation

Chapter 4 demonstrates the significance of stakeholder clustering to the two processes of landmine regime formation, emphasising the range of influential sub-state and international actors that play a decisive role in shaping their effectiveness. How these actors are linked within and across regimes raises important questions if, as argued by Harald Muller, the behaviour of actors is more likely to be influenced where regimes and their participants are ‘networked.’²⁶⁶ This concept is particularly relevant in the context of mine action where decisions taken at an international level seek to achieve an impact on the level of communities and individuals. It also recognises that alongside states a wide range of international as well as sub-state actors play a major part in implementing the regimes’ provisions. This is significant because the involvement (or non-involvement) of different actors can provoke consequences beyond the objectives they were set up to achieve. This may result from altering actors’ perceptions of each other or deepening understanding of a particular issue with consequences that reach into broader policy areas. In particular, the concept of regime networking seems appropriate to the Ottawa Process given that it is identified with globalising trends through its linkage of an international campaign bringing governments, advocates and mine action experts closer together with the ability to give a voice to local mine action campaigners around the world.

The co-chairing and co-rapporteur approach to the APMBC intersessional meetings provides a mechanism to cluster actors by seeking to ensure that both donors

Harpviken (2004): p.182.

and affected states are engaged in implementation. A sponsorship programme made possible by voluntary contributions has enabled representatives of states parties needing financial assistance to attend and participate in various APMBC meetings.²⁶⁷ However, there is an important distinction that is not acknowledged within the regime between giving a voice to different groups and offering them a genuine role in decision making. As Beier points out ‘the Achilles heel of the more optimistic renderings of global civil society lies in the apparent assumption that the formal right to speak is one with the practical ability to raise a voice.’²⁶⁸ It is equally important to consider how implementation clusters offer opportunities for heightened cooperation, coordination, the development of synergies and for critical reflection on effectiveness. In this respect, Brinkert acknowledges a potentially counter-productive divergence between states parties focus on realising the underpinning humanitarian goals of the regime and the ICBL’s priorities on compliance, the conduct of non-signatories, and applicability of the treaty to other weapons.²⁶⁹

The distinction between representation and influence is highlighted in the APII regime. Echoing the APMBC approach, the 2005 meeting of CCW states parties decided on the principle of ‘equitable geographical rotation’ among regional groups when selecting the Presidency for future review conferences.²⁷⁰ Although an important principle, limited developing world participation in the regime means that this is more symbolic than representative of a genuinely participative approach. Indeed, at the 3rd CCW Review Conference between 7-17 November 2006, the

²⁶⁶ Levy, Young & Zurn (1995): p.279.

²⁶⁷ Nellen, S., ‘Lessons from the Implementation of the Anti-Personnel Mine Ban Convention’; *Disarmament Forum* 1 (2005): pp.66-67.

²⁶⁸ Beier in Harpviken (2004) : p.26.

²⁶⁹ Brinkert in Harpviken (2004): p.14.

²⁷⁰ CCW/MSP/2005/2 para 38.

President was French and of the ten Vice-Presidents, none came from severely mine affected countries.²⁷¹ This weakness was at least recognised in the final conference report, which emphasised the need to seek broader participation from mine-affected states.

In a nod to the Ottawa Process, it was agreed to develop a sponsorship programme to allow representatives from developing countries to attend CCW meetings. However, there is only a tenuous relationship between regime provisions and work to reduce the threat to civilians posed by these weapons in mine affected countries. The practical benefits of such a programme are therefore questionable in relation to the restrictions-based approach of the regime. An important conclusion is that the effectiveness of emulation effects in implementation is strongly conditioned by design factors. Despite the seeming importance of demonstrating broad ownership of the implementation process, mine affected states are not a key target group for APII regime implementation regardless of efforts to increase their presence in this cluster. It is also significant that specialist mine action organisations have been denied full admission to successive meetings of APII states parties, representing a loss of potential expertise. In the case of the 2001 Review Conference, while specialist NGOs provided expertise in informal discussions and at three committee meetings, they were excluded from the negotiations and on the objection of one state party were even excluded from meetings of the preparatory committee for the conference.²⁷²

²⁷¹ Vice-presidents were nominated from Bulgaria, China, Cuba, the Czech Republic, Germany, Japan, Morocco, the Philippines, Poland and Switzerland.

²⁷² Lloyd, R., 'Strengthening the Inhumane Weapons Convention: Second Review Conference of the Convention on Certain Conventional Weapons'; *ISIS Policy Paper on Qualitative Arms Control* No.2. (December 2001). Available at www.isisuk.demon.co.uk/0811/isis/uk/regpapers/no02_paper.html

In order to develop a more nuanced understanding of the landmine regime implementation cluster, it is important to consider Price's distinction between the transnational coalition coalescing around the issue of a landmine ban from an epistemic community:

Because the organizers are not experts to whom governments turn for knowledge in times of uncertainty but rather are better seen as moral entrepreneurs...their influence derives less from the independent effects of authoritative claims of scientific knowledge than from their ability to successfully engage the policy process and engage in moral proselytising through persuasion.²⁷³

The distinction between experts and entrepreneurs is significant because achieving the humanitarian goals of the APMBC requires that the moral entrepreneurship which drove regime formation be combined with lessons drawn from a community of practice grounded in mine action experience. There *is* a nascent networking of expertise in humanitarian demining that, if harnessed, would constitute a genuine epistemic community. One example is the IMAS Review Board established to oversee the review process for the international mine action standards (IMAS). Chaired by UNMAS, its membership includes technical representatives of donors, commercial demining companies, national representatives of mine-affected states, national and international NGOs and individual specialists.²⁷⁴ The UN has played a significant role in bringing together mine action stakeholders into a 'network of networks' through its Electronic Mine Information Network (E-MINE) that attempts to link relevant UN bodies, academic institutions, commercial companies, international NGOs and

²⁷³ Price (Summer 1998): p.620.

²⁷⁴The composition of the board, minutes of its meetings, work plan and outputs are available on a website that also houses the updated IMAS. See: www.mineactionstandards.org

international organisations.²⁷⁵ Online discussion networks more specific to technical aspects of mine action have developed where mine action professionals share knowledge and deal with problems faced in their day-to-day work.²⁷⁶

However, an epistemic community only exists if its knowledge is operationalised. UNMAS has attempted to enhance the relationship between its mine action work and APMBC implementation through creating the post of treaty implementation officer in 2001. This position has increased transparency and information-sharing on UN mine action programmes, resulting in a clearer picture of national APMBC implementation measures and their impact. UNMAS has also been involved in advocacy efforts on behalf of the regime in Asia and the Middle East and prepared a template to support national planning processes. The role of UNMAS is as a convening mechanism for other mine action stakeholders. While there is value in outreach activities to various constituencies that result in increased transparency, there is no mechanism for expertise from the mine action practitioner community to feed directly into the regime implementation process. lacuna has not been identified in the extant regime literature.

This section presents a number of important findings for landmine regime implementation. In particular, while acknowledging mechanisms and actors highlighted in the existing literature involved in implementation within and across the two regimes, the lack of both tools and capacity to address implementation challenges are identified as an important deficiency. The absence of formal verification mechanisms inhibits regime learning. The inability to include such provisions tailored

²⁷⁵ www.mineaction.org

²⁷⁶ Examples include the MgM network established by German mine clearance organisation *Menschen Gegen Minen* (People Against Landmines) at www.mgm.org/e/index.htm and the Inter-Galactic EOD Forum moderated by mine action expert Andy Smith at <http://groups.google.com/group/igeod?hl=eng>

to mine action requirements represents a weakness in the design phase that is compounded by the absence of practitioner experience within the implementation cluster. Our analysis of leadership roles within the APMBC regime also identifies the challenge that significant responsibility rests with one entity – the ICBL – whose characteristic as an entrepreneurial leader poses particular dilemmas in the implementation phase. I demonstrate that issues of leadership in regime implementation are highly relevant in conjunction with the absence of formal verification mechanisms. Year on year decreases in levels of annual reporting suggests that the political will instrumental to the regime formation phase is now declining without any response from the regime. The absence of FFMs despite evidence of non-compliance from civil society monitoring further reinforces the finding that political will a qualitatively different challenge in implementation.

3. Analysing landmine regime effectiveness

This section addresses the effectiveness of the two landmine regimes in relation to mine action. It applies a framework for regime effectiveness that incorporates resource, political will and humanitarian dimensions. It builds on new insights into landmine regime implementation developed in section 3 by focusing on implementation challenges are from the perspective of voluntary and involuntary defection. More nuanced insights are developed through differentiating levels of compliance from the effectiveness of the regimes in addressing the challenges they are intended to meet. This section thus contributes to answering primary research questions on whether compliance with regime rules actually produces the desired result of reducing the suffering to individuals and communities caused by these weapons.

3.1 *Voluntary and involuntary defection*

Even where regime rules are unambiguous, implementation challenges may be particularly acute for states that lack the human, material or technological resources to fulfil regime obligations. Regimes must therefore address the risk of what Richard Putnam terms ‘involuntary defection’²⁷⁷ where commitments are not met despite the requisite political will and clarity over obligations. If regimes are unresponsive to the risk of involuntary defection then effectiveness will be undermined through failing to recognise the limitations of its members to meet their obligations or to channel assistance from other actors. States joining regimes for political reasons may also voluntarily defect from obligations when they are unwilling to implement regime commitments in practice. Certainly, Chapter 4 highlights a norm cascade in the regime formation phase that, if providing a strong push factor in favour of APMBC membership, also had the consequence of underplaying the costs of regime obligations. This risk would seem to be particularly elevated in the case of mine action which combines high costs and the use of advanced technologies with the location of the work in predominantly developing states. How regime members are assisted by other stakeholders in a position to do so, as required under both treaty regimes, is thus particularly important since mine affected states are particularly vulnerable to involuntary defection.

²⁷⁷ Putnam (1988): pp. 427-60.

By failing to integrate obligations into domestic law, regimes lose the strength given by what Muller terms ‘legal and constitutional reflexivity.’²⁷⁸ Consequently, if obligations are not translated to national level laws and government policies then prospects for successful implementation are low. A study on the development of national mine action legislation²⁷⁹ by the GICHD which examined 17 mine affected states highlights a number of significant potential benefits from the development of such legislation. These include improved coordination within government and with international actors, better accreditation procedures as well as increased transparency and accountability. Significant benefits demonstrated in the case of Afghanistan have included reinforced coordination between mine action and other development sectors; greater control over mine action actors; improved accreditation and safety, improved transparency and coordination; and, better accountability to donors. Conversely, failure to embed regime commitments in domestic laws and structures erodes donor confidence, undermines mine action programmes and has negative consequences at the national level through public scrutiny.

Colombia is the only APMBC state party to date that has consolidated a single instrument for national mine action legislation, incorporating all aspects of APMBC implementation. South Africa represents an important example of a state party voluntarily exceeding its obligations by providing in its national implementing legislation for the appointment of domestic inspectors to conduct verification activities and facilitate international FFMs.²⁸⁰ More broadly, only 49 of 152 states

²⁷⁸ Muller, H. ‘The Internalization of Principles, Norms, and Rules by Governments: The case of Security Regimes’; in Rittberger (1993): p.386.

²⁷⁹ GICHD, (2004) *A Study of the Development of Indigenous Mine Action Legislation*. Available at: www.gichd.ch/fileadmin/pdf/publicatios/Legislation_study.pdf

²⁸⁰ Grobbelaar (2003): p.134.

parties passed new domestic laws to implement the provisions of the APMBC.²⁸¹ This implies a willingness by certain states to join without addressing the practical consequences of regime membership at the national level. The GICHD study found that the main reason for states developing such legislation was to fulfil the terms of APMBC membership and that in some cases these measures were directly linked to implementation requirements under the treaty.²⁸² There is thus an implicit regime conditionality that exerts an influence on some members in this area. However, the link has not been made between the mine action work that highlights the importance of legislation to mine action effectiveness and the potential for the regime to support this goal. Given the number of states parties that have not integrated obligations into domestic law, this suggests that supporting domestic implementation frameworks should be an acknowledged priority for the APMBC regime.²⁸³

The APMBC obliges mine affected regime members to ‘make every effort’ (Article 5) to identify and clear mined areas. The regime is therefore consistent with the IMAS in placing responsibility on states for clearing mines within their own territory.²⁸⁴ However, states emerging from conflict commonly lack the capacity to manage their mine action activities, or there may be a political vacuum in a country or region. The risk of involuntary defection is therefore particularly elevated. The provision under Article 6 for states ‘in a position to do so’ to provide resources for mine clearance is thus crucial. Given the absence of capacity in many developing states affected by landmines, the assistance of donors is a constant feature of mine action. This support

²⁸¹ *Landmine Monitor* (2006): p.16.

²⁸² GICHD (2004)

²⁸³ *Ibid.* p.2.

²⁸⁴ This is typically under the auspices of an inter-ministerial national mine action authority (NMAA). A Mine Action Centre (MAC) is responsible for day-to-day coordination and implementation of mine action policy and activities.

by the mine action community includes providing appropriate assistance to mine affected states, sustaining the commitment of donors, building capacity among local actors and better linking mine action to related security and development issues. The Article 6 commitment is particularly significant due to the clustering effect of the APMBC regime. The regime brings together both donors and mine affected states offering opportunities to pool resources and target support in a ‘joined up’ manner.

In many mine affected states, responsibility for mine action planning and operations is devolved to the UN. Local capacity building is recognised by the mine action community as a central goal in order to hand responsibility for mine action back as soon as possible to the legitimate national authorities. Capacity building in mine action is understood as set out in the extant UN policy as:

A state’s ability and willingness to develop and articulate mine action policy and direction. It is also about a state’s ability to plan, coordinate, manage and sustain a mine action programme that is accountable, cost-effective and able to address the humanitarian and socio-economic implications of landmine contamination, and to provide appropriate legislation.²⁸⁵

There is a potential contradiction between the support of third countries and the principle of national ownership enshrined within the regimes. While mine action capacity building can provide a model for re-establishing good governance the inverse is also true. The influx of foreign investment can cause tensions and attract the corrupt and self-interested. Mine action programming, as with other externally supported peacebuilding efforts, thus suffers from the ‘Samaritan’s Dilemma.’ As Maslen notes, ‘the generosity of donors can make it less likely that the recipients exert the necessary

efforts to help themselves.²⁸⁶ This concern reflects the need for a critical assessment of the actual rather than intended capacity building effects of externally sponsored and implemented mine action activities and the role of the two regimes in these efforts. Significant gaps remain in the area of national capacity to govern mine action. In particular, there is a tension between the responsibility placed by the APMBC on states parties and the reality that mine affected states may not be capable of assuming responsibility for setting policy, overseeing and managing mine action at the national level.

There is an emerging recognition that capacity building of mine action actors at the local level can only be optimised within the framework of an effective national mine action strategy.²⁸⁷ However, Per Nergaard, Head of the Mine Action Unit at NPA, highlights the absence of national plans that support the implementation of the core Article 5 obligation of mine-affected states to clear mined areas within ten years as something that ‘needs the immediate attention of all States Parties to the Convention to fundamentally correct these things now.’²⁸⁸ UNMAS coordinated an initiative to assist mine affected countries implement Article 5 requirements through supporting priority setting at the national level, developing a template for mine action planning in the period 2005-2009, and reporting on progress at statutory regime meetings. As a substantive contribution to the Nairobi Summit, UNMAS also coordinated an initiative to assist mine affected countries in developing national plans related to APM destruction. This initiative focused on priority setting and budget requirements in

²⁸⁵ United Nations General Assembly, *Mine Action and Effective Coordination: The United Nations Policy*, UN Doc. A/53/496 (UNMAS: New York 1998)

²⁸⁶ Maslen (2004): p.103.

²⁸⁷ GICHD, (2004) *A Study of Local Organisations in Mine Action* pp.13-14. Available at: www.gichd.ch/fileadmin/pdf/publications/Local_Organisations.pdf

²⁸⁸ Nergaard (February 2006): p.35.

more than 20 countries between national stakeholders and relevant UN field staff.²⁸⁹

Progress in these areas is reported regularly at intersessional meetings and has been useful in demonstrating different mine action challenges in specific contexts.

While there is thus much more to be done in building national capacity to support mine action, in practice, the APMBC regime has done little to encourage external actors to embed capacity building in their demining assistance. One challenge to capacity building has been a preference by donors for home-grown organisations and in-kind contributions – such as staff and equipment – when these have not been the most appropriate solutions to a given national or local mine action context. This gap is tacitly recognised in the 2005 Zagreb Progress Report on achieving the aims of the Nairobi Action Plan which, rather than identifying the achievements of the regime in this area, states that ‘the United Nations has assisted a number of States Parties in establishing national plans and in making these plans publicly available on its E-MINE website.’²⁹⁰ The regime provides a platform to showcase UN efforts in this area. Beyond this, the APMBC does not make a substantive contribution to mine action capacity building.

There is clearly a fine line between involuntary defection from regime obligations and wilful failure to implement national commitments. This picture is further complicated by the political imperatives that may drive states to deny that they have failed to meet international obligations. Real or alleged treaty violations among APMBC members have been relatively few in number. Angola admitted continuing to use APMs while a

²⁸⁹ UNMAS 2004 Annual Report pp. 8-9. Available at www.mineaction.org

²⁹⁰ APLC/MSP.6/2005/5 p.21.

signatory although not yet a full state party.²⁹¹ In the case of APII, Russia in Chechnya and Pakistan in its border dispute with India have used landmines without marking, fencing or monitoring them in accordance with the protocol.²⁹² The US has also incorporated Soviet-era minefields into its perimeter defences in Afghanistan. As in the case of India and Pakistan's use of APMs in border areas, there has been no information provided in their annual reports on measures taken to mark and monitor these minefields or protect civilians. Moreover, the state owned Pakistani Ordnance Factories (POF) allegedly offered APMs for sale to an undercover British television journalist via an attaché to their embassy in London. The offer, followed up with a faxed quotation from POF, thus contravenes Pakistani and British domestic legislation as well as the APII prohibition on transfers.²⁹³

Dislocation between regime implementation process and mine action challenges represents an important weakness in the way the regime approaches implementation. This reinforces our hypothesis that linking the IHL discourse of the regime with mine action knowledge and expertise is critical to regime effectiveness. This linkage is currently unacknowledged in the landmines literature. The difference between emphasis on national ownership as the hallmark of the Ottawa Process and a lack of focus within the APMBC on national capacity building to help operationalise commitments is particularly stark. Our analysis shows that voluntary defection by states parties from the obligation not to use landmines (or to do so only under certain conditions) is rare. However, this places additional emphasis on the need to address

²⁹¹ Maslen, S. *After Diana* p.71.

²⁹² ICBL Statement to the first Conference of States Parties to Amended Protocol II of the Convention on certain Conventional Weapons. 15 December 1999.

²⁹³ *Landmine Monitor* (2000): p.748.

mine action challenges. Regime effectiveness in these areas is considered in the rest of this section.

3.2 Resources

An area where the raised profile of the landmine issue is recognised as making a demonstrable impact is on resource mobilisation. Between 1997-2005, annual donor funding for mine action rose from \$139 million to \$376 million. In a conspicuous example, following adherence to the APMBC, the UK's Department for International Development (DfID) committed to double its funding for humanitarian demining from £5-10 million per year in the period 1998-2001.²⁹⁴ By 2005 this figure reached £11.8 million per annum. The link between increased funding and the APMBC is made clear by an explicit conditionality, intended to promote universalisation, stating that 'DfID will not provide direct support for governments' mine action programmes in countries that ignore the growing international condemnation of APLs, and continue to use these weapons.'²⁹⁵

Additional resources for mine action in other than monetary terms is significant if less visible as a regime effect. Although the project is not directly linked to the APMBC, Switzerland's willingness to commit several million francs to the development and implementation of the Information System for Mine Action (IMSMA) by the GICHD, currently operational in over 30 mine action programmes,²⁹⁶ reflects a policy decision to support mine action as a priority over other humanitarian activities. Indeed, the creation of the GICHD itself represents a major new commitment to mine action. The

²⁹⁴ DfID, 'Landmines and Poverty: Breaking the Link'; *DFID Issues* (August 1998): p.3.

timing of these related initiatives, launched respectively in 1998 and 1999, links the decisions to the raised profile of the issue as a result of the Ottawa Process.

Support for mine action from multilateral development donors can also be tied to the Ottawa Process. In August 1997 the World Bank agreed for the first time to fund mine action, emphasising that the centrepiece of its support was for humanitarian demining. Although the Bank stresses that it has no role in treaties and conventions that relate to member states, there is an implicit membership conditionality in its support for humanitarian demining:

The Bank stands ready to support implementation of obligations imposed under the treaty by any member state that requests it.....Although the Bank does not refer specifically to the Ottawa Convention in its guidelines, it stresses that any legal agreement for a project involving landmine clearance must include a covenant under which the government undertakes not to lay new mines anywhere in the country that would undermine the execution or development objectives of the project.²⁹⁷

There is a subtle difference between DfID's allusion to the need to respect *international* condemnation of APMs and the Bank's emphasis on a *national* covenant against landmine use that reflects the distinction between treaty obligations and their domestic implementation. However, World Bank mine action funding requirements shares with DfID an important regime-driven conditionality linking support to either regime membership or the fulfillment of regime goals.

²⁹⁵ DfID (August 1998): p.3.

²⁹⁶ See: www.gichd.ch/998.0.html

²⁹⁷ The World Bank, 'Landmine Contamination: A Development Imperative'; *Social Development Notes, Conflict Prevention and Reconstruction No.20* October 2004, p.2.

In November 1997, the European Commission earmarked Euro 15 million for research into new technologies to identify and destroy APMs.²⁹⁸ As with the World Bank, DfID and Switzerland, the timing of this announcement, at the culmination of the APMBC regime formation phase, further illustrates the strong pressures within the international community to show solidarity with the APMBC and its goals at the time of the regime's creation. Since entry into force of the APMBC, the European Commission and EU Member States have collectively contributed nearly EURO 700 million to mine action with further support for 2005-2007 estimated at EURO 140 million.²⁹⁹ These resources and the regime based conditionalities that condition their disbursement demonstrate an important regime effect in influencing the priorities of bilateral and multilateral mine action supporters.

Resource allocation for mine action in the implementation period also demonstrates that the APMBC regime has generated significant interaction effects. Without being a target of regime advocacy efforts, the profile of the issue has encouraged new actors beyond the traditional development donor community to contribute to mine action. Support by the European Football Association (UEFA) for ICRC mine action work³⁰⁰ and manufacturing company Daewoo's donation to the Slovenian-based International Trust Fund for Mine Action³⁰¹ show the pull of the anti-APM norm reaching sporting and commercial sectors with no previous engagement in mine action. The regime effect of a norm cascade evident in the regime formation phase with states feeling obliged to be on the 'right side' of the issue is thus apparent in the area of resource generation during implementation. Building on the profile of the issue during regime

²⁹⁸ Reuters, 'EU to launch into landmine removal'; 18 November 1997.

²⁹⁹ The European Union, *Mine Actions in the World*, (2004): pp.7-12.

³⁰⁰ ICRC, *Mine Action Special Report* (1999).

³⁰¹ ITF website, list of donors. See: www.itf-fund.si/donatorji/donatorji.asp

formation, the reach of the anti-APM norm extends beyond states to the private sector in the regime implementation phase. These unconventional new mine action donors offer a convincing response to counterfactual questions on resource generation. Given their complete lack of engagement with this issue area prior to the high profile Ottawa Process, this new funding can only be attributed to an APMBC regime effect.

It is important to acknowledge that increased mine action funding since the beginning of the Ottawa Process has not been drawn solely from members and supporters of the APMBC. Nine states that have not joined the regime contributed over \$425 million from 1997-2002 to support mine action in third countries.³⁰² In particular, the issue of resources provides an important correction to criticism of the US for failing to join the APMBC. While not an APMBC member, the US has not only pursued the regime's disarmament objectives (the US has not using APMs in combat since Kuwait in 1991) but also its mine action objectives as the biggest single donor in this field.³⁰³ Between 1993-2005, the US has contributed over \$1 billion in mine action funding.³⁰⁴ Although US funding has spiked since 2003 due to support for mine action in Iraq and Afghanistan, the US has been involved since the early days of mine action in the late 1980s. Significantly, from 1995-97, US mine action funding remained constant while sharp rises were seen in 1998, 1999 and 2000, coinciding with the entry into force and initial APMBC implementation phase. The timing of these funding increases points to an important regime effect *beyond* the membership of the APMBC regime. The visible success of a regime with strong and highly visible humanitarian credentials has

³⁰² Brinkert (2003): p.44.

³⁰³ The primary source of US government support – through the creative use of a public-private partnership – is the US Agency for International Development / Patrick J. Leahy War Victims Fund (USAID/LWVF).

provoked an emulation effect, inducing the US to demonstrate the necessary level of political commitment to the issue. Contributing increased resources to mine action provides an indirect means to address criticism generated as a result of declining to join the regime.

Support for the APMBC demonstrates that APII remains the poor relation in terms of profile, marketing and outreach. While actors involved in the Ottawa Process make conspicuous efforts to promote the APMBC brand and its universalisation, little comparable effort can be discerned within the CCW framework. In contrast, increased support for mine action among bilateral actors can be directly attributed to the Ottawa Process. The generation of additional resources for mine action thus provides one measure of the effectiveness of the APMBC regime. The regime has influenced multi- as well as bilateral donors to invest heavily in a humanitarian issue area that otherwise would not have attracted such elevated levels of funding. That this additional support has come from non-traditional mine action donors and even states that explicitly reject the APM ban as a national policy decision demonstrates the underlying normative strength of the regime and the emulation effects created by this process. Increased or sustained funding levels – well after political interest in the APMBC has peaked – therefore provide a positive indicator for regime effectiveness.

3.3 Political will

Political will has been demonstrated to be a critical criterion for effective regimes in different issue areas, particularly in ‘hard cases’ – such as the landmines issue –

³⁰⁴ Statement by James F. Lawrence, Deputy Director, Office of Weapons Removal and Abatement,

where security concerns may form a significant part of the calculus.³⁰⁵ Achievability of regime goals and the related danger of defection is thus an important consideration.³⁰⁶ In the regime formation phase, targeted advocacy by states, the ICBL and the ICRC raised the profile of the landmine issue and facilitated the development of national interest groups in different regions. Political will to encourage regime membership was therefore generated at both international and national levels. In implementation, with compliance monitoring a devolved rather than formal regime commitment, a common division of labour has evolved at the national level with civil society fulfilling an oversight function and the state providing operational support to mine action both within national programmes and through assistance to other states in a broader regional or international framework. On one level this provides the regime with different sources supporting implementation at state and sub-state levels. However, at national level it raises important questions related to the effectiveness of informal oversight as a means to generate sufficient political will to ensure regime compliance.

In mine affected states, political will is a pre requisite to deliver on costly compliance obligations. Related to this point, international support for mine action presents a risk that funds are diverted from their intended purpose. Corruption therefore represents significant mine action challenge that finds a clear nexus with regime effectiveness. Diversion of funds, self-interested selection of clearance tasks and ‘land-grabbing’ have long been associated with certain demining programmes and therefore represent a test of regime members’ political will to implement mine action related regime

Bureau of Political-Military Affairs, US Department of State, Standing Committee on Mine Clearance, Mine Risk Education and Mine Action Technologies, Geneva, 14 June 2005.

³⁰⁵ Hurrell in Rittberger (1993): p.71.

³⁰⁶ Putnam (1988): pp.427-60.

obligations. But the issue is rarely taken up by civil management and oversight bodies or civil society at national and local levels. Corruption may affect donor support as was the case in Cambodia in 1999 where allegations of financial impropriety, corruption and mismanagement led to the withholding of significant donor contributions.³⁰⁷ The APMBC addresses both these concerns by imposing a conditionality on national actors by linking mine action assistance to moves towards regime membership. However, this major challenge to mine action effectiveness has not been taken up as an implementation issue within the framework of the APMBC. As demonstrated in Chapter 4, Cambodia played an important role in the genesis of the regime and retains an influential role in the intersessional work programme. These factors mitigate against the regime addressing a politically sensitive issue that qualifies the success of the implementation process.

Knowledge of the specific nature and location of the landmine threat can be particularly challenging to obtain in intra-state conflicts conducted by one or more armed non-state armed actors (ANSAs). Such groups, characterised by decentralisation, poverty and unwillingness to compromise, often control mined territory and are responsible for the manufacture, trade, selling and use of landmines. Irregular nuisance mining is common and does not conform to the notion of a 'minefield' with locations often unrecorded. The 2008 *Landmine Monitor* records ANSAs in at least 9 countries using APMs compared to 8 in 2007, 10 in 2006 and 13 in 2005. ANSAs represent a major category of mine users today³⁰⁸ and represent an evident priority for engagement by the landmine regimes in order to achieve their

³⁰⁷ *Landmine Monitor* (2004): p.254.

³⁰⁸ *Landmine Monitor* (2008): p.5.

humanitarian goals. Indeed, the extension of APII to non state armed conflicts was a significant, if belated recognition of the realities of contemporary landmine warfare.

However, the regimes have not focused on ANSAs. On a practical level, engagement poses a qualitatively different challenge to state actors. In political terms, states are often reluctant to engagement with ANSAs on their territory for fear of lending legitimacy to their cause. NGOs can therefore play an important role in engaging with ANSAs when states are unwilling or unable. Such a role is essential since the APMBC has no formal mechanism to engage with these actors. The NGO Geneva Call was established in 2000 with the specific mandate of engaging armed groups in a ban on APMs and in the respect for humanitarian norms. It does so through encouraging groups to adhere to Deeds of Commitment that mirror the requirements the APMBC places on states.³⁰⁹ Geneva Call's own research found around 60 ANSAs using landmines with the majority in Asia (31) and Africa (15).³¹⁰ Although 60 % of landmine use by ANSAs occurs in the territory of non-APMBC states parties, this issue is relevant for regime members as in Colombia where both the FARC³¹¹ and ELN³¹² are frequent mine users.

The functional role assumed by Geneva Call could not be carried out without the normative pull of the regime and its influence on states. Although Geneva Call's procedure of binding groups to a Deed of Commitment is outside the regime proper, there would be no foundation for such action without the stigmatisation that the

³⁰⁹ According to the Geneva Call website, as of 1 March 2006, 27 armed groups in Burma, Burundi, India, Iraq, The Philippines, Somalia and Sudan have agreed to ban the use of APMs through this mechanism. A template Deed and complementary information can be found at: www.genevacall.org

³¹⁰ Geneva Call *Armed Non-State Actors and Landmines, A Global Report Profiling Non-State Actors and their Use, Acquisition, Production, Transfer and Stockpiling of Landmines*, Volume I (2006).

³¹¹ Revolutionary Armed Forces of Colombia.

APMBC has fostered. There is also a relationship between state and non-state actors which becomes apparent through a deeper analysis of Geneva Call's work. This is shown on the one hand when the Sudan Peoples Liberation Army/Movement (SPLA/M) signed a Deed of Commitment in October 2001, an act which preceded and perhaps precipitated ratification of the convention by the Sudanese Government.³¹³ On the other, such direct interaction has led to criticism from some states parties – predictably governments in conflict with such groups – that permission should be sought before engaging with them. Although the organisation has resisted such pressures, recognising the threat to its neutrality and therefore its effectiveness, this tension has emerged in APMBC meetings with criticism of Geneva Call's activities by members such as Turkey due to their work with the Kurdistan Workers Party (PKK). The existence of the APMBC regime creates spillover effects utilised by Geneva Call through association with the anti-APM norm.

The first APMBC review conference held in Nairobi in December 2004 prompted the signatures of Estonia and Papua New Guinea as well as the full adherence of Latvia, Poland, Sri Lanka and Ethiopia to the regime. This was the biggest international gathering on the landmine issue since the APMBC was opened for signature in December 1997. Increases in regime membership as a result of this meeting provide important evidence that through its implementation mechanisms the regime continues to enhance political will through encouraging states to be on the 'right side' of the issue. Moreover, Egypt announced a moratorium on production at the Nairobi Review Conference while China endorsed the purpose and objectives of the APMBC and expressed a desire to expand cooperation in this area. Similarly, non-states parties

³¹² National Liberation Army.

Belarus, Cameroon, Gambia, Lithuania and Ukraine all submitted voluntary Article 7 reports, highlighting important political level spillover effects in the behaviour of states outside of the regime.

Egypt, Finland, Iraq, Israel and Poland have all ceased production of APMs. A de facto global ban on licit trade in APMs has also been realised. In these cases, political will is qualified by a desire to be seen to comply with the letter of the APMBC *without* signing up to all regime obligations. The case of POF in the UK discussed above is significant not just as a case of voluntary defection. Exposure of the issue resulted in rapid denials from the Pakistani government and the immediate recall of concerned embassy staff to Islamabad. This demonstrates that the breach was recognised as a serious international incident by the Pakistani government. This shows an important quality of normative interplay between regime members and non-members with behaviour influenced despite the boundaries traced by the respective treaties and their supporters. It is particularly significant that following entry into force of the regime, the profile of the APMBC has raised the potential cost of discovery significantly in political terms. The ICBL in particular gauges regime effectiveness in quantitative terms with each new member representing a step towards the ultimate goal of universalisation. Yet the existing literature does not acknowledge this important qualitative contribution to regime effectiveness exerted by states' political compunction to fulfill key regime obligations without formally joining the regime.

³¹³ Geneva Call, 'Armed Non-State Actors and Landmines: A Report Profiling Non-State Actors and their Use, Acquisition, Production, Transfer and Stockpiling of Landmines'; Volume, 1 (2006).

The work of Geneva Call provides a positive example of regime effects and flexible approaches to implementation. However, it also provides important new insights to the APMBC's limitations. The key stipulations of the treaty have been adapted and applied to ANSAs. Yet Geneva Call's capacity is limited. As the single largest category of landmine users, ANSAs and their use of landmines represent an obvious focus of the regime from a mine action perspective. However, the reluctance of some states to address ANSAs on their own territory and of others to 'rock the boat' by highlighting a sensitive issue has led to a contradiction between political and humanitarian imperatives. The inability of the regime to address the issue of corruption provides another important example of this phenomenon. As demonstrated by the case of POF, the regime exerts effects that raise the political stakes of not falling in line with the anti-APM norm. However, this is qualitatively different from an ability to enforce compliance with mine action-related regime commitments.

This contradiction also provides an additional insight to the consequences for regime effectiveness of the composition of the implementation cluster. Despite the innovative collaborations that have characterised the regime formation process, the APMBC remains a state-based regime. Where national security interests emerge, political will is lost. The regime displays the paradox of having been created through the strong commitment of NSAs yet demonstrates resistance in its implementation to supporting these actors in fulfilling key regime goals with an evident humanitarian impact. The lack of engagement of ANSAs directly through the APMBC represents a missed opportunity to further encourage reciprocal arrangements whereby states' adherence to treaty provisions is mirrored by relevant non-state actors.

3.4 *Humanitarian impact*

A humanitarian imperative provided the motor to the Ottawa Process, led to the rapid formation of the APMBC regime and reinforced the need to enhance the CCW regime demonstrating continued vigour in the implementation phase. As demonstrated in Chapter 4, the normative dimension, in particular the de facto stigmatisation of APMs, has been a powerful factor in generating the requisite political will for states to join the APMBC. Kjellman argues that the *Landmine Monitor* has served as a normative watchdog, keeping the goals and progress of the treaty in the spotlight.³¹⁴ However, while Kjellman is right that *Landmine Monitor* highlights a number of important regime implementation issues, this does not address issues that may be critical from a mine action perspective that are not taken up within the regime. A key nexus between the regimes and mine action is thus their effectiveness in addressing this central humanitarian objective. This section therefore assesses regime effectiveness in two dimensions: the humanitarian impact of the regimes; and, ‘force multiplier’ effects of the regimes in linking mine action to related issues.

There is evidence to suggest that this normative capital has been effectively operationalised in the implementation phase. In this regard, the contribution of the anti-APM norm to regime compliance can be measured by the absence of evidence or serious allegations of APM use by regime members in *Landmine Monitor*, despite the fact that many states were users in the recent past. The 2005 *Landmine Monitor* identifies landmine casualties in 58 countries during the period covered by the report, 8 less than during the previous reporting period. However, it also estimates that there

³¹⁴ Kjellman in Harpviken (2004): p.185.

were between 15-20,000 new landmine/UXO casualties in the same period. Although the effectiveness of mine action is increasingly judged by such criteria, it does not follow that the regime – as demonstrated by the supply side focus of the ICBL – is necessarily able to judge its effectiveness in these terms.

A similar critique within the regimes can be made of the facile assumption that any mine action is ‘a good thing.’ As Brinkert notes, ‘the matter of resources to ensure the implementation of the convention is not as simplistic as a one-way flow of money from relatively wealthy, unaffected countries to relatively poor, mine affected counterparts.’ Citing the ICBL as an example, Brinkert acknowledges that much remains to be done within the regime on the *qualitative* dimension of resource generation: ‘while the ICBL has been very effective in focusing attention on the supply side of the resource issue (i.e. how much is generated), it perhaps could give increasing attention to better understanding the demand side of the equation (i.e. how much is required).’³¹⁵ A predominant focus on extending regime membership represents a similarly quantitative approach that ignores both the quality of implementation and the ability of the regimes to address ‘hard’ implementation issues.

Mine action challenges correspond to many dilemmas faced in seeking sustainable measures to address complex security and development needs in fragile states. Mine action is an enabling activity for other reconstruction and development activities while, conversely, its gains are lost if states revert to conflict. It is therefore a significant but under-researched question to consider how far the two regimes support the integration of mine action with related security and development issues. It is

important to acknowledge the consequences of the landmine regimes in order to to develop new insights in this wider context. Expert assessments reviewing a decade of mine action work conclude that there is a danger of mine action being compartmentalised away from other security and development activities. This sets mine action apart from poverty reduction strategies and also leaves it vulnerable to accusations that costs are far greater than benefits *vis a vis* providing water or addressing preventable diseases.³¹⁶ Reports highlight that mine action cannot be individualised but must be linked to related reconstruction and development efforts. In particular, achieving this goal requires ‘a more multidisciplinary and multi-sectoral approach as mine action realises the need for expertise and experience from numerous disciplines to achieve its goals.’³¹⁷ This finding reflects the broader challenge of ensuring coherence, making sure that efforts are tailored to specific local contexts and showing flexibility to address shifting priorities in challenging environments.

There remains a need to de-mystify and mainstream mine action in order to better develop links with related humanitarian and development activities, moving away from what Horwood characterises as a ‘parallel existence.’ This parallelism has been created or at least encouraged by the high profile and consequently elevated donor support created by the Ottawa Process.³¹⁸ Given that regime members support mine action as only one of many development commitments, the regimes offer important fora to bridge such gaps at a policy level. This expands the research question ‘do the regimes matter’ under a humanitarian criterion for effectiveness beyond the confines

³¹⁵ Brinkert, K. ‘Paving the Bridge between Development and Disarmament: Resources Generated by the Anti-Personnel Mine Ban Convention’; *Disarmament Forum* 3 (2003): p.50.

³¹⁶ Harris, G., ‘The Economics of Landmine Clearance: Case Study Cambodia’; *Journal of International Development* 12 (2) (2000): pp. 219-225.

³¹⁷ Horwood, C.; ‘Humanitarian Mine Action: The First Decade of a New Sector in Humanitarian Aid’; *Relief and Rehabilitation Network Paper*, Overseas Development Institute, (March, 2000): p.30.

of the landmines issue to reflect the complexities of the security-development nexus within which it is situated. It also makes the case that if the very specific nature of the landmine issue and its profile has distanced it from other development issues, the landmine regimes should provide a means to bring mine action closer to wider development concerns.

Mine action is an important development activity, both in its own right and as an enabling activity for other elements of reconstruction and development. However, this work can have limited or counter-intuitive results in humanitarian terms if not done carefully. The APMBC regime provides a unique framework to address issues of context because of the strong developing state membership evident in both its negotiation and implementation phases. However, like the issue of corruption, reluctance within the regime to address hard implementation issues such as inappropriate or counter-productive mine action activities is apparent. This represents a lost opportunity to enhance the humanitarian dimension of regime effectiveness that has not been acknowledged in the literature. In contrast, the CCW process has historically lacked support from the South and APII remains characterised by a lack of developing world support. There is no pool of local knowledge and expertise within the implementation cluster to engage on context-specific implementation challenges. The lack of support within the regime for national implementation is thus both a cause and effect of this narrow membership base.

³¹⁸ Horwood in Harpviken (2004): p.167.

4. Conclusions

Analysing the implementation processes of the two landmine regimes in detail and through the lens of regime theory has enabled the elaboration of a number of new insights into APII and the APMBC. In particular, a more nuanced picture of determinants of regime effectiveness emerges through focused analysis of resource, political, and humanitarian factors. In addressing the major hypotheses that underpin our research, key findings from our analysis of landmine regime implementation that emerge from this chapter can be grouped under two themes: design factors that result in gaps between negotiated provisions and their implementation; and, the relationship between stakeholder clustering and the ability of the regimes to support mine action.

Systematically analysing regime implementation processes within our research framework has proved instructive. Both regimes demonstrate high levels of compliance among regime members according to the letter of treaty requirements. Both regimes have increased membership over time while, although applying to a far greater extent to the APMBC, new resources that support the realisation of mine action goals have been mobilised as a consequence of both regimes. However, applying Underdal's twofold definition of regime effectiveness, this chapter demonstrates important gaps in the political will and material commitment of states parties to meet their own obligations and to support other regime members that require assistance.

The interplay between domestic and international commitments is shown to be particularly significant as a determinant of regime effectiveness. Reflecting a negative

consequence of the norm cascade that impelled many states to join the regime, this chapter shows that domestic implementation of regime obligations has not been prioritised by mine affected states parties. The lack of national legal or bureaucratic frameworks and the absence of regime support in these areas present significant barriers to regime effectiveness. Moreover, in many cases involuntary defection is a major risk since regime compliance is beyond the means of mine affected states. Although recognised as a key mine action priority, the absence of a nexus between regime implementers and expert communities means that addressing these gaps through capacity building has not been a regime priority. Given that funding and technical support for national mine action programmes is largely provided by bi- and multilateral donors, this disjunction between regime and mine action priorities poses a serious challenge to the effectiveness of the APMBC.

This chapter demonstrates costs in terms of extending regime membership and sourcing expertise in order to enhance regime effectiveness as a result of an exclusionary approach to regime participation within the CCW framework. Activities within APII that mirror APMBC initiatives such as equitable geographical rotation of regime responsibilities and a sponsorship programme are thus rendered largely redundant by the lack of interest in the regime by these stakeholders. In contrast, according to the prevalent narrative, the Ottawa Process is characterised by transparency and inclusiveness. However, our analysis of regime clustering dynamics demonstrates that strong participation of mine affected states in regime formation has not been mirrored by an influential role in implementation. Moreover, while expertise is increasingly networked within the mine action community, practitioners do not form a core element of the APMBC implementation cluster. Negative consequences

of this narrower implementation cluster on the ability of the regimes to support mine action that are introduced in this chapter are further developed in relation to humanitarian demining and stockpile destruction in Chapters 6 and 7.

The under-emphasised role of ANSAs in the context of the regimes highlights that political imperatives are highly relevant to landmine regime implementation. Resistance from some regime members to the work of Geneva Call is an instructive example of the regime's response to a hard case implementation issue. Geneva Call's role is entirely consistent with the origins and values of the Ottawa Process with civil society taking the lead where states are reluctant to act. This clearly poses difficulties for some regime stakeholders. Unwillingness to address the issue of ANSAs and other hard cases such as corruption reveals that issues unpalatable for the diplomatic community or 'off message' for the advocacy lobby are avoided within the regime despite the humanitarian costs of not fulfilling core regime objectives.

Significantly, a protectionist approach is evident within both regimes that works against cooperation. The recent co-location of the secretariat function for the two regimes with the GICHD points to common implementation requirements that may offer the chance of greater coordination and perhaps cooperation in the future. Similarly, many of the implementation issues faced by the landmine regimes are not unique but reflect the broader security and development challenges faced by states emerging from conflict. However, the elevated profile of the issue area compared to other development priorities means that opportunities exist in terms of political will and resources that would not otherwise be available. This chapter demonstrates that the combination of a narrow implementation cluster and the 'parallel existence'

phenomenon within mine action limits the effectiveness of both regimes. The need for mainstreaming mine action with related security and development issues in order to meet common goals is acknowledged by mine action stakeholders but particularistic interests and a lack of technical expertise provide significant, unacknowledged barriers to regime engagement with this agenda.

This chapter demonstrates concrete implementation successes but also a number of gaps that limit the effectiveness of the regimes in achieving their overarching goals. Common to both regimes is the fact that, even if met, certain obligations do not result in ‘pay offs’ that fulfil the underpinning security, development and humanitarian goals of the regimes. Moreover, addressing research questions relating to agency and normative considerations provide new insights into shifting dynamics across different phases of regime evolution and their consequences for regime effectiveness. These findings reinforce the hypothesis that the relationship between regime design and implementation is highly significant in shaping the effectiveness of the regimes. The following chapters build on these insights in order to systematically analyse regime effectiveness in the specific mine action pillars of humanitarian demining and stockpile destruction.

Chapter 6

Humanitarian Demining and the Landmine Regimes

1. Introduction

This chapter contributes to our overall research objectives by seeking to better understand the contributions made by the two landmine regimes in the area of humanitarian demining. It therefore addresses the research questions introduced in Chapter 1 that engage with different aspects of regime effectiveness through analysing positive (or negative) influences that can be attributed to the two regimes in this area. This chapter therefore builds on the critical insights gained in Chapter 5 on the implementation and effectiveness of the two regimes and further refines this analysis in relation to humanitarian demining. It is also directly linked to the subsequent chapter that poses similar questions of implementation and effectiveness to the destruction of landmine stockpiles. By analysing two central elements of the mine action agenda from a regime perspective, our approach offers important research payoffs through exploring the different challenges posed by these activities and the ability of the regimes to address them.

Conducting humanitarian demining to ensure that areas are free from landmines, thus making land safe for civilian use, is the most tangible way of achieving the humanitarian and developmental goals of the two regimes.³¹⁹ The research motivation to focus on humanitarian demining in this chapter is thus founded on its central

³¹⁹ As defined by the IMAS, humanitarian demining involves the range of ‘activities which lead to the removal of mines and UXO hazards, including technical survey, mapping, clearance, marking, post-clearance documentation, community mine action liaison and the handover of cleared land’. IMAS 04.10, Edition 2, January 2003. Standard 3.42.

importance in meeting core regime objectives set out in both APII and the APMBC. In line with our overall approach, it also brings out the fact that regime dynamics and effectiveness can depend greatly on specific sub-issues and commitments. This fills an identified gap in the existing literature. Despite measures within the CCW dating back to 1980, the increased profile of the issue as a result of the Ottawa Process and humanitarian demining efforts that preceded this process by nearly ten years, there is relatively little existing analysis of the relationship between the two landmine regimes and this vital work. Applying our research framework that links analysis of IHL treaty regimes to the mine action discourse enables us to determine humanitarian demining-related criteria for effectiveness that can critically question the positive image projected by regime advocates.

The apparent cognitive dissonance between advocacy actors and practitioners highlighted in earlier chapters is particularly marked in the area of humanitarian demining. Mike Croll, a former deminer and author of *The History of Landmines*, thus characterises the ban campaign as a double edged sword whose positives must be set against a diversion of resources away from humanitarian demining: ‘certainly the campaign brought a great deal of publicity to the issue, but it.....distorted the size and shape of the problem and distracted attention from the crux of the issue.’³²⁰ Thus, key research questions further developed in this chapter address the interplay between technical and political considerations for regime effectiveness in the area of humanitarian demining. Further deepening our understanding of the consequences of disjunctions between humanitarian demining and regime actors represents a related research focus. This chapter also seeks to contribute new insights to our knowledge of

³²⁰ Croll, M. *The History of Landmines*. (Pen and Sword Books, UK) (1998): p.136.

stakeholder clustering dynamics in the area of humanitarian demining, considering the interactions of mine affected states, civil society actors and mine action professionals as well as – in the case of APII – producers and users involved in this area of regime implementation.

An important counter-factual question considers whether there is a causal link or a degree of parallelism between the regimes and the effectiveness of humanitarian demining. Developing new knowledge in this area is critical to understanding regime effectiveness because it provides a focus on the actual (rather than perceived) contribution of the landmine regimes to addressing a major issue on international humanitarian and development agendas. Because of the role of the Ottawa Process in pushing the landmines issue up the international policy agenda, it is tempting to assume a causal link between this regime's implementation and progress in the field of humanitarian demining. However, such a link should not be assumed given parallel efforts in the context of IHL and, fundamentally, a mine action community that has matured significantly in its appreciation of how to address the scourge of landmines.

Humanitarian demining displays both lengthy historical antecedents and a short history as a distinct discipline. Mine action began in Afghanistan from 1988 with a UN-assisted appeal for funds to assist 'humanitarian demining.' Humanitarian demining programmes subsequently expanded to many other countries,³²¹ particularly in Asia, Africa and the Balkans, but also, though to a more limited extent, in Eastern Europe and the Americas. The state of the art in humanitarian demining emphasises a 'toolkit' approach that combines the appropriate use of manual deminers, mine

detection dogs and mechanical demining equipment.³²² However, there is a significant gap between ‘best practice’ and the realities faced on the ground. Many practitioners point out that due to financial and practical constraints they must work with what they have (or what they are given) in often difficult conditions rather than achieving an ‘ideal’ combination of capabilities.³²³ The reality of humanitarian demining as an evolutionary field points to the need for flexibility within the regimes in order to adapt to shifting challenges and priorities. Developing our analysis of regime learning within the regimes thus represents an important consideration for regime effectiveness in the field of humanitarian demining.

This chapter systematically analyses the implementation and effectiveness of the two landmine regimes. It begins by analysing humanitarian demining considerations in regime provisions in order to further elucidate the interplay between design and implementation in relation to regime effectiveness. Building on Chapter 5, regime effectiveness in supporting humanitarian demining is considered under the themes of resources, political will and humanitarian impact. The chapter concludes by identifying new contributions to knowledge on the effectiveness of APII and the APMBC in their support to humanitarian demining.

2. Regime implementation and humanitarian demining

In order to explore the relationship between regime design and implementation this section focuses on the humanitarian demining-related provisions of the landmine

³²¹ The 2008 Edition of *Landmine Monitor* identifies more than 70 mine affected countries around the world. *Landmine Monitor* (2008): p.19.

³²² GICHD, *A Guide to Mine Action* (2003) p.65.

³²³ King, C. ‘The Demining Toolkit’; in GICHD, *Mine Action: Lessons and Challenges* (2005): p.34.

regimes. It begins by analysing regime rules in relation to the practical challenges of humanitarian demining. This section then assesses cases of voluntary and involuntary defection from humanitarian demining-related obligations. Finally, verification is considered as a means to understand the extent to which the regimes are aware of humanitarian demining challenges and flexible enough to adapt in order to better address them.

2.1 Regime rules and field realities

This sub-section considers regime obligations that are relevant to humanitarian demining. It brings together IHL and mine action literatures to investigate the hypothesis that practitioner expertise in both design and implementation phases is critical to regime effectiveness in this pillar of mine action. Where there is dislocation between the regimes and humanitarian demining, it considers the consequences in terms of the regimes' ability to exert positive change in this area.

Knowing the extent and location of mined areas is a pre requisite for effective humanitarian demining. Thus, each state party to the APMBC must make 'every effort to identify all mined areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced.' Further, 'as soon as possible' these areas should be 'perimeter marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed.'³²⁴ APII requires that 'all reasonable precautions should be taken to protect civilians from the impact of mines,

³²⁴ APMBC, Article 5, para 2.

booby traps and other devices,³²⁵ while their locations should be recorded in accordance with the requirements of the protocol's Technical Annex.³²⁶ Manually emplaced APMs that are not self-destructing and self-deactivating can only be used if 'placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area.'³²⁷ Locating and identifying mined areas thus represents a common priority across both regimes.

In reality, few mined areas are fenced and in many cases animals, weather or the needs of local people result in the destruction or removal of such barriers as have existed. Even fence poles and wire have an intrinsic worth that may outweigh the protective value of the barrier. Contaminated land viable for hunting or farming is frequently used by locals in the full knowledge of the risks being run. Moreover, maps often do not exist given the widespread practice of 'nuisance' mine laying in developing world conflicts targeted directly at civilian populations. Even where precise maps are available, the location of mines shifts over time due to weather and soil conditions, limiting their value. *Landmine Monitor* acknowledges that one aspect of the Article 5 requirement almost never met is that of perimeter marking and monitoring to ensure the safety of civilians. It is reported that only Denmark, France (in respect to a military base in Djibouti) and the UK (Falkland Islands) have taken such measures. These are clearly exceptional cases involving developed countries that know to a high degree of accuracy where these APMs have been emplaced. That no mine-affected state has been able to fulfil this obligation points to the fact that the

³²⁵ Amended Protocol II, Article 3, para 10.

³²⁶ Amended Protocol II, Article 9, para 1.

³²⁷ Amended Protocol II, Article 5, para 2.

requirement is unenforceable in the context of developing countries with large, often unmapped swathes of contaminated land.

APII reiterates the earlier Protocol II requirement for the recording of ‘pre-planned’ minefields. However, many mined areas laid by government or irregular forces have either served immediate tactical reasons – so the provision does not apply – or when targeted at civilians have not been planned or mapped at all. Even in the Falklands where the location of mined areas is well known, landmines have shifted over time as a result of weather and ground conditions, rendering maps largely redundant. Although subject to little discussion at the 1979-80 negotiating conference, it was recognised even at the time that the concept of a ‘pre-planned’ minefield was both vague and represented a degree of advanced preparation sufficient to exclude nearly all traditional minefields as well as the less clearly defined mined areas frequently encountered by deminers.³²⁸ India has subscribed to ‘a phased approach (that) will narrow the scope in which landmines can be used only for the defense of borders.’³²⁹ This approach stands or falls on whether India can meet its obligations: are mined areas perimeter marked and monitored? Have accurate maps of mined areas been made and exchanged with opponents at the end of hostilities to aid subsequent demining efforts? And, fundamentally, if there has been compliance with these measures, has this ensured that civilians have not suffered through the use of landmines? Reporting from the Kashmir region suggests that the difficulties of mapping and marking during conflict have made these provisions impossible to

³²⁸ Carnahan (1984): p.84.

³²⁹ India, Permanent Mission of India to the United Nations, Geneva; ‘Statement by Ambassador Savitri Kadi, Permanent Representative of India to the First Annual Conference of the States Parties to the Amended Protocol II to the CCW, Geneva, 15 December 1999.

implement effectively.³³⁰ Moreover, economic necessity and the effects of climate are further factors that have undermined the effectiveness of measures to accurately identify mined areas and warn civilians of potential hazards. This underlines the importance of Underdal's twofold definition of effectiveness. National compliance with the letter of regime commitments does not contribute to the intent and purpose of the regime by reducing the danger posed by these weapons.

Neither regime acknowledges that in many cases the tactical use of landmines does not conform to the image of static, clearly defined minefields. Analysis of APMBC Article 7 reports demonstrates evidence of this gap between regime rules and field reality. Moldova reported full clearance of mined areas by August 2000 although subsequent reports have shown that communities continue to avoid certain 'cleared' areas. Other areas not subject to clearance are also suspected of containing landmines.³³¹ Similarly, the DRC in its Article 7 report states that 'no mined area has yet been identified' whereas UN information confirms the presence of landmines within the national territory.³³² While the stipulation to mark mined areas may be important regardless of the challenges of implementation, it is thus questionable whether mine affected regime members are able to identify accurately their mined areas. A further consideration is that where such information could be usefully provided, there is no obligation under APII to record the types of mines used, the pattern of mine laying or the location of individual mines, key information for the purpose of humanitarian demining. It is significant that the provisions on minefield marking and mapping contained in *both* treaty regimes reflect a broader lack of

³³⁰ Banerjee, D and Joseph, M.; *Anti-Personnel Landmines: a South Asian Regional Survey* (New Delhi) (1999): pp.20-21.

³³¹ *Landmine Monitor* (2006): p.29.

³³² *Landmine Monitor* (2006): p.29.

appreciation of humanitarian demining concerns. While these challenges are not open to ready solutions, the two regimes are weakened by their failure to acknowledge these practical implementation challenges.

The APMBC obliges member states to destroy or ensure the destruction of all APMs in mined areas under its jurisdiction or control ‘no later than ten years after the entry into force of this convention for that State Party.’³³³ While placing the responsibility for clearance squarely on individual regime members, the term ‘ensure the destruction’ of APMs is used deliberately to denote the external assistance that many post-conflict states require in fulfilling this obligation. Indeed, the APMBC requires states parties ‘in a position to do so’ to assist in these efforts.³³⁴ Moreover, a request may be submitted seeking an extension of the destruction deadline for renewable periods of up to ten years.³³⁵ In the APMBC drafting process, the time period for destruction of mined areas was subject to considerable discussion while it was also proposed not to provide a specific deadline.³³⁶ This reflects a tension between ban advocates pushing for short deadlines and other regime actors seeking greater flexibility either in acknowledgement of the scale of the humanitarian demining challenge or as a means to dilute this core obligation. A fixed deadline was ultimately retained in order not to dilute the urgency of the issue. However, the renewal clause recognises the difficulty of this task in the context of capacity and resource deficits in heavily mine-affected states. The combination of fixed deadline and renewal clause is therefore significant because it embeds an unresolved tension between different regime stakeholders within the regime framework.

³³³ APMBC, Article 4.

³³⁴ APMBC, Article 6, para 4.

³³⁵ APMBC, Article 5, para 3.

In contrast, APII neither commits states parties to clear the mines they laid nor to assist in mine action beyond a request that after the cessation of hostilities, former conflict parties provide information to facilitate this work ‘wherever possible.’³³⁷ APII does include a provision that requires all APMs to be detectable by commonly available mine detection equipment.³³⁸ If this provision cannot be complied with in respect to existing stocks, a nine-year deferral period is permitted. Of current APII members that are not party to the APMBC, Russia’s compliance with APM detectability requirements is deferred until 2014. A nine-year deferral for the self-destruct and self-neutralise provisions on remotely delivered APMs ends in 2010. Prokosch argues that landmine contamination in Afghanistan would be much less severe today if the Soviet Union had observed its earlier Protocol II obligations following ratification in 1982. Instead, ‘through lack of control and lack of publicity, the Soviet army felt free to act without fear of effective sanctions or public censure, as have government and opposition forces in many other conflicts since 1980.’³³⁹ This example highlights a dual challenge to regime effectiveness. On the one hand, lengthy deferral periods for the implementation of key technical provisions come with humanitarian costs. On the other, this is exacerbated by the absence of political will to impel states parties to implement provisions for humanitarian reasons in advance of the required timeframe.

Decisions made in both regimes on time limits for destruction of landmines were based on compromises. Arguably, this reflects in regime design the practical

³³⁶ Maslen, S. and Herby, P.; ‘An International Ban on Anti-Personnel Mines. History and Negotiation of the “Ottawa Treaty”’; *International Review of the Red Cross* no. 325, pp.693-713.

³³⁷ Amended Protocol II, Article 9, para 2.

³³⁸ Amended Protocol II, Article 4.

challenges of implementation and the consequent need for flexible provisions that recognise them. It also makes clear the interests of different stakeholders and the flexibility required to agree provisions in a consensus framework. However, while both regimes display a lack of awareness of certain ‘field’ realities, a core difference in the orientation and knowledge base of the two regimes is also highlighted. In the APII regime design process, destruction of stocks was understood as a technical exercise. In the context of the APMBC, practical difficulties of implementation and the humanitarian costs of different options were discussed at length in the negotiation of the regime. This is reflected in emphasis given to support for national implementation that is absent from the APII regime.

Our analysis demonstrates commonalities and distinctions across the two regimes. In particular, this sub-section shows how contemporary use of landmines and the practical realities of mine affected states create significant barriers to implementation of regime obligations. While not recognised as such in the literature, the relevant regime provisions thus represent a ‘best case’ scenario rather than achievable commitments. It is evident that in both regimes humanitarian demining expertise has not informed provisions in ways that ensure obligations are realistic and enforceable. This relates both to context-specific socio-economic or environmental concerns but also to understanding relevant security dynamics. Moreover, while our analysis of stakeholder clustering throughout this thesis highlights that the APMBC does provide space (unlike APII) for developing world concerns, neither regime demonstrates flexibility to address challenges to regime effectiveness faced by mine affected states. An important distinction is also apparent. While APII understands implementation in

³³⁹ Prokosch (1995: p.182.

technical terms, the APMBC acknowledges the need to support national stakeholders in achieving these goals.

2.2 *Involuntary and voluntary defection in regime implementation*

This sub-section builds on the previous one by considering how gaps between regime rules and mine action realities play out in the implementation phase. It identifies where compliance with humanitarian demining-related provisions has not been fully achieved and seeks to develop new insights into causes of voluntary and involuntary defection. Reflecting the different objectives of the two regimes, it considers both the use of landmines by APII and APMBC regime members and the APMBC-specific obligation to clear mined areas.

On the central ban on the use of APMs, Angola, Ecuador and Ethiopia admitted using APMs as APMBC signatories. Allegations have also been made of use by signatories Burundi, Rwanda, Sudan and Uganda.³⁴⁰ However such conduct by states parties has been rare. As of January 2007, there were no allegations of APM use by signatories or full states parties for some 18 months. The drastic reduction in the use of APMs by states generates a pay off for humanitarian demining since this represents a measurable reduction in the likely number of future mined areas that the humanitarian demining community would have been called on to clear. The decline in mine use thus fulfils the humanitarian criterion for regime effectiveness. In terms of the strength of the anti-APM norm, it is also significant that a central pillar of the regime

³⁴⁰ *Landmine Monitor* 2006, p.8.

– the prohibition on the use of APMs – has proved resilient during the decade since the APMBC regime entered into force.

Landmine Monitor characterises the obligation to clear mined areas as ‘the greatest challenge to the integrity of the treaty.’³⁴¹ Furthermore, the Nairobi Action Plan agreed at the first APMBC Review Conference in 2004, calls on states to ‘strive to ensure that few, if any, States Parties will feel compelled to request an extension’ to their ten year clearance deadline.³⁴² However, of the 29 states with clearance deadlines in 2009 and 2010 it is estimated that 13 will struggle to reach this goal.³⁴³ Indeed, at the meeting of APMBC states parties held in Amman, Jordan in November 2007, the focus of the sessions dedicated to mine clearance was not on implementation challenges but modalities for requesting extensions to clearance deadlines.³⁴⁴ This provides evidence in implementation of the tension identified in the design phase between regime obligations and humanitarian demining realities.

Inability to meet clearance deadlines suggests a significant gap between regime goals and the likelihood of their implementation that poses a dilemma for mine-affected regime members as well as for the regime more broadly. It also introduces a more nuanced distinction problematised in Section 3.3 below between achieving regime goals and meeting the humanitarian criterion for effectiveness. This is evident in the potential disconnect between the humanitarian demining imperative to reduce the

³⁴¹ *Landmine Monitor* 2006, p.23.

³⁴² Nairobi Action Plan; Action no. 27. *Final Report of the First Review Conference*. APLC/CONF/2004/5, 9 February 2005, p.99.

³⁴³ Bosnia and Herzegovina, Cambodia, Chad, Croatia, Denmark, Mozambique, Niger, Senegal, Tajikistan, Thailand, UK, Yemen, Zimbabwe.

³⁴⁴ Barlow, D., ‘The Parable of the Two Sons’; *Journal of Mine Action* 11, 2 (Spring 2008): p.11.

harm caused by APMs and the regime obligation to clear all mines regardless of their impact.

A number of APMBC members that have not taken steps to clear mined areas in line with treaty commitments lack the appropriate domestic capacity to support this work. Thailand's likely missing of its clearance deadline is attributed to a combination of factors. *Landmine Monitor* identifies three causes: 'mine action has not been a government priority, inadequate financial support, and the military structure of mine action in Thailand.'³⁴⁵ For a number of other states parties, including Niger, Swaziland and Venezuela that have also not begun clearance operations, adequate capacity is clearly an issue. In each case, involuntary defection can be attributed to a combination of the scale of the task, the lack of domestic capacity or implementation mechanisms as well as insufficient political will. The ability of the regimes to influence these critical components for regime effectiveness in the area of humanitarian demining are considered in Section 3 below.

The case of Venezuela is qualitatively different, crossing the line between involuntary to voluntary defection. Clearance of APMs – used to protect naval facilities near the border with Colombia – is alleged to be conditional on finding an alternative protection system.³⁴⁶ Military necessity therefore seems to be the key consideration in influencing Venezuela's non-compliant behaviour. Significantly, this failure to implement a clear regime obligation was highlighted by *Landmine Monitor* as early as 2005. However, reflecting a reluctance to address sensitive implementation issues, this has not been taken up to date as an issue of non-compliance within the framework

³⁴⁵ *Landmine Monitor* (2006): p.30.

of the APMBC regime.³⁴⁷ As discussed in Chapter 4, in contrast to the overtly humanitarian orientation of the APMBC, a founding principle of APII is the need to balance humanitarian concerns with those of military necessity. However, as in the case of Venezuela's alleged APMBC non-compliance, long-standing accusations that Russia employed landmines in Chechnya without marking, fencing or monitoring would represent a clear breach of the country's obligations under APII.³⁴⁸ In a parallel to the APMBC, this issue has been repeatedly raised by civil society campaigners but has not been addressed within the regime.

The political factors that impede national implementation of humanitarian demining programmes come as no surprise to the UN-run programmes, NGOs and commercial companies engaged in humanitarian demining programmes. Reflecting the security dynamics that make landmine regimes a 'hard' case, where political will remains elusive, conflicting national interests frequently play a role. This sub-section demonstrates that while some humanitarian demining commitments have been observed, important examples of voluntary and involuntary defection can be identified. From a mine action perspective, these may highlight the challenging nature of the work. However, from a regime perspective, findings show the inability within APII and the APMBC to acknowledge and address gaps in implementation at the national level. This directly links to research questions that associate effectiveness with the ability of the regimes to be evolutionary in order to address implementation challenges.

³⁴⁶ *Landmine Monitor* (2005): p.612. Interview with an (anonymous) military official, 20 April 2005.

³⁴⁷ *Landmine Monitor* (2007); 'Country and Area Reports'.

³⁴⁸ ICBL Statement to the 1st Conference of States Parties to Amended Protocol II of the Convention on Certain Conventional Weapons, 15 December 1999.

2.3 *Verification*

Implementation goals can only be achieved if mechanisms are in place to make members aware of whether regime objectives are being met. This sub-section considers the role of verification in enabling the regimes to identify and engage with implementation challenges in the area of humanitarian demining. It assesses the strengths and weaknesses of formal as well as informal verification mechanisms, thus further substantiating insights developed in Chapter 5 in relation to humanitarian demining.

Verification mechanisms provide an important means of understanding and monitoring regime implementation. As discussed in Chapter 5, the accuracy of some APMBC reporting is questionable given the lack of capacity in mine-affected states to survey the national territory, the absence of control of some areas of the country, particularly where ANSAs are present, and in some cases an evident reluctance to advertise ‘bad news.’ Consequently, the Philippines and Bangladesh in their Article 7 reports have rejected claims that there are known or suspected mined areas on their territory, despite reports to the contrary. In the case of Bangladesh, the army reported that border security forces – the ‘Na Sa Ka’ – had laid mines along the border with Myanmar although the border guard leadership subsequently denied this.³⁴⁹ These discrepancies undermine the value of regime reporting as an analytical tool to support humanitarian demining planning and prioritisation.

³⁴⁹ *Landmine Monitor* (2006): p.29.

The ICBL, in its de facto role as APMBC compliance watchdog, pays close attention through *Landmine Monitor* to the *number* of annual APMBC reports. However, less attention is paid to the *quality* of the data provided. This may be explained by the fact that advocacy experts and diplomats responsible for the meetings that consider implementation issues do not have humanitarian demining expertise in order to question the detail of the reports. This point is significant because it builds on earlier analysis of stakeholder clustering. The lack of practitioner expertise in the implementation cluster results in costs for how the regime is able to engage with humanitarian demining issues.

As discussed in Chapter 5, below the level of the state, the role ANSAs play in this field receives insufficient attention within the two regimes. ANSAs represent a major category of mine users, often control mined territory and are responsible for the manufacture, trade and use of landmines.³⁵⁰ The ICBL, through *Landmine Monitor*, provides details of APM use by ANSAs but does not use its considerable influence to advocate for such actors to be addressed within the framework of the regime. This points to a reluctance to deal with a ‘hard case’ issue that would cause disputes among regime members – notably those with armed groups on their territory – even though there is an evident benefit for humanitarian demining in engaging with this major category of landmine user. Although the two landmine regimes, in line with overarching principles of IHL, are binding only on states, the need to involve rebel opposition groups, insurgents, militias and warlord factions in efforts to ban or restrict the use of landmines has grown with an increasing awareness of their role. This gap in

³⁵⁰ According to the 2006 edition of *Landmine Monitor*, armed non-state groups used APMs in ten countries: Burma, Burundi, Colombia, Guinea-Bissau, India, Iraq, Nepal, Pakistan, Russia/Chechnya and Somalia).

regime engagement therefore has particular costs given that these actors are using landmines in more countries than government armed forces.³⁵¹

APII reporting is also deficient from a humanitarian demining perspective. Annual APII reports provide significant detail on mine action activities in order to promote transparency. However, there is no link between such transparency and obligations within the regime. The protocol's focus on the technical characteristics of landmines could provide a value-added to the demining community through clarifying technical data that would assist in their clearance and destruction. In Kosovo, following the NATO air campaign, details of NATO bombing missions as well as demining activities in support of its operations was only forthcoming following lengthy institutional bottlenecks and problems linked to security classification. These problems were overcome through the persistence of mine action practitioners and not through any intervention via the mechanism of the regimes. The regime has not developed a dialogue with the humanitarian demining practitioner community to refine such requirements. Lost opportunities to develop such synergies demonstrate the importance of stakeholder clustering to regime effectiveness. Specific regime provisions did not benefit from practitioner input while the continued absence of these actors in the implementation process means that the regime has not been able to evolve in order to better meet implementation challenges.

The APMBC approach is in stark contrast to the CCW in terms of the role of informal verification. Civil society has not mobilised behind the APII regime. In part, this reflects the nature of the regime framework: civil society actors continue to be

³⁵¹ *Landmine Monitor* (2006) p.8.

excluded from all but the public plenary sessions of states parties' meetings. On the other hand, this exclusion is consistent with a conscious policy decision on the part of the ICBL that pursuing a ban on APMs is incompatible with engaging a regime that advocates a 'restrictions' based approach to the issue. Regardless of the ICBL approach, analysis of the impact of informal verification provides additional insights to our understanding of regime interplay. Civil society plays a de facto role in APII verification since a section on CCW compliance is included in *Landmine Monitor*. This reflects a recognition by the ICBL of the benefit in highlighting non-compliance by APII regime members and as a result reinforcing a perceived gap in humanitarian terms between the two treaty regimes. However, while this advocacy-driven approach does not extend to pursuing a positive role in encouraging the implementation or universalisation of APII, it does raise the stakes for non-compliance. While this may not change the behaviour of militarily-significant states where national security concerns are at stake (e.g. Russia in Chechnya), it has contributed to increased transparency from regime members.

I show that verification of humanitarian demining-related provisions is particularly vulnerable to an unwillingness to address defection. This results in a vicious circle with regime advocates de-emphasising issues that are 'off message' in terms of the positive evolution of the regime while non-compliant states hide their conduct both to offset the political costs of exposure but also to avoid a potential loss of funding for humanitarian demining. By neglecting to follow through on the gaps in annual reporting or suggestions of non-compliance, an opportunity is missed to provide the mine action community with new information or support that would be of benefit for humanitarian demining.

3. Regime effectiveness and humanitarian demining

Flexibility to adapt over time has been identified as a key component of successful regimes in different issue areas.³⁵² In this respect, humanitarian demining has arguably witnessed a ‘gestalt shift’ in recent years from emphasis on numbers of landmines cleared to their socio-economic impact as a guide to prioritisation.³⁵³ The mine action community is not fully situated within this new paradigm; although a new means of understanding the issue has emerged, its operationalisation, with the contingent benefits to mine affected communities, remains an ongoing process. The combination of an evolving mine action discourse with the recent emergence of APII and the APMBC reinforces insights developed in earlier chapters by showing that regime learning is a key quality to ensure that the regimes adapt to this evolving understanding of humanitarian demining.

In order to develop new knowledge on the value added of the two landmine regimes, this section critically examines the linkages between the landmine regimes and humanitarian demining policy and practice. It systematically applies the research framework elaborated in Chapter 2 and builds on the broader analysis developed in the previous chapter in order to develop new insights to humanitarian demining effectiveness under the themes of resources, political will and humanitarian impact. Generating additional revenues for humanitarian demining provides a measure of regime effectiveness. However, if resources are one indication of an effective regime, a distinction needs to be made between resource generation as a result of the profile of

³⁵² Levy, Young & Zurn (1995) p.278.

the issue and the effective targeting of these resources through the mechanism of the two regimes. The potential misuse of resources also links to a second key determinant of landmine regime effectiveness: the role of the regimes in fostering political will to act on regime obligations. Central research questions for this thesis that are further developed in this area include an elaborated analysis of political will. This concept is not fully expressed by regime membership but by states parties taking the challenging steps necessary to fulfil humanitarian demining obligations. Finally, given the intersection between regime goals and the broader rationale of IHL, a humanitarian criterion provides a third element of regime effectiveness.

3.1 *Resources*

Increased resources are only useful if they are deployed in ways that support the implementation of treaty objectives. A high level of funding on a macro level is important but for humanitarian demining purposes using these resources effectively and getting them to programmes in a timely manner is critical. An expert assessment published in 1999 on the first ten years of humanitarian demining programmes included recognition of the need for ‘better coordination and cooperation in exchange for the large pledges put forward.’³⁵⁴ In September 2002, Norway, in advance of the 2004 APMBC Review Conference, presented a non-paper proposing actions to ‘address all aspects of how to secure sufficient funding for reaching the aims of the Convention.’³⁵⁵ In the non-paper, sustainability was recognised as the cornerstone for designing and implementing humanitarian demining programmes. For example, the

³⁵³ GICHD, *Mine Action: Lessons and Challenges* (2005): pp.32-33.

³⁵⁴ Taylor, C.E. ‘Humanitarian Demining Programs: The First Decade’; *Mine Victims Fund* (1999): p8.

mine action programme in Kosovo is only one case that was plagued by such problems with the UN-commissioned review of the operation highlighting that ‘in any peacebuilding operation, mine action should not be a discretionary activity left to the charitable impulses of the donor community.’³⁵⁶ As an example, the UN Mission’s budget for 1999-2000 was not made available to the programme until late 2000.³⁵⁷ *Landmine Monitor* also records a lack of sustained funding as causing lay-offs of personnel or the halting of demining operations during 2006 in Afghanistan, Croatia, Guinea-Bissau, Iraq, Mauritania and Tajikistan.³⁵⁸

Resource constraints are not a new phenomenon and humanitarian demining programmes have frequently suffered from shortfalls or the slow disbursement of funding. However, the Norwegian initiative is significant because, for the first time, the key issue of *effective* rather than *adequate* funding was put on the regime’s agenda. Until then, neither the core group of states nor the ICBL paid particular attention to the effectiveness of these resources in finding their way to the operational level despite its prominence as an issue within the mine action discourse. Significantly, in the intervening years since the non-paper was tabled, there has been no substantive progress within the regime on bridging the gap between overall resource levels and their application.

Resource commitment by states with their own severe resource limitations provides a strong indication of political will to implement regime obligations. However, if

³⁵⁵ Norway, ‘Resources to Achieve the Convention’s Humanitarian Aims’; *Non-paper presented at the Fourth Meeting of the States Parties*, Geneva, 18 September 2003.

³⁵⁶ The Praxis Group Ltd., ‘Willing to Listen: An Evaluation of the United Nations Mine Action Programme in Kosovo 1999-2001’; (February 2002): p.20.

³⁵⁷ The Praxis Group (February 2002): p.8.

³⁵⁸ *Landmine Monitor* (2006): p.32.

obtaining information on donor resources is an inexact science, this is all the more challenging for mine-affected states. Responses by mine affected states to a questionnaire issued by Norway point to a growth in mine action funding between 1997-2002 amounting to USD \$18 million in this period through expanded state budgets. Brinkert emphasises that, beyond the traditional donor base, states defining themselves as ‘in a position’ to assist mine action in third countries include a further thirty-six member states from all regions of the world.³⁵⁹ Moreover, the allocation of funding for clearance by state-owned electrical utilities in Peru³⁶⁰ and public companies in Croatia³⁶¹ demonstrates that such efforts are not limited to governments. Beyond financial support, examples of practical assistance generated by the regime from this broader category of states parties include: Argentine demining and explosive ordnance destruction in Kuwait; Brazilian support to mine action in Central America and Angola; Malaysian training for developing countries in demining and destruction techniques; and, Paraguayan peacekeepers’ clearance work in the DRC.³⁶²

Although contributions may be modest in comparison to those of Western mine action donors, they represent a significant potential ‘value added’ to the quality of humanitarian demining assistance. This can be attributed to the ‘soft’ regime requirement of assisting other states parties. Support from actors in the same region and with similar experiences to mine-affected states is particularly useful for humanitarian demining purposes as it is likely to be tailored to the needs of their neighbours. Such approaches reduce the risk of repeating a criticism frequently

³⁵⁹ Brinkert in *Disarmament Forum* 3, 2003, p.44.

³⁶⁰ Government of Peru, Response to the Questionnaire distributed by the Norwegian Coordinator of the Resource Mobilisation Contact Group, 27 January 2003.

³⁶¹ Croatian Ministry of Foreign Affairs and Croatian Mine Action Centre, ‘Funding Demining in the Republic of Croatia’; *Presentation to the Standing Committee on the General Status and Operation of the Convention*, Geneva, 3 February 2003.

levelled at mine action donors of providing inappropriate 'Rolls Royce' solutions to developing world problems.

As explored in Chapter 5, the issue of resources in poor countries, particularly provided by external actors and processed through weak bureaucracies, presents challenges of corruption within mine action. Humanitarian demining is particularly vulnerable in this area. In Cambodia, allegations in 1999 over falsified payroll records in the Cambodian Mine Action Centre (CMAC) proved the tip of an iceberg that led to further revelations concerning land being cleared at the behest of military commanders, logging firms and a former Khmer Rouge leader. CMAC had insufficient management and oversight capacity so with little coherent data about its practices, the allegations were reinforced, leading to a loss of donor confidence and consequent drop in support.³⁶³ Cambodia's high profile within the APMBC framework offers the potential to influence its policies. However, neither capacity building nor corruption issues that, if addressed, would have significant humanitarian demining payoffs have been taken head on within the regime framework. Cambodia provides an example of how hard issues relating to resources and more broadly to the conduct of a regime member that are highly relevant for humanitarian demining have not been addressed through the regime.

Our analysis of resource mobilisation for humanitarian demining generates a number of significant insights for landmine regime effectiveness. The positive contribution of the APMBC to increasing resources for this activity is unsurprising. However, unprecedented support from non-traditional donors, often with their own resource

³⁶² Brinkert (2003): pp.44-45.

constraints, represents an important example of regime interaction effects. This is particularly significant when regionally driven and thus contextually relevant. Our analysis provides strong evidence that the three criteria for regime effectiveness are interrelated. The lack of take up within the regime of Norwegian-led efforts to apply a qualitative approach to resource issues is critical. This represents a key research finding that points to a damaging perception gap between regime implementers and the humanitarian demining community. It also reflects a broader knowledge gap between the cluster of regime implementation stakeholders and the humanitarian demining practitioners in the field that has clear implications for the ability of the regime to fulfil its humanitarian objectives. Finally, there is an evident but unacknowledged failure within the regime to deploy carrots and sticks that enhance capacity and strengthen political will of mine affected regime members to support humanitarian demining.

3.2 *Political will*

By placing responsibility for humanitarian demining on states parties, the APMBC recognises the importance of national ownership (and thus political will) as a pre-condition for achieving regime objectives. This is consistent with the identification within the mine action community of the need for ‘a commitment to the development of skills and capacities which national and other authorities require in order to take effective command of mine action programmes’³⁶⁴ as a sine qua non for sustainable national humanitarian demining programmes. The experience of humanitarian

³⁶³ Information obtained from the website of the NGO Forum on Cambodia: www.ngoforum.org.kh, accessed on 21 December 2003.

demining practitioners shows that capacity building could provide significant benefits to effective implementation of the regimes' humanitarian demining provisions.³⁶⁵

There is thus an evident complementarity between the regime framework and broader humanitarian demining goals.

However, to date there is limited evidence of capacity building activities that ensure transparency, accountability and effective control of mine action at the national level. Kosovo provides a relevant case in point. Mine action was labelled from an early stage as an activity suitable to be handed over to the local authorities. The United Nations Mission in Kosovo (UNMIK) handed responsibility for humanitarian demining to the Kosovo Protection Corps (KPC), largely made up of demobilised Albanian fighters and therefore closely identified with the Kosovo Liberation Army (KLA).³⁶⁶ Although viewed as a means to demobilise and reintegrate former combatants, this decision had several negative consequences. First, it deprived Kosovars who already had relevant skills of long term employment prospects; second, it resulted in poor work since insufficient training was given to the KPC mine clearance teams; and third it raised concerns over the political and ethnic bias of the force, particularly if deployed in ethnic Serb areas. Responsibility was handed over to newly created government authorities on 15 December 2001 – although senior management posts were still held by international staff – but was moved back to the United Nations Special Representative in 2004, reflecting the need for greater oversight and control. The fact that Kosovo represents the sole example of a

³⁶⁴ Eaton, R., Horwood, C. and Niland, N. 'The Development of Indigenous Mine Action Capacities'; *Study Report Prepared for the United Nations Department of Humanitarian Affairs*, (1997): p.67.

³⁶⁵ A 2004 study by the GICHD points out that capacity building at the local level can only be optimised within the framework of an effective national mine action strategy. GICHD (2004) *A Study of Local Organisations in Mine Action*, pp.13-14.

³⁶⁶ The Praxis Group (12 February 2002): p.80.

programme being handed back to ‘national’ ownership demonstrates the lack of progress in this area with its consequences for humanitarian demining effectiveness.

The relationship between international support and national ownership is not simply one where external actors support national capacity building. It is also incumbent on national actors to support their own mine action programmes. This political support of governments is essential but often lacking. In Cambodia, the HALO Trust must wait months for new vehicles and other equipment which has already arrived in country, because a policy of never paying bribes means that the customs service does not release them.³⁶⁷ Moreover, Grobbelaar cites an unnamed Southern African country where international demining staff need to reapply for a work visa every three months.³⁶⁸ Similar examples of bureaucratic logjams and efforts to obtain fees in order to navigate them could be cited in most mine-affected countries. These problems are well known among donors, policy makers and practitioners. However, the APMBC regime – which requires states parties to make every effort to assist humanitarian demining – plays no role in attempting to address such behaviour within its membership or as a condition for humanitarian demining support.

Analysis in earlier chapters demonstrates important regime effects on influential states that are not members of both regimes. The US position is characterised in the existing literature as at the same time a leading force behind APII and an APMBC ‘rejectionist.’ US support for humanitarian demining has not been reflected by any movement on a political level towards acceptance of the anti-APM norm. Indeed, under the Bush administration there was a policy shift that de-emphasised the

³⁶⁷ Interview with HALO Trust Cambodia Country Manager, Siem Reap, 1 July 2001.

eventual move from APMs to other weapons systems fulfilling similar functions without their humanitarian problems.³⁶⁹ However, US support for humanitarian demining reinforces the hypothesis that the two regimes are best understood as part of a wider IHL regime addressing inhumane weapons. In 2006 the US chaired the Mine Action Support Group (MASG), responsible for coordinating policy among 24 major mine action donors. This structural leadership role is very different from the ‘pariah’ label promoted by the ICBL in response to its non-membership of APMBC. Certainly the US role in humanitarian demining demonstrates the interlocking and overlapping nature of the regimes with common goals more significant than regime membership.

Regimes in other issue areas suggest that support from influential states can influence the behaviour of a broader range of actors. Although it may be argued that US commitment to a ban on APMs would result in emulation effects among some other states, it is questionable whether US policy would have a direct impact on key militarily significant APMBC rejectionists such as China or Russia. That these two states are members of the APII regime is itself politically significant. Yet from a humanitarian demining point of view, regime membership has no bearing on Russian and Chinese landmines already in the ground in post-conflict and conflict-ridden states around the world or on the fact that Russia continues to use APMs in Chechnya.³⁷⁰ The compliance of these states with APII detectability requirements will have effects on potential future humanitarian demining activities. However, the proliferation of Chinese and Russian weapons over past decades has not (as with the

³⁶⁸Grobbelaar, N., (Ed.) (2003) *Mine Action in Southern Africa: Instrument of Development*; South African Institute of International Affairs : p.60.

³⁶⁹ The Pentagon has requested \$1.66 billion for research and production of two new landmine systems between 2006-2013 which, according to *Landmine Monitor*, are incompatible with the APMBC.

Landmine Monitor (2007). Available at: www.icbl.org/lm/2007/usa.html

³⁷⁰ *Landmine Monitor* (2006): p.7.

US) been offset by a countervailing commitment to humanitarian demining that has increased significantly since the entry into force of the regimes.

As a leading member of the APII regime, the US has invested significantly in alternatives to APMs as well as in ensuring compliance of existing systems with the regime's detectability requirements. These measures to make landmines more readily detectable reduce the risks to deminers in the field. US support for humanitarian demining therefore contributes to the APMBC regime's core goal of reducing the humanitarian suffering caused by these weapons. The contrast between a commitment to humanitarian demining and a policy position that is no nearer an APM ban provides further evidence to reinforce the hypothesis that embracing the core political message of the Ottawa Process (a universal ban at all costs) is not a precondition for substantive progress in realising humanitarian demining payoffs. Ken Anderson, a former ICBL campaigner, questions the value of the APMBC regime without US membership.³⁷¹ Yet this argument ignores a more nuanced reality that in terms of support for humanitarian demining, important dynamics that transcend partisan regime positions generate effects among members and non-members that contribute to achieving the regime's underpinning objectives.

While the topic of ANSAs has been discussed at APMBC Standing Committee meetings since 2005 as well as at the sixth meeting of state parties, the role played by Geneva Call is particularly relevant from a humanitarian demining perspective. As with verification and compliance monitoring, informal arrangements have been developed where the regime proper has lacked the ability to address a key mine action

³⁷¹ Anderson, *European Journal of International Law* Vol.11. No.1.

issue. It is therefore legitimate to assess how effectively the range of stakeholders at a sub-state level with a role to play in humanitarian demining are addressed. That the European Parliament, on 7 July 2005, called on ANSAs to sign the Geneva Call Deed of Commitment demonstrates the increasing importance attached to such obligations by the international community.³⁷² Yet despite the resistance of some regime members, Geneva Call could not have developed its role without the normative pull of the regime. Indeed, it is important to note that stigmatisation also generates emulation effects below the level of the state. For ANSAs that control mined areas, acknowledgement of the illegitimacy of these weapons is an essential first step to opening up that land for clearance. The stigmatisation of APMs is also felt on the ground, contributing to a widespread perception of demining as an ‘honourable’ profession.

Our analysis of the ability of the regimes to increase political will for humanitarian demining demonstrates the multi-layered nature of regime effectiveness. On one level, deep linkages are delineated between the regimes based on a recognition that humanitarian demining contributes to a shared humanitarian imperative. The de facto support of the US for the humanitarian demining goals of the APMBC and the willingness of different ANSAs to give up these weapons both represent an acknowledgement and consequence of their illegitimacy. However, if the role of ANSAs has been discussed within the APMBC, it remains a ‘hard case’ that the regime has not directly addressed. Stakeholder clustering in the implementation phase, in particular the absence of practitioner expertise, thus has direct consequences for humanitarian demining since implementation challenges remain unacknowledged.

³⁷² European Parliament Resolution # P6_TA-PROV (2005) 0298; *A World Without Landmines*.

Deficits in political will thus represent a cause and effect of limited regime support to humanitarian demining since a lack of contextually-grounded knowledge combines with a reluctance to address politically sensitive implementation issues.

3.3 Humanitarian impact

Ultimately, the effectiveness of APII and the APMBC rests on their impact in addressing the humanitarian costs associated with landmines. Both regimes are underpinned by an imperative to reduce the suffering posed by landmines. Humanitarian demining seeks to achieve this goal through ensuring that individuals and communities are free to live without the risk of death or injury through the presence of these weapons. It is also important to acknowledge that landmines represent only one part of a broader challenge to build peace and lay the foundations for sustainable development. This section therefore assesses the regimes in two dimensions: the effectiveness of technical regime provisions in fulfilling humanitarian objectives; and, the role of the regimes in linking humanitarian demining to broader security and development goals.

Article 6 of the APMBC encourages cooperation to improve the role of technology in humanitarian demining. This is an important provision in the light of the findings of a UN-sponsored study into global operational needs for mine action that ‘in some cases, donors have forced unsuitable and ineffective equipment on national programmes and local demining projects. This has harmed the relationship between donors, researchers, industry and the user community.’³⁷³ In the context of demining

³⁷³ Bryden and McAslan (2002): p.6.

technology, this reflects a common perception, reinforced by experience from practitioners, of wasted resources spent on expensive, inappropriate equipment that fail once exposed to the rigors of climatic and other conditions as well as the lack of spare parts common to post-conflict environments.³⁷⁴

Although the gap between technology and field realities is recognised in the report of the 2006 conference of APMBC states parties, inappropriate donor support has not been directly addressed in the framework of the intersessional work programme. As discussed in Chapter 5, these meetings bring together both donors and representatives of mine affected states but the humanitarian demining practitioner community does not play a prominent role in this implementation mechanism. Two significant findings can be drawn on the relationship between agency and regime effectiveness in this area. First, a lack of technical expertise in the regime implementation phase works against problem solving based on the realities of humanitarian demining. Second, despite efforts to ensure broad developing world representation, there remains an inherent asymmetry between donors and recipients, unaddressed within the regime, that prevents the latter from criticising the nature of the support they receive for fear of receiving less in the future. This insight echoes Beier's observation that while the Ottawa Process 'collapsed political time' in the regime design phase, there is 'unchanged political space' for the developing world in the regime's implementation.³⁷⁵ These challenges also further demonstrate an underlying weakness in the regime's inability to mobilise expertise or political will to address the 'hard' implementation challenges posed by humanitarian demining.

³⁷⁴ Grobbelaar (2003): p.16.

Although APII's stipulated self-destruct and self-neutralise requirements would avoid death or injury to anyone stepping on a landmine after the end of its active life, in practice this would provide no additional benefit in terms of the effectiveness of humanitarian demining. All objects emitting a metal signature must be excavated in the same way and all landmines must be treated as 'live' for the purpose of clearance. As demining expert Tim Lardner points out, 'it doesn't matter to my deminers on the ground whether there are no mines or whether there are a thousand mines, in the five hectares of land they are told to clear.'³⁷⁶ More broadly, as demonstrated in the UN global needs study, the requirement to clear surrounding vegetation and excavate every metal source in a contaminated area means that the numbers of landmines, dangerous or otherwise, has little or no bearing on the rate of clearance.³⁷⁷ The humanitarian benefits in terms of future use of APMs that would flow from the application of these APII provisions are therefore more than offset by the much greater threat posed by landmines already in the ground.

APII's detectability provisions are considered within the regime as a major contribution to humanitarian demining. Michael Matheson, chief US negotiator at the 1995-96 CCW Review Conference, correctly argues that greater detectability of APMs – instead of the difficult to detect and long-lived APMs frequently used in developing world conflicts around the globe – save lives among deminers and military personnel operating in a mine-affected area.³⁷⁸ The compliance of China and Russia with this provision is instructive. The former has already met its detectability obligations while the latter has deferred compliance to 2014. It is significant that these

³⁷⁵ Beier in Harpviken (2004): p.28.

³⁷⁶ Quoted in Flynn, M.J. in Mathew, McDonald and Rutherford (Eds.) (2004): p.121.

³⁷⁷ Bryden & McAslan (2002): pp.7-8.

states and their militaries have recognised the hazards to their own forces of ‘undetectable’ APMs and phased out such models from their arsenals on their own initiative. The APII regime thus provides a framework that unites self-interest – from the point of view of military utility – with a humanitarian demining payoff. However, it is wrong to suggest (as Matheson does) that this has led to a significant reduction in civilian casualties. Increased detectability (as opposed to self-destruct or self-neutralise capabilities) even if adopted universally would therefore provide no significant humanitarian benefits for civilian safety. Moreover, the detectability provision in APII can only relate to current and future stocks of APMs. This fails to recognise the temporal dimension of the landmine issue; from a humanitarian demining perspective, the vast majority of the post-conflict hazards to be cleared pre-date APII so the restrictions have no bearing on their work.

It is widely recognised that while the identification and clearance of high-impact areas of mine infestation can lead to major benefits in the shorter term, work to remove the mine threat from certain areas – given the resources available and the unavoidably painstaking nature of manual clearance – will be a matter of decades. It is also acknowledged that this work will result in commensurately diminishing returns when the costs are weighed against humanitarian benefits. The scale of the demining task in severely mine-affected states was acknowledged during the APMBC regime design phase. However, ‘100% clearance’ was retained as the benchmark for regime compliance. The distinction between absolute goals and relative benefits highlights contrasting measures of effectiveness within the regime and understood by the humanitarian demining community. They reflect a concern within the regime – built

³⁷⁸ Matheson, M.J.; ‘Filling the Gaps in the Conventional Weapons Convention’; *Arms Control Today*

into the design phase and carried through to implementation – that failing to define and meet unequivocal targets will undermine regime credibility. From a humanitarian demining perspective, a different emphasis is on whether investing scarce resources in striving to achieve absolute targets represents a justifiable humanitarian payoff.

This divergence between regime and humanitarian demining priorities in the understanding of what constitutes effectiveness persists in the implementation phase and is captured in the distinction between ‘mine free’ and ‘impact free.’ The APMBC is inflexible that compliance means ‘100% free’ of APMs whereas for humanitarian demining purposes the goal is to eliminate the threat posed to populations by these weapons. If there is minimal humanitarian risk from APMs then scarce resources are better invested elsewhere. Djibouti recognised this important distinction by declaring itself to be ‘mine safe’ rather than ‘mine free’ in its Article 7 report. In the Falkland Islands, Argentine minefields have been perimeter-fenced and monitored by British forces with the result that the only casualties recorded in the twenty-five years since the end of the conflict are British soldiers involved in mine clearance.³⁷⁹ In the Falklands, the landmine and UXO contamination has no humanitarian impact while the territory that is mined – beaches and peat areas³⁸⁰ – have little or no socio-economic value. There is therefore no imperative for the civilian population to enter these areas while a permanent UK military presence regularly conducts mine awareness training and ensures that perimeter fencing and marking remains in place. Although under Article 9 of the APMBC the UK is obliged to clear the Falklands minefields by 1 March 2009, both the islanders and the UK government have suggested that the cost and effort would be better invested in severely mine affected

(November 2001). Available at: www.armscontrol.org/act/2001_11/mathesonov01.asp

regions. Even the UK NGO *Landmine Action*, highly critical of government policy in the regime formation phase, proposed under the ‘Falklands Initiative’³⁸¹ that a ten year clearance extension be granted to the UK in exchange for additional revenues to be provided for severely mine affected states during this period.

At least one state party may have misinterpreted humanitarian demining-related obligations through describing measures to emplace *permanent* minefield marking – thus implying that the land would not be cleared.³⁸² This represents a qualitatively different case from pursuing a nuanced approach to the merits of clearance in the absence of humanitarian impact. The example of Kosovo, where responsibility for mine action in the province was prematurely handed to newly founded provisional government authorities, provides further evidence of the complexity of this issue. In Kosovo, there is significant disagreement between UNMAS declaring the province ‘impact free’ and the HALO Trust resumption of clearance operations as a result of the continuing high numbers of civilian casualties. Local mine action authorities detail only relatively few dangerous areas yet ‘HALO knows these figures to be incorrect and is planning a joint survey....to define the remaining threat from cluster munitions and landmines’.³⁸³ The same problems of certitude therefore apply whether the objective is to be ‘mine’ or ‘impact’ free.

These examples demonstrate an inherent tension between the desire not to dilute the clarity of the anti-APM norm and considerations relevant to the effectiveness of humanitarian demining. In the case of the APMBC, if the consequence of regime

³⁷⁹ *Landmine Monitor* 2006, pp.771-772.

³⁸⁰ United Kingdom APMBC Article 7 Reports, Form I, 15 March 2005 and 12 April 2006.

³⁸¹ See: www.landmineaction.org

³⁸² APLC/MSP.7 2006/5 p.14.

obligations is to push states to expend resources that could better be used for other development priorities in the hunt for the ‘last mine’ then this is irrationally wasteful. However, our analysis of resource and political will factors that contribute to states parties inadvertently or deliberately failing to meet regime obligations is compelling. This reinforces the finding that the humanitarian imperative underpinning the regime must be nurtured in order to support humanitarian demining outcomes, even if this has an associated cost on the level of specific activities. APII provides for a qualitatively different approach to these concerns. Humanitarian demining issues and expertise were marginal to the negotiation of the regime. The impact of design factors on regime effectiveness is evident in provisions that do not take into account temporal considerations or the highly challenging environments within mine affected countries, in particular ignoring current levels of mine contamination. Furthermore, emphasis on the technical characteristics of weapons leaves little room for consideration of the civilians affected by them. Thus, while the regime creates positive effects, it also highlights an important distinction between a implementation of humanitarian demining-related provisions and the humanitarian impact of the regime.

The humanitarian imperative underpinning both regimes points to the need to understand humanitarian demining in relation to wider security and development challenges. There is an evolving policy literature that attempts to situate humanitarian demining within broader peacebuilding and development fields. The literature emphasises how humanitarian demining reduces civilian deaths and injuries and allows refugees and the internally displaced to return home. It assesses its important enabling role for rebuilding economies, transport and other infrastructure as well as

³⁸³ Taken from the HALO Trust website on 10 January 2007: www.halotrust.org/Kosovo.html

providing jobs. Moreover, the human resource base for humanitarian demining points to potentially mutually reinforcing links between mine action and related activities such as DDR, SSR or SALW programmes. There is an unrealised potential for the integration of mine action with other peacebuilding activities. The APMBC regime acts as a convenor for states and multilateral institutions with humanitarian, security and development goals of which humanitarian demining forms only a part. Similarly, although the APII provision on information exchange following the cessation of hostilities is weak, it does point to an area recognised by the mine action community for its practical and political benefits where the regime could reinforce efforts to include mine action in peace agreements.³⁸⁴

Achieving better integration with other peacebuilding and development issues therefore represents a realistic objective with clear humanitarian payoffs for both regimes. However, echoing a conclusion drawn from a review of donor policy statements that ‘the link between mine action and peacebuilding is generally acknowledged, but poorly developed,’³⁸⁵ these ‘spillover effects’ have not been considered within the framework of the regimes. This lack of synergy between mine action and broader peacebuilding and development has been acknowledged through Canada establishing a Contact Group on ‘Linking Mine Action and Development’ in the APMBC.³⁸⁶ However, there is resistance to developing these linkages within the regime. In part this reflects fear of a reduction in overall funding levels for humanitarian demining or a dilution of the effectiveness of humanitarian demining

³⁸⁴ See: United Nations, *Mine Action Guidelines for Ceasefire and Peace Agreements*, United Nations Inter-Agency Coordination Group on Mine Action, (New York, 2003).

³⁸⁵ Harpviken, K.B. and Skara, B.A. ‘Humanitarian Mine Action and Peacebuilding: Exploring the Relationship’; in Harpviken (2004): p.37.

³⁸⁶ APLC/MSP.7/2006/5 p.25.

programming.³⁸⁷ But it also represents an acknowledgement that the success of the Ottawa Process has stemmed from the way APMs have been isolated and stigmatised as a humanitarian threat. The relative lack of integration of mine action is thus significant. It enhances our understanding of regime dynamics by showing that there is actually a common interest shared by APMBC regime partisans and mine action practitioners to maintain the uniqueness of the issue area. While not discussed in the existing literature, systematically applying our research framework to the area of humanitarian demining thus clarifies different costs to regime effectiveness (as well as some benefits) from the perspectives of resources, political will and humanitarian impact in pursuing this strategy.

4. Conclusions

Analysing the implementation processes of the two landmine regimes in detail and through the lens of regime theory provides new insights to confirm the hypothesis that the relationship between regime design and implementation is critical to landmine regime effectiveness. In particular, an important distinction is demonstrated between overtly beneficial ‘ideal’ provisions and their effectiveness in support of humanitarian demining. A number of provisions in both regime frameworks, through flaws and compromises in regime design, are largely redundant in the face of a combination of climate, geography and the socio-economic needs of local populations. From a military utility perspective, in the context of APII there was awareness among the original drafters of the protocol that the term ‘pre-planned’ minefield was opaque and unrealistic in relation to both traditional and asymmetric uses of landmines. These

³⁸⁷ See: Dahinden, M. ‘Humanitarian Demining at a Crossroads – A Farwell Lecture’. 1 July 2004.

insights thus contribute to addressing research questions that consider the relationship between international regime commitments and national implementation processes by demonstrating considerable costs in terms of regime effectiveness as a result of failure to address field realities in regime design.

If the regimes exert positive effects on resource mobilisation for humanitarian demining, this chapter highlights an important distinction between quantitative and qualitative criteria for effectiveness in the area of resource generation. While resources have increased measurably, the regimes do not contribute to efforts to ensure that funding translates into targeted, sustained and effective support to humanitarian demining. The regimes are particularly weak in focusing the influence and conditionalities that could be applied when faced with ‘hard cases.’ Thus, while misuse of donor resources is open knowledge in many demining contexts, it is not a focus within the regime. Perception gaps between association within the regimes of effectiveness with the level of funding made available for mine action and the more nuanced definition applied in this thesis reflect an important split between an evolving mine action discourse and regime frameworks that are unable to learn and adapt to more qualitative criteria for effectiveness.

Chapter 4 deconstructs the highly political landmine regime formation process while Chapter 5 builds on this by providing new insights to both political as well as technical determinants of regime effectiveness in the implementation phase. This chapter reinforces these research findings by demonstrating that to shape effectiveness in the area of humanitarian demining the regimes must address both these dimensions. Emulation effects have proved a major factor in swelling APMBC regime

membership. However, this chapter elaborates a qualitatively different set of challenges relating to the political will necessary to implement humanitarian demining-related provision. In many mine affected states, the desire to cut a positive international figure through regime membership has not been followed up with domestic implementation measures or in some cases has led to misleading reporting of the level of compliance with humanitarian demining obligations. Moreover, the number of APMBC members seeking extensions to clearance obligations shows the challenge of achieving this goal for mine affected states, regardless of considerations of political will.

A central implementation challenge is the ability of the regimes to support mine-affected regime members to fulfil humanitarian demining-related obligations and avoid defection. This chapter demonstrates that domestic implementation of regime obligations is either not a priority or is beyond the means of many mine affected states. The absence of domestic implementing legislation provides a clear indicator of such a lack of commitment that is acknowledged in the humanitarian demining community but has not provided a catalyst for action within the regimes. The inability of the APMBC to link political will for regime formation to a commensurate commitment to implementation nuances our understanding of the influence of norms across different phases of regime development. The lack of focus on hard implementation challenges also further clarifies the costs of disjunctions between regime and mine action priorities. This demonstrates an unacknowledged gap in the focus of the regimes that ignores humanitarian demining-related implementation challenges in practice.

This chapter demonstrates that if knowledge related to humanitarian demining is becoming more effectively networked, the APMBC implementation process – driven by politico-diplomatic and advocacy expertise – is de-linked from this evolving discourse. The APII regime, although addressing technical implementation issues, is similarly disengaged since its focus is not on humanitarian demining but on issues of detectability and self-destruct / self-neutralise that underpin the regime’s restrictions-based approach. The consequence for both regimes is that they fulfill an important role in packaging and disseminating information and analysis. However, the capacity is lacking to assess this in qualitative terms and engage in necessary course corrections. Our analysis of how influential regime stakeholders are clustered in implementation demonstrates a lack of developing world buy in during the implementation phase. This provides an important corrective to the accepted narrative of the APMBC as a ‘participatory’ regime. Critically, gaps in regime design have not been filled through opening up decision making mechanisms to a broader range of expertise in the implementation process.

Tensions between the concepts of ‘mine free’ and ‘impact free’ add to our knowledge of the significance of the dislocation between the APMBC regime and mine action priorities in the area of humanitarian demining. There is a clear challenge to regime effectiveness if states parties declare themselves mine free for political reasons or through a lack of appreciation of the threat in their own countries. On the one hand, if ‘mine free’ becomes a negotiated term rather than an absolute requirement then this would permit the better targeting of resources to humanitarian demining operations. However, such an approach also runs the risk of eroding the key normative foundation of the regime and thus reducing the pressure on regime members (as well as non-

members) to comply with its provisions. Lowering the bar for compliance to ‘impact free’ could also increase the risk of voluntary or involuntary defection through states misunderstanding or deliberately misinterpreting their obligations. This dilemma poses a key challenge for the evolution of the APMBC regime because it presents a significant barrier to aligning regime and mine action goals.

This chapter provides a critical analysis of the implementation and effectiveness of the two landmine regimes in the area of humanitarian demining. Different frames of reference and communities within design and implementation clusters have resulted in only one regime – the APMBC – that focuses directly on humanitarian demining. However, the APII regime contributes to humanitarian demining goals given the potential benefits offered through regulating different categories of landmine. Yet the common feature of both regimes – provisions that have proved difficult or unrealistic to enforce in the face of implementation challenges – point to a significant dislocation between the regimes and the humanitarian demining community. These gaps represent missed opportunities for the regimes to generate positive effects on humanitarian demining policy and practice. The following chapter builds on this analysis through assessing common or distinct challenges to regime effectiveness in the context of landmine stockpile destruction.

Chapter 7

Stockpile Destruction and the Landmine Regimes

1. Introduction

This chapter contributes to our overall research aims through developing new insights into the contribution of the landmine regimes to destroying all stocks of landmines prohibited under the respective treaty frameworks. The technical, resource and security implications of stockpile destruction provide important considerations for research questions that address the interrelated technical and political dimensions of regime effectiveness. The burden on affected states to clearly identify and destroy stocks on their territory informs our understanding of how international commitments translate into national level implementation. Related research questions specific to stockpile destruction consider the clarity of provisions on which stocks must be destroyed and when, the feasibility of commitments in relation to the challenging environments in which stockpile destruction takes place, the ability of the regimes to incentivise or enforce compliance as well as the implications of deferral periods and other compromises that came about through negotiations in the regime design phase.

In practical terms, stockpile destruction represents the only way to ensure landmines are never used. A growing awareness of the importance of stockpile destruction to achieving underpinning humanitarian goals is reflected in the emphasis placed within the two treaty regimes on states meeting their destruction deadlines. Stockpile destruction also has an inherent attraction for political and advocacy purposes since it is easily measured (in comparison to activities such as mine risk education or victim

assistance) and thus may represent an easily demonstrable success story for the regimes. This chapter builds on the findings within Chapter 6 that analyse the costs to regime effectiveness of disjunctions between regime and mine action priorities. This issue is further developed through analysing the potential tension between a focus on mines destroyed as a quantitative (and highly visible) measure of regime effectiveness and the evolving understanding within the mine action community that emphasises the qualitative criterion of socio-economic and humanitarian impact in determining effectiveness.

Fulfilling the regimes' stockpile destruction obligations requires a combination of technical capacity and the political will to take this step. It is therefore regarded as a key commitment that, if not met by states parties, would undermine regime goals and credibility. With different regime memberships and contrasting approaches to stockpile destruction, understanding how the regimes contribute to addressing the resource, political and humanitarian dimensions of stockpile destruction represents a central research objective of this chapter. Given both the costs of stockpile destruction and the national security implications of giving up this capacity, contributing to research questions that address and explore the ability of the regimes to identify and deal with defection is particularly significant in this chapter.

This chapter seeks to understand the effectiveness of the regimes in influencing the behaviour of both regime members and non-members. Regime interplay dynamics that result in effects beyond regime membership may be particularly significant given that states with huge stockpiles of APMs are not members of the APMBC while a

number of APII member states have deferred compliance with certain of its key provisions.

Concerns of agency in relation to how the regimes address stockpile destruction are highly relevant given the disconnect, highlighted in earlier chapters, between stakeholder clusters involved in the design and implementation phases of the regimes. The role played by practitioner communities responsible for stockpile destruction is thus an important focus of this chapter. Building on analysis in Chapters 5 and 6, if the regimes address the challenges of stockpile destruction solely from the perspective of state actors, regime effectiveness is impaired by the lack of emphasis on stockpiled landmines held and used by ANSAs. Thus, while IHL in general and the landmine regime leadership in particular may demonstrate strongly state-centric dynamics, how the regimes interact with international and sub-state actors in the area of stockpile destruction is highly significant for regime effectiveness.

The APMBC contains provisions specifically dealing with stockpile destruction while this activity is a consequence of complying with a number of restrictions contained in APII. This chapter begins by critically analysing stockpile destruction implementation through the regimes in the light of insights drawn from the mine action discourse. New understandings on why defection occurs are developed through relating regime obligations to technical and political stockpile destruction challenges. Applying the research framework utilised throughout this thesis, it then considers the effectiveness of measures to destroy stockpiled landmines through the two regimes under the themes of resources, political will and humanitarian impact. This chapter concludes

by considering new contributions to knowledge drawn from an individual and comparative analysis of APII and the APMBC in the field of stockpile destruction.

2. Regime implementation and stockpile destruction

This section considers the relationship between regime provisions and the challenges faced in supporting stockpile destruction in different mine affected contexts. Given the range of implementation challenges related to stockpile destruction, this section considers ways in which the regimes support states parties in meeting their obligations. While acknowledging that the line between the two may be blurred, cases of involuntary and voluntary defection are considered. Compliance monitoring and verification in relation to stockpile destruction is addressed in order to further elaborate on our research questions into the significance of regime learning for landmine regimes. This section therefore considers how far the regimes are aware of challenges and can adapt to provide for more effective implementation.

2.1 Regime rules and field realities

It is a central tenet of regime theory that regime rules should reflect a clear understanding of the measures required to implement them, demonstrating the intrinsic link between regime design and implementation. Chapter 4 analyses how the language contained in the provisions of both regimes reflects particularities of the regime design process and, in particular, the knowledge base of the design clusters. From a mine action perspective, the definition of stockpile destruction set out in the

IMAS³⁸⁸ does not clarify what should be destroyed: APMs, AVMs or other weapons and ammunition. This approach reflects the reality that landmines are frequently stockpiled with other munitions that may themselves pose a hazard. Consequently, in the context of post-conflict stockpile destruction undertaken for security reasons, the destruction of landmines is not distinguished from other explosive ordnance. Conceptual fuzziness is also a deliberate step so as not to align too narrowly with the definitions of a single regime framework.

The contexts within which stockpile destruction takes place suggest a distinction between three types of stockpile destruction: the disposal of competently stored state inventories of landmines; the destruction of caches of arms found in post-conflict countries (as undertaken in Iraq following the US-led invasion); and, the destruction of weapons found and grouped for destruction as a result of humanitarian demining activities.

In the first category of state inventories, the two landmine regimes have made a clear, measurable, and with the APMBC, dramatic impact in reducing global landmine stockpiles. *Landmine Monitor* calculates that in the mid 1990s, 131 states possessed stockpiles of more than 260 million APMs. 2008 estimates suggest that 44 countries now stockpile about 176 million APMs. Among APMBC states parties, as of August 2008, 144 of the 156 regime members have completed destruction of their stockpiles. Collectively this represents a total of some 42 million stockpiled APMs destroyed since the treaty's entry into force set against some 14 million still held by regime

³⁸⁸ Ibid. Standard 3.202.

members.³⁸⁹ Compliance with APII requirements has led to significant destruction of non-compliant stocks. China in November 2005 declared that it had destroyed some 500'000 landmines not compliant with APII. The US in June 1998 completed destruction of over 3.3 million dumb (non-self destruct) landmines, retaining only those needed for training and research as well as for use in the South Korean demilitarised zone.³⁹⁰ These figures demonstrate that while stockpile destruction raises a number of significant challenges, observance of the relevant provisions has had a demonstrable quantitative impact in reducing global landmine levels.

In the latter two categories (post-conflict caches and weapons collected through humanitarian demining), destruction activities have always formed a necessary part of mine action but have not been the focus of significant attention within the framework of the regimes. It is therefore important to distinguish regime-specific effects from the broader impact of mine action activities. One important set of implementation issues relates to how far the provisions for stockpile destruction in both regimes are consistent with field realities and requirements within the mine action community. It also throws up politically sensitive questions on deflection unpacked below that relate to how stockpile destruction obligations are interpreted by regime members.

Article 4 of the APMBC obliges regime members to ensure the destruction of all stockpiled APMs 'it owns or possesses or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.'³⁹¹ There is therefore a clear timetable for the

³⁸⁹ All figures drawn from *Landmine Monitor* (2008): pp. 8-9.

³⁹⁰ IRIN In-depth, 'Laying Landmines to Rest: Humanitarian Mine Action'; available at: www.newsline.irrinnews.org/InDepthMain.aspx?InDepthID=19&ReportID=62807

³⁹¹ APMBC, Article 4.

destruction of stockpiled APMs. Unlike Article 5 on mine clearance, which sets a deadline of ten years for the clearance of mined areas but allows the possibility of extension periods, the stockpile destruction deadline is non-renewable. Similarly, although APII contains no specific provisions on the destruction of stockpiles, if a state party is unable or unwilling to make stocks compliant with provisions on detectability, self-destruction or self-neutralisation, then destruction is the only feasible alternative. As Maslen notes, ‘since the Protocol prohibits the use or transfer of an unlawful weapon, it is likely, in practice, to destroy it.’³⁹² A deferral period of 9 years for these provisions therefore represents a de facto deadline for stockpile destruction (unless stocks are adapted for compliance).

However, stockpile destruction continues to be a significant challenge for APMBC regime implementation. Remaining stocks held by regime members represent the ‘hard cases’ in terms of capacity and political will that must be destroyed in line with regime rules. Outside of the APMBC framework, the major holders of stockpiles – China (110 million), Russia (74 million) the US (10.4 million), Pakistan (6 million) and India (4-5 million) – are APII members and therefore must ensure compliance with its provisions.³⁹³ The relevance of APII in this area is further emphasised by the fact that these major landmine stockpilers are highly unlikely to sign up to an APM ban in the foreseeable future.

The 2004 Nairobi Action Plan calls for two mutually reinforcing sets of actions in order to achieve the treaty’s stockpile destruction objectives. First, states parties are requested to identify and report on all stockpiled APMs, to establish national and local

³⁹² Maslen, S., ‘Destruction of Anti-personnel Mine Stockpiles’; in GICHD (2005): p.194.

capacities necessary to meet their deadlines and to develop plans, identify priorities, problems and requests for assistance in a timely manner. Second, states parties ‘in a position to do so’ are required to assist others in meeting stockpile destruction obligations.³⁹⁴ These requirements reflect obligations applicable to both regimes and capture the two key elements of successful implementation:

- The ability and willingness of states to meet their obligations
- The level of assistance provided by third parties in meeting these goals

The APMBC regime, through its regular implementation monitoring meetings, has acknowledged the distinction between explicit regime provisions and the context-specific challenges of implementing them. Recognising the danger of losing track of whether landmines have been stockpiled, retained for training purposes or destroyed, Action 15 of the Nairobi Action Plan requires:

When previously unknown stockpiles are discovered after stockpile destruction deadlines have passed, report such activities in accordance with their obligations under Article 7, take advantage of other informal means to share such information and destroy those mines as a matter of urgent priority.

However, the disjointed relationship between these requirements and field realities are well illustrated through considering the experience of a mine affected regime member. Angola, with work hampered because landmine caches are frequently found in heavily mined and difficult to access areas, has suggested that it may require an extension to its deadline for destruction of APM stockpiles. The terse statement in *Landmine Monitor* to the effect that ‘the Mine Ban Treaty does not allow extensions

³⁹³ Figures drawn from *Landmine Monitor* (2006), pp.11-14.

for stockpile destruction³⁹⁵ fails to acknowledge or address the implementation challenges that caused Angola to miss its destruction deadline in the first place. Although strictly in breach of its treaty obligations since January 2007, defection is by a heavily mine-affected state in need of assistance. A lack of recognition of this reality in the regime's response to Angola's implementation challenge is significant because it suggests a gap between the form of regime support and its substance in supporting regime members in practice.

2.2 *Involuntary and voluntary defection in regime implementation*

This sub-section builds on the preceding analysis of gaps between regime provisions and practical stockpile destruction challenges by analysing defection in this area of the mine action agenda. States' *ability* to meet their obligations is a key determinant of successful implementation. Given the cost and potential complexity of stockpile destruction, the danger of involuntary defection would seem to be significant for mine-affected states. This poses a dilemma since many countries have neither the resources nor the technological base to develop appropriate destruction facilities. The need within the regime framework to support national implementation is therefore evident. States' *willingness* to meet regime obligations is at least as important in understanding implementation. The potential for voluntary defection therefore represents an important component of our analysis.

In a statement to the Standing Committee on Stockpile Destruction, the DRC declared that it had fulfilled its APMBC stockpile destruction commitment by destroying all

³⁹⁴ *Nairobi Action Plan* (APLC/CONF/2004/5, part III) Actions #9-16.

stockpiled APMs under its control ‘that it had been able to identify.’³⁹⁶ The statement went on to acknowledge the likelihood of finding additional stockpiles in the future in parts of the country under the control of ANSAs. The existence of such stocks has been confirmed through the small numbers of APMs handed over to the United Nations through its DDR programme.³⁹⁷ For the ICBL, this statement creates an unsatisfactory doubt as to whether the DRC is compliant with its Article 4 obligation.³⁹⁸ However, the ambiguity is not the result of a lack of clarity over regime obligations but rather a reflection of the inability of the government to exert oversight and control over the national territory.³⁹⁹ A December 2005 roundtable meeting on the implementation of the APMBC in DRC demonstrated a further dimension to the challenge faced by the state in highlighting the absence of a coherent structure or clear management responsibilities responsible for the country’s treaty obligations within the government. This situation was exacerbated by the instability faced by the post-conflict government during a period of political transition in the build up to national elections.⁴⁰⁰

In a similar example, Afghanistan declared at the May 2006 meeting of the Standing Committee on Stockpile Destruction that all ‘known’ stockpiles would be destroyed by its March 2007 deadline. However, at the same meeting Afghan representatives acknowledged the challenge of addressing ‘the need for local commanders and villagers to voluntarily give up their stockpiled caches or to disclose the locations of

³⁹⁵ *Landmine Monitor* (2008): p.9.

³⁹⁶ Presentation by the DRC, *Standing Committee on Stockpile Destruction*, Geneva, 11 May 2006.

³⁹⁷ United Nations, *Statement on the Issue of Stockpile Destruction to the Intersessional Programme* (2005).

³⁹⁸ *Landmine Monitor* (2006): p.326.

³⁹⁹ In June 2005, the United Nations Mission in DRC (MONUC) reported that the Union of Congolese Patriots – Lubamba (UPC/L) had been responsible for mine laying. *UN OCHA ‘Monitoring de la Situation Humanitaire en RDC, du 11 au 17 Juin 2005’*.

them.⁴⁰¹ While the deadline was missed by 6 months, Afghanistan's formal notification of the completion of stockpile destruction in October 2007 retained the proviso that this relates to 'known' stockpiles.⁴⁰² Subsequent to this date further small quantities of APMs have been recovered from caches while there has also been reporting of minelaying by Taliban forces.⁴⁰³

How far provisions provide latitude for differing interpretations and enable regime members to evade their obligations is an important consideration across different types of regime. This challenge has been exemplified in the APMBC context by Turkmenistan, stating in its first Article 7 report in October 2001, that 761'782 APMs remained from an initial stockpile of 1.7 million. Destruction was estimated to take 8 years and an extension to its destruction deadline was requested.⁴⁰⁴ Interventions by the co-chairs of the Stockpile Destruction Standing Committee saw Turkmenistan clarify that it would meet its deadline and that only 250'000 APMs remained.⁴⁰⁵ In subsequent reporting of its successful destruction programme, it was announced that some 70'000 APMs would be retained for training and testing as provided for under Article 3. This figure is well beyond the numbers understood by other states parties to be required for training or testing and was criticised for breaching the spirit of the treaty. The Turkmen Embassy to NATO subsequently wrote to the European Commission stating that in February 2004 some 60'000 further APMs would be destroyed.⁴⁰⁶ Finally, in April 2005, all stocks including those originally reserved for

⁴⁰⁰ 'Rapport General de la Table Ronde sur la Mise en Oeuvre de la Convention d'Ottawa Sur l'Interdiction des Mines Antipersonnel' ; Republique Democratique du Congo, 6-7 December 2005.

⁴⁰¹ Standing Committee on Stockpile Destruction, Meeting Report (11-12 May 2006): p.3.

⁴⁰² *Landmine Monitor* (2008): p.79.

⁴⁰³ *Ibid.*, p.82.

⁴⁰⁴ Turkmenistan, Article 7 Report submitted 14 November 2001, Forms B-D.

⁴⁰⁵ Standing Committee on Stockpile Destruction, 'Update on Implementation of Article 4', 30 May 2002.

⁴⁰⁶ Maslen, S. *Mine Action after Diana* (2004): pp.68-69.

training were destroyed. An addendum provided by *Landmine Monitor* points out that all these figures were wildly inaccurate since the Turkmen authorities had confused the number of cassettes with the number of individual APMs. Rather than 70'000 APMs the real figure at that point was 572'200!⁴⁰⁷

Clarity, support from regime members, coherence and links between primary obligations and enabling provisions are identified within different regimes as important considerations for the implementation of regime rules.⁴⁰⁸ Although formally joining the regime on 1 March 1999, Turkmenistan only attended an intersessional meeting in June 2004 for the first time and failed to attend the subsequent 2005 meetings. Similarly, its first two Article 7 reports were incomplete and the third consisted of a four-sentence statement. The short space between signature of the treaty (3 December 1997) and ratification (19 January 1998) reinforces the hypothesis that provision for domestic implementation modalities represents an important indicator for commitment to national implementation.

The cases analysed in his sub-section provide important insights to implementation challenges in the area of stockpile destruction. This allows us to identify missed opportunities but also limitations in what the regimes can achieve in preventing defection. APMBC reporting by Afghanistan and DRC highlight the practical difficulties certain regime members face in ascertaining the numbers and locations of APM stockpiles on the national territory. Declarations by states are thus shown to be inadequate where ANSAs retain de facto control of parts of the national territory. It is untenable for the government to claim full compliance with its national stockpile

⁴⁰⁷ *Landmine Monitor* (2005): p.594.

destruction obligations given the number of armed groups at large across the country that certainly hold stockpiles and in some cases have been accused of mine laying. Stockpile destruction challenges also demonstrate both the potential for abuse as well as the lack of capacity in some states to internalise and implement obligations through their own bureaucratic structures. The lack of depth to central state structures – the inability to effectively implement, manage and oversee regime commitments at the national level – render meaningless the quantitative approach to implementation promoted within the regime. Instead, these cases of involuntary defection reinforce our research finding that the absence of qualitative approaches that emphasise national capacity building represent a barrier to realising regime goals.

Turkmenistan’s stockpile destruction history provides additional insights. This case is significant both in highlighting capacity gaps that contribute to regime defection and in demonstrating the limitations of regime support for implementation in this area. Given that Turkmenistan has few diplomatic ties to other countries and very limited engagement in the APMBC intersessional work programme, there has been limited scope for the regime to engage Turkmenistan over its commitments. The difficulty of engaging with a state that has severe capacity deficits and does not want or is not able to engage in a process of implementation within the framework of the regime is therefore apparent.

⁴⁰⁸ Franck (1990): p.184.

2.3 *Verification*

As discussed above, beyond practical implementation challenges, political will represents a key consideration for stockpile destruction. More than withholding use, destruction represents the ultimate step in giving up a useful military capability. In this regard, compliance monitoring and verification are particularly important for regimes in different issue areas in providing checks and balances on regime members. This sub-section therefore builds on earlier analysis of implementation challenges and cases of defection from stockpile destruction obligations to refine our understanding of the ability of the regimes to identify and address implementation challenges through compliance monitoring and verification.

APMBC Article 7 reports require states parties to report on the size of APM stockpiles,⁴⁰⁹ the numbers and types of mines retained for training in humanitarian demining-related activities⁴¹⁰ and progress in stockpile destruction efforts.⁴¹¹ Emphasis is placed on accessibility of information to all interested parties⁴¹² so reports are made freely available on the website of the United Nations Department for Disarmament Affairs (DDA).⁴¹³ APII reporting requirements do not specifically mention stockpile destruction but do require reporting on ‘steps taken to meet technical requirements of this protocol.’⁴¹⁴ To facilitate reporting, states agreed to a common reporting format while VERTIC, the UK-based organisation specialising in

⁴⁰⁹ APMBC, Article 7 paragraph 1b.

⁴¹⁰ APMBC, Article 7 paragraph 1d.

⁴¹¹ APMBC, Article 7 paragraph 1f.

⁴¹² UN Final Report of the First Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Trade of Anti-personnel mines and on their Destruction, May 1999. Available at: www.disarmament.un.org/mineban.nsf

⁴¹³ GICHD (2003): p.49.

⁴¹⁴ Amended Protocol II, Article 13 c.

verification of disarmament treaty obligations, developed a guide to assist states parties in fulfilling their reporting requirements. E-MINE is a further mechanism developed to support stockpile destruction, providing a consolidated reference point for technical papers, guidelines and lessons learned on stockpile destruction.⁴¹⁵ An in-kind donation from Canada to UNMAS enabled the system's development. It thus represents an example of bilateral mine action support by an APMBC member to the UN that also contributes directly to meeting regime goals. Significantly, enhancing transparency represents a common objective that aligns regime and mine action interests. This approach has led to increased confidence within the regime as well as technical support for implementation through making available consolidated advice on stockpile destruction.

Chapters 5 and 6 demonstrate the influential role of informal verification mechanisms in the absence of 'active' verification within either regime. Civil society, mobilised through the ICBL, plays a central role in APMBC verification of stockpile destruction provisions while also monitoring CCW compliance issues. As with humanitarian demining, *Landmine Monitor* represents the most important source for information and analysis on states' compliance with their stockpile destruction obligations under the landmine regimes. Despite a common verification framework, stockpile destruction can be distinguished from the other pillars of mine action because of the dominant role played by states and commercial companies in conducting this activity. *Landmine Monitor's* function is thus particularly significant as a mechanism that provides the views of a network of individuals reporting from the countries in question. The state or commercially driven nature of stockpile destruction means that

⁴¹⁵ See: www.mineaction.org

this may be the only evidence base or alternative view emerging from certain states parties.

Russia ratified APII on 2 March 2005 and for the first time disclosed the size of its landmine stockpile, consisting of 26.5 million APMs of which 23.5 million are to be destroyed by 2015 after a nine year deferral period.⁴¹⁶ The implementation challenge is particularly complex because Russia possesses between 7-10 million PFM-1 type APMs that are highly sensitive and well beyond their shelf life.⁴¹⁷ In order to meet stockpile destruction obligations, Russia developed a method of destruction involving encasing in concrete which has been widely acknowledged as crucial in destroying over 13 million of these weapons to date.⁴¹⁸ On the other hand, according to *Landmine Monitor's* Russia author R. Dogov, destruction plans and adequate resources are not in place with little commitment by Russian authorities and a lack of engagement by international actors. He also suggests that inappropriate storage conditions and 'self-switching' of mines to combat mode pose a very high risk of self-detonation. This forms part of a broader problem, acknowledged by Dogov that 'In Russia itself, demining activities lack standardization, verification, and control mechanisms. They cannot be regarded as humanitarian, and the scale on which they take place is inadequate.'⁴¹⁹

As the major category of mine users, ANSAs represent an important target for verification measures. The 2008 *Landmine Monitor* reports ANSA stockpiles of

⁴¹⁶ Statement by Sergei Ivanov, Minister of Defence, Parliamentary Hearings, 23 November 2004.

⁴¹⁷ The PFM-1 remotely-deliverable APM provides a very specific destruction challenge. It contains hydrogen chloride so open detonation as a destruction method would lead to environmental pollution.

⁴¹⁸ *Landmine Monitor* (2005): p.854.

⁴¹⁹ Dogov, R., 'Landmines in Russia and the Former Soviet Union: A Lethal Epidemic'; *Medicine and Global Survival* Vol. 7. No.1. pp.40-41.

APMs on the territory of 9 states parties.⁴²⁰ However, in most cases these numbers represent stockpiles seized by government forces. Verification therefore provides a very partial picture that is of limited utility because it fails to capture the size of the stockpiles available to armed groups. Once seized, the weapons are no longer a humanitarian threat unless states fail to destroy them in line with their obligations. Geneva Call acknowledges the difficulty of obtaining good data on stocks held by ANSAs, attributing this in part to a reluctance to show their hand. In line with defection challenges faced by national actors in some mine affected states, it also reflects a lack of oversight and control over weapons caches,⁴²¹ including both factory and home made devices, that can be cached, buried under ground, or in some cases kept in the homes of civilians. Verification of ANSA stockpiles thus represents a doubly challenging regime obligation for national authorities and international actors since both quantitative and qualitative data is difficult to obtain.

This sub-section highlights a fundamental distinction between implementation processes under the two regimes. Essentially these can be characterised as ‘active’ and ‘passive’ approaches to verification and its relationship to regime implementation. The diverse actors within the APMBC implementation cluster are mobilised in ways that encourage identification of potential implementation challenges. States parties are lobbied by civil society to address implementation challenges while common interests have fostered links to expert communities – both donors and technical specialists – that can contribute to problem solving. In contrast, APII states parties report on stockpile destruction in order to demonstrate compliance with regime rules. Yet there is limited transparency on how regime commitments are

⁴²⁰ Afghanistan, Algeria, Iraq, Myanmar,, Pakistan, Somalia, Sri Lanka Turkey and Uganda. See

to be achieved and no mechanism whereby comparative experience can be shared or advice sought that could address implementation challenges. Analysing official versus civil society views of Russia's stockpile destruction record is instructive. Providing information on APM stockpiles is an important step. But the fact that for Russia this only occurred in 2005⁴²² demonstrates a response to a regime commitment as opposed to a desire to support humanitarian goals. Reflecting analysis in previous chapters, Russia's stockpile destruction commitments cannot be isolated from the reality of its continued use of APMs. The absence of 'active' verification informed by mine action practitioners thus contributes to sustaining the lack of confidence reflected in *Landmine Monitor* reports.

3. Regime effectiveness and stockpile destruction

That stockpile destruction is the most recent activity to be recognised as one of the pillars of mine action suggests an earlier lack of focus on this issue. While stockpile destruction is now understood as a key element of mine action, it continues to receive little attention on a policy level as a regime implementation issue. This reflects the widespread perception that it is purely a 'technical' activity. In this context, the need for flexibility to adapt to better achieve regime objectives as the challenges of implementation become more apparent over time is a central dimension of regime effectiveness. Underdal's twofold determination is therefore particularly relevant to regime effectiveness in the area of stockpile destruction. Increased resources and political will in this area represent two key indicators of regime effectiveness.⁴²³

Landmine Monitor (2008): p.10.

⁴²¹ Geneva Call, *Armed Non State Actors and Landmines* Volume I, (2005): p.28

⁴²² Entry into force of APII for the Russian Federation took place on 2 September 2005.

⁴²³ Young (1995): p.19.

Moreover, if stockpile destruction is carried out ineffectively or provokes other negative consequences then it fails to meet the humanitarian criterion for effectiveness that underpins both regimes and which distinguishes IHL regimes from many other issue areas.

This section considers the effectiveness of APII and the APMBC's contribution to stockpile destruction. Increased support by donors and national actors for stockpile destruction as a result of the influence of the landmine regimes is one clear indicator of effectiveness. Yet achievements must also be set against the scale of the task still to be completed and the likelihood of goals being realised. Flexibility to address changing demands over time is crucial. This quality includes addressing evolving appreciations of stockpile destruction requirements or challenges that arise during the implementation process such as those posed by different interpretations of regime obligations. In order to fulfill Underdal's definition in the sense of the realisation of underpinning regime objectives, three criteria are applied. *Resources* made available for this activity are a key consideration given the costs associated with stockpile destruction and the resource deficits faced by many mine-affected states. *Political will* refers to the ability of the regimes to gain support for regime objectives among regime members, non-members as well as international and non-state actors. Finally, this section considers the *humanitarian* criterion for effectiveness. How far has the regimes' focus on stockpile destruction made an impact on the humanitarian suffering caused by these weapons in different contexts?

3.1 Resources

While stockpile destruction has been folded into wider security assistance programmes in different regions, few donors have placed significant emphasis on stockpile destruction as a priority in their commitment to mine action. One argument explored below is that this may be attributed to its apparently technical nature in comparison to the more overtly ‘humanitarian’ pillars of mine action. This is consistent with a ‘norm bandwagon’ effect influential in facilitating APMBC regime formation. Moreover, as an activity mostly conducted by national militaries and commercial companies, stockpile destruction does not involve a diverse implementation cluster when compared to other mine action sectors. This is compounded by the fact that the regime formation phase was internationalised and therefore relatively transparent, thus exerting political pressure on states to join the regime. However, implementation takes place on a national level where both pressure and support – in the form of expertise and resources – are lacking. This has costs in terms of regime effectiveness.

Canada provides one of the few examples of a bilateral donor that contributes significant resources for stockpile destruction, providing technical expertise, material, equipment and financial support. Canada has supported mine action in Central America through the OAS Comprehensive Action against Anti-personnel Mines (AICMA) programme. Echoing the regional approach to regime formation, one element of this programme of support involved using the 3rd meeting of states parties to the APMBC in Managua as a target date for the destruction of all APM stockpiles by regime members in the region. This provides a significant example that

demonstrates how regime goals can be achieved through fusing the technical and political dimensions of the implementation process. Using political deadlines to achieve technical regime objectives in this case provides a powerful means of exerting positive conditionality on regime members.

Multilateral institutions have proved effective vehicles in supporting stockpile destruction. Work through NATO's Partnership for Peace Programme (PfP) with 22 APMBC states parties has resulted in the destruction of more than 6.25 million APMs.⁴²⁴ The PfP Programme provided a means to support Ukraine in the destruction of its (non-PFM-1) APM stocks. The Belarus Ministry of Defence has accepted technical assistance from the European Commission to assist in the destruction of 3.37 million PFM-1 APMs while the European Commission also awarded a contract worth Euro 3 million for the destruction of Ukraine's 5.95 million PFM-type mines. From a security perspective, the broader policy implications of PfP stockpile destruction work were underlined by then NATO Secretary General Lord Robertson who characterised it as 'a very practical example of our concrete cooperation on defence reform and our joint efforts to eliminate the legacy of the Cold War'.⁴²⁵ This initiative has also been identified as reducing the risk of trafficking posed by stockpiled weapons in the former Soviet Union.⁴²⁶

Angola's stockpile destruction programme is jointly funded by the European Commission (85%), the Government of Angola (10%) and UNDP (5%). This positive example of external assistance in conjunction with national commitment to the

⁴²⁴ *Standing Committee on Stockpile Destruction* (11-12 May 2006): p.4.

⁴²⁵ Retrieved from: www.icbl.org/lm/2002/ukraine.html#Heading13456 (6 June 2003).

⁴²⁶ Journal of Mine Action, 'NATO-sponsored Project Reduces Massive Mine Stockpile across Eastern Ukraine'. 7.2.

destruction programme is particularly conspicuous in the absence of a broader picture of resources dedicated to stockpile destruction by mine affected states. This is an important lacuna given that alongside the less tangible quality of political will, resource commitment provides the clearest indication of regime members taking responsibility for their obligations. While some mine affected states do provide such information, the lack of information on stockpiles and their destruction is particularly acute in the case of ANSAs. Among APMBC member states, only the DRC has included details in its Article 7 reporting of APMs seized from non-state groups.⁴²⁷ Moreover, as the work of Geneva Call demonstrates, while ANSAs may be prepared to commit resources and destroy stocks under their Deed of Commitment, such activities are not conducted under the regimes' verification mechanisms so issues of transparency and accountability remain.

It is important to acknowledge the resource imperative for stockpile destruction beyond the level of financial assistance. For example, destroying ordnance found through humanitarian demining operations is frequently undermined by the difficulty of obtaining significant quantities of high explosive to carry out in situ destruction. The APMBC regime discourse ignores this practical issue for stockpile destruction implementation. This points to an additional gap between the regime's political objective of achieving comprehensive implementation and its ability to understand contextually defined implementation challenges and mobilise its membership to achieve these objectives in practice. Stockpile destruction thus provides another dimension to inform our hypothesis that stakeholder clustering is critical to landmine regime effectiveness. The lack of practitioner expertise in the implementation cluster

⁴²⁷ *Landmine Monitor* (2006) : p.327.

impairs regime effectiveness through the lack of appreciation of the challenges to be overcome in this area.

If the generation of resources is one indicator of an effective regime then neither APII nor the APMBC can be considered effective under this criterion. I demonstrate that one reason for this gap is a reluctance to support a technical dimension of a humanitarian issue area. However, this has costs because it fails to take into account the significant humanitarian payoffs offered by stockpile destruction. While less visible in regime implementation, it is significant that this criterion continues to affect states' choices. This reflects a lack of practitioner input to regime implementation in this area that could demonstrate significant returns from relatively modest material or financial investments in mine affected states.

3.2 Political will

Only through engaging in the process of implementation can states fully understand the implications of regime obligations. While the APMBC has clearly led to increased political will for stockpile destruction in developed states, the learning curve is particularly steep where states lack the capacity to ensure international obligations will be implemented at the national level. As discussed in Chapter 5, failing to enact domestic implementing legislation or to adopt other necessary measures as a result of the short time period between signature and ratification are indications that the costs of regime membership have not been fully assessed. Both the cost and the sensitivity of permanently removing landmines from arsenals represent significant obstacles to regime effectiveness. In particular, treating stockpile destruction as a technical

activity fails to take into account the need to generate political will to implement destruction programmes. This section therefore considers the influence of the regimes in generating the requisite political will to implement their stockpile destruction requirements. In particular, how regimes adapt in the face of challenges that only become apparent during the process of implementation is considered in order to further explore our research questions relating on regime flexibility and learning.

Article 3 of the APMBC allows ‘the minimum number absolutely necessary’ of APMs to be retained for ‘the development of and training in mine detection, mine clearance or mine destruction techniques.’⁴²⁸ Some 216’000 APMs are currently held by states parties for research and training purposes as permitted under this provision. More than half retain between 1-5 thousand APMs with 23 states retaining less than 1’000. 4 states account for nearly one third of retained APMs.⁴²⁹ It is significant that 38 APMBC states parties that retain APMs for training and testing have not reported using any for these activities over two consecutive years. This suggests an absence of political will to re-evaluate training and testing needs over time to ensure consistency with the minimum requirement stipulated under Article 3.

In Sudan, ‘mines retained’ has become a highly political issue that has been linked to the development of the peace process. Thus, following the principle agreed in the 2005 Comprehensive Peace Agreement (CPA), 5’000 landmines kept by the Sudanese armed forces have been matched by the exact amount held by the Government of Southern Sudan People’s Army. This represents the only example within the landmine regimes where the domestic implementation mechanism for international obligations

⁴²⁸ APMBC, Article 3 paragraph 1.

is found in the terms of a peace agreement and highlight an important potential confidence building dimension to engagement in stockpile destruction.

Russia's innovative destruction programme for its PFM-1 stocks demonstrates that it has addressed a major technical challenge in order to implement regime obligations. Full disclosure of the national landmine arsenal for the first time also constitutes an important political step that goes beyond Russia's overt regime commitments. The US has also been more transparent than required by APII in announcing the political and operational caveats that apply to landmine stocks not yet destroyed or made compliant with the provisions of the regime. The US has said that it reserves the right to use non-self destruct APMs in South Korea but only until 2010. Non self destruct AVMs may be used for the same period although only with Presidential approval.⁴³⁰ Beyond these reservations, all stocks have been modified to comply with APII or destroyed. These examples from militarily significant states point to broader APII regime effects. Encouraging transparency among members beyond regime obligations demonstrates that states parties are not only constrained by the letter of their commitments but also feel the need to be seen to be complying with the intent and purpose of the regime.

The examples of Russia and the US reflect the overlapping and interlocking relationship between technical requirements and the broader political context within which the regimes are situated. This provides evidence of a positive emulation effect with non-regime members also complying with certain treaty provisions in the area of stockpile destruction. In 2005, South Korea disclosed its stockpile of 407'800 APMs, significantly less than had previously been indicated by officials. Israel also reported

⁴²⁹ Algeria, Bangladesh, Brazil and Turkey. *Landmine Monitor* (2008): p.11.

for the first time on the destruction of its outdated stockpiled landmines.⁴³¹ This points to regime effects contributing to transparency and thus confidence building in even those militarily-significant states that would appear to place the highest premium on retaining these weapons. Importantly, the normative push that obligates regime members and non-members to show commitment to the humanitarian principles underpinning the regimes also reinforces our hypothesis that there is a strong – though subliminal – interplay between the two landmine regimes.

As international legal instruments, the two landmine regimes bind states as opposed to non-state actors. This poses a challenge to the relevance of the regimes given the number of internal armed conflicts in which stockpiles are held by ANSAs and the consequent need to exert influence over sub-state actors in this area. While states are bound to address conduct by any actors that contravene treaty obligations as part of their national implementation measures, many are unable or unwilling to do so in the context of ANSAs. This represents an important challenge to regime effectiveness since ANSAs controlling territory have been acknowledged as more likely to hold stocks of APMs. Research also shows that these actors may be willing to destroy stockpiles either as a confidence building measure or as a form of reparation for affected communities in areas under its control.⁴³² The political dynamics of stockpile destruction are thus also applicable to ANSAs and represent a means for the regimes to influence their conduct. The Polisario Front in the Western Sahara, following signature of its Deed of Commitment, destroyed over 3'000 landmines in February 2006 according to international standards, witnessed by MINURSO, the United Nations Mine Action Service (UNMAS), and representatives of foreign governments,

⁴³⁰ US Department of State Fact sheet, 27 February 2004.

the media as well as various NGOs. In other cases, such as Iraqi Kurdistan and Somaliland,⁴³³ land has been cleared but destruction left to international NGOs operating in the area.

Stockpile destruction by the Polisario Front provides a positive example with clear benefits for individuals and communities. It also demonstrates a mutually reinforcing implementation cluster involving the regime, civil society and international organisations (the UN) in supporting national implementation. However, this and other examples also provide important insights into the limitations of regime implementation in the context of ANSAs and stockpile destruction. The political payoff for the ANSA gained through being seen to comply with international good practice in this area meets the group's need for recognition and legitimacy. This is contrary to the national interests of the state against whom these groups are in conflict. For this reason, the work of Geneva Call has been criticised by some APMBC member states for not seeking a mandate from the state concerned. This criticism demonstrates that the regime does not provide a mechanism in this area to change the cost-benefit calculus of political interests in favor of achieving regime goals.

The previous sub-section analyses the resource costs associated with addressing stockpile destruction as a technical endeavour. Research questions under the theme of political will build on these findings through demonstrating complex regime dynamics derived from the highly political nature of this activity. While in some areas (mines retained for training) regime members are not motivated to revisit earlier decisions,

⁴³¹ *Landmine Monitor* (2006): pp.11-13.

⁴³² *Ibid.* p.132.

other aspects of stockpile destruction implementation demonstrate a strong willingness to go beyond regime commitments. I demonstrate important effects stemming from this behaviour. Thus, additional transparency by APMBC states parties such as Russia and the US not only contributes to confidence building within the regime but also leads to emulation effects from other non regime members. Stockpile destruction also demonstrates an important quality of regime interplay. In particular, for non-APMBC members, demonstrating that compliance obligations have been exceeded, albeit in a different regime, provides an important opportunity to be associated with the moral clarity of the anti-APM norm. Increased political will to support APMBC regime objectives is therefore a by-product of staying on the ‘right side’ of the landmine issue by association with the Ottawa Process.

3.3 *Humanitarian impact*

Membership of both regimes has resulted in the destruction of millions of stockpiled APMs. However, to apply a humanitarian criterion for regime effectiveness, the value of this work must be set against those landmines still held and in some cases used by states such as Russia, China, India and Pakistan. This section therefore considers regime effectiveness in relation to the humanitarian impact of the regimes in the area of stockpile destruction. It also analyses the extent to which humanitarian objectives are realised through linking stockpile destruction to broader security and development goals.

⁴³³ Ibid. p.83.

Different interpretations of the Article 1 obligation not to ‘assist’ anyone to engage in a prohibited activity link the scope of the regimes to the humanitarian payoffs that can be realised through stockpile destruction. 31 states parties have declared foreign stockpiling of APMs on the territory of a state party by a non-regime member as prohibited. Tajikistan is the only case where an APMBC regime member has reported holding the APMs of a non state party (Russia) on its territory. Norway, which had jurisdiction and control of US APMs stored on its territory on behalf of NATO, ruled that the landmines would have to be removed by 1 January 2003, the deadline for completion of its stockpile destruction under the APMBC. Maslen argues that to be in accordance with the provisions of Article 4, the APMs should have been destroyed and that their transfer was not permitted under the treaty since it was not for the purpose of destruction.⁴³⁴ He also suggests that a states party’s military forces that win control of APM stockpiles while on peacekeeping or other missions on the territory of a non-state party would be obliged to destroy them, citing the example of French peacekeeping troops in Afghanistan destroying 70’000 APMs stored near Kabul airport in February 2002 as an example.⁴³⁵

Germany, Japan, Qatar and the UK have stated that US APM stocks in their territories are not under their jurisdiction and control, so are not part of their regime obligations. *Landmine Monitor* scrutinised the US stockpiling of military hardware (including APMs) on container ships off the British Indian Ocean Territory of Diego Garcia to which, along with other British Overseas Territories, the UK Landmines Act was extended in 2002. The UK position was that:

⁴³⁴ Maslen in GICHD (2005): p.196.

We wish to affirm that US stocks do not fall under our national jurisdiction or control and we do not therefore have any obligations under Article 4.....in respect of them. We have fully complied with our obligations in respect of stocks that were under our jurisdiction or control.⁴³⁶

The argument that the US ships have ‘state immunity’ and are therefore not a UK responsibility was later ‘clarified’ with the British government accepting that if APMs were unloaded this would constitute a breach of treaty obligations.⁴³⁷ The UK restatement of its position was in response to questions posed in the framework of APMBC meetings followed by parliamentary questions initiated by the ICBL. In this case, the two-level dimension of IHL regime obligations is well illustrated by concerns over regime compliance expressed at an international level creating effects through being re-articulated at a national level.

The process of implementation demonstrates how certain sensitive issues such as foreign stockpiling and other ambiguities were unresolved during the regime design phase. The meaning of ‘assistance’ under the APMBC has been addressed at the national level in different ways. National security concerns have been particularly revealing in encouraging certain state parties to interpret regime obligations in different ways. Where there have been suggestions that conduct by regime members has not been in the humanitarian spirit of the regime, as in the case of US stocks held off Diego Garcia, it is significant that targeted advocacy at international and national levels encouraged the UK to clarify its position. However, an inherent ambiguity

⁴³⁵ Ibid. p.197.

⁴³⁶ UK Permanent Representation to the Conference on Disarmament, ‘Anti-personnel Landmine Stockpiles and their Destruction: A Progress Report’, 11 May 2001.

⁴³⁷ Parliamentary answer by Foreign and Commonwealth Office (FCO), *Hansard*, 11 September 2003, col. 400W.

remains in the relationship between international obligations and the latitude allowed for national implementation.

Stockpile destruction is an obligation of regime membership. From a mine action perspective it may be motivated by a range of security and development concerns. Recognition of an underlying developmental rationale for stockpile destruction was facilitated through clarification by the Development Assistance Committee of the Organisation for Economic Cooperation and Development (OECD DAC) that donor support for stockpile destruction can be recognised as Official Development Assistance (ODA).⁴³⁸ This reinforces the regimes' stockpile destruction obligations by nesting them within the broader processes that development donors seek to support while also providing an additional incentive that donors can contribute to achieving development aid targets through supporting stockpile destruction as part of their ODA contributions.⁴³⁹ Moreover, the United Nations supports stockpile destruction through its mine action activities, as a by-product of DDR programmes as well as through resource mobilisation activities. UNDP has declared that stockpile destruction should form a part of any integrated mine action programme that it supports.⁴⁴⁰

In many post-conflict environments, abandoned stockpiles represent a danger to civilians, security personnel as well as to those charged with destroying them. This is currently most evident in Iraq and Afghanistan where the roadside bombs that cause many casualties among soldiers as well as civilians have often been pilfered from

⁴³⁸ OECD DAC, 'Conflict Prevention and Peacebuilding: What Counts as ODA?' Available at: www.oecd.org/dataoecd/32/32/34535173.pdf

⁴³⁹ In order to comply with the UN Millennium Development Goals (MDGs), donors have committed to raising their levels of ODA to 0.7% of gross national income by 2015. Many donors have failed to achieve this level of ODA to date.

unguarded stockpiles. From a security perspective, the concept of a broader security framework for stockpile destruction has been elaborated by the European Commission, which characterises stockpile destruction as an important element of its support for a human security agenda.⁴⁴¹ This demonstrates a parallel to many successful security regimes with positive behaviour change achieved through issue linkage between regime implementation and the broader agendas of bi- and multilateral actors. The different rationales for support to stockpile destruction put forward by the UN and the European Commission acknowledge the relevance of this activity in addressing both ‘hard’ and ‘soft’ security challenges. This provides an important new insight that where significant support for stockpile destruction has been forthcoming through the regimes, this has been linked to broader policy frameworks and political interests.

While stockpile destruction may not have the visibility of other pillars of mine action, a range of motives are apparent for supporting it: the OECD DAC supports stockpile destruction for developmental purposes; NATO from a security angle and the European Commission as well as the UN for a combination of both. While such support could occur without reference to the regimes, linking support for stockpile destruction to APMBC membership has proved a powerful conditionality. European Commission stockpile destruction assistance was in parallel to, and conditional on, Ukraine and Belarus’ ratification of the APMBC regime. Linking stockpile destruction assistance to their regime membership has thus resulted in the destruction of millions of APMs that may otherwise have posed a humanitarian or security risk.

⁴⁴⁰ Statement by UNDP on the status of UN support to Stockpile Destruction to the Intersessional Standing Committee on Stockpile Destruction, Geneva, 6 February 2003.

⁴⁴¹ Standing Committee Meeting on Stockpile Destruction, Geneva 12 February 2004, ‘European Commission Project for the destruction of PFM-1 stockpiles in Ukraine’, Statement by P.Krejsa, p.2.

Through the entry point of stockpile destruction, it has also bound the two countries to all the other applicable regime obligations. It is thus significant to recognise that destruction of stocks was facilitated by a combination of technical/financial support and political conditionality linked to regime membership. Through association with the underpinning security and development rationales for stockpile destruction in a given context, the regimes raise awareness of and support for this activity. However, these represent a reaction to rather than a significant part of either regime discourse. This represents a lost opportunity to build on an important regime effect and thus enhance the humanitarian impact of the regime.

This sub-section contributes a number of important insights to the significance of nesting landmine regimes within the broader framework of IHL. Normative considerations are highly significant in addressing gaps in regime design through encouraging behaviour change. The dual focus of the ICBL at international and domestic levels in exerting pressure on the UK government to clarify its position on foreign stockpiles provides an important example of the organisation's influencing role in the implementation phase. Our analysis of stockpile destruction also provides new insights into the interplay of different international regimes and organisations through associating landmine regime implementation with wider security and development imperatives. Regime effectiveness in the area of stockpile destruction is thus reinforced by the nexus between humanitarian obligations international assistance and associated political conditionalities for regime membership.

4. Conclusions

This chapter provides a critical analysis of the implementation and effectiveness of the stockpile destruction-related provisions of the two landmine regimes. It demonstrates that the ostensibly technical (rather than overtly political or humanitarian) nature of stockpile destruction coupled with the evident success already achieved in this area contributes to a lack of emphasis on stockpile destruction within the landmine regimes. Significantly, a focus within the APMBC regime on encouraging states parties to meet destruction deadlines means that impressive statistics on mines destroyed mask a critical distinction between the numbers of APMs destroyed by the majority of states parties and a more modest achievement in eradicating stockpiles and caches in mine affected states. This lacuna helps us to understand gaps in the regime's ability to address stockpile destruction hard cases that result in evident humanitarian costs.

Ensuring that states parties are supported in fulfilling obligations recalls the critical relationship between international and domestic regime commitments. Although international regimes are agreed on the level of states, our analysis of stockpile destruction dynamics shows that in many cases successful implementation depends on the support of international and sub-state actors. The work of Geneva Call in supporting the engagement of ANSAs in all aspects of the landmine ban is instructive. Confirming our findings in Chapter 6 in relation to humanitarian demining, this chapter demonstrates that, despite informal compliance verification mechanisms highlighting the significant scale of stockpiles controlled by ANSAs, the regime has not been able to deal with them given the sensitivity of the issue for some regime

members. As in other areas of APMBC support to mine action, failure to address such hard cases represents a significant barrier to regime effectiveness. It is particularly significant that in the area of stockpile destruction a lack of emphasis on the ANSAs issue within the implementation process is not the result of a lack of knowledge but of a lack of political will to address a sensitive topic.

This chapter demonstrates that gaps in political will are compounded by inadequate human and organisational capacity in the area of stockpile destruction. Rapid signature and ratification without related domestic implementation measures when linked to such capacity gaps is directly linked to defection from stockpile destruction obligations. In the case of the APMBC, emphasis on the integrity of the anti-APM norm that sees states parties ‘succeed’ or ‘fail’ in meeting obligations within a given timeframe fails to take into account challenging, context-specific implementation challenges. Our analysis of regime dynamics in the area of stockpile destruction thus contributes to the tension identified in earlier chapters between regime and mine action priorities. It is important that binding obligations are not diluted. However, this chapter demonstrates that regime effectiveness is affected because specific defection challenges faced by mine affected states parties are not addressed. Our analysis of the cases of DRC and Turkmenistan thus confirms that implementation is inhibited less by the clarity of regime commitments and more by a lack of capacity and political will on the level of national actors. Therefore, while additional resources for stockpile destruction have been channelled to mine affected states through the APMBC regime, underlying capacity deficits on the national level remain unacknowledged, thus undermining regime effectiveness.

Our analysis of the contributions of the regimes in the area of stockpile destruction is particularly relevant to addressing research questions that look at the significance of stakeholder clustering. Despite an ostensibly open framework for regime implementation, politico-diplomatic and advocacy communities that dominate the APMBC implementation cluster lack the knowledge to respond to the implementation challenges of mine-affected states. Thus, while the regime has raised awareness of the risk of involuntary defection faced by certain regime members, it has been less effective in addressing stockpile destruction defection. As ‘conventional’ stockpiles diminish through compliance with commitments under both regimes, the remaining implementation challenges will increasingly be hard cases. Stockpile destruction dynamics thus reinforce our research finding that a continued emphasis on entrepreneurial leadership (at the expense of practitioner expertise) in the implementation phase prevents the regimes from learning and adapting to address implementation challenges by tapping into the broader mine action community of practice.

Even with the vastly increased profile of the landmine issue as a result of the Ottawa Process, stockpile destruction has not received particularly high levels of donor funding. However, the interrelationship between stockpile destruction and broader security and development concerns is significant. This chapter shows that the interplay of regime obligations with wider security and development commitments has proved a significant contributing factor in increasing both political will and available resources for stockpile destruction activities. APMBC membership as a condition for EU stockpile destruction assistance for Ukraine’s PFM-1 stocks resulted in the destruction of millions of other APMs as a consequence of this conditionality.

Stockpile destruction thus demonstrates important dynamics of ‘intermeshing’ or ‘networking’⁴⁴² between an international regime and international organisations on the basis of common goals. Stockpile destruction thus benefits from the wider normative imperative that encourages states to stay on the right side of this issue. Where such pressures cannot be brought to bear (as in the case of Turkmenistan) the regime has fewer options to exert this influence in support of implementation.

While only the APMBC has specific stockpile destruction provisions, both regimes link stockpile destruction to the realisation of overall regime goals. In both cases, important, positive regime effects are discerned in the area of stockpile destruction. By drawing together IHL and mine action practitioner literatures, this chapter also demonstrates a number of gaps in understanding, missed opportunities and unrealised synergies in this area of mine action. While unpacking characteristics that are particular to stockpile destruction, our analysis also reinforces research findings for mine action more broadly developed in earlier chapters. The following concluding chapter brings together insights developed through systematically applying the analytical framework of regime theory to the landmine regimes across the different chapters. New contributions to knowledge are assessed and the implications of our findings for an IHL research agenda are considered.

⁴⁴² Levy, Young and Zurn (1995): p.279.

Chapter 8

The Effectiveness of International Landmine Regimes

1. Introduction

This thesis provides an in-depth analysis of international landmine treaties within the broader framework of IHL. A key research motivation is that the role and achievements of the respective regimes are *assumed* by different stakeholder groups according to their own specific interests. Examining international actions on landmine issues from a regime perspective has thus proved useful in enabling the development of new insights into complex and interdependent regime dynamics. This concluding chapter considers the insights and contributions to knowledge that have been developed through addressing the hypotheses and research questions introduced in Chapter 1 and refined in Chapter 2 throughout the various thesis chapters.

The first overall hypothesis underpinning the research questions explored through this thesis posits that the interplay of design and implementation factors is critical to landmine regime effectiveness. While regime theory has contributed to knowledge in subjects such as trade, security and the environment, the issue area of IHL has not been analysed from a regime perspective. Our focus on the relationship between design, implementation and effectiveness of the landmine regimes therefore addresses a lack of critical analysis on this issue which, it is argued, mean that the impact of the regimes in supporting mine action objectives and addressing the humanitarian suffering posed by these weapons is unclear.

The second main hypothesis addresses the significance of regime interplay and nesting dynamics for landmine regime effectiveness. Analysing APII and the APMBC as nested regimes situates these specific cases as part of a long history of efforts under international law to alleviate the humanitarian suffering caused by weapons through regulation or prohibition. This perspective enables us to critically question the accepted narrative that juxtaposes the two regimes in order to consider ‘deep’ linkages that highlight evidence of regime interplay. Our understanding of measures to ban or restrict landmines is deepened by providing – through the lens of regime theory – a first systematic, analysis of these efforts that brings together insights from IHL and mine action discourses within a coherent analytical framework. Systematically applying a definition of effectiveness that emphasises a combination of observing regime rules and the extent to which underpinning regime objectives are achieved has been particularly important in order to better understand the relationship between setting and implementing regime goals.

In order to move beyond the analytical constraints of a limited implementation period, it has proved useful to deepen our understanding of IHL regimes with a longer historical pedigree. Consideration of Hague Declaration 3 and the 1925 Gas Protocol as regimes has enabled us to pose nuanced questions for the landmine regimes on the basis of more drawn out processes of regime development. In particular, this approach enhances our understanding of effectiveness in this issue area through clarifying the impact over time of factors such as gaps between regime obligations and regime goals, normative considerations as well as stakeholder clustering in earlier IHL regimes. Analysing these historical case studies as regimes also provides an original

contribution to knowledge through critically re-evaluating an existing literature in this issue area from a new perspective.

This concluding chapter begins by considering findings developed from our main hypothesis relating to the interplay between regime design and implementation. It then addresses our second main hypothesis by identifying how our understanding of IHL in general and the landmine regimes in particular have been enhanced or refined by considering issues of regime interplay and nesting. Through our systematic analysis of IHL and mine action literatures within a coherent research framework, a penultimate section focuses specifically on research findings in the area of landmine regime effectiveness that address the costs of disjunctions between regime and mine action priorities. Finally, findings outlined in this chapter are considered against wider research priorities in this field.

2. Key research questions for landmine regimes

This section considers contributions to knowledge developed through addressing our first main hypothesis. Building on insights into the interplay between design and implementation, it then considers the relationship between technical and political factors for regime effectiveness. Finally this section points to important agency considerations, in particular the significance of stakeholder clustering for regime effectiveness.

2.1 *The interplay between design and implementation*

Analysing APII and the APMBC through the lens of regime theory clarifies the extent to which the regimes meet their specific and overarching goals. Regime design is shown to be highly influential in shaping subsequent implementation and effectiveness of both landmine regimes. This thesis demonstrates that the transition from the regime formation phase to the qualitatively different process of implementation creates significant challenges. As discussed below, findings may be counter-intuitive, with an apparent ‘strength’ in regime design actually representing an obstacle when transferred to the regime implementation phase. Moreover, regime rules – in particular the weight accorded to different actors in shaping the negotiating process – are shown to be particularly significant in their subsequent influence on regime implementation.

Including ‘safety valves’ within regime frameworks allows regimes to function in the face of implementation challenges. APII with its permissive language, long entry into force periods and opportunities for extension to deadlines thus offers a number of safety valves for states. In contrast, the APMBC presents a rigid set of obligations for its members. Yet we can observe that the absence of flexibility in the APMBC contributes to the effectiveness of the regime exactly because commitments are clear and unequivocal. Regime members are under no illusion as to the extent of their obligations. In practice, therefore, this thesis demonstrates that the regime design for APII that allows – through optional deferral periods – for flexibility in meeting regime obligations has not been more effective when set against the APMBC imperative to preserve key norms and principles through avoiding reservations or

permissive language. Moreover, the integrity of the APMBC regime on a normative level and the absence of a safety valve in APII regime rules that would have given greater space to civil society concerns clearly play a significant role in contributing to contrasting regime dynamics.

APII functions as a regime for different reasons. Long implementation and optional deferral periods means that there are no surprises for regime members. Clearly defined rules of engagement for regime participation, including consensus decision-making and very limited accountability beyond the level of states, similarly provides for confidence-building inside the regime. Although within the APII implementation process there are regular experts meetings, these remain largely at a governmental level. This factor again contributes to the stability of the regime while at the same time representing a cost in terms of the ability to problem-solve that a broader expertise base would provide.

The limitations of regime design only become fully apparent during the implementation process. How regimes learn therefore represents an important concept in addressing the technical and political hurdles to fulfilling regime obligations. However, our analysis of the relationship between landmine regime provisions and mine action realities demonstrates that even where learning mechanisms exist, without clustering the appropriate expertise, fostering political buy-in and supporting national capacities to address hard issues, the right lessons cannot be drawn. Chapters 6 and 7 show that measures adopted within the APMBC to provide for greater clarity on implementation have had limited impact because greater transparency has not led

to increased accountability. Concrete measures have not been developed to address underlying regime challenges of political will and capacity.

2.2 The relationship between technical and political factors

The interplay of technical and political considerations is shown to be an important, under-analysed consideration for landmine regime effectiveness. Regimes are negotiated at a political level but implementation is strongly influenced by a combination of political and technical challenges faced by regime members. As Chapter 4 demonstrates, the process of APMBC regime formation focused on influencing the political calculus for regime membership. However, if states assume obligations at the international level, they must implement them at the national level. The political and substantive costs associated with these measures in certain cases pose problems for implementation that effective regimes should be able to recognise and address. Our analysis of the implementation of the stockpile destruction provisions of the APMBC highlights an important dislocation between political and technical levels. The relative lack of donor support for this activity stems from its apparently technical (rather than humanitarian) profile. Yet at the same time, an implementation cluster lacking practitioner expertise fails to address technical challenges. The technical-political split is highly significant because the regime is unable to recognise potential humanitarian payoffs that could be achieved through relatively small investments in supporting stockpile destruction. This reinforces our research finding that, regardless of clear regime obligations or adequate resources, capacity building and political will are critical to regime effectiveness.

A common feature of both regimes is the absence of a formal verification mechanism. This contributes to non-compliance being a *sub rosa* issue rather than featuring prominently within either regime. The absence of formal compliance monitoring and verification compounds a reluctance to openly address ‘hard’ issues – such as corruption – that may pose problems for certain regime members and consequently undermine the positive image of the regime. This points to a key research finding. The regimes do not lack empirical data on implementation challenges: *Landmine Monitor* represents a tool for regime learning, providing the single, comprehensive information source on states parties’ compliance. But the regimes neither harness the technical understanding needed to develop appropriate mechanisms nor bring to bear the requisite political will to address sensitive implementation challenges.

On a political level, meeting stockpile destruction targets is acknowledged as key to regime credibility. However, implementation of the stockpile destruction provisions of the APMBC is considered from a technical perspective, measured in terms of whether regime members complete destruction within the stipulated timeframe. However, Chapter 7 demonstrates that in practice this endeavour is highly political. In mine affected states where national authorities do not have full control of their territory, meeting stockpile destruction commitments may be impossible. This practical challenge is compounded by an unwillingness to address the politically sensitive issue of how to engage with ANSAs that use or stockpile APMs. Capacity challenges in mine affected states are thus compounded by a double deficit of political will at both the national level and within the regime.

This thesis demonstrates that the extent to which political and technical considerations bifurcate or reinforce each other are both under-estimated and highly significant factors for APII regime effectiveness. If the *scope* of the regime and the flexibility of its deferral periods for implementation reflect the political limitations of a process defined by the consensus requirement, the *focus* of the regime on new technologies and future use of these weapons is a reflection of the technical knowledge base of the designers. While there may be political incentives for developing countries to participate in the regime in the company of major powers, the regime offers few substantive incentives given that restrictions offer an expensive, technically challenging solution that for a mine affected state does not address the basic problem of mines already in the ground. In itself, initiatives that seek to widen participation within the APII regime are significant as attempts to foster regime learning. Yet, if such measures do not make sense from the perspective of regime goals and capacities they will have limited utility. Without such reflection it is difficult to identify the incentives for developing states to contribute meaningfully to the APII regime.

2.3 Key actors and the significance of stakeholder clustering

A secondary research question explored through this thesis is that the contribution of ‘implementers’ during the design phase is a key contributing factor to the development of effective treaty provisions. Given that many implementation challenges only become apparent after regime rules are agreed, experience from the landmine regimes reinforces the central role of expert communities in both these phases of regime development. The absence of mine action expertise or voices from mine affected countries within APII has resulted in a regime that does not address the

concerns of these constituencies. Consequently, as shown in Chapter 4, the central challenges of dealing with mines already in the ground and the costs for developing countries that come with technological re-engineering of weapon stocks were not a factor in the regime design process. Similarly, the focus of APII provisions on traditional military operations does not reflect experience in contemporary conflicts with landmines utilised as a weapon of fear against civilian populations.

For the APMBC, one important finding is that there is an absence of communication and coordination between politico-diplomatic and advocacy communities active within the regime implementation process and the practitioner community engaged in the different pillars of mine action. This clarifies an important distinction between a true epistemic community and an APMBC implementation process that is still strongly influenced by norm entrepreneurs. This insight feeds into a broader research finding that emphasis on ‘brand loyalty’ over cooperation in the implementation phase has adverse implications for regime effectiveness. As shown in Chapters 6 and 7, learning within the framework of the APMBC has been stymied by a lack of mine action expertise and a consequent inability to problem solve in the area of practical implementation challenges. Thus, capacity gaps in the implementation phase do not impair regime effectiveness in terms of fulfilling obligations but they do reduce opportunities for the regime to evolve in order to more effectively reduce the suffering caused by these weapons.

This thesis demonstrates that how actors combine and relate to each other is a critical determinant for regime effectiveness in this issue area. The composition of such clusters at various points in regime evolution represent an important regime dynamic

that strongly influences how cooperation and problem-solving occur. The literature surrounding the Ottawa Process focuses on the importance of the civil society coalition and its relationship to a core group of committed states for regime formation. A broad cluster of involved actors including states, civil society, experts and representatives of mine affected states bring different influences to bear on the process of regime formation. Participation is thus an important part of this narrative. As demonstrated in Chapter 4, this combination of policy makers, practitioners, advocates and ‘victims’ proved decisive in winning support for the regime and undermining countervailing (predominately technical) arguments. However, the successful self-selection dynamic was effective in garnering support from the undecided rather than providing crucial input to the development of the treaty. Indeed, compared to other IHL treaties, the APMBC is marked by the lack of changes made to the initial draft during the negotiating process. In contrast to the prevalent discourse on the regime formation process, participation was less crucial to the design of the treaty text than to increasing political will in favour of membership. This points to an important gap between entrepreneurial leadership as distinct from structural or intellectual leadership, reflecting the decision making dynamics of a ‘global’ coalition with a much more narrowly constructed leadership.

A distinction between representation and influence becomes particularly significant in the implementation phase. The effectiveness of APII is constrained by the unchanged nature of the implementation cluster, in particular, a continued lack of entrepreneurial leadership able to champion transformational change. The ‘closed’ nature of the CCW regime, reflected by a limited public record of negotiations and few post-facto analyses, offers scant opportunities for regime learning. Indeed,

innovations within the APII regime – such as the introduction of a sponsorship programme to encourage participation from mine-affected states – reflects an emulation effect in response to measures adopted by the APMBC although within a very different regime framework. In contrast, within the APMBC the influential constellation of actors has shifted with a different balance of political will and technical expertise generating important consequences. While regime formation was clustered around a diverse group of advocacy-focused actors, supportive states and expert communities, implementation has seen the regime governed by a narrower cluster of advocates and the politico-diplomatic community. There is a continued involvement of mine affected states but, counter-intuitively, the implementation cluster places less rather than more emphasis on mine action expertise.

Significantly, both practitioners and those that have assumed a leadership role in regime implementation share a consensus that there is no need to rely so heavily on the practitioner community now that the regime has achieved a broad and growing membership. One reason for this is provided by the opening page of the HALO Trust website which states clearly that ‘HALO is not distracted by involvement in campaigns and conferences. We have a simple mission statement – ‘getting mines out of the ground, now.’⁴⁴³ Thus, while leadership of the implementation process is tightly controlled by non-experts, the mine action expert community is also – consciously – less directly associated with regime implementation because of their focus on mine action and not the regime per se.

⁴⁴³ www.halotrust.org

Through assessing different aspects of implementation, the regular intersessional meetings provide the major APMBC mechanism for regime learning. Meetings are generally attended by diplomats (many based in Geneva) and agendas are shaped by the APMBC secretariat – the GICHD in collaboration with core group states and the ICBL. Representation from mine-affected countries is encouraged through a sponsorship programme and a policy of co-chairing of committees. These meetings provide a forum to gauge implementation. However, as elaborated in Chapter 5, the form and composition of the cluster of relevant regime actors means that the nature of the meetings is geared towards information sharing and awareness raising rather than problem-solving. The common characterisation of the APMBC in the literature as a crossroads where state and non-state actors meet on an equal footing is challenged by the composition of this cluster. In implementation, the centrality of a core group of states and the ICBL conditions the regime's effectiveness through constraining its ability to learn in order to better address regime challenges.

Our analysis of stakeholder clustering dynamics highlights important shifts across APMBC regime formation and implementation phases. A particularly important finding is that the advocacy-driven approach so critical to the process of regime formation has costs when applied in regime implementation. The ICBL provided targeted advocacy that proved key to building a strong coalition in favour of a ban on APMs. *Landmine Monitor* represents a transition mechanism for the ICBL from advocacy to monitoring and verification service provider for the regime. However, there is a gap between the knowledge generated by *Landmine Monitor* research and demonstrable regime responses. If *Landmine Monitor* is critical in identifying the extent to which states are meeting their obligations, a significant gap lies in the ability

to operationalise these findings within the regime through addressing voluntary as well as involuntary defection. Reflecting the central role of the ICBL within the APMBC implementation process, this points to an expertise gap at the heart of regime decision making. The prevalence of entrepreneurial over intellectual leadership highlights a conflation of expert communities with civil society in a wider sense. The absence from the implementation cluster of mine action expertise is therefore highly significant for regime effectiveness.

3. Analysing IHL and mine action as linked sub-regimes within a nested IHL regime framework

This section articulates new insights and addresses gaps in the existing literature through addressing our hypothesis that regime interplay and nesting within a broader IHL framework are important issues for landmine regimes. Building on the research questions addressed through the various chapters, this section considers research findings in two dimensions. First, regime interplay dynamics are analysed. Second, the significance of regime nesting and the embedding of landmine regimes within the broader normative framework of IHL is assessed.

3.1 Norms and regime interplay

The significance of normative content to regime effectiveness in IHL regimes more broadly and the landmines issue in particular represent important secondary research questions explored through this thesis. Chapter 4 demonstrates that the ‘norm bandwagon’ phenomenon of the Ottawa Process is a central factor in accounting for

the broader membership of the APMBC in comparison to APII. The significance of being seen to be a concerned international actor was underlined from the outset of the Ottawa Process by growing international support subsequent to the first Ottawa conference. In contrast, while APII has not exerted a pull factor beyond a core constituency of predominantly Northern states, membership has proved politically significant in order to exhibit commitment and concern for the landmine issue without signing up to a ban on APMs.

Less visibly, an important quality of regime interplay is demonstrated through a de facto conditionality imposed on a number of levels by the anti-APM norm. Thus, beyond the loss of a military capability, it is significant that the calculus for joining the regime includes the policy step of contradicting the US position, a significant decision for close allies such as the UK as well as the many states dependent on US security and development assistance. The behaviour of EU applicant states was strongly influenced by the need to be seen to be on the right side of the issue – even where there was a cost in terms of their defence-industrial base – persuaded that the political opprobrium of non-membership outweighed any potential costs of joining the regime. In the case of South Africa, its prominent role in the Ottawa Process embodied an internationalist concern, post-Apartheid, to be seen to re-enter the international community as a morally proactive actor.

A significant gap in the literature on both APII and the APMBC lies in regime interplay dynamics beyond regime membership. The policy orientation of the US is particularly significant given its structural leadership role in many international regimes. As demonstrated in Chapters 6 and 7, the desire to be associated with the

anti-APM norm has led to the US increasing its support for mine action as well as placing greater emphasis on active participation in the APII regime. From a starting point of the US treating the CCW as one among many of its arms control obligations, it has become the leading force in both promoting APII compliance and in developing new instruments such as Protocol V to address wider categories of post-conflict hazard. This stance combines a desire to demonstrate good international citizenship with the inherently political tactic of promoting measures that can be ‘managed’ in a forum with clear rules as opposed to a less biddable Ottawa-style framework.

Our analysis of historical IHL case studies provides useful insights to the significance of ‘stigmatisation’ for the effectiveness of certain IHL regimes. This concept links concerns over specific weapons to a wider IHL agenda. Chapter 3 demonstrates that the de-legitimisation of chemical weapons through the 1925 Gas Protocol influenced the behaviour of non-regime members and was a necessary precursor to the later CWC. It is significant that the emergence of a norm against these weapons enhanced political will in support of further, more far reaching measures. This historical analysis helps us to deepen our knowledge of interlocking and overlapping dynamics of landmine regime formation. A landmine regime could not be formed on this single issue in 1980 but embedding it within the CCW enabled the formation of the regime. Increased political will subsequently led both to the additional restrictions in APII and to the momentum behind the Ottawa Process.

An important set of research findings relates to the anti-APM norm and how this has influenced the behaviour of actors within the APMBC and across the two landmine regimes. There is a de facto international ban on licit trade in APMs (Russia and

China have ceased APM exports) while APM production has also greatly decreased. The APMBC thus continues to generate norm bandwagon effects which resonate with a broad swathe of the international community. Bi- and multilateral mine action donors have explicitly linked funding to regime membership. This has led to broader payoffs since, as demonstrated in Chapter 7, a membership conditionality linked to support for stockpile destruction has obliged these states to meet the full range of regime obligations. An array of different non-APMBC members – from the US to Russia and India – have thus increased their commitment to APII or aligned themselves with APMBC priorities in order to associate themselves with the normative position associated with this process. This effect has also led to increased transparency – beyond stated APII obligations – by states such as Russia and China, a significant step for actors that place such emphasis on national security concerns.

Recalling Putnam's two-level game, we see states remaining outside the regime in order to meet the requirements of one domestic constituency (the security establishment). At the same time they adopt measures and increase funding for mine action in order to demonstrate to other domestic constituencies (including civil society but also other groups within government) as well as to the international community that they are committed to the norm of reducing the humanitarian suffering caused by these weapons. The US, which has not used APMs in combat since 1991, is perhaps one of the strongest de facto supporters of the regime and its humanitarian objectives. US mine action support thus highlights that APMBC regime membership is not a precondition for fulfilling regime goals. Relatedly, continued ICBL criticism of the US as 'Ottawa rejectionist' demonstrates how removed this perspective is from an understanding of regime payoffs in relation to mine action effectiveness.

Chapter 4, shows how juxtaposing the Ottawa and APII processes in normative terms was a highly successful tactic to highlight the need for a new international instrument geared towards an unequivocal ban on APMs. However, this broader normative framework is significant because it points to an unacknowledged bridge *between* the regimes within the broader framework of IHL. Both Russia and the US have gone well beyond their APII obligations in showing transparency on APM policy and technical information on stockpiles. These positive emulation effects that build on the need to show commitment to humanitarian principles demonstrate a strong if subliminal quality of regime interplay. Significantly, such conduct by major militarily significant states generates further emulation effects among other non-APMBC members also keen to stay on the ‘right side’ of the issue. A continued ‘demonisation’ of the US by the ICBL for its non-membership of the APMBC therefore seems to reflect a counter-productive hangover from the regime formation phase given the pre-eminent US role in mine action and the lack of opposition of the US in substantive terms to the underlying goals of the treaty.

3.2 *Regime nesting*

It is argued that regimes in different issue areas are strengthened through being nested within broader normative frameworks. Indeed, it has proved analytically useful to situate APII and the APMBC as part of this broader IHL regime. The case studies on dum dum bullets and chemical gas demonstrate important qualities of regime resilience through the mutually reinforcing relationship between these historical regimes and newer IHL treaties. Our analysis of Hague Declaration 3 shows that the

impact of the regime on the subsequent use of these rounds provides only a partial picture of regime effectiveness. Spillover effects into more recent efforts to prohibit certain weapons represent important regime nesting dynamics that provide for a more nuanced understanding of IHL regime effectiveness. Thus, even if specific provisions have become less relevant over time, the mutually reinforcing relationship of the regime to the customary IHL principles of superfluous injury and unnecessary suffering strengthens the underpinning regime norm while encouraging regime-compliant behavior.

Critically examining the prevalent narrative, actively propagated in the literature⁴⁴⁴ and discussed in Chapter 4, that the Ottawa Process is unique in terms of civil society's central role and a key victory for an emerging human security agenda has generated a number of insights. As Chapter 3 demonstrates, absent the force multiplier effects of globalisation, the processes that led to the ban on *dum dum* bullets and the 1925 Gas Protocol saw influential roles played by a wide array of civil society bodies in conjunction with sympathetic states. The media also had an important role in pushing states to the negotiating table in both these earlier IHL regimes. This 'myth' of immaculate conception is not significant in itself but does have implications for regime effectiveness if it contributes to reinforcing artificial divisions between regime stakeholders and thus to lost synergies in the implementation phase.

This thesis demonstrates that the nexus between de-legitimisation and political will is particularly significant in the context of a regime nested within the broader framework

⁴⁴⁴ See: Cameron, Lawson & Tomlin, B.W. (1998) and Mathew, McDonald and Rutherford (2004).

of IHL. Stigmatisation results in regime effects that extend far beyond obligations associated with regime membership. Both increased US mine action support and the non-use of APMs since the entry into force of the treaty reflect the humanitarian imperative underpinning the APMBC. This displays strong parallels to the US relationship to the 1925 Gas Protocol. Thus, Chapter 3 argues that while the US did not join the regime for many years, the stigma associated with chemical gas meant that the use of these weapons was never an option since the regime's entry into force.

Blurred lines between political will to join the APMBC regime and a more nuanced analysis of the behaviour of different states in the implementation phase, demonstrates an important quality of normative interplay that extends beyond regime membership. If militarily-significant non-APMBC members have fulfilled some regime obligations, accusations of non-compliant behaviour levelled at Pakistan in the POF case are significant for different reasons. The rapid response of the Pakistani government in seeking to refute these allegations demonstrates that a breach of the UK's national obligations under the APMBC was regarded by them as highly sensitive in political terms. An important regime interplay effect is demonstrated by the APMBC raising the political costs of discovery for states in breach of its obligations, regardless of regime membership in the strict legal sense of IHL.

4. Regime effectiveness

Building on a definition of effectiveness drawn from the wider regime theory discourse which focuses on considerations of *resources* and *political will*, the particular characteristics of the landmine regimes are addressed by third aspect of

effectiveness, *humanitarian impact*. Critically assessing IHL and mine action discourses within a single analytical framework links related but previously disconnected discourses. This approach has proved useful in addressing research questions that consider disjunctions between regime and mine action priorities. The following section considers new insights gained through applying these three dimensions of effectiveness to APII and the APMBC.

4.1 *Resources*

The APMBC places the onus on states parties to fulfil obligations yet in nearly all cases mine action is strongly assisted by the expertise and financial support of international actors. The convening role of the regime is therefore essential in order to bridge resource and capacity gaps by supporting regime members in fulfilling their obligations. This thesis demonstrates that the APMBC is effective in generating additional resources for mine action. Counterfactual questions are addressed by regime membership conditionalities placed on funding support, evidence of interaction effects through commitments by non-traditional donors as well as the timing of new commitments by different donors that coincide with entry into force of the regime. Important emulation effects are also shown with non-APMBC members such as the US increasing mine action funding to demonstrate political commitment as a response to criticism of its non-membership of the regime. This resource dynamic displayed by the structural leader of the APII regime highlights an important contrast between the two regimes. While the APMBC has generated resources through effective marketing of a humanitarian brand, APII has neither the entrepreneurial leadership nor the moral clarity to provoke such effects.

The APMBC regime focuses expertise in a number of areas, such as for the development of national mine action strategies or assistance in designing domestic implementing legislation. However, in other areas the capacity needs of mine affected regime members are not aligned with the regime implementation process. This represents a significant contradiction between the regime's emphasis on national ownership and its lack of emphasis on capacity building as a key enabling activity. A lack of resource commitment in this area highlights a significant gap between regime and mine action priorities.

As discussed in Chapter 5, the case of Cambodia highlights challenges associated with resource generation. Cambodia is not failing to meet any of its explicit APMBC obligations so this is not an issue for the regime. Underdal's distinction between effectiveness in fulfilling obligations as opposed to achieving regime goals is evident: if national authorities are undermining mine action work then this clearly runs against the overarching humanitarian objectives of the regime. Real or perceived corruption represents a sensitive issue for the regime that the APMBC leadership has proved reluctant to address. Thus, if additional financial resources are a demonstrable achievement of the APMBC, the regime plays only a modest role in how those resources are targeted and used.

This thesis demonstrates that the gap between resource generation and effective deployment of these resources is particularly evident in the area of humanitarian demining. Despite strong awareness of this issue within the mine action community, country-based evidence from *Landmine Monitor* and efforts to focus on the challenge

of resource sustainability within the APMBC led by Norway, the regime has not made progress on this issue. This is a critical research finding because our focus on resources highlights how perception and knowledge gaps between regime implementers and expert communities coupled with a reluctance to address hard implementation issues significantly inhibits the effectiveness of the regime in fulfilling its overarching humanitarian objectives. Thus, while the mine action community is undergoing a ‘gestalt shift’ from quantitative to humanitarian or socio-economic impact-driven approaches, the regime implementation cluster is unable to bridge the gap between *adequate* and *effective* resources.

4.2 *Political will*

The literature surrounding the Ottawa Process highlights the effectiveness of the two-track regime formation process in building political will in favour of the regime. While our research findings help to understand the positive dynamics underlying this process, important new insights demonstrate ways in which political will was absent in this phase. During APMBC treaty negotiations the core group displayed a reluctance to include issues – such as assistance for mine victims – that might complicate the task of achieving a widely-adopted treaty centred on an APM ban. As shown in Chapter 4, the focus on this overarching political goal meant that discussion on technical issues related to the draft treaty was minimal. The successful strategy was therefore to address hard issues that might be found in the details by avoiding them. Beyond the US, unable to countenance an unadulterated ban but still wanting to drive the process, red line issues were never brought to the fore during the negotiating process. By contrast, in the APII framework, the consensus requirement for decision-

making meant that the political and technical red lines were clear. With the ‘nuclear option’ of banning weapons off the table, negotiations focussed very much on a technical level.

This thesis demonstrates that understanding the shifting dynamic from the political process of regime formation to the implementation of obligations that are both technologically-challenging and politically-sensitive is key to regime effectiveness. Chapters 6 and 7 underline hidden costs in implementation related to the APMBC norm bandwagon effect. Our analysis shows that early signature and ratification without consideration for the implications of regime obligations has costs in terms of the implementation of provisions related to humanitarian demining and stockpile destruction. If the anti-APM norm created widespread support for the APMBC, it does not follow that there is commensurate political will by states to meet their obligations. Narrow gaps between signature and domestic ratification by a number of mine-affected states may signal the strength of the anti-APM norm yet also provide a clear indication that the full costs of membership are not being considered.

A major challenge to regime effectiveness can subsequently be discerned when member states lack the relevant capacities or lose their enthusiasm in the more technically challenging, expensive and sensitive (in domestic terms) implementation phase. This points to an apparent paradox with the anti-APM norm encouraging adherence yet at the same time blinding states to the costs of membership. Furthermore, these costs are higher for mine affected states given that the challenges of capacity and political will are particularly acute in the settings most in need of support from the regimes.

Resource challenges within the APMBC demonstrate that an important aspect of distinguishing implementation from effectiveness is how regimes deal with hard cases. A hard implementation issue that the regime has not addressed is in the area of inappropriate donor support. Technology for mine action is one area where there is a nexus between a clear mandate within the APMBC (Article 6) to improve its role and strong evidence from mine action practitioners that technology is frequently expensive, inappropriate and ineffective. Despite this issue having been raised within the regime, there has been no progress on it within the implementation process. This demonstrates a serious challenge to regime effectiveness. Beyond the lack of practitioner expertise in the implementation cluster, the regime has chosen not to address this sensitive issue and neither expert communities nor the affected states that receive such support have the leverage to change this.

In the mine action literature, the absence of ownership and a related lack of attention to capacity building is regarded as a major shortcoming of existing programmes. This issue has not been directly addressed within either regime, begging the question whether this is recognised as a significant issue for regime effectiveness. Chapters 6 and 7 reinforce our research finding that mine-affected states have a less well-defined and influential role in APMBC implementation than in the regime formation phase. Given that in many mine-affected contexts the state itself cannot be considered as a unitary actor, this demands a more nuanced understanding within the regime of voluntary and involuntary defection. Both regimes lack the technical/contextual awareness to support mine affected states in ways that reinforce political will and mitigate against non-compliance. While less relevant in the APII regime with its

narrower membership base, this demonstrates an important distinction within the APMBC between the principle of ‘ownership’ that is central to the APMBC framework and how this is translated into practice through building national capacity with international assistance.

4.3 Humanitarian impact

As IHL regimes, the effectiveness of APII and the APMBC rests on their impact in reducing the humanitarian costs of landmines. Support to mine action represents the most tangible way to deliver on the humanitarian objectives of the regimes through reducing risk to individuals and communities. The evident decline in the use of APMs as a result of the APMBC clearly constitutes a major success in terms of the humanitarian criterion for effectiveness. However, this thesis demonstrates that a quantitative approach to implementation resting on statistics such as regime membership or stockpiles destroyed does not address the qualitative concerns of affected states or mine action practitioners. Relatedly, the lack of focus within the regime on capacity building contributes directly to involuntary defection and thus to reduced regime effectiveness.

Chapter 7 shows that while implementation of stockpile destruction provisions is understood within the regime as a technical endeavour, in fact this is a highly political process. Failure to recognise this interplay has costs in terms of the humanitarian dimension of regime effectiveness when the political imperatives that led states to join the APMBC regime have not been subsequently matched by a commensurate focus on the requirements assumed by taking such a step. Failing to address both the political

and technical challenges that result in defection by regime members in meeting clearance or stockpile destruction targets present, humanitarian, security and developmental challenges that have not been fully recognised within the framework of the regimes.

Applying a humanitarian criterion for regime effectiveness allows us to critically question claims of effectiveness relating to certain APII provisions. In particular, this approach provides an important corrective to arguments deployed within the regime as to the humanitarian impact of obligations for the increased detectability of landmines. Compliance with this provision offers no humanitarian payoff for civilians since these at risk groups have no access to mine detection equipment. More broadly, all provisions that apply to current and future stocks of landmines ignore the field reality that the humanitarian threat relates to mines already in the ground long before provisions were agreed. The significant additional protection for military personnel and deminers does represent a humanitarian payoff. But it is significant that compliance with these provisions by China and Russia also demonstrates how the regime unites self-interest with a humanitarian demining payoff since both these states were motivated by an awareness of the risks to their own forces posed by ‘undetectable’ APMs.

Our analysis of regime effectiveness in its humanitarian dimension demonstrates a significant tension between regime and mine action priorities. A commitment to 100% clearance as a regime benchmark is inconsistent with the onus of mine action to demonstrate clear payoffs for conducting this work. Paradoxically, the regime therefore seeks to preserve the anti-APM norm at the expense of more effective

humanitarian demining. However, the tripartite definition of effectiveness applied in this thesis is important because it demonstrates the interrelated nature of these criteria. For the APMBC, our research findings in the areas of resources and political will show that nurturing the normative imperative of the regime in implementation is key to promoting compliance while also generating emulation effects beyond the regime. Lowering the bar from 'mine free' may also contribute to defection through states misunderstanding or deliberately misinterpreting their obligations. Conducting certain humanitarian demining activities that do not have evident humanitarian, security or developmental payoffs may therefore be a necessary price to pay for maintaining the integrity of the regime and thus ensuring broader regime effectiveness.

5. An IHL regime research agenda

This thesis has provided a systematic analysis of key aspects of the design, implementation and effectiveness of international agreements relating to landmines within a broader IHL framework. Through addressing a number of related secondary research questions, the main hypothesis that the relationship between regime design and implementation is critical to understanding landmine regime effectiveness has been strongly validated. Moreover, considering research questions relating to our second main hypothesis on the importance of regime nesting and interplay in this issue area provides a number of important new insights. This concluding section considers the implications of these new contributions to knowledge for further research into IHL regimes more broadly and landmine regimes in particular.

In both regimes, our research framework that unites IHL with the mine action practitioner discourse problematises important gaps between ‘ideal’ provisions and field realities. The application of Underdal’s definition of effectiveness is particularly important in demonstrating that even when met, certain obligations do not have security, development or humanitarian payoffs. Research findings from this thesis that highlight a lack of clarity on regime effectiveness within APII and the APMBC raise important issues for how treaty designers and implementers in the broader IHL field address effectiveness issues. This challenge is further complicated by a counter-intuitive but significant disjunction between regime and mine action interests that means that effective mine action may undermine the integrity of the APMBC regime. Thus, further work on IHL effectiveness must seek to address complex questions in which design, agency and normative considerations are intermeshed.

Our understanding of the concept of regime learning in this issue area has been refined through analysing stakeholder clustering dynamics across regime formation and implementation. A lack of input from mine action practitioners in implementation has significant adverse implications for the ability of the regimes to learn and evolve. On the one hand, despite claims to openness in the case of the APMBC, there has been an approach based on entitlement rather than transparency in allocating influential regime roles. On the other, a lack of engagement in implementation is not simply a reflection of the preferences of controlling interests within the regimes but is also a consequence of a self-conscious (and self-interested) desire to treat mine action as a ‘black art’ set apart from broader policy, programming and budgetary considerations. This points to a gap in our knowledge of how to influence stakeholder clustering and

regime leadership dynamics in this issue area that requires further work to develop more nuanced understandings that can support learning within these regimes.

This thesis demonstrates that the two regimes are intrinsically linked even if this is not widely understood or acknowledged in the existing literature. Interlinkages between APII and the APMBC, if remaining taboo within the regimes, generate dynamics that impact on regime effectiveness. Although a mechanism of one regime, the function provided by *Landmine Monitor* influences behaviour in both through its reporting on APII compliance issues. More broadly, an important quality of regime interplay results in effects that support common goals regardless of regime membership. However, despite evident complementarities and latent synergies, little effort has been made to bring the two regimes closer together. Further research on regime interplay dynamics therefore offers opportunities to address an issue that is both neglected in the existing literature and may offer important payoffs across the two regimes.

Exploring regime nesting dynamics within the broader framework of efforts under IHL to address inhumane weapons highlights significant, under-emphasised aspects of the relationship between the two regimes that only emerge when they are embedded within the wider historical context of IHL. Critically examining historical antecedents enables us to better understand the importance of the concept of stigmatisation for IHL regimes. This is confirmed by the catalysing effect on both state and non-state actors of the anti-APM norm in promoting the observance of regime objectives as ‘the right thing to do.’ Although not the research focus of this thesis, a number of emulation effects in the broader IHL agenda can be discerned as a result of the landmine regimes. Regime consequences and spillover effects therefore point to an

important focus for further research in the wider IHL field. In particular, building on our analysis of APII and the APMBC, the ability of IHL regimes to exert effects beyond their membership represents a significant, under-researched area for further work.

Further clarifying the relationship of mine action to related activities also necessitates greater understanding of how international regimes, international organisations, states and NSAs interact within a given issue area. APMBC membership conditionalities links the realisation of regime goals to the broader security and development agendas of actors such as the EU and the UN. Analysis of ‘sticks’ and ‘carrots’ associated with regime membership thus points to the need for further research in order to better situate mine action within poverty reduction, development and peacebuilding frameworks. The ability to create virtuous cycles through a combination of conditionalities and incentives offers an important area for further work that can contribute new insights into the overlapping and interlocking nature of regimes, institutions, states and NSAs in an interdependent world. Drawing on our analysis of landmine regimes, understanding determinants and variables that can contribute to such integration – while recognising legitimate concerns within the issue area communities over ‘mainstreaming’ or ‘securitising’ humanitarian work – therefore represents an important research priority.

In conclusion, the original contributions to knowledge developed in this thesis come from applying a coherent analytical framework to the design, implementation and effectiveness of landmine regimes. Regime theory offers only one approach to better understanding international efforts to address these issues. However, this contribution

is significant exactly because it provides a first scientific, critical assessment of landmine regime strengths and weaknesses that pose a number of questions for their further evolution. The security, development and humanitarian objectives of a field of work that will still require decades of international and national commitment provide a compelling argument for further research to support the fulfilment of landmine regime goals.

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